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# TEXAS REGISTER

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# TEXAS REGISTER

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# THE GOVERNOR

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

## Appointments

### Appointments for January 4, 2023

Appointed as Judge of the Criminal District Court No. 2, Dallas County for a term until December 31, 2024, or until his successor shall be duly elected and qualified, Justin J. "J.J." Koch of Dallas, Texas (replacing Judge Nancy Kennedy of Dallas who was elected to the Fifth Court of Appeals).

### Appointments for January 5, 2023

Appointed as Judge of the Criminal District Court No. 3, Tarrant County for a term until December 31, 2024, or until his successor shall be duly elected and qualified, Douglas A. "Doug" Allen of Fort Worth, Texas (replacing Judge Robb D. Catalano of Fort Worth who resigned).

Appointed as the Border Commerce Coordinator for a term at the pleasure of the Governor, Jane Nelson of Flower Mound, Texas (replacing John B. Scott of Fort Worth).

Appointed as the Secretary of State for a term to continue in office during the term of service of the Governor, Jane Nelson of Flower Mound, Texas (replacing John B. Scott of Fort Worth who resigned).

Appointed to the Trinity River Authority Board of Directors for a term to expire March 15, 2027, Frederick C. "Fred" Tate of Colleyville, Texas (replacing Roger P. Nober of Fort Worth who resigned).

### Appointments for January 6, 2023

Designating James Beauchamp of Midland as presiding officer of the Commission on State Emergency Communications for a term to expire at the pleasure of the Governor. Mr. Beauchamp is replacing Debbie S. "Debi" Hays of Odessa as presiding officer.

Appointed to the Nueces River Authority Board of Directors for a term to expire February 1, 2027, Elizabeth P. Aliseda, O.D., of Beeville, Texas (replacing John W. Galloway of Beeville whose term expired).

Appointed to the Nueces River Authority Board of Directors for a term to expire February 1, 2027, Allan P. Bloxsom, III, of Uvalde, Texas (Mr. Bloxsom is being reappointed).

Appointed to the Nueces River Authority Board of Directors for a term to expire February 1, 2027, Ross G. Cansino of George West, Texas (replacing Amy M. Clark of Three Rivers whose term expired).

Appointed to the Commission on State Emergency Communications for a term to expire September 1, 2023, Edwina L. Lane of Ector, Texas (replacing Debbie S. "Debi" Hays of Odessa, who resigned).

Appointed to the Texas Alcoholic Beverage Commission for a term to expire November 15, 2027, Kevin J. Lilly of Houston, Texas (Mr. Lilly is being reappointed).

### Appointments for January 9, 2023

Appointed to the Teacher Retirement System of Texas Board of Trustees for a term to expire August 31, 2027, Brittany G. Allred of

Dallas, Texas (replacing Christopher S. "Chris" Moss of Lufkin whose term expired).

Appointed to the Teacher Retirement System of Texas Board of Trustees for a term to expire August 31, 2027, John W. Elliott of Austin, Texas (Mr. Elliott is being reappointed).

Appointed to the Teacher Retirement System of Texas Board of Trustees for a term to expire August 31, 2027, Elvis D. Williams of Fair Oaks Ranch, Texas (replacing Gregory A. "Greg" Gibson, Ed.D. of Schertz whose term expired).

Appointed to be the Director of the Office of Community-Based Care Transition for a term to expire at the pleasure of the Governor, George J. Cannata, Jr. of Fort Worth, Texas (replacing Theresa L. "Trisha" Thomas of Pflugerville).

Appointed to the Texas State Technical College System Board of Regents for a term to expire August 31, 2023, Robert J. "Robb" Misso, III of Cedar Park, Texas (replacing John K. Hatchel of Woodway who is deceased).

Appointed to the Texas Military Preparedness Commission for a term to expire February 1, 2023, Michael Bob Starr of Abilene, Texas (replacing Wood F. Gilliland of Abilene who resigned).

Appointed to the Texas Military Preparedness Commission for a term to expire February 1, 2025, Todd M. Fox of Belton, Texas (replacing Patrick K. "Pat" Akuna, Jr. of Killeen who resigned).

Appointed to the Department of Information Resources for a term to expire February 1, 2027, Jeffrey W. Tayon of Houston, Texas (Mr. Tayon is being reappointed).

Appointed to the Texas Workforce Commission for a term to expire February 1, 2023, Alberto "Albert" Trevino, III of Harlingen, Texas (replacing Julian Alvarez of Harlingen who resigned).

Greg Abbott, Governor

TRD-202300116



## Proclamation 41-3951

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

WHEREAS, I, GREG ABBOTT, Governor of the State of Texas, issued a disaster proclamation on July 8, 2022, as amended and renewed in a number of subsequent proclamations, certifying that exceptional drought conditions posed a threat of imminent disaster in several counties; and

WHEREAS, the Texas Division of Emergency Management has confirmed that those same drought conditions continue to exist in these and other counties in Texas, with the exception of Bastrop, Brazoria, Brewster, Burnet, Calhoun, Clay, Coke, Coleman, Colorado, Concho, Fayette, Frio, Galveston, Glasscock, Haskell, Hill, Hood, Kimble, Knox, Lampasas, Leon, Limestone, Llano, Mason, McCulloch, Menard, Palo Pinto, Parker, Runnels, Schleicher, Somervell, Stephens,

Sterling, Tom Green, Washington, Wichita, Wilbarger, and Williamson counties;

NOW, THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby amend and renew the aforementioned proclamation and declare a disaster in Andrews, Aransas, Atascosa, Austin, Bandera, Baylor, Bee, Bell, Bexar, Blanco, Borden, Bosque, Brown, Burnet, Caldwell, Callahan, Cameron, Castro, Childress, Collingsworth, Comal, Comanche, Coryell, Cottle, Crosby, Dallam, Dawson, Deaf Smith, Dickens, Eastland, Erath, Falls, Fisher, Floyd, Foard, Gaines, Garza, Gillespie, Gonzales, Grimes, Guadalupe, Hale, Hamilton, Hansford, Hardeman, Hartley, Hays, Henderson, Hidalgo, Howard, Hutchinson, Jones, Kendall, Kent, Kerr, King, Kinney, Lipscomb, Lubbock, Lynn, Martin, McLennan, Medina, Mills, Mitchell, Montgomery, Moore, Motley, Nolan, Ochiltree, Oldham, Parmer, Polk, Potter, Randall, Real, Roberts, Scurry, Shackelford, Sherman, Stonewall, Swisher, Taylor, Terry, Travis, Uvalde, and Yoakum counties.

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

Pursuant to Section 418.016 of the Texas Government Code, any regulatory statute prescribing the procedures for conduct of state business

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

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

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 31st day of December, 2022.

Greg Abbott, Governor

TRD-202300058



# THE ATTORNEY GENERAL

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

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

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

## Requests for Opinions

### RQ-0491-KP

#### Requestor:

Mr. Mark Wolfe

Executive Director

Texas Historical Commission

Post Office Box 12276

Austin, Texas 78711-2276

Re: Questions related to the ownership of the Texas Revolution and Texas Civil War centennial markers and what state agency, if any, is responsible for the preservation and maintenance of the markers (RQ-0491-KP)

#### Briefs requested by January 23, 2023

### RQ-0492-KP

#### Requestor:

The Honorable Stephanie Klick

Chair, House Committee on Public Health

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Renewal of RQ-0435-KP relating to the authority of school districts or educators to choose what disciplinary action to impose on a student because of race, ethnicity, sex, gender, or disability status of the student (RQ-0492-KP)

#### Briefs requested by January 9, 2023

### RQ-0493-KP

#### Requestor:

The Honorable Joe Gonzales

Bexar County Criminal District Attorney

101 West Nueva, Suite 727

San Antonio, Texas 78205

Re: Whether the "safe haven" law in Family Code section 262.301 authorizes installation of newborn safety devices in municipally owned safe haven facilities within the City of San Antonio (RQ-0493-KP)

#### Briefs requested by January 26, 2023

### RQ-0494-KP

#### Requestor:

The Honorable David A. Levy

Archer County Attorney

Post Office Box 1186

Archer City, Texas 76351

Re: Questions related to the use of a sheriff's commissary funds for a vehicle to transport inmates to medical appointments (RQ-0494-KP)

#### Briefs requested by February 3, 2023

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

TRD-202300095

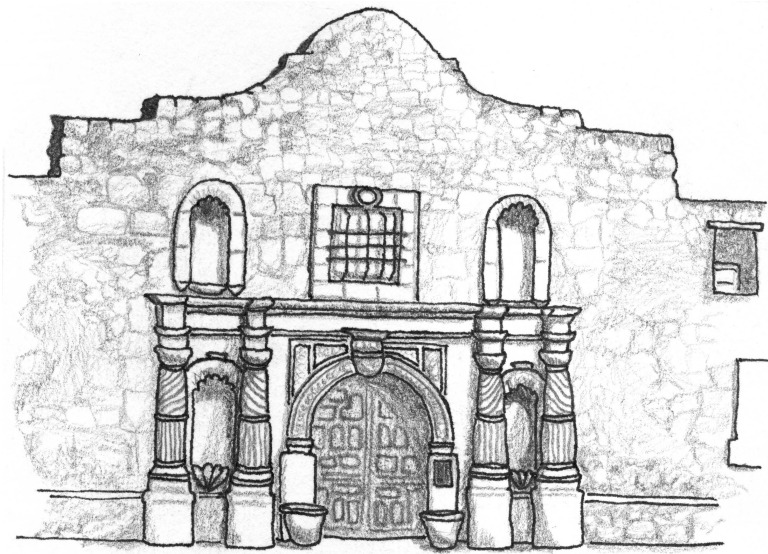
Austin Kinghorn

General Counsel

Office of the Attorney General

Filed: January 10, 2023







# 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 4. AGRICULTURE

### PART 12. TEXAS A&M FOREST SERVICE

#### CHAPTER 216. RURAL VOLUNTEER FIRE DEPARTMENT ASSISTANCE PROGRAM

##### 4 TAC §§216.1, 216.2, 216.4 - 216.6, 216.9

Texas A&M Forest Service (TFS) proposes an amendment to §§216.1, 216.2, 216.4 - 216.6, and 216.9 relating to grants for emergency assistance under the Rural Volunteer Fire Department Assistance Program. The proposed amendment adds language to provide clarity, provide the addition of the agency's online grant application system, provide more specifications to award criteria, change how grant applications are ranked, remove requested funding as a factor in application ratings, and divide funds by branch instead of region for other equipment.

**FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT.** Robby DeWitt, Associate Director for Finance and Administration has determined that for each of the first five-years the proposed amendments are in effect, there will not be a fiscal impact on state or local government as a result of enforcing or administering these amendments.

**PUBLIC BENEFIT/COST NOTE.** Mr. DeWitt has also determined that for the first five-year period the amended rules are in effect, the public benefit will be a more clearly defined process for providing grants to volunteer fire departments.

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

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES.** There will be no impact on rural communities, small businesses, or micro-businesses as a result of implementing these amendments and therefore no regulatory flexibility analysis or economic impact statement, as specified in Texas Government Code §2006.002, is required.

**GOVERNMENT GROWTH IMPACT STATEMENT.** For each year of the first five years the proposed amendments will be in effect, Texas A&M Forest Service has determined that these amendments: (1) will not create or eliminate a government program; (2) will not result in the addition or reduction of employees; (3) will not require an increase or decrease in future

legislative appropriations; (4) will not lead to an increase or decrease in fees paid to a state agency; (5) will not create a new regulation; (6) will not repeal an existing regulation; and (7) will not result in an increase or decrease in the number of individuals subject to the rule. During the first five years that the amendments would be in effect, the proposed amendments will not positively or adversely affect the Texas economy.

**PUBLIC COMMENTS:** Comments on the proposal may be submitted to Jason Keiningham, Office of the Associate Director, Forest Resource Protection Division, Texas A&M Forest Service, 200 Technology Way, Suite 1162, College Station, Texas 77845-3424, (979) 458-7341. Comments must be received no later than thirty days from the date of publication of this proposal.

**STATUTORY AUTHORITY.** The amendments are proposed pursuant to Texas Government Code, §614.102, which authorizes the agency director to adopt rules considered necessary for the administration of the program and Texas Government Code, §614.106, which mandates that the agency adopt rules to administer the program.

Texas Government Code, §§614.101, 614.102, 614.103, 614.104, 614.105 and 614.106 are affected by this proposal.

##### §216.1. Purpose and Scope.

(a) Purpose. This chapter establishes procedures for the administration of the Rural Volunteer Fire Department Assistance Program ~~[program]~~ as authorized by §614.106 of the Texas Government Code.

##### (b) Scope.

(1) This chapter shall govern the agency's award of available grant funds to eligible fire department recipients.

(2) This chapter shall not be construed to enlarge, diminish, modify, or otherwise alter the jurisdiction, powers, or authority of the Texas A&M Forest Service, or the substantive rights of any person.

(3) To the extent any provision of this chapter is in conflict with any statute, the statute shall control.

##### §216.2. 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) Agency--The Texas A&M Forest Service, a member of The Texas A&M University System and an agency of the State of Texas.

(2) Recognized Fire Department--A fire department chartered by the Texas Secretary of State as a not-for-profit entity or a fire department operating under a local government entity.

(3) Part-Paid Fire Department--Defined in §614.101(5) of the Texas Government Code.

(4) Program--The Rural Volunteer Fire Department Assistance Program, Texas Government Code, Chapter 614, Subchapter G.

(5) TIFMAS Grants--Grants for firefighter training and equipment for fire departments not eligible for VFD Assistance grants. [participating in the Texas Intrastate Fire Mutual Assistance System (TIFMAS).]

(6) VFD Assistance Grants--Grants for firefighter training and equipment for volunteer fire departments (VFDs).

(7) Volunteer Fire Department--Defined in §614.101(6) of the Texas Government Code.

(8) Operating--A recognized fire department providing fire protection to a designated primary protection area as assigned by the county.

#### §216.4. Application Requirements.

The following requirements must be met before the agency will consider an application under the program.

##### (1) TIFMAS Grants.

(A) Applications for assistance must be for equipment or training that complies with agency-published standards, specifications, and limitations.

(B) All applications for assistance must be submitted on the required grant application form published by the agency or on the agency's online application system.

(C) Applications must be complete, and all required information must be provided to the agency by the published due date. Incomplete applications are not considered.

(D) An applicant must provide any supplemental information requested by the agency on or before the requested due date. An application is not complete until the requested information is received by the agency.

##### (2) VFD Assistance Grants.

(A) Applications for assistance must be for equipment or training that complies with agency-published standards, specifications, and limitations.

(B) All applications for assistance must be submitted on the required grant application form published by the agency or on the agency's online application system.

(C) Applications must be complete, and all required information must be provided to the agency by the published due date. Incomplete applications are not considered.

(D) An applicant must provide any supplemental information requested by the agency on or before the requested due date. An application is not complete until the requested information is received by the agency.

#### §216.5. Award Criteria.

The following criteria are used by the agency to determine eligibility for grant awards.

##### (1) TIFMAS Grants.

(A) When determining eligibility for a part-paid fire department, a part-time paid position is counted as one-half of a full-time paid position.

(B) Applications for assistance for trucks and other equipment are rated based upon a standardized numeric system that

considers the following factors: total number of TIFMAS qualified personnel, past statewide deployments, department reporting to TX-FIRS and FireConnect, and number of firefighters holding Strike Team Engine (STEN), Engine Boss (ENGB), and Firefighter Type 1/Incident Commander Type 5 (FF1/ICT5) qualifications. [participation in TIFMAS and ability to provide TIFMAS resources to state deployments.]

(C) The agency may limit the maximum amount of grant funds a fire department can receive per year to ensure a wider distribution of the funds.

##### (2) VFD Assistance Grants.

(A) When determining eligibility for a part-paid fire department:

(i) A paid position includes any combination of paid fire, EMS, administrative and support staff employed by a fire department or other entity of local government to fulfill an emergency service or supporting function.

(ii) A part-time paid position is counted as one-half of a full-time paid position.

(B) Applications for assistance are rated based upon a standardized numeric system that considers the following factors: years in existence, size of the primary protection area, population of the primary protection area, distance to the nearest viable mutual aid department, age of the application and wildfire risk. For apparatus grants, the current age of apparatus to be replaced with grant funded apparatus will be considered.

(C) The agency may award vehicle and equipment grants to eligible fire departments to assist in meeting matching requirements for federal grants. Applications for federal grant matching assistance are rated upon a standardized numeric system that considers the following factors: size of the department, annual budget and source of revenue and the amount the department would benefit from the grant.

(D) The agency may limit the maximum amount of grant funds a fire department can receive per year to ensure a wider distribution of the funds.

#### §216.6. Award Process.

The following procedures are used by the agency to award available grant funds.

##### (1) TIFMAS Grants.

(A) Available grant funding is allocated to each grant category annually by the agency.

(B) Training grants are funded upon receipt of complete applications until available funding is exhausted.

(C) Truck grants are handled as follows.

(i) Applications are assigned a numeric rating and sorted in numerical order. [by region.]

(ii) The agency holds periodic meetings throughout each fiscal year to approve grant awards. The date, time and location for each meeting are published on the agency's website at least two weeks prior to the meeting. The meetings are open to the public.

(iii) Grant awards are based upon the application ratings and the date the applications were received, [made to the top applications as sorted by region based upon the numeric ratings.] subject to funding limitations.

(iv) Fire departments that have outstanding issues with the State of Texas or the agency will not be considered for new grant awards until the issues are resolved.

(v) The agency's approval of applications for award during a public meeting is preliminary, contingent upon a final review of each application for eligibility, errors, duplications, and program compliance. Approvals are withdrawn in the event of an error or disqualifying condition. Following the final review, a grant award letter is sent to each approved grant recipient.

(vi) Grant awards have a specified termination date by which the recipient must complete its obligations and submit the necessary documentation to the agency for processing.

(vii) Applications not approved for funding are kept on file and considered during subsequent funding meetings.

(viii) The agency may award emergency grants to eligible fire departments that have suffered a catastrophic loss. A catastrophic loss is a sudden and unexpected event which seriously compromises the firefighting capability of an eligible fire department and which puts the local community at risk. Emergency grant awards are based on a department's application, agency assessment of impact and availability of program funds.

(D) Other equipment grants are handled as follows.

(i) Funds are divided by geographic ~~branch,~~ branch, based upon the number of fire departments per ~~branch~~ branch, to establish target fund allocations. Allocations by ~~branch~~ branch may be adjusted by the agency based on the applications received.

(ii) The agency holds periodic meetings throughout each fiscal year to approve grant awards. The date, time and location for each meeting are published on the agency's website at least two weeks prior to the meeting. The meetings are open to the public.

(iii) Grant awards are based upon the application ratings, ~~[the amounts requested,]~~ the date each application was received, the number and type of unfunded applications on file and the amount of funds available.

(iv) Fire departments that have outstanding issues with the State of Texas or the agency are not considered for new grant awards until the issues are resolved.

(v) The agency's approval of applications for award during a public meeting is preliminary, contingent upon a final review of each application for eligibility, errors, duplications, and program compliance. Approvals are withdrawn in the event of an error or disqualifying condition. Following the final review, a grant award letter is sent to each approved grant recipient.

(vi) Grant awards have a specified termination date by which the recipient must complete its obligations and submit the necessary documentation to the agency for processing.

(vii) Applications not approved for funding are kept on file and considered during subsequent funding meetings.

(viii) The agency may award emergency grants to eligible fire departments that have suffered a catastrophic loss. A catastrophic loss is a sudden and unexpected event which seriously compromises the firefighting capability of an eligible fire department and which puts the local community at risk. Emergency grant awards are based on a department's application, agency assessment of impact and availability of program funds.

(2) VFD Assistance Grants.

(A) Available grant funding is allocated to each grant category annually by the agency.

(B) Training grants are funded upon receipt of complete applications until available funding is exhausted.

(C) Firefighter Property Program slip-on units are awarded in conjunction with 1-2 ton, 2.5 ton cargo, 5 ton cargo, and tractor style apparatus awards.

(D) [(C)] Equipment grants are handled as follows.

(i) Funds are divided by geographic region, based upon the number of fire departments per region, to establish target fund allocations. Allocations by region may be adjusted by the agency based on the applications received.

(ii) The agency holds periodic meetings throughout each fiscal year to approve grant awards. The date, time and location for each meeting are published on the agency's website at least two weeks prior to the meeting. The meetings are open to the public.

(iii) Grant awards are based upon the application ratings, ~~[the amounts requested,]~~ the dates the applications were received, the number and type of unfunded applications on file and the amount of funds available. Ratings shall take into consideration the frequency, size and severity of past wildfires in the department's jurisdiction; the potential for loss or damage to property resulting from future wildfires in the department's jurisdiction; and the department's need for emergency assistance under Texas Government Code §614.103(a-1).

(iv) Fire departments that have outstanding issues with the State of Texas or the agency are not considered for new grant awards until the issues are resolved.

(v) The agency's approval of applications for award during a public meeting is preliminary, contingent upon a final review of each application for eligibility, errors, duplications, and program compliance. Approvals are withdrawn in the event of an error or disqualifying condition. Following the final review, a grant award letter is sent to each approved grant recipient.

(vi) Grant awards have a specified termination date by which the recipient must complete its obligations and submit the necessary documentation to the agency for processing.

(vii) Applications not approved for funding are kept on file and considered during subsequent funding meetings.

(viii) The agency may award emergency grants to eligible fire departments that have suffered a catastrophic loss. A catastrophic loss is a sudden and unexpected event which seriously compromises the firefighting capability of an eligible fire department and which puts the local community at risk. Emergency grant awards are based on a department's application, agency assessment of impact and availability of program funds.

(ix) The agency may award emergency grants, based on availability of program funds, to eligible fire departments who apply for the grant and whose equipment is damaged or lost in responding to a declared state of disaster under Texas Government Code §418.014 in an area subject to the declaration for:

(I) The replacement or repair of damaged or lost personal protective equipment or other firefighting equipment; and

(II) The purchase of a machine to clean personal protective equipment.

~~[(III) Emergency grant awards are based on a department's application and availability of program funds.]~~

§216.9. *Program Forms and Procedures.*

Application forms and procedures are published on the agency's website or on the agency's online application system.

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 January 6, 2023.

TRD-202300049

Robby DeWitt

Associate Director for Finance and Administration

Texas A&M Forest Service

Earliest possible date of adoption: February 19, 2023

For further information, please call: (979) 458-7341



## TITLE 13. CULTURAL RESOURCES

### PART 3. TEXAS COMMISSION ON THE ARTS

#### CHAPTER 35. A GUIDE TO PROGRAMS AND SERVICES

##### 13 TAC §35.1

The Texas Commission on the Arts (Commission) proposes an amendment to §35.1, concerning a Guide to Programs and Services.

##### Background

In December 2021, the Commission updated its grant guidelines to address the change at the federal level from requiring a DUNS number (a unique entity identifier issued by Dun & Bradstreet) to requiring a System of Award Management - Unique Entity Identifier number (SAM-UEI). This requirement is part of the Commission's Terms and Conditions from the National Endowment for the Arts (NEA) block grant for Texas.

April 4, 2022, the new federal requirement of having a SAM-UEI went into effect.

In July 2022, the NEA provided new clarification around the SAM-UEI requirement. This clarification specified:

*"For subawards that are made with funds other than the NEA funds + Cost Share/Match for the Partnership award, it is a best practice to assign a unique entity identifier. It is strongly recommended you require all subrecipients to provide a SAM UEI."*

The Commission's constituents have found the process of obtaining a SAM-UEI to be burdensome and time consuming. It has proven to be a barrier to participation for smaller and rural organizations seeking support to bring Commission artists to their schools and libraries. The agency has the flexibility to allocate the federal funds by grant program. By omitting federal funds from the one noncompetitive grant program that funds these activities, the Commission proposes to update its guidelines and lift this requirement for this group of underserved constituents.

##### Fiscal impact on State and Local Government

Gary Gibbs, Executive Director of the Commission, has determined that for the first five years the amendment is in effect, there is no foreseeable economic implications relating to costs or rev-

enues of the state or local governments as a result of enforcing or administering the proposed amendment.

##### Public Benefit

Gary Gibbs, Executive Director, has determined that for each of the first five years the proposed amendment is in effect, the public benefit anticipated as a result of the amendment is to eliminate a bureaucratic barrier for small and rural organizations seeking support to bring Commission artists to their schools and libraries.

##### Probable Economic Costs to Persons Required to Comply with the Rule

The Executive Director has further determined that for the first five years the amended rule is in effect, there are no substantial costs anticipated as a result of the proposed rule.

##### One-for-One Rule Analysis

Because the Commission does not regulate persons, it asserts proposal and adoption of the amended rule is not subject to the requirements of Government Code §2001.0045.

##### Government Growth Impact Statement

For each of the first five years the proposed rule is in effect, the agency has determined the following: (1) the amended rule does not create or eliminate a government program; (2) implementation of the amended rule does not require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the amended rule does not require an increase or decrease in future legislative appropriations to the agency; (4) the amended rule does not require an increase or decrease in fees paid to the agency, (5) the amended rule does not create a new regulation; (6) the amended rule does not expand existing regulations; (7) the amended rule does not increase the number of individuals subject to it and (8) the amended rule does not adversely affect this state's economy.

##### Local Employment Impact Statement

The Executive Director has determined that no local economies are substantially affected by the amended rule, and, as such, the Commission is exempted from preparing a local employment impact statement pursuant to Government Code §2001.022.

##### Fiscal Impact on Small and Micro-Businesses, and Rural Communities

The Executive Director has determined that the proposed rule will not have an adverse effect on small or micro-businesses, or rural communities. The Commission is not a regulatory agency. As a result, the Commission asserts preparation of an economic impact statement and a regulatory flexibility analysis, as provided by Government Code §2006.002, are not required.

##### Takings Impact Assessment

The Commission has determined that there are no private real property interests affected by the amended rule; thus, the Commission asserts preparation of a takings impact assessment, as provided by Government Code §2007.043, is not required.

##### Environmental Rule Analysis

The Commission has determined that this proposal is not brought with the specific intent to protect the environment or reduce risks to human health from environmental exposure; thus, the Commission asserts this proposal is not a "major environmental rule" as defined by Government Code §2001.0225.

As a result, the Commission asserts preparation of an environmental impact analysis, as provided by said §2001.0225, is not required.

#### Public Comments

Written comments on the proposal may be submitted to Dana Swann, Texas Commission on the Arts, P.O. Box 13406, Austin, Texas 78711-3406, or by email to [dana.swann@arts.texas.gov](mailto:dana.swann@arts.texas.gov) with the subject line "Guideline Amendment." All comments will be accepted for 30 days upon publication of this proposal in the *Texas Register*.

#### Statutory Authority

The amendment is proposed under the Government Code, §444.009, which provides the Texas Commission on the Arts with the authority to make rules and regulations for its government and that of its officers and committees, and §444.024, which authorizes the Commission to award grants.

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

#### §35.1. *A Guide to Programs and Services.*

The Commission adopts by reference a Guide to Programs and Services (revised December 2022 [2021]). This document is published by and available from the Texas Commission on the Arts, P.O. Box 13406, Austin, Texas 78711. This document is also available online at [www.arts.texas.gov](http://www.arts.texas.gov).

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 January 4, 2023.

TRD-202300047

Gary Gibbs

Executive Director

Texas Commission on the Arts

Earliest possible date of adoption: February 19, 2023

For further information, please call: (512) 936-6580



## TITLE 19. EDUCATION

### PART 2. TEXAS EDUCATION AGENCY

#### CHAPTER 102. EDUCATIONAL PROGRAMS

##### SUBCHAPTER MM. COMMISSIONER'S

##### RULES CONCERNING SUPPLEMENTAL

##### SPECIAL EDUCATION SERVICES PROGRAM

#### 19 TAC §102.1601

The Texas Education Agency (TEA) proposes an amendment to §102.1601, concerning supplemental special education services (SSES) and instructional materials program for certain public school students receiving special education services. The proposed amendment would reflect a grant source change and provide clarification.

