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# TEXAS REGISTER

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# TEXAS REGISTER

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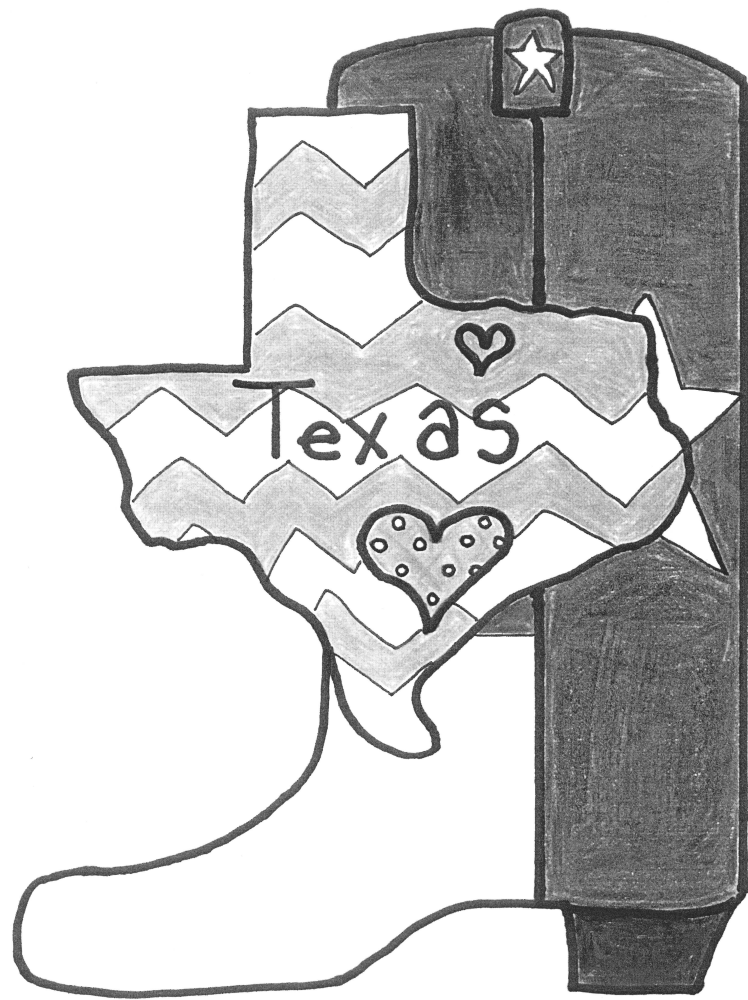
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# THE GOVERNOR

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

## Appointments

### Appointments for January 18, 2023

Appointed to the Interstate Compact for Juveniles for a term to expire at the pleasure of the Governor, Louis A. "Lou" Serrano, IV of Austin, Texas (replacing Camille Cain as Administrator and replacing Daryl Liedecke as the Commissioner. Mr. Liedecke will continue serving as the Deputy Compact Administrator).

### Appointments for January 25, 2023

Appointed to the State Independent Living Council for a term to expire October 24, 2025, Dana L. McGrath of Austin, Texas (replacing Keisha Row Nunn of Austin, whose term expired).

Appointed to the State Independent Living Council for a term to expire October 24, 2025, Patrick D. Sturdivant of San Antonio, Texas (replacing Thomas M. "Mike" Bates of Odessa, whose term expired).

Appointed to the State Independent Living Council for a term to expire October 24, 2025, Tiffany Walker of San Antonio, Texas (replacing Colton J. Read of New Braunfels, whose term expired).

Greg Abbott, Governor

TRD-202300296



## Proclamation 41-3954

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

WHEREAS, I, Greg Abbott, Governor of Texas, issued a disaster proclamation on May 31, 2021, certifying under Section 418.014 of the Texas Government Code that the surge of individuals unlawfully crossing the Texas-Mexico border posed an ongoing and imminent threat of disaster for a number of Texas counties and for all state agencies affected by this disaster; and

WHEREAS, I amended the aforementioned proclamation in a number of subsequent proclamations, including to modify the list of affected counties and therefore declare a state of disaster for those counties and for all state agencies affected by this disaster; and

WHEREAS, the certified conditions continue to exist and pose an ongoing and imminent threat of disaster as set forth in the prior proclamations;

NOW, THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby renew the aforementioned proclamation and declare a disaster for Bee, Brewster, Brooks, Chambers, Colorado, Crane, Crockett, Culberson, DeWitt, Dimmit, Duval, Edwards, El Paso, Frio, Galveston, Goliad, Gonzales, Hudspeth, Jackson, Jeff Davis, Jim Hogg, Jim Wells, Kenedy, Kerr, Kimble, Kinney, Kleberg, La Salle, Lavaca, Live Oak, Mason, Maverick, McCulloch, McMullen, Medina, Menard, Midland, Pecos, Presidio, Real, Refugio, San Patricio, Schleicher, Sutton, Terrell, Throckmorton, Uvalde, Val Verde, Victoria, Webb, Wharton, Wilbarger, Wilson, Zapata, and Zavala counties and for all state agencies affected by this disaster. All orders, directions, suspensions, and authorizations provided in the Proclamation of May 31, 2021, as amended and renewed in subsequent proclamations, are in full force and effect.

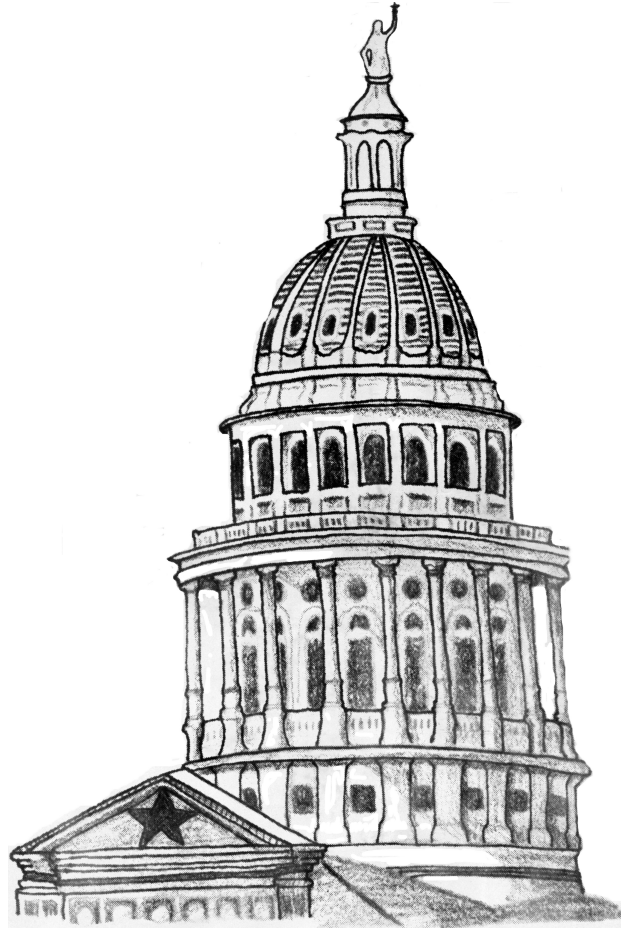
In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

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 20th day of January, 2023.

Greg Abbott, Governor

TRD-202300264







# EMERGENCY RULES

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

## TITLE 26. HEALTH AND HUMAN SERVICES

### PART 1. HEALTH AND HUMAN SERVICES COMMISSION

#### CHAPTER 500. COVID-19 EMERGENCY

##### HEALTH CARE FACILITY LICENSING

##### SUBCHAPTER A. HOSPITALS

###### 26 TAC §500.4

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts on an emergency basis in Title 26 Texas Administrative Code, Chapter 500, COVID-19 Emergency Health Care Facility Licensing, new §500.4, concerning an emergency rule in response to COVID-19 in order to permit a licensed hospital to participate in the Centers for Medicare & Medicaid Services (CMS) Acute Hospital Care at Home Program to expand hospital capacity in response to the COVID-19 pandemic. As authorized by Texas Government Code §2001.034, the Commission may adopt an emergency rule without prior notice or hearing upon finding that an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice.

Emergency rules adopted under Texas Government Code §2001.034 may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

###### BACKGROUND AND PURPOSE

The purpose of the emergency rulemaking is to support the Governor's proclamations relating to the continued response to the COVID-19 disaster. In these proclamations, the Governor authorized the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster and directed that government entities and businesses would continue providing essential services. HHSC accordingly finds that an imminent peril to the public health, safety, and welfare of the state requires immediate adoption of this emergency rule for Participating in the Centers for Medicare and Medicaid Services Acute Hospital Care at Home Program During the COVID-19 Pandemic.

To protect hospital patients and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting an emergency rule to temporarily permit a currently licensed hospital to participate in the CMS hospitals at home program to expand hospital capacity in response to the COVID-19 pandemic.

###### STATUTORY AUTHORITY

The emergency rulemaking is adopted under Texas Government Code §2001.034 and §531.0055 and Texas Health and Safety

Code §241.026. Texas Government Code §2001.034 authorizes the adoption of emergency rules without prior notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice. Texas Government Code §531.0055 authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by the health and human services system. Texas Health and Safety Code §241.026 authorizes the Executive Commissioner of HHSC to adopt rules governing development, establishment, and enforcement standards for the construction, maintenance, and operation of licensed hospitals.

The new section implements Texas Government Code §531.0055 and Texas Health and Safety Code §241.026.

§500.4. Participating in the Centers for Medicare and Medicaid Services Acute Hospital Care at Home Program During the COVID-19 Pandemic.

(a) Notwithstanding hospital functions and services requirements at 25 TAC §133.41 (relating to Hospital Functions and Services) and hospital physical plant and construction requirements at 25 TAC §§133.161 - 133.169 (relating to Physical Plant and Construction Requirements), a hospital may treat an eligible patient at that patient's residence as part of the Centers for Medicare & Medicaid Services (CMS) Acute Hospital Care at Home program if the hospital:

(1) obtains CMS approval to participate in the Acute Hospital Care at Home program;

(2) submits an application as specified by the Texas Health and Human Services Commission (HHSC) via email at info-hhfc@hhs.texas.gov to participate in the Acute Hospital Care at Home program;

(3) provides a copy of the CMS approval and any additional information HHSC requires in its review of the request; and

(4) receives written approval from HHSC to participate in the CMS Acute Hospital Care at Home program.

(b) At any time HHSC may withdraw its approval for a hospital to participate in the CMS Acute Hospital Care at Home program. Any patient being treated under the program at the time approval is withdrawn shall be safely relocated as soon as practicable according to the hospital's policies and procedures.

(c) A hospital that participates in the CMS Acute Hospital Care at Home program shall comply with the CMS program requirements and with all other applicable statutes and regulations.

(d) To the extent this section may conflict with a requirement of 25 TAC §133.21(c)(4)(B) - (C) (relating to General), this section controls.

(e) The hospital shall develop, implement, and enforce policies and procedures to ensure the safety of a patient's residence when participating in the CMS Acute Hospital Care at Home program.

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

Filed with the Office of the Secretary of State on January 25, 2023.

TRD-202300312

Karen Ray  
Chief Counsel  
Health and Human Services Commission  
Effective date: January 29, 2023  
Expiration date: May 28, 2023  
For further information, please call: (512) 834-4591



# PROPOSED RULES

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

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

## TITLE 19. EDUCATION

### PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

#### CHAPTER 3. RULES APPLYING TO ALL PUBLIC AND PRIVATE OR INDEPENDENT INSTITUTIONS OF HIGHER EDUCATION IN TEXAS REGARDING ELECTRONIC REPORTING OPTION FOR CERTAIN OFFENSES; AMNESTY

##### SUBCHAPTER A. REQUIREMENTS FOR CERTAIN INCIDENTS OF SEXUAL HARASSMENT, SEXUAL ASSAULT, DATING VIOLENCE, OR STALKING AT CERTAIN PUBLIC AND PRIVATE INSTITUTIONS OF HIGHER EDUCATION; AUTHORIZING ADMINISTRATIVE PENALTIES

###### 19 TAC §3.19

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 3, Subchapter A, §3.19, concerning compliance with requirements for certain incidents of sexual harassment, sexual assault, dating violence, or stalking reporting. Specifically, this amendment will add a matrix to determine the amount of the administrative penalty, with mitigating and aggravating factors; set the due date for compliance certification; set a schedule for risk-based compliance monitoring; and provide for appeal of assessed penalties.

The current rule only specifies the statutory maximum for an administrative penalty. Adding a matrix provides clarity and guidance to Coordinating Board staff and affected institutions. Texas Education Code (TEC), Chapter 51, Sections 51.259 and 51.295 allow the Coordinating Board to adopt rules as necessary to implement and enforce TEC Chapter 51, Subchapters E-2 and E-3. The Coordinating Board used negotiated rulemaking procedures in developing the revisions.

Rule 3.19(a), Compliance, adds the specific due date for each postsecondary educational institution to annually certify in writing to the Coordinating Board that it is in substantial compliance with Texas Education Code, Chapter 51, Subchapter E-2. This revision adds clarity to the reporting requirement. The statutory requirement only specified annual certification. The rules initially

specified a month. To ensure all postsecondary educational institutions have the same understanding of the due date, a specific date was added. This date was chosen in order for the Coordinating Board to fulfill its obligation to report on substantial compliance of postsecondary educational institutions during the preceding calendar year.

Rule 3.19(b), Compliance, is a new section stating that the Coordinating Board shall conduct a risk-based compliance monitoring of Texas Education Code, Chapter 51, Subchapters E-2 and E-3. The new section provides details on the risk factors under which the review will be undertaken and the report template which will be provided to institutions. As the Coordinating Board was charged with reporting on substantial compliance by postsecondary educational institutions, this section was added to provide guidance on the risk factors that the Coordinating Board staff would utilize in its review for substantial compliance.

Rule 3.19(c), Compliance, is a renumbered section. The section clarifies the statutory requirements effective dates, and that the statutory penalty amount may be assessed annually. The section addresses the effect of substantial compliance and the Coordinating Board's independent evaluation of evidence on the penalty assessment. The effective dates for each statutory subchapter are listed in the statute and clarified in the rule. Specifically stating that the statutory penalty could be assessed annually was the result of the negotiated rulemaking committee's acknowledgement that ongoing or separate non-compliance should not be included in a one-time penalty that could never be assessed again. The negotiated rulemaking committee also agreed that, per the statute, if a postsecondary educational institution was found in substantial compliance, no penalty assessment would be made.

Rule 3.19(d), Compliance, is a new section detailing how the Coordinating Board will determine an institution's or system's good faith effort to remain in substantial compliance. Factors for evaluation are provided in this section. As the Coordinating Board was charged with reporting on substantial compliance by postsecondary educational institutions, this section was added to provide guidance on the factors that the Coordinating Board staff would utilize in its review to determine an institution's or system's good faith efforts to be in substantial compliance.

Rule 3.19(e), Compliance, is a renumbered section that replaces the current language with new language. The section states that failure to file the annual certification by October 31 of each year will result in a \$2000 penalty per day of violation. The section allows a one month cure period whereby the penalty will not be assessed. The penalty also allows an institution to file a good faith correction to a previously filed certification within a reasonable time. As each postsecondary educational institution is statutorily-required to file an annual certification and the due date has been clarified, this section was added to provide for a specific

penalty amount within the statutory amount which would result if the annual certification was not timely filed and how the late filing could be cured, resulting in no late filing penalty.

Rule 3.19(f), Compliance, is a new section, providing a penalty matrix for the annual penalty assessment if an institution fails to maintain substantial compliance with Texas Education Code, Chapter 51, Subchapters E-2 or E-3. The section provides details on what the Coordinating Board will consider when assessing penalties, including the number of students at an institution, mitigating factors, aggravating factors, and other factors justice may require. The penalty matrix breaks down penalty amounts by sections of Subchapters E-2 and E-3. The statute allows for an administrative penalty in an amount not to exceed \$2 million in both Subchapters E-2 and E-3 but does not give additional guidance on how to make the penalty amount determination. Through the negotiated rulemaking process, this section was added to give postsecondary educational institutions a framework for the possible amounts to be administratively assessed and factors which might increase or decrease the total amount assessed.

Rule 3.19(g), Compliance, is a renumbered section that replaces the current language with new language. The section requires the Coordinating Board to provide a written notice to an institution for its reason for assessing an administrative penalty. This requirement was moved from the existing section (c) of the rule to this section and clarifies that it refers to another section within the rule and follows the statutory requirement to provide written notice.

Rule 3.19(h), Compliance, is a renumbered section that replaces the current language with new language. The section provides for institutional appeal of an assessed administrative penalty and allows the Coordinating Board to enter a final decision and order after a contested case proceeding. The section clarifies the statutory right to appeal a penalty assessment and affirmatively states that the Coordinating Board will enter a final decision after a contested case proceeding.

Rule 3.19(i), Compliance, states that an institution may not pay an administrative penalty assessed under this rule using state-appropriated or federal money. This language was moved from another rule section and the rule prohibition follows the statutory prohibition against state or federal money.

Rule 3.19(j), Compliance, requires the Coordinating Board to deposit an assessed administrative penalty to the credit of the sexual assault program fund established under Section 420.008, Texas Government Code. This language was moved from another rule section and the requirement to deposit administrative penalty funds follows the statutory requirement to deposition to the credit of an established sexual assault program fund.

Rule 3.19(k), Compliance, provides for an annual report to the governor, lieutenant governor, the speaker of the house of representatives, and the standing legislature committees with primary jurisdiction over legislation concerning sexual assault at postsecondary educational institutions. The report is to include a summary of institutions found not to be in substantial compliance and any penalties assessed during the preceding calendar year. This language was moved from another rule section and the annual report submission follows the statutory requirement to report substantial compliance of postsecondary educational institutions to the governor, lieutenant governor, the speaker of the house of representatives, and the standing legislature commit-

tees with primary jurisdiction over legislation concerning sexual assault at postsecondary educational institutions.

Tina Jackson, Assistant Commissioner, Workforce Education, has determined that for each of the first five years the sections are in effect there would be fiscal implications for state or local governments only if an institution violates the rule, as required by statute. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

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

Tina Jackson, Assistant Commissioner, Workforce Education, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be the clarity in enforcing the requirements and in assessing penalties; and in adding assessed administrative penalties to the sexual assault program fund which is a special account in the general revenue fund. There are anticipated economic costs to persons who are required to comply with the sections as proposed.

#### Government Growth Impact Statement

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

Comments on the proposal may be submitted to Cathie Maeyaert, P.O. Box 12788, Austin, Texas 78711-2788, or via email at [cathie.maeyaert@highered.texas.gov](mailto:cathie.maeyaert@highered.texas.gov). Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendment is proposed under Texas Education Code, Sections 51.259 and 51.295 which provide the Coordinating Board with the authority to adopt rules as necessary to implement and enforce TEC, Chapter 51, Subchapters E-2 and E-3.

The proposed amendment affects Texas Administrative Code, Title 19, Part 1, Chapter 3, §3.19.

#### §3.19. Compliance.

(a) The chief executive officer of each postsecondary educational institution shall annually certify in writing to the Coordinating Board, not later than [in] October 31 of each year, that the institution is in substantial compliance with Texas Education Code, Chapter 51, Subchapter E-2. The Coordinating Board shall make available to institutions a required template for the certification which satisfies the requirements of this section.

(b) In addition to annually reviewing the reporting under Texas Education Code §51.258 and §3.19, the Coordinating Board shall conduct risk-based compliance monitoring of Texas Education Code, Chapter 51, Subchapters E-2 and E-3. The Coordinating Board will determine the basis for reviews based on risk factors such as time since last review, stakeholder feedback, prior findings or complaints, and other factors. The Coordinating Board shall make available to the institutions a report template which satisfies the requirements of this section.

(c) [(b)] If the Coordinating Board determines that a postsecondary educational institution is not in substantial compliance with Texas Education Code, Chapter 51, Subchapters E-2, effective [on or after] January 1, 2020, or Subchapter [and] E-3, effective [on or after] August 1, 2020, the Coordinating Board may assess an administrative penalty against the institution in an amount not to exceed \$2 million annually. Compliance errors committed by an institution or system that are in substantial compliance with Subchapters E-2 and E-3 will not result in a penalty. The Coordinating Board will not find an institution is out of substantial compliance with the provisions in Subchapter E-2 and Subchapter E-3 based on a determination that the Coordinating Board would have taken different action after an independent evaluation of evidence. [In determining the amount of the penalty, the Coordinating Board shall consider the nature of the violation and the number of students enrolled at the institution.]

(d) In evaluating whether an institution or system is in substantial compliance in accordance with §3.3 of this title (relating to Definitions), the Coordinating Board will determine the institution's or system's good faith effort by evaluating the following factors:

- (1) The nature and seriousness of the compliance error;
- (2) The extent to which the institution complied with the statutory requirements and to what extent it did not;
- (3) The number of any institutional compliance errors;
- (4) Whether the institution had actual notice of the error;
- (5) Whether the institution made any effort to rectify any compliance errors or agrees to rectify any violations going forward;
- (6) The extent to which the institution has relevant policies and/or practices;
- (7) The institution's intent;
- (8) Severity of the error's effect;
- (9) Any previous compliance errors of a similar kind and the time lapse since those error(s);
- (10) Institutional efforts to prevent compliance errors, including the extent to which the institution provided training to employees and/or acted after learning about the error;
- (11) The explanation for the cause of the compliance error, including a good-faith mistake; a differing, reasonable interpretation of the law; a conflict between two provisions, or a conflict with another legal or governmental requirement (such as Title IX regulations or a mandatory report to the National Institutes of Health);
- (12) Any prevention and/or response efforts of the institution, made in good faith, to address a possible compliance error;
- (13) The degree of cooperation of the institution with the Coordinating Board in remedying a potential compliance error; and
- (14) Any other fact or circumstance as justice may require.

(e) [(e)] A postsecondary educational Institution's failure to timely and accurately file the certification of substantial compliance

with Texas Education Code §51.258 and Subsection (a) not later than October 31 of each year shall result in a penalty of \$2,000 per day of violation. [If the Coordinating Board assesses an administrative penalty against a postsecondary educational institution under Subsection (b), the Coordinating Board shall provide to the institution written notice of the Coordinating Board's reasons for assessing the penalty.]

(1) A postsecondary educational institution may cure a violation under this subsection by filing its report not later than November 30 of the year the report was due.

(2) If the postsecondary educational institution cures the violation as provided in this subsection, the Coordinating Board shall not assess a penalty.

(3) If the postsecondary educational Institution fails to cure the violation as provided in this subsection, the Coordinating Board shall assess the full penalty owed under this subsection beginning on November 1 of the year the report was due.

(4) If a postsecondary educational institution files a good faith correction to a previously filed certification of substantial compliance within a reasonable time of discovering an unintentional error, but not later than February 1 following the due date of the report, the Coordinating Board shall not assess a penalty.

(f) The Coordinating Board may assess an administrative penalty, up to a total of \$2 million annually, if a postsecondary educational institution has failed to maintain substantial compliance with Texas Education Code, Chapter 51, Subchapters E-2 or E-3.

(1) In determining the total penalty to assess, the Coordinating Board shall consider the number of students at the institution, the penalty matrix in this section, apply mitigating and aggravating factors, and any other factor justice may require. Mitigating factors may result in a reduction of the administrative penalty. Aggravating factors may result in an increased administrative penalty, up to \$2 million annually.

(2) Penalty Matrix. Potential annual penalty amounts are shown in Figure 1.

Figure: 19 TAC §3.19(f)(2)

(3) Mitigating factors may include:

(A) The inability of the postsecondary educational institution to meet the requirement of law due to:

(i) a disaster declared under Texas Government Code, Chapter 418;

(ii) a technology failure rendering compliance impossible; or

(iii) a severe medical impairment of a person responsible for compliance with a requirement under Texas Education Code, Chapter 51, Subchapters E-2 or E-3.

(B) Evidence that the postsecondary educational institution properly reported an incident to another state or federal agency with law enforcement or regulatory authority;

(C) Any actual notice from the institution of the compliance error;

(D) Institutional efforts to prevent compliance errors, including the extent to which the institution provided training to employees and/or acted after learning about the error;

(E) The explanation for the cause of the compliance error, including a good-faith mistake; a differing, reasonable interpretation of the law; a conflict between two provisions, or a conflict with

another legal or governmental requirement (such as Title IX regulations or a mandatory report to the National Institutes of Health);

(F) The lack of harm to any individual; and

(G) The extent to which the institution or system complied with Texas Education Code, Chapter 51, Subchapters E-2 and E-3.

(4) Aggravating factors shall include:

(A) Harm to an individual caused by, or directly related to, the postsecondary educational institution's failure to comply with Chapter 51, Subchapters E-2 and E-3;

(B) Any evidence of a postsecondary educational institution's failure to act on a prior substantially similar complaint;

(C) Any evidence of multiple incidents of similar failures or length of time of failure by the postsecondary institution;

(D) Any evidence that the postsecondary educational institution or its chief executive officer knowingly provided a false certification under Texas Education Code §51.258(a);

(E) That the postsecondary educational institution attempted to conceal or cause others to conceal information relevant to a determination of violation under Texas Education Code, Chapter 51, Subchapters E-2 and E-3; and

(F) The extent to which the institution or system failed to comply with Texas Education Code, Chapter 51, Subchapters E-2 and E-3.

{(d) A postsecondary educational institution assessed an administrative penalty under Subsection (b) may appeal the penalty in the manner provided by Chapter 2001, Government Code.}

(g) [(e)] If the Coordinating Board assesses an administrative penalty against a postsecondary educational institution under subsection (f) of this section, the Coordinating Board shall provide to the institution written notice of the Coordinating Board's reason for assessing the penalty. [A postsecondary educational institution may not pay an administrative penalty assessed under Subsection (b) using state or federal money.]

(h) [(f)] A postsecondary educational institution assessed an administrative penalty under Subsection (f) may appeal the penalty in the manner provided by Chapter 2001, Texas Government Code. The Coordinating Board shall enter a final decision and order as to any penalty assessed after a contested case proceeding. [The Coordinating Board shall deposit an administrative penalty collected under this section to the credit of the sexual assault program fund established under Section 420.008, Texas Government Code.]

(i) [(g)] A postsecondary educational institution may not pay an administrative penalty assessed under Subsection (f) using state-appropriated or federal money. [The Coordinating Board shall annually submit to the governor, the lieutenant governor, the speaker of the house of representatives, and the standing legislative committees with primary jurisdiction over legislation concerning sexual assault at postsecondary educational institutions a report regarding compliance with this subchapter, including a summary of the postsecondary educational institutions found not to be in substantial compliance as provided by this section and any penalties assessed under this section during the calendar year preceding the date of the report.]

(j) The Coordinating Board shall deposit an administrative penalty collected under this section to the credit of the sexual assault program fund established under Section 420.008, Texas Government Code.

(k) The Coordinating Board shall annually submit to the governor, the lieutenant governor, the speaker of the house of representatives, and the standing legislature committees with primary jurisdiction over legislation concerning sexual assault at postsecondary educational institutions a report regarding compliance with this subchapter, including a summary of the postsecondary education institutions found not to be in substantial compliance as provided by this section and any penalties assessed under the section during the calendar year preceding the date of the report.

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

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Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: March 5, 2023

For further information, please call: (512) 427-6209



## CHAPTER 13. FINANCIAL PLANNING SUBCHAPTER F. FORMULA FUNDING AND TUITION CHARGES FOR REPEATED AND EXCESS HOURS OF UNDERGRADUATE STUDENTS

### 19 TAC §§13.101 - 13.104, 13.109

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 13, Subchapter F, §§13.101 - 13.104 and 13.109, concerning limitations on hours eligible to be reported for formula funding to the Coordinating Board. Specifically, this amendment will implement Senate Bill (SB) 1531 from the 87th Regular Session of the Texas Legislature that establishes a specific limit on hours that can be reported for formula funding that are in excess of those required for an associate degree. The amendment would also revise a provision regarding notification of students on their progress towards the hours limit to make the responsibilities of institutions specific and actionable.

SB 1531 (87th Regular Session) amended Education Code to reestablish excess hours limits for formula funding. The new limits are 30 hours in excess of what is required for a baccalaureate degree and 15 hours in excess of what is required for an associates degree. Students are assumed to be enrolled in a baccalaureate degree if their intention is unknown.

Rule 13.101, Authority, is amended to make the list of authorities under which the subsequent rules are implemented to be more accurate.

Rule 13.102, Definitions, the definitions of "student" and "academic" are made more specific and clearer in response to stakeholder engagement. The definition of excess hours now refers to §13.103 rather than fully describing what excess hours are.

Rule 13.103, Limitation on Formula Funding for Excess Hours, is amended to explicitly define the excess hours limit for each co-

hort considering previous amendments to Education Code concerning the excess hours limit.

Rule 13.104, Exemptions for Excess Hours, is amended to establish that hours abandoned by the Fresh Start program do not count against the excess hours limit. This clarifies the requirement in rule to align with statute.

Rule 13.109, Additional Responsibilities of Institutions, contained a provision that required institutions of higher education to "assist" students approaching the excess hours limit. This was vague and unenforceable. The revised rule replaces this with a requirement that institutions provide at least one notice to students approaching the excess hours limit.

Emily Cormier, Assistant Commissioner for Funding, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. The rule change is in conformity with statute due to the implementation of SB1531; a fiscal impact of the rule change may reduce future appropriations to institutions of higher education due to semester credit hours no longer being eligible for state formula funding, but the revisions to rule align directly to statute and therefore, the rules do not have a fiscal impact. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

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

Emily Cormier, Assistant Commissioner for Funding, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be to encourage institutions of higher education to reduce the number of courses students take in excess of the required number of courses for associates degrees. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

#### Government Growth Impact Statement

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

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

The amendment is proposed under Texas Education Code, Section 61.0595, which provides the Coordinating Board with the authority to establish rules that limit certain undergraduate hours that may be reported for formula funding.

The proposed amendment affects rules on the limitations for the reporting of hours to the Coordinating for formula funding.

#### *§13.101. Authority.*

Texas Education Code, §54.014, provides that each institution [institutions] may charge a higher rate of tuition to students with repeated or excess hours. Texas Education Code, §61.0595, limits formula funding for excess hours. The General Appropriations Act, SB 1, Article III, §13, 87th Legislature, Regular Session, limits formula funding for a course for which a student would generate formula funding for the third time. Texas Education Code, §61.059(b), grants the Coordinating Board the authority to devise, establish, and periodically review and revise formula recommendations for institutions of higher education. [The General Appropriations Act, SB 1, Article III, §40, 85th Legislature, Regular Session, limits formula funding for a course for which a student would generate formula funding for the third time.] Texas Education Code, §51.340(a) limits the number of remedial or developmental education semester credit hours for which formula funding may be received.

#### *§13.102. Definitions.*

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

(1) Degree Plan--Academic program of courses and their related hours culminating in a degree or certificate, including minors, double majors, and completion of any other special program in which the student is also enrolled, such as a program with a study abroad component.

(2) Excess Hours--Hours attempted by a student that are in excess of the limits and therefore ineligible for formula funding as described in §13.103. [Effective with students initially enrolling in the fall 1999 semester and subsequent terms, hours attempted by a resident undergraduate student that exceed more than 45 hours of the number of hours required for completion of the degree plan in which the student is enrolled. Effective with students initially enrolling in the fall 2006 semester and subsequent terms, hours attempted by a resident undergraduate student that exceed more than 30 hours of the number of hours required for completion of the degree program in which the student is enrolled. Effective fall 2009, hours earned by a student before graduating from high school and used to satisfy high school graduation requirements are not included in the calculation of excess hours. For purposes of excess hours, resident undergraduate student includes a nonresident student who is permitted to pay resident tuition.]

(3) Hours--Semester credit hours.

(4) International Study Abroad Student--A student who is a citizen or permanent resident of a nation other than the United States who resides in the nation of which he or she is a citizen or permanent resident and who is in the United States and enrolled at a Texas public institution of higher education for a limited time as part of an exchange program or other study abroad program and who is not seeking a certificate or degree from a Texas Public institution of higher education.

(5) Non-Course-Based Developmental Education Interventions (also known as Non-Semester-Length Interventions and also referred to as interventions)--Interventions that use learning approaches designed to address a student's identified weaknesses and effectively and efficiently prepare the student for college-level work. These interventions must be overseen by an instructor of record, must

not fit traditional course frameworks, and cannot include advising or learning support activities already connected to a traditional course; interventions may include, but are not limited to, tutoring, supplemental instruction, or labs.

(6) Remedial and Developmental Courses--Courses designed to correct academic deficiencies and bring students' skills to an appropriate level for entry into college. The term includes English for speakers of other languages (ESOL) courses in which a student is placed as a result of failing the reading or writing portion of a test required by §4.56 of this title (relating to Assessment Instruments).

(7) Repeated Hours for Attempted Course--Hours for a course that is the same or substantially similar to a course that the student previously attempted for two or more times at the same institution. Previously attempted courses from which the student withdraws before the official census date shall not count as an attempted course.

(8) Repeated Hours for Completed Course--Hours for a course in which a student enrolls for two or more times that is the same as or substantially similar to a course that the student previously completed and received a grade of A, B, C, D, F, or Pass/Fail at the same institution.

(9) Student--For the purposes of this subchapter students are defined as undergraduate students who have not yet received a baccalaureate degree or equivalent. [; a student who has not been awarded a bachelor's degree or the equivalent.]

(10) Workforce Education Courses--Courses offered by two-year institutions for the primary purpose of preparing students to enter the workforce that are included in the Workforce Education Course Manual (WECM) or a college's technical local need course inventory. [rather than academic transfer.] The term includes both technical courses and continuing education courses.

§13.103. *Limitation on Formula Funding for Excess Hours.*

(a) An institution [Institutions] shall not submit excess hours to the Board for the purposes of formula funding, unless those hours are exempt under the provisions of §13.104 of this title (relating to Exemptions for Excessive Hours [Excessive Hour Exemptions]).

(b) For the purpose of determining the number of hours required for a degree plan, each institution [institutions] shall utilize the degree plan designated by the student as of the official census day of the term.

(1) For a student who was initially enrolled in fall of 2023 and in an associate degree program the excess hours limit is the required semester credit hours for the degree, plus 15; [If a student at a four-year institution is not enrolled in a degree program, institutions shall consider the student to be enrolled in a degree program requiring a minimum of 120 hours.]

(2) A student initially enrolled in fall of 2023 but not enrolled in any program is treated as enrolled in a baccalaureate degree program and the excess hours limit is 150;

(3) For an undergraduate resident student initially enrolled in the fall of 2006 or later and in a baccalaureate degree program the excess hours limit is the hours required for the student's degree, plus 30;

(4) For an undergraduate resident student initially enrolled in the fall of 1999 through summer 2006, the excess hours limit is the hours required for the student's degree, plus 45; and

(5) For an undergraduate resident student initially enrolled before fall 1999, there is no excess hours limit.

(c) [(2)] If a student is enrolled on a temporary basis in a university or health-related institution and is also enrolled in a private or independent institution of higher education or an out-of-state institution of higher education, a Texas institution shall consider the student to be enrolled in a degree program requiring a minimum of 120 hours.

(d) [(e)] An institution [Institutions] shall not consider any hours for which a student has enrolled as part of a master's or professional degree program without first completing a baccalaureate [bachelor's] degree in the calculation of the number of hours required for a baccalaureate [bachelor's] degree or the equivalent until the student has completed a minimum of 120 hours required for the baccalaureate [bachelor's] degree or equivalent.

§13.104. *Exemptions for Excess Hours.*

The following types of hours are exempt and are not subject to the limitation on formula funding set out in §13.103 of this title (relating to Limitation on Formula Funding for Excess Hours):

(1) hours earned by the student before receiving a baccalaureate [bachelor's] degree that has been previously awarded to the student;

(2) hours earned through examination or similar method without registering for a course;

(3) hours from remedial and developmental courses and/or interventions, workforce education courses, or other courses that would not generate [academic] credit that could be applied to an academic [a] degree at the institution if the course work is within limitations specified in §13.107 of this title (relating to Limitation on Formula Funding for Remedial and Developmental Courses and Interventions);

(4) hours earned by the student at a private institution or an out-of-state institution;

(5) hours not eligible for formula funding;

(6) semester credit hours earned by the student before graduating from high school and used to satisfy high school graduation requirements; [and]

(7) hours abandoned through enrollment under the Academic Fresh Start Program under Tex. Educ. Code Section 51.931; and

(8) [(7)] 15 semester credit hours not otherwise exempt earned toward a degree program by a student who:

(A) has reenrolled at the institution following a break in enrollment from the institution or another institution of higher education covering at least the 24-month period preceding the first class day of the initial semester or other academic term of the student's reenrollment; and

(B) successfully completed at least 50 semester credit hours of course work at an institution of higher education that are not exempt in paragraphs (1) - (7) [(1) - (6)] of this section before that break in enrollment.

§13.109. *Additional Responsibilities of Institutions.*

(a) Each institution [Institutions] shall report to the Board all information required to comply with the provisions of this subchapter. Based upon this information, the Coordinating Board shall maintain a database containing information regarding the number of hours a student has accumulated.

(b) Each institution shall publish information in the catalog about the limitations on hours set out in this subchapter and the tuition rate that will be charged to an affected student. Until this material is



included in its catalog, the institution shall inform each new undergraduate student enrolling at the institution in writing of the limitations on formula funding and the tuition rate that will be charged to an affected student.

(c) Each institution of higher education [Institutions] shall track the progress of each student in relation to the excess hours limit, notify the student of their progress toward the limit, and disclose the institution's tuition policy for a student who exceeds the limit. Notification shall occur no later than when a student seeking an associate degree has accumulated 60 hours and when a student seeking a baccalaureate degree has accumulated 120 hours. [students and shall identify and assist those students who are approaching the limitations on formula funding.]

{(d) Community and technical colleges and the Lamar State Colleges shall inform each student of the individual's progress toward the limitations on formula funding and shall disclose the institution's tuition policy for students who exceed the limitations when the student has accumulated 70 or more hours.}

{(e) Universities and health-related institutions shall inform each student of the individual's progress toward the limitations on formula funding and shall disclose the institution's tuition policy for students who exceed the limitations when the student has accumulated 120 or more hours toward the limit.}

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 18, 2023.

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Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6548



## TITLE 22. EXAMINING BOARDS

### PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

#### CHAPTER 511. ELIGIBILITY

##### SUBCHAPTER C. EDUCATIONAL REQUIREMENTS

###### 22 TAC §511.57

The Texas State Board of Public Accountancy (Board) proposes an amendment to §511.57, concerning Qualified Accounting Courses.

###### Background, Justification and Summary

To be eligible to take the UCPA exam an applicant must have completed a minimum number of hours of course work from an accredited higher education institution. The Board is recognizing the addition of courses in financial planning as acceptable course work.

###### Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

###### Public Benefit

The adoption of the proposed rule amendment will expand the course work available to a student wishing to become eligible to take the CPA exam.

###### Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

###### Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

###### Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

###### Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

###### Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on March 3, 2023.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods

of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

#### Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151, §901.655 and §901.307(b) which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

#### §511.57. *Qualified Accounting Courses.*

(a) An applicant shall meet the board's accounting course requirements in one of the following ways:

(1) Hold a baccalaureate or higher degree from a board-recognized institution of higher education as defined by §511.52 of this chapter (relating to Recognized Institutions of Higher Education) and present official transcript(s) from board-recognized institution(s) that show degree credit for no fewer than 30 semester credit hours of upper division accounting courses as defined in subsections (e), (f) and (g) of this section; or

(2) Hold a baccalaureate or higher degree from a board-recognized institution of higher education as defined by §511.52 of this chapter, and after obtaining the degree, complete the requisite 30 semester credit hours of upper division accounting courses, as defined in subsections (e), (f) and (g) of this section, from four-year degree granting institutions, or accredited community colleges, provided that all such institutions are recognized by the board as defined by §511.52 or §511.54 of this chapter (relating to Recognized Texas Community Colleges).

(b) Credit for hours taken at board-recognized institutions of higher education using the quarter system shall be counted as 2/3 of a semester credit hour for each hour of credit received under the quarter system.

(c) The board will accept no fewer than 30 semester credit hours of accounting courses from the courses listed in subsections (e), (f) and (g) of this section. The hours from a course that has been repeated will be counted only once toward the required 30 semester hours. The courses must meet the board's standards by containing sufficient accounting knowledge and application to be useful to candidates taking the UCPAE. A board-recognized institution of higher education must have accepted the courses for purposes of obtaining a baccalaureate or higher degree or its equivalent, and they must be shown on an official transcript.

(d) Upper level accounting coursework recognized by the board and in effect prior to January 1, 2024, may be found in §511.60 of this chapter (relating to Qualified Accounting Courses Prior to January 1, 2024).

(e) Effective January 1, 2024, the subject-matter content should be derived from the UCPAE Blueprint. A minimum of 15 semester hours with at least three semester hours in each of the following accounting course content area is required:

(1) financial accounting and reporting for business organizations that may include:

(A) intermediate accounting;

(B) advanced accounting; and

(C) accounting theory;

(2) financial statement auditing;

(3) taxation; and

(4) accounting information systems.

(f) Effective January 1, 2024, a minimum of 15 hours in any of the following accounting course content area is required:

(1) managerial or cost accounting (excluding introductory level courses);

(2) auditing and attestation services;

(3) internal accounting control and risk assessment;

(4) financial statement analysis;

(5) accounting research and analysis;

(6) up to 9 semester credit hours of taxation (including tax research and analysis);

(7) financial accounting and reporting for governmental and/or other nonprofit entities;

(8) up to 9 semester credit hours of accounting information systems, including management information systems ("MIS"), provided the MIS courses are listed or cross-listed as accounting courses, and the institution of higher education accepts these courses as satisfying the accounting course requirements for graduation with a degree in accounting;

(9) up to 12 semester credit hours of accounting data analytics, provided the institution of higher education accepts these courses as satisfying the accounting course requirements for graduation with a degree in accounting; business data analytics may be considered provided the courses are listed or cross-listed as accounting courses, and the institution of higher education accepts these courses as satisfying the accounting course requirements for graduation with a degree in accounting; (while data analytics tools may be taught in the courses, application of the tools should be the primary objective of the courses);

(10) fraud examination;

(11) international accounting and financial reporting;

(12) mergers and acquisitions;

(13) financial planning;

(14) [(13)] an accounting internship program (not to exceed 3 semester credit hours) which meets the following requirements:

(A) the accounting knowledge gained is equal to or greater than the knowledge gained in a traditional accounting classroom setting;

(B) the employing firm provides the faculty coordinator and the student with the objectives to be met during the internship;

(C) the internship plan is approved in advance by the faculty coordinator;

(D) the employing firm provides significant accounting work experience with adequate training and supervision of the work performed by the student;

(E) the employing firm provides the student with training, supervision, periodic feedback and a final evaluation at the conclusion of the internship, provides a letter describing the duties performed

and the supervision to the student, and provides a copy of the documentation to the faculty coordinator and the student;

(F) the student keeps a diary comprising a chronological list of all work experience gained in the internship;

(G) the student writes a paper demonstrating the knowledge gained in the internship;

(H) the student and/or faculty coordinator provides evidence of all items upon request by the board; and

(I) the internship course shall not be taken until a minimum of 12 semester credit hours of upper division accounting course work has been completed;

(15) [(14)] at its discretion, the board may accept up to three semester hours of credit of accounting course work with substantial merit in the context of a career in public accounting, provided the course work is predominantly accounting or auditing in nature but not included in paragraphs (1) - (13) [(1) - (12)] of this subsection. For any course submitted under this provision, the Accounting Faculty Head or Chair must affirm to the board in writing the course's merit and content; and

(16) [(15)] at its discretion, the board may accept up to three semester credit hours of independent study in accounting selected or designed by the student under faculty supervision. The curriculum for the course shall not repeat the curriculum of another accounting course that the student has completed.

(g) The board requires that a minimum of two semester credit hours in research and analysis relevant to the course content described in subsection (f) of this section be completed. The semester credit hours may be obtained through a standalone course or offered through an integrated approach. If the course content is offered through integration, the institution of higher education must advise the board of the course(s) that contain the research and analysis content. The course may be used toward the 15 semester credit hours of upper level accounting courses identified in subsection (f)(5) of this section.

(h) The following types of introductory courses do not meet the accounting course definition in subsections (e) and (f) of this section:

- (1) elementary accounting;
- (2) principles of accounting;
- (3) financial and managerial accounting;
- (4) introductory accounting courses; and
- (5) accounting software courses.

(i) Any CPA review course offered by an institution of higher education or a proprietary organization shall not be used to meet the accounting course definition.

(j) CPE courses shall not be used to meet the accounting course definition.

(k) An ethics course required in §511.58(d) of this chapter (relating to Definitions of Related Business Subjects and Ethics Courses) shall not be used to meet the accounting course definition in subsections (e) and (f) of this section.

(l) Accounting courses completed through an extension school of a board recognized educational institution may be accepted by the board provided that the courses are accepted for a business baccalaureate or higher degree conferred by that educational institution.

(m) The board may review the content of accounting courses and determine if they meet the requirements of this section.

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

Filed with the Office of the Secretary of State on January 20, 2023.

TRD-202300225

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: March 5, 2023

For further information, please call: (512) 305-7842



## 22 TAC §511.58

The Texas State Board of Public Accountancy (Board) proposes an amendment to §511.58, concerning Definitions of Related Business Subjects and Ethics Courses.

### Background, Justification, and Summary

To be eligible to take the UCPA exam an applicant must have completed a minimum number of hours of course work from an accredited higher education institution. The Board is specifically recognizing the addition of acceptable course work to be courses in information systems and data analytics. Course work in information systems and related courses is limited to a maximum of 6 credit semester hours. Course work in data analytics and related courses is limited to a maximum of 9 credit semester hours.

### Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

### Public Benefit

The proposed rule amendment will provide the CPA with a broader education that will enhance the accounting work performed by the CPA on behalf of a public in a more technologically oriented world.

### Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

### Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities, or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities, or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

## Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

## Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

## Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on March 3, 2023.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

## Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151, §901.655 and §901.307(b) which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

### §511.58. Definitions of Related Business Subjects and Ethics Courses.

(a) Related business courses are those business courses that a board recognized institution of higher education accepts for a business baccalaureate or higher degree by that educational institution.

(b) An individual who holds a baccalaureate or higher degree from a recognized educational institution as defined by §511.52 of this chapter (relating to Recognized Institutions of Higher Education) may take related business courses from four-year degree granting institutions, or recognized community colleges, provided that all such institutions are recognized by the board as defined by §511.52 or §511.54

of this chapter (relating to Recognized Texas Community Colleges). Related business courses taken at a recognized community college are only the courses that the board has reviewed and approved to meet this section.

(c) The board will accept no fewer than 24 semester credit hours of upper level courses (for the purposes of this subsection, economics and statistics at any college level will count as upper division courses) as related business subjects (without repeat), taken at a recognized educational institution shown on official transcripts or accepted by a recognized educational institution for purposes of obtaining a baccalaureate degree or its equivalent, in the following areas. ~~[No more than 6 credit semester hours taken in any one subject area may be used to meet the minimum hour requirement.]~~

(1) No more than 6 credit semester hours taken in any of the following subject areas may be used to meet the minimum hour requirement:

(A) [(+) business law, including study of the Uniform Commercial Code;

(B) [(2) economics;

(C) [(3) management;

(D) [(4) marketing;

(E) [(5) business communications;

(F) [(6) statistics and quantitative methods;

(G) information systems or technology; and

(H) other areas related to accounting.

(2) No more than 9 credit semester hours taken in any of the following subject areas may be used to meet the minimum hour requirement:

(A) finance and financial planning; and

(B) data analytics, data interrogation techniques, cyber security and/or digital acumen in the accounting context, whether taken in the business school or in another college or university program, such as the engineering, computer science, information systems, or math programs (while data analytic tools may be used in the course, application of the tools should be the primary objective of the course.

~~[(7) finance;]~~

~~[(8) information systems or technology;]~~

~~[(9) business data analytics (while data analytic tools may be used in the course, application of the tools should be the primary objective of the course); and]~~

~~[(10) other areas related to accounting.]~~

(d) In addition to the 24 hours required in subsection (c) of this section, the board requires that 3 passing semester hours be earned as a result of taking a standalone course in accounting or business ethics. The course must be taken at a recognized educational institution and should provide students with a framework of ethical reasoning, professional values, and attitudes for exercising professional skepticism and other behavior in the best interest of the public and profession. The ethics course shall:

(1) include the ethics rules of the AICPA, the SEC, and the board;

(2) provide a foundation for ethical reasoning, including the core values of integrity, objectivity, and independence; and

(3) be taught by an instructor who has not been disciplined by the board for a violation of the board's rules of professional conduct, unless that violation has been waived by the board.

(e) The board requires that a minimum of 2 upper level semester credit hours in accounting communications or business communications with an intensive writing curriculum be completed. The semester hours may be obtained through a standalone course or offered through an integrated approach. If the course content is offered through integration, the university must advise the board of the course(s) that contain the accounting communications or business communications content. The course may be used toward the 24 semester credit hours of upper level business courses listed in subsection (c)(1) [(e)(5)] of this section.

(f) Credit for hours taken at recognized institutions of higher education using the quarter system shall be counted as 2/3 of a semester hour for each hour of credit received under the quarter system.

(g) Related business courses completed through and offered by an extension school, correspondence school, or continuing education program of a board recognized educational institution may be accepted by the board, provided that the courses are accepted for a business baccalaureate or higher degree conferred by that educational institution.

(h) The board may review the content of business and ethics courses and determine if they meet the requirements of this section.

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

Filed with the Office of the Secretary of State on January 20, 2023.

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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: March 5, 2023

For further information, please call: (512) 305-7842



## SUBCHAPTER D. CPA EXAMINATION

### 22 TAC §511.72

The Texas State Board of Public Accountancy (Board) proposes an amendment to §511.72, concerning Uniform Examination.

#### Background, Justification and Summary

The rule recognizes that an individual taking the UCPA exam will be required to pay an examination fee to the National Association of Boards of Accountancy.

#### Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

#### Public Benefit

The adoption of the proposed rule amendment will put the applicant to take the UCPA exam on notice of a fee in addition to the fees charged by the board.

#### Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

#### Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

#### Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

#### Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

#### Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on March 3, 2023.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

#### Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151, §901.655 and §901.307(b) which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§511.72. *Uniform Examination.*

(a) The board shall contract with NASBA for the administration of the UCPAE, in conjunction with the AICPA and a test vendor. The examination shall be offered as determined by the AICPA, NASBA, and the testing vendor. The examination may be offered at the following locations provided they are secure, approved and monitored by the board or its designee and the testing vendor:

- (1) at the board's office; and
- (2) at testing facilities established by NASBA and the testing vendor.

(b) The board shall utilize the UCPAE available from the AICPA covering the following sections until such time as the UCPAE is restructured by the AICPA:

- (1) auditing and attestation;
- (2) business environment and concepts;
- (3) regulation; and
- (4) financial accounting and reporting.

(c) If the UCPAE is restructured by the AICPA, the board shall utilize the UCPAE available from the AICPA that tests the knowledge and skills required for performance as a newly licensed certified public accountant. The examination shall include the subject areas of accounting and auditing and related knowledge and skills as the board may require. The board shall determine the manner in which credit for a subject is integrated into the new structure.

(d) Effective January 1, 2024, the board shall utilize the UCPAE available from the AICPA covering the following sections:

- (1) auditing and attestation (AUD);
- (2) business analysis and reporting (BAR);
- (3) financial accounting and reporting (FAR);
- (4) information systems and controls (ISC);
- (5) taxation and regulation (REG); and
- (6) tax compliance and planning (TCP).

(e) An applicant taking a section of the UCPAE shall pay an examination fee to NASBA, when required by NASBA, and an eligibility fee to the board pursuant to §521.14 of this title (relating to Eligibility Fee).

(f) [(e)] An applicant taking the examination is required to have in their possession the Notice to Schedule form provided by NASBA, a government-issued form of identification containing a photograph of the applicant, and a second form of identification such as a board-issued form.

(g) [(f)] An applicant taking the examination shall sign a statement of confidentiality and conduct which the applicant must follow during the entire examination.

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

Filed with the Office of the Secretary of State on January 20, 2023.

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J. Randel (Jerry) Hill

General Counsel

Texas Board of Public Accountancy

Earliest possible date of adoption: March 5, 2023

For further information, please call: (512) 305-7842

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**TITLE 31. NATURAL RESOURCES AND CONSERVATION**

**PART 10. TEXAS WATER DEVELOPMENT BOARD**

**CHAPTER 353. INTRODUCTORY PROVISIONS**

The Texas Water Development Board (TWDB) proposes an amendment to 31 Texas Administrative Code (TAC) §§353.4, 353.12, 353.41, 353.103, 353.122, and 353.140.

**BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED AMENDMENT.**

These amendments are being made pursuant to the TWDB's periodic rule review of Chapter 353. In assessing the reasons for initially adopting the rules and assessing any necessary updates, the TWDB identified some necessary changes.

**SECTION BY SECTION DISCUSSION OF PROPOSED AMENDMENTS.**

**SUBCHAPTER A. GENERAL PROVISIONS.**

**§353.4. *Public Participation.***

Section 353.4 is proposed to be amended in order to conform with current agency practice. While the rule states that members of the public must sign a registration form at the Board Meeting, the agency currently allows members of the public to submit a form via email in anticipation of Board Meetings.

**§353.12. *Applications Filing and Notice.***

Section 353.12 is proposed to be amended to provide transparency to the public on applications received by the TWDB. While current rule requires publishing a list of certain applications received in the *Texas Register* each month, the TWDB proposes to post the list on the agency's website instead. The statute requiring reporting of certain applications received does not require publication in the *Texas Register* and those individuals interested in TWDB applications are more likely to check the agency website than the *Texas Register*.

**SUBCHAPTER C. HISTORICALLY UNDERUTILIZED BUSINESS PROGRAM.**

**§353.41. *Adoption of Comptroller Rules.***

Section 353.41 is proposed to be amended to update citations and cross references. The former General Services Commission duties and rules were transferred to the Comptroller of Public Accounts.

**SUBCHAPTER G. TEXAS NATURAL RESOURCES INFORMATION SYSTEM (TNRIS).**

*§353.103. State Agency Geographic Information Standards.*

Section 353.103 is proposed to be amended to update an outdated statutory reference and correct grammar.

SUBCHAPTER H. COLLECTING DELINQUENT OBLIGATIONS.

*§353.122. Procedures For Collecting A Delinquent Obligation.*

Section 353.122 is proposed to be amended to change an updated United States Postal Service term from "address service requested" to "address correction requested."

SUBCHAPTER J. ENHANCED CONTRACT MONITORING.

*§353.140. Enhanced Contract Monitoring Procedure.*

Section 353.140 is proposed to be amended in order to simplify the enhanced contract monitoring procedures that the TWDB uses for analyzing contracts. The simplified language will align more closely with statutory requirements for applicable types of contracts. The simplified list of attributes and risk factors to be considered by staff will aid staff in tailoring risk reviews to specific types of contracts. The key risk factors that apply to typical TWDB contracts will remain in the procedures.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS (Texas Government Code §2001.024(a)(4))

Ms. Rebecca Trevino, Chief Financial Officer, has determined that there will be no fiscal implications for state or local governments as a result of the proposed rulemaking. For the first five years these rules are in effect, there is no expected additional cost to state or local governments resulting from their administration.