**BACKGROUND INFORMATION AND JUSTIFICATION:** Senate Bill (SB) 1716, 87th Texas Legislature, Regular Session, 2021, added Texas Education Code (TEC), Chapter 29, Subchapter A-1, which established the SSES program. The program is designed to address concerns that have arisen as a result of the

coronavirus pandemic for students receiving special education services. It provides additional funds for eligible students who are served in special education to use for supplemental services and materials. These supplemental services and materials are not and cannot be considered as part of the provision of a free appropriate public education as set out in a student's individualized education program. The SSES program expires September 1, 2024.

Under SB 1716, the commissioner was required to establish rules to implement and administer the SSES program, and §102.1601 was adopted to establish the parameters to allow eligible students to be provided with funds that may be used for goods and services with TEA-approved providers and vendors. In accordance with statute, certain eligible students are given priority based on enrollment in a school district or open-enrollment charter school that is eligible for a compensatory education allotment. In addition, TEA prioritizes applicants with economic need based on qualification for the National School Lunch Program. The proposed amendment would update the rule as follows.

Subsection (b)(2) would be amended to remove reference to the federally funded SSES grant and instead refer to any SSES grant, including the state-funded SSES grant. This change would reflect that grant funds may have multiple sources.

Subsections (c)(1), (e)(3)(C), and (f)(1) would be amended to reflect an award amount of up to \$1500 in state funds with the possibility of additional federal funds depending on eligibility and availability. This change would reflect the use of state grant funds under TEC, §29.042, as well as the potential use of additional federal grant funds, subject to eligibility and availability of such federal funds, for a grant program addressing the needs of medically fragile children.

Subsection (c) would also be amended to move information related to the use of the National School Lunch Program for need-based qualification from subsection (c)(1) to new subsection (c)(3). To align with current agency practice, new subsection (c)(2) would be added to reflect that TEA uses Public Education Information Management System (PEIMS) codes to verify award eligibility.

New subsection (f)(4) would be added to specify that parents and guardians who receive an award notification but whose student no longer qualifies for the SSES program must notify TEA of the student's change in eligibility status. This change would ensure that grant funds are provided only to eligible students.

Subsection (g)(6) would be amended to include a reference to guardians when referencing parents. This change would ensure references to parents and guardians are consistent throughout the rule.

Subsection (h) would be amended to remove the provision that SSES accounts are suspended when account holders do not begin spending funds from their accounts within six months after account creation. This change would allow for spending period fluctuations and ensure flexibility based on appropriations, waiting lists, and programmatic need.

**FISCAL IMPACT:** Jennifer Alexander, deputy commissioner for special populations, has determined that there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

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

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

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

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

**GOVERNMENT GROWTH IMPACT:** TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would expand an existing regulation. The proposed amendment would clarify SSES program requirements, clarify the eligibility and verification process, and set the award minimum.

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

**PUBLIC BENEFIT AND COST TO PERSONS:** Ms. Alexander has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be clarification to members of the public and school districts regarding the SSES program. The SSES program provides a benefit of additional services and instructional materials to eligible students and prioritizes students with financial need. There is no anticipated economic cost to persons who are required to comply with the proposal.

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

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

**PUBLIC COMMENTS:** The public comment period on the proposal begins January 20, 2023, and ends February 21, 2023. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About\\_TEA/Laws\\_and\\_Rules/Commissioner\\_Rules\\_\(TAC\)/Proposed\\_Commissioner\\_of\\_Education\\_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/). Public hearings to solicit testimony and input on the proposal will be held at 9:00 a.m. on January 24 and 26, 2023, via Zoom. The public may participate in either hearing virtually by linking to the hearing at <https://zoom.us/j/7366629670> or joining by SIP at [7366629670@zoomcrc.com](mailto:7366629670@zoomcrc.com). The public may attend one or both hearings. Anyone wishing to testify at one of the hearings must sign in between 8:30 a.m. and 9:00 a.m. on

the day of the respective hearing. Each hearing will conclude once all who have signed in have been given the opportunity to comment. Each individual's comments are limited to three minutes, and each individual may comment only once. Both hearings will be recorded and made available publicly.

**STATUTORY AUTHORITY.** The amendment is proposed under Texas Education Code (TEC), §29.041, which establishes requirements for providing a supplemental special education services (SSES) and instructional materials program for certain public school students receiving special education services and requires the commissioner by rule to determine, in accordance with TEC, Chapter 29, Subchapter A-1, the criteria for providing a program to provide supplemental special education services and instructional materials for eligible public school students; TEC, §29.042, which requires the commissioner to determine requirements related to the establishment and administration of the SSES program; TEC, §29.043, which requires the commissioner to establish an application process for the SSES program; TEC, §29.044, which requires the commissioner to determine eligibility criteria for the approval of an application submitted under TEC, §29.043; TEC, §29.045, which requires the commissioner to determine requirements for students meeting eligibility criteria and requirements for assigning and maintaining accounts under TEC, §29.042(b); TEC, §29.046, which requires the commissioner to determine requirements and restrictions related to account use for accounts assigned to students under TEC, §29.045; TEC, §29.047, which requires the commissioner to determine requirements related to criteria and application for agency-approved providers and vendors; TEC, §29.048, which requires the commissioner to determine responsibilities for the admission, review, and dismissal (ARD) committee; and TEC, §29.049, which requires that the commissioner adopt rules as necessary to establish and administer the SSES and instructional materials program.

**CROSS REFERENCE TO STATUTE.** The amendment implements Texas Education Code, §§29.041-29.049.

*§102.1601. Supplemental Special Education Services and Instructional Materials Program for Certain Public School Students Receiving Special Education Services.*

(a) Definitions. For the purposes of this section, the following definitions apply.

(1) Eligible student--A student who meets all program eligibility criteria under Texas Education Code (TEC), §29.044, and this section.

(2) Management system--The online system provided by the marketplace vendor to allow for account creation, management of funds, and access to the marketplace.

(3) Marketplace--The virtual platform where parents and guardians with Supplemental Special Education Services (SSES) program funds may purchase goods and services.

(4) Marketplace vendor--The vendor chosen by the Texas Education Agency (TEA) to create an online marketplace for the use of SSES program funds.

(5) Supplemental special education instructional materials--This term has the meaning defined in TEC, §29.041, and specifically excludes materials that are provided as compensatory services or as a means of providing a student with a free appropriate public education.

(6) Supplemental special education services--This term has the meaning defined in TEC, §29.041, and specifically excludes ser-

vices that are provided as compensatory services or as a means of providing a student with a free appropriate public education.

(b) Eligibility criteria. All students currently enrolled in a Texas public school district or open-enrollment charter school who are served in a special education program during the 2021-2022 or 2022-2023 school year, including, but not limited to, students in early childhood special education, prekindergarten, Kindergarten-Grade 12, and 18-and-over transition programs, are eligible for the SSES program with the following exclusions:

(1) students who do not reside in Texas or move out of the state, not including military-connected students entitled to enroll or remain enrolled while outside the state; or

(2) students who previously received an [a federally funded] SSES grant.

(c) Awards.

(1) Parents and guardians of eligible students may receive grants as long as funds are available of up to \$1,500 in state funds and may receive additional federal funds, depending on eligibility and availability, for use in the purchasing of supplemental special education instructional materials and supplemental special education services through the curated marketplace of educational goods and services. Parents and guardians may receive only one grant for each eligible student. Students enrolled in a school district or open-enrollment charter school that is eligible for a compensatory education allotment under TEC, §48.104, will be prioritized to receive a grant award.

(2) TEA will use Public Education Information Management System (PEIMS) codes to verify eligibility in order to award accounts for the SSES program.

(3) TEA will prioritize, as necessary, the awarding of applicant accounts based on applicants qualifying for the National School Lunch Program and available funds.

(d) Establishment of the marketplace.

(1) In accordance with TEC, §29.042(d), TEA shall award an education service center (ESC) with an operational and school district support grant, which may include, but is not limited to, the following operational requirements:

(A) writing and administering a contract for a vendor for the SSES marketplace that curates the content in its marketplace for educational relevancy. In accordance with the Family Educational Rights and Privacy Act, the contract must require the vendor for the marketplace to protect and keep confidential students' personally identifiable information, which may not be sold or monetized;

(B) providing technical assistance to parents and guardians throughout the SSES program process;

(C) serving as the main point of contact for the selected marketplace vendor to ensure eligible student accounts are appropriately spent down;

(D) approving or denying all purchases from the SSES marketplace, including communication with parents and guardians about purchase order requests;

(E) increasing the number of qualified service providers in the marketplace; and

(F) approving or denying all potential service providers.

(2) Providers of supplemental special education instructional materials and services may apply to be listed in the marketplace. To become an approved marketplace service provider, an applicant

must sign a service provider agreement and comply with licensing, safety, and employee background checks.

(A) Organization service providers are required to provide their Texas Tax ID for TEA to verify the validity of the organization.

(B) Individual service providers are required to provide proof of credentials and licensing in accordance with the individual service provider categories established by TEA.

(3) TEA shall provide a process for the application and approval of vendors to the marketplace.

(4) TEA and the marketplace vendor shall provide a curated list of vendors through which parents and guardians can purchase educationally relevant supplemental special education instructional materials. The established marketplace vendor shall be responsible for ensuring the vendors comply with SSES program parameters as they relate to the marketplace and be responsible for all communications with marketplace vendors.

(e) Application process for grant on behalf of a student.

(1) TEA is responsible for the application process and the determination of which applicants are approved for SSES program grants.

(2) Parents and guardians who would like to apply on behalf of their eligible students must complete the online application.

(3) Upon approval of the application:

(A) TEA shall send contact information for parents and guardians of eligible students in a secure manner to the online marketplace vendor for account creation and distribution;

(B) parents and guardians of eligible students will receive an email to the same email address provided during application from the marketplace vendor with information on how to access their accounts; and

(C) parents and guardians will be awarded an account of not more than \$1,500 in state funds and may be awarded in the account additional federal funds, depending on eligibility and availability, per eligible student to be used to purchase supplemental special education services and supplemental special education instructional materials.

(4) Parents and guardians of students who are deemed not eligible or who are determined to have violated account use restrictions under subsection (h) of this section will receive notification from TEA and be provided an opportunity to appeal the denial or account use determination. TEA shall exercise its discretion to determine the validity of any such appeal.

(5) If necessary, eligible students will be placed on a waitlist and parents and guardians will be notified. Should additional funds become available, priority will be given in the order established by the waitlist and in accordance with subsection (c) of this section.

(6) TEA shall maintain confidentiality of students' personally identifiable information in accordance with the Family Educational Rights and Privacy Act and, to the extent applicable, the Health Insurance Portability and Accountability Act.

(f) Approval of application; assignment of account.

(1) TEA shall set aside funds for a pre-determined number of accounts of up to \$1,500 in state funds with additional federal funds set aside, depending on eligibility and availability, per account to be awarded to parents and guardians of eligible students.

(2) Parents and guardians with more than one eligible student may apply and receive a grant for each eligible student.

(3) Approved parents and guardians will receive an award notification email from the marketplace vendor and may begin spending account funds upon completion of account setup.

(4) Parents and guardians who receive an award notification but whose student no longer qualifies under subsection (b) of this section shall notify TEA of their student's change in eligibility status.

(5) [(4)] Within 30 calendar days from receiving an award notification email, parents and guardians must:

(A) access or log in to their account or the account may be subject to reclamation; and

(B) agree to and sign the SSES parental acknowledgment affidavit.

(g) Use of funds. Use of SSES program funds provided to parents and guardians are limited as follows.

(1) Only supplemental special education instructional materials and supplemental special education services available through the marketplace of approved providers and vendors may be purchased with SSES program funds.

(2) Supplemental special education instructional materials and services must directly benefit the eligible student's educational needs.

(3) Supplemental special education instructional materials shall be used in compliance with TEA purchasing guidelines.

(4) If TEA approves vendors for a category of instructional material under subsection (d) of this section, supplemental special education instructional materials must be purchased from the TEA-approved vendor for that category of supplemental special education instructional material. If TEA does not establish criteria for a category of supplemental special education instructional materials, funds in a student's account may be used to purchase the supplemental special education instructional materials from any vendor.

(5) The contracted ESC has full authority to reject or deny any purchase.

(6) Parents and guardians may not use SSES program funds for reimbursement of goods or services obtained outside of the marketplace. SSES program funds shall not be paid directly to parents or guardians of eligible students.

(h) Account use restrictions. TEA may, subject to the appeal process referenced in subsection (e)(4) of this section, close or suspend accounts and reclaim a portion or all of the funds from accounts in the marketplace if:

(1) the supplemental special education materials or services that parents or guardians attempt to purchase are not educational in nature or are deemed to be in violation of the purchasing guidelines set forth by TEA;

(2) it is determined that the supplemental special education materials or services purchased do not meet the definitions in subsection (a)(5) and (6) of this section;

(3) the SSES program parental acknowledgement affidavit is not signed within 30 calendar days of receipt of account email from the marketplace vendor; or

~~[(4) account holders do not begin spending funds from their accounts within six months after account creation; or]~~

(4) [(5)] a student no longer meets the eligibility criteria set out in subsection (b) of this section.

(i) Requirements to provide information.

(1) School districts and open-enrollment charter schools shall notify parents and guardians of students served by special education of the SSES program and how to apply.

(2) At the student's next admission, review, and dismissal (ARD) committee meeting, the ARD committee shall determine if a student has been awarded an SSES account. At this meeting, upon learning that a student has been awarded an account, the ARD committee shall provide:

(A) information about types of goods and services that are available to the eligible student; and

(B) instructions and resources on accessing the online accounts.

(j) Restrictions. A student's ARD committee may not consider a student's current or anticipated eligibility for any supplemental special education instructional materials or services that may be provided under this section when developing or revising a student's individualized education program, when determining a student's educational setting, or in the provision of a free appropriate public education.

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 January 9, 2023.

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: February 19, 2023

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



## TITLE 28. INSURANCE

### PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

#### CHAPTER 165. REJECTED RISK: INJURY PREVENTION SERVICES

##### 28 TAC §165.1

INTRODUCTION. The Texas Department of Insurance, Division of Workers' Compensation (DWC) proposes to amend 28 TAC §165.1, concerning Identification and Notification of Certain Policyholders Insured by the Texas Mutual Insurance Company Acting as the Insurer of Last Resort. Section 165.1 implements Texas Insurance Code §§2054.354, 2054.504, and 2054.507.

EXPLANATION. Amending §165.1 is necessary to add Texas Mutual Insurance Company's (Texas Mutual) physical address, update obsolete Insurance Code references, and make updates for plain language and agency style. Section 165.1 requires Texas Mutual to give DWC a list of policyholders that need accident prevention services, including policyholders they insure as the insurer of last resort. It also requires policyholders who must



get a safety consultation and are located outside of Texas to give information to Texas Mutual.

**FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Deputy Commissioner of Health & Safety Mary Landrum 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 sections, other than that imposed by the statute. This determination was made because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendments.

Ms. Landrum 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, Ms. Landrum expects that enforcing and administering the proposed amendments will have the public benefits of ensuring that DWC's rules conform to Insurance Code §§2054.354, 2054.504, and 2054.507 and are current and accurate, which promotes transparent and efficient regulation.

Ms. Landrum expects that the proposed amendments will not increase the cost to comply with Insurance Code §§2054.354, 2054.504, and 2054.507 because they do not impose requirements beyond those in the statute or that exist in the current rule.

Section 2054.354 provides that Texas Mutual must develop statistical and other information to allow it to distinguish between its writings in the voluntary market and as the insurer of last resort. Section 2054.504 requires certain policyholders insured under Subchapter H to get a safety consultation. Section 2054.507 states that, if a safety consultant identifies a hazardous condition or practice, an accident plan must be developed for the policyholder. Therefore, these policyholders must submit information to Texas Mutual, and Texas Mutual must submit information to DWC to establish data for Texas Mutual acting as the insurer of last resort.

The amendments add Texas Mutual's physical address, so policyholders required to get a safety consultation and whose offices are outside of Texas know where to send information. The amendments also update Insurance Code references, so the public can find the applicable laws. As a result, the cost associated with the requirement that Texas Mutual, acting as the insurer of last resort, identify and notify DWC of certain policyholders requiring accident prevention services, or the requirement that policyholders subject to a safety consultation must send Texas Mutual information, does not result from the enforcement or administration of the proposed amendments.

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.** DWC has determined that the proposed amendments will not have an adverse economic effect or a disproportionate economic impact on small or micro businesses, or on rural communities because the proposed amendments make editorial changes, changes to update obsolete references, and updates for plain language and agency style only. The proposed amendments do not change the people the rule affects or impose additional costs. As a result, and in accordance with Government Code §2006.002(c), DWC is not required to prepare a regulatory flexibility analysis.

**EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045.** DWC has determined that this proposal does not impose a possible cost on regulated persons. As a result, no additional rule amendments are required under Government Code §2001.0045.

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

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

DWC made these determinations because the proposed amendments make editorial changes, changes to update obsolete references, and updates for plain language and agency style only. They do not change the people the rule affects or impose additional costs.

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

**REQUEST FOR PUBLIC COMMENT.** DWC will consider any written comments on the proposal that DWC receives no later than 5 p.m., Central time, on February 21, 2023. Send your comments to [RuleComments@tdi.texas.gov](mailto:RuleComments@tdi.texas.gov); or to Texas Department of Insurance, Division of Workers' Compensation, Legal Services, MC-LS, P.O. Box 12050, Austin, Texas 78711-2050.

To request a public hearing on the proposal, submit a request before the end of the comment period to [RuleComments@tdi.texas.gov](mailto:RuleComments@tdi.texas.gov); or to Texas Department of Insurance, Division of Workers' Compensation, Legal Services, MC-LS, P.O. Box 12050, Austin, Texas 78711-2050. The request for public hearing must be separate from any comments. If DWC holds a public hearing, it will consider written and oral comments presented at the hearing.

**STATUTORY AUTHORITY.** DWC proposes §165.1 under Insurance Code §§2054.354, 2054.504, and 2054.507 and Labor Code §§402.00111, 402.00116, and 402.061.

Insurance Code §2054.354 provides that Texas Mutual must develop statistical and other information to allow Texas Mutual to distinguish between their writings in the voluntary market and as the insurer of last resort.

Insurance Code §2054.504 requires certain policyholders insured under Subchapter H to get a safety consultation.

Insurance Code §2054.507 requires that, if a safety consultant identifies a hazardous condition or practice, an accident plan will be developed for the policyholder.

Labor Code §402.00111 provides that the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority under Title 5 of the Labor Code.

Labor Code §402.00116 provides that the commissioner of workers' compensation shall administer and enforce this title, other workers' compensation laws of this state, and other laws granting jurisdiction to or applicable to DWC or the commissioner.

Labor Code §402.061 provides that the commissioner of workers' compensation shall adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

CROSS-REFERENCE TO STATUTE. Section 165.1 implements Insurance Code §§2054.354, 2054.504, and 2054.507, which were amended to apply to Texas Mutual by HB 3458, 77th Legislature, Regular Session (2001) and recodified by HB 2017, 79th Legislature, Regular Session (2005).

§165.1. *Identification and Notification of Certain Policyholders Insured by the Texas Mutual Insurance Company Acting as the Insurer of Last Resort.*

(a) The Texas Mutual Insurance Company must [shall] provide the division a list [a listing] of the policyholders requiring accident prevention services (rejected risk employers) [~~Rejected Risk employers~~] to the Texas Workers' Compensation Commission's Division of Worker's Health and Safety (the division). This list must [shall] include rejected risk employers that meet the criteria in Texas Insurance Code Chapter 2054, Subchapters H and K [those employers identified by the Texas Mutual Insurance Company through application of the criteria found in the Texas Insurance Code, art. 5.76-3, §8, and art. 5.76-4].

(b) A policyholder subject to Texas Insurance Code §2054.504 [the Texas Insurance Code, art. 5.76-3, §8(e) or §8(d)], whose corporate office is located outside [the state] of Texas must, on [shall, upon] receipt of notification by the Texas Mutual Insurance Company of the requirement to get [obtain] a safety consultation as a condition of insurance, provide the Texas Mutual Insurance Company the following information:

- (1) the name and title of the senior official in Texas with the authority to commit funds and to establish policy, procedures, and actions required to implement the accident prevention plan and address the exposures identified in the hazard exposure survey;
- (2) the official's mailing address; and
- (3) the official's business telephone number.

(c) Information required by subsection (b) of this section must [shall] be mailed to the Texas Mutual Insurance Company at 2200 Aldrich Street, Austin, Texas 78723-3474 [the appropriate address].

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 January 2, 2023.  
TRD-202300011  
Kara Mace  
Deputy Commissioner for Legal Services  
Texas Department of Insurance, Division of Workers' Compensation  
Earliest possible date of adoption: February 19, 2023  
For further information, please call: (512) 804-4703

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## TITLE 34. PUBLIC FINANCE

### PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

#### CHAPTER 3. TAX ADMINISTRATION SUBCHAPTER V. FRANCHISE TAX

##### 34 TAC §3.591

The Comptroller of Public Accounts proposes amendments to §3.591, concerning margin: apportionment. The amendments are in response to the Texas Supreme Court opinion in *Sirius XM Radio, Inc. v. Hegar*, No. 20-0462 (Tex. March 25, 2022).

In its opinion, the Supreme Court stated: "We see no reason for the 'receipt-producing, end-product act' test to play any role in our decision." Accordingly, the comptroller deletes the receipt-producing, end-product act discussion and examples in subsection (e)(26)(A) and removes references to the deleted examples throughout the section.

The comptroller also amends subsection (e)(26)(A) to incorporate the Supreme Court decision that the most natural reading of 'service performed in this state' supports locating the performance of the service at the place where the taxpayer's personnel or equipment is physically doing useful work for the customer." The proposed rule interprets the Court's phrase "useful work for the customer" to mean "work that the customer hired the taxable entity to perform," and that the phrase does not include "activities that enable the taxable entity to do business in general or are not directly used in the provision of a service to the customer." The proposed rule replaces "equipment" with "property" to recognize that, in some cases, property may be used to perform services, and the property may not be equipment. For example, a beekeeper that offers pollination services to agricultural customers uses honeybees to perform the useful work for the customer. While honeybees are property, it is not clear that they would be considered "equipment."

The comptroller similarly amends subsection (e)(26)(B) to provide additional guidance for determining the fair value of services when they are performed both inside and outside of Texas for a single charge.

Brad Reynolds, Chief Revenue Estimator, has determined that during the first five years that the proposed amendments are in effect, the rules: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy.

Mr. Reynolds also has determined that the proposed amended rule would benefit the public by updating the rule to reflect the guidance from the Texas Supreme Court ruling in *Sirius*. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses or rural communities. The proposed amendments would have no fiscal implications for the state government, units of local government, or individuals. There would be no significant anticipated economic cost to the public.

You may submit comments on the proposal to Jenny Burleson, Director, Tax Policy Division, P.O. Box 13528 Austin, Texas 78711 or to the email address: [tp.rule.comments@cpa.texas.gov](mailto:tp.rule.comments@cpa.texas.gov). The comptroller must receive your comments no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendments are proposed under Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture), which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2 (State Taxation).

The amendments implement Tax Code, §171.103 (Determination of Gross Receipts from Business Done in this State for Margin).

§3.591. *Margin: Apportionment.*

(a) Effective date. The provisions of this section apply to franchise tax reports originally due on or after January 1, 2008, except as otherwise noted.

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

(1) Capital asset--Any asset that is held for use in the production of income, and that is subject to depreciation, depletion or amortization.

(2) Employee retirement plan--A plan or other arrangement that qualifies under Internal Revenue Code (IRC), §401(a) (Qualified pension, profit-sharing, and stock bonus plans), or that satisfies the requirement of IRC, §403 (Taxation of employee annuities), or a government plan described in IRC, §414(d) (Definitions and special rules).

(3) Gross receipts--Revenue as determined under §3.587 of this title (relating to Margin: Total Revenue), except as provided in subsection (e)(2) (concerning capital assets and investments) and subsection (e)(17) (concerning loans and securities) of this section. Non-receipt items excluded from total revenue under §3.587 of this title are not included in the calculation of total revenue under that section and are not deducted from gross receipts. These non-receipt items include the exclusion for uncompensated care, the \$500 exclusion per pro bono services case, the exclusion for the direct cost of providing waterway transportation, the exclusion for the direct cost of providing agricultural aircraft services, and the exclusion for the cost of a vaccine. See subsection (d)(5) of this section for gross receipts that are excluded from the apportionment calculation.

(4) Internal Revenue Code--The Internal Revenue Code of 1986 in effect for the federal tax year beginning on January 1, 2007, not including any changes made by federal law after that date, and any regulations adopted under that code applicable to that period.

(5) Inventory--Property held primarily for sale to customers in the ordinary course of a trade or business. Securities and loans held for investment, hedging, or risk management purposes are not inventory.

(6) Investment--Any non-cash asset that is not a capital asset or inventory.

(7) Legal domicile--The legal domicile of a corporation or limited liability company is its state of formation. The legal domicile of a partnership, trust, or joint venture is the principal place of business of the partnership, trust, or joint venture.

(8) Location of payor--The legal domicile of the payor.

(9) Principal place of business--The place where an entity's management directs, controls, and coordinates the entity's activities.

(10) Regulated investment company--Any domestic corporation defined under IRC, §851(a) (Definition of regulated investment company), including a taxable entity that includes trustees or sponsors of employee benefit plans that have accounts in a regulated investment company.

(11) Security--An instrument defined under IRC, §475(c)(2) (Mark to market accounting method for dealers in securities). This term includes instruments described by §475(e)(2)(B), (C), and (D) of that code.

(12) Tax reporting period--The period upon which the tax is based under Tax Code, §171.1532 (Business on Which Tax on Net Taxable Margin Is Based) or §171.0011 (Additional Tax).

(13) Taxable entity--Any entity upon which tax is imposed under Tax Code, §171.0002(a) (Definition of Taxable Entity) and not specifically excluded under Tax Code, §171.0002(b) or §171.0002(c). See also §3.581 of this title (relating to Margin: Taxable and Nontaxable Entities).

(14) Texas gross receipts--The portion of a taxable entity's gross receipts that is from business done in Texas.

(c) Apportionment formula. Except as provided in paragraphs (1) and (2) of this subsection, a taxable entity's margin is apportioned to Texas to determine the amount of franchise tax due by multiplying the taxable entity's margin by a fraction, the numerator of which is the taxable entity's Texas gross receipts and the denominator of which is the taxable entity's gross receipts from its entire business.

(1) Regulated investment company services. A taxable entity's margin derived, directly or indirectly, from the sale of management, distribution, or administration services to or on behalf of a regulated investment company, is apportioned to Texas by multiplying that portion of the taxable entity's total margin by a fraction:

(A) the numerator of which is the average of the sum of shares owned at the beginning of the year and the sum of the shares owned at the end of the year by the investment company shareholders whose principal place of business is in this state or, if the shareholders are individuals, are residents of this state; and

(B) the denominator of which is the average of the sum of shares owned at the beginning of the year and the sum of shares owned at the end of the year by all investment company shareholders.

(2) Employee retirement plan services. A taxable entity's margin derived, directly or indirectly, from the sale of management, administration, or investment services to an employee retirement plan is apportioned to Texas by multiplying that portion of the taxable entity's total margin by a fraction:

(A) the numerator of which is the average of the sum of beneficiaries domiciled in Texas at the beginning of the year and the sum of beneficiaries domiciled in Texas at the end of the year; and

(B) the denominator of which is the average of the sum of all beneficiaries at the beginning of the year and the sum of all beneficiaries at the end of the year.

(d) General rules for reporting gross receipts.

(1) A taxable entity that files an annual report must report gross receipts based on the business done by the taxable entity beginning with the day after the date upon which the previous report was based, and ending with the last accounting period ending date for fed-

eral income tax purposes ending in the calendar year before the calendar year in which the report is originally due.

(2) A taxable entity with a beginning date prior to October 4, 2009 that files an initial report must report gross receipts based on its activities commencing with the beginning date, as described in §3.584 of this title (relating to Margin: Reports and Payments), and ending on the last accounting period ending date for federal income tax purposes that is at least 60 days before the original due date of the initial report. A taxable entity with a beginning date on or after October 4, 2009 that files a first annual report must report gross receipts based on its activities commencing with the beginning date and ending on the last accounting period ending date for federal income tax purposes in the same calendar year as the beginning date.

(3) Taxable entities that are members of an affiliated group that are part of a unitary business must file a combined franchise tax report. See §3.590 of this title (relating to Margin: Combined Reporting), for determining gross receipts for a combined report.

(4) When a taxable entity computes gross receipts for apportionment, the taxable entity is deemed to have elected to use the same methods that the taxable entity used in filing its federal income tax return.

(5) Any item of revenue that is excluded from total revenue under Texas law or United States law is excluded from gross receipts from an entity's entire business and Texas gross receipts as provided by Tax Code, §171.1055(a) (Exclusion of Certain Receipts for Margin Apportionment). For example, any amount that is excluded from total revenue under the IRC, §78 (Dividends received from certain foreign corporations by domestic corporations choosing foreign tax credit) or §951 - 964 (26 U.S. Code Subpart F - Controlled Foreign Corporations), is excluded from gross receipts. Non-receipt items that are excluded from total revenue under §3.587 of this title, such as \$500 per pro bono services case; the actual cost of uncompensated care; the direct cost of providing waterway transportation; the direct cost of providing agricultural aircraft services and the cost of a vaccine, are not deducted from gross receipts under this section. See subsection (b)(3) of this section, concerning definition of gross receipts. For example, under Tax Code, §171.1011(g-3) (Determination of Total Revenue from Entire Business), an attorney may exclude \$500 from total revenue for handling a pro bono case. Since the \$500 is not a receipt, there is no exclusion for pro bono work when calculating gross receipts. Therefore, if a taxable entity starts with its total revenue amount to calculate its gross receipts, the taxable entity must add back the \$500 per pro bono services case.

(6) A taxable entity that uses a 52 - 53 week accounting year end and that has an accounting year that ends during the first four days of January of the year in which the report is originally due may use the preceding December 31 as the date through which margin is computed.

(7) Any item of allocated revenue excluded under §3.587(c)(9) of this title is excluded from Texas gross receipts and gross receipts from an entity's entire business.

(e) Computation and sourcing of gross receipts.

(1) Advertising services. Gross receipts from the dissemination of advertising are sourced to the locations of the advertising audience. The locations of the advertising audience should be determined in good faith using the most reasonable method under the circumstances, considering the information reasonably available. The method should be consistently applied from year to year and supported by records retained by the service provider. Locations that may be reasonable include the physical locations of the advertising, advertising

audience locations recorded in the books and records of the service provider, and locations listed in published rating statistics. If the locations of nationwide advertising audiences cannot otherwise be reasonably determined, then 8.7% of the gross receipts are sourced to Texas. For reports originally due prior to January 1, 2021, advertising receipts attributable to a radio or television station transmitter in Texas may be sourced to Texas.

(2) Capital assets and investments.

(A) Except as provided in subparagraph (C) of this paragraph, only the net gain from the sale of a capital asset or investment is included in gross receipts. A net loss from the sale of a capital asset or investment is not included in gross receipts.

(B) The net gain or net loss from the sale of a capital asset or investment is the amount realized from the sale less the adjusted basis for federal income tax purposes.

(C) For reports originally due prior to January 1, 2021, a taxable entity may add the net gains and losses from sales of investments and capital assets to determine the total gross receipts from such transactions. If both Texas and out-of-state sales have occurred, then a separate calculation of net gains and losses on Texas sales must be made. If the combination of net gains and losses results in a loss, the taxable entity may not net the loss against other receipts.

(D) The net gain from the sale of a capital asset or investments is sourced based on the type of asset or investment sold. The net gain from the sale of an intangible asset is sourced to the location of the payor as provided in paragraph (21)(B) of this subsection, concerning gross receipts from the sale of intangible assets, and paragraph (25) of this subsection, concerning securities, of this subsection. Examples of intangible assets include, but are not limited to, stocks, bonds, commodity contracts, futures contracts, patents, copyrights, licenses, trademarks, franchises, goodwill, and general receivable rights. The net gain from the sale of real property is sourced as provided in paragraph (23) of this subsection, concerning real property. The net gain from the sale of tangible personal property is sourced as provided in paragraph (29) of this subsection, concerning tangible personal property.

(E) Examples.

(i) Example 1. During a report year, a real estate investment company sells two Texas investment properties, reporting a gain on sale of one property and a loss on the sale of the other property. The company should include the net gain on the profitable sale in gross receipts from its entire business but should not include the net loss on the unprofitable sale. The company should not offset the net loss against the net gain. To determine Texas gross receipts, the asset should be sourced based on its nature. Receipts from the sale of real property are sourced to the location of the property, as provided in paragraph (23) of this subsection. The company should include only the net gain on the sale of the Texas investment property in Texas gross receipts and should not include the net loss on the sale of the other Texas investment property.

(ii) Example 2. The facts are the same as in Example 1, except the real estate investment company also had net gains and net losses from the sale of out-of-state properties. For reports originally due prior to January 1, 2021, the real estate investment company may offset all of the net losses from these sales against all of the net gains. If the result is a net gain, the net gain is included in gross receipts from its entire business. If the result is a net loss, the net loss may not be included in gross receipts from its entire business. To determine Texas gross receipts, the company may offset the net loss from the sale of the one Texas property against the net gain from the sale of the other

Texas property. If the result is a net gain, the net gain is included in Texas gross receipts. If the result is a net loss, the net loss may not be included in Texas gross receipts.

(3) Computer hardware and digital property.

(A) Gross receipts from the sale of computer hardware together with any software installed on the hardware are sourced as the sale or lease of tangible personal property under paragraph (29) of this subsection.

(B) Gross receipts from the lease of computer hardware together with any software installed on the hardware are sourced as the leasing of tangible personal property under paragraph (14)(B) of this subsection.

(C) Gross receipts from the sale of digital property (computer programs and any content in digital format that is either protected by copyright law or no longer protected by copyright law solely due to the passage of time) that is transferred by fixed physical media are sourced as the sale of tangible personal property under paragraph (29) of this subsection.

(D) Gross receipts from lease of digital property that is transferred by fixed physical media are sourced as the leasing of tangible personal property under paragraph (14)(B) of this subsection.

(E) Gross receipts from the sale or lease of digital property that is transferred by means other than by fixed physical media are sourced as the sale of intangible property under paragraph (21)(B) of this subsection.

(F) Gross receipts from the delivery of digital property as a service are sourced under paragraph (26) of this subsection, unless otherwise provided in this subsection.

(G) Gross receipts from the delivery of digital property as part of an internet hosting service are sourced as internet hosting receipts under paragraph (13) of this subsection. See paragraph (13)(D) of this subsection for factors distinguishing the purchase of access over the internet to computer services from the purchase or lease of digital property.

(H) Gross receipts from the use (as opposed to the sale or licensing) of digital property are sourced under paragraph (21)(A) of this subsection.

(I) Examples.

(i) Example 1. Movie Studio produces a copyrighted movie in digital format and successively sells the theatrical rights to Movie Theater Chain Company, the broadcast rights to Cable Company, the internet streaming rights to Internet Company A, the internet rental rights to Internet Company B, the digital versatile disc (DVD) sale rights to DVD Company, DVD rental rights to Kiosk Company, and the permanent download sale rights to Download Company. In each instance, Movie Studio's receipts are from the right to use its copyrighted digital property and sourced to where the copyright is used under paragraph (21)(A) of this subsection. Movie Theater Chain Company receipts from ticket sales are from the sale of a service and sourced ~~[to the audience location]~~ under paragraph (26) [(26)(A)(i)] of this subsection. Cable Company subscription receipts from broadcasting the movie are from the sale of a service and sourced ~~[to the audience location]~~ under paragraph (26) [(26)(A)(i)] of this subsection. Internet Company A's subscription receipts for its streaming service using its website are from an internet hosting service and sourced to the location of the customer under paragraph (13) of this subsection. Internet Company B's receipts from the rental (access for a limited time) of the movie using the company's website are from an internet hosting service and sourced to the location of the

customer under paragraph (13) of this subsection. DVD Company's receipts from the sale of DVDs are from the sale of tangible personal property and sourced under paragraph (29) of this subsection. Kiosk Company's receipts from the rental of DVDs are from the rental of property and sourced to the location of the property under paragraph (14) of this subsection. Download Company's receipts from the sale of permanent downloads of the movie are from the sale intangibles and sourced to the location of payor under paragraph (21)(B) of this subsection.

(ii) Example 2. Software Company designs bookkeeping software for personal use. Software Company licenses the software to Computer Company to include in the software sold with its computers. Software Company sells digital versatile discs (DVDs) of the bookkeeping software to Retail Company for resale to end users. Software Company sells downloads of its bookkeeping software directly to end users. Software Company sells an on-line version of its bookkeeping software in which end users can enter and store data on-line using the Software Company's website for a periodic fee. Software Company receipts from licensing the software to Computer Company are from the use of its digital product and sourced to the location of use under paragraph (21)(A) of this subsection. Computer Company's receipts from the sale of computers with pre-loaded software are from the sale of tangible personal property and sourced under paragraph (29) of this subsection. Software Company's receipts from the sale of DVDs to Retail Company are from the sale of tangible personal property and sourced under paragraph (29) of this subsection. Software Company's receipts from the sale of downloads to end users are from the sale of intangible property and sourced to the location of payor under paragraph (21)(B) of this subsection. Software Company's receipts from the sale of its on-line version are from the sale of an internet hosting service and sourced to the location of the customer under paragraph (13) of this subsection.

(4) Condemnation. Gross receipts from condemnation of property are sourced to the location of the property condemned.

(5) Debt forgiveness. If a creditor releases any part of a debt, then the amount that the creditor forgives is a gross receipt that is sourced to the legal domicile of the creditor.

(6) Debt retirement. Gross receipts from the retirement of a taxable entity's own indebtedness, such as through the taxable entity's purchase of its own bonds at a discount, are sourced to the taxable entity's legal domicile. The indebtedness is treated as an investment in the determination of the amount of gross receipts.

(7) Dividends.

(A) Dividends that are recognized as a reduction of the taxpayer's basis in stock of a taxable entity for federal income tax purposes are not gross receipts. Dividends that exceed the taxpayer's basis for federal income tax purposes that are recognized as a capital gain are treated as dividends for apportionment purposes.

(B) The following are excluded from Texas gross receipts and gross receipts from an entity's entire business:

(i) dividends from a subsidiary, associate, or affiliated taxable entity that does not transact a substantial portion of its business or regularly maintain a substantial portion of its assets in the United States;

(ii) Form 1120, Schedule C special deductions that are excluded from total revenue; and

(iii) dividends on federal obligations that are excluded from total revenue.

(C) Dividends that are received from a corporation or other sources are sourced to the location of the payor.

(D) Dividends received from a national bank are sourced to Texas if the bank's principal place of business is located in Texas. Dividends received from a bank that is organized under the Texas Banking Code are sourced to Texas.

(8) Exchanges of property. Exchanges of property are included in gross receipts to the extent that the exchange is recognized as a taxable transaction for federal income tax purposes. Such exchange must be included in gross receipts based on the gross exchange value, unless otherwise required under this section.

(9) Federal enclave. Gross receipts from a taxable entity's sales, services, leases, or other business activities that are transacted on a federal enclave that is located in Texas are sourced to Texas, unless otherwise excepted by this section.

(10) Financial derivatives. Gross receipts from the settlement of financial derivatives contracts, including hedges, options, swaps, futures, and forward contracts, and other risk management transactions are sourced to the location of the payor.

(11) Insurance proceeds.

(A) Business interruption insurance proceeds are gross receipts when the proceeds are intended to replace lost profits. Such receipts are Texas gross receipts when the location of the payor is in Texas.

(B) Gross receipts from fire and casualty insurance proceeds are sourced to the location of the damaged or destroyed property.

(12) Interest.

(A) Except as provided in subparagraph (B) of this paragraph, interest received is sourced to the location of the payor.

(B) Interest received from a national bank is a Texas gross receipt if the bank's principal place of business is located in Texas. Interest received from a bank that is organized under the Texas Banking Code is a Texas gross receipt.

(C) The following are excluded from Texas gross receipts and gross receipts from an entity's entire business:

(i) interest on federal obligations that is excluded from total revenue; and

(ii) interest that is exempt from federal income tax.

(D) A banking corporation may exclude from its Texas gross receipts interest that is earned on federal funds and interest that is earned on securities that are sold under an agreement to repurchase and that are held in a correspondent bank that is domiciled in Texas, but the banking corporation must include the interest in its gross receipts from an entity's entire business.

(13) Internet hosting service. For reports originally due on or after January 1, 2014, receipts from internet hosting are Texas gross receipts if the customer is located in Texas.

(A) Internet hosting service means providing to an unrelated user access over the internet to computer services using property that is owned or leased and managed by the provider and on which the user may store or process the user's own data or use software that is owned, licensed, or leased by the user or provider.

(B) Internet hosting includes real-time, nearly real-time, and on-demand access over the internet to computer services such as:

(i) data storage and retrieval;

(ii) video gaming;

(iii) database search services;

(iv) entertainment streaming services;

(v) processing of data; and

(vi) marketplace provider services.

(C) Internet hosting does not include:

(i) telecommunications service;

(ii) cable television service;

(iii) internet connectivity service;

(iv) internet advertising service; or

(v) internet access solely to download digital content for storage and use on the customer's computer or other electronic device.

(D) The purchase of access over the internet to computer services is distinguished from the purchase or lease of computer hardware or digital property (which are sourced under subsection (e)(3) of this section) by taking into account all relevant factors, the relevance of which may vary depending upon the circumstances. Some relevant factors indicating the purchase of access to a computer service rather than the purchase or lease of computer hardware or digital property include:

(i) the customer is not in physical possession of the property;

(ii) the customer does not control the property, beyond the customer's network access and use of the property;

(iii) the provider has the right to determine the specific property used in the transaction and replace such property with comparable property;

(iv) the property is a component of an integrated operation in which the provider has other responsibilities, including ensuring the property is maintained and updated;

(v) the customer does not have a significant economic or possessory interest in the property;

(vi) the provider bears any risk of substantially diminished receipts or substantially increased expenditures if there is nonperformance under the contract;

(vii) the provider uses the property concurrently to provide significant services to entities unrelated to the customer;

(viii) the provider's fee is primarily based on a measure of work performed or the level of the customer's use rather than the mere passage of time; and

(ix) the total contract price substantially exceeds the rental value of the property for the contract period.

(E) The customer location is determined by the physical location where the purchaser or the purchaser's designee consumes the service. The location should be determined in good faith using the most reasonable method under the circumstances, considering the information reasonably available. Receipts from some services may be sourced to multiple customer locations or to multiple customers. Locations that may be reasonable under the circumstances include the customer's principal place of business, the customer's business unit that is using the computer services, the delivery addresses for individual

units of service provided to the customer, the primary place or places of consumption by the customer, the service address of the customer, the billing address of the customer, or a combination of methods.

(i) Example 1. An individual purchases access to a dating application. The most reasonable customer location for consumption of the service may be the billing address of the individual in the absence of information regarding the individual's physical address.

(ii) Example 2. A benefactor purchases access to a computer service for a charitable organization. The customer is the purchaser's designee for consuming the service - the charitable organization. The most reasonable customer location for consumption of the service may be the physical address of the charitable organization.

(iii) Example 3. An intermediary purchases access to a computer service for resale to a third party. The customer is purchaser's designee for consuming the service - the third party. The most reasonable customer location for consumption of the service may be the physical location of the third party, if known.

(iv) Example 4. A law firm purchases access to a database search program for attorneys in multiple offices. The customers are the purchaser's designees for consuming the service - its attorneys. The most reasonable customer locations for consumption of the service may be physical addresses of each office, with the access fee sourced proportionately based on the number of attorneys in each office.

(v) Example 5. A retailer with multiple sales outlets purchases access to point of sales software that reports to the retailer's central office. The most reasonable customer locations for consumption of the service may be the physical addresses of the central office and each designated point of sale, with the access fee sourced proportionately between the central office and each designated point of sale.

(vi) Example 6. A retailer with multiple sales outlets purchases access to federal income tax preparation software. The most reasonable customer location for consumption of the service may be the principal place of business of the retailer.

(vii) Example 7. An individual pays a fee to an internet ride-sharing service connecting the individual with a driver at a particular location. The most reasonable customer location for consumption of the service may be the physical address of rendezvous point for the ride.

(14) Leases and subleases.

(A) Gross receipts from the lease, sublease, rental, or subrental of real property are sourced to the location of the property.

(B) Gross receipts from the lease, sublease, rental, or subrental of tangible personal property are sourced to the location of the property. If the property is used both inside and outside Texas, then lease payments are sourced based on the number of days that the tangible personal property was used in Texas divided by the number of days that the tangible personal property was used everywhere. If the amount due under the lease is based on mileage, then the lease payments are sourced based on the number of miles in Texas divided by the number of miles everywhere.

(C) If a lump sum is charged for the lease, sublease, rental, or subrental of more than one item of property, and the items are located both inside and outside Texas, the lump-sum is sourced to Texas based on a ratio of the fair rental value of the items located in Texas to the fair value of the items located outside of Texas.

(D) Gross receipts from the lease, sublease, rental, or subrental of a vessel that engages in commerce are sourced to Texas

based on the number of days that the vessel is engaged in commerce in Texas waters divided by the number of days that the vessel is engaged in commerce everywhere.

(E) Gross receipts from a lease, sublease, rental, or subrental of real property or tangible personal property that is treated as a sale for federal income tax purposes are sourced in the same manner as a sale. Any portion of the payments that the contracting parties designate as interest is sourced as provided in paragraph (12) of this subsection, concerning interest.

(15) Litigation awards. Litigation awards are gross receipts that are sourced to the location of the payor; however, if the litigation awards are intended to replace receipts for which another rule provided in this section applies, then the gross receipts are sourced in accordance with that rule. For example, if a taxable entity sues a Delaware corporation to recover on a sale of goods delivered to a Texas location, then a judgment for the amount of that sale would not convert the receipts from Texas gross receipts to Delaware receipts. See subsection (f) of this section, for the sourcing of receipts from judgments, compromises, or settlements that relate to natural gas production.

(16) Loan servicing.

(A) Gross receipts from servicing loans secured by real property are sourced to the location of the collateral real property that secures the loan being serviced.

(B) Gross receipts from servicing loans that are not secured by real property are sourced as provided in paragraph (26) of this subsection, concerning services.

(17) Loans and securities treated as inventory of the seller.

(A) Gross proceeds from the sale of a loan or security treated as inventory of the seller for federal income tax purposes are included in gross receipts even though the tax basis is not included in total revenue under §3.587(e)(4) of this title. Securities and loans held for investment or risk management purposes are not inventory. Gross receipts from the sale of a loan or security treated as inventory of the seller are sourced to the location of the payor as provided in paragraph (25) of this subsection, concerning securities. See paragraph (2) of this subsection, concerning capital assets and investments, or paragraph (10) of this subsection, concerning financial derivatives, for the treatment of gains and losses from sales of loans and securities not treated as inventory of the seller.

(B) If a lending institution categorizes a loan or security as "Securities Available for Sale" or "Trading Securities" under Financial Accounting Standard No. 115, the gross proceeds of the sale of that loan or security are considered gross receipts. In this subparagraph, "Financial Accounting Standard No. 115" means the Financial Accounting Standard No. 115 in effect as of January 1, 2009, not including any changes made after that date.

(18) Membership or enrollment fees paid for access to benefits. Membership or enrollment fees paid for access to benefits are gross receipts from the sale of an intangible asset and are sourced to the location of the payor.

(19) Mixed transactions. If a transaction involves elements of both a sale of tangible personal property and a service, but no documentation exists to show separate charges for the tangible personal property and service elements, then the comptroller may determine the amounts that are allocable to each element based on fair values or on any available evidence.

(20) Net distributive income. The net distributive income or loss from a passive entity that is included in total revenue is sourced to the principal place of business of the passive entity.

(21) Patents, copyrights, and other intangible assets.

(A) Gross receipts from the use of intangible assets.

(i) Revenues from a patent royalty are included in Texas receipts to the extent that the patent is utilized in production, fabrication, manufacturing, or other processing in Texas.

(ii) Revenues from a copyright royalty are included in Texas receipts to the extent that the copyright is utilized in printing or other publication in Texas.

(iii) Gross receipts that the owner of a patent, copyrighted material, trademark, franchise, or license receives from licensing the use of the patent, copyrighted material, trademark, franchise, or license are sourced to Texas to the extent the patent, copyrighted material, trademark, franchise or license is used in Texas.

(iv) Royalties from an affiliated taxable entity that does not transact a substantial portion of its business or regularly maintain a substantial portion of its assets in the United States are excluded from Texas gross receipts and gross receipts from an entity's entire business.

(B) Gross receipts from the sale of intangible assets. Except as otherwise provided in this section, gross receipts from the sale of intangible assets are sourced to the location of payor.

(C) Examples.

(i) Example 1. The owner of seismic data grants a license to an oil company to access the seismic data. Even though a license is part of this transaction, the receipts are from the use of the underlying intangible property, the seismic data (which cannot be copyrighted), not from the use of a license. Accordingly, the receipts are sourced under subparagraph (B) of this paragraph to the location of the payor.

(ii) Example 2. An inventor licenses a patent to a manufacturer. When the manufacturer licensee thereafter produces the patented item, it uses the patent, and its payments to the inventor, owner of the patent, are receipts from the use of a patent under subparagraph (A) of this paragraph. The receipts that the inventor receives are included in Texas receipts to the extent that the patent is used in production, fabrication, manufacturing, or other processing in Texas.

(iii) Example 3. The owner of copyrighted material grants a license to a publisher to publish the copyrighted material. When the publisher publishes the copyrighted material, it uses the copyright, and its payments to the owner are receipts from the use of a copyright under subparagraph (A) of this paragraph. The receipts that the copyright owner receives from the use of its copyright is included in Texas receipts to the extent the copyright is used in Texas.

(22) Qualified stock purchase under IRC, §338(h)(10) (Certain stock purchases treated as asset acquisitions). Receipts that are treated as receipts from the sale of assets by the target taxable entity under IRC, §338(h)(10) are sourced according to the rules that apply to sales of such assets. For the purposes of this paragraph, the purchaser of the target's stock is considered the purchaser of the assets.

(23) Real property. Gross receipts from the sale, lease, rental, sublease, or subrental of real property, including mineral interests, are sourced to the location of the property. Royalties from mineral interests are considered revenue from real property.

(24) Sales taxes. State or local sales taxes that are imposed on the customer, but are collected by a seller are not included in the seller's gross receipts. However, discounts that a seller is allowed to take in remittance of the collected sales tax are gross receipts to the seller.

(25) Securities. Gross receipts from the sale of securities are sourced to the location of the payor. If securities are sold through an exchange, and the payor cannot be identified, then 8.7% of the revenue is a Texas gross receipt. For reports originally due prior to January 1, 2021, a taxable entity may use 7.9% instead of 8.7%.

(26) Services. Except as otherwise provided in this section, gross receipts from a service are sourced to the location where the service is performed.

(A) Location of performance. Except as provided in other subparagraphs, a service is performed at the location or locations where the taxable entity's personnel or property are doing the work that the customer hired the taxable entity to perform. Activities that are not directly used to provide a service are not relevant when determining the location where a taxable entity performs a service [of the receipts-producing, end-product act or acts. If there is a receipts-producing, end-product act, the location of other acts will not be considered even if they are essential to the performance of the receipts-producing acts. If there is not a receipts-producing, end-product act, then the locations of all essential acts may be considered].

~~{(i) Example 1. Admission fees, subscription fees, or other charges for an audience to observe live or pre-recorded performances are sourced to the locations where the recipients observe the performance. The location where the live performance was rehearsed, the location where the pre-recorded performance was recorded, and the location where the admission fee or other charge was paid are not determinative.}~~

~~{(ii) Example 2. Gross receipts from the architectural design of a structure, are sourced to the location or locations where the architect performed the work. The delivery location of any tangible work product, such as a blueprint, is not determinative. However, if the tangible work product of the architect is considered to be the sale of tangible personal property rather than the sale of a service, such as the sale of house plan books, the gross receipts are sourced as provided in paragraph (29) of this subsection, concerning tangible personal property.}~~

(B) If services are performed both inside and outside Texas for a single charge, then receipts from the services are Texas gross receipts on the basis of the fair value of the services that are performed in Texas. In determining fair value, the relative value of each service provided on a stand-alone basis may be considered. Units of service, such as hours worked, may also be considered. The cost of performing a service does not necessarily represent its value. If costs are considered, costs should be limited to the direct costs of doing the work that the customer hired the taxable entity to perform and should not include any costs that are not directly used to provide a service to the customer [directly related to the service and not overhead costs].

(i) Example 1. A law firm with offices in Texas and Louisiana charges a client by the hour. Hours billed for work conducted in Texas are Texas gross receipts.

(ii) Example 2. A law firm with offices in Texas and Louisiana charges a client a lump sum fee of \$5,000 to draft a document. Attorneys in the Texas office recorded 20 hours on the project, and attorneys in the Louisiana office recorded 5 hours on the project at the same billing rate. Texas gross receipts are \$4,000. If the law firm



does not record hours worked on a project, other measures of direct cost may be considered.

(iii) Example 3. A Texas-based landscaper provides grounds maintenance services at its client's four offices in Texas, and one office in Oklahoma, for an annual fee of \$50,000. The landscape services at each of the locations are substantially the same. Texas gross receipts are \$40,000. Although the cost of performing the landscaping maintenance service at the Oklahoma office is higher than the cost of performing the service at the other locations because of the additional travel cost, the additional cost is not considered.

(C) Taxable entities that have margin that is derived, directly or indirectly, from the sale of services to or on behalf of a regulated investment company should refer to subsection (c)(1) of this section for information on apportionment of such margin.

(D) Taxable entities that have margin that is derived, directly or indirectly, from the sale of management, administration, or investment services to an employee retirement plan should refer to subsection (c)(2) of this section for information on apportionment of such margin.

(E) Receipts from services that a defense readjustment project performs in a defense economic readjustment zone are not Texas gross receipts.

(27) Single member limited liability company (SMLLC). For purposes of this section, the sale of a SMLLC by its sole owner is the sale of a membership interest in the SMLLC. The membership interest is an intangible asset, and receipts from the sale of a SMLLC are sourced to the location of payor.

(28) Subsidies or grants. Proceeds of subsidies or grants that a taxable entity receives from a governmental agency are gross receipts, except when the funds are required to be expended dollar-for-dollar (i.e., passed through) to third parties on behalf of the agency. Receipts from a governmental subsidy or grant are sourced in the same manner as the item to which the subsidy or grant was attributed. For example, receipts from a grant to conduct research for the government are receipts from a service and are sourced to the location where the research is performed.