These rules are not expected to result in reductions in costs to either state or local governments. There is no change in costs because the rules update non-substantive references and terminology or only impact internal agency procedures. These rules are not expected to have any impact on state or local revenues. The rules do not require any increase in expenditures for state or local governments as a result of administering these rules. Additionally, there are no foreseeable implications relating to state or local governments' costs or revenue resulting from these rules.

Because these rules will not impose a cost on regulated persons, the requirement included in Texas Government Code, §2001.0045 to repeal a rule does not apply. Furthermore, the requirement in §2001.0045 does not apply because these rules are necessary to implement legislation.

The TWDB invites public comment regarding this fiscal note. Written comments on the fiscal note may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

PUBLIC BENEFITS AND COSTS (Texas Government Code §2001.024(a)(5))

Ms. Rebecca Trevino also has determined that for each year of the first five years the proposed rulemaking is in effect, the public will benefit from the rulemaking as it simplifies and clarifies TWDB processes and updates outdated terminology and references. Ms. Rebecca Trevino also has determined that for each year of the first five years the proposed rulemaking is in effect, the rules will not impose an economic cost on persons required to comply with the rule as it generally only impacts internal TWDB procedures.

ECONOMIC AND LOCAL EMPLOYMENT IMPACT STATEMENT (Texas Government Code §§2001.022, 2006.002); REGULATORY FLEXIBILITY ANALYSIS (Texas Government Code §2006.002)

The TWDB has determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect because it will impose no new requirements on local economies. The TWDB also has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of enforcing this rulemaking. The TWDB also has determined that there is no anticipated economic cost to persons who are required to comply with the rulemaking as proposed. Therefore, no regulatory flexibility analysis is necessary.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION (Texas Government Code §2001.0225)

The TWDB reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the rulemaking is not subject to Texas Government Code §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the rulemaking is to clarify and simplify internal TWDB procedures.

Even if the proposed rule were a major environmental rule, Texas Government Code §2001.0225 still would not apply to this rulemaking because Texas Government Code §2001.0225 only applies to a major environmental rule, the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: (1) does not exceed any federal law; (2) does not exceed an express requirement of state law; (3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and (4) is not proposed solely under the general powers of the agency, but rather Texas Water Code §6.195 and Texas Government Code §§2001.039, 2107.002, 2161.003, and 2261.253. Therefore, this proposed rule does not fall under any of the applicability criteria in Texas Government Code §2001.0225.

The TWDB invites public comment regarding this draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

TAKINGS IMPACT ASSESSMENT (Texas Government Code §2007.043)

The TWDB evaluated this proposed rule and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this rule is to clarify and simplify TWDB procedures. The proposed rule would substantially advance this stated purpose by updating outdated terminology and references and by clarifying agency practice and procedure related to general administrative functions.

The TWDB's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this proposed rule because this is an action that is reasonably taken to fulfill obligations mandated by state law, which is exempt under Texas Government Code §2007.003(b)(4). The TWDB is a state agency in the executive branch that is required to adopt certain general state agency requirements in rule.

Nevertheless, the TWDB further evaluated this proposed rule and performed an assessment of whether it constitutes a taking under Texas Government Code Chapter 2007. Promulgation and enforcement of this proposed rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulation does not affect a landowner's rights in private real property because this rule-making does not burden, restrict, or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. In other words, this rule establishes internal agency practices without burdening or restricting or limiting the owner's right to property and reducing its value by 25% or more. Therefore, the proposed rule does not constitute a taking under Texas Government Code, Chapter 2007.

#### GOVERNMENT GROWTH IMPACT STATEMENT (Texas Government Code §2001.0221)

The TWDB reviewed the proposed rulemaking in light of the government growth impact statement requirements of Texas Government Code §2001.0221 and has determined, for the first five years the proposed rule would be in effect, the proposed rule will not: (1) create or eliminate a government program; (2) require the creation of new employee positions or the elimination of existing employee positions; (3) require an increase or decrease in future legislative appropriations to the agency; (4) require an increase or decrease in fees paid to the agency; (5) create a new regulation; (6) expand, limit, or repeal an existing regulation; (7) increase or decrease the number of individuals subject to the rule's applicability; or (8) positively or adversely affect this state's economy.

#### AGENCY REVIEW OF EXISTING RULES (Texas Government Code §2001.039)

The TWDB reviewed Chapter 353 and the proposed rulemaking in light of the statutory requirement for the TWDB to review existing rules in Texas Government Code §2001.039. It has determined that the proposed rulemaking to Chapter 353 (specifically §§353.4, 353.12, 353.41, 353.103, 353.122, and 353.140) is necessary to comply with §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code Texas Water Code §6.195 and Texas Government Code §§2001.039, 2107.002, 2161.003, and 2261.253, which establish either general state agency requirements or specific TWDB requirements for rules.

The TWDB concurrently intends to review the rules in 31 TAC Chapter 353 in accordance with Texas Government Code §2001.039. The TWDB will consider whether the initial factual,

legal, and policy reasons for adopting each rule in these chapters and subchapters continue to exist and whether these rules should be repealed, readopted, or readopted with amendments.

#### SUBMISSION OF COMMENTS (Texas Government Code §2001.024(a)(7))

Written comments on the proposed rulemaking may be submitted by mail to Office of General Counsel, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, by email to [rulescomments@twdb.texas.gov](mailto:rulescomments@twdb.texas.gov), or by fax to (512) 475-2053. Comments will be accepted until 5:00 p.m. of the 31st day following publication the *Texas Register*. Include "Chapter 353" in the subject line of any comments submitted.

### SUBCHAPTER A. GENERAL PROVISIONS

#### 31 TAC §§353.4, §353.12

#### STATUTORY AUTHORITY (Texas Government Code §2001.024(a)(3))

The amendment is proposed under the authority of Texas Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Texas Water Code §6.195 and Texas Government Code §§2001.039, 2107.002, 2161.003, and 2261.253.

This rulemaking affects Water Code, Chapters 6 and 16 and Government Code, Chapters 2001, 2107, 2161, and 2261.

#### §353.4. *Public Participation.*

(a) Board meetings, unless recessed into executive session pursuant to the Texas Open Meetings Act, shall be open to the public.

(b) Any person seeking to address the board concerning an item on the board's agenda posted with the secretary of state shall complete [sign] a registration form at or before the meeting. The board may administer oaths to those persons testifying before the board. When the board is required to accept or invites public comments at its meetings, the board will establish the order for presentation of argument or comments concerning items about which the public seeks to address the board. When necessary in order to prevent undue meeting length, the board may limit the number of times a person may testify, the time period for oral presentations, and the time period for raising questions. The board may limit or exclude cumulative or unduly repetitious presentations, and may require that one representative present the information and position of an entity or persons and entities that are closely aligned.

(c) A person desiring to file briefs, affidavits, information, or any written statements or documents relating to an agenda item shall submit the document no later than the date of the meeting, provided the board may grant additional time for submission. Since the board will take action on most agenda items at the scheduled meeting, persons seeking to file written information with the board should attempt to provide the information to the executive administrator as early as possible before the board meeting.

#### §353.12. *Applications Filing and Notice.*

At the time an application requiring action of the board is filed with the board and is administratively complete, the board shall give notice as follows.

(1) The executive administrator shall mail notice confirming the information in paragraph (3) of this section to any person who shall have previously informed the executive administrator in writing of an interest in said application.



(2) The executive administrator shall post the [submit to the secretary of state] information contained in paragraph (3) of this section on the agency website [for publication in the *Texas Register*].

(3) Notices under this section shall state:

(A) the identifying number given the application by the board;

(B) the name and address of the applicant;

(C) the date on which the application was submitted; and

(D) a brief summary of the information included in the application.

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 20, 2023.

TRD-202300236

Ashley Harden

General Counsel

Texas Water Development Board

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For further information, please call: (512) 463-7686



## SUBCHAPTER C. HISTORICALLY UNDERUTILIZED BUSINESSES PROGRAM

### 31 TAC §353.41

The amendment is proposed under the authority of Texas Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Texas Water Code §6.195 and Texas Government Code §§2001.039, 2107.002, 2161.003, and 2261.253.

This rulemaking affects Water Code, Chapters 6 and 16 and Government Code, Chapters 2001, 2107, 2161, and 2261.

§353.41. *Adoption of Comptroller [General Services Commission's] Rules.*

The board adopts the current administrative rules adopted by the Texas Comptroller of Public Accounts [General Services Commission] regarding the Historically Underutilized Business Program. The Comptroller's [General Service Commission's] rules can be found at Title 34 [H], Part 1 [5], Chapter 20 [44], Subchapter D [B], Division 1.

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

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Ashley Harden

General Counsel

Texas Water Development Board

Earliest possible date of adoption: March 5, 2023

For further information, please call: (512) 463-7686

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## SUBCHAPTER G. TEXAS NATURAL RESOURCES INFORMATION SYSTEM (TNRIS)

### 31 TAC §353.103

The amendment is proposed under the authority of Texas Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Texas Water Code §6.195 and Texas Government Code §§2001.039, 2107.002, 2161.003, and 2261.253.

This rulemaking affects Water Code, Chapters 6 and 16 and Government Code, Chapters 2001, 2107, 2161, and 2261.

§353.103. *State Agency Geographic Information Standards.*

(a) *Applicability.* All users and developers of geographic datasets and geographic information systems in state agencies must comply with the technical standards specified in this section. Activities conducted by a registered professional land surveyor while engaged in the practice of professional surveying, as defined in the Professional Land Surveying Practices Act (Texas Occupations Code, Chapter 1071 [Art. 5282e, VTCS]) are exempt from these standards.

(b) *Implementation guidance.* Pursuant to Water Code §16.021(c), the GIO provides guidance to the Executive Administrator of the Texas Water Development Board and to the Department of Information Resources (the department). The guidance provided by the GIO to the department relates to technology standards developed by the department for geographic datasets pursuant to Water Code §16.021(e)(4).

(c) *Geographic Information Standards.*

(1) *Geographic dataset acquisition and development.*

(A) *Standard.* An agency planning to acquire, develop, or enhance a geographic dataset that may correspond to an HPIDS dataset shall coordinate such activity with the GIO to determine potential use of the HPIDS master contract.

(B) *Procurement of public domain geographic datasets.* An agency that procures a copy of a federal or other public domain geographic dataset shall make the dataset available to the Texas Natural Resources Information System (TNRIS). TNRIS will make these datasets available to other agencies, institutions of higher education, and to the public.

(2) *Geographic dataset exchange: Data format.* An agency that originates or adds data content to a non-proprietary geographic dataset and distributes the dataset to another state agency, institution of higher education, or the public must make the dataset available in at least one digital format that is recognized by the most commonly used geographic information systems. This requirement does not preclude the agency from offering the dataset in other data formats. The GIO provides guidance on acceptable formats for data exchange.

(3) *Geographic dataset documentation.*

(A) *Preparation.* An agency shall prepare documentation for each geographic dataset that it both:

(i) originates and/or adds data content to; and

(ii) distributes as a standard product to another state agency, institution of higher education, or the public.

(B) *Statement of Purpose.* Documentation must include a statement of the purpose or intended use of the dataset and a dis-

claimer warning against unintended uses of the dataset. If an agency is aware of specific inappropriate uses of the dataset that [which] some users may be inclined to make, the dataset disclaimer must specifically warn against those uses.

(C) Format. This documentation must be in a geospatial metadata format specified by the GIO.

(D) Delivery. In responding to a request for a geographic dataset, an agency shall provide the requestor a copy of the documentation.

(4) GIS map product disclaimer. Any map product, in paper or electronic format, produced using geographic information system technology and intended for official use and/or distribution outside the agency, must include a disclaimer statement advising against inappropriate use. If the nature of the map product is such that a user could incorrectly consider it to be a survey product, the disclaimer must clearly state that the map is not a survey product.

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

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Ashley Harden

General Counsel

Texas Water Development Board

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For further information, please call: (512) 463-7686



## SUBCHAPTER H. COLLECTING DELINQUENT OBLIGATIONS

### 31 TAC §353.122

The amendment is proposed under the authority of Texas Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Texas Water Code §6.195 and Texas Government Code §§2001.039, 2107.002, 2161.003, and 2261.253.

This rulemaking affects Water Code, Chapters 6 and 16 and Government Code, Chapters 2001, 2107, 2161, and 2261.

§353.122. *Procedures For Collecting A Delinquent Obligation.*

(a) When an obligation has been determined to be delinquent, pursuant to §353.121 of this title (relating to Procedures For Establishing A Delinquent Obligation), the board shall take the following steps.

(1) Verify the debtor's address and telephone number, to the extent possible.

(2) Use the comptroller of public account's "Warrant Hold" procedures to prevent payment to a delinquent debtor.

(3) Within 30 days of the obligation being determined to be delinquent, send the debtor a demand letter for the full amount of the obligation.

(4) If the debtor does not respond to the demand letter, send a second demand letter no sooner than 30 days but not more than 60 days after the first demand letter was mailed.

(5) Verify that the obligation is not legally uncollectible or uncollectible as a practical matter.

(A) In cases of bankruptcy, the board shall prepare and timely file a proof of claim, when appropriate, in the bankruptcy case of each debtor. Copies of all such proofs of claims filed shall be sent to the attorney general. The board shall maintain records of notices of bankruptcy filings, dismissals, and discharge orders to enable it to ascertain whether the collection of the claim is subject to automatic stay provisions or whether the debt has been discharged.

(B) If the obligation is subject to an applicable limitation provision that would prevent suit as a matter of law, the obligation will not be referred to the attorney general unless circumstances indicate the limitations provision has been tolled or is otherwise inapplicable.

(C) If a corporation has been dissolved, has been liquidated under Chapter 7 of the United States Bankruptcy Code, or has forfeited its corporate privileges or charter, or, in the case of a foreign corporation, had its certificate of authority revoked, the obligation shall be referred to the attorney general unless circumstances indicate the account is clearly uncollectible. These circumstances shall be documented in the appropriate account file.

(D) If the debtor is an individual and is located out-of-state, or outside the United States, the matter shall not be referred to the attorney general unless a determination is made that the domestication of a Texas judgment in the foreign forum would more likely than not result in collection of the obligation, or that the expenditure of board funds to retain foreign counsel to domesticate the judgment and proceed with collection attempts is justified. The board shall consult with the attorney general in making such determinations.

(E) If the debtor is deceased, the board shall file a claim in each probate proceeding administering the decedent's estate. If such probate proceeding has concluded and there are no remaining assets of the decedent available for distribution, the delinquent obligation shall be classified as uncollectible and not referred to the attorney general. If probate administration is pending or if none has been opened, any referral to the attorney general shall include an explanation of any circumstances indicating that the decedent has assets available to apply towards satisfying the obligation.

(6) If the debtor does not respond to the second demand letter within 30 days of it being mailed, and if the debt is not determined to be legally uncollectible or uncollectible as a practical matter, the board shall report the uncollected and delinquent obligation to the attorney general for further collection efforts. However, delinquent obligations upon which a bond or other security is held shall be referred to the attorney general no later than 60 days after becoming delinquent. If the principal has filed for relief under federal bankruptcy laws, the account shall be referred to the attorney general immediately upon notice or as soon as the board knows of the filing.

(b) Demand letters sent by the board shall include a statement, where practical, that the debt, if not paid, will be referred to the Texas attorney general's office. The demand letters shall be mailed in envelopes bearing the notation "address correction [service] requested" in conformity with the current regulations and policies of the United States Postal Service. If an address correction is provided by the United States Postal Service, the affected demand letter shall be resent to the address provided.

(c) Where permitted by state law, the board shall file a lien securing an obligation in the appropriate records of the county where the debtor's principal place of business or, where appropriate, the debtor's residence is located or in such county as may be required by law. The

lien shall be filed as soon as the obligation becomes delinquent or as soon as is practicable. If the delinquent obligation is referred to the attorney general in accordance with this section, the lien may not be released unless the board receives written approval from the attorney general or if the delinquent obligation is paid in full.

(d) Where practicable, the board shall maintain individual collection histories of each account in order to document attempted contacts with the debtor, the substance of the communications with the debtor, efforts to locate the debtor and assets, and other information pertinent to collection of the delinquent account.

(e) The procedures of this section do not apply to:

(1) bonds or other debt obligations held by the board as evidence of debt incurred through the board's financial assistance programs for which collection remedies are provided by the debt vehicle or by law; or

(2) any debt for which a collection process is already determined by law.

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

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Ashley Harden

General Counsel

Texas Water Development Board

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## SUBCHAPTER J. ENHANCED CONTRACT MONITORING

### 31 TAC §353.140

The amendment is proposed under the authority of Texas Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Texas Water Code §6.195 and Texas Government Code §§2001.039, 2107.002, 2161.003, and 2261.253.

This rulemaking affects Water Code, Chapters 6 and 16 and Government Code, Chapters 2001, 2107, 2161, and 2261.

§353.140. *Enhanced Contract Monitoring Procedure.*

(a) In accordance with Government Code §§2261.253(c) and 2261.256, [AH] contract managers[; with the support of contract administration;] will perform [a] risk analyses for goods and services contracts [analysis prior to the execution of a contract] to determine whether enhanced contract and [or] performance monitoring is necessary. The [impact and probability of the] following attributes will be considered, as applicable:

(1) risk of fraud, waste, or abuse [contract cost revisions];

(2) cost, duration, and scope of the contract [contract duration limitations];

(3) responsibilities and accountability of agency and vendor staff [transaction and data volume];

(4) vendor experience and past performance [monitoring and quality assurance];

(5) data security protocols [vendor control activities and data quality]; and

(6) legislative or statutory requirements, potential impact on agency operations or programs, and external stakeholder impacts. [communication and customer service;]

[(7) complexity of vendor operations and processes;]

[(8) complexity of contract scope or deliverables;]

[(9) close out, including untimely delivery, outstanding invoices or unresolved matters creating delays;]

[(10) extent of government regulations;]

[(11) vendor cooperation with audits;]

[(12) potential for public disclosure;]

[(13) vendor experience and past performance;]

[(14) physical and system security;]

[(15) data security;]

[(16) business continuity/disaster recovery;]

[(17) training;]

[(18) financial assurance and credit worthiness;]

[(19) fraud, waste and abuse; and/or]

[(20) any other factors that may impact the contract.]

(b) Any contract rated high risk will receive enhanced contract monitoring to be performed by the contract manager. Enhanced contract monitoring may include the following actions, as applicable:

(1) weekly or monthly progress reports;

(2) documented controlled correspondence;

(3) regular site visits;

(4) project team meetings; and/or

(5) documentation of corrective actions.

(c) Contract and performance monitoring activities will be documented and reported to the board on a quarterly basis. The Procurement Director, in working with the contract manager, [Contract administration] will [immediately] notify the board of any serious issue or risk [that is] identified with respect to a contract subject to enhanced monitoring.

(d) This process does not apply to an interagency agreement or contract, interlocal agreement, memorandum of understanding, [or] a contract for which there is not a cost, or agency grant programs.

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

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## CHAPTER 354. MEMORANDA OF UNDERSTANDING

### 31 TAC §§354.1, 354.2, 354.4, 354.6, 354.9, 354.15

The Texas Water Development Board (TWDB) proposes the repeal of 31 Texas Administrative Code (TAC) §§354.1, 354.2, 354.4, 354.6, 354.9, and 354.15 as part of a reorganization and review of its rules.

#### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED AMENDMENT.

Simultaneously with this proposal for repeal, the TWDB proposes to review, adopt, and re-adopt rules in 31 TAC Chapter 354, Memoranda of Understanding. The TWDB has determined that the aforementioned rules for repeal are either expired, were adopted to facilitate the administration of Agency directives that are no longer necessary, or are instead interagency contracts effective pursuant to Chapter 771, Texas Government Code.

#### SECTION BY SECTION DISCUSSION OF PROPOSED REPEALS

Section 354.1 is repealed as the manner of compliance between the Texas Historical Commission and the TWDB has changed since the promulgation of the rule.

Section 354.1 is repealed because the term of the contract expired August 31, 2017.

Section 354.4 is repealed because the term of the contract expired August 31, 2017, and the General Appropriations Act rider relating to the contract has not been renewed.

Section 354.6 is repealed and the contract will not be readopted into rule as a memorandum of understanding because the contract is an interagency contract between the named agencies under Chapter 771, Texas Government Code.

Section 354.9 is repealed because the term of the contract expired August 31, 2017.

Section 354.15 is repealed because the initiative between the Comptroller of Public Accounts and the Agency is no longer necessary to facilitate TWDB directives.

#### FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS (Texas Government Code §2001.024(a)(4))

Ms. Rebecca Trevino, Chief Financial Officer, has determined that there will be no fiscal implications for state or local governments as a result of the proposed repeal. For the first five years these rules are in effect, there is no expected additional cost to state or local governments resulting from their administration.

The repeal is not expected to result in reductions in costs to either state or local governments as there is no change in costs for as the term for the underlying contracts; the affected contracts have either already expired or the effective contracts will not be readopted as a memorandum of understanding. The repeal is not expected to have any impact on state or local revenues and it does not require any increase in expenditures for state or local

governments. Additionally, there are no foreseeable implications relating to state or local governments' costs or revenue resulting from this repeal.

Because the repeal will not impose a cost on regulated persons, the requirement included in Texas Government Code, §2001.0045 to repeal a rule does not apply

The TWDB invites public comment regarding this fiscal note. Written comments on the fiscal note may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

#### PUBLIC BENEFITS AND COSTS (Texas Government Code §2001.024(a)(5))

Ms. Rebecca Trevino also has determined that for each year of the first five years the proposed repeal is in effect, the public will benefit from the repeal as it reorganizes and streamlines the TWDB's administration of its statutory duties. Ms. Rebecca Trevino also has determined that for each year of the first five years the proposed repeal is in effect, the repeal will not impose an economic cost on persons required to comply as the repeal is being conducted pursuant to a periodic review of the TWDB's rules that is otherwise required by statute.

#### ECONOMIC AND LOCAL EMPLOYMENT IMPACT STATEMENT (Texas Government Code §§2001.022, 2006.002); REGULATORY FLEXIBILITY ANALYSIS (Texas Government Code §2006.002)

The TWDB has determined that a local employment impact statement is not required because the proposed repeal does not adversely affect a local economy in a material way for the first five years, and the repeal will impose no new requirements on local economies. The TWDB also has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of this repeal. The TWDB also has determined that there is no anticipated economic cost to persons who are required to comply with the repeal. Therefore, no regulatory flexibility analysis is necessary.

#### DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION (Texas Government Code §2001.0225)

The TWDB reviewed the repeal in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the repeal is not subject to Texas Government Code §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the repeal is to conduct a review and reorganization of the TWDB's rules as required by state law.

Even if the proposed rule were a major environmental rule, Texas Government Code §2001.0225 still would not apply to this rule-making because Texas Government Code §2001.0225 only applies to a major environmental rule, the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or

(4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: (1) does not exceed any federal law; (2) does not exceed an express requirement of state law; (3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and (4) is not proposed solely under the general powers of the agency, but rather under § 6.101, Texas Water Code. Therefore, this proposed rule does not fall under any of the applicability criteria in Texas Government Code §2001.0225.

The TWDB invites public comment regarding this draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

#### TAKINGS IMPACT ASSESSMENT (Texas Government Code §2007.043)

The TWDB evaluated this proposed repeal and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this repeal is conducted pursuant to TWDB review and reorganization of its existing Memoranda of Understanding between it and various other state governmental agencies. The proposed repeal substantially advances this stated purpose.

The TWDB's analysis also indicates that Texas Government Code, Chapter 2007 does not apply to this proposed rule because this is an action that is reasonably taken to fulfill an obligation imposed by state statute which is exempt under Texas Government Code §2007.003(b)(4). The TWDB as an agency is required by law to promulgate into its rules all memoranda of understanding it enters into with other Texas state agencies.

The TWDB evaluated this repeal and performed an assessment of whether it constitutes a taking under Texas Government Code Chapter 2007. Promulgation and enforcement of this proposed repeal would be neither a statutory nor a constitutional taking of private real property because it neither relates to nor impacts private property. Specifically, the subject proposed regulation does not affect a landowner's rights in private real property because this rulemaking does not burden, restrict, or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. Therefore, the proposed rule does not constitute a taking under Texas Government Code, Chapter 2007.

#### GOVERNMENT GROWTH IMPACT STATEMENT (Texas Government Code §2001.0221)

The TWDB reviewed the repeal in light of the government growth impact statement requirements of Texas Government Code §2001.0221 and has determined, for the first five years the proposed rule would be in effect, the repeal will not: (1) create or eliminate a government program; (2) require the creation of new employee positions or the elimination of existing employee positions; (3) require an increase or decrease in future legislative appropriations to the agency; (4) require an increase or decrease in fees paid to the agency; (5) create a new regulation; (6) expand, limit, or repeal an existing regulation; (7) increase or decrease the number of individuals subject to the rule's applicability; or (8) positively or adversely affect this state's economy.

#### AGENCY REVIEW OF EXISTING RULES (Texas Government Code §2001.039)

The TWDB reviewed Chapter 354 and the repeal in light of the statutory requirement for the Agency to review existing rules in Texas Government Code §2001.039 and has determined that the aforementioned repeals to 31 TAC Chapter 354 are necessary to comply with §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and also specifically under §6.104, Texas Water Code, which imposes a requirement on the TWDB to adopt any memorandum of understanding between the board and another state agency into rule.

The TWDB concurrently intends to review the rules in 31 TAC Chapter 354 in accordance with Texas Government Code §2001.039. The TWDB will consider whether the initial factual, legal, and policy reasons for adopting each rule in these chapters and subchapters continue to exist and whether these rules should be repealed, readopted, or readopted with amendments.

#### SUBMISSION OF COMMENTS (Texas Government Code §2001.024(a)(7))

Written comments on the proposed repeal may be submitted by mail to Office of General Counsel, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, by email to [rulescomments@twdb.texas.gov](mailto:rulescomments@twdb.texas.gov), or by fax to (512) 475-2053. Comments will be accepted until 5:00 p.m. of the 31st day following publication the *Texas Register*. Include "Chapter 354 Repeal" in the subject line of any comments submitted.

#### STATUTORY AUTHORITY (Texas Government Code §2001.024(a)(3))

The repeal is proposed under the authority of Texas Water Code §6.101, which authorizes the TWDB to repeal or adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Texas Water Code §6.104.

Cross-reference to statute: This rulemaking affects Texas Water Code, Chapter 6, Subchapter D.

§354.1. *Memorandum of Understanding with Texas Historical Commission.*

§354.2. *Memorandum of Understanding Between the Office of the Governor and the Texas Water Development Board.*

§354.4. *Memorandum of Understanding Between the Texas Department of Agriculture and the Texas Water Development Board.*

§354.6. *Interagency Cooperation Contract between the Texas Water Development Board, the Texas Commission on Environmental Quality and Department of State Health Services.*

§354.9. *Memorandum of Understanding Between the Public Utility Commission of Texas and the Texas Water Development Board.*

§354.15. *Agreement in Furtherance of Transparency Initiative.*

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

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Ashley Harden  
General Counsel  
Texas Water Development Board  
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For further information, please call: (512) 463-7686



### 31 TAC §354.6

The Texas Water Development Board (TWDB) proposes new 31 Texas Administrative Code (TAC) §354.6.

#### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULE.

The TWDB proposes new §354.6 related to a new Memorandum of Understanding (MOU) between the Texas Water Development Board and the Texas Commission on Environmental Quality (TCEQ). The current §354.6 is repealed elsewhere in this same issue of the *Texas Register*. Simultaneously with this proposed rule, the TWDB proposes to review, adopt, and re-adopt rules in 31 TAC Chapter 354, Memoranda of Understanding.

#### SECTION BY SECTION DISCUSSION OF PROPOSED RULE.

§354.6. Memorandum of Understanding Between the Texas Water Development Board and the Texas Commission on Environmental Quality Related to Expedited Permit Review for Interregional Water Supply Projects.