(29) Tangible personal property. Examples of transactions that involve the sale of tangible personal property and result in Texas gross receipts include, but are not limited to, the following:

(A) the sale of tangible personal property that is delivered in Texas to a purchaser. Delivery is complete upon transfer of possession or control of the property to the purchaser, an employee of the purchaser, or transportation vehicles that the purchaser leases or owns. FOB point, location of title passage, and other conditions of the sale are not relevant to the determination of Texas gross receipts;

(B) the sale of tangible personal property that is delivered in Texas to an employee or transportation agent of an out-of-state purchaser. A carrier is an employee or agent of the purchaser if the carrier is under the supervision and control of the purchaser with respect to the manner in which goods are transported;

(C) the sale and delivery in Texas of tangible personal property that is loaded into a barge, truck, airplane, vessel, tanker, or any other means of conveyance that the purchaser of the property leases and controls or owns. The sale of tangible personal property that is delivered in Texas to an independent contract carrier, common carrier, or freight forwarder that a purchaser of the property hires results only in gross receipts everywhere if the carrier transports or forwards the property to the purchaser outside this state;

(D) the sale of tangible personal property with delivery to a common carrier outside Texas, and shipment by that common carrier to a purchaser in Texas;

(E) the sale of oil or gas to an interstate pipeline company, with delivery in Texas;

(F) the sale of tangible personal property that is delivered in Texas to a warehouse or other storage facility that the purchaser owns or leases;

(G) the sale of tangible personal property that is delivered to and stored in a warehouse or other storage facility in Texas at the purchaser's request, as opposed to a necessary delay in transit, even though the property is subsequently shipped outside Texas;

(H) the drop shipment of tangible personal property in Texas. A drop shipment is a shipment of tangible personal property from a seller directly to a purchaser's customer, at the request of the purchaser, without passing through the hands of the purchaser. This results in Texas gross receipts for the seller and the purchaser.

(30) Telecommunication services.

(A) Gross receipts from telephone calls that both originate and terminate in Texas are sourced to Texas.

(B) Gross receipts from telephone calls that originate in Texas but terminate outside of Texas or that originate outside of Texas but terminate in Texas are not sourced to Texas.

(C) Gross receipts from telecommunication services other than those services in subparagraph (A) or (B) of this paragraph are sourced to Texas if the services are performed in Texas. For example, a telephone company that provides a long distance carrier access to the telephone company's local exchange network in Texas is performing a service in Texas. Any fee that the telephone company charges the long distance carrier for access to the local exchange network in Texas is a Texas receipt regardless of whether the access is related to an interstate call. A fee that is charged to obtain access to a local exchange network in Texas and that is based on the duration of an interstate telephone call are not sourced to Texas.

(31) Television broadcaster licensing income. For reports originally due on or after January 1, 2018, a broadcaster's gross receipts from licensing income from broadcasting or otherwise distributing film programming by any means are sourced to Texas if the legal domicile of the broadcaster's customer is in this state. In this subparagraph, the following words and terms shall have the following meaning:

(A) Broadcaster--A taxable entity, not including a cable service provider or a direct broadcast satellite service, that is a television station licensed by the Federal Communications Commission, television broadcast network, cable television network, or television distribution company.

(B) Customer--A person, including a licensee, who has a direct connection or contractual relationship with a broadcaster under which the broadcaster derives revenue.

(C) Film programming--All or part of a live or recorded performance, event, or production intended to be distributed for visual and auditory perception by an audience.

(D) Programming--Includes news, entertainment, sporting events, plays, stories, or other literary, commercial, educational, or artistic works.

(32) Texas waters. Gross receipts from transactions that occur in Texas waters are sourced to Texas. Texas waters are consid-

ered to extend to 10.359 statute miles, or nine nautical miles, from the Texas coastline.

(33) Transportation services. Gross receipts from the transportation of goods or passengers are sourced to Texas by:

(A) including gross receipts from the transportation of goods or passengers that both originates and terminates in Texas; or

(B) the multiplication of total transportation receipts by the ratio of total compensated mileage in the transportation of goods and passengers in Texas to total compensated mileage.

(f) Natural gas production.

(1) Gross receipts that a gas producer realizes from the contract price of gas that the gas producer produces and that the purchaser takes pursuant to the terms of sales are sourced to Texas, if the gas is delivered in Texas.

(2) Gross receipts that a gas producer realizes from a purchaser's payment under a sale or purchase contract for gas to be produced even if no gas is produced and delivered to the purchaser, are sourced to the location of the payor.

(3) Gross receipts that a gas producer realizes from a purchaser's payments to terminate a gas purchase contract are sourced to the location of the payor.

(4) Gross receipts that a gas producer realizes from a contract amendment that relates to the price of the gas sold are treated as gross receipts from the sales of gas and are sourced to Texas if delivery is made to a location in Texas. Gross receipts that the gas producer realizes from a contract amendment that relates to a provision other than the price of gas sold are sourced to the location of the payor.

(5) Gross receipts that a gas producer realizes from litigation awards for a breach of contract, reimbursements for litigation-related expenses (e.g., documented attorney's fees or court costs), or in-

terest (upon which the parties have agreed, that the records of the producer reflects, or in an amount that a court has ordered) are sourced to the location of the payor.

(6) Gross receipts that a gas producer realizes from a judgment, compromise, or settlement relating to the recovery of a contract price of gas produced are sourced to Texas to the extent the contract specified delivery to a location in Texas. Gross receipts that a gas producer realizes from a judgment, compromise, or settlement that relates to several claims or causes of action shall be prorated based upon the documented amounts due under the contract for each claim or cause of action according to the records of the producer. For example, a settlement sum of \$100,000 for a pricing dispute of \$25,000 and for failure to pay for gas not taken in the amount of \$225,000, would result in receipts of \$10,000 from gas sales ( $100,000 \times 25,000/250,000$ ) and receipts from other business of \$90,000 ( $100,000 \times 225,000/250,000$ ). Records of the producer shall include, but are not limited to the following: contracts, settlement agreements, accounting records and entries, court pleadings and worksheets, including calculations reflecting settlement amounts.

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 January 5, 2023.

TRD-202300048

Jenny Burleson

Director, Tax Policy

Comptroller of Public Accounts

Earliest possible date of adoption: February 19, 2023

For further information, please call: (512) 475-2220

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# ADOPTED RULES

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

## TITLE 1. ADMINISTRATION

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

#### CHAPTER 354. MEDICAID HEALTH SERVICES

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts in the Texas Administrative Code (TAC), Title 1, Part 15, Chapter 354, Subchapter A, Division 33, amendments to §354.1430, concerning Definitions; §354.1432, concerning Telemedicine and Telehealth Benefits and Limitations; §354.1434, concerning Home Telemonitoring Benefits and Limitations; and new §354.1435, concerning Provision of Behavioral Health Services through an Audio-Only Platform; and §354.1436, concerning Provision of Non-behavioral Health Services Using an Audio-only Platform; and in Subchapter M, Division 1, amendments to §354.2603, concerning Definitions; §354.2607, concerning Assessment and Service Authorization; and §354.2609, concerning Recovery/Treatment Planning, Recovery/Treatment Plan Review, and Discharge Summary; in Division 2, amendments to §354.2655, concerning Mental Health Targeted Case Management Services; and §354.2657, concerning Documentation Requirements; and in Division 3, amendments to §354.2707, concerning Crisis Intervention Services; §354.2709, concerning Medication Training and Support Services; §354.2711, concerning Psychosocial Rehabilitative Services; and §354.2713, concerning Skills Training and Development Services.

Sections 354.1430, 354.1432, 354.1434, 354.1435, 354.1436, 354.2603, 354.2607, 354.2609, 354.2655, 354.2657, 354.2707, 354.2709, 354.2711, and 354.2713 are adopted without changes to the proposed text as published in the October 21, 2022, issue of the *Texas Register* (47 TexReg 6921). These rules will not be republished.

#### BACKGROUND AND JUSTIFICATION

The adopted rules are necessary to implement Texas Government Code §531.02161 that was added by House Bill (H.B.) 4, 87th Legislature, Regular Session, 2021. Texas Government Code §531.02161 requires HHSC to develop and implement policies and procedures for the provision of healthcare services delivered via telemedicine and telehealth, including certain behavioral health services using an audio-only platform, by implementing changes in state law.

The adopted rules also implement Texas Government Code, §531.001, amended by Senate Bill (S.B.) 1107, 85th Legislature, Regular Session, 2017 to standardize definitions for telemedicine medical services and telehealth services; Texas Government Code, §531.001 and §531.0217(d), amended by

S.B. 670, 86th Legislature, Regular Session, 2019 to require reimbursement parity, to prevent denial of services solely because an in-person medical service did not occur and to not limit a physician's choice of platform; and Texas Government Code, §531.02164 (c-1), added by H.B. 1063, 86th Legislature, Regular Session, 2019 to allow home telemonitoring services for persons with diabetes, heart disease, and other specific conditions.

#### COMMENTS

The 31-day comment period ended November 21, 2022.

During this period, HHSC received comments regarding the proposed rules from three stakeholders, including Association of Persons Affected by Addiction (APAA), Teaching Hospitals of Texas (THOT), and Texas Medical Association (TMA). A summary of comments relating to the rules and HHSC responses follows.

Comment: APAA commented on a requirement in the behavioral health medical policies for the delivery of certain behavioral health services via synchronous audio-only technology.

Response: HHSC declines to make changes in response to this comment because the comment is related to the behavioral health medical policies HHSC posted for public comment in June 2022 and were implemented on September 1, 2022. Inquiries about a current benefit should be submitted to the Medical and Dental Benefit Policy general mailbox at: [medicaidbenefitrequest@hhsc.state.tx.us](mailto:medicaidbenefitrequest@hhsc.state.tx.us)

Comment: THOT requested clarification that only clinically effective and cost-effective telemedicine and telehealth services, as determined and published by HHSC in the Texas Medicaid Provider Procedures Manual (TMPPM), are covered.

Response: HHSC believes the commenter is referring to proposed §354.1432(4) and (6) regarding conditions for reimbursement applicable to telemedicine medical services and telehealth services. As described in the proposed rules, covered services that HHSC has determined are clinically effective and cost-effective when provided as a telemedicine medical service or as a telehealth service must be designated for reimbursement by HHSC and can be found in the TMPPM. HHSC declines to make changes in response to this comment.

Comment: THOT recommended that the rules describing telemedicine and telehealth coverage include a requirement for HHSC to provide an opportunity for stakeholder review and input as part of its process for determining covered services. This could be done through notifications and attendance at the Medical Care Advisory Committee and E-Health Advisory Committee meetings.

Response: HHSC declines to make the suggested changes in response to this comment. The current process for changing

Medicaid medical and dental policies includes an opportunity for stakeholder review and comment. Policy changes, to include designating a code as payable for services related to the provision of certain Medicaid covered services in an audio-only format, will be published in the TMPPM. As is currently the process, prior to publication in the TMPPM, all Medicaid policy changes will be posted for public comment on the HHSC Medicaid Medical and Dental Policies website.

Additionally, HHSC provides advance notices for health plans and providers of impending updates to policy.

Comment: THOT recommended that HHSC include, in the published final rules or through the TMPPM, evaluation and management services codes 99441, 99442, and 99443 for established patients provided as audio-only.

Response: HHSC declines to make the suggested changes in the published final rules or through the TMPPM because it is within HHSC's discretion to determine which healthcare services are cost effective and clinically effective when provided as a telemedicine medical service or a telehealth service, including the use of an audio-only platform. As such, HHSC continues to evaluate the audio-only services codes 99441, 99442 and 99443.

Comment: THOT requested HHSC approve additional clinically appropriate and cost-effective audio-only services, e.g., prenatal group sessions and some chronic care management services, as soon as possible and with appropriate stakeholder input.

Response: HHSC thanks THOT for their comment and will continue to evaluate audio only, evidence-based services for possible inclusion in the Texas Medicaid service array.

Comment: TMA recommended revising §354.2607(b)(4) to clarify that the documentation requirements of a Qualified Mental Health Professional-Community Services (QMHP-CS) are intended to only include existing, properly diagnosed intellectual/developmental disabilities, and that a QMHP-CS is not qualified to determine a diagnosis.

Response: HHSC declines to amend §354.2607(b)(4) as requested, since it is out of scope for this rule project. However, HHSC may address the requested change in a future rule project to ensure the public is provided the opportunity to comment.

Comment: TMA recommended revising proposed §354.2607(c)(1) to be gender neutral. TMA also recommended revising the same rule to expressly tie the scope-of-licensure requirement for Licensed Practitioners of the Healing Arts (LPHAs) to the Texas Occupations Code for clarity.

Response: HHSC declines to amend §354.2607(c)(1) as requested, since it is out of scope for this rule project. However, HHSC may address the requested change in a future rule project to ensure the public is provided the opportunity to comment.

Comment: TMA recommended revising proposed §354.2607(c)(3), to replace the word "person" with "LPHA," since the former has broad meaning that can include a business.

Response: HHSC declines to amend §354.2607(c)(3) since it is out of scope for this rule project. However, HHSC may address the requested change in a future rule project to ensure the public is provided the opportunity to comment.

Comment: TMA expressed concern about the use of "medical necessity" in proposed §354.2607(e)(2), stating that, aside from

a physician, the other professionals who meet the definition of a LPHA are not qualified or legally authorized to determine medical necessity.

Response: HHSC declines to amend §354.2607(e)(2) as requested since this is out of scope for this rule project. The language in §354.2607(e)(2) stems from existing language in previous subsection (c)(2) of §354.2607. This rule project merely reorganizes that language into a different subsection and does not change the substance of subsection (c)(2) (now renumbered as subsection (e)(2)). More information is available in Section 5 in the Behavioral Health and Case Management Services Handbook in the TMPPM. However, HHSC may address the requested change in a future rule project to ensure the public is provided the opportunity to comment.

Comment: TMA requested clarification of the phrase in proposed §354.2607(e)(3) "physical health care needs, as determined by a physician, physician assistant, or advanced practice registered nurse," to ensure the rule does not facilitate any unintended violations of Texas' scope of licensure laws.

Specifically, the TMA asked if this statement refers to the determination of a formal medical diagnosis.

Response: HHSC declines to amend §354.2607(e)(3) as requested since this is out of scope for this rule project. Inquiries about current benefit language should be submitted to the Medicaid and Dental Benefit Policy general mailbox at: [medicaidbenefitrequest@hhsc.state.tx.us](mailto:medicaidbenefitrequest@hhsc.state.tx.us)

## SUBCHAPTER A. PURCHASED HEALTH SERVICES

### DIVISION 33. ADVANCED TELECOMMUNICATIONS SERVICES

#### 1 TAC §§354.1430, 354.1432, 354.1434 - 354.1436

#### STATUTORY AUTHORITY

The amendments and new sections are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021, which provides HHSC with the authority to administer the federal medical assistance program in Texas and to adopt rules and standards for program administration.

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

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Karen Ray

Chief Counsel

Texas Health and Human Services Commission

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For further information, please call: (512) 438-4651



SUBCHAPTER M. MENTAL HEALTH  
TARGETED CASE MANAGEMENT AND  
MENTAL HEALTH REHABILITATION  
DIVISION 1. GENERAL PROVISIONS

1 TAC §§354.2603, 354.2607, 354.2609

STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021, which provides HHSC with the authority to administer the federal medical assistance program in Texas and to adopt rules and standards for program administration.

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DIVISION 2. MENTAL HEALTH TARGETED  
CASE MANAGEMENT

1 TAC §§354.2655, §354.2657

STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021, which provides HHSC with the authority to administer the federal medical assistance program in Texas and to adopt rules and standards for program administration.

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DIVISION 3. MENTAL HEALTH  
REHABILITATION

1 TAC §§354.2707, 354.2709, 354.2711, 354.2713

STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021, which provides HHSC with the authority to administer the federal medical assistance program in Texas and to adopt rules and standards for program administration.

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

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Karen Ray

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TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF  
AGRICULTURE

CHAPTER 1. GENERAL PROCEDURES

SUBCHAPTER E. ADVISORY COMMITTEES

4 TAC §1.201

The Texas Department of Agriculture (Department) adopts new 4 Texas Administrative Code §1.201, concerning Wine Advisory Committee. The rule is adopted without changes to the proposed text as published in the November 18, 2022, issue of the *Texas Register* (47 TexReg 7619) and will not be republished.

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

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

No comments were received by the Department concerning the proposed rule.

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

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 January 6, 2023.

TRD-202300051

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Texas Department of Agriculture

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## CHAPTER 17. MARKETING AND PROMOTION

### SUBCHAPTER G. GO TEXAN PARTNER PROGRAM RULES

#### 4 TAC §§17.300 - 17.305, 17.307 - 17.310

The Texas Department of Agriculture (Department) adopts the repeal of Texas Administrative Code, Title 4, Chapter 17, Subchapter G, GO TEXAN Partner Program Rules, §§17.300 - 17.305 and §§17.307 - 17.310. The repeal is adopted without changes to the proposed text as published in the December 2, 2022, issue of the *Texas Register* (47 TexReg 8002) and will not be republished.

The Department identified the need for the 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 December 2, 2022, issue of the *Texas Register* (47 TexReg 8054).

The Department adopts the repeal of Subchapter G based on lack of business necessity for this subchapter after completion of the Department's review of the GO TEXAN Program in accordance with recommendations of the Texas Sunset Advisory Commission.

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 and Section 12.0175 governing administration of the GO TEXAN Program.

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

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## TITLE 19. EDUCATION

### PART 2. TEXAS EDUCATION AGENCY

#### CHAPTER 103. HEALTH AND SAFETY

##### SUBCHAPTER DD. COMMISSIONER'S

##### RULES CONCERNING VIDEO SURVEILLANCE OF CERTAIN SPECIAL EDUCATION SETTINGS

#### 19 TAC §103.1303

The Texas Education Agency adopts an amendment to §103.1303, concerning commissioner's review of actions concerning video cameras in special education settings. The amendment is adopted with changes to the proposed text as published in the October 28, 2022 issue of the *Texas Register* (47 TexReg 7208) and will be republished. The adopted amendment updates the procedures for documents filed with the agency's division responsible for hearings and appeals to allow electronic filing.

**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. Texas Education Code (TEC), §29.022, implements TGC, §2001.004, by specifying the requirements of the commissioner to adopt rules to implement and administer TEC, §29.022. Section 103.1303 implements TEC, §29.022, by specifying the requirement for all hearings and reviews of actions concerning denials of requests for the installation of cameras, denials of requests to view a video, denials of requests to release a video, and requests of a school district for an extension of time for the installation of cameras.

The adopted amendment to subsection (c)(4) updates the requirements 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. The adopted amendment also states that electronic filing, rather than filing by facsimile, is strongly encouraged.

In response to public comment, subsection (b)(7)(C) was modified at adoption to allow requests for expedited review to be filed electronically.

**SUMMARY OF COMMENTS AND AGENCY RESPONSES:** The public comment period on the proposal began October 28, 2022, and ended November 28, 2022. Following is a summary of public comments received and corresponding agency responses.

Comment: An educator commented in opposition to any proposed changes to §103.1303. The educator described personal experience with reviewing videos after parent requests and expressed concern about the high administrative burden required to review hours or days of video footage within seven days of parent requests. The commenter also expressed concern for overly broad parent requests and the cost of outsourcing video redaction for Family Educational Rights and Privacy Act (FERPA) compliance.

Response: The agency disagrees. The amendment adds the option of electronically filing documents to existing options to file by mail, delivery, or facsimile. The amendment does not increase administrative demands but rather incorporates an electronic practice common in Texas courts.

Comment: A representative of Disability Rights Texas commented in support of the proposed revision, stating it would add options to improve access to the expedited appeals process for lawyers, non-attorney advocates, and unrepresented parents of students with disabilities. The representative also suggested a revision to §103.1303(b)(7)(C) to permit an electronic filing option in expedited reviews.

Response: The agency agrees and has made the suggested change to §103.1303(b)(7)(C) at adoption. The change aligns the language in subsection (b)(7)(C) with other language that adds electronic filing as a filing option, without imposing any additional compliance requirements.

Comment: A director of special education commented that the current TEC provides sufficient student safety and that careful consideration is needed before making changes that would increase staff demands. The director also raised concern about parents' understanding of the law and the amount of time required to review video footage.

Response: The agency disagrees. The amendment to §103.1303, which implements TEC, §29.022, adds the option of electronically filing documents to existing options to file by mail, delivery, or facsimile. The amendment does not increase administrative demands but rather incorporates an electronic practice common in Texas courts.

**STATUTORY AUTHORITY.** The amendment is adopted under Texas Education Code (TEC), §7.057, which provides procedures and deadlines for filing an appeal to the commissioner; TEC, §29.022, which requires video surveillance in certain special education settings to promote student safety and authorizes the commissioner to adopt rules to implement and administer the section, including for an expedited review of a denial of a request for special education cameras; 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 and §29.022, and Texas Government Code, §2001.004.

*§103.1303. Commissioner's Review of Actions Concerning Video Cameras in Special Education Settings.*

(a) **Applicability.** This section shall apply to all hearings and reviews of actions taken under Texas Education Code (TEC), §29.022, concerning denials of requests for the installation of cameras, denials of requests to view a video, denials of requests to release a video, and requests of a school district for an extension of time for the installation of cameras. This section applies to constructive denials of requests, which occur when a school district fails to timely issue a denial of a

request. To the extent that this section conflicts with any other sections governing hearings before the commissioner of education, including Chapter 157, Subchapter AA of this title (relating to General Provisions for Hearings Before the Commissioner of Education) and Subchapter BB of this title (relating to Specific Appeals to the Commissioner), this section shall prevail.

(b) **Denial of request.** The following standards and procedures apply to a denial of a request made under TEC, §29.022(a), for the placement of a video camera or to the denial of a request to release a video or to view a video made under TEC, §29.022(i) or (l)(2).

(1) Once a request for placement of a video camera or a request to release a video is administratively denied, the requestor must exhaust administrative remedies through the school district's grievance process even if the requestor opts for the expedited review process. However, a school district, parent, staff member, or administrator may request an expedited review even before local remedies are exhausted.

(2) After local remedies are exhausted by filing a grievance with the school board and obtaining a school board determination, the requestor may appeal the denial to the commissioner of education under TEC, §7.057, by filing a petition for review.

(3) In a case where there is a denial of a request for the placement of a video camera, the commissioner will determine whether the person requesting placement is a person allowed to request placement under TEC, §29.022(a-1), and whether the requestor made a proper request under TEC, §29.022(a-3).

(4) The commissioner will not consider the cost to the district of installing cameras or releasing a video.

(5) In a case where there is a denial of a request to release a video, the commissioner will determine whether the requestor is a person allowed to receive a video under TEC, §29.022(i). The commissioner may make an in-camera inspection of the video in question in the appropriate case.

(6) The following timelines are established for filing a petition for review.

(A) A petition for review shall be filed with the commissioner within 10 calendar days of the decision of the board of trustees denying the request being first communicated to the requestor or requestor's counsel, whichever occurs first. The petition for review shall be made in accordance with §157.1073(c) of this title (Relating to Hearings Brought Under Texas Education Code, §7.057) and may include a request for expedited review.

(B) The district's answer and local record shall comply with §157.1052(b) and (c) of this title (relating to Answers) and §157.1073(d) of this title and shall be filed with the commissioner within 10 calendar days of the school district receiving notification from the commissioner of the appeal.

(C) The procedures specified in §§157.1059; 157.1061; and 157.1073(e)-(h), (j), and (k) of this title apply to a case brought to the commissioner under this section.

(7) A request for expedited review is governed by the following.

(A) The expedited review process is designed to allow a requestor to promptly receive a preliminary judgment from the commissioner as to a decision to deny a request for the installation of cameras or a decision to deny a request to release a video while at the same time respecting the school grievance process. The expedited review process does not apply to a request to only view a video. Invoking the expedited review process results in a prompt initial determination.

However, the final commissioner's determination is to be based on a substantial evidence review of the school district's grievance record. This allows for a full record to be developed at the school district level and does not require the requestor and the school district to make an evidentiary record before the Texas Education Agency (TEA) in Austin, Texas. Because the requirements of TEC, §7.057, are met when the school board's decision is heard by the commissioner, an appeal to district court is allowed under TEC, §7.057(d). TEC, §29.022, does not by itself allow an appeal to district court.

(B) A school district, parent, staff member, or administrator may request an expedited review. Any request for an expedited review shall include the names, telephone numbers, and addresses of all interested parties to the request. "Interested parties" are all persons who brought the grievance, all persons who have testified or provided written statements as part of the grievance process, and the school district. The request for expedited review shall specify whether the school district denied a request for the placement of a video camera or the school district denied a request to release a video and briefly describe why that decision is either correct or incorrect.

(C) A request for expedited review shall be filed with the commissioner no earlier than 14 business days after a request for placement of a video camera or a request to release a video is administratively denied under TEC, §29.022(i) or (l)(2), and no later than the fifth business day after a school board resolves a grievance as to a request for placement of a video camera or a request to release a video. A request for expedited review shall be filed with the commissioner electronically as provided on the division's website or by U.S. mail, facsimile, hand delivery, or a commercial delivery service.

(D) Whenever an interested party files a document with the commissioner, with the exception of the request for expedited review, the interested party shall send the same document to all other interested parties by the same method that the document was sent to the commissioner. Hand-delivery of the document by the next day may be substituted for service by facsimile delivery.

(E) If a request for expedited review is timely filed, the commissioner will establish a briefing schedule and will send to all interested parties a notice that an expedited review has been filed, which will include relevant statutes and rules. Any interested party who knows of any additional interested parties who have not been notified will promptly inform the commissioner in writing.

(F) All briefing shall clearly state the facts relied upon. Documents relevant to the issues presented may be attached to a brief. All briefing shall provide the reasons why the commissioner should or should not grant the request for expedited review. Citations to statutes, rules, commissioner decisions, and caselaw are important to identify the legal basis for the claims made.

(G) All interested parties who are in favor of granting the request for expedited review shall file briefing at the time specified for the requestor of the expedited review.

(H) All interested parties who are opposed to granting the request for expedited review shall file briefing at the same time.

(I) Briefing is not limited to the issues specifically raised in the pleadings in the case. However, no new arguments may be raised in the reply briefs. Reply briefs may contain new citations to the record and legal authority as to issues previously raised.

(J) A preliminary judgment shall be issued based on the briefing of the interested parties. The preliminary judgment will be sent to the requestor, the school district, and all interested parties. If it is determined that a school district is not likely to prevail on the issue of a request for the placement of video cameras or the issue of a request

to view a video under full review, the school district will fully comply with TEC, §29.022.

(K) After a preliminary judgment is made, a final judgment will be made in accordance with the procedures set forth in paragraphs (1)-(5) of this subsection.

(c) Extension of time. A request by a school district for an extension of time to begin the operation of a video camera under TEC, §29.022, shall be made and decided using the following procedures.

(1) Any request by a school district for an extension of time to begin the operation of a video camera shall be filed with the commissioner prior to the 45th school business day after a request to begin operating a video camera is received. However, a school district should request an extension of time as soon as it determines that an extension of time should be filed.

(2) A request for an extension of time to begin the operation of a video camera shall specify why an extension of time should be granted. The request shall include affidavits supporting any factual claims made in the request and reference any legal authority as to why the request should be granted. The request may include a request for expedited review. The request shall name the individual who requested the installation of cameras and provide the individual's address and telephone number. Immediately following the individual's address and telephone number there shall appear in bold type: "You have been identified as the individual who requested the operation of a video camera that is the subject of this request to the commissioner of education to extend the statutory timeline. You may, but are not required to, participate in the proceedings before the commissioner concerning the school district's request for an extension of time. It is entirely up to you whether and to what extent you wish to participate in these proceedings. The procedures governing these proceedings are found at 19 Texas Administrative Code §103.1303(c) and Texas Education Code, §29.022."

(3) A request for an extension of time to begin the operation of a video camera shall list the names, telephone numbers, and addresses of all interested parties to the request. All interested parties include all parents of students in the classroom or other special education setting for which a video camera has been requested and all staff who provided services in a classroom for which a video camera has been requested.

(4) All documents in a case shall be filed with the Division of Hearings and Appeals, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, facsimile number (512) 475-3662. Documents shall be filed electronically as provided on the division's website or by mail, delivery, or facsimile. All documents must be actually received by the Division of Hearings and Appeals by the date specified in this section. The mailbox rule does not apply to filings in a case filed under this subsection. Electronic filing is strongly encouraged.

(5) All filings in a case shall be sent to the school district, the individual who initially requested the installation of the cameras, and all interested parties who have filed a request to receive documents filed in the case by the same method as the request is filed with the commissioner. Due to the requirements of the Family Educational Rights and Privacy Act of 1974, the names, telephone numbers, and addresses of parents and other publicly identifiable student information may not be given to the interested parties. The copies of the filings sent to interested parties shall be redacted to remove all personally identifiable student information.

(6) Any response to a request for an extension of time to begin the operation of a video camera shall be filed with the commis-



sioner by an interested party within 10 calendar days of the filing of the request. If no response to the request is timely filed, the commissioner shall issue a final decision within 20 calendar days of the filing of the request.

(7) A response to a request for an extension of time to begin the operation of a video camera shall specify why an extension of time should or should not be granted. The response shall include affidavits concerning any factual claims made in the request and reference any legal authority as to why the request should or should not be granted. The response may include a request for expedited review.

(8) A request for expedited review must be filed with the commissioner within 10 calendar days of the filing of the request for an extension of time to begin the operation of a video camera. If a request for expedited review is made, all interested parties shall be notified that they have been identified as interested parties in the request for an extension of time to begin the operation of a video camera. In particular, the interested parties will be informed that it is their choice whether to participate in the proceedings before the commissioner, that it is entirely up to them to determine to what extent they wish to participate in the proceedings, that the procedures governing these proceedings are found in this subsection and TEC, §29.022, and that upon their written request filed with the commissioner they will be sent all filings in this case.

(9) If a request for an expedited review is not made, the commissioner shall issue a final decision within 45 calendar days of the filing of the request for an extension of time to begin the operation of a video camera, unless the commissioner determines that an evidentiary hearing would be helpful in deciding the issues raised. If the commissioner decides to hold an evidentiary hearing, the commissioner shall establish the timelines and procedures to be used. Whether to conduct the hearing by telephone or other electronic methods will be considered.

(10) If a request for expedited review is made, the following procedures shall be followed.

(A) Any reply by the school district to any response to the request shall be filed with the commissioner within 25 calendar days of the filing of the request for an extension of time to begin the operation of a video camera.

(B) A preliminary judgment shall be made by the commissioner within 35 calendar days of the filing of the request for an extension of time to begin the operation of a video camera.

(C) Any interested party or the school district may file objections to the preliminary judgment within 40 calendar days of the filing of the request for an extension of time to begin the operation of a video camera.

(D) Any reply to an objection to a preliminary judgment must be filed within 45 calendar days of the filing of a request for an extension of time to begin the operation of a video camera.

(E) The commissioner shall issue a final decision within 55 calendar days of the filing of the request for an extension of time to begin the operation of a video camera, unless the commissioner determines that an evidentiary hearing would be helpful in deciding the issues raised. If the commissioner decides to hold an evidentiary hearing, the commissioner shall establish the timelines and procedures to be used. Whether to conduct the hearing by telephone or other electronic methods will be considered.

(11) In making either a preliminary judgment or a final judgment under this subsection, the commissioner will consider whether granting the requested extension is reasonable considering

all factors, including contracting statutes, architectural and structural issues, and the difference in costs to the district if a moderate extension of time is granted.

(12) A commissioner's final decision under this subsection is not subject to appeal.

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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## TITLE 26. HEALTH AND HUMAN SERVICES

### PART 1. HEALTH AND HUMAN SERVICES COMMISSION

#### CHAPTER 550. LICENSING STANDARDS FOR PRESCRIBED PEDIATRIC EXTENDED CARE CENTERS

##### SUBCHAPTER C. GENERAL PROVISIONS DIVISION 1. OPERATIONS AND SAFETY PROVISIONS

###### 26 TAC §550.209

The Texas Health and Human Services Commission (HHSC) adopts in Texas Administrative Code (TAC) amendments to §550.209, concerning Emergency Preparedness Planning and Implementation, in Title 26, Part 1, Chapter 550, Licensing Standards for Prescribed Pediatric Extended Care Centers.

Amended §550.209 is adopted without changes to the proposed text as published in the September 16, 2022, issue of the *Texas Register* (47 TexReg 5717). This rule will not be republished.

###### BACKGROUND AND JUSTIFICATION

As required by Texas Government Code §531.0202(b), the Department of Aging and Disability Services was abolished effective September 1, 2017, after all its functions were transferred to HHSC, in accordance with Senate Bill 200, 84th Legislature, Regular Session, 2015, and Texas Government Code §531.0201 and §531.02011. Texas Government Code §531.0055 requires the Executive Commissioner of HHSC to adopt rules for the operation and provision of services by the health and human services system. Therefore, the Executive Commissioner of HHSC adopts amended §550.209 in Title 26, Part 1, Chapter 550.

The amendment is necessary to implement a new procedure that requires the program provider to assign a designee to enroll and respond to requests through the Emergency Communication System in the format established by HHSC.

## COMMENTS

The 31-day comment period ended October 17, 2022. During this period, HHSC did not receive any comments regarding the proposed amendment.

## STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §248A.101, which authorizes the Executive Commissioner of HHSC to adopt rules to implement Texas Health and Safety Code §248A, including rules prescribing minimum standards to protect the health and safety of minors being served in prescribed pediatric extended care centers.

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

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Karen Ray

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Health and Human Services Commission

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For further information, please call: (512) 438-3161



## CHAPTER 551. INTERMEDIATE CARE FACILITIES FOR INDIVIDUALS WITH AN INTELLECTUAL DISABILITY OR RELATED CONDITIONS

### SUBCHAPTER C. STANDARDS FOR LICENSURE

#### 26 TAC §551.50

The Texas Health and Human Services Commission (HHSC) adopts in Texas Administrative Code (TAC) amendments to §551.50, concerning Emergency Preparedness and Response, in Title 26, Part 1, Chapter 551, Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions.

Amended §551.50 is adopted without changes as published in the September 16, 2022, issue of the *Texas Register* (47 TexReg 5720). This rule will not be republished.

#### BACKGROUND AND JUSTIFICATION

As required by Texas Government Code §531.0202(b), the Department of Aging and Disability Services was abolished effective September 1, 2017, after all its functions were transferred HHSC, in accordance with Senate Bill 200, 84th Legislature, Regular Session, 2015, and Texas Government Code §531.0201 and §531.02011. Texas Government Code §531.0055 requires the Executive Commissioner of HHSC to adopt rules for the operation and provision of services by the health and human services system. Therefore, the Executive Commissioner of HHSC adopts amended §551.50 in Title 26, Part 1, Chapter 551.

The amendment is necessary to implement a new procedure that requires the program provider to assign a designee to enroll and respond to requests through the Emergency Communication System in the format established by HHSC.

## COMMENTS

The 31-day comment period ended October 17, 2022. During this period, HHSC did not receive any comments regarding the proposed amendment.

## STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §252.008 and §252.036, which, respectively, require the Executive Commissioner of HHSC to adopt rules related to the administration and implementation of Chapter 252 and to adopt minimum standards relating to facilities licensed under Texas Health and Safety Code Chapter 252.

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

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Karen Ray

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## CHAPTER 553. LICENSING STANDARDS FOR ASSISTED LIVING FACILITIES

### SUBCHAPTER E. STANDARDS FOR LICENSURE

#### 26 TAC §553.275

The Texas Health and Human Services Commission (HHSC) adopts in Texas Administrative Code (TAC) amendments to §553.275, concerning Emergency Preparedness and Response, in Title 26, Part 1, Chapter 553, Licensing Standards for Assisted Living Facilities.

Amended §553.275 is adopted without changes to the proposed text as published in the September 16, 2022, issue of the *Texas Register* (47 TexReg 5724). This rule will not be republished.

#### BACKGROUND AND JUSTIFICATION

As required by Texas Government Code §531.0202(b), the Department of Aging and Disability Services was abolished effective September 1, 2017, after all its functions were transferred to HHSC, in accordance with Senate Bill 200, 84th Legislature, Regular Session, 2015, and Texas Government Code §531.0201 and §531.02011. Texas Government Code §531.0055 requires the Executive Commissioner of HHSC to adopt rules for the operation and provision of services by the health and human services system. Therefore, the Executive

Commissioner of HHSC adopts amended §553.275 in Title 26, Part 1, Chapter 553.

The amendment is necessary to implement a new procedure that requires the program provider to assign a designee to enroll and respond to requests through the Emergency Communication System in the format established by HHSC.

#### COMMENTS

The 31-day comment period ended October 17, 2022. During this period, HHSC did not receive any comments regarding the proposed amendment.

#### STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §247.025 and §247.026, which respectively require the Executive Commissioner to adopt rules necessary to implement Texas Health and Safety Code, Chapter 247, relating to assisted living facilities, and to prescribe by rule minimum standards to protect the health and safety of an assisted living facility residents.

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

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Karen Ray

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Health and Human Services Commission

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For further information, please call: (512) 438-3161



## CHAPTER 554. NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION SUBCHAPTER T. ADMINISTRATION

### 26 TAC §554.1914

The Texas Health and Human Services Commission (HHSC) adopts in Texas Administrative Code (TAC) amendments to §554.1914, concerning Emergency Preparedness and Response, in Title 26, Part 1, Chapter 554, Nursing Facility Requirements for Licensure and Medicaid Certification.

Amended §554.1914 is adopted without changes as published in the September 16, 2022, issue of the *Texas Register* (47 TexReg 5729). This rule will not be republished.

#### BACKGROUND AND JUSTIFICATION

As required by Texas Government Code §531.0202(b), the Department of Aging and Disability Services was abolished effective September 1, 2017, after all its functions were transferred to HHSC, in accordance with Senate Bill 200, 84th Legislature, Regular Session, 2015, and Texas Government Code §531.0201 and §531.02011. Texas Government Code §531.0055 requires the Executive Commissioner of HHSC to

adopt rules for the operation and provision of services by the health and human services system. Therefore, the Executive Commissioner of HHSC adopts amended §554.1914 in Title 26, Part 1, Chapter 554.

The amendment is necessary to implement a new procedure that requires the program provider to assign a designee to enroll and respond to requests through the Emergency Communication System in the format established by HHSC.

#### COMMENTS

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

During this period, HHSC did not receive any comments regarding the proposed amendment.

#### STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055 and Texas Health and Safety Code §242.001 and §242.037. Texas Government Code §531.0055 authorizes the Executive Commissioner of HHSC to adopt rules for the operation and provision of services by the health and human services agencies. Texas Health and Safety Code §242.001 states that the goal of Chapter 242 is to ensure that nursing facilities in Texas deliver the highest possible quality of care and establish the minimum acceptable level of care for individuals who are living in a nursing facility. Texas Health and Safety Code §242.037 requires the Executive Commissioner of HHSC to make and enforce rules prescribing minimum standards relating to quality of life, quality of care, and resident rights for nursing facility residents.

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

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Karen Ray

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Health and Human Services Commission

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For further information, please call: (512) 438-3161



## CHAPTER 558. LICENSING STANDARDS FOR HOME AND COMMUNITY SUPPORT SERVICES AGENCIES SUBCHAPTER C. MINIMUM STANDARDS FOR ALL HOME AND COMMUNITY SUPPORT SERVICES AGENCIES DIVISION 3. AGENCY ADMINISTRATION

### 26 TAC §558.256

The Texas Health and Human Services Commission (HHSC) adopts in Texas Administrative Code (TAC) amendments to §558.256, concerning Emergency Preparedness Planning and Implementation, in Title 26, Part 1, Chapter 558, Licensing Standards for Home and Community Support Services Agencies.

Amended §558.256 is adopted without changes as published in the September 16, 2022, issue of the *Texas Register* (47 TexReg 5733). The rule will not be republished.

#### BACKGROUND AND JUSTIFICATION

As required by Texas Government Code §531.0202(b), the Department of Aging and Disability Services was abolished effective September 1, 2017, after all its functions were transferred to HHSC, in accordance with Senate Bill 200, 84th Legislature, Regular Session, 2015, and Texas Government Code §531.0201 and §531.02011. Texas Government Code §531.0055 requires the Executive Commissioner of HHSC to adopt rules for the operation and provision of services by the health and human services system. Therefore, the Executive Commissioner of HHSC adopts amended §558.256 in Title 26, Part 1, Chapter 558.

The amendment is necessary to implement a new procedure that requires the program provider to assign a designee to enroll and respond to requests through the Emergency Communication System in the format established by HHSC.

#### COMMENTS

The 31-day comment period ended October 17, 2022. During this period, HHSC did not receive any comments regarding the proposed amendment.

#### STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §142.010 and §142.012, which respectively authorize the Executive Commission of HHSC to adopt rules necessary to implement Chapter 142 and set minimum standards for home and community support services agencies licensed under Chapter 142.

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

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Karen Ray

Chief Counsel

Health and Human Services Commission

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## CHAPTER 559. DAY ACTIVITY AND HEALTH SERVICES REQUIREMENTS

### SUBCHAPTER D. LICENSURE AND PROGRAM REQUIREMENTS

#### 26 TAC §559.64

The Texas Health and Human Services Commission (HHSC) adopts in Texas Administrative Code (TAC) amendments to §559.64, concerning Emergency Preparedness and Response,

in Title 26, Part 1, Chapter 559, Day Activity and Health Services Requirements.

Amended §559.64 is adopted without changes as published in the September 16, 2022, issue of the *Texas Register* (47 TexReg 5735). This rule will not be republished.

#### BACKGROUND AND JUSTIFICATION

As required by Texas Government Code §531.0202(b), the Department of Aging and Disability Services was abolished effective September 1, 2017, after all its functions were transferred to HHSC, in accordance with Senate Bill 200, 84th Legislature, Regular Session, 2015, and Texas Government Code §531.0201 and §531.02011. Texas Government Code §531.0055 requires the Executive Commissioner of HHSC to adopt rules for the operation and provision of services by the health and human services system. Therefore, the Executive Commissioner of HHSC adopts amended §559.64 in Title 26, Part 1, Chapter 559.

The amendment is necessary to implement a new procedure that requires the program provider to assign a designee to enroll and respond to requests through the Emergency Communication System in the format established by HHSC.

#### COMMENTS

The 31-day comment period ended October 17, 2022. During this period, HHSC did not receive any comments regarding the proposed amendment.

#### STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Human Resources Code §103.004 and §103.005, which respectively provide that the Executive Commissioner of HHSC shall adopt rules for implementing Chapter 103 and adopt rules for licensing and set standards for safety and sanitation for facilities.

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

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## CHAPTER 565. HOME AND COMMUNITY-BASED (HCS) PROGRAM AND COMMUNITY FIRST CHOICE (CFC) CERTIFICATION STANDARDS

### SUBCHAPTER A. EMERGENCY RESPONSE SYSTEM

## 26 TAC §565.1

The Texas Health and Human Services Commission (HHSC) adopts in Texas Administrative Code (TAC) new §565.1, concerning Emergency Response System, in Title 26, Part 1, new Chapter 565, Home and Community-based Services (HCS) Program and Community First Choice (CFC) Certification Standards.

New §565.1 is adopted without changes to the proposed text as published in the September 16, 2022, issue of the *Texas Register* (47 TexReg 5739). HHSC added Subchapter A, Emergency Response System, to the TAC reference. This rule will not be republished.

### BACKGROUND AND JUSTIFICATION

As required by Texas Government Code §531.0202(b), the Department of Aging and Disability Services was abolished effective September 1, 2017, after all its functions were transferred to, in accordance with Senate Bill 200, 84th Legislature, Regular Session, 2015, and Texas Government Code §531.0201 and §531.02011. Texas Government Code §531.0055 requires the Executive Commissioner of HHSC to adopt rules for the operation and provision of services by the health and human services system. Therefore, the Executive Commissioner of HHSC adopts new §565.1 in Title 26, Part 1, new Chapter 565.

The new rule is necessary to implement a new procedure that requires the program provider to assign a designee to enroll and respond to requests through the Emergency Communication System in the format established by HHSC.

### COMMENTS

The 31-day comment period ended October 17, 2022. During this period, HHSC did not receive any comments regarding the new rule.

### STATUTORY AUTHORITY

The new rule is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; and Texas Human Resources Code §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

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

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## CHAPTER 566. TEXAS HOME LIVING (TXHML) PROGRAM AND COMMUNITY FIRST CHOICE (CFC) CERTIFICATION STANDARDS

### 26 TAC §566.1

The Texas Health and Human Services Commission (HHSC) adopts in Texas Administrative Code (TAC) new §566.1, concerning Emergency Response System, in Title 26, Part 1, new Chapter 566, Texas Home Living (TXHML) Program and Community First Choice (CFC) Certification Standards.

New §566.1 is adopted without changes to the proposed text as published in the September 16, 2022, issue of the *Texas Register* (47 TexReg 5740). This rule will not be republished.

### BACKGROUND AND JUSTIFICATION

As required by Texas Government Code §531.0202(b), the Department of Aging and Disability Services was abolished effective September 1, 2017, after all its functions were transferred to HHSC, in accordance with Senate Bill 200, 84th Legislature, Regular Session, 2015, and Texas Government Code §531.0201 and §531.02011. Texas Government Code §531.0055 requires the Executive Commissioner of HHSC to adopt rules for the operation and provision of services by the health and human services system. Therefore, the Executive Commissioner of HHSC adopts new §566.1 in Title 26, Part 1, new Chapter 566.

The new rule is necessary to implement a new procedure that requires the program provider to assign a designee to enroll and respond to requests through the Emergency Communication System in the format established by HHSC.

### COMMENTS

The 31-day comment period ended October 17, 2022. During this period, HHSC did not receive any comments regarding the new rule.

### STATUTORY AUTHORITY

The new rule is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; and Texas Human Resources Code §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

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

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## CHAPTER 745. LICENSING

The Texas Health and Human Services Commission (HHSC) adopts in Texas Administrative Code (TAC), Title 26, Chapter 745, new Subchapter M, Administrative Reviews and Due Process Hearings, which consists of new §§745.8801, 745.8803, 745.8805, 745.8807, 745.8809, 745.8811, 745.8813, 745.8815, 745.8831, 745.8833, 745.8835, 745.8837, 745.8839, 745.8841, 745.8843, 745.8845, 745.8847, 745.8849, 745.8851, 745.8853, 745.8855, 745.8871, 745.8873, 745.8875, 745.8877, 745.8879, and 745.8881.

New §§745.8801, 745.8803, 745.8813, and 745.8835 are adopted with changes to the proposed text as published in the September 9, 2022, issue of the *Texas Register* (47 TexReg 5436). These rules will be republished.

New §§745.8805, 745.8807, 745.8809, 745.8811, 745.8815, 745.8831, 745.8833, 745.8837, 745.8839, 745.8841, 745.8843, 745.8845, 745.8847, 745.8849, 745.8851, 745.8853, 745.8855, 745.8871, 745.8873, 745.8875, 745.8877, 745.8879, and 745.8881 are adopted without changes to the proposed text as published in the September 9, 2022, issue of the *Texas Register* (47 TexReg 5436). These rules will not be republished.

### BACKGROUND AND JUSTIFICATION

The new sections are necessary to continue to comply with House Bill (H.B.) 5, 85th Legislature, Regular Session, 2017, directing the Texas Department of Family and Protective Services (DFPS) to become a stand-alone agency that is separate from the Texas Health and Human Services Commission (HHSC) system. This bill also moved the regulation of child care from DFPS to HHSC, with only the responsibility for investigating allegations of child abuse, neglect, and exploitation in child care operations remaining at DFPS.

Since HHSC Child Care Regulation (CCR) is responsible for the administrative rules in TAC, Title 40, Chapter 745, Licensing, that impact child care operations, these rules must be transferred from DFPS to HHSC. CCR already administratively transferred all the rules in Title 40, Chapter 745 to Title 26, Chapter 745, except for Subchapters K and M. Those subchapters could not be administratively transferred because some of the rules also apply to responsibilities that remained with DFPS.

DFPS adopted rules applicable to DFPS responsibilities in Title 40, Chapter 707. Accordingly, CCR is adopting Title 26, Chapter 745, new Subchapter M, Administrative Reviews and Due Process Hearings, and the corresponding rules; to replace the repealed Title 40, Chapter 745, Subchapter M, Administrative Reviews and Due Process Hearings, which are published elsewhere in this issue of the *Texas Register*.

In addition to replacing the content of the Title 40, Chapter 745, Subchapter M rules with new rules in Title 26, Chapter 745, Subchapter M, the changes in the new Subchapter M rules:

- Delete duties that are specific to DFPS, including conducting administrative reviews for DFPS findings of child abuse, neglect, and exploitation in child care operations;
- Update the rules to match current practices, including making the rules consistent with statutory changes that have already been operationalized by CCR;
- Clarify when a request for an administrative review and due process hearing is timely;
- Clarify that administrative reviews will be conducted by HHSC Child Care Enforcement;
- Clarify actions a person conducting an administrative review can take at the end of the review;
- Extend the time frame a person conducting an administrative review has to issue a decision when no meeting or conference was held;
- Clarify the rules for better readability and understanding; and
- Add citations for clarity.

### COMMENTS

The 31-day comment period ended October 10, 2022. During this period, HHSC received four comments regarding the proposed rules from the Texas Alliance of Child and Family Services. No other comments were received. A summary of comments relating to the rules and HHSC's responses follows.

**Comment:** Regarding §745.8801, the commenter encouraged the reinstatement of the language from the proposed repeal of 40 TAC §745.8803(b) that limits CCR's authority to implement a decision or action that is the subject of the administrative review until the due process rights concerning the action or decision are waived or exhausted. The commenter stated that this language is consistent with due process.

**Response:** Even though HHSC does not believe this language is necessary, HHSC generally agrees that the language from repealed 40 TAC §745.8803(b) is consistent with due process and revised the rule to include the language with a modification. Specifically, HHSC modified the language to clarify that HHSC may not "finalize" (vs "implement") any decision or action until the due process rights have been exhausted. HHSC also added a cross-reference to Division 3 of this subchapter to highlight that an operation may not be able to operate pending due process for some enforcement actions, before HHSC can finalize the action.

**Comment:** Regarding §745.8803(a)(1)(D), the commenter appreciated the clarification that administrative reviews are available when CCR adds a condition to a corrective action plan for an operation that is on probation.

**Response:** HHSC appreciates the comment. No rule changes are required.

**Comment:** Regarding §745.8813, the commenter was concerned with the flexibility for the person conducting the administrative review to alter the standard cited--with no additional due process rights for the provider if this occurs. The commenter pointed out that while this flexibility is in the current rules, there have been reported issues where the provider was not able to speak to whether the facts at issue violated the minimum standard that was ultimately issued or did not realize the cited standard had changed until they received the decision from the reviewer. To be more consistent with principles of giving the regulated party fair notice of the matter for which they are

being cited, there should either be an opportunity for additional arguments by the provider if desired—or the reviewers should not be given this flexibility. If HHSC will not consider modification as suggested, then the commenter strongly urges that the reviewer's authority be limited such that they do not have the authority to cite a standard that carries an additional penalty or that is weighted higher than the original standard.

Response: HHSC disagrees with the comment but did update subsection (a) of the rule for further clarification. The due process rights relate to all information in the record that describes the deficiency and whether there is a deficiency, not just the minimum standard, rule, or law that was cited. If, after reviewing the record and information presented by the requester, the reviewer determines there was no deficiency, then the reviewer will overturn the deficiency and not cite a new minimum standard, rule, or law. On the other hand, if the reviewer determines that the operation was deficient, then HHSC must uphold the deficiency with the original minimum standard, rule, or law that was cited or by updating the record to reflect the minimum standard, rule, or law that the reviewer believes most accurately describes how the operation was deficient. Whether the newly cited rule is weighted higher or may carry a penalty is irrelevant. However, if an administrative penalty or another enforcement action is taken as a result, then the operation would have the right to due process related to the action. Finally, this is not a change from the current rule or practice.

Comment: Regarding §745.8815(a)(1), the commenter appreciated the retention of the general time frame of 21 days for a person conducting an administrative review to issue a decision because the timely resolution of administrative reviews is critical.

Response: HHSC appreciates the comment. No rule changes are required.

HHSC also added to §745.8803 a right to request an administrative review for an operation that is denied a voluntary suspension, which is allowed by current practice. In the next few months, HHSC will be recommending the removal of this right from TAC, Title 40, Chapter 745, Subchapter K, Inspections and Investigations, because it fits more appropriately in this subchapter and rule.

HHSC made a minor grammatical editorial change to §745.8835(b)(4).

## SUBCHAPTER M. ADMINISTRATIVE REVIEWS AND DUE PROCESS HEARINGS DIVISION 1. ADMINISTRATIVE REVIEWS

**26 TAC §§745.8801, 745.8803, 745.8805, 745.8807,  
745.8809, 745.8811, 745.8813, 745.8815**

### STATUTORY AUTHORITY

The new sections are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of HRC.

*§745.8801. What is an administrative review?*

(a) An administrative review is an informal review that determines whether a decision or action was appropriate under applicable laws and rules. An administrative review is not a formal hearing and does not involve formal examination and cross-examination of witnesses.

(b) If you do not waive your right to request an administrative review, we may not finalize any decision or action that is the subject of the review until you exhaust your due process rights concerning the decision or action. However, you may not be able to operate pending due process for some enforcement actions as provided by Division 3 of this subchapter (relating to Operating Pending and Administrative Review and Due Process Hearing).

*§745.8803. Who may request an administrative review?*

(a) The following chart describes who may request an administrative review to dispute a decision or action:

Figure: 26 TAC §745.8803(a)

(b) An owner, partner, governing body, director, licensed administrator, or designee of an operation may not request an administrative review to dispute:

(1) An automatic suspension or revocation of a permit under Texas Human Resources Code (HRC) §42.052(j) or §42.054(f);

(2) The implementation of a court order against the operation;

(3) An emergency suspension or closure of the operation under HRC §42.073;

(4) A determination that the operation poses an immediate threat or danger to the health or safety of children; or

(5) An imposition of an administrative penalty against the operation.

*§745.8813. What actions may the person conducting the administrative review take at the end of the review?*

(a) The person conducting an administrative review may uphold, overturn, or alter the decision or action. The person alters the decision or action by modifying it after assessing the relevant information available at the end of the review. For example, if the disputed decision under review is a minimum standard deficiency, the person conducting the review may determine the deficiency occurred and alter the record by updating the minimum standard to one that better describes the deficiency.

(b) If the telephone conference or meeting did not occur for a reason outlined in §745.8811(d) of this division (relating to How is an administrative review conducted?), the person conducting the administrative review will base the decision to uphold, overturn, or alter the decision or action on the written request for a review, any supporting documentation submitted with the request, and any other information that the person gathered.

(c) If the person overturns or alters the decision or action, the Texas Health and Human Services Commission (HHSC) will update HHSC records to reflect the change.

(d) If the decision or action is altered, the requestor may not request an additional administrative review concerning the altered decision or action.