This proposed rule would replace an outdated MOU, repealed elsewhere in this issue of the *Texas Register*, with a new MOU entered into between the TWDB and TCEQ. House Bill (HB) 1052, passed during the 86th Texas Legislative Session, required the TWDB and TCEQ to enter into an MOU related to the expedited permit review for interregional water supply projects funded by the TWDB's State Participation Program. This bill was codified as Texas Water Code §16.145. Texas Water Code §6.104 requires the TWDB to adopt by rule any MOU between the TWDB and another state agency.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS (Texas Government Code §2001.024(a)(4))

Ms. Rebecca Trevino, Chief Financial Officer, has determined that there will be no fiscal implications for state or local governments as a result of the proposed rule. For the first five years these rules are in effect, there is no expected additional cost to state or local governments resulting from their administration.

These rules are not expected to result in reductions in costs to either state or local governments. There is no change in costs for local governments because the use of the TWDB's financial assistance programs is voluntary. These rules are not expected to have any impact on state or local revenues. The rules do not require any increase in expenditures for state or local governments as a result of administering these rules. Additionally, there are no foreseeable implications relating to state or local governments' costs or revenue resulting from these rules. If a local government does choose to voluntarily utilize the TWDB's State Participation Program for financing an interregional water supply project, an expedited permit review process for the permits required for that project might save the local government some money on that permit review process.

Because these rules will not impose a cost on regulated persons, the requirement included in Texas Government Code, §2001.0045 to repeal a rule does not apply. Furthermore, the requirement in §2001.0045 does not apply because these rules

are necessary to implement legislation. This MOU is required by HB 1052 of the 86th Texas Legislative Session.

The TWDB invites public comment regarding this fiscal note. Written comments on the fiscal note may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

PUBLIC BENEFITS AND COSTS (Texas Government Code §2001.024(a)(5))

Ms. Rebecca Trevino also has determined that for each year of the first five years the proposed rulemaking is in effect, the public will benefit from the rulemaking as it provides clarity on the roles of TWDB and TCEQ related to expedited permit review for interregional water supply projects funded through the State Participation Program. Ms. Rebecca Trevino also has determined that for each year of the first five years the proposed rulemaking is in effect, the rules will not impose an economic cost on persons required to comply with the rule as participation in TWDB financial assistance programs is voluntary and the MOU requirement is imposed by statute.

ECONOMIC AND LOCAL EMPLOYMENT IMPACT STATEMENT (Texas Government Code §§2001.022, 2006.002); REGULATORY FLEXIBILITY ANALYSIS (Texas Government Code §2006.002)

The TWDB has determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect because it will impose no new requirements on local economies. The TWDB also has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of enforcing this rulemaking. The TWDB also has determined that there is no anticipated economic cost to persons who are required to comply with the rulemaking as proposed. Therefore, no regulatory flexibility analysis is necessary.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION (Texas Government Code §2001.0225)

The TWDB reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the rulemaking is not subject to Texas Government Code §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the rulemaking is to delineate the responsibilities of the TWDB and TCEQ related to expedited permit reviews for interregional water supply projects funded through the State Participation Program.

Even if the proposed rule were a major environmental rule, Texas Government Code §2001.0225 still would not apply to this rulemaking because Texas Government Code §2001.0225 only applies to a major environmental rule, the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the fed-

eral government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: (1) does not exceed any federal law; (2) does not exceed an express requirement of state law; (3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and (4) is not proposed solely under the general powers of the agency, but rather Texas Water Code §6.104. Therefore, this proposed rule does not fall under any of the applicability criteria in Texas Government Code §2001.0225.

The TWDB invites public comment regarding this draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

#### TAKINGS IMPACT ASSESSMENT (Texas Government Code §2007.043)

The TWDB evaluated this proposed rule and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this rule is to comply with the statutory requirement to enter into this MOU outlined in Texas Water Code §16.145. The proposed rule would substantially advance this stated purpose by delineating the responsibilities of the TWDB and TCEQ related to expedited permit reviews for interregional water supply projects funded through the State Participation Program.

The TWDB's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this proposed rule because this is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code §2007.003(b)(4). The TWDB is the agency that implements the State Participation Program.

Nevertheless, the TWDB further evaluated this proposed rule and performed an assessment of whether it constitutes a taking under Texas Government Code Chapter 2007. Promulgation and enforcement of this proposed rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulation does not affect a landowner's rights in private real property because this rulemaking does not burden, restrict, or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. This rule simply delineates the TWDB's and TCEQ's responsibilities related to expedited permit reviews for interregional water supply projects funded through the State Participation Program and establishes compliance with the TWDB's requirement to publish all MOUs with other state agencies in rule. Therefore, the proposed rule does not constitute a taking under Texas Government Code, Chapter 2007.

#### GOVERNMENT GROWTH IMPACT STATEMENT (Texas Government Code §2001.0221)

The TWDB reviewed the proposed rulemaking in light of the government growth impact statement requirements of Texas Government Code §2001.0221 and has determined, for the first five years the proposed rule would be in effect, the proposed rule will not: (1) create or eliminate a government program; (2) require the creation of new employee positions or the elimination of existing employee positions; (3) require an increase or decrease

in future legislative appropriations to the agency; (4) require an increase or decrease in fees paid to the agency; (5) create a new regulation; (6) expand, limit, or repeal an existing regulation; (7) increase or decrease the number of individuals subject to the rule's applicability; or (8) positively or adversely affect this state's economy.

#### AGENCY REVIEW OF EXISTING RULES (Texas Government Code §2001.039)

The TWDB reviewed Chapter 354 and the proposed rulemaking in light of the statutory requirement for the TWDB to review existing rules in Texas Government Code §2001.039. It has determined that the proposed rulemaking to Chapter 354, specifically §354.6, is necessary to comply with §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and also specifically §6.104, which requires the TWDB to adopt by rule all MOUs with other state agencies.

The TWDB concurrently intends to review the rules in 31 TAC Chapter 354 in accordance with Texas Government Code §2001.039. The TWDB will consider whether the initial factual, legal, and policy reasons for adopting each rule in these chapters and subchapters continue to exist and whether these rules should be repealed, readopted, or readopted with amendments.

#### SUBMISSION OF COMMENTS (Texas Government Code §2001.024(a)(7))

Written comments on the proposed rulemaking may be submitted by mail to Office of General Counsel, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, by email to [rulescomments@twdb.texas.gov](mailto:rulescomments@twdb.texas.gov), or by fax to (512) 475-2053. Comments will be accepted until 5:00 p.m. of the 31st day following publication of the *Texas Register*. Include "Chapter 354" in the subject line of any comments submitted.

#### STATUTORY AUTHORITY (Texas Government Code §2001.024(a)(3))

The rule is proposed under the authority of Texas Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Texas Water Code §6.104, which requires the TWDB to adopt by rule any MOU with another state agency.

This rulemaking affects Water Code, Chapters 6, 16, and 17.

§354.6. Memorandum of Understanding Between the Texas Water Development Board and the Texas Commission on Environmental Quality Related to Expedited Permit Review for Interregional Water Supply Projects.

(a) This Memorandum of Understanding ("Agreement") is between the Texas Water Development Board ("TWDB") and the Texas Commission on Environmental Quality ("TCEQ"), each an agency of the State of Texas.

(b) Whereas, the TWDB provides financial assistance for the construction, acquisition, or improvements of water supply projects, including through the State Participation Program,

(c) Whereas, the TCEQ conducts reviews and issues permits for certain aspects of the construction, acquisitions, or improvements for water supply projects,

(d) Whereas, the 86th Legislature, R.S. passed and the governor signed House Bill 1052, which was effective September 1, 2019,

(e) Whereas, House Bill 1052 added certain interregional water supply projects as projects eligible for State Participation funding from the TWDB,

(f) Whereas, House Bill 1052 required the TWDB and TCEQ to enter into a memorandum of understanding for the expedited approval of permits for such interregional water supply projects funded by TWDB through the State Participation Program,

(g) Now, therefore, in consideration of the benefits to the State of Texas, the TWDB and TCEQ hereby agree as follows:

(1) The TCEQ will, to the extent allowed by law, provide expedited review of permit applications for interregional water supply projects as provided by Texas Water Code, Section 16.145.

(2) The TWDB will, to the extent allowed by law, provide information to the TCEQ related to interregional water supply projects identified under Texas Water Code, Section 16.145 to ensure that TCEQ's review of permit applications associated with such projects can be conducted on an expedited basis.

(3) General conditions:

(A) This Agreement may be amended by mutual agreement of the TWDB and TCEQ in accordance with applicable law.

(B) This Agreement may be terminated by either party upon written notice to the other party and in accordance with applicable law.

(C) Any written notices required by this Agreement shall be addressed to the respective party as follows:

(i) Executive Director, TCEQ, P.O. Box 13087, Austin, Texas 78711-3231;

(ii) Executive Administrator, TWDB, P.O. Box 13231, Austin, Texas 78711-3231.

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 20, 2023.

TRD-202300243

Ashley Harden

General Counsel

Texas Water Development Board

Earliest possible date of adoption: March 5, 2023

For further information, please call: (512) 463-7686



## CHAPTER 380. ALTERNATIVE DISPUTE RESOLUTION

### SUBCHAPTER A. GENERAL PROVISIONS

#### 31 TAC §380.2, §380.3

The Texas Water Development Board (TWDB) proposes an amendment to 31 Texas Administrative Code (TAC) §380.2, Applicability, and §380.3, Definitions.

#### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED AMENDMENT.

The TWDB proposes amendments to 31 TAC Chapter 380, Alternative Dispute Resolution, Subchapter A, General Provisions.

These amendments are proposed to make the rules consistent with statute in Chapter 2260, Texas Government Code.

#### SECTION BY SECTION DISCUSSION OF PROPOSED AMENDMENTS.

##### 31 TAC §380.2, *Applicability*

Section 380.2, Applicability, is revised to add new paragraph (4). New paragraph (4) allows a claim for breach of contract to which Chapter 114, Civil Practices and Remedies Code to proceed against the TWDB, consistent with applicable statute in Chapter 2260, Texas Government Code.

##### 31 TAC §380.3, *Definitions*

Section 380.3, Definitions, is revised to provide that certain attorney's fees may be recoverable in an action against the TWDB, consistent with applicable statute in Chapter 2260, Texas Government Code.

#### FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS (Texas Government Code §2001.024(a)(4))

Ms. Rebecca Trevino, Chief Financial Officer, has determined that there will be no fiscal implications for state or local governments as a result of the proposed rulemaking. For the first five years these rules are in effect, there is no expected additional cost to state or local governments resulting from their administration.

These rules are not expected to result in reductions in costs to either state or local governments and there will be no change in costs for either state or local governments as these changes are necessary to comply with the resolution of certain contract claims against the state in Chapter 2260 of the Texas Government Code. These rules are not expected to have any impact on state or local revenues. The rules do not require any increase in expenditures for state or local governments as a result of administering these rules. Additionally, there are no foreseeable implications relating to state or local governments' costs or revenue resulting from these rules.

Because these rules will not impose a cost on regulated persons, the requirement included in Texas Government Code, §2001.0045 to repeal a rule does not apply. Furthermore, the requirement in §2001.0045 does not apply because these rules are necessary to implement legislation.

The TWDB invites public comment regarding this fiscal note. Written comments on the fiscal note may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

#### PUBLIC BENEFITS AND COSTS (Texas Government Code §2001.024(a)(5))

Ms. Rebecca Trevino also has determined that for each year of the first five years the proposed rulemaking is in effect, the public will benefit from the rulemaking as it clarifies the resolution process between the TWDB and contractors regarding certain contract claims against the state. Ms. Rebecca Trevino also has determined that for each year of the first five years the proposed rulemaking is in effect, the rules will not impose an economic cost on persons required to comply with the rule as these requirements are imposed by statute in Chapter 2260 of the Texas Government Code.

#### ECONOMIC AND LOCAL EMPLOYMENT IMPACT STATEMENT (Texas Government Code §§2001.022, 2006.002);



#### REGULATORY FLEXIBILITY ANALYSIS (Texas Government Code §2006.002)

The TWDB has determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect because it will impose no new requirements on local economies. The TWDB also has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of enforcing this rulemaking. The TWDB also has determined that there is no anticipated economic cost to persons who are required to comply with the rulemaking as proposed. Therefore, no regulatory flexibility analysis is necessary.

#### DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION (Texas Government Code §2001.0225)

The TWDB reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the rulemaking is not subject to Texas Government Code §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the rulemaking is to clarify the resolution process between the TWDB and contractors regarding certain contract claims against the state.

Even if the proposed rule were a major environmental rule, Texas Government Code §2001.0225 still would not apply to this rulemaking because Texas Government Code §2001.0225 only applies to a major environmental rule, the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: (1) does not exceed any federal law; (2) does not exceed an express requirement of state law; (3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and (4) is not proposed solely under the general powers of the agency, but rather under Chapter 2260 of the Texas Government Code. Therefore, this proposed rule does not fall under any of the applicability criteria in Texas Government Code §2001.0225.

The TWDB invites public comment regarding this draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

#### TAKINGS IMPACT ASSESSMENT (Texas Government Code §2007.043)

The TWDB evaluated this proposed rule and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this rule is to clarify

the resolution process between the TWDB and contractors regarding certain contract claims against the state. The proposed rule would substantially advance this stated purpose by aligning currently adopted TWDB rules with statutory changes regarding the kinds of contract claims subject to TWDB rule and the recovery of certain attorney's fees in the resolution of a contract dispute with the TWDB.

The TWDB's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this proposed rule because this is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code §2007.003(b)(4). The TWDB is the agency primarily charged with the responsibility for water planning and for administering water financing for the state.

Nevertheless, the TWDB further evaluated this proposed rule and performed an assessment of whether it constitutes a taking under Texas Government Code Chapter 2007. Promulgation and enforcement of this proposed rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulation does not affect a landowner's rights in private real property because this rulemaking does not burden, restrict, or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. In other words, this rule requires compliance with existing state law related to the resolution of contract claims against the state by contractor in accordance with Texas Government Code, Chapter 2260. Therefore, the proposed rule does not constitute a taking under Texas Government Code, Chapter 2007.

#### GOVERNMENT GROWTH IMPACT STATEMENT (Texas Government Code §2001.0221)

The TWDB reviewed the proposed rulemaking in light of the government growth impact statement requirements of Texas Government Code §2001.0221 and has determined, for the first five years the proposed rule would be in effect, the proposed rule will not: (1) create or eliminate a government program; (2) require the creation of new employee positions or the elimination of existing employee positions; (3) require an increase or decrease in future legislative appropriations to the agency; (4) require an increase or decrease in fees paid to the agency; (5) create a new regulation; (6) expand, limit, or repeal an existing regulation; (7) increase or decrease the number of individuals subject to the rule's applicability; or (8) positively or adversely affect this state's economy.

#### AGENCY REVIEW OF EXISTING RULES (Texas Government Code §2001.039)

The TWDB reviewed the proposed rulemaking in light of the statutory requirement for the Agency to review existing rules in Texas Government Code §2001.039. It has determined that the proposed rulemaking to Subchapter A, General Provisions, specifically 31 TAC §§380.2 and 380.3 is necessary to comply with §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and also specifically Chapter 2260, Texas Government Code, which requires the TWDB to follow certain procedures in the resolution of certain contract claims against the state.

The TWDB concurrently intends to review the rules in 31 TAC Chapter 380 and (publish notice of such in the *Texas Register*) in accordance with Texas Government Code §2001.039. The TWDB will consider whether the initial factual, legal, and policy reasons for adopting each rule in these chapters and sub-

chapters continue to exist and whether these rules should be repealed, readopted, or readopted with amendments.

**SUBMISSION OF COMMENTS** (Texas Government Code §2001.024(a)(7))

Written comments on the proposed rulemaking may be submitted by mail to Office of General Counsel, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, by email to [rulescomments@twdb.texas.gov](mailto:rulescomments@twdb.texas.gov), or by fax to (512) 475-2053. Comments will be accepted until 5:00 p.m. of the 31st day following publication the *Texas Register*. Include Chapter 380, Subchapter A in the subject line of any comments submitted.

**STATUTORY AUTHORITY** (Texas Government Code §2001.024(a)(3))

The amendment is proposed under the authority of Texas Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Texas Government Code, Chapter 2260.

Cross-reference to statute: Texas Government Code, Chapter 2260.

*§380.2. Applicability.*

This chapter does not apply to:

- (1) claims for personal injury or wrongful death arising from a breach of contract;
- (2) an action of the board for which the contractor is entitled to a specific remedy pursuant to state or federal constitution or statute; ~~and~~
- (3) contracts that are:
  - (A) between the board and:
    - (i) the federal government or its agencies, another state, or another nation;
    - (ii) a unit of state government; or
    - (iii) a local governmental body, or a political subdivision of another state;
  - (B) between a subcontractor and a contractor;
  - (C) within the exclusive jurisdiction of:
    - (i) a state or local regulatory body; or
    - (ii) a federal court or regulatory body; or
  - (D) solely and entirely funded by federal grant monies other than for a project defined in §380.3(12) of this title (relating to Definitions); ~~and~~.

(4) a claim for breach of contract to which Chapter 114, Civil Practices and Remedies Code, applies.

*§380.3 Definitions.*

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

- (1) Board--Texas Water Development Board.
- (2) Executive administrator--The executive administrator of the Texas Water Development Board.
- (3) Claim--An assertion by a contractor that the board has breached a contract.

(4) Contract--A written agreement between the board and a contractor by the terms of which the contractor agrees either to:

- (A) provide goods or services, by sale or lease, to or for the board; or
- (B) perform a project as defined by Texas Government Code, §2166.001.

(5) Contractor--An independent contractor who has entered into a contract directly with the board. The term does not include:

- (A) the contractor's subcontractors, officers, employees, agents, or other persons furnishing goods or services to the contractor;
- (B) an employee of the board; or
- (C) a student at an institution of higher education.

(6) Counterclaim--An assertion by the board that:

- (A) a contractor has breached a contract; or
- (B) justifies the actions taken by the board that are the subject of a contractor's claim.

(7) Damages--The total amount of money recoverable on a claim for breach of contract after deducting any amount owed the board for work not performed under the contract or not in substantial compliance with the contract's terms. Damages do not include:

- (A) consequential or similar damages;
- (B) exemplary damages;
- (C) damages based on an unjust enrichment theory;
- (D) attorney's fees except attorney's fees may be recoverable if:
  - (i) the claim is for breach of a written contract for (I) engineering, architectural, or construction services, (II) material related to the services described in the preceding paragraph (1) of this section; and
  - (ii) the amount in controversy is less than \$250,000, excluding penalties, costs, expenses, prejudgment interest, and attorney's fees; or

(i) the claim is for breach of a written contract for (I) engineering, architectural, or construction services, (II) material related to the services described in the preceding paragraph (1) of this section; and

(ii) the amount in controversy is less than \$250,000, excluding penalties, costs, expenses, prejudgment interest, and attorney's fees; or

(E) home office overhead.

(8) Day--A calendar day.

(9) Event--An act or omission, or a series of acts or omissions, giving rise to a claim or counterclaim.

(10) Goods--Supplies, materials, or equipment.

(11) Parties--The board and the contractor who entered into the contract that is alleged to have been breached.

(12) Project--As defined in Texas Government Code, §2166.001, a building construction project that is financed wholly or partly by a specific appropriation, bond issue, or federal money, including the construction of:

(A) a building, structure, or appurtenant facility or utility, including the acquisition and installation of original equipment and original furnishing; and

(B) an addition to, or alteration, modification, rehabilitation, or repair of an existing building, structure, or appurtenant facility or utility.

(13) Services--The furnishing of skilled or unskilled labor or consulting or professional work, or a combination thereof, excluding the labor of an employee of the board.

(14) Unit of state government--The state or an agency, department, commission, bureau, board, office, council, court, or other entity that is in any branch of state government and that is created by the constitution or a statute of this state, including a university system or institution of higher education. The term does not include a county, municipality, court of a county or municipality, special purpose district, or other political subdivision of this state.

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 20, 2023.

TRD-202300245

Ashley Harden

General Counsel

Texas Water Development Board

Earliest possible date of adoption: March 5, 2023

For further information, please call: (512) 463-7686



## TITLE 34. PUBLIC FINANCE

### PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

#### CHAPTER 20. STATEWIDE PROCUREMENT AND SUPPORT SERVICES

##### SUBCHAPTER D. SOCIO-ECONOMIC PROGRAM

##### DIVISION 1. HISTORICALLY UNDERUTILIZED BUSINESSES

###### 34 TAC §§20.281 - 20.294, 20.297, 20.298

The Comptroller of Public Accounts proposes amendments to §20.281, concerning policy and purpose, §20.282, concerning definitions, §20.283, concerning evaluation of active participation in the control, operation, and management of entities, §20.284, concerning statewide annual HUB utilization goals, §20.285, concerning subcontracts, §20.286, concerning state agency planning responsibilities, §20.287, concerning state agency reporting requirements, §20.288, concerning the certification process, §20.289, concerning protests, §20.290, concerning recertification, §20.291, concerning revocation, §20.292, concerning certification and compliance reviews, §20.293, concerning Texas historically underutilized business certification directory, §20.294, concerning graduation procedures, §20.297, concerning HUB forum programs in state agencies, and §20.298, concerning mentor-protégé program.

The amendment of §20.281 deletes a sentence that described Chapter 20, Subchapter D, Division 1. That description was incomplete and unnecessary.

The amendments of §20.282 update and rearrange the definitions as needed, and make the revisions described below.

The amendment of paragraph (1) revises the definition of "applicant" to remove the term "supplier" from the list of business organizations that may apply for HUB certification. A supplier is not a form of business organization recognized by the Texas HUB program. The amended definition of "applicant" also adds the catchall term "other business organizations," to indicate that the list of business organizations is not exhaustive.

The amendment of paragraph (2) revises the definition of "application" to mean the set of materials submitted by an applicant for HUB certification, rather than the comptroller's form for requesting HUB certification. This revised definition is consistent with the usage of the term in Chapter 20, Subchapter D, Division 1.

The amendment of paragraph (3) revises the definition of "commodities" to recognize that that term may include goods sought by the state, or contracted for, not only goods that have been delivered.

The amendments of former paragraphs (4), (5), and (24) delete the definitions of "comptroller," "contractor," and "respondent" because the terms are defined in §20.25 of this title (related to Definitions) and these definitions apply to the entire chapter, including Subchapter D, Division 1.

The amendment of former paragraph (6) deletes the definition of "directory" and replaces it with "HUB directory" in new paragraph (9), which is the term used throughout Chapter 20, Subchapter D, Division 1, and revises its definition. The revised definition provides the current name of the directory and informs that it is an online resource.

The amendment of former paragraph (8), renumbered paragraph (5), revises the definition of "economically disadvantaged person" to state that this term has the definition assigned by Government Code, Chapter 2161.001(3).

The amendment of former paragraph (9) deletes the definition of "forum" because the term is explained in §20.297, concerning HUB forum programs for state agencies.

The amendment of former paragraph (10), renumbered paragraph (6), revises the definition of "graduation" to use the term "size standards" rather than "comptroller's size standards for HUB certification," consistent with the rest of Chapter 20, Subchapter D, Division 1, and to indicate that a business becomes ineligible for HUB certification when it exceeds the size standards.

The amendment of former paragraph (11), renumbered paragraph (7), revises the definition of "historically underutilized business (HUB)" for clarity and style by eliminating surplus verbiage and needless cross-references to other definitions. The defined term "qualifying owner," contained in former paragraph (19), renumbered paragraph (17), is used to make the definition more readable.

The amendment of former paragraph (12), renumbered paragraph (8), revises the definition of "historically underutilized business (HUB) coordinator" to better describe the role and to remove language that merely restates Government Code, §2161.062(e). The responsibilities of a HUB coordinator are more thoroughly stated in §20.296, concerning HUB coordinator responsibilities.

The amendment of former paragraph (13) deletes the definition of "HUB report" because the definition conflicts with the usage of the term in the rules, and the meaning of the term is otherwise clear from context.

The amendment of former paragraph (14) deletes the definition of "HUB business plan" because the term is only used once in §20.286, concerning state agency planning responsibilities, where its meaning is clear from context.

The amendment of former paragraph (15), renumbered paragraph (10), revises the definition of "HUB subcontracting plan" to better describe what a HUB subcontracting plan is, and to remove miscellaneous facts that do not define the term.

The amendment of former paragraph (16), renumbered paragraph (11), revises the definition of "mentor-protégé program" for clarity and to remove a requirement for certain state agencies to implement such a program, which is not part of the definition. That requirement is retained in §20.298, concerning the mentor-protégé program.

The amendment of former paragraph (19), renumbered paragraph (17), deletes the definition of "owner or qualifying owner" and replaces it with "qualifying owner" only in renumbered paragraph (16), because "owner" is a substantially broader term that includes anyone who legally owns a business, even if they would not qualify to own a historically underutilized business. The definition is further revised to indicate that the term is singular and not plural, to eliminate a needless cross-reference to another definition, and for style.

The amendment of former paragraph (20) deletes the definition of "person or natural person" and moved the definition of "person" only in new paragraph (14), because the term "natural person" is no longer used in Chapter 20, Subchapter D, Division 1. It is further revised to eliminate the requirement of U.S. citizenship or veterancy, which is not part of the ordinary meaning of "person." The U.S. citizenship or veterancy requirement is relocated to the definition of "qualifying owner" in renumbered paragraph (17).

The amendment of former paragraph (21) deletes the definition of "principal place of business" and moves the revised definition to new paragraph (15). The revised definition eliminates a needless cross-reference to another definition.

The amendment of former paragraph (22) deletes the definition of "professional services" and moves it to new paragraph (16).

The amendment of former paragraph (23), renumbered paragraph (18), revises the definition of "resident of the state of Texas" to reduce the requirement of physical residence from 12 consecutive months to six consecutive months if the person has indicated Texas residency on their latest federal income tax return.

The amendments of former paragraphs (26), (28), (31), and (32) delete the definitions of "SBA," "subcontractor funds," "treasury funds," and "USAS" because these terms are not used in Subchapter D, Division 1.

The amendment of former paragraph (27), renumbered paragraph (20), revises the definition of "subcontractor" to replace the word "person" with "entity." The usage of "person" in this definition was inconsistent with the definition of "person" in §20.282. The revised definition makes it clear that a subcontractor may or may not be working on a contract for a state government entity. It also states that an employee of a contractor is not considered a subcontractor, but contract workers may be subcontractors.

The amendment of former paragraph (29), renumbered paragraph (21), revises the definition of "size standards" for ease of

understanding and to add a cross-reference to §20.294, concerning graduation procedures.

The amendment of former paragraph (33), renumbered paragraph (23), revises the definition of "vendor identification number" for ease of understanding.

The amendment of former paragraph (34), renumbered paragraph (24), revises the definition of "work" so that it is no longer limited to the context of a government contract.

The amendment of former paragraph (35), renumbered paragraph (25), revises the definition of "working day" to eliminate days on which a state agency is declared closed by its executive officer. As revised, the definition will provide more clarity for contractors and subcontractors.

The amendment of §20.283 utilizes the term "qualifying owner" as defined in §20.282. It also incorporates language that was previously contained in §20.292 into a new subsection (c). As a result, the substance of the active participation requirement is now entirely contained in §20.283.

The amendment of §20.284 revises the section for readability and concision and deletes language that is no longer needed. The amendment also adds to subsection (d) two optional measures an agency may take to help show its good faith effort to meet HUB utilization goals: providing courtesy reviews of HUB subcontracting plans and offering HUB compliance training during vendor conferences. Subsection (e) is revised to add a reference to the Government Code, Chapter 2161 definition of "economically disadvantaged person," which the comptroller considers more appropriate than the reference it replaces.