(e) If the requestor has the right to request a due process hearing related to the altered decision or action, the altered decision or action will be the subject of the hearing.

(f) If the requestor does not have the right to request a due process hearing, the altered decision or action will be final.

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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Health and Human Services Commission

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## DIVISION 2. DUE PROCESS HEARINGS

**26 TAC §§745.8831, 745.8833, 745.8835, 745.8837, 745.8839, 745.8841, 745.8843, 745.8845, 745.8847, 745.8849, 745.8851, 745.8853, 745.8855**

### STATUTORY AUTHORITY

The new sections are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of HRC.

§745.8835. *Who may request a due process hearing?*

(a) The following chart describes who may request a due process hearing to dispute a decision or action:

Figure: 26 TAC §745.8835(a)

(b) An owner, partner, governing body, director, licensed administrator, or designee of an operation may not request a due process hearing to dispute:

(1) An automatic suspension or revocation of a permit under Texas Human Resources Code (HRC) §42.052(j) or §42.054(f);

(2) The implementation of a court order against the operation;

(3) An emergency suspension or closure of the operation under HRC §42.073; or

(4) A determination that the operation poses an immediate threat or danger to the health or safety of children.

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

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## DIVISION 3. OPERATING PENDING AN ADMINISTRATIVE REVIEW AND DUE PROCESS HEARING

**26 TAC §§745.8871, 745.8873, 745.8875, 745.8877, 745.8879, 745.8881**

### STATUTORY AUTHORITY

The new sections are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of HRC.

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

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## TITLE 28. INSURANCE

### PART 1. TEXAS DEPARTMENT OF INSURANCE

#### CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

The Commissioner of Insurance adopts amendments to 28 TAC §§5.4604, 5.4606, 5.4621, 5.4626, and 5.4640, concerning certificates of compliance for improvements for purposes of coverage under a policy issued by the Texas Windstorm Insurance Association (TWIA). Sections 5.4606, 5.4626, and 5.4640 are adopted without changes to the proposed text as published in the September 23, 2022, issue of the *Texas Register* (47 TexReg 6150). These rules will not be republished. Section 5.4604 and §5.4621 are adopted with changes to the proposed text as published in the September 23, 2022, issue of the *Texas Register* (47 TexReg 6150). These rules will be republished.

**REASONED JUSTIFICATION.** The amendments are necessary to implement statutory change and to require electronic submission of certain information submitted to TDI.

Insurance Code §2210.2515 specifies that TDI must issue certificates of compliance for structures meeting specified criteria. Certificates of compliance issued by TDI are used to demonstrate evidence of insurability for the purpose of TWIA coverage. House Bill 3564 amended §2210.2515 to eliminate TDI's authority to rescind certificates of compliance after issuance.

Before this rule amendment, such forms were submitted to TDI by several methods: through the Windstorm system available



on the TDI website, by email, by fax, and by mail. The amendments to §5.4604 and §5.4621 requiring electronic submission of certain forms through the Windstorm system will increase government efficiency by eliminating duplication of effort among TDI staff.

The Windstorm system is an electronic system available on TDI's website that allows users to find a windstorm inspector, apply for a certificate of compliance, access and print the certificate, and apply to become an inspector. Only professional engineers and inspectors use the system to apply for certificates of compliance. Previously, when TDI received certificates of compliance form submissions by alternate means--such as fax, email, or paper--TDI staff entered the form information into the Windstorm system. When form filings that were submitted by alternate means had omissions or errors, TDI needed to contact the filer to request a correction or refiling. This resulted in delays in processing applications. In contrast, filers using TDI's Windstorm system received immediate notice if their submission lacks a necessary component.

The amendments to §5.4606 and §5.4626 requiring electronic submission of supporting documentation through the Windstorm system or by email will streamline and expedite TDI's receipt and review of this information. Although the Windstorm system is not currently equipped to accept supporting documentation, TDI plans to modify the Windstorm system to accept it. Email submissions will be accepted while the Windstorm system is modified to accept such supporting documentation and will continue to be accepted after that.

The amendments to §5.4640 remove references to TDI's authority to rescind a certificate of compliance after issuance. These amendments are necessary to implement the changes made by HB 3564. HB 3564 amended Insurance Code §2210.2515(k) to prohibit TDI from rescinding a certificate of compliance for a completed or ongoing improvement for purposes of coverage under a TWIA-issued policy after issuing the certificate.

The adopted text contains several changes from the proposed rule amendments. Adopted rule text in §5.4604 and §5.4621 includes language permitting form submission by email if the Windstorm system is nonfunctional. Section 5.4604 and §5.4621 are also adopted with nonsubstantive changes to maintain consistent usage of the term "Windstorm system" throughout the rule. In addition, proposed text in §5.4604 is adopted with a nonsubstantive change to correct a section title in a reference to another section of the Administrative Code.

Descriptions of the adopted amendments follow.

Section 5.4604. The amendments to §5.4604 revise subsection (c) to require that the information in the Application for Certificate of Compliance for Completed Improvement, Form WPI-2E, be submitted electronically to TDI using the Windstorm system.

Amendments to the section also correct the name of the Texas Board of Professional Engineers and Land Surveyors, correct a reference to the section heading of §5.4606, and add the whole form title for Form WPI-2E.

The acronym "TDI" has been removed before the term "Windstorm system" in the text of subsection (c) as proposed, to maintain consistent wording throughout the sections. In addition, the text of subsection (c) as proposed has been changed to specify that TDI will accept an email submission of a completed WPI-2E to [windstorm@tdi.texas.gov](mailto:windstorm@tdi.texas.gov) only when the Windstorm system is

nonfunctional. A reference to §5.4623 in subsection (d) has also been changed to correct the section title.

Section 5.4606. The amendments to §5.406 add subsection (e) to require that all supporting evidence be submitted electronically to TDI using the Windstorm system or through email at [windstorm@tdi.texas.gov](mailto:windstorm@tdi.texas.gov). The amendments also correct the name of the Window & Door Manufacturers Association and make non-substantive changes to punctuation and capitalization elements and a reference to another section to conform to TDI style guidelines.

Section 5.4621. The amendments to §5.4621 add a new paragraph (5) to require that the information collected in the Application for Certificate of Compliance, Form WPI-1, and the Inspection Verification Form, Form WPI-2, be submitted electronically to TDI using the Windstorm system.

The amendments remove existing paragraphs (2) and (6). These paragraphs address Form WPI-1 and Form WPI-2, but those forms will now be addressed in new paragraph (5). The amendments renumber the paragraphs in the section and update internal references within the section as appropriate to reflect the new and deleted paragraphs.

The catchline "Electronic Submission" in §5.4621(5) has been changed to capitalize only the first word to maintain consistent capitalization. In addition, the text of paragraph (5) as proposed is changed to specify that TDI will accept an email submission of a completed Form WPI-1 or WPI-2 to [windstorm@tdi.texas.gov](mailto:windstorm@tdi.texas.gov) only when the Windstorm system is nonfunctional. Finally, the acronym "TDI" has been removed before the term "Windstorm system" in paragraph (5) to maintain consistent wording throughout the sections.

Section 5.4626. The amendments to §5.4626 add new subsection (c) to require all information required by the section to be submitted electronically to TDI using the Windstorm system or through email at [windstorm@tdi.texas.gov](mailto:windstorm@tdi.texas.gov). The amendments also redesignate current subsection (c) as subsection (d) to reflect the addition of the new subsection.

Section 5.4640. The amendments to §5.4640 eliminate references to the rescission of issued certificates of compliance, consistent with HB 3564. In addition, the amendments correct the name of Form WPI-2E, correct a reference to the heading of §5.4606, and make nonsubstantive punctuation changes to conform to TDI style guidelines.

SUMMARY OF COMMENTS. TDI did not receive any comments on the proposed amendments.

## SUBCHAPTER E. TEXAS WINDSTORM INSURANCE ASSOCIATION DIVISION 7. INSPECTIONS FOR WINDSTORM AND HAIL INSURANCE

### **28 TAC §5.4604, §5.4621**

STATUTORY AUTHORITY. The Commissioner adopts the amendments to §§5.4604, 5.4606, 5.4621, 5.4626, and 5.4640 under Insurance Code §2210.008(b) and §36.001.

Insurance Code §2210.008(b) provides that the Commissioner may adopt rules that are reasonable and necessary to implement Insurance Code Chapter 2210.

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.

*§5.4604. Certification Form for Completed Improvement.*

(a) Persons must submit the following information when applying to TDI for a certificate of compliance for a completed improvement on a structure:

(1) a statement from a professional engineer licensed by the Texas Board of Professional Engineers and Land Surveyors that affirms that the engineer has:

- (A) designed the improvement;
- (B) affixed the engineer's seal on the design; and

(C) affirmed the design complies with the applicable building code under the plan of operation, and that the improvement was constructed in accordance with the design; or

(2) a sealed postconstruction evaluation report completed and submitted by a professional engineer licensed by the Texas Board of Professional Engineers and Land Surveyors that:

(A) confirms the improvement's compliance with the applicable building code under the plan of operation; and

(B) includes supporting evidence such as that identified in §5.4606 of this title (relating to Supporting Evidence for Sealed Postconstruction Evaluation Report and Design for Certificate of Compliance for Completed Improvement) for the engineer's postconstruction evaluation report.

(b) The following information must also be provided:

(1) the physical address (including street, street number, city, county, and ZIP code);

(2) whether the original transfer of title from the builder to the initial owner of the improvement has occurred or is expected to occur in the future;

(3) whether the improvement is substantially completed;

(4) the wind zone location;

(5) whether the structure is in a Coastal Barrier Resource System Unit;

(6) the property owner's name and contact information, or the name and contact information of the builder or contractor that made the completed improvement;

(7) the name and contact information of the engineer certifying the completed improvement;

(8) the date construction of the completed improvement began;

(9) the date of application for the certificate of compliance for the completed improvement;

(10) the name of the person submitting the application for the certificate of compliance for the completed improvement;

(11) the type of structure to which the completed improvement was made, including the structure's name or number and number of units, if applicable;

(12) the subject of the inspection (for example, entire structure, addition, alteration, or repair);

(13) the building code standard and applicable wind load standard under which the completed improvement was designed or inspected;

(14) the wind-speed conditions that the completed improvement is designed to withstand;

(15) the importance factor or risk category of the structure;

(16) the exposure category of the structure;

(17) information on the protection of exterior openings from windborne debris;

(18) the dates the completed improvement was inspected; and

(19) the signature and Texas Board of Professional Engineers and Land Surveyors registration number of the engineer certifying the completed improvement.

(c) The information required by subsections (a) and (b) of this section, also listed in Form WPI-2E, Application for Certificate of Compliance for Completed Improvement, must be submitted to TDI electronically using the Windstorm system, which is available on the TDI website. TDI will accept a completed Form WPI-2E emailed to [windstorm@tdi.texas.gov](mailto:windstorm@tdi.texas.gov) only when the Windstorm system is nonfunctional.

(d) If an applicant applies using a sealed design, an engineer must maintain the evidence supporting that design, such as information listed in §5.4606(a)(8) of this title and §5.4623 of this title (relating to Information Required to Inspect to Design Documents). TDI may request to view the sealed design and supporting documents, as applicable, to verify that there is a sealed design, designed by the engineer, and to verify the engineer's affirmation that the design complies with the applicable building code under the plan of operation and the improvement was constructed in accordance with the design.

*§5.4621. Certification of Ongoing Improvements Inspected by Appointed Qualified Inspectors.*

This section describes the procedure for the certification of ongoing improvements inspected by appointed qualified inspectors.

(1) Eligible structures. An appointed qualified inspector or a designated representative of an appointed qualified inspector may only inspect an ongoing improvement for which TDI has received the following information:

(A) the physical address (including street, street number, city, county, and ZIP code);

(B) the wind zone location;

(C) the type of structure the ongoing improvement is or is a part of, including the structure's name or number, and number of units, if applicable;

(D) the subject of the inspection (for example, entire structure, addition, alteration, or repair);

(E) the name and contact information of the appointed qualified inspector inspecting the ongoing improvement, or whose designated representative is inspecting the ongoing improvement;

(F) the storm code, if applicable;

(G) the date construction of the ongoing improvement began;

(H) the date of application for the certificate of compliance for the ongoing improvement;

(I) the name of the person submitting the application for the certificate of compliance for the ongoing improvement;

(J) the owner's name and contact information;

(K) the name and contact information of the builder or contractor making the ongoing improvement;

(L) whether the structure is located inside or outside city limits; and

(M) whether the structure is in a Coastal Barrier Resource Zone.

(2) **Inspection.** The appointed qualified inspector or a designated representative of the appointed qualified inspector must inspect for compliance with the applicable windstorm building code each ongoing improvement during each major construction phase, including the foundation stage; rough framing stage; final framing stage, including attachment of component and cladding items and installation of windborne debris protection; and installation of mechanical equipment. The appointed qualified inspector's designated representatives may assist in conducting inspections, but the appointed qualified inspector must closely monitor and provide direct supervision of any designated representative assisting with the inspection process.

(3) **Report.** The appointed qualified inspector or a designated representative of the appointed qualified inspector must prepare all necessary construction inspection reports under §5.4625 of this title (relating to Inspection Reports).

(4) **Verification of compliance.** If the appointed qualified inspector determines that the ongoing improvement meets the applicable windstorm building code standard, the appointed qualified inspector must submit the following information to TDI:

(A) the information required by paragraph (1)(A) - (F) of this section;

(B) the building code standard and applicable wind load standard with which the ongoing improvement complies;

(C) the wind speed conditions the ongoing improvement is certified to withstand;

(D) the dates the ongoing improvement was inspected;

(E) the exposure category of the structure;

(F) information on the protection of exterior openings from windborne debris;

(G) the risk category of the structure;

(H) the appointed qualified inspector's appointment number; and

(I) the application number from TDI.

(5) **Electronic submission.** The information required by paragraphs (1) and (4) of this section, listed on Form WPI-1 and Form WPI-2, respectively, must be submitted to TDI electronically using the Windstorm system, which is available on the TDI website. TDI will accept a completed Form WPI-1 or WPI-2 emailed to [windstorm@tdi.texas.gov](mailto:windstorm@tdi.texas.gov) only when the Windstorm system is nonfunctional.

(6) **Notification of noncompliance.** If the appointed qualified inspector determines that the ongoing improvement does not meet the applicable windstorm building code standard, the appointed qualified inspector must inform the person seeking certification in writing. The notice must:

(A) list specific deficiencies in the construction and deviations from the design;

(B) list other items of concern relating to the windstorm inspection and certification; and

(C) describe remedial actions required for compliance.

(7) **Verification of noncompliance.** If the remedial actions described in the notification of noncompliance in paragraph (6)(C) of this section are not taken, the appointed qualified inspector must submit the information required by paragraph (4) of this section to TDI, certifying that the ongoing improvement does not meet the applicable windstorm building code standard.

(8) **Review.** TDI will review the submitted information and any other relevant information, including information requested under §5.4626 of this title (relating to Substantiating Information), to determine whether the ongoing improvement meets the applicable windstorm building code standard.

(9) **Certification.** If TDI determines that the ongoing improvement meets the windstorm building code standards, TDI will issue a form with the following information:

(A) the information described in paragraph (1)(A) - (C) of this section;

(B) the subject of the certification (for example, entire structure, addition, alteration, or repair);

(C) the building code standard and applicable wind load standard with which the ongoing improvement complies;

(D) the date construction of the ongoing improvement began;

(E) whether the occupancy type is considered residential, commercial, agricultural, or religious;

(F) the certification date;

(G) TDI's certification number; and

(H) the type of inspector.

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 January 3, 2023.

TRD-202300018

Allison Eberhart

Deputy General Counsel

Texas Department of Insurance

Effective date: January 23, 2023

Proposal publication date: September 23, 2022

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



## 28 TAC §§5.4606, 5.4626, 5.4640

**STATUTORY AUTHORITY.** The Commissioner adopts the amendments to §§5.4604, 5.4606, 5.4621, 5.4626, and 5.4640 under Insurance Code §2210.008(b) and §36.001.

Insurance Code §2210.008(b) provides that the Commissioner may adopt rules that are reasonable and necessary to implement Insurance Code Chapter 2210.

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.

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 January 3, 2023.

TRD-202300019

Allison Eberhart

Deputy General Counsel

Texas Department of Insurance

Effective date: January 23, 2023

Proposal publication date: September 23, 2022

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

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## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

#### CHAPTER 745. LICENSING

The Texas Health and Human Services Commission (HHSC) adopts in Title 40, Texas Administrative Code (TAC), Chapter 745, the repeal of Subchapter M, Administrative Reviews and Due Process Hearings, which consists of the repeal of §§745.8801, 745.8803, 745.8805 - 745.8807, 745.8809, 745.8813, 745.8815, 745.8817, 745.8831, 745.8833, 745.8835, 745.8837, 745.8839, 745.8841, 745.8843, 745.8845, 745.8847, 745.8849, 745.8851, 745.8853, 745.8855, 745.8871, 745.8873, 745.8875, 745.8877, 745.8879, and 745.8881.

Repealed §§745.8801, 745.8803, 745.8805 - 745.8807, 745.8809, 745.8813, 745.8815, 745.8817, 745.8831, 745.8833, 745.8835, 745.8837, 745.8839, 745.8841, 745.8843, 745.8845, 745.8847, 745.8849, 745.8851, 745.8853, 745.8855, 745.8871, 745.8873, 745.8875, 745.8877, 745.8879, and 745.8881 are adopted without changes to the proposed text as published in the September 9, 2022, issue of the *Texas Register* (47 TexReg 5436). These rules will not be republished.

#### BACKGROUND AND JUSTIFICATION

The repealed sections are necessary to continue to comply with House Bill (H.B.) 5, 85th Legislature, Regular Session, 2017, directing the Texas Department of Family and Protective Services (DFPS) to become a stand-alone agency that is separate from the Texas Health and Human Services Commission (HHSC) system. This bill also moved the regulation of child care from DFPS to HHSC, with only the responsibility for investigating allegations of child abuse, neglect, and exploitation in child care operations remaining at DFPS.

Since HHSC Child Care Regulation (CCR) is responsible for the administrative rules in Title 40, TAC, Chapter 745, Licensing, that impact child care operations, these rules must be transferred from DFPS to HHSC. CCR already administratively transferred all the rules in Title 40, TAC, Chapter 745 to Title 26, TAC, Chapter 745, except for Subchapters K and M. Those subchapters could not be administratively transferred because some of the rules also apply to responsibilities that remained with DFPS.

DFPS adopted rules applicable to DFPS responsibilities in Title 40, Chapter 707. In addition, CCR is adopting and publishing new Title 26, Chapter 745, Subchapter M, Administrative Re-

views and Due Process Hearings, containing new rules applicable to CCR responsibilities elsewhere in this issue of the *Texas Register*. Accordingly, CCR is adopting the repeal of Title 40, TAC, Chapter 745, Subchapter M, Administrative Reviews and Due Process Hearings, including the repeal of the rules in that subchapter.

#### COMMENTS

The 31-day comment period ended October 10, 2022. During this period, HHSC did not receive any comments regarding the proposed repeal.

### SUBCHAPTER M. ADMINISTRATIVE REVIEWS AND DUE PROCESS HEARINGS DIVISION 1. ADMINISTRATIVE REVIEWS

**40 TAC §§745.8801, 745.8803, 745.8805 - 745.8807, 745.8809, 745.8813, 745.8815, 745.8817**

#### STATUTORY AUTHORITY

The repealed sections are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of HRC.

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

Filed with the Office of the Secretary of State on January 2, 2023.

TRD-202300002

Karen Ray

Chief Counsel

Department of Family and Protective Services

Effective date: January 26, 2023

Proposal publication date: September 9, 2022

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

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### DIVISION 2. DUE PROCESS HEARINGS

**40 TAC §§745.8831, 745.8833, 745.8835, 745.8837, 745.8839, 745.8841, 745.8843, 745.8845, 745.8847, 745.8849, 745.8851, 745.8853, 745.8855**

#### STATUTORY AUTHORITY

The repealed sections are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of HRC.

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

Filed with the Office of the Secretary of State on January 2, 2023.

TRD-202300003

Karen Ray

Chief Counsel

Department of Family and Protective Services

Effective date: January 26, 2023

Proposal publication date: September 9, 2022

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



**DIVISION 3. OPERATIONS PENDING THE  
ADMINISTRATIVE REVIEW AND DUE  
PROCESS HEARING**

**40 TAC §§745.8871, 745.8873, 745.8875, 745.8877,  
745.8879, 745.8881**

**STATUTORY AUTHORITY**

The repealed sections are adopted under Texas Government Code §531.0055, which provides that the Executive Commis-

sioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of HRC.

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

Filed with the Office of the Secretary of State on January 2, 2023.

TRD-202300004

Karen Ray

Chief Counsel

Department of Family and Protective Services

Effective date: January 26, 2023

Proposal publication date: September 9, 2022

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





# 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 9, Training.

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 9 continue to exist.

Comments regarding suggested changes to the rules in Chapter 9 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 rule-making action by the commission.

#### Submittal of Comments

The commission invites public comment on this preliminary review of the rules in Chapter 9. Written comments may be submitted to Gwen Ricco, Texas Register/Agenda Coordinator, 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 2023-011-009-AS. Comments must be received by February 21, 2023. For further information, please contact Robert Icenogle, Human Resources and Staff Services Division, at (512) 239-0131.

TRD-202300125

Guy Henry

Acting Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: January 11, 2023



The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 TAC Chapter 15, Fleet Vehicle Management.

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 15 continue to exist.

Comments regarding suggested changes to the rules in Chapter 15 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 rule-making action by the commission.

#### Submittal of Comments

The commission invites public comment on this preliminary review of the rules in Chapter 15. Written comments may be submitted to Gwen Ricco, Texas Register/Agenda Coordinator, 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 2023-019-015-AS. Comments must be received by February 21, 2023. For further information, please contact Robert Icenogle, Human Resources and Staff Services Division, at (512) 239-0131.

TRD-202300129

Guy Henry

Acting Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: January 11, 2023



The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 TAC Chapter 19, Electronic Transmission of Information by Commission.

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 19 continue to exist.

Comments regarding suggested changes to the rules in Chapter 19 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 rule-making action by the commission.

#### Submittal of Comments

The commission invites public comment on this preliminary review of the rules in Chapter 19. 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 2023-016-019-AD. Comments must be received by February 21, 2023. For further information, please contact Brad Patterson, Office of the Chief Clerk, at (512) 239-1201.

TRD-202300126

Guy Henry

Acting Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: January 11, 2023



The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 TAC Chapter 25, Environmental Testing Laboratory Accreditation and Certification.

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 25 continue to exist.

Comments regarding suggested changes to the rules in Chapter 25 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 rule-making action by the commission.

#### Submittal of Comments

The commission invites public comment on this preliminary review of the rules in Chapter 25. 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 2023-017-025-CE. Comments must be received by February 21, 2023. For further information, please contact D. Jody Koehler, Monitoring Division, at (512) 239-1990.

TRD-202300127

Guy Henry

Acting Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: January 11, 2023



The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 TAC Chapter 30, Occupational Licenses and Registrations.

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 30 continue to exist.

Comments regarding suggested changes to the rules in Chapter 30 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 rule-making action by the commission.

#### Submittal of Comments

The commission invites public comment on this preliminary review of the rules in Chapter 30. 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 2023-018-030-WS. Comments must be received by February 21, 2023. For further information, please contact Rebecca Moore, Project Manager, Occupational Licensing and Registration Division, at (512) 239-2463.

TRD-202300128

Guy Henry

Acting Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: January 11, 2023





# TABLES & GRAPHICS

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Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

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Figure: 26 TAC §745.8803(a)

Decision or action in dispute:	Person who can request an administrative review to dispute the decision or action:
<p>(1) Any of the following concerning an operation or prospective operation:</p> <p>(A) A denial or revocation of a waiver or variance;</p> <p>(B) The citation of a deficiency;</p> <p>(C) The denial of a voluntary suspension.</p> <p>(D) The imposition of probation or an adverse action, subject to the limitations in subsection (b) of this section; or</p> <p>(E) The addition of a condition to a corrective action plan for a probation that the operation is currently on.</p>	<p>The applicant, or an owner, partner, governing body, director, licensed administrator, or designee of the operation.</p>
<p>(2) A determination that a program is not exempt from regulation.</p>	<p>The person or entity that requested the exemption determination.</p>
<p>(3) The imposition of a remedial action listed in §745.9031 of this chapter (relating to What remedial actions can Licensing take against my administrator's license?).</p>	<p>The applicant or licensed administrator.</p>
<p>(4) A controlling person designation.</p>	<p>The person designated as a controlling person.</p>
<p>(5) A determination that the person poses an immediate threat or danger to the health or safety of children because of:</p> <p>(A) A juvenile adjudication; or</p> <p>(B) Another issue unrelated to criminal history or a Department of Family and Protective Services child abuse, neglect, or exploitation investigation.</p>	<p>The person determined to pose the immediate threat or danger to the health or safety of children.</p>

Figure: 26 TAC §745.8835(a)

Decision or action in dispute:	Person who can request a due process hearing to dispute the decision or action:
(1) The imposition of either of the following against an operation:  (A) An adverse action, subject to the limitations in subsection (b) of this section; or  (B) An administrative penalty.	The applicant or an owner, partner, governing body, director, licensed administrator, or designee of the operation.
(2) A denial, refusal to renew, suspension, or revocation of an administrator's license.	The applicant or licensed administrator.
(3) The designation of a person as a controlling person.	The person designated as a controlling person.
(4) The imposition of an administrative penalty against a controlling person.	The controlling person that the administrative penalty was imposed upon.
(5) A Central Registry finding of child abuse, neglect, or exploitation that has not been sustained and is the result of a background check conducted under Subchapter F of this chapter (relating to Background Checks).	The subject of the background check.
(6) A determination that the person poses an immediate threat or danger to the health or safety of children because of:  (A) A juvenile adjudication; or  (B) Another issue unrelated to criminal history or a Texas Department of Family and Protective Services child abuse, neglect, or exploitation investigation.	The person determined to pose the immediate threat or danger.



# IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

## Office of the Attorney General

### Notice of Amendment to Consent Decree in Texas Water Code Enforcement Action

The State of Texas gives notice of the following proposed amendment to a consent decree in an environmental enforcement action under the Texas Water Code. Before the State may enter into a voluntary settlement agreement, pursuant to section 7.110 of the Texas Water Code, the State shall permit the public to comment in writing. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed amendment if the comments disclose facts or considerations indicating that consent is inappropriate, improper, inadequate or inconsistent with the requirements of the law.

Case Title: *United States of America and State of Texas v. E.I. du Pont de Nemours and Co. and Performance Materials, NA, Inc.*; No. 1:21-cv-516, in the U.S. District Court for the Eastern District of Texas.

Background: This was an environmental enforcement action brought jointly by the United States, on behalf of the U.S. Environmental Protection Agency, and the State of Texas, on behalf of the Texas Commission on Environmental Quality. It concerned the operations of the defendants at the Sabine River Works Chemical Manufacturing Complex, located at 3055 FM 1006, Orange, Orange County, Texas ("the Facility"). The lawsuit was settled on January 28, 2022, by a Consent Decree in the U.S. District Court providing for the payment of civil penalties, attorneys' fees, and injunctive relief.

The parties now propose to modify one of the injunctive provisions to allow Defendant The Dow Chemical Company ("TDCC"), legal successor to Performance Materials, NA, Inc., to use an alternative technology to achieve one of the objectives for control of benzene emissions at the Facility. At two locations, TDCC currently uses a single carbon canister as a secondary control device and a flare (or a waste steam superheater) as the primary control. Under the proposed alternative, TDCC will substitute a thermal oxidizer for the current primary control, and the flare will become the secondary control.

For a complete description of the proposed change, the proposed Agreement and Order Regarding Modification of Consent Decree and its attachments should be reviewed in its entirety. Requests for copies of the proposed agreement and order, and written comments on the same, should be directed to Thomas Edwards, Assistant Attorney General, Office of the Attorney General of Texas, P.O. Box 12548, MC 066, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911, or email: [Thomas.Edwards@oag.texas.gov](mailto:Thomas.Edwards@oag.texas.gov). Written comments must be received within 30 days of publication of this notice to be considered.

TRD-202300082  
Austin Kinghorn  
General Counsel  
Office of the Attorney General  
Filed: January 10, 2023

## 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 01/16/23 - 01/22/23 is 18% for Consumer<sup>1</sup>/Agricultural/Commercial<sup>2</sup> credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 01/16/23 - 01/22/23 is 18% for Commercial over \$250,000.

<sup>1</sup> Credit for personal, family or household use.

<sup>2</sup> Credit for business, commercial, investment or other similar purpose.

TRD-202300114

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: January 10, 2023

## 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 21, 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 21, 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, pro-

vides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: 7-ELEVEN, INCORPORATED dba 7-Eleven Store 40928; DOCKET NUMBER: 2022-0810-PST-E; IDENTIFIER: RN104527189; LOCATION: Laredo, Webb County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.72, by failing to report a suspected release to the TCEQ within 24 hours of discovery; and 30 TAC §334.74, by failing to investigate and confirm all suspected releases of regulated substances requiring reporting under 30 TAC §334.72 within 30 days; PENALTY: \$20,052; ENFORCEMENT COORDINATOR: Carolyn Kent, (512) 239-2536; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(2) COMPANY: Halepaska Property Management, LLC; DOCKET NUMBER: 2022-1334-UTL-E; IDENTIFIER: RN106599905; LOCATION: Victoria, Victoria 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: \$550; ENFORCEMENT COORDINATOR: Daniel Brill, (512) 239-2564; REGIONAL OFFICE: 500 North Shoreline Boulevard, Suite 500, Corpus Christi, Texas 78401, (361) 881-6900.

(3) COMPANY: Howard C. Bigham, Jr. dba Key Mobile Home Park; DOCKET NUMBER: 2022-1335-UTL-E; IDENTIFIER: RN101246262; LOCATION: Snyder, Scurry 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: \$750; ENFORCEMENT COORDINATOR: Daniel Brill, (512) 239-2564; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(4) COMPANY: Monarch Utilities I L.P.; DOCKET NUMBER: 2022-0430-MWD-E; IDENTIFIER: RN103015350; LOCATION: Point Blank, San Jacinto County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0014056001, Final Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: \$43,875; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$21,937; ENFORCEMENT COORDINATOR: Harley Hobson, (512) 239-1337; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(5) COMPANY: Southwest Texas Commercial Properties LLC dba Star Stop 430532; DOCKET NUMBER: 2022-0321-PST-E; IDENTIFIER: RN102438462; LOCATION: Mertzon, Irion County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(c)(2)(C) and TWC, §26.3475(d), by failing to inspect the impressed corrosion protection system at least once every 60 days to ensure the rectifier and other system components are operating properly; 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks (USTs) in a manner which will detect a release at a frequency of at least once every 30 days; and 30 TAC §334.51(b)(2)(C) and TWC, §26.3475(c)(2), by failing to equip each UST with a valve or other appropriate device designed to automatically shut off the flow of regulated substances into the tank when the liquid level in the tank reaches

no higher than 95% capacity; PENALTY: \$7,975; ENFORCEMENT COORDINATOR: Courtney Gooris, (817) 588-5863; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(6) COMPANY: Staff Water Supply Corporation; DOCKET NUMBER: 2022-1164-UTL-E; IDENTIFIER: RN101193472; LOCATION: Ranger, Eastland 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: \$625; ENFORCEMENT COORDINATOR: Ecko Beggs, (915) 834-4968; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(7) COMPANY: Thind Energy Incorporated dba On the Road 111; DOCKET NUMBER: 2022-1028-PST-E; IDENTIFIER: RN110491131; LOCATION: Lufkin, Angelina County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks; PENALTY: \$2,250; ENFORCEMENT COORDINATOR: Melissa Anderson, (512) 239-2527; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(8) COMPANY: Undine Texas, LLC; DOCKET NUMBER: 2022-1221-UTL-E; IDENTIFIER: RN101279321; LOCATION: Cypress, Montgomery 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: \$1,000; ENFORCEMENT COORDINATOR: Daniel Brill, (512) 239-2564; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(9) COMPANY: Yanira Enterprises LLC dba Yanira Mart; DOCKET NUMBER: 2022-1070-PST-E; IDENTIFIER: RN102257474; LOCATION: Wichita Falls, Wichita County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks in a manner which will detect a release at a frequency of at least once every 30 days; PENALTY: \$3,375; ENFORCEMENT COORDINATOR: Melissa Anderson, (512) 239-2527; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(10) COMPANY: Zachary Bice, Dana Riley, and Sandra Mitchell; DOCKET NUMBER: 2022-0541-MLM-E; IDENTIFIER: RN111442463; LOCATION: Concan, Uvalde County; TYPE OF FACILITY: unauthorized municipal solid waste (MSW) site; RULES VIOLATED: 30 TAC §111.201 and Texas Health and Safety Code, §382.085(b), by failing to not cause, suffer, allow, or permit outdoor burning within the State of Texas; and 30 TAC §330.15(c), by failing to not cause, suffer, allow, or permit the unauthorized disposal of MSW; PENALTY: \$10,138; ENFORCEMENT COORDINATOR: Courtney Gooris, (817) 588-5863; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

TRD-202300092



## Enforcement Orders

An agreed order was adopted regarding Daniel Ramirez dba San Antonio Auto & Truck and D. D. RAMIREZ, INC. dba San Antonio Auto & Truck, Docket No. 2020-0507-MLM-E on January 11, 2023, assessing \$11,250 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Taylor Pearson, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding First Yeti Inc dba Classic Mart, Docket No. 2020-0553-PST-E on January 11, 2023, assessing \$6,236 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Taylor Pearson, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding John Adam Solis, Docket No. 2020-1333-PST-E on January 11, 2023, assessing \$11,216 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Cynthia Sirois, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding Candice Morris, Docket No. 2021-0387-PST-E on January 11, 2023, assessing \$6,250 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Cynthia Sirois, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding THE ORCHARDS ON THE BRAZOS, LLC, Docket No. 2021-0753-PWS-E on January 11, 2023, assessing \$16,107 in administrative penalties with \$3,220 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.

A default order was adopted regarding Antonio Garcia, Docket No. 2021-1106-MLM-E on January 11, 2023, assessing \$11,910 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Jennifer Peltier, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Aqua Texas, Inc., Docket No. 2021-1202-MWD-E on January 11, 2023, assessing \$39,165 in administrative penalties. 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 Targa Downstream LLC, Docket No. 2021-1230-AIR-E on January 11, 2023, assessing \$25,000 in administrative penalties with \$5,000 deferred. Information concerning any aspect of this order may be obtained by contacting Johnnie Wu, 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 Hasa, Inc., Docket No. 2021-1344-WQ-E on January 11, 2023, assessing \$153,000 in ad-

ministrative penalties. Information concerning any aspect of this order may be obtained by contacting Laura Draper, 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 Victoria County Water Control and Improvement District No. 2, Docket No. 2021-1424-PWS-E on January 11, 2023, assessing \$3,063 in administrative penalties. 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 P AND S 2016 INC dba Nome Mart, Docket No. 2022-0144-PST-E on January 11, 2023, assessing \$7,875 in administrative penalties with \$1,575 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 ARN Alliance Incorporated dba Speedy Zone, Docket No. 2022-0153-PST-E on January 11, 2023, assessing \$7,777 in administrative penalties with \$1,555 deferred. Information concerning any aspect of this order may be obtained by contacting Karolyn Kent, 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 OQ Chemicals Corporation, Docket No. 2022-0284-AIR-E on January 11, 2023, assessing \$9,525 in administrative penalties with \$1,905 deferred. Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, 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 Mitsubishi Chemical America, Inc. f/k/a Noltex L.L.C., Docket No. 2022-0322-AIR-E on January 11, 2023, assessing \$7,900 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, 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 EL CAMINO BAY PROPERTY OWNERS ASSOCIATION, Docket No. 2022-0332-PWS-E on January 11, 2023, assessing \$2,925 in administrative penalties. 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 Franklin County, Docket No. 2022-0370-AIR-E on January 11, 2023, assessing \$11,250 in administrative penalties with \$2,250 deferred. Information concerning any aspect of this order may be obtained by contacting Kate Dacy, 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 Mitsubishi Chemical America, Inc. f/k/a Lucite International, Inc., Docket No. 2022-0397-AIR-E on January 11, 2023, assessing \$28,834 in administrative penalties with \$5,776 deferred. Information concerning any aspect of this order may be obtained by contacting Johnnie Wu, 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 Silverton, Docket No. 2022-0474-PWS-E on January 11, 2023, assessing \$2,875 in adminis-

trative penalties. 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.

TRD-202300118

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: January 11, 2023



### Notice of Application and Public Hearing for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls Proposed Air Quality Registration Number 170532

**APPLICATION.** Tex Mix Partners LLC, P.O. Box 830, Leander, Texas 78646-0830 has applied to the Texas Commission on Environmental Quality (TCEQ) for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls Registration Number 170532 to authorize the operation of a concrete batch plant. The facility is proposed to be located at 5715 Old Plum Highway, La Grange, Fayette County, Texas 78945. 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=29.930833&lng=-96.953055&zoom=13&type=r>. This application was submitted to the TCEQ on September 28, 2022. The primary function of this plant is to manufacture concrete by mixing materials including (but not limited to) sand, aggregate, cement and water. The executive director has determined the application was technically complete on December 7, 2023.

**PUBLIC COMMENT / PUBLIC HEARING.** Public written comments about this application may be submitted at any time during the public comment period. The public comment period begins on the first date notice is published and extends to the close of the public hearing. Public comments may be submitted either in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087, or electronically at [www14.tceq.texas.gov/epic/eComment/](http://www14.tceq.texas.gov/epic/eComment/). Please be aware that any contact information you provide, including your name, phone number, email address and physical address will become part of the agency's public record.

A public hearing has been scheduled, that will consist of two parts, an informal discussion period and a formal comment period. During the informal discussion period, the public is encouraged to ask questions of the applicant and TCEQ staff concerning the application, but comments made during the informal period will not be considered by the executive director before reaching a decision on the permit, and no formal response will be made to the informal comments. During the formal comment period, members of the public may state their comments into the official record. **Written comments about this application may also be submitted at any time during the hearing.** The purpose of a public hearing is to provide the opportunity to submit written comments or an oral statement about the application. **The public hearing is not an evidentiary proceeding.**

**The Public Hearing is to be held:**

**Wednesday, February 15, 2023, at 6:00 p.m.**

**Hampton Inn**

**1624 State Highway 71**

**La Grange, Texas 78945**

**RESPONSE TO COMMENTS.** A written response to all formal comments will be prepared by the executive director after the comment period closes. The response, along with the executive director's decision on the application, will be mailed to everyone who submitted public comments and the response to comments will be posted in the permit file for viewing.

The executive director shall approve or deny the application not later than 35 days after the date of the public hearing, considering all comments received within the comment period, and base this decision on whether the application meets the requirements of the standard permit.

**CENTRAL/REGIONAL OFFICE.** The application will be available for viewing and copying at the TCEQ Central Office and the TCEQ Austin Regional Office, located at 12100 Park 35 Circle Building A Rm 179, Austin, Texas 78753-1808, during the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, beginning the first day of publication of this notice.

**INFORMATION. If you need more information about this permit application or the permitting process, please call the Public Education Program toll free at (800) 687-4040. Si desea información en español, puede llamar al (800) 687-4040.**

Further information may also be obtained from Tex Mix Partners, LLC, P.O. Box 830, Leander, Texas 78646-0830, or by calling Mr. Aaron Dalton, Project Engineer at (512) 759-1438.

Notice Issuance Date: January 10, 2023

TRD-202300121

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: January 11, 2023



### Notice of District Petition

Notice issued January 5, 2023

TCEQ Internal Control No. D-06212022-045; Cibolo Creek Municipal Authority of Bexar, Comal, and Guadalupe counties (the "Authority") filed an application with the Texas Commission on Environmental Quality (TCEQ) for authority to levy impact fees of \$2,200 per equivalent single-family connection for new connections to the wastewater treatment and collection systems within the North Side Basin service area and \$2,300 per equivalent single-family connection for new connections to the wastewater treatment system within the South Side Basin service area of the Cibolo Creek Municipal Authority. The Authority files this application under the authority of Chapter 395 of the Local Government Code, 30 Texas Administrative Code Chapter 293, and the procedural rules of the TCEQ. The purpose of impact fees is to generate revenue to recover the costs of capital improvements or facility expansions made necessary by and attributable to serving new development in the Authority's service areas. At the direction of the Authority, a registered engineer has prepared a capital improvements plan for the system that identifies the capital improvements or facility expansions and their costs for which the impact fees will be assessed. The impact fee application and supporting information are available for inspection and copying during regular business hours in the Districts Section of the Water Supply Division, Third Floor of Building F (in the TCEQ Park 35 Office Complex located between Yager and Braker lanes on North IH-35), 12100 Park 35 Circle, Austin, Texas 78753. A copy of the impact fee application and supporting information, as well as the capital improvements plan, is available for inspection and copying at the Authority's office during regular business hours.



## INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at [www.tceq.texas.gov/agency/cc/pub\\_notice.html](http://www.tceq.texas.gov/agency/cc/pub_notice.html) or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at [www.tceq.texas.gov](http://www.tceq.texas.gov).

TRD-202300119

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: January 11, 2023



## Notice of District Petition

Notice issued January 5, 2023

TCEQ Internal Control No. D-11222022-035; Maggie J. Cryer and Pulte Homes of Texas, LP, a Texas limited partnership, (Petitioners) filed a petition for creation of Cresswind Cove Municipal Utility District No. 1 (District) of Chambers County with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioners hold title to a majority in value of the land to be included in the proposed District; (2) there are no lienholders on the property to be included in the proposed District; (3) the proposed District will contain approximately 245.198 acres located within Chambers County, Texas; and (4) the land within the proposed District is partially within the corporate limits and extraterritorial jurisdiction of the City of Cove. By Ordinance No. 2022-01-001, passed and approved on January 6, 2022, the City of Cove, Texas, gave its consent to the creation of the proposed District, pursuant to Texas Water Code §54.016.

The petition further states that the proposed District will: (1) purchase, construct, acquire, provide, operate, maintain, repair, improve, or extend, inside or outside of its boundaries, any and all works, improvements, facilities, systems, plants, equipment, and appliances necessary or helpful to supply and distribute water for municipal, domestic, industrial, and commercial purposes; (2) collect, transport, process, dispose of, and control domestic, industrial, and commercial wastes; (3) gather, conduct, divert, abate, amend, and control local storm water or other local harmful excesses of water or provide adequate drainage in the proposed District; and (4) purchase, construct, acquire, provide, operate, maintain, repair, improve, or extend, inside or outside of its boundaries, such additional facilities, plants, equipment, appliances, and enterprises as shall be consonant with all of the purposes for which the proposed District is created. Additional work and services which may be performed by the proposed District include the purchase, construction, acquisition, provision, operation, maintenance, repair, improvement, extension, and development of a roadway system and park and recreational facilities. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioners that the cost of said project will be approximately \$32,500,000 (\$25,500,000 for water, wastewater, and drainage plus \$7,000,000 for roads).

## INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at [www.tceq.texas.gov/agency/cc/pub\\_notice.html](http://www.tceq.texas.gov/agency/cc/pub_notice.html) or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at [www.tceq.texas.gov](http://www.tceq.texas.gov).

TRD-202300120

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: January 11, 2023

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

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Order (DO). The commission staff proposes a DO when the staff has sent the Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **February 21, 2023**. The commission will consider any written comments received, and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of the proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on February 21, 2023**. The commission's attorney is available to discuss the DO and/or the comment procedure at the listed phone number; however, TWC, §7.075, provides that comments on the DO shall be submitted to the commission in **writing**.

(1) COMPANY: Chad Horace Currie dba CLC Landscaping, LLC; DOCKET NUMBER: 2021-1535-LII-E; TCEQ ID NUMBER: RN111075891; LOCATION: 3012 Farm-to-Market Road 621, Suite F, near San Marcos, Guadalupe County; TYPE OF FACILITY: landscape irrigation business; RULES VIOLATED: TWC, §37.003, Texas Occupations Code, §1903.251, and 30 TAC §30.5(a), by failing to hold an irrigator license prior to selling, designing, installing, maintaining, altering, repairing, servicing, or providing consulting services relating to an irrigation system, or connecting an irrigation system to any water supply; and TWC, §37.003 and 30 TAC §30.5(b), by failing to refrain from advertising or representing to the public that it can perform services for which a license is required unless it holds a current license, or unless it employs an individual who holds a current license; PENALTY: \$2,369; STAFF ATTORNEY: Cynthia Sirois, Litigation, MC 175, (512) 239-3392; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

TRD-202300112

Gitanjali Yadav

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: January 10, 2023

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

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Shutdown/Default Order (S/DO). Texas Water Code (TWC), §26.3475, authorizes the commission to order the shutdown of any underground storage tank (UST) system found to be noncompliant with release detection, spill and overflow prevention, and/or, after December 22, 1998, cathodic protection regulations of the commission, until such time as the owner/operator brings the UST system into compliance with those regulations. The commission proposes a Shutdown Order after the owner or operator of a UST facility fails to perform required corrective actions within 30 days after receiving notice of the release detection, spill, and overflow prevention, and/or after December 22, 1998, cathodic protection violations documented at the facility. The commission proposes a Default Order when the staff has sent an Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations, the proposed penalty, the proposed technical requirements necessary to bring the entity back into compliance, and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. In accordance with TWC, §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **February 21, 2023**. The commission will consider any written comments received and the commission may withdraw or withhold approval of an S/DO if a comment discloses facts or considerations that indicate that consent to the proposed S/DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed S/DO is not required to be published if those changes are made in response to written comments.

A copy of the proposed S/DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the S/DO shall be sent to the attorney designated for the S/DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on February 21, 2023**. The commission's attorney is available to discuss the S/DO and/or the comment procedure at the listed phone number; however, comments on the S/DO shall be submitted to the commission in **writing**.

(1) COMPANY: HENDERSON DRIVE INN, INC.; DOCKET NUMBER: 2021-1425-PST-E; TCEQ ID NUMBER: RN102462249; LOCATION: 103 Henderson Street, Palacios, Matagorda County; TYPE OF FACILITY: UST system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(d), 30 TAC §334.49(a)(1), and TCEQ Agreed Order, Docket Number 2018-1142-PST-E, Ordering Provision Number 2.b.i., by failing to provide corrosion protection for the UST system; TWC, §26.3475(c)(1), 30 TAC §334.50(b)(1)(A), and TCEQ Agreed Order, Docket Number 2018-1142-PST-E, Ordering Provision Number 2.b.ii., by failing to monitor the USTs in a manner which will detect a release at a frequency of at least once every 30 days; TWC, §26.3475(a), 30 TAC §334.50(b)(2), and TCEQ Agreed Order, Docket Number 2018-1142-PST-E, Ordering Provision Number 2.b.iii., by failing to provide release detection for the piping associated with the UST system; 30 TAC §334.10(b)(2) and TCEQ Agreed Order, Docket Number 2018-1142-PST-E, Ordering Provision Number 2.a., by failing to assure that all UST recordkeeping requirements are met; and

30 TAC §334.602(a), by failing to designate, train, and certify at least one named individual for each class of operator - Class A, B, and C - for the facility; PENALTY: \$89,830; STAFF ATTORNEY: William Hogan, Litigation, MC 175, (512) 239-5918; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-202300108

Gitanjali Yadav

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: January 10, 2023



### Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **February 21, 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 A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on February 21, 2023**. The designated attorneys are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on an AO shall be submitted to the commission **in writing**.

(1) COMPANY: KIA ENTERPRISES, INC. dba Iffi Stop 1 Food Market; DOCKET NUMBER: 2021-1541-PWS-E; TCEQ ID NUMBER: RN101737534; LOCATION: 9146 Highway 242 near Conroe, Montgomery County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.41(c)(3)(A) and TCEQ Agreed Order Docket Number 2015-1431-PWS-E, Ordering Provision Numbers 2.a.i. and 2.c., by failing to submit well completion data for review and approval prior to placing the facility's public drinking water well into service; and 30 TAC §290.46(n)(1) and TCEQ Agreed Order Docket Number 2015-1431-PWS-E, Ordering Provision Number 2.a.ii., by failing to provide accurate up-to-date detailed as-built plans or record drawings and specifications for each treatment plant, pump station, and storage tank until the facility is decommissioned; PENALTY: \$1,000; STAFF ATTORNEY: Megan L. Grace, Litigation, MC 175, (512) 239-3334; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: Riviera Independent School District; DOCKET NUMBER: 2021-0365-MLM-E; TCEQ ID NUMBER: RN102686607; LOCATION: 203 Seahawk Drive, Riviera, Kleberg County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(1)(5), by failing to meet the conditions for an issued exception; 30 TAC §290.121(a) and (b), by failing to maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes sampling frequency, and specifies the analytical procedures and laboratories that the facility will use to comply with the monitoring requirements; 30 TAC §290.46(s)(1), by failing to calibrate the flow measuring devices installed on each of the facility's two PuroLite A300E media filtration vessels at least once every 12 months; 30 TAC §290.39(j) and Texas Health and Safety Code, §341.0351, by failing to notify the executive director prior to making any significant change or addition to the system's production, treatment, storage, pressure maintenance, or distribution facilities; and TWC, §26.121(a)(1) and 30 TAC §305.42(a), by failing to obtain authorization to discharge municipal waste into or adjacent to any water in the state; PENALTY: \$3,000; SUPPLEMENTAL ENVIRONMENTAL PROJECT: \$3,000; STAFF ATTORNEY: Marilyn Norrod, Litigation, MC 175, (512) 239-5916; REGIONAL OFFICE: Corpus Christi Regional Office, 500 North Shoreline Boulevard, Suite 500, Corpus Christi, Texas 78401-0318, (361) 881-6900.

(3) COMPANY: SECOND LAREDO STORE INC dba Tejano Mart 508; DOCKET NUMBER: 2022-0315-PST-E; TCEQ ID NUMBER: RN101876241; LOCATION: 9804 Farm-to-Market Road 1472, Laredo, Webb County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every 30 days; TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide release detection for the pressurized piping associated with the UST system; and 30 TAC §334.10(b)(2), by failing to assure that all UST recordkeeping requirements are met; PENALTY: \$3,719; STAFF ATTORNEY: Marilyn Norrod, Litigation, MC 175, (512) 239-5916; REGIONAL OFFICE: Laredo Regional Office, 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

TRD-202300110

Gitanjali Yadav

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: January 10, 2023



### Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions of Comal Iron & Metal, Inc.; SOAH Docket No. 582-23-07603; TCEQ Docket No. 2021-0295-EAQ-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing via Zoom videoconference at:

10:00 a.m. - February 9, 2023

To join the Zoom meeting via computer or smart device:

<https://soah-texas.zoomgov.com/>

**Meeting ID:** 161 232 6198

**Password:** TCEQ34

or

To join the Zoom meeting via telephone dial:

+1 (669) 254-5252

**Meeting ID:** 161 232 6198

**Password:** 978553

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed September 26, 2022, concerning assessing administrative penalties against and requiring certain actions of COMAL IRON & METAL, INC., for violations in Comal County, Texas, of: 30 Texas Administrative Code §213.4(a)(1).

The hearing will allow COMAL IRON & METAL, INC., the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford COMAL IRON & METAL, INC., the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. **Upon failure of COMAL IRON & METAL, INC. to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes.** COMAL IRON & METAL, INC., the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Tex. Water Code § 7.054, Tex. Water Code chs. 7 and 26, and 30 Texas Administrative Code chs. 70 and 213; Tex. Water Code § 7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Texas Administrative Code §70.108 and §70.109 and ch. 80, and 1 Texas Administrative Code ch. 155.

Further information regarding this hearing may be obtained by contacting Jennifer Peltier, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Sheldon Wayne, Public Interest Counsel, Mail Code 103, at the same P.O. Box address given above, or by telephone at (512) 239-6363.

**Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at [www.tceq.texas.gov/goto/efilings](http://www.tceq.texas.gov/goto/efilings) or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.**

**In accordance with 1 Texas Administrative Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at [www.soah.texas.gov](http://www.soah.texas.gov), or in printed format upon request to SOAH."**

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

TRD-202300123

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: January 11, 2023



Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions of Leon Loa and Teresa Soto SOAH Docket No. 582-23-09216 TCEQ Docket No. 2020-1260-MLM-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing via Zoom videoconference at:

10:00 a.m. - February 9, 2023

To join the Zoom meeting via computer or smart device:

<https://soah-texas.zoomgov.com/>

**Meeting ID:** 161 984 0712

**Password:** TCEQDC1

or

To join the Zoom meeting via telephone dial:

+1 (669) 254-5252

**Meeting ID:** 161 984 0712

**Password:** 5247869

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed August 17, 2021, concerning assessing administrative penalties against and requiring certain actions of Leon Loa and Teresa Soto, for violations in Hockley County, Texas, of: Tex. Health & Safety Code § 382.085(b), 30 Texas Administrative Code §§111.201 and 330.15(a) and (c).

The hearing will allow Leon Loa and Teresa Soto, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford Leon Loa and Teresa Soto, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. **Upon failure of Leon Loa and Teresa Soto appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes.** Leon Loa and Teresa Soto, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Tex. Water Code § 7.054 and Tex. Water Code ch. 7, Tex. Health & Safety Code ch. 361 and 382 and 30 Texas Administrative Code chs. 70, 111, and 330; Tex. Water Code § 7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Texas Administrative Code §§70.108 and 70.109 and ch. 80, and 1 Texas Administrative Code ch. 155.

Further information regarding this hearing may be obtained by contacting Misty James, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Sheldon Wayne, Staff Attorney, Office of Public Interest Counsel, Mail Code 103, at the same P.O. Box address given above, or by telephone at (512) 239-6363.

**Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at [www.tceq.texas.gov/goto/efilings](http://www.tceq.texas.gov/goto/efilings) or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.**

**In accordance with 1 Texas Administrative Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at [www.soah.texas.gov](http://www.soah.texas.gov), or in printed format upon request to SOAH."**

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: January 10, 2023

TRD-202300122

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: January 11, 2023



## General Land Office

### Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 *Federal Register* pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 26. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of December 16, 2022 to January 6, 2023. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§30.25, 30.32, and 30.41, the public comment period extends 30 days from the date published on the Texas General Land Office web site. The notice was published on the web site on Friday, January 13, 2023. The public comment period for this project will close at 5:00 p.m. on Sunday, February 12, 2023.

## FEDERAL AGENCY ACTIONS:

**Applicant:** Orange County Drainage District

**Location:** The project site is located in wetlands and waters adjacent to Neches River, in Bridge City, Orange County, Texas.