The amendments of §20.285 reorganize and condense the rule for ease of readability, and make the revisions noted below.

The amendment of subsection (a) uses the term "contract value," which is defined in Section 20.25. It also recognizes that the only official source of HUB certification information is the comptroller's online HUB directory.

The amendment of subsection (b) replaces the special rule for "alternative delivery methods" for construction, which were not explained or defined in rule. Instead, it includes a rule allowing state agencies to specify separate deadlines for the HUB plan and other parts of the response. This will allow an agency bidding a construction project to accept HUB plans after other parts of responses are due, as long as it does not open responses until the HUB plans are due. Revised subsection (b) also clarifies the notice provided to vendors in a solicitation regarding HUB subcontracting requirements. Finally, it provides additional examples of both minor deficiencies in a HUB subcontracting plan that may be corrected after submission and significant deficiencies that render the HUB subcontracting plan nonresponsive.

The amendment of subsection (c) requires a respondent to use a HUB subcontracting plan form prescribed by the comptroller. It also eliminates an incomplete description of the content that may appear on the forms, such as "the expected percentage of work to be subcontracted" and "the approximate dollar value of that percentage of work."

The amendment of subsection (d) consolidates and organizes information about the four methods by which a respondent may demonstrate a good faith effort to include HUBs in subcontracting, which information was previously scattered among several subsections. While the four methods are substantially the same as before, the revised rule gives them names: the solicitation

method, the all-HUB-subcontractors method, the meeting-or-exceeding-HUB-goal method, and the self-performing method. Paragraph (1), which covers the solicitation method, clarifies that neither the day on which the respondent sends notice to a HUB nor the day on which the respondent submits its response counts toward the minimum number of days the respondent must give HUBs to bid on subcontract work. Paragraph (3), which covers the meeting-or-exceeding-HUB-goal method, eliminates from the conditions of meeting the utilization goal the prohibition on using HUBs with which the respondent has existing contracts that have been in place for more than five years. This prohibition was inconsistent with the statutory aim of increasing HUB participation in state contracts, which is not limited to new HUBs or new HUB subcontracting relationships.

The amendment of subsection (e) improves style and adds clarity.

The amendment of subsection (f) separates the contractor's duty to maintain records demonstrating HUB compliance from its duty to submit periodic reports of its compliance to the state agency. The latter obligation is relocated to revised subsection (g), concerning progress assessment reports.

The amendment of subsection (g) allows the state agency to accept progress assessment reports from the contractor electronically, provided that the electronic report meets the comptroller's formatting and content requirements.

New subsection (h) consolidates and organizes state agency requirements to monitor HUB subcontracting plan compliance during the contract, which were previously scattered among multiple subsections. It no longer instructs a state agency to require the contractor to report payments to subcontractors, which duplicated a requirement in revised subsection (g). Instead, it requires the agency to carefully review the contractor's progress assessment reports. It also removes the references to reporting a contractor's noncompliance "in accordance with §20.585 of this title (relating to Debarment) and §20.586 of this title (relating to Procedures for Investigations and Debarment)," because those referenced sections do not mention reporting to the comptroller. Instead, new §20.285(h) states that the state agency shall report such noncompliance "in accordance with §20.509 of this title (relating to Performance Reporting)" and may also report it as grounds for potential debarment.

New subsection (i) states the rule for revising a HUB subcontracting plan. Because HUB subcontracting plan revisions are not part of monitoring a contractor's compliance with the HUB subcontracting plan and may occur outside that context, the two subjects no longer occupy the same subsection. Although the substance of the rule is not changed from the prior version, it is significantly condensed.

The amendment of §20.286 revises the section for accuracy and ease of comprehension. The revised subsection (a) more accurately states the goal of Government Code, Chapter 2161, Subchapter D, to increase HUB utilization by state agencies. The revised subsection (c) articulates that an agency's legislative appropriation request must demonstrate compliance with statutes and rules related to HUBs.

The amendment of §20.287 adds a descriptive title to each subsection for ease of use. The revised subsection (b) eliminates language related to contractor reporting of payments to subcontractors, which duplicated a requirement in §20.285. The revised subsection (d) provides the correct reference to the statute which addresses group purchasing for health care. The revised sub-

section (e) eliminates the term "bids," which was not defined, and instead refers to the defined term "responses" and clarifies that the comptroller reports the graduation rates for HUBs, rather than subgroups of HUBs, consistent with Government Code, §2161.121(a)(3). The revised subsection (g) eliminates the term "HUB credit," which was not defined, and instead refers to HUB "expenditure," consistent with Government Code, §2161.122(c). The revised subsection (g) adds a new clause stating that if a business is certified as a HUB for at least one day during a reporting period, all payments to that business for the entire period qualify as HUB expenditures. The amendment deletes subsection (h), which restated reporting requirements contained in §20.285.

The amendment of §20.288 revises the section for accuracy, concision, and ease of comprehension. The revised subsection (a) refers to the online HUB certification system, which is the only accepted method for an applicant to request certification. The revised subsection (c) requires an applicant to provide evidence of Texas residency that is satisfactory to the comptroller. Subsection (c) was divided into two subsections to separate information regarding proof of residency (retained in subsection (c)) from information regarding the comptroller's goal of processing applications within 90 days (now in subsection (d)). The revised subsection (d) eliminates surplus language. The revised subsection (e) clarifies that a business may be denied HUB certification on the basis that it has an unfavorable record of performance on state contracts. The subsection which described a packet of orientation materials provided by the comptroller to new HUBs is deleted to allow flexibility to provide the most current and helpful information by mail, email, meetings, virtual meetings, streaming video, and other means. The revised subsection (j) adds a sentence to specify that the expiration of HUB certifications granted by an organization other than the comptroller occurs as provided by the certifying organization.

The amendment of §20.289 clarifies that a HUB may protest a denial or revocation of certification using the online HUB certification system. The revised section also reflects that a protest is decided by the director of the division of the comptroller responsible for administering state procurement laws, and the director's decision is the final administrative action of the comptroller.

The amendment of §20.290 revises the section to include the online HUB certification system, which is the only accepted method for an applicant to seek recertification.

The amendment of §20.291 revises the section for clarity and to eliminate surplus language. It states that the HUB seeking to avoid revocation of HUB status shall submit documentation through the online HUB certification system. Information regarding the protest process, which merely repeated §20.289, is deleted. New subsection (c) states that businesses that have had their HUB status revoked may not be included in meeting statewide or state agency HUB utilization goals after the end of the last reporting period in which they held certification for at least one day.

The amendment of §20.292 revises the section to provide additional detail and improve ease of comprehension. The revised subsection (a) distinguishes between certification reviews and compliance reviews and specifies that the methods of conducting reviews are desk reviews, virtual reviews, in-person reviews, and onsite reviews. A description of the consequences of a review is moved from subsection (a) to revised subsection (d). The standard for active participation and control by a qualifying owner is relocated from §20.292(c) to §20.283(c) in order to consolidate

rules on the same subject. The revised subsection (d) expressly states that HUB certification may be denied or revoked after a certification or compliance review.

The amendment of §20.293 changes the title to the section from "Texas historically underutilized business certification directory" to "historically underutilized business directory" and describes the free online database of current HUB certification information provided by the comptroller. It eliminates references to printed directories or other media, which are no longer used to provide HUB certification information.

The amendment of §20.294 eliminates surplus language, addresses HUB eligibility as described below, and revises the section for ease of comprehension. It adds a title for each subsection. It consistently uses the term "size standards" rather than other terms that are not defined in the rules, and makes the revisions described below.

The amendment of subsection (a) clarifies that the size of an entity includes affiliate businesses as defined by the Small Business Administration rules referenced therein. This includes entities that own a HUB or HUB applicant, as well as entities owned by an owner of a HUB or HUB applicant. A HUB applicant that exceeds the size standards in combination with its affiliates will be denied certification or recertification. A HUB that is found to exceed the size standards in combination with its affiliates during a compliance review will graduate from the HUB program.

The amendment of subsection (c)(3) provides that the HUB application of a successor in interest of a HUB graduate, meaning a business that has acquired substantially all the assets and liabilities of the HUB graduate, will be treated as a reapplication by the HUB.

The amendment of §20.294 also removes several provisions that are no longer appropriate. The list of Small Business Administration categories in subsection (a) is no longer accurate, because the Small Business Administration instead provides size standards based on industry codes. Because the comptroller has incorporated the Small Business Administration size standards, it does not need to review and re-assess the size standards annually as provided in the former subsection (d). Finally, because there is no need for a mentor to be a HUB under the current mentor-protégé program rules, and in fact most mentors are not HUBs, there is no practical reason to keep the provision in former subsection (f) allowing the director to extend a mentor's HUB status after it exceeds the size standards. A mentor that graduates and thus loses its HUB status may continue as a mentor, regardless of HUB status. The amended §20.294 omits each of these provisions.

The amendment of §20.297 eliminates the imprecise conjunction "and/or."

The amendment of §20.298 revises the section for ease of comprehension and to eliminate surplus wording. The revised subsection (a) clarifies that the purpose of the Mentor-Protégé Program is to foster relationships between experienced contractors and HUBs and to increase the ability of HUBs to participate in state contracts and subcontracts. The revised subsection (a) eliminates a redundant statement of the objective of the Mentor-Protégé Program and a description of certain features of the program, which are already described in other subsections. The revised subsection (b) states that agencies "shall consider" certain factors in implementing the Mentor-Protégé Program, rather than stating that agencies "are encouraged to" consider the factors. The amended subsection (e) expressly requires, as a con-

dition of participating as a mentor, an entity's registration on the Centralized Master Bidders List. The revised subsection (h) eliminates unclear guidance regarding the revocation of a protégé's HUB status while the protégé is participating as a subcontractor. As with any other change to a HUB subcontracting plan, the contractor shall work with the state agency in good faith to modify the plan in compliance with §20.285.

Brad Reynolds, Chief Revenue Estimator, has determined that during the first five years that the proposed amended rules 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 rules would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed amended rules would benefit the public by updating the rules to reflect or clarify the current practice. There would be no significant anticipated economic cost to the public. The proposed amended rules would have no significant fiscal impact on small businesses or rural communities.

A public hearing will be held to receive comments on the proposed amendment. There is no physical location for this meeting. The meeting will be held on Tuesday, February 21, 2023 at 10:00 a.m. To access the online public meeting by web browser, please enter the following URL into your browser: <https://txcpa.webex.com/txcpa/j.php?MTID=m7affdf270e0ed6dddec09914ff096575>. To join the meeting by computer or cell phone using the Webex app, use the access code 2499 920 5957. Persons interested in providing comments at the public hearing may contact Mr. Gerard MacCrossan, Comptroller of Public Accounts, at [Gerard.MacCrossan@cpa.texas.gov](mailto:Gerard.MacCrossan@cpa.texas.gov) or by calling (512) 463-4468 by Monday, February 20, 2023.

Comments on the proposal may be submitted to Ms. Tosca M. McCormick, Comptroller of Public Accounts, P.O. Box 13186, Austin, Texas 78701-3186 or to the email address: [Tosca.McCormick@cpa.texas.gov](mailto:Tosca.McCormick@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*.

This rule amendment is proposed under Government Code, §2161.0012, which authorizes the comptroller to adopt rules to efficiently and effectively administer Government Code, Chapter 2161 regarding historically underutilized businesses.

These amendments implement Government Code, Chapter 2161.

*§20.281. Policy and Purpose.*

It is the policy of the comptroller to encourage the use of historically underutilized businesses (HUBs) by state agencies and to assist agencies in the implementation of this policy through race, ethnic, and gender-neutral means. The purpose of the HUB program is to promote full and equal business opportunities for all businesses in an effort to remedy disparity in state procurement and contracting in accordance with the HUB utilization goals specified in the State of Texas Disparity Study. [This subchapter (relating to the Historically Underutilized Businesses) describes the minimum steps and requirements to be undertaken by the comptroller and state agencies to fulfill the state's HUB

policy and attain aspirational goals recommended by the Texas Disparity Study;]

§20.282. *Definitions.*

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

(1) Applicant--A corporation, sole proprietorship [sole-proprietorship], partnership, joint venture, limited liability company, or other business organization [supplier] that applies to the comptroller for certification as a [an] historically underutilized business.

(2) Application--The information, documents, and representations submitted by an applicant that constitute its [comptroller's form for applicants to] request for certification as a [an] historically underutilized business.

(3) Commodities--Any tangible goods [good provided by a contractor to the state].

[(4) Comptroller--The office of the Texas Comptroller of Public Accounts.]

[(5) Contractor--Any vendor or supplier of commodities or services to a state agency under a purchase order contract or other state contract. A prime contractor is the lead contractor under a state contract.]

[(6) Directory--The Texas Certified Historically Underutilized Business Directory.]

(4) [(7)] Disparity study--The State of Texas Disparity Study - 2009, conducted by MGT of America, Inc., dated March 30, 2010, or any updates of the study that are prepared on behalf of the state as provided by Government Code, §2161.002(c).

(5) [(8)] Economically disadvantaged person--Has the meaning assigned by Government Code, §2161.001(3) [An eligible HUB owner (as defined in paragraph (19) of this section) whose business has not exceeded the graduation size standards according to the comptroller's graduation procedures in §20.294 of this title (relating to Graduation Procedures)].

[(9) Forum--A collaborative effort between state agencies and potential contractors to provide information and training regarding procurement opportunities.]

(6) [(10)] Graduation--When a certified HUB exceeds the [comptroller's] size standards and becomes ineligible for continued certification as a result [standard for HUB certification].

(7) [(11)] Historically underutilized business [Underutilized Business] (HUB)--A business organization described [outlined] in subparagraphs (A) - (F) of this paragraph that is certified by the comptroller because it [State of Texas and] has not exceeded the size standards established by §20.294 of this title and is [with its principal place of business in Texas (as defined in paragraph (21) of this section)]:

(A) a corporation formed for the purpose of making a profit in which at least 51% of all classes of the shares of stock or other equitable securities are owned by one or more qualifying owners [persons described by paragraph (19)(C) of this section];

(B) a sole proprietorship created for the purpose of making a profit that is 100% owned, operated, and controlled by a qualifying owner [person described by paragraph (19)(C) of this section];

(C) a partnership formed for the purpose of making a profit in which 51% of the assets and interest in the partnership is owned

by one or more qualifying owners [persons who are described by paragraph (19)(C) of this section];

(D) a joint venture in which each entity [in the joint venture] is a HUB [under this paragraph];

(E) a supplier contract between a HUB [under this paragraph] and a prime contractor under which the HUB is directly involved in the manufacture or distribution of the supplies or materials or otherwise warehouses and ships the supplies; or

(F) a business other than described in subparagraphs (B), (C), (D), and (E) of this paragraph, which is formed for the purpose of making a profit and is otherwise a legally recognized business organization under the laws of the State of Texas, provided that at least 51% of the assets and 51% of any classes of stock and equitable securities are owned by one or more qualifying owners [persons described by paragraph (19)(C) of this section].

(8) [(12)] Historically underutilized business [Underutilized Business] (HUB) coordinator--The staff member designated by a state agency to be primarily responsible for overseeing the implementation of HUB laws and monitoring attainment of HUB utilization goals [agencies with more than \$10 million in biennial budget. The position of coordinator must be at least equal to the procurement director or may be the procurement director].

(9) HUB directory--The Historically Underutilized Business Directory published on the comptroller's web site.

[(13) HUB report--A fiscal year semi-annual and annual report of the state's total expenditures, contract awards and payments made to certified HUBs].

[(14) HUB business plan--A written plan developed by state agencies for increasing HUB utilization required as part of the state agency's strategic plan, as required by Government Code, §2161.123.]

(10) [(15)] HUB subcontracting plan--Written plan identifying whether a contract will be self-performed or include [documentation regarding] the use of subcontractors, which subcontractors will be used, how much of the contract each subcontractor will receive, and how subcontractors were selected [is required to be submitted with all responses to state agency contracts with an expected value of \$100,000 or more where subcontracting opportunities have been determined by the state agency to be probable. The HUB subcontracting plan subsequently becomes a provision of the awarded contract, and shall be monitored for compliance by the state agency during the term of the contract].

(11) [(16)] Mentor-Protégé Program--A program designed by the comptroller to encourage [assist] agencies to work with [in identifying] prime contractors and HUBs to foster long-term [long term] relationships [and for potential long-term contractual relationships. Each state agency required to have a HUB coordinator is required to implement the Mentor-Protégé Program in accordance with §20.298 of this title (relating to Mentor-Protégé Program)].

(12) [(17)] Non-treasury funds--Funds that are not state funds subject to the custody and control of the comptroller and available for appropriation by the legislature.

(13) [(18)] Other services--All services other than construction and professional services, including consulting services subject to Government Code, Chapter 2254, Subchapter B.

(14) Person--A human being.

(15) Principal place of business--The location where the qualifying owner or owners of the business direct, control, and coordinate the business's daily operations and activities.

(16) Professional services--Services of certain licensed or registered professions that must be purchased by state agencies under Government Code, Chapter 2254, Subchapter A.

(17) ~~[(19)]~~ Qualifying [Owner or qualifying] owner--A [natural] person [or persons] who:

(A) is a resident [are residents] of the State of Texas [as that term is defined in paragraph (23) of this section];

(B) has [have] a proportionate interest and demonstrates [demonstrate] active participation in the control, operation, and management of an applicant [the entities' affairs]; and

(C) is a member [are economically disadvantaged] because of their identification as members] of one of the following groups:

(i) Black Americans, which includes persons having origins in any of the Black racial groups of Africa;

(ii) Hispanic Americans, which includes persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

(iii) American Women, which includes all women of any ethnicity except those specified in clauses (i), (ii), (iv), and (v) of this subparagraph;

(iv) Asian Pacific Americans, which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific, the Northern Marianas, and Subcontinent Asian Americans which includes persons whose origins are from India, Pakistan, Bangladesh, Sri Lanka, Bhutan or Nepal;

(v) Native Americans, which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians; and

(vi) Service-disabled Veterans, which includes veterans as defined by 38 U.S.C. §101(2) who have suffered at least a 20% service-connected disability as defined by 38 U.S.C. §101(16) who are not Black Americans, Hispanic Americans, American Women, Asian Pacific Americans, or Native Americans; and[-]

(D) is a U.S. citizen, born or naturalized, or a service-disabled veteran as defined by 38 U.S.C., §101(2) who has suffered at least a 20% service-connected disability as defined by 38 U.S.C., §101(16).

~~[(20) Person or natural person--A human being who is a U.S. citizen, born or naturalized, or a human being who is not a U.S. citizen, but is a veteran as defined by 38 U.S.C. §101(2) who has suffered at least a 20% service-connected disability as defined by 38 U.S.C. §101(16).]~~

~~[(21) Principal place of business--The location where the qualifying owner or owners (as defined in paragraph (19) of this section) of the business direct, control, and coordinate the business's daily operations and activities.]~~

~~[(22) Professional services--Services of certain licensed or registered professions that must be purchased by state agencies under Government Code, Chapter 2254, Subchapter A.]~~

(18) ~~[(23)]~~ Resident of the State of Texas-- An individual who [Qualifying owners are considered residents of the state if the owners]:

(A) physically resides [reside] in the state for a period of not less than six [12] consecutive months prior to submitting an application for HUB certification, and lists [list] Texas as their residency in their most recent tax return submitted to the U.S. Internal Revenue Service, or;

(B) has [have] established, to the satisfaction of the comptroller, a Texas domicile for a period of time sufficient to demonstrate their intention to permanently reside in the state consistently over a substantial period of time.

~~[(24) Respondent--A person that submits a response.]~~

(19) ~~[(25)]~~ Response--A submission made in answer to an invitation for bid, request for proposal, or other purchase solicitation document, which may take the form of a bid, proposal, offer, or other applicable expression of interest.

~~[(26) SBA--The U.S. Small Business Administration.]~~

(20) ~~[(27)]~~ Subcontractor--An entity that [As defined by Government Code, §2251.001, this is a person who] contracts with a prime contractor to work or contribute toward completing work under a purchase order or other contract. The term does not include employees of the contractor but includes contracted workers who will work on the contract [for a governmental entity].

~~[(28) Subcontractor funds--Payments made to any subcontractor by a prime contractor or supplier under contract with the state.]~~

(21) ~~[(29)]~~ Size standards--Graduation and eligibility thresholds established by the comptroller under §20.294 (concerning Graduation Procedures) [HUB program consistent with the comptroller's rules which are based on the U.S. Small Business Administration's size standards, and based on the North American Industry Classification System codes. These may also be used to determine eligibility for HUB registration].

(22) ~~[(30)]~~ Term contract--A statewide contract established by the comptroller as a supply source for user entities for specific commodities or services.

~~[(31) Treasury funds--State funds subject to the custody and control of the comptroller and available for appropriation by the legislature.]~~

~~[(32) USAS--Uniform Statewide Accounting System for the State of Texas.]~~

(23) ~~[(33)]~~ Vendor Identification Number (VID)--A 13-digit identification number used in state government to identify the bidder or business for payment or award of contracts, certification as a HUB, and [registration] on the bidders list.

(24) ~~[(34)]~~ Work--Providing goods or performing services [on behalf of a governmental entity] pursuant to a contract.

(25) ~~[(35)]~~ Working day--Normal business day of a state agency, not including weekends, federal or state holidays[, or days the state agency is declared closed by its executive officer].

*§20.283. Evaluation of Active Participation in the Control, Operation, and Management of Entities.*

(a) In determining the extent of ["]active participation in the control, operation and management["] necessary for qualification as a HUB, the comptroller may consider all relevant evidence. In considering and applying the factors set forth in [paragraphs (1) - (10) of] this subsection, the comptroller will consider actual roles and responsibilities of the qualifying [eligible] owners, rather than titles or statements of intention regarding the owners' role. Factors which may be considered include, but are not limited to:



(1) appearance and relative scope of responsibility of qualifying [HUB-eligible] owners in articles of incorporation or partnership formation documents;

(2) duties and rights of shareholders or partners relative to operational decisions affecting the short term and long term goals of the business;

(3) any restrictive language in articles of incorporation or partnership agreements applicable to qualifying [HUB eligible] owner;

(4) whether any licenses, certificates, or permits required to operate the business are held by or in the name of the qualifying [HUB eligible] owner, and whether the qualifying [eligible] owner is qualified to hold such licenses or permits pursuant to applicable laws and regulations;

(5) the percentages [percentage] of profit and [and/or] risk available to the qualifying [HUB eligible] owner under the corporate or partnership agreements;

(6) ability of other owners or partners to dilute either the ownership percentage or operational powers of the qualifying [HUB eligible] owner;

(7) whether the qualifying [HUB eligible] owner has full time employment elsewhere that might conflict with full participation in operation of the business;

(8) the percentage of government versus non-government contracts performed by the business where the qualifying [HUB eligible] owner actively participates in the bidding of the contract or the performance of the work;

(9) the period of time a qualifying [HUB eligible] owner participated in the active management and operation of the business prior to the business seeking HUB status; and

(10) whether and to what extent the HUB business shares management, board members, partners, employees, or other resources with another business in amounts or ways which might indicate that they are related or affiliated businesses.

(b) The comptroller may request any additional information it considers necessary to evaluate [any or all of the factors in subsection (a)(1) - (10) of this section prior to a decision to certify] an applicant as a HUB.

(c) Qualifying owners must be able to make independent and unilateral business decisions which guide the future and destiny of the business, and must be proportionately responsible for the direction and management of the business. Absentee or titular ownership by qualifying owners who do not take an active role in controlling and participating in the business is not consistent with the definition of a HUB.

*§20.284. Statewide Annual HUB Utilization Goals.*

(a) In accordance with §20.281 of this title (relating to Policy and Purpose) and Government Code, §2161.181 and §2161.182, each state agency shall make a good faith effort to utilize HUBs in contracts for construction, services (including professional and consulting services) and commodities purchases. Each state agency may achieve the statewide and the [and/or state agency-specific] annual HUB utilization goals specified in the state agency's Legislative Appropriations Request by contracting directly with HUBs or indirectly through subcontracting opportunities.

(b) The statewide HUB utilization goals [for the procurement categories for the State of Texas] are:

(1) 11.2% for heavy construction other than building contracts;

(2) 21.1% for all building construction, including general contractors and operative builders contracts;

(3) 32.9% for all special trade construction contracts;

(4) 23.7% for professional services contracts;

(5) 26.0% for all other services contracts; and

(6) 21.1% for commodities contracts.

(c) State agencies shall establish [their own state agency-specific] HUB utilization goals for each procurement category identified [outlined] in subsection (b) of this section. Agencies may [can] set their [state agency-specific] HUB utilization goals higher or lower than the statewide utilization goals. However [set out in subsection (b) of this section; however, at a minimum], the statewide HUB utilization goals shall [should] be the [each state agency's] starting point for establishing state agency-specific goals. State agency-specific HUB utilization goals shall [should] be based on:

(1) a state agency's fiscal year expenditures and total [totals] contract expenditures [expenditure];

(2) the availability to a state agency of HUBs in each procurement category;

(3) the state agency's historic utilization of HUBs; and

(4) other relevant factors.

(d) Each state agency shall make a good faith effort to assist HUBs in receiving a portion of the total [contract] value of all contracts that the state agency expects to award in a fiscal year. Factors in determining a state agency's good faith shall include:

(1) the state agency's performance in meeting or exceeding their [state agency-specific] HUB utilization goals or the statewide HUB utilization goals as they included as part of their legislative appropriations request in accordance with Government Code, §2161.127; and

(2) the state agency's adoption and implementation of the following procedures [taking the following factors into consideration]:

(A) prepare and distribute information on procurement procedures in a manner that encourages participation in state contracts by all businesses;

(B) divide proposed requisitions into reasonable lots in keeping with industry standards and competitive bid requirements;

(C) where feasible, assess bond and insurance requirements and design requirements that reasonably permit more than one business to perform the work;

(D) specify reasonable, realistic delivery schedules consistent with a state agency's actual requirements;

(E) ensure that specifications, terms, and conditions reflect a state agency's actual requirements, are clearly stated, and do not impose unreasonable or unnecessary contract requirements;

(F) provide potential bidders with referenced list of certified HUBs for subcontracting;

(G) develop and apply a written methodology to determine whether their [any state agency-specific] HUB utilization goals are appropriate under the Disparity Study<sup>[, as some HUB groups have not been underutilized within applicable contracting categories and should not be included in the HUB goals for that category]</sup>, or whether the statewide HUB utilization goals from the Disparity Study are appropriate for the state agency, and taking into account the provisions of Government Code, §2161.002(d);

(H) identify potential subcontracting opportunities in all contracts and require a HUB subcontracting plan for contracts of \$100,000 or more over the life of the contract (including any renewals), where such opportunities exist, in accordance with Government Code, §2161.251; [and]

(I) seek HUB subcontracting in contracts that are less than \$100,000 whenever possible;[-]

(J) provide, at a state agency's option, courtesy reviews of respondents' HUB subcontracting plans required to be submitted with responses pursuant to Government Code, §2161.252; and

(K) provide, at a state agency's option, HUB-subcontracting-plan-compliance training to potential respondents during pre-bid, pre-offer, and pre-proposal conferences.

(e) A state agency may also demonstrate good faith under this section by submitting a supplemental letter with documentation to the comptroller with their HUB report or legislative appropriations request [identifying the progress,] including other relevant information, such as[-], but not limited to the following, as prescribed by the comptroller]:

(1) identifying the percentage of contracts (prime and subcontracts) awarded to businesses that are not [certified as] HUBs, but that are owned by economically disadvantaged persons as defined in Government Code, §2161.001 [that are members of groups identified in §20.282(19)(C) of this title (relating to Definitions)];

(2) demonstrating that a different goal from that identified in subsection (b) of this section was appropriate given the state agency's types of purchases;

(3) demonstrating that a different goal was appropriate given the particular qualifications required by a state agency for its contracts;

(4) demonstrating that a different goal was appropriate given that graduated HUBs cannot be counted toward the goal; or

(5) demonstrating assistance to business entities [nonecertified HUBs] in obtaining HUB certification [with the comptroller].

#### §20.285. Subcontracts.

(a) Analyzing potential contracts of \$100,000 or more. In accordance with Government Code, Chapter 2161, Subchapter F, each state agency that considers entering into a contract with an expected value of \$100,000 or more [over the life of the contract (including any renewals)] shall, before it [the state agency] solicits responses [bids, proposals, offers, or other applicable expressions of interest], determine whether subcontracting opportunities are probable under the contract.

(1) State agencies shall use the following steps to determine if subcontracting opportunities are probable under the contract:

(A) examine [examining] the scope of work to be performed under the proposed contract and determine [determining] if it is likely that some of the work may be performed by a subcontractor;

(B) check [research the Centralized Master Bidders List,] the HUB directory [Directory, the Internet, and other directories, identified by the comptroller,] for HUBs that may be available to perform the contract work; and

(C) consider whether [a state agency may determine that] subcontracting is probable for only a subset of the work expected to be performed or the funds to be expended under the contract.[ If a state agency determines that subcontracting is probable on only a

portion of a contract, it shall document its reasons in writing for the procurement file.]

(2) State agencies may consider additional sources of information regarding the probability of subcontracting, including [In addition, determination of subcontracting opportunities may include, but is not limited to, the following:]

(A) [contacting other state and local agencies and institutions of higher education to obtain] information from other state agencies and local governments [regarding similar contracting and subcontracting opportunities]; and

(B) information about past state contracts with similar scopes of work [reviewing the history of similar state agency purchasing transactions].

(b) Requiring [Receipt of] HUB subcontracting plans.

(1) If[-], through the analysis in subsection (a) of this section, a state agency determines that subcontracting opportunities are probable, the solicitation [then its invitation for bids, request for proposals or other purchase solicitation documents] shall state that probability and explicitly require that any response include a completed HUB subcontracting plan[-: A bid, proposal, offer, or other expression of interest to such a solicitation must include a completed HUB subcontracting plan] to be considered responsive. The solicitation shall state the applicable HUB utilization goal, and provide information on where to find and how to complete the comptroller's HUB subcontracting plan form.

(2) A state agency shall require [The] HUB subcontracting plans to [plan shall] be submitted with each [the respondent's] response. If a state agency permits responses to be submitted in parts, with deadlines for each part, the solicitation shall specify which deadline applies to the HUB subcontracting plan and shall [on or before the due date for responses, except for construction contracts involving alternative delivery methods. For construction contracts involving alternative delivery methods, the HUB subcontracting plan may be submitted up to 24 hours following the date/time that responses are due provided that responses are] not open responses [opened] until after the HUB subcontracting plan is due [received].

(3) A state agency shall reject any response [Responses] that does [do] not include a completed and timely HUB subcontracting plan [in accordance with this subsection shall be rejected] due to material failure to comply with Government Code, §2161.252(b).

(4) If a properly submitted HUB subcontracting plan contains minor deficiencies, such as [(e.g.,] failure to sign or date the plan or[-] failure to submit already-existing evidence that a good faith effort was completed [three HUBs were contacted]), the state agency may allow [contact] the respondent to cure the minor deficiency. A state agency may not allow a respondent to cure material deficiencies, including completion of a good faith effort after the response deadline (such as contacting minority trade organizations after the response deadline, or producing a description of the resources the respondent will use to self-perform the work) [for clarification to the plan if it contains sufficient evidence that the respondent developed and submitted the plan in good faith].

(c) Completing [Requirements of] a HUB subcontracting plan. The HUB subcontracting plan shall consist of a completed form prescribed by the comptroller, with attachments as appropriate.

[(1) A state agency shall require a respondent to state whether it is a certified HUB. A state agency shall also require a respondent to state overall subcontracting and overall certified HUB subcontracting to be provided in the contract. Respondents shall

follow procedures in paragraph (2)(A) - (D) of this subsection when developing the HUB subcontracting plan.]

{(2) The HUB subcontracting plan shall include the state agency's HUB goals for its HUB business plan, and shall consist of completed forms prescribed by the comptroller and shall include the following:}

{(A) certification that respondent has made a good faith effort to meet the requirements of this section;}

{(B) identification of the subcontractors that will be used during the course of the contract;}

{(C) the expected percentage of work to be subcontracted; and}

{(D) the approximate dollar value of that percentage of work.}

{(3) The successful respondent shall provide all additional documentation required by the state agency to demonstrate compliance with good faith effort requirements prior to contract award. If the successful respondent fails to provide supporting documentation (phone logs, fax transmittals, electronic mail, etc.) within the timeframe specified by the state agency to demonstrate compliance with this subsection prior to contract award, that respondent's bid/proposal shall be rejected for material failure to comply with advertised specifications and state law.}

(d) Demonstrating [Establishing] good faith in the development of a HUB subcontracting plan. The HUB subcontracting plan must demonstrate that the respondent developed it in good faith. For each part of the work that the solicitation identified as a probable subcontracting opportunity and each part of the work that the respondent actually intends to subcontract, the respondent must demonstrate its good faith development of a HUB subcontracting plan by a method described in paragraphs (1)-(4) of this subsection [effort by respondent].

(1) Solicitation Method. To complete the solicitation method, the respondent shall comply with all requirements of this clause. [Any person submitting a bid, proposal, offer or other applicable expression of interest in obtaining a contract with the state shall submit a completed HUB subcontracting plan demonstrating evidence of good faith effort in developing that plan. Good faith effort shall be shown through utilization of the methods specified below, and in full conformance with all directions for demonstration and submission specified in the HUB subcontracting plan forms prescribed by the comptroller.]

(A) The respondent shall divide [Divide] the [contract] work into reasonable lots or portions [to the extent] consistent with prudent industry practices.

(B) The respondent shall notify, in writing, at least two trade organizations or development centers that serve economically disadvantaged persons, of the subcontracting opportunities that the respondent intends to subcontract. [Provide written justification of the selection process if the selected subcontractor is not a HUB.]

(C) The respondent shall notify, in writing, at least three HUBs of the subcontracting opportunities that the respondent intends to subcontract. The respondent shall provide the notice described in this subclause to three or more HUBs per subcontracting opportunity that provide the type of work required. [Provide documentation of meeting one or more of the following requirements:]

{(i) notify trade organizations or development centers that serve members of groups identified in §20.282(19)(C) of this title (relating to Definitions) according to methods established

by the comptroller to assist in identifying HUBs by disseminating subcontracting opportunities to their membership/participants. The notice shall, in all instances, include the scope of work, information regarding location to review plans and specifications, information about bonding and insurance requirements, and identify a contact person. Respondent must provide notice to organizations or development centers no less than seven (7) working days prior to submission of the response unless circumstances require a different time period, which is determined by the state agency and documented in the contract file. The respondent must document compliance with this subsection on the forms prescribed by the comptroller in the manner directed on such forms;}

{(ii) submit documentation that 100% of all available subcontracting opportunities will be performed by one or more HUBs; or}

{(iii) submit documentation that one or more HUB subcontractors will be utilized and that the total value of those subcontracts will meet or exceed the statewide goal for the appropriate contract category found in §20.284(b) of this title (relating to Statewide Annual HUB Utilization Goals), or the state agency-specific goal for the contracting category established by the procuring state agency, whichever is higher. When utilizing this demonstration method, HUB subcontractors with which the respondent has existing contracts that have been in place for more than five years can not be claimed for purposes of demonstrating that the applicable goal has been met or exceeded.}

(D) The notices required by subparagraphs (B) and (C) of this paragraph shall include the scope of work, information regarding location to review plans and specifications, information about bonding and insurance requirements, required qualifications, and other contract requirements and identify a contact person. [Provide documentation of meeting one or more of the following requirements:]

{(i) notify at least three (3) HUB businesses of the subcontracting opportunities that the respondent intends to subcontract. The respondent shall provide the notice described in this section to three or more HUBs per each subcontracting opportunity that provide the type of work required for each subcontracting opportunity identified in the contract specifications or any other subcontracting opportunity the respondent cannot complete with its own equipment, supplies, materials, and/or employees. The notification shall be in writing, and the respondent must document the HUBs contacted on the forms prescribed by the comptroller. The notice shall, in all instances, include the scope of the work, information regarding the location to review plans and specifications, information about bonding and insurance requirements, and identify a contact person. The notice shall be provided to potential HUB subcontractors at least seven (7) working days prior to submission of the respondent's response, unless circumstances require a different time period, which is determined by the state agency and documented in the contract file;}

{(ii) submit documentation that 100% of all available subcontracting opportunities will be performed by one or more HUBs; or}

{(iii) submit documentation that one or more HUB subcontractors will be utilized and that the total value of those subcontracts will meet or exceed the statewide goal for the appropriate contract category found in §20.284(b) of this title, or the state agency-specific goal for the contracting category established by the procuring state agency, whichever is higher. When utilizing this demonstration method, HUB subcontractors with which the respondent has existing contracts that have been in place for more than five years can not be claimed for purposes of demonstrating that the applicable goal has been met or exceeded.}

(E) The respondent shall provide the notices required by subparagraphs (B) and (C) of this paragraph at least seven working days prior to submission of the response. Neither the day on which the notice is sent nor the day on which the respondent submits its response count as one of the required seven working days. A state agency may determine that circumstances require a different time period than seven working days but must notify potential vendors of the requirement and document the justification in the contract file.

(F) The respondent shall submit documentation of having provided the notices required by subparagraphs (B) and (C) of this paragraph, including copies of relevant correspondence with the recipients, with its HUB subcontracting plan.

(G) If the respondent selects a non-HUB business to perform a subcontract instead of a HUB that bid for the same subcontract work, the respondent shall include a written justification for the selection in its HUB subcontracting plan.

(H) The respondent shall retain documentation of its compliance with each aspect of the solicitation method and submit it to the state agency upon request.

(2) All-HUB-Subcontractors Method. The respondent may use the all-HUB-subcontractors method to demonstrate a good faith effort for any subcontracting opportunity by submitting documentation that 100% of subcontracting opportunities will be performed by HUBs. [The respondent shall use the comptroller's Centralized Master Bidders List, the HUB Directory, Internet resources, and/or other directories as identified by the comptroller or the state agency when searching for HUB subcontractors. Respondents may utilize the services of minority, women, and community organizations contractor groups, local, state, and federal business assistance offices, and other organizations that provide assistance in identifying qualified applicants for the HUB program who are able to provide all or select elements of the HUB subcontracting plan.]

(3) Meeting-or-Exceeding-HUB-Goal Method. The respondent may use the meeting-or-exceeding-HUB-goal method to demonstrate a good faith effort for any subcontracting opportunity by submitting documentation that it will utilize one or more HUBs to perform subcontracts with a total value that will meet or exceed the HUB utilization goal identified by the procuring state agency in the solicitation. [In making a determination if a good faith effort has been made in the development of the required HUB subcontracting plan, a state agency may require the respondent to submit supporting documentation explaining how the respondent has made a good faith effort according to each criterion listed in subsection (e)(2)(A) - (D) of this section. The documentation shall include at least the following:]

[(A) how the respondent divided the contract work into reasonable lots or portions consistent with prudent industry practices;]

[(B) how the respondent's notices contain adequate information about bonding, insurance, the availability of plans, the specifications, scope of work, required qualifications and other requirements of the contract allowing reasonable time for HUBs to participate effectively;]

[(C) how the respondent negotiated in good faith with qualified HUBs, not rejecting qualified HUBs who were also the best value responsive bidder;]

[(D) how the respondent provided notice to trade organizations or development centers to assist in identifying HUBs by disseminating subcontracting opportunities to their membership/participants;]

[(E) for contracts subject to paragraph (1)(D)(ii) of this subsection, which HUBs were contracted to perform the subcontracting services for each subcontracting opportunity; and]

[(F) for contracts subject to paragraph (1)(D)(iii) of this subsection, which contractor(s) were utilized to perform the subcontracting opportunities, and the relevant dates for the respondent's contractual agreements with the contractor(s).]

(4) Self-performing Method. The respondent may use the self-performing method to demonstrate a good faith effort for any subcontracting opportunity by providing a statement of how it intends to fulfill the entire contract, including each subcontracting opportunity, with its own equipment, supplies, materials, and employees. The respondent shall provide the following if requested by the procuring state agency: [A respondent's participation in a Mentor-Protégé Program under Government Code, §2161.065, and the submission of a protégé as a subcontractor in the HUB subcontracting plan constitutes a good faith effort for the particular area to be subcontracted with the protégé. When submitted, state agencies may accept a Mentor-Protégé Agreement that has been entered into by the respondent (mentor) and a certified HUB (protégé). The state agency shall consider the following in determining the respondent's good faith effort:]

(A) evidence of existing staffing to meet contract objectives; [if the respondent has entered into a fully executed Mentor-Protégé Agreement that has been registered with the comptroller prior to submitting the plan, and]

(B) monthly payroll records showing employees engaged in the contract; [if the respondent's HUB subcontracting plan identifies the areas of subcontracting that will be performed by the protégé.]

(C) on-site reviews of company headquarters or work site where services are to be performed; and

(D) documentation proving employment of qualified personnel holding the necessary licenses and certificates required to perform the work.

(5) Subcontracting to a HUB Protégé. If the respondent is a mentor in a mentor-protégé agreement that is registered with the comptroller under §20.298 of this title (relating to Mentor-Protégé Program), the respondent may demonstrate a good faith effort for any subcontracting opportunity by subcontracting the work to its protégé. [If the respondent is able to fulfill all of the potential subcontracting opportunities identified with its own equipment, supplies, materials and/or employees, respondent must sign an affidavit and provide a statement explaining how the respondent intends to fulfill each subcontracting opportunity. The respondent must agree to provide the following if requested by the state agency:]

[(A) evidence of existing staffing to meet contract objectives;]

[(B) monthly payroll records showing company staff fully engaged in the contract;]

[(C) on site reviews of company headquarters or work site where services are to be performed; and]

[(D) documentation proving employment of qualified personnel holding the necessary licenses and certificates required to perform the work.]

(6) The respondent shall use the HUB directory to identify HUBs. If the respondent uses any alternate source, it accepts the risk that its HUB subcontracting plan may be noncompliant due to inaccurate HUB certification information.

(c) Accepting or rejecting [Reviewing] the HUB subcontracting plan. The state agency shall review the respondent's HUB subcontracting plan [shall be reviewed and evaluated] prior to [contract] award. The HUB subcontracting plan [and, if accepted,] shall be incorporated into [become a provision of] the state agency's contract. The agency and contractor may agree to revise [Revisions necessary to clarify and enhance information submitted in] the submitted [original] HUB subcontracting plan for clarity and maximum HUB utilization [may be made in an effort to determine good faith effort]. State agencies shall review the documentation submitted by the respondent to determine if the respondent made a good faith effort [has been made in accordance with this section]. If the state agency determines that a [submitted] HUB subcontracting plan was not developed in good faith or the good faith effort was incomplete, the state agency shall reject [treat that determination as a material failure to comply with advertised specifications, and] the [subject] response [(bid, proposal, offer, or other applicable expression of interest) shall be rejected]. The state agency shall document the reasons for rejection [shall be recorded] in the contract [procurement] file.

(f) Contractor [Maintaining] records. The contractor

[(1)] [Prime contractors] shall maintain [business] records documenting its compliance with the HUB subcontracting plan [and shall submit a compliance report to the contracting state agency monthly, in the format required by the comptroller. The compliance report submission shall be required as a condition for payment].

[(2)] During the term of the contract, the state agency shall monitor the HUB subcontracting plan monthly to determine if the value of the subcontracts to HUBs meets or exceeds the HUB subcontracting provisions specified in the contract. Accordingly, state agencies shall audit and require a prime contractor to report to the state agency the identity and the amount paid to its subcontractors in accordance with §20.287(b) of this title (relating to State Agency Reporting Requirements). If the prime contractor is meeting or exceeding the provisions, the state agency shall maintain documentation of the prime contractor's efforts in the contract file. If the prime contractor fails to meet the HUB subcontracting provisions specified in the contract, the state agency shall notify the prime contractor of any deficiencies. The state agency shall give the prime contractor an opportunity to submit documentation and explain to the state agency why the failure to fulfill the HUB subcontracting plan should not be attributed to a lack of good faith effort by the prime contractor.]

(g) Progress assessment reports. The contractor shall submit a progress assessment report to the state agency with each invoice, in the format required by the comptroller. A state agency may, at its option, allow electronic submissions of the compliance report required by this subsection so long as the electronically-submitted compliance reports are in the format and contain all information required by the comptroller. The progress assessment report shall be a condition for payment. [Monitoring HUB subcontracting plan during the contract.]

[(1)] If the selected respondent decides to subcontract any part of the contract in a manner that is not consistent with its HUB subcontracting plan, the selected respondent must comply with provisions of this section and submit a revised HUB subcontracting plan before subcontracting any of the work under the contract. If the selected respondent subcontracts any of the work without prior authorization and without complying with this section, the selected respondent is deemed to have breached the contract and is subject to any remedial actions provided by Government Code, Chapter 2161, other applicable state law and this section. Agencies shall report nonperformance relative to its contracts to the comptroller in accordance §20.509 of this title (relating to Performance Reporting).]

[(2)] If at any time during the term of the contract, the selected respondent desires to make changes to the approved HUB subcontracting plan, proposed changes must be received for prior review and approval by the state agency before changes will be effective under the contract. The selected respondent must comply with provisions of this section, relating to developing and submitting a subcontracting plan for substitution of work or of a subcontractor, prior to any alternatives being approved under the HUB subcontracting plan. The state agency shall approve changes by amending the contract or by another form of written state agency approval. The reasons for amendments or other written approval shall be recorded in the procurement file.]

[(3)] If a state agency expands the original scope of work through a change order or contract amendment, including a contract renewal that expands the scope of work, the state agency shall determine if the additional scope of work contains additional probable subcontracting opportunities not identified in the initial solicitation. If the state agency determines probable subcontracting opportunities exist, the state agency will require the selected respondent to submit a HUB subcontracting plan/revised HUB subcontracting plan for the additional probable subcontracting opportunities.]

[(4)] To determine if the prime contractor is complying with the HUB subcontracting plan, the state agency may consider the following:]

[(A)] whether the prime contractor gave timely notice to the subcontractor regarding the time and place of the subcontracted work;]

[(B)] whether the prime contractor facilitated access to the resources needed to complete the work; and]

[(C)] whether the prime contractor complied with the approved HUB subcontracting plan.]

[(5)] If a determination is made that the prime contractor failed to implement the HUB subcontracting plan in good faith, the state agency, in addition to any other remedies, may report nonperformance to the comptroller in accordance with §20.585 of this title (relating to Debarment) and §20.586 of this title (relating to Procedures for Investigations and Debarment). In addition, if the prime contractor failed to implement the HUB subcontracting plan in good faith, the state agency may revoke the contract for breach of contract and make a claim against the prime contractor.]

[(6)] State agencies shall review their procurement procedures to ensure compliance with this section.]

(h) Monitoring HUB subcontracting plan compliance.

(1) During the term of the contract, the state agency shall monitor the contractor's subcontracting by reviewing HUB progress assessment reports to determine whether it complies with the HUB subcontracting plan. The state agency shall perform monitoring at intervals corresponding to invoice submissions. The state agency shall determine if the value of the payments to HUBs meets or exceeds the HUB subcontracting plan. The state agency shall document the contractor's performance in the contract file.

(2) To determine if the contractor is complying with the HUB subcontracting plan, the state agency may consider the following:

(A) whether the contractor gave timely notice to the subcontractor regarding the time and place of the subcontracted work;

(B) whether the contractor facilitated access to the resources needed to complete the work; and

(C) any other information the state agency considers relevant.

(3) If the contractor fails to comply with the HUB subcontracting plan, the state agency shall notify the contractor of the deficiencies and give the contractor an opportunity to submit documentation and explain why its failure to fulfill the HUB subcontracting plan should not be attributed to a lack of good faith effort by the contractor. Any deficiencies identified by the state agency must be rectified by the contractor prior to the next reporting period.

(4) The state agency shall report failure to comply with the HUB subcontracting plan to the comptroller in accordance with §20.509 of this title (relating to Vendor Performance Reporting). If the state agency determines that the contractor failed to implement the HUB subcontracting plan in good faith, the state agency may, in addition to any other remedies, bar the contractor from further contracting opportunities with the agency. The state agency may also report nonperformance to the comptroller for consideration for possible debarment pursuant to Government Code, §2155.077. A debarment for failure to implement the HUB subcontracting plan may be for a period of no more than five years.

(i) Revising the HUB subcontracting plan.

(1) Before the contractor performs or subcontracts any part of the contract in a manner that is not consistent with its HUB subcontracting plan, it shall submit a revised HUB subcontracting plan to the state agency. Failure to comply with this section may be deemed a breach of the contract subject to any remedies provided by Government Code, Chapter 2161 and other applicable law.

(2) The state agency may approve requested changes to the HUB subcontracting plan by amending the contract. The reasons for amending the HUB subcontracting plan shall be recorded in the contract file.

(3) If a state agency expands the scope of work through a change order or contract amendment, including a renewal that expands the scope of work, it shall determine if the additional scope of work contains additional probable subcontracting opportunities. If the state agency determines probable subcontracting opportunities exist, the state agency shall require the contractor to submit a revised HUB subcontracting plan for the additional probable subcontracting opportunities.

*§20.286. State Agency Planning Responsibilities.*

(a) Agencies are required to prepare a written HUB business plan, which shall provide for increasing the utilization [use] of HUBs in purchasing, and in public works contracts in accordance with Government Code, §2161.123.

(b) Pursuant to Government Code, §2161.003, state agencies shall adopt the comptroller's rules related to administering Government Code, Chapter 2161, Subchapters B and C.

(c) Agencies must include a detailed report with their legislative appropriations request that shows the extent to which the agency complied with Government Code, Chapter 2161, and the rules of the comptroller relating to HUBs [identifying Good Faith Effort compliance]. The report should include the state agency's effort to identify HUBs for contracts and subcontracts, the agency's utilization of HUBs, and the [state] agency's successes and shortfalls at increasing [to increase] HUB participation.

*§20.287. State Agency Reporting Requirements.*

(a) Non-treasury funds. State agencies will report to the comptroller, not later than March 15 of each year regarding the previous six-month period and on September 15 of each year regarding the preceding fiscal year, the payments made for the purchase of goods and

services awarded and actually paid from non-treasury funds by the state agency. The report shall include information requested by the comptroller and shall be in a form prescribed by the comptroller. State agencies' purchases from state term contracts or group [contracts/group] purchases which are paid from non-treasury funds must be identified on the report as such so that they may be reflected on the comptroller's report of its own purchases.

(b) Monthly information. State agencies shall maintain[,] and compile monthly[,] information relating to the [state agency's and each of its operating division's] use of HUBs by the agency and each of their operating divisions, including information regarding subcontractors and suppliers. [This information shall include but is not limited to the information required in this section. On a monthly basis, state agencies shall require their prime contractor to report to the state agency the identity and amount paid to each HUB and non-HUB subcontractor to whom the prime contractor has awarded a subcontract for the purchase of supplies, materials and equipment. Prime contractors shall report to the applicable state agency the progress payments made to subcontractors and suppliers each month in which such payment is made.]

(c) Spending totals. State agencies will report to the comptroller, not later than March 15 of each year regarding the previous six-month period and on September 15 of each year regarding the preceding fiscal year, the total dollar amount of HUB and non-HUB contracting and subcontracting participation in all of the agencies' contracts for the purchase of goods, services and public works [payments]. State agencies must include contracting and subcontracting participation paid from treasury and non-treasury funds.

(d) Group purchasing report. State agencies that participate in a group purchasing program under Government Code, §2155.144 [§2155.134] shall submit [include] a separate report to the comptroller, not later than March 15 of each year regarding the previous six-month period and September 15 of each year regarding the preceding fiscal year, of purchases that are made through the group purchasing program and shall report the dollar amount of each purchase that is allocated to the reporting state agency.

(e) Consolidated report. The comptroller shall prepare a consolidated report based on a compilation and analysis of the reports submitted by each state agency and other information available to the comptroller. These reports of HUB purchasing and contracts shall form a record of each state agency's purchases in which the state agency selected the contractor. If the contractor was selected by the comptroller as part of its state term contract program, the purchase will be reflected on the comptroller's report of its own purchases. The comptroller report will contain the following information:

- (1) the total dollar amount of payments made by each state agency;
- (2) the total number of HUBs [actually] paid by each state agency;
- (3) the total number of contracts awarded to HUBs by each state agency;
- (4) the number of responses [bids] received from HUBs by each state agency; and
- (5) the graduation rate [rates] of HUBs as defined in §20.294 of this title (relating to Graduation Procedures) [for the groups identified in §20.282 (19)(C) of this title (relating to Definitions) and certified by the comptroller].

(f) Report to legislature. On May 15 of each year, the comptroller shall submit the consolidated report regarding the previous six-

month period and on November 15 of each year regarding the preceding fiscal year to the presiding officer of each house of the legislature, the members of the legislature and the joint select committee.

(g) Determination of HUB expenditures. State agencies shall report as HUB expenditures ~~[will receive HUB credit for]~~ the total payments ~~made [awarded]~~ directly to certified prime and subcontractor [subcontract] HUBs under the Vendor Identification Number in the comptroller's HUB directory as follows: ~~[Directory. When the prime contractor is a HUB, it must perform at least 25% of the total value of the contract with its own or leased employees, as defined by the Internal Revenue Service, in order for the state agency to receive 100% HUB credit for the entire contract. A prime that is a HUB may subcontract up to 75% of the contract with HUBs or non-HUB subcontractors. If a prime HUB contractor's HUB subcontracting plan identifies that it is planning to perform less than 25% of the total value of contract with its employees, the state agency will receive HUB credit for the value of the contract that was actually performed by the prime HUB contractor and its HUB subcontractors. To obtain HUB credit, the state agency must report its HUB subcontracting expenditures to the comptroller in accordance with subsection (e) of this section.]~~

(1) A state agency shall report as HUB expenditures payments made to prime and subcontractor HUBs who were certified for at least one day during the reporting period.

(2) When the prime contractor is a HUB, it must perform at least 25% of the total value of the contract with its own or leased employees, as defined by the Internal Revenue Service, in order for the state agency to report all payments to the prime contractor for the contract as HUB expenditures. If a HUB prime contractor performs less than 25% of the total value of contract with its employees or leased employees, the state agency shall only report as HUB expenditures the value of the contract that was actually performed by the contractor and its HUB subcontractors.

~~[(h) Any prime HUB contractor that seeks to satisfy the good faith effort requirement shall report to the state agency the identity and amount paid to each HUB each month in which such payment is made. The report will include the volume of work performed under the contract, the portion of the work that was performed with its employees, non-HUB contractors and other HUB contractors. The state agency may request payment documentation in accordance with subsection (b) of this section and the HUB subcontracting plan that confirms the performance of the contractor. The state agency shall discuss the performance of the contractor and document the contractor's performance in the contract file. Any deficiencies will be identified by the state agency and must be rectified prior to the next reporting period by the contractor.]~~

#### §20.288. Certification Process.

(a) A business seeking certification as a HUB must submit an application through the online HUB certification system [to the comptroller in a form prescribed by the comptroller], affirming under penalty of perjury that the business qualifies as a HUB.

(b) If requested by the comptroller, the applicant must provide any and all materials and information necessary to demonstrate a qualifying owner's [an economically disadvantaged person's] active participation in the control, operation, and management of the HUB.