**Latitude & Longitude (NAD 83):** 30.027212, - 93.859633

**Project Description:** The applicant proposes permanently convert approximately 7.658 acres of estuarine emergent wetlands (EEM), 0.096 acre of palustrine scrub shrub (PSS) wetlands, 0.003 acre of palustrine aquatic bed (PAB3), and 0.039 acre of palustrine forested (PFO) wetlands to open water, and to deepen and widen approximately 8.281 acres of tidal open waters to rehabilitate, improve and extend previously existing drainage conveyances for western portions of Bridge City. In addition, there will be temporary impacts to approximately 4.347 acres of EEM wetlands, 0.119 acre of PSS wetlands, 0.002 acre of PAB3, and 0.875 acres of tidal open waters. All temporarily impacted areas will be restored to pre-construction contours once the project is complete.

The proposed drainage rehabilitation, improvements, and extension will be approximately 15,525 feet in length, 22 feet to 112 feet wide, and at depths ranging from 1.3 feet to 7.5 feet (flowline elevations ranging from +5.94' to -3.50' NAV '88). Approximately 25,842 cubic yards of material will be dredged from tidal open waters, 27,741 cubic yards of material excavated from EEM wetlands, 368 cubic yards excavated from PSS, and 146 cubic yards of material excavated from PFO wetlands to construct the new drainage channel. Approximately 37,200 cubic yards of dredged and/or excavated material will be utilized for marsh creation as part of a permittee responsible compensatory mitigation plan, while approximately 16,900 cubic yards of dredged and/or excavated material will be placed in the designated upland confined disposal area.

The purpose of the project is to restore previous drainage outfalls that existed prior to the beneficial use dredged material placement and marsh restoration in the Bridge City Marsh area, and to do so in a manner that allows the restored drainage outfalls to reach open water beyond the restored marsh with minimal effects to the restored marsh.

**Type of Application:** U.S. Army Corps of Engineers permit application # SWG-2022-00166. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act. Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality as part of its certification under §401 of the Clean Water Act.

**CMP Project No:** 22-1107-F1

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection, may be obtained from the Texas General Land Office Public Information Officer at 1700 N. Congress Avenue, Austin, Texas 78701, or via email at [pialegal@glo.texas.gov](mailto:pialegal@glo.texas.gov). Comments should be sent to the Texas General Land Office Coastal Management Program Coordinator at the above address or via email at [federal.consistency@glo.texas.gov](mailto:federal.consistency@glo.texas.gov).

TRD-202300117

Mark Havens

Chief Clerk, Deputy Land Commissioner

General Land Office

Filed: January 10, 2023



## Texas Health and Human Services Commission

Public Notice - Texas State Plan Amendment effective March 1, 2021

The Texas Health and Human Services Commission (HHSC) announces its intent to submit an amendment to the Texas State Plan for Medical Assistance under Title XIX of the Social Security Act. The proposed amendment is effective March 1, 2021.

The proposed amendment documents coverage of COVID-19 prevention and treatment as benefits in Texas Medicaid, including coverage for conditions that may seriously complicate COVID-19 treatment.

The proposed amendment is estimated to result in an additional annual aggregate expenditure of \$406,815,439 for federal fiscal year (FFY) 2021, consisting of \$276,675,180 in federal funds and \$130,140,259 in state general revenue. For FFY 2022, the estimated additional annual expenditure is \$442,010,076 consisting of \$296,146,751 in federal funds and \$145,863,325 in state general revenue. For FFY 2023, the estimated additional annual expenditure is \$149,511,157 consisting of \$57,681,404 in federal funds and \$91,829,753 in state general revenue.

**Copy of Proposed Amendment** - Interested parties may obtain additional information and/or a free copy of the proposed amendments by contacting Shae James, State Plan Coordinator, by mail at the Health and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, Texas 78711; or by email at [Medicaid\\_Chip\\_SPA\\_Inquiries@hhsc.state.tx.us](mailto:Medicaid_Chip_SPA_Inquiries@hhsc.state.tx.us). Copies of proposed amendment will be available for review at the local county offices of HHSC, (which were formerly the local offices of Texas Department of Aging and Disability Services).

**Written Comments** - Written comments about the proposed amendment and/or requests to review comments may be sent by U.S., mail, overnight mail special delivery mail, hand delivery, fax, or email:

**U.S. Mail**

Texas Health and Human Services Commission  
Attention: Medical Benefits Office of Policy

Mail Code H-310 P.O. Box 149030  
Austin, Texas 78756

**Overnight Mail, special Deliver mail, or hand delivery**

Texas Health and Human Services Commission  
Attention: Medical Benefits Office of Policy  
John H. Winters Building  
Mail Code H-310

701 W. 51st St.  
Austin, Texas 78751

**Fax**

Attention: Office of Policy at (512) 730-7474

**Email**

[MedicaidBenefitRequest@hhsc.state.tx.us](mailto:MedicaidBenefitRequest@hhsc.state.tx.us)

**Preferred Communication** - During the current state of disaster due to COVID-19, physical forms of communication are checked with less frequency than normal business operations. For the quickest response, and to help curb the possible transmission of infection, please use email or phone if possible for communication with HHSC related to this state plan amendment.

TRD-202300056  
Karen Ray  
Chief Counsel  
Texas Health and Human Services Commission  
Filed: January 9, 2023

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**Department of State Health Services**

Licensing Actions for Radioactive Materials

During the second half of November 2022, the Department of State Health Services (Department) has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables (in alphabetical order by location). The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX [Texas]" indicates that the radioactive material may be used on a temporary basis at locations throughout the state.

In issuing new licenses and amending and renewing existing licenses, the Department's Radiation Section has determined that the applicant has complied with the licensing requirements in Title 25 Texas Administrative Code (TAC), Chapter 289, for the noted action. In granting termination of licenses, the Department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC, Chapter 289. In granting exemptions to the licensing requirements of Chapter 289, the Department has determined that the exemption is not prohibited by law and will not result in a significant risk to public health and safety and the environment.

A person affected by the actions published in this notice may request a hearing within 30 days of the publication date. A "person affected" is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. 25 TAC §289.205(b)(15); Health and Safety Code §401.003(15). Requests must be made in writing and should contain the words "hearing request," the name and address of the person affected by the agency action, the name and license number of the entity that is the subject of the hearing request, a brief statement of how the person is affected by the action what the requestor seeks as the outcome of the hearing, and the name and address of the attorney if the requestor is represented by an attorney. Send hearing requests by mail to: Hearing Request, Radioactive Material Licensing, MC 2835, PO Box 149347, Austin, Texas 78714-9347, or by fax to: (512) 206-3760, or by e-mail to: RAMlicensing@dshs.texas.gov.

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
AUSTIN	THERMO FINNIGAN LLC	L01186	AUSTIN	58	11/30/22
CARROLLTON	JUBILANT DRAXIMAGE INC DBA JUBILANT RADIOPHARMA	L06943	CARROLLTON	17	11/15/22
CYPRESS	HOUSTON INTERVENTIONAL CARDIOLOGY PA	L05470	CYPRESS	17	11/21/22
DALLAS	THE UNIVERSITY OF TEXAS SOUTHWESTERN MEDICAL CENTER AT DALLAS	L00384	DALLAS	137	11/18/22
DENTON	NUMED INC	L02129	DENTON	84	11/16/22
FANNIN	COLETO CREEK POWER LLC	L06950	FANNIN	04	11/15/22
FORT WORTH	UPNT CANCER LLC DBA TEXAS CANCER SPECIALISTS	L07068	FORT WORTH	05	11/22/22
GARLAND	MICROPAC INDUSTRIES INC	L06376	GARLAND	04	11/15/22
HOUSTON	THE CENTER FOR COLLABORATIVE RESEARCH INC	L06284	HOUSTON	05	11/18/22
HOUSTON	CHI ST LUKES HEALTH BAYLOR COLLEGE OF MEDICINE MEDICAL CENTER	L06661	HOUSTON	10	11/23/22
HOUSTON	INSIGNIA TTG PARENT LLC	L06535	HOUSTON	11	11/22/22



AMENDMENTS TO EXISTING LICENSES ISSUED: (Continued)

HOUSTON	MEMORIAL HERMANN HEALTH SYSTEM DBA MEMORIAL HERMANN TEXAS MEDICAL CENTER	L06439	HOUSTON	22	11/29/22
HOUSTON	HOUSTON NORTHWEST OPERATING COMPANY LLC	L06190	HOUSTON	45	11/29/22
HOUSTON	SHELL CHEMICAL LP	L02116	HOUSTON	63	11/15/22
HOUSTON	SHELL CHEMICAL LP	L02116	HOUSTON	64	11/28/22
HOUSTON	HARRIS COUNTY HOSPITAL DISTRICT	L01303	HOUSTON	108	11/30/22
HOUSTON	MEMORIAL HERMANN HEALTH SYSTEM	L03052	HOUSTON	111	11/30/22
HOUSTON	AMERICAN DIAGNOSTIC TECH LLC	L05514	HOUSTON	161	11/16/22
HOUSTON	CARDINAL HEALTH 414 LLC	L01911	HOUSTON	171	11/16/22
JOURDANTON	SAN MIGUEL ELECTRIC COOPERATIVE INC	L02347	CHRISTINE	32	11/15/22
LONGVIEW	KING TOOL COMPANY	L05142	LONGVIEW	16	11/28/22
LUBBOCK	ISORX TEXAS LTD	L05284	LUBBOCK	39	11/21/22
MIDLAND	CDK PERFORATING LLC DBA NINE ENERGY SERVICE	L06616	MIDLAND	12	11/29/22
MIDLAND	TEXAS ONCOLOGY PA DBA ALLISON CANCER CENTER	L04905	MIDLAND	31	11/21/22

AMENDMENTS TO EXISTING LICENSES ISSUED: (Continued)

NEDERLAND	LEONARD M THOME MD PA	L06529	NEDERLAND	03	11/16/22
NEW BRAUNFELS	CEMEX CONSTRUCTION MATERIALS SOUTH LLC	L07156	NEW BRAUNFELS	1	11/18/22
ODESSA	TEXAS ONCOLOGY PA DBA TEXAS ONCOLOGY	L05140	ODESSA	25	11/28/22
ORANGE	INV NYLON CHEMICALS AMERICAS LLC	L05777	ORANGE	23	11/15/22
PASADENA	PMC HOSPITAL LLC	L06384	PASADENA	09	11/15/22
PASADENA	PASADENA REFINING SYSTEM INC	L01344	PASADENA	40	11/18/22
PLANO	HEALTHTEXAS PROVIDER NETWORK DBA BAYLOR SCOTT & WHITE LEGACY HEART CENTER	L06582	PLANO	13	11/18/22
PORT ARTHUR	MOTIVA ENTERPRISES LLC	L05211	PORT ARTHUR	30	11/15/22
RICHARDSON	METHODIST HOSPITALS OF DALLAS DBA METHODIST RICHARDSON MEDICAL CENTER	L06474	RICHARDSON	14	11/28/22
ROWLETT	LAKE POINTE OPERATING COMPANY LLC	L04060	ROWLETT	26	11/21/22
SAN ANTONIO	BHS PHYSICIANS NETWORK INC DBA HEART & VASCULAR INSTITUTE OF TEXAS	L06750	SAN ANTONIO	24	11/29/22

AMENDMENTS TO EXISTING LICENSES ISSUED: (Continued)

STAFFORD	ALOKI ENTERPRISE INC	L06257	STAFFORD	60	11/16/22
THROUGHOUT TX	TEXAS MATERIALS GROUP INC	L06539	AUSTIN	9	11/18/22
THROUGHOUT TX	GESSNER ENGINEERING LLC	L03733	BRYAN	31	11/28/22
THROUGHOUT TX	BRYANT CONSULTANTS INC	L05096	CARROLLTON	13	11/16/22
THROUGHOUT TX	TEXAS A&M UNIVERSITY	L00448	COLLEGE STATION	160	11/29/22
THROUGHOUT TX	ALLIANCE GEOTECHNICAL GROUP INC	L05314	DALLAS	51	11/17/22
THROUGHOUT TX	D&S ENGINEERING LABS LLC	L06677	DENTON	25	11/17/22
THROUGHOUT TX	RRC POWER & ENERGY LLC	L06105	HASKELL	16	11/18/22
THROUGHOUT TX	THOMPSON ENGINEERING INC	L07169	HOUSTON	01	11/30/22
THROUGHOUT TX	ELEMENT MATERIALS TECHNOLOGY HOUSTON LLC	L06451	HOUSTON	10	11/17/22
THROUGHOUT TX	COASTAL TESTING LABORATORIES INC	L01945	HOUSTON	32	11/15/22
THROUGHOUT TX	GAMMATRON INC	L02148	HOUSTON	33	11/16/22
THROUGHOUT TX	TEAM INDUSTRIAL SERVICES INC	L00087	PASADENA	260	11/15/22
THROUGHOUT TX	SOUTHWEST RESEARCH INSTITUTE	L00775	SAN ANTONIO	91	11/16/22
THROUGHOUT TX	SCHLUMBERGER TECHNOLOGY CORPORATION	L06303	SUGAR LAND	24	11/28/22

AMENDMENTS TO EXISTING LICENSES ISSUED: (Continued)

THROUGHOUT TX	SCHLUMBERGER TECHNOLOGY CORPORATION	L01833	SUGAR LAND	226	11/29/22
WACO	TEXAS ONCOLOGY PA	L05940	WACO	19	11/23/22
WEBSTER	BAY AREA HEART PLLC	L07165	WEBSTER	01	11/16/22

RENEWAL OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
DALLAS	TEXAS INSTRUMENTS INC	L05048	DALLAS	21	11/29/22
LA PORTE	INDUSTRIAL NUCLEAR COMPANY INC	L04508	LA PORTE	34	11/28/22
PLANO	HEALTHTEXAS PROVIDER NETWORK	L06501	PLANO	21	11/28/22
THROUGHOUT TX	RONE ENGINEERING SERVICES LTD	L02356	DALLAS	58	11/16/22
THROUGHOUT TX	COASTAL TESTING LABORATORIES INC	L01945	HOUSTON	31	11/15/22

TERMINATIONS OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
AUSTIN	FUGRO USA LAND INC	L03875	AUSTIN	34	11/29/22
CHAPPELL HILL	CHAPPELL HILL LOGGING SYSTEMS	L05522	CHAPPELL HILL	08	11/16/22
CORPUS CHRISTI	COASTAL BEND BLOOD CENTER	L05694	CORPUS CHRISTI	09	11/23/22
LUBBOCK	METHODIST DIAGNOSTIC IMAGING	L03948	LUBBOCK	62	11/15/22
PLANO	NEOTEK ENERGY INC	L06821	PLANO	04	11/29/22
THROUGHOUT TX	PREMIUM INSPECTION & TESTING INC	L07136	NEDERLAND	04	11/16/22

EXEMPTIONS ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	Exemption Number	City of License d Entity	Amendment Number	Date of Action
N/A	N/A	Generic Exemption	E22-06a	N/A	N/A	11/29/22

TRD-202300050  
 Cynthia Hernandez  
 General Counsel  
 Department of State Health Services  
 Filed: January 6, 2023

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**Texas Department of Insurance**

Notice of Rate Filing

Texas Automobile Insurance Plan Association

Description:

On January 3, 2023, the Texas Automobile Insurance Plan Association (TAIPA) filed a request to charge new insurance rates for private passenger and commercial automobiles. The filed rates represent a 5% increase in private passenger automobile and commercial automobile rates. TAIPA proposed an effective date of June 1, 2023, for new and renewal business.

The commissioner of insurance will review the filing to determine whether TAIPA's proposed rates are just, reasonable, adequate, not excessive, not confiscatory, and not unfairly discriminatory for the risks covered, as required by Insurance Code §2151.201. TAIPA's proposed rates must also be sufficient to carry all claims to maturity and meet the expenses incurred in writing and servicing the business.

In accordance with Insurance Code §2151.2022(c), the commissioner has extended the period by which the filing must be approved or disapproved by 30 days. The filing must be approved or disapproved no later than March 6, 2023.

To Review, Request Copies, and Comment:

To review or get copies of TAIPA's rate filing:

Online: Go to [www.tdi.texas.gov/rules/2023/exrules.html](http://www.tdi.texas.gov/rules/2023/exrules.html).

In person: You can review the filing at the Texas Department of Insurance, Office of the Chief Clerk, 1601 Congress Ave., Austin, Texas 78701. To schedule a time to review the materials in person, please email [ChiefClerk@tdi.texas.gov](mailto:ChiefClerk@tdi.texas.gov).

By mail: Write to the Texas Department of Insurance, Office of the Chief Clerk, MC: GC-CCO, P.O. Box 12030, Austin, Texas 78711-2030.

To comment on the rate filing, send written comments by email to ChiefClerk@tdi.texas.gov or by mail to the Texas Department of Insurance, Office of the Chief Clerk, MC: GC-CCO, P.O. Box 12030, Austin, Texas 78711-2030. Hand-delivered comments must be directed to the Texas Department of Insurance, Office of the Chief Clerk, 1601 Congress Ave., Austin, Texas 78701, and can be delivered during regular business hours. Your comments must be received by 5:00 p.m., central time, on February 17, 2023.

TRD-202300053  
Allison Eberhart  
Deputy General Counsel  
Texas Department of Insurance  
Filed: January 6, 2023

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## Texas Department of Licensing and Regulation

### Notice of Vacancies on Massage Therapy Advisory Board

The Texas Department of Licensing and Regulation (Department) announces two vacancies on the Massage Therapy Advisory Board (Board) established by Texas Occupations Code, Chapter 455. The purpose of the Board is to provide advice and recommendations to the Texas Commission of Licensing and Regulation (Commission) and the Department on technical matters relevant to the administration of this chapter. **This announcement is for:**

- one member of the public; and
- one licensed massage therapist.

The Board is composed of the following nine members appointed by the presiding officer of the Commission, with the Commission's approval. Members serve staggered six-year terms with the terms of three members expiring September 1 of each odd-numbered year. The Board is composed of the following members:

1. two members who are licensed massage therapists;
2. two members who represent licensed massage schools;
3. two members who represent licensed massage establishments;
4. one member who is a peace officer with expertise in the enforcement of Chapter 20A, Penal Code, and Subchapter A, Chapter 43, Penal Code; and
5. two members of the public.

Interested persons should submit an application on the Department website at: <https://www.tdlr.texas.gov/AdvisoryBoard/login.aspx>. Applicants can also request an application via e-mail at [advisory.boards@tdlr.texas.gov](mailto:advisory.boards@tdlr.texas.gov).

**This is not a paid position and there is no compensation or reimbursement for serving on the Committee.**

Issued in Austin, Texas this January 20, 2023.

TRD-202300115  
Mike Arismendez  
Executive Director  
Texas Department of Licensing and Regulation  
Filed: January 10, 2023

## North Central Texas Council of Governments

### Request for Qualifications - NCTCOG Traffic Incident Management Training Program (First Responder and Manager's Course and Executive Level Course)

The North Central Texas Council of Governments (NCTCOG) is requesting written qualifications from individuals interested in instructing the NCTCOG Traffic Incident Management Training Program (First Responder and Manager's Course and Executive Level Course). The purpose of this training program is to initiate a common, coordinated response to traffic incidents that will build partnerships, enhance safety for emergency personnel, reduce upstream traffic crashes, improve the efficiency of the transportation system, and improve air quality in the Dallas-Fort Worth region.

Qualifications must be received no later than 5:00 p.m., Central Time, on Friday, February 10, 2023, to Camille Fountain, Senior Transportation Planner, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011 and electronic submissions to [TransRFPs@nctcog.org](mailto:TransRFPs@nctcog.org). The Request for Qualifications will be available at [www.nctcog.org/rfp](http://www.nctcog.org/rfp) by the close of business on Friday, January 20, 2023.

NCTCOG encourages participation by disadvantaged business enterprises and does not discriminate on the basis of age, race, color, religion, sex, national origin, or disability.

TRD-202300124  
R. Michael Eastland  
Executive Director  
North Central Texas Council of Governments  
Filed: January 11, 2023

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## Public Utility Commission of Texas

### Notice of Application to Amend a Certificate of Convenience and Necessity for a Name Change

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on December 28, 2022, to amend a certificate of convenience and necessity for a name change to add two assumed names.

Docket Style and Number: Application of Livingston Telephone Company, LLC to Amend Its Certificate of Convenience and Necessity, Docket Number 54523.

The Application: Livingston Telephone Company, LLC filed an application to change the name to add two assumed names on its certificate of convenience and necessity number 40052.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by electronic mail at [puc.texas.gov](http://puc.texas.gov), by phone at (512) 936-7120, or toll-free at (888) 782-8477. The deadline for intervention in this proceeding is March 1, 2023. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 54523.

TRD-202300046  
Theresa Walker  
Assistant Rules Coordinator  
Public Utility Commission of Texas  
Filed: January 4, 2023

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## Texas Water Conservation Advisory Council

## December 2022 Applications

Project No. 62935, a request from Greenbelt Municipal & Industrial Water Authority, P.O. Box 665, Clarendon, Texas 79226, received on December 12, 2022, for \$18,100,000 in financing from the Drinking Water State Revolving Fund for the development of additional water supplies from the Ogallala Aquifer.

Project No. 62936, a request from Angelina Neches River Authority, 2901 North John Redditt Drive, Lufkin, Texas 75904, received on December 15, 2022, for \$7,705,000 in financing from the Drinking Water State Revolving Fund for Prairie Grove Utilities water system improvements project.

Project No. 62937, a request from Barksdale Water Supply Corporation, P.O. Box 178, Barksdale, Texas 78828, received on December 16, 2022, for \$960,000 in financing from the Drinking Water State Revolving Fund for construction of new water well.

Project No. 73934, a request from San Leon Municipal Utility District, 443 24th Street, San Leon, Texas 77539, received on December 28, 2022, for \$14,285,000 in financing from the Clean Water State Revolving Fund for a wastewater collection system replacement and rehabilitation project.

Project No. 62938, a request from the City of Blanco, 318 Pecan Street, Blanco, Texas 78606, received on December 28, 2022, for \$3,663,739 in financing from the Drinking Water State Revolving Fund for a water system improvement project.

Project No. 62939, a request from the City of Liberty Hill, 926 Loop 332, Liberty Hill, Texas 78642, received on December 28, 2022, for \$14,587,800 in financing from the Drinking Water State Revolving Fund for Liberty Hill No. 2 direct potable reuse project.

Project No. 62940, a request from the City of Liberty Hill, 926 Loop 332, Liberty Hill, Texas 78642, received on December 28, 2022, for \$14,563,014 in financing from the Drinking Water State Revolving Fund for Liberty Hill No. 4 Edwards Aquifer well field project.

Project No. 62941, a request from the City of Liberty Hill, 926 Loop 332, Liberty Hill, Texas 78642, received on December 28, 2022, for \$14,690,581 in financing from the Drinking Water State Revolving Fund for Liberty Hill No. 3 new drinking supply system originating from Gandy Tract Pond.

Project No. 62944, a request from the City of Eden, P.O. Box 915 Eden, Texas 76837, received on December 28, 2022, for \$3,541,000 in financing from the Drinking Water State Revolving Fund for water system improvements project.

Project No. 62942, a request from Westbound Water Supply Corporation, 201 East 8th Street, Cisco, Texas 76437, received on December 28, 2022, for \$5,416,000 in financing from the Drinking Water State Revolving Fund for water system improvements project.

Project No. 73933, a request from the City of Bartlett, 140 West Clark Street, Bartlett, Texas 76511, received on December 28, 2022, for \$16,190,000 in financing from the Clean Water State Revolving Fund for wastewater treatment plant and collection system improvements project.

Project No. 73932, a request from the City of Garrison, 330 South B Avenue, Garrison, Texas 75946, received on December 28, 2022, for \$6,000,000 in financing from the Clean Water State Revolving Fund for wastewater treatment plant replacement project.

Project No. 62943, a request from the City of Silverton, P.O. Box 250, Silverton, Texas 79257, received on December 29, 2022, for \$14,880,000 in financing from the Drinking Water State Revolving Fund for Swisher County well field development project.

Project No. 62579, a request from the City of Smyer, 202 Lincoln, P.O. Box 203, Smyer, Texas 79367, received on December 29, 2022, for \$4,365,000 in financing from the Drinking Water State Revolving Fund for water adsorption treatment system.

Project No. 62946, a request from Corix Utilities, 1812 Centre Creek Drive, Suite 100, Austin, Texas 78754, received on December 29, 2022, for \$9,883,000 in financing from the Drinking Water State Revolving Fund for Lometa water system improvements project.

Project No. 62945, a request from Rowena Water Supply Corporation, P.O. Box 125, Rowena, Texas 76875, received on December 30, 2022, for \$6,721,000 in financing from the Drinking Water State Revolving Fund for a project to reduce total trihalomethanes levels.

TRD-202300054

Ashley Harden

General Counsel

Texas Water Conservation Advisory Council

Filed: January 9, 2023

## ◆ ◆ ◆ Workforce Solutions Deep East Texas

Request for Proposal #22-417 Lease Space for Workforce Solutions Deep East Texas Angelina County Workforce Center in Lufkin, Texas

Issued by:

Workforce Solutions Deep East Texas

415 S. First Street, Suite 110B, Lufkin, Texas 75901

(936) 639-8898

[www.detwork.org](http://www.detwork.org)

The Deep East Texas Local Workforce Development Board dba Workforce Solutions Deep East Texas Board (Board) is soliciting proposals for lease space for its Workforce Solutions Deep East Texas Angelina County Workforce Center (WFC) to be located in Lufkin, (Angelina County), Texas. The purpose of this Request for Proposal (RFP) is to solicit proposals to lease existing space, renovate existing space, and/or construct a facility that can be leased in whole or part to the Board.

Anyone interested in submitting a proposal should obtain a copy of the Request for Proposal (RFP) at [www.detwork.org](http://www.detwork.org) or request a copy of the RFP by emailing [procurement@detwork.org](mailto:procurement@detwork.org).

Release Date: January 4, 2023

Bidders Conference: January 18, 2023, 9:00 a.m. (CST)

Deadline for Submission of Questions: January 25, 2023, 2:00 p.m. (CST)

Proposal Due Date and Time: February 13, 2023, 4:00 p.m. (CST)

Projected Notice of Award Date: March 1, 2023

Proposals must be submitted via email to [procurement@detwork.org](mailto:procurement@detwork.org).

Workforce Solutions Deep East Texas is an equal opportunity employer/program and auxiliary aids and Services are available upon request to include individuals with disabilities.

RELAY Texas service at 711 or (TDD) (800) 735-2989/(800) 735-2988 (voice).

TRD-202300045

Mark Durand  
Executive Director  
Workforce Solutions Deep East Texas  
Filed: January 4, 2023





## How to Use the Texas Register

**Information Available:** The sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

**Governor** - Appointments, executive orders, and proclamations.

**Attorney General** - summaries of requests for opinions, opinions, and open records decisions.

**Texas Ethics Commission** - summaries of requests for opinions and opinions.

**Emergency Rules** - sections adopted by state agencies on an emergency basis.

**Proposed Rules** - sections proposed for adoption.

**Withdrawn Rules** - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

**Adopted Rules** - sections adopted following public comment period.

**Texas Department of Insurance Exempt Filings** - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

**Review of Agency Rules** - notices of state agency rules review.

**Tables and Graphics** - graphic material from the proposed, emergency and adopted sections.

**Transferred Rules** - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

**In Addition** - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

**How to Cite:** Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words “TexReg” and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 47 (2022) is cited as follows: 47 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written “47 TexReg 2 issue date,” while on the opposite page, page 3, in the lower right-hand corner, would be written “issue date 47 TexReg 3.”

**How to Research:** The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: <http://www.sos.state.tx.us>. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

## Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State’s website at <http://www.sos.state.tx.us/tac>.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
26. Health and Human Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

**How to Cite:** Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

**How to Update:** To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule’s *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

### TITLE 1. ADMINISTRATION Part 4. Office of the Secretary of State Chapter 91. Texas Register

1 TAC §91.1.....950 (P)

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