(c) A ~~[It shall be the burden of the]~~ person claiming Texas residency must [to] prove residency [their] status by submitting: [through submission of adequate and appropriate documentation. Such documentation may include, but is not limited to:]

(1) a current valid Texas driver's license or I.D. card; and~~[-]~~ voter registration card showing Texas address~~;~~

(2) additional evidence of residency satisfactory to the comptroller, such as an appraisal statement for Texas real property (including whether a homestead exemption was claimed for that real property)[;] or most recent paid utility statements.

(d) The comptroller shall certify the applicant as a HUB or provide the applicant with written justification of its denial of certification within 90 days after the date the comptroller receives an [a satisfactorily completed] application ~~[from the applicant]~~.

(e) ~~[(d)]~~ The comptroller ~~[reviews and evaluates applications; and]~~ may reject an application based on one or more of the following:

- (1) the application is not satisfactorily completed;
- (2) the applicant does not meet the requirements of the definition of HUB;
- (3) the application contains false information;
- (4) the applicant does not provide required information in connection with the certification review conducted by the comptroller; or
- (5) the applicant has an unfavorable ~~[applicant's]~~ record of performance on ~~[any]~~ prior contracts with the state.

(f) ~~[(e)]~~ The comptroller may approve the existing certification program of one or more local governments or nonprofit organizations in this state that certify historically underutilized businesses, minority business enterprises, women's business enterprises, or disadvantaged business enterprises that substantially fall under the same definition, to the extent applicable for HUBs found in Government Code, §2161.001, and maintain them on the comptroller's HUB directory [Historically Underutilized Businesses List], if the local government or nonprofit organization:

- (1) meets or exceeds the standards established by the comptroller ~~[as set out in this subchapter;]~~ and
- (2) agrees to the terms and conditions as required by statute relative to the agreement between the local government or [and/or] nonprofits for the purpose of certification of HUBs.

(g) ~~[(f)]~~ The agreement in subsection (f) ~~[(e)]~~ of this section must take effect immediately and contain conditions as follows:

- (1) allow for automatic certification of businesses certified by the local government or nonprofit organization as prescribed by the comptroller;
- (2) provide for the efficient updating of the HUB directory [comptroller database containing information about HUBs and potential HUBs as prescribed by the comptroller];
- (3) provide for a method by which the comptroller may efficiently communicate with businesses certified by the local government or nonprofit organization;
- (4) provide those businesses with information about the state's Historically Underutilized Business Program; and
- (5) require that a local government or nonprofit organization that enters into an agreement under subsection (f) ~~[(e)]~~ of this section, complete the certification of an applicant with written justification of its certification denial within the period established by the comptroller in its rules for certification.

(h) ~~[(g)]~~ The comptroller will not accept the certification of a local government or nonprofit organization that charges money for the certification of businesses to be listed on the HUB directory [Historically Underutilized Business List maintained by the comptroller].

(i) ~~[(h)]~~ The comptroller may terminate an agreement made under this section if a local government or nonprofit organization fails to meet the standards established by the comptroller for certifying HUBs. In the event of the termination of an agreement, those HUBs [HUB's] that were certified as a result of the agreement will maintain their HUB status during the fiscal year in which the agreement was in effect. Businesses which [These HUB's who] are removed from the HUB directory [list] as a result of the termination of an agreement with a local government or nonprofit organization may apply [directly] to the comptroller for certification [as a HUB].

~~[(i)]~~ The comptroller will send all certified HUBs an orientation packet including a certificate, description of certification value/significance, list of state agency purchasers, and information regarding electronic commerce, the Texas Marketplace, and the state procurement process.]

(j) The certification is valid for a four-year period beginning on the date the comptroller certifies [TPASS certified] the applicant as a HUB. If the certification was granted by an organization other than the comptroller under subsections (f) and (g) of this section, it is valid for the period granted by that organization.

#### §20.289. Protests.

An applicant may protest the comptroller's denial or revocation of certification [its application] by filing a [written] protest through the online HUB certification system [with the comptroller] within 30 days after the date the comptroller sent notice of the denial or revocation [disposition] to the applicant. [Comptroller staff will then prepare a recommendation for review by the director of the TPASS division of the comptroller.] The [decision of the] director will consider the protest and issue a [is] final decision. The director's decision shall be the final administrative action of the comptroller.

#### §20.290. Recertification.

Upon expiration of the four-year period, a HUB [HUBs] that desires recertification must:

(1) submit an application through the online HUB certification system [return a completed recertification form as provided by the comptroller]; and

(2) comply with the requirements specified in §20.288 of this title (relating to the Certification Process) which apply to the recertification process.

#### §20.291. Revocation.

(a) The comptroller shall revoke the certification of a HUB if the comptroller determines that a business does not meet the definition of HUB or that the business fails to provide requested information in connection with a certification review conducted by the comptroller. The comptroller shall provide the business with written notice of the proposed revocation. A HUB shall [Applicants] have 30 days from receipt of the written notice to provide written documentation through the online HUB certification system stating the basis for disputing the [grounds for] revocation. [The applicant shall also submit documentation to address the deficiencies identified in the notice.] The comptroller shall evaluate the documentation to determine [confirm] the HUB's [applicant's] eligibility, and[- The comptroller shall] provide the applicant with written notification of the decision. [their certification status. If an applicant's certification is revoked, the applicant may appeal to the director of the TPASS division of the comptroller within 14 days of receipt of written notice of the revocation. Upon receipt of the applicant's request for appeal, the director will render a decision on the appeal within 30 days of receipt of the written appeal. The decision of the director is final.]

(b) If a HUB is barred from participating in state contracts in accordance with Government Code, §2155.077, the comptroller shall revoke the certification of that business for a period commensurate with the debarment period.

(c) Businesses that have had their HUB status revoked may not be included in meeting statewide or state agency HUB utilization goals after the end of the last reporting period in which they held certification for at least one day.

#### §20.292. Certification and Compliance Reviews.

(a) The comptroller will conduct certification reviews of applicants and compliance reviews of certified HUBs. The comptroller may perform random or targeted compliance desk, virtual, or in-person, on-site reviews. The comptroller may [of certified businesses by auditing them to] verify the information submitted by a business is accurate, and the business continues to meet all HUB eligibility requirements after certification has been granted. [Certification is subject to revocation if it is determined that a business does not qualify as an HUB.] Certification and compliance reviews of any business may be conducted upon determining a review is warranted.

(b) Businesses subject to certification and compliance reviews must provide the comptroller with any information requested to verify the [certification] eligibility of the business.

(c) The applicant's business documentation shall be reviewed to substantiate the required level of participation and control, and must demonstrate responsibility in the critical areas of the business' operation[- Eligible owners must be able to make independent and unilateral business decisions which guide the future and destiny of the business, and must be proportionately responsible for the direction and management of the business. The eligible owner's level of participation in the business will be evaluated] as set forth in §20.283 of the title (relating to Evaluation of Active Participation in the Control, Operation, and Management of Entities). [Absentee or titular ownership by eligible owners who do not take an active role in controlling and participating in the business is not consistent with the definition of a HUB.]

(d) If a [The] business does not [must] meet all eligibility [other certification and compliance] requirements or does not provide requested information within the timeframe specified by the comptroller, the business will be denied certification or have its certification revoked [identified in the comptroller's HUB Policies and Procedures used to determined eligibility].

#### §20.293. [Texas] Historically Underutilized Business [Certification] Directory.

The comptroller provides an online HUB directory that is updated daily to indicate current certification status. Access to the HUB directory is free and open to the public. [shall compile in the most cost-efficient format a directory of businesses certified as HUBs. The comptroller shall update the directory as necessary to maintain its accuracy. The comptroller shall provide a copy to state agencies, local governments and the public on a cost recovery basis upon receipt of a written request. The comptroller shall provide access to the directory either electronically or in hard copy, on CD, magnetic tape, or other portable electronic media, depending on the needs of each state agency. The comptroller and state agencies shall use the directory in conjunction with the comptroller's bidders list to solicit bids from certified HUBs for state purchasing and public works contracts.]

#### §20.294. Graduation Procedures.

(a) Size Standards. A HUB shall graduate [be graduated] from being eligible for [used to fulfill] HUB certification [procurement utilization goals] when it has maintained gross receipts or total employ-



ment levels during four consecutive years which, including all affiliates, exceed the U.S. Small Business Administration [SBA] size standards set forth in 13 CFR Part 121.1; §121.201 for the following categories:}]

- ~~[(1) heavy construction other than building construction;]~~
- ~~[(2) building construction, including general contractors and operative builders;]~~
- ~~[(3) special trade construction;]~~
- ~~[(4) medical, financial, and accounting services;]~~
- ~~[(5) architectural, engineering and surveying services;]~~
- ~~[(6) other services including legal services;]~~
- ~~[(7) commodities wholesale; and]~~
- ~~[(8) commodities manufacturers;]~~

(b) Graduation. Businesses [Firms] that achieve the size standards identified in subsection (a) of this section [will be assumed to] have reached a competitive status in overcoming the effects of discrimination. The comptroller shall review, as part of the certification or recertification process, the financial revenue or relevant data of a business [firms] to determine whether the size standards identified in subsection (a) of this section have been achieved. When the comptroller determines that the business exceeds the applicable size standard, the comptroller shall inform the business that it has graduated and is no longer certified as a HUB, and shall remove the business from the HUB directory.

(c) Effects of Graduation.

(1) Businesses that have graduated from the HUB program [in accordance with this section, or that have been decertified in accordance with this division,] may not be included in meeting statewide or state agency HUB utilization goals after the end of last reporting period in which they held certification for at least one day.

~~[(d) The comptroller shall review the SBA size standards each fiscal year to determine the need to reassess HUB graduation size standards and make any appropriate changes needed;]~~

(2) [(e)] A business [HUB] that has graduated [pursuant to this section] or does not qualify as a HUB under [§20.282(11) and (19) of] this title [(relating to Definitions)], shall be eligible to reapply for HUB certification only after demonstrating that it meets [they meet] the qualifications for HUB, including the [graduation] size standards.

(3) A business is considered a successor in interest if it has acquired substantially all of the assets and liabilities of another business. The application of the successor in interest to a HUB that has graduated will be treated as a reapplication of the HUB. The successor in interest applicant must show that it meets the size standards before it is considered eligible to apply.

~~[(f) If a HUB is mentoring two or more protégé businesses when it reaches the graduation size standards set forth in subsection (a) of this section, it may petition the director of the TPASS division of the comptroller for a one-year extension of HUB status. The granting of such extension shall be solely at the discretion of the director;]~~

§20.297. HUB Forum Programs for State Agencies.

(a) In accordance with Government Code, §2161.066, the comptroller shall design a program of forums in which HUBs are invited by state agencies to deliver technical and business presentations that demonstrate their capability to do business with the state agency:

(1) to senior managers and procurement personnel at state agencies that acquire goods and services of a type supplied by the HUBs; and

(2) to prime contractors or vendors with the state who may be subcontracting for goods and services of a type supplied by the HUBs.

(b) Each state agency with a biennial appropriation exceeding \$10 million shall participate in the forums by sending senior managers and procurement personnel to attend relevant presentations. The state agency will inform their prime contractors or vendors about presentations relevant to subcontracting opportunities for HUBs and small businesses. The comptroller and each agency that has a HUB coordinator shall:

(1) design its own forum program and model the program, to the extent appropriate, following the format established by the comptroller;

(2) sponsor presentations by HUBs at the state agency offices unless state agency facilities will not accommodate forum participants as determined and documented by the [State Agency] HUB Coordinator; and

(3) identify and invite HUBs to make marketing presentations on the types of goods and services they provide.

(c) Agencies may elect to implement forums individually or cooperatively with other agencies. The state agency's forum programs may include, but are not limited to, the following initiatives:

(1) providing marketing information that will direct HUBs to key staff within the agency;

(2) requesting other state agencies to assist in the preparation and planning of the forum when necessary;

(3) informing HUBs about potential contract opportunities and future awards; and

(4) preparing an annual report of each sponsored and [and/or] cosponsored forum.

§20.298. Mentor-Protégé Program.

(a) The Mentor-Protégé Program is a program administered by the comptroller in [In] accordance with Government Code, §2161.065, and implemented by state agencies. The purpose of the [the comptroller shall design a] Mentor-Protégé Program is to foster long-term relationships between experienced [prime] contractors and HUBs [Historically Underutilized Businesses (HUBs)] and to increase the ability of HUBs to obtain and perform contracts and [contract with the state or to receive] subcontracts for [under a] state agency business. [contract. The objective of the Mentor-Protégé Program is to provide professional guidance and support to the protégé to facilitate their development and growth. All participation is voluntary and program features should remain flexible so as to maximize participation.] Each state agency with a biennial appropriation that exceeds \$10 million shall implement the [a] Mentor-Protégé Program.

(b) Each [In efforts to design a Mentor-Protégé Program, each] state agency that implements the Mentor-Protégé program shall consider;] because of its unique mission and resources, is encouraged to implement a Mentor-Protégé Program that considers;]

(1) the needs of protégé businesses requesting to be mentored;

(2) the availability of mentors who possess unique skills, talents, and experience related to the mission of the state agency's program; and

(3) the state agency's staff and other resources.

(c) Agencies may elect to implement the Mentor-Protégé Program [Programs] individually or in cooperation [cooperatively] with other agencies, [and/or other] public entities, or [and] private organizations[; with skills, resources and experience in Mentor-Protégé Programs]. Agencies are encouraged to implement a Mentor-Protégé Program to address the needs of [its] protégé businesses in the following [critical] areas [of the state's procurements]:

- (1) construction;
- (2) commodities; and [and/or]
- (3) services.

(d) State agencies may consider, but are not limited to, the following factors in developing their Mentor-Protégé Program:

(1) [develop and implement] internal procedures, including an application process, regarding the Mentor-Protégé Program which identifies the eligibility criteria and the selection criteria for mentors and potential HUB protégé businesses;

(2) recruitment of [recruit prime] contractor [or vendor] mentors and protégés [protégé to voluntarily participate in the program];

(3) documentation of [establish a Mentor-Protégé Program objective identifying both] the roles and expectations of the state agency, the mentor and the protégé;

(4) monitoring [monitor the] progress of mentor-protégé relationships [the mentor protégé relationship];

(5) [identify] key [state] agency resources including senior managers and procurement personnel to assist with the implementation of the program;

(6) [encourage] partnerships with local governmental and nonprofit entities [to implement a community based Mentor-Protégé Program];

(7) the appropriate length of time for mentor-protégé relationships to continue (generally[; As a general matter, the statewide HUB program recommends that such relationships be] limited to four years);

(8) guidance [explore other methods and procedures] related to the Mentor-Protégé Program [Programs recommended] in the [Texas] Disparity Study [-2009]; and

(9) assessment of [assess] the effectiveness of their Mentor-Protégé Program by conducting periodic surveys and interviews [surveys/interviews] of [both] mentors and protégés.

(e) A state agency's Mentor-Protégé Program implementation must include mentor eligibility and selection criteria. In determining the eligibility and selection of a mentor, state agencies shall require each [may consider the following criteria]:

[(1)] [whether the] mentor to be [is a] registered [bidder] on the [comptroller's] Centralized Master Bidders List (CMBL); and may additionally consider the following criteria:

(1) [(2)] whether the mentor has extensive work experience and can provide developmental guidance in areas that meet the needs of the protégé, including but not limited to, business, financial, and personnel management; technical matters such as production, inventory control and quality assurance; marketing; insurance; equipment and facilities; and [and/or] other related resources;

[(2)] [(3)] whether the mentor is in "good standing" with the State of Texas and is not in violation of any state statutes, rules or governing policies;

[(3)] [(4)] whether the mentor has mentoring experience;

[(4)] [(5)] the number of protégés that a mentor can appropriately assist;

[(5)] [(6)] whether the mentor has a successful past work history with the state agency;

[(6)] [(7)] the amount of time a HUB has participated as a mentor in the program, or in other agencies' programs; and

[(7)] [(8)] whether and to what extent the mentor and protégé businesses share management, board members, partners, current or former employees, or other resources that might indicate that they are related or affiliated businesses.

(f) A state agency's Mentor-Protégé Program implementation must include protégé eligibility and selection criteria. In determining the eligibility and selection of HUB protégés, state agencies may use the following criteria:

(1) whether the protégé is eligible and willing to become certified as a HUB;

(2) whether the protégé's business has been operational for at least one year;

(3) whether the protégé is willing to participate with a mentor [mentoring firm] and will identify the type of guidance that is needed for its development;

(4) whether the protégé is in "good standing" with the State of Texas and is not in violation of any state statutes, rules, or governing policies;

(5) whether the protégé is involved in a mentoring relationship with another contractor;

(6) the amount of time a HUB has participated as a protégé in the program, or in other agencies' programs; and

(7) whether and to what extent the mentor and protégé businesses share management, board members, partners, employees, or other resources that might indicate that they are related or affiliated businesses.

(g) The mentor and the protégé should agree on the nature of their involvement under the state agency's Mentor-Protégé Program. The [mentor/protégé initiative]. Each state agency will monitor the progress [process] of the relationship. The mentor and protégé relationship should be reduced to writing and [that agreement] may include, but is not limited to, the following:

(1) identification of the developmental areas in which the protégé needs guidance;

(2) the time period which the developmental guidance will be provided by the mentor;

(3) [name, address, phone and fax numbers, and the] points of contact that will oversee the agreement of the mentor and protégé;

(4) procedure for a mentor [firm] to notify the protégé in advance if it intends to [voluntarily] withdraw from the program or terminate the mentor-protégé relationship;

(5) procedure for a protégé [firm] to notify the mentor in advance if it intends to terminate the mentor-protégé relationship; and

(6) a mutually agreed upon timeline to report the progress of the mentor-protégé relationship to the state agency.

(h) The protégé must maintain its HUB certification status for the duration of the agreement. [~~If a prime contractor has been awarded a contract with a state agency, which requires a HUB subcontracting plan, and the Mentor-Protégé Agreement is terminated, or the protégé's HUB certification expires, the prime contractor must either:~~]

~~[(1) enter into a new agreement with a certified HUB protégé; or]~~

~~[(2) comply with the requirements of this title relating to developing and submitting a HUB subcontracting plan.]~~

(i) Each state agency must notify its mentors and protégés that participation is voluntary. The notice must include written documentation that participation in the state agency's Mentor-Protégé Program implementation is neither a guarantee of [for] a contract opportunity nor a promise of business; but the program's intent is to foster positive long-term business relationships.

(j) State agencies may demonstrate their good faith under this section by submitting a supplemental letter with documentation to the comptroller with their HUB report or legislative appropriations request identifying the progress and testimonials of mentors and protégés that participate in the state agency's program. [~~In accordance with §20.296 of this title (relating to HUB Coordinator Responsibilities) the state agency's HUB coordinator shall facilitate compliance by its state agency.~~]

(k) Each state agency that implements the [sponsors a] Mentor-Protégé Program must report that information to the comptroller upon completion of a signed agreement by both parties. Information regarding the Mentor-Protégé Agreement shall be reported [~~to the comptroller~~] in a form prescribed by the comptroller within 21 calendar days after the agreement has been signed. The comptroller will register that agreement on the approved list of mentors and protégés. Approved Mentor-Protégé Agreements are valid for all state agencies in determining good faith effort for the particular area of subcontracting to be performed by the protégé as identified in the HUB subcontracting plan.

(l) The comptroller shall retain [~~maintain~~] and make available to state agencies all registered Mentor-Protégé Agreements. The sponsoring state agency shall monitor and report the termination of an existing Mentor-Protégé Agreement that has been registered with the comptroller within 21 calendar days.

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

Filed with the Office of the Secretary of State on January 20, 2023.

TRD-202300246

Don Neal

General Counsel, Operations and Support Legal Services  
Comptroller of Public Accounts

Earliest possible date of adoption: March 5, 2023

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



## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

## PART 5. TEXAS BOARD OF PARDONS AND PAROLES

### CHAPTER 145. PAROLE

#### SUBCHAPTER A. PAROLE PROCESS

##### 37 TAC §§145.3, 145.12, 145.15, 145.18

The Texas Board of Pardons and Paroles proposes amendments to 37 TAC Chapter 145, Subchapter A, §145.3, §145.12, §145.15, and §145.18 concerning parole process. The amendments are proposed to provide edits for uniformity and consistency throughout the rules; to correct grammatical errors; to reflect current rehabilitation programs; and to accurately reflect the statutory requirements for the reconsideration for release of offenders sentenced to certain offenses.

David Gutiérrez, Chair of the Board, determined that for each year of the first five-year period the proposed amendments are in effect, no fiscal implications exist for state or local government as a result of enforcing or administering these sections.

Mr. Gutiérrez also has determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the amendments to these sections will be to clarify the procedures in the parole process. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the amended rules as proposed. The amendments 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; does not create a new regulation; does not expand, limit, or repeal an existing regulation; 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.

An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed amendments will not have an economic effect on micro-businesses, small businesses, or rural communities as defined in Texas Government Code §2006.001(2).

Comments should be directed to Bettie L. Wells, General Counsel, Texas Board of Pardons and Paroles, 209 W. 14th Street, Suite 500, Austin, Texas 78701, or by e-mail to [bettie.wells@tdcj.texas.gov](mailto:bettie.wells@tdcj.texas.gov). Written comments from the general public should be received within 30 days of the publication of this proposal.

The amended rules are proposed under Texas Government Code §508.036, §508.0441, §508.045, §508.141, and §508.149. Section 508.036 requires the Board to adopt rules relating to the decision-making processes used by the board and parole panels. Section 508.0441 and §508.045 authorize the Board to adopt reasonable rules as proper or necessary relating to the eligibility of an offender for release to mandatory supervision and to act on matters of release to mandatory supervision. Section 508.141 provides the Board authority to adopt policy establishing the date on which the board may reconsider for release an inmate who has previously been denied release. Section 508.149 provides authority for the discretionary release of offenders on mandatory supervision.

No other statutes, articles, or codes are affected by these amendments.

§145.3. *Policy Statements Relating to Parole Release Decisions by the Board of Pardons and Paroles.*

To aid the Board in its analysis and research of parole release, the Board adopts the following policies.

(1) Release to parole is a privilege, not an offender right, and the parole decision maker is vested with complete discretion to grant, or to deny, parole release as defined by statutory law.

(A) Candidates for parole are [tø bæ] evaluated on an individual basis.

(B) There are no mandatory rules or guidelines that must be followed in every case because each offender is unique. The Board and Parole Commissioners have the statutory duty to make release decisions, which are only in the best interest of society. The Board and parole panels use parole guidelines as a tool to aid in the discretionary parole decision process.

(2) The Board will reconsider for release an offender, other than an offender serving a sentence for an offense listed in Section 508.149(a), Government Code as soon as practicable after the first anniversary of the date of denial.

(3) The Board will reconsider for release an offender who is serving a sentence for an offense under Section 508.149(a), Government Code [;] or an offense punishable as a second or third degree felony under Section 22.04, Penal Code, after the first anniversary date of the denial and end before the fifth anniversary date of the denial, but in no event shall it be less than one (1) calendar year from the panel decision date.

(4) The Board will reconsider for release an offender who is serving a sentence for an offense under Section 22.021, Penal Code; or serving a life sentence for a capital felony, who is eligible for parole, after the first anniversary of the date of the denial and before the 10th anniversary of the date of denial.

(5) [(4)] An offender will be considered for parole when eligible and when the offender meets the following criteria with regard to behavior during incarceration.

(A) Other than on initial parole eligibility, the offender [person] must not have had a major disciplinary misconduct report in the six-month period prior to the date he is reviewed for parole, [;] which has resulted in loss of good conduct time or reduction to a classification status below that assigned during that offender's [person's] initial entry into the TDCJ-CID.

(B) Other than on initial parole eligibility, at the time he is reviewed for parole the person must be classified in the same or higher time earning classification assigned during that person's entry into the TDCJ-CID.

(C) If an offender who has received an affirmative vote to parole and, following the vote, notification is received that the offender has been reduced below initial classification status or has lost good conduct time, the parole decision will be reviewed and revoted by the parole panel that rendered the decision.

(D) A person who has been revoked and returned to custody for a violation of the conditions of release to parole or mandatory supervision will be considered for release to parole or mandatory supervision when eligible.

(E) An offender who is otherwise eligible for parole and who has charges pending alleging a felony offense committed while in

the TDCJ, any facility under its supervision, or a facility under contract with the TDCJ, and for which a complaint has been filed with a magistrate of the State of Texas, [any facility under its supervision, or a facility under contract with TDCJ] will not be considered for release to parole.

(F) An offender who is otherwise eligible for release and meets the criteria for Medically Recommended Intensive Supervision (MRIS) as required by Section 508.146, Government Code may be considered for release on parole.

(6) [(5)] Any consideration by a Board Member or Parole Commissioner of an offender's litigation activities when determining an offender's candidacy for parole is strictly prohibited. No offender will be denied the opportunity to present to the judiciary, including appellate courts, his or her allegations concerning violations of fundamental constitutional rights. Any consideration of such legal activity during the parole review, supervision, or revocation process is a violation of Board policy. In the event parole is denied in violation of this section, the offender may pursue a remedy under the special review provisions of §145.17 of this title (relating to Action upon Special Review--Release Denied). In the event parole or mandatory supervision is revoked in violation of this section, the offender may pursue a remedy under the motion to reopen hearing provisions of §146.11 of this title (relating to Releasee's Motion to Reopen Hearing or Reinstate Supervision).

§145.12. *Action upon Review.*

A case reviewed by a parole panel for parole consideration may be:

(1) deferred for request and receipt of further information;

(2) denied a favorable parole action at this time and set for review on a future specific month and year (Set-Off). The next review date (Month/Year) for an offender serving a sentence listed in Section 508.149(a), Government Code, or serving a sentence for second or third degree felony under Section 22.04, Penal Code may be set at any date after the first anniversary of the date of denial and end before the fifth anniversary of the date of denial, unless the inmate is serving a sentence for an offense under Section 22.021, Penal Code, or a life sentence for a capital felony, in which event the designated month must begin after the first anniversary of the date of the denial and end before the tenth [40th] anniversary of the date of the denial. The next review date for an offender serving a sentence not listed in Section 508.149(a), Government Code shall be as soon as practicable after the first anniversary of the denial;

(3) denied parole and ordered serve-all, but in no event shall this be utilized if the offender's projected release date is greater than five (5) years for offenders serving sentences listed in Section 508.149(a), Government Code, or serving a sentence for second or third degree felony under Section 22.04, Penal Code; or greater than one (1) year for offenders not serving sentences listed in Section 508.149(a), Government Code. If the serve-all date in effect on the date of the panel decision is extended by more than 180 days, the case shall be placed in regular parole review;

(4) determined [that] the totality of the circumstances favor the offender's release on parole, further investigation (FI) is ordered with the following available voting options; and[;] impose all conditions of parole or release to mandatory supervision that the parole panel is required or authorized by law to impose as a condition of parole or release to mandatory supervision;

(A) FI-1--Release the offender when eligible;

(B) FI-2 (Month/Year)--Release on a specified future date;

(C) FI-3 R (Month/Year)--Transfer to a TDCJ rehabilitation program. Release to parole only after program completion and not earlier than three (3) months from specified date. Such TDCJ program may include either CHANGES [~~Lif~~eskills], Voyager, [~~Segovia~~] Pre-Release Center ([~~Segovia~~] PRC), or any other approved [~~tier~~] program;

(D) FI-4 R (Month/Year)--Transfer to a TDCJ rehabilitation program. Release to parole only after program completion and not earlier than four (4) months from specified date. Such TDCJ program shall be the Sex Offender Education Program (SOEP);

(E) FI-5--Transfer to TDCJ In-Prison Therapeutic Community Program (IPTC). Release to aftercare component only after completion of IPTC;

(F) FI-6--Transfer to a TDCJ DWI Program. Release to continuum of care program as required by paragraph (5) of this section;

(G) FI-6 R (Month/Year)--Transfer to a TDCJ rehabilitation program. Release to parole only after program completion and no earlier than six (6) months from specified date. Such TDCJ program may include the Pre-Release Therapeutic Community (PRTC), Pre-Release Substance Abuse Program (PRSAP), or In-Prison Therapeutic Community Program ([~~IP~~TC]), or any other approved [~~tier~~] program;

(H) FI-7 R (Month/Year)--Transfer to a TDCJ rehabilitation program. Release to parole only after program completion and not earlier than seven (7) months from the specified date. Such TDCJ program shall be the Serious and Violent Offender Reentry Initiative (SVORI);

(I) FI-9 R (Month/Year)--Transfer to a TDCJ rehabilitation program. Release to parole only after program completion and not earlier than nine (9) months from specified date. Such TDCJ program shall be the Sex Offender Treatment Program (SOTP-9);

(J) FI-18 R (Month/Year)--Transfer to a TDCJ rehabilitation treatment program. Release to parole only after program completion and no earlier than 18 months from specified date. Such TDCJ program shall be [~~either~~] the Sex Offender Treatment Program (SOTP-18) [~~;~~ or the InnerChange Freedom Initiative([~~IF~~)]];

(5) any person released to parole after completing a TDCJ rehabilitation program as a prerequisite for parole, must participate in and complete any required post-release program. A parole panel shall require as a condition of release on parole or release to mandatory supervision that an offender who immediately before release is a participant in the program established under Section 501.0931, Government Code, participate as a releasee in a drug or alcohol abuse continuum of care treatment program; or

(6) any offender receiving an FI vote, as listed in paragraph (4)(A) - (J) of this section, shall be placed in a program consistent with the vote. If treatment program managers recommend a different program for an offender, a transmittal shall be forwarded to the parole panel requesting approval to place the offender in a different program.

*§145.15. Action upon Review; Extraordinary Vote (SB 45).*

(a) This section applies to any offender convicted of or serving a sentence for a capital felony, other than a life sentence, an offense under Sections 20A.03, 21.02, or 21.11(a)(1), Penal Code, or who is required under Section 508.145(c), Government Code to serve 35 calendar years before becoming eligible for parole review. All members of the Board shall vote on the release of an eligible offender. At least two-thirds of the members must vote favorably for the offender to be released to parole. Members of the Board shall not vote until they receive and review a copy of a written report from the department on the probability of the offender committing an offense after being released.

(1) Upon review, use of the full range of voting options is not conducive to determining whether two-thirds of the Board considers the offender ready for release to parole.

(2) If it is determined [~~that~~] circumstances favor the offender's release to parole the Board has the following voting options available:

(A) FI-1--Release the offender when eligible;

(B) FI-4 R (Month/Year)--Transfer to a TDCJ rehabilitation program. Release to parole only after program completion and not earlier than four (4) months from specified date. Such TDCJ program shall be the Sex Offender Education Program (SOEP);

(C) FI-9 R (Month/Year)--Transfer to a TDCJ rehabilitation program. Release to parole only after program completion and not earlier than nine (9) months from specified date. Such TDCJ program shall be the Sex Offender Treatment Program (SOTP-9); or

(D) FI-18 R (Month/Year)--Transfer to a TDCJ rehabilitation treatment program. Release to parole only after program completion and no earlier than eighteen months from the specified date. Such TDCJ program may include the Sex Offender Treatment Program (SOTP-18) [~~;~~ or the InnerChange Freedom Initiative (IFI)]. In no event shall the specified date be set more than three (3) years from the current panel decision date.

(3) If it is determined that circumstances do not support a favorable action upon review, the following options are available:

(A) NR (Month/Year)--Deny release and set the next review date for 36 or 60 months following the panel decision date; or

(B) SA--The offender's minimum or maximum expiration date is less than 60 months away. The offender will continue to serve their sentence until that date.

(b) If the offender is sentenced to serve consecutive sentences and each sentence in the series is for an offense committed on or after September 1, 1987, the following voting options are available to the Board panel:

(1) CU/FI (Month/Year-Cause Number)--A favorable parole action that designates the date an offender would have been released if the offender had been sentenced to serve a single sentence;

(2) CU/NR (Month/Year-Cause Number)--Deny release and set the next review date for 36 or 60 months following the panel decision date; or

(3) CU/SA (Month/Year-Cause Number)--Deny release and order serve-all if the offender is within 60 months of their maximum expiration date.

(c) Some offenders are eligible for consideration for release to Discretionary Mandatory Supervision if the sentence is for an offense committed on or after September 1, 1996. Prior to the offender reaching the projected release date, the voting options are the same as those listed in subsections (a) and (b) of this section. If the TDCJ-CID determines that release of the offender will occur because the offender will reach the projected release date, the case shall be referred to a three-member parole panel within 30 days of the offender's projected release date for consideration for release to mandatory supervision using the following options:

(1) RMS--Release to mandatory supervision; or

(2) DMS (Month/Year)--Deny release to mandatory supervision and set for review on a future specific month and year. The next mandatory supervision review date shall be set one (1) year from the panel decision date.

(d) Upon review of any eligible offender who qualifies for release to Medically Recommended Intensive Supervision (MRIS), the MRIS panel shall initially vote to either recommend or deny MRIS consideration. The MRIS panel shall base this decision on the offender's medical condition and medical evaluation, and shall determine whether the offender constitutes a threat to public safety.

(1) If the MRIS panel determines the offender does constitute a threat to public safety, no further voting is required.

(2) If the MRIS panel determines ~~that~~ the offender does not constitute a threat to public safety, the case shall be sent to the full Board, which shall determine whether to approve or deny the offender's release to parole. The following voting options are available to the Board:

(A) Approve MRIS--The Board shall vote F1-1 and impose special condition "O" - "The offender shall comply with the terms and conditions of the MRIS program and abide by a Texas Correctional Office for Offenders with Mental or Medical Impairments (TCOOMMI)-approved release plan. At any time this condition is in effect, an offender shall remain under the care of a physician and in a medically suitable placement"; the Board shall provide appropriate reasons for the decision to approve MRIS; or

(B) Deny MRIS--The Board shall provide appropriate reasons for the decision to deny MRIS.

(3) The decision to approve release to MRIS for an offender remains in effect until specifically withdrawn by the Board.

(e) If a request for a special review meets the criteria set forth in §145.17(f) of this title (relating to Action upon Special Review--Release Denied), the offender's case shall be sent to the special review panel.

(1) The special review panel may take action as set forth in §145.17(i) of this title.

(2) When the special review panel decides the offender's case warrants a special review, the case shall be re-voted by the full Board. The Presiding Officer shall determine the order of the voting panel. Voting options are the same as those in subsections (a) - (c) of this section.

§145.18. *Action upon Review; Extraordinary Vote (HB 1914).*

(a) This section applies to any offender convicted of or serving a sentence for a capital felony [offense] with a life sentence, who is eligible for parole, or convicted of or serving sentence for an offense under Section 22.021, Penal Code. All members of the Board shall vote on the release of an eligible offender. At least two-thirds of the members must vote favorably for the offender to be released to parole. Members of the Board shall not vote until they receive and review a copy of a written report from the TDCJ ~~[department]~~ on the probability of the offender committing an offense after being released.

(1) Upon review, use of the full range of voting options is not conducive to determining whether two-thirds of the Board considers the offender ready for release to parole.

(2) If it is determined that circumstances favor the offender's release to parole the Board has the following voting options available:

(A) FI-1--Release the offender when eligible;

(B) FI-4 R (Month/Year)--Transfer to a TDCJ rehabilitation program. Release to parole only after program completion and not earlier than four months from specified date. Such TDCJ program shall be the Sex Offender Education Program (SOEP);

(C) FI-9 R (Month/Year)--Transfer to a TDCJ rehabilitation program. Release to parole only after program completion and not earlier than nine (9) months from specified date. Such TDCJ program shall be the Sex Offender Treatment Program (SOTP-9); or

(D) FI-18 R (Month/Year)--Transfer to a TDCJ rehabilitation treatment program. Release to parole only after program completion and no earlier than eighteen months from the specified date. Such TDCJ program may include the Sex Offender Treatment Program (SOTP-18) ~~[, or the InnerChange Freedom Initiative (IFI)]~~. In no event shall the specified date be set more than three (3) years from the current panel decision date.

(3) If it is determined that circumstances do not support a favorable action upon review, the following options are available:

(A) NR (Month/Year)--Deny release and set the next review date for 36, 60, 84, or 120 months following the panel decision date; or

(B) SA--The offender's minimum or maximum expiration date is less than 120 months away. The offender will continue to serve their sentence until that date.

(b) If the offender is sentenced to serve consecutive sentences and each sentence in the series is for an offense committed on or after September 1, 1987, the following voting options are available to the Board panel:

(1) CU/FI (Month/Year-Cause Number)--A favorable parole action that designates the date an offender would have been released if the offender had been sentenced to serve a single sentence;

(2) CU/NR (Month/Year-Cause Number)--Deny release and set the next review date for 60, 84, or 120 months following the panel decision date; or

(3) CU/SA (Month/Year-Cause Number)--Deny release and order serve-all if the offender is within 120 months of their maximum expiration date.

(c) Some offenders are eligible for consideration for release to Discretionary Mandatory Supervision if the sentence is for an offense committed on or after September 1, 1996. Prior to the offender reaching the projected release date, the voting options are the same as those listed in subsections (a) and (b) of this section. If the TDCJ-CID determines that release of the offender will occur because the offender will reach the projected release date, the case shall be referred to a three-member parole panel within 30 days of the offender's projected release date for consideration for release to mandatory supervision using the following options:

(1) RMS--Release to mandatory supervision; or

(2) DMS (Month/Year)--Deny release to mandatory supervision and set for review on a future specific month and year. The next mandatory supervision review date shall be set one year from the panel decision date.

(d) Upon review of any eligible offender who qualifies for release to Medically Recommended Intensive Supervision (MRIS), the MRIS panel shall initially vote to either recommend or deny MRIS consideration. The MRIS panel shall base this decision on the offender's medical condition and medical evaluation, and shall determine whether the offender constitutes a threat to public safety.

(1) If the MRIS panel determines the offender does constitute a threat to public safety, no further voting is required.

(2) If the MRIS panel determines that the offender does not constitute a threat to public safety, the case shall be sent to the full

Board, which shall determine whether to approve or deny the offender's release to parole. The following voting options are available to the Board:

(A) Approve MRIS--The Board shall vote F1-1 and impose special condition "O" --"The offender shall comply with the terms and conditions of the MRIS program and abide by a Texas Correctional Office for Offenders with Mental or Medical Impairments (TCOOMMI)-approved release plan. At any time this condition is in effect, an offender shall remain under the care of a physician and in a medically suitable placement"; the Board shall provide appropriate reasons for the decision to approve MRIS; or

(B) Deny MRIS--The Board shall provide appropriate reasons for the decision to deny MRIS.

(3) The decision to approve release to MRIS for an offender remains in effect until specifically withdrawn by the Board.

(e) If a request for a special review meets the criteria set forth in §145.17(f) of this title (relating to Action upon Special Review--Release Denied), the offender's case shall be sent to the special review panel.

(1) The special review panel may take action as set forth in §145.17(i) of this title.

(2) When the special review panel decides the offender's case warrants a special review, the case shall be re-voted by the full Board. The Presiding Officer shall determine the order of the voting panel. Voting options are the same as those in subsections (a) - (c) of this section.

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

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Bettie Wells  
General Counsel  
Texas Board of Pardons and Paroles  
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For further information, please call: (512) 406-5478



## SUBCHAPTER B. TERMS AND CONDITIONS OF PAROLE

### 37 TAC §145.27

The Texas Board of Pardons and Paroles (Board) proposes the repeal of Title 37, Chapter 145, Subchapter B, §145.27. The proposed repeal is the result of a review of the subchapter pursuant to the four-year rule review prescribed by §2001.039 Government Code.

The repeal of §145.27 is proposed because the pilot program, which is the subject of §521.1421 Transportation Code, has become a permanent program administered by the Texas Department of Criminal Justice.

David Gutiérrez, Chair of the Board, determined that for each year of the first five-year period the proposed repeal is in effect, no fiscal implications exist for state or local government as a result of enforcing or administering these sections.

Mr. Gutiérrez also has determined that for each year of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of enforcing the repeal to these sections will be to clarify the procedures in the parole process. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the amended rules as proposed. The repeal 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; does not create a new regulation; does not expand, limit, or repeal an existing regulation; 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.

An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed repeal will not have an economic effect on micro-businesses, small businesses, or rural communities as defined in Texas Government Code §2006.001(2).

Comments should be directed to Bettie L. Wells, General Counsel, Texas Board of Pardons and Paroles, 209 W. 14th Street, Suite 500, Austin, Texas 78701, or by e-mail to [bettie.wells@tdcj.texas.gov](mailto:bettie.wells@tdcj.texas.gov). Written comments from the general public should be received within 30 days of the publication of this proposal.

The repeal is proposed under §508.036(b)(1) Government Code, which provides authority for the Board to adopt rules relating to the decision-making processes used by the Board and parole panels.

The code affected by the proposal is Texas Transportation Code, Chapter 521.

### §145.27. Personal Identification Program.

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

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Bettie Wells  
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For further information, please call: (512) 406-5478



## CHAPTER 147. HEARINGS SUBCHAPTER A. GENERAL RULES FOR HEARINGS

### 37 TAC §§147.1, 147.3, 147.5, 147.6

The Texas Board of Pardons and Paroles proposes amendments to 37 TAC Chapter 147, Subchapter A, §§147.1, 147.3, 147.5, and 147.6 concerning general rules for hearings. The amendments are proposed to provide edits for uniformity and consistency throughout the rules, correct grammatical errors, delineate prohibited acts in ex parte communications, and clarify the hearing officer's responsibility regarding written testimony.

David Gutiérrez, Chair of the Board, determined that for each year of the first five-year period the proposed amendments are in effect, no fiscal implications exist for state or local government as a result of enforcing or administering these sections.

Mr. Gutiérrez also has determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the amendments to these sections will be to clarify the procedures in the parole process. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the amended rules as proposed. The amendments 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; does not create a new regulation; does not expand, limit, or repeal an existing regulation; 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.

An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed amendments will not have an economic effect on micro-businesses, small businesses, or rural communities as defined in Texas Government Code §2006.001(2).

Comments should be directed to Bettie L. Wells, General Counsel, Texas Board of Pardons and Paroles, 209 W. 14th Street, Suite 500, Austin, Texas 78701, or by e-mail to [bettie.wells@tdcj.texas.gov](mailto:bettie.wells@tdcj.texas.gov). Written comments from the general public should be received within 30 days of the publication of this proposal.

The amended rules are proposed under §§508.0441, 508.045, 508.281, and 508.283, Government Code. Section 508.0441 relates to the board member and parole commissioners release and revocation duties. Section 508.045 provides parole panels with the authority to grant, deny, revoke parole, or revoke mandatory supervision. Section 508.281 and §508.283 relate to hearings to determine violations of the releasee's parole or mandatory supervision.

No other statutes, articles, or codes are affected by these amendments.

#### §147.1. Public Hearings.

(a) All hearings on matters not confidential or privileged by law, or both, shall be open to the public.

(b) Appropriate federal and state constitutional provisions, statutes, regulations, and judicial precedent establishing the confidential or privileged nature of information presented shall be given effect by the Hearing Officer.

(c) To effect this provision, the Hearing Officer shall have the authority to close the hearing to the extent necessary to protect against the improper disclosure of confidential privileged information.

(d) If the Hearing Officer closes the hearing pursuant to this section, in no event shall the Hearing Officer exclude from the hearing a party as defined by §141.111 [Section 141.111] of this title (relating to Definition and Terms) and includes:

- (1) the releasee;
- (2) the releasee's attorney;
- (3) the releasee's interpreter;

- (4) Board Member or Board employee;
- (5) TDCJ employee;
- (6) County jail employee; and
- (7) Prosecuting attorney.

(e) When the Hearing Officer closes the hearing, the Hearing Officer shall announce on the record that the hearing will be closed to the public to protect the confidential ~~and~~ or privileged information being introduced into evidence. After the confidential ~~and~~ or privileged evidence is obtained, the Hearing Officer shall open the hearing to the public and announce the same on the record.

#### §147.3. Ex Parte Consultations.

Unless required for the disposition of matters authorized by law, Hearing Officers, Board Members and Parole Commissioners assigned to render a decision or to make findings of fact and conclusions of law in an individual case shall not ~~may not communicate~~, directly or indirectly, initiate, permit, nor consider communications concerning ~~in connection with~~ any issue of fact or law with any party, except on notice and opportunity for all parties to participate.

#### §147.5. Witnesses.

(a) The Hearing Officer may determine whether a witness may be excused under the rule that excludes witnesses from the hearing.

(1) In no event shall the Hearing Officer exclude from the hearing a party under the authority of this section. For these purposes, the term "party" means the definition in §141.111 [Section 141.111] of this title (relating to Definition of Terms) and includes:

- (A) the releasee;
- (B) the releasee's attorney; and

(C) no more than one representative of the TDCJ Parole Division who has acted or served in the capacity of supervising, advising, or agent officer in the case.

(2) In the event ~~that~~ it appears to the Hearing Officer that an individual who is present at the hearing and intended to be called by a party as a witness has no relevant, probative, noncumulative testimony to offer on any material issue of fact or law, then the Hearing Officer, in his sound discretion, may determine that such individual should not be placed under the rule and excluded from the hearing.

(b) All witnesses who testify in person are subject to cross-examination unless the Hearing Officer specifically finds good cause for lack of confrontation and cross-examination.

(c) Witnesses personally served with a subpoena and who fail to appear at the hearing, ~~and upon good cause determined by the Hearing Officer,~~ may present testimony by written statement, upon a favorable good cause determination by the Hearing Officer.

#### §147.6. Record.

(a) The record in any case includes all pleadings, motions, and rulings; evidence received or considered; matters officially noticed; questions and offers of proof, objections, and rulings on them; all relevant ~~TDCJ Parole~~ Division documents, staff memoranda or reports submitted to or considered by the Hearing Officer involved in making the decision, and any decision, opinion, or report by the Hearing Officer presiding at the hearing.

(b) All hearings shall be electronically recorded in their entirety.

(c) The hearing record is made [a] part of the official parole record maintained by the ~~TDCJ Parole~~ Division. All requests for



copies of the hearing report or hearing recording shall be addressed to the [TDCJ Parole] Division.

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

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Bettie Wells

General Counsel

Texas Board of Pardons and Paroles

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For further information, please call: (512) 406-5478



## SUBCHAPTER B. EVIDENCE

### 37 TAC §147.24, §147.26

The Texas Board of Pardons and Paroles proposes amendments to 37 TAC Chapter 147, Subchapter B, §147.24 and §147.26 concerning evidence. The amendments are proposed to provide edits for uniformity and consistency throughout the rules and to correct grammatical errors.

David Gutiérrez, Chair of the Board, determined that for each year of the first five-year period the proposed amendments are in effect, no fiscal implications exist for state or local government as a result of enforcing or administering these sections.

Mr. Gutiérrez also has determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the amendments to these sections will be to clarify the procedures in the parole process. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the amended rules as proposed. The amendments 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; does not create a new regulation; does not expand, limit, or repeal an existing regulation; 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.

An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed amendments will not have an economic effect on micro-businesses, small businesses, or rural communities as defined in Texas Government Code §2006.001(2).

Comments should be directed to Bettie L. Wells, General Counsel, Texas Board of Pardons and Paroles, 209 W. 14th Street, Suite 500, Austin, Texas 78701, or by e-mail to [bettie.wells@tdcj.texas.gov](mailto:bettie.wells@tdcj.texas.gov). Written comments from the general public should be received within 30 days of the publication of this proposal.

The amended rules are proposed under §§508.0441, 508.045, 508.281, and 508.283, Government Code. Section 508.0441 relates to the board member and parole commissioners release

and revocation duties. Section 508.045 provides parole panels with the authority to grant, deny, revoke parole, or revoke mandatory supervision. Section 508.281 and §508.283 relate to hearings to determine violations of the releasee's parole or mandatory supervision.

No other statutes, articles, or codes are affected by these amendments.

#### §147.24. *Relevant Testimony.*

Testimony shall be confined to the subject of the pending matter. In the event any party at a hearing shall pursue a line of questioning that is, in the [opinion of the] Hearing Officer's opinion [Officer], irrelevant, incompetent, unduly repetitious, or immaterial, such questioning shall be terminated.

#### §147.26. *Stipulation.*

Evidence may be stipulated to by agreement of all parties.

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

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Bettie Wells

General Counsel

Texas Board of Pardons and Paroles

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## PART 15. TEXAS FORENSIC SCIENCE COMMISSION

### CHAPTER 651. DNA, CODIS, FORENSIC ANALYSIS, AND CRIME LABORATORIES

The Texas Forensic Science Commission ("Commission") proposes amendments to 37 Texas Administrative Code §651.5 and §651.203 to remove certain categories of analysis from the scope of firearms/toolmarks analysis that are subject to State accreditation and licensing requirements. The removal includes the activities evaluation of firearm-related evidence for NIBIN suitability, performance of NIBIN entries and individual characteristic database. The change removes these categories of analysis to harmonize these sections of the Commission's administrative rules with changes from a previous rulemaking that exempted these activities from accreditation and licensing requirements in Texas. The amendments are necessary to reflect adoptions made by the Commission at its October 7, 2022 quarterly meeting. The amendments are made in accordance with the Commission's crime laboratory accreditation authority under Code of Criminal Procedure, Art. 38.01 § 4-d which directs the Commission to establish an accreditation process for crime laboratories, the Commission's forensic analyst licensing authority under Code of Criminal Procedure, Art. 38.01 § 4-a, which directs the Commission to establish the qualifications for a forensic analyst license, and the Commission's general rulemaking authority under Art. 38.01 § 3-a, which directs the Commission to adopt rules necessary to implement Code of Criminal Procedure, Art. 38.01.

Fiscal Note. Leigh M. Tomlin, Associate General Counsel of the Commission, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no fiscal impact to state or local governments as a result of the enforcement or administration of the amendments. The proposed amendments remove certain firearm/toolmark forensic activities related to determination of NIBIN suitability and NIBIN entry from the scope of activities subject to Commission accreditation and licensing rules. The amendments do not impose any costs to state or local governments.

Rural Impact Statement. The Commission expects no adverse economic effect on rural communities as the proposed amendments do not impose any direct costs or fees on municipalities in rural communities. The proposed amendments harmonize language from a previous rulemaking that exempted certain toolmark forensic activities from State accreditation and licensing requirements.

Public Benefit/Cost Note. Leigh M. Tomlin, Associate General Counsel of the Commission, has also determined that for each year of the first five years the proposed amendments are in effect, the anticipated public benefit includes providing clarity to law enforcement agencies and other criminal justice stakeholders regarding the exemption of NIBIN-entry related activities and related individual characteristic database associations from the Commission's accreditation and licensing oversight.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. As required by the Government Code § 2006.002(c) and (f), Leigh M. Tomlin, Associate General Counsel of the Texas Forensic Science Commission, has determined that the proposed amendments will not have an adverse economic effect on any small or micro business because the rule does not impose any economic costs to these businesses. The proposed amendments harmonize language from a previous rulemaking that exempted certain toolmark forensic activities from State accreditation and licensing requirements.

Takings Impact Assessment. Leigh M. Tomlin, Associate General Counsel of the Commission, has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043. The proposed amendments harmonize language from a previous rulemaking that exempted certain firearm/toolmark forensic activities related to determination of NIBIN suitability, NIBIN entry, and the individual characteristic database associations from State accreditation and licensing requirements.

Government Growth Impact Statement. Leigh M. Tomlin, Associate General Counsel of the Commission, has determined that for the first five-year period, implementation of the proposed amendment will have no government growth impact as described in Title 34, Part 1, Texas Administrative Code §11.1. Pursuant to the analysis required by Government Code 2001.221(b), 1) the proposed amendments do not create or eliminate a government program; 2) implementation of the proposed amendments do not require the creation of new employee positions or the elimination of existing employee positions; 3) implementation of the proposed amendments do not increase or decrease future legislative appropriations to the agency; 4) the proposed amendments do not require a fee; 5) the proposed amendments do not create a new regulation; 6)

the proposed amendments do not increase the number of individual's subject to regulation; and 7) the proposed amendments have a neutral effect on the state's economy. The amendments do not expand any licensing requirement under the Commission's current programs, but rather clarify that certain activities related to determination of NIBIN suitability, NIBIN entry, and individual characteristic database associations often performed by law enforcement agencies outside the accredited laboratory setting or in collaboration with federal agencies not subject to accreditation and licensing requirements.

Requirement for Rule Increasing Costs to Regulated Persons. Leigh M. Tomlin, Associate General Counsel of the Commission, has determined that there are no anticipated increased costs to regulated persons as the proposed amendments do not impose any fees or costs.

The Texas Forensic Science Commission invites comments on the proposal from any member of the public. Please submit comments to Leigh M. Tomlin, 1700 North Congress Avenue, Suite 445, Austin, Texas 78701 or leigh@fsc.texas.gov. Comments must be received by March 6, 2023 to be considered by the Commission.

## SUBCHAPTER A. ACCREDITATION

### 37 TAC §651.5

Statutory Authority. The amendments are proposed under Tex. Code Crim. Proc. art 38.01 §§ 4-a and (3)-a.

Cross reference to statute. The proposal amends rule 37 Texas Administrative Code §651.5 and §651.203.

*§651.5. Forensic Disciplines Subject to Commission Accreditation.*

(a) Forensic analysis/recognized accreditation. This section describes a forensic discipline or category of analysis that involves forensic analysis for use in a criminal proceeding and for which accreditation is available from a recognized accrediting body.

(b) By discipline. A crime laboratory may apply for Commission accreditation for one or more of the following disciplines:

(1) Seized Drugs. Categories of analysis may include one or more of the following: qualitative determination, quantitative measurement, weight measurement, and volume measurement;

(2) Toxicology. Categories of analysis may include one or more of the following: qualitative determination and quantitative measurement;

(3) Forensic Biology. Categories of analysis may include one or more of the following: DNA-STR, DNA-YSTR, DNA-Mitochondrial, DNA-SNP, body fluid identification, relationship testing, microbiology, individual characteristic database, and nucleic acids other than human DNA;

(4) Firearms/Toolmarks. Categories of analysis may include one or more of the following: physical comparison, determination of functionality, length measurement, trigger pull force measurement, qualitative chemical determination, distance determination, ejection pattern determination, product (make/model) determination[, evaluation of firearm-related evidence for NIBIN suitability, performance of NIBIN entries, and individual characteristic database];

(5) Materials (Trace). Categories of analysis may include one or more of the following: physical determination, chemical determination, physical/chemical comparison, product (make/model) determination, gunshot residue analysis, footwear and tire tread analysis, and fire debris and explosives analysis (qualitative determination); or

(6) Other discipline and its related categories of analysis if accredited by a recognized accrediting body and approved by the Commission.

(c) Cross-disciplines and categories of analysis. A laboratory may choose to assign a particular discipline or category of analysis to a different administrative section or unit in the laboratory than the designation set forth in this subchapter.

(d) If an accreditation for a category of analysis is accompanied by the term 'only' or a similar notation, the Commission will deem the accreditation to exclude other categories of analysis in that discipline.

(e) Accreditation of a confirmation test procedure does not carry automatic accreditation of an associated field, spot, screening, or other presumptive test.

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

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Leigh Tomlin

Associate General Counsel

Texas Forensic Science Commission

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For further information, please call: (512) 936-0661



## SUBCHAPTER C. FORENSIC ANALYST LICENSING PROGRAM

### 37 TAC §651.203

Statutory Authority. The amendments are proposed under Tex. Code Crim. Proc. art 38.01 §§ 4-a and (3)-a.

Cross reference to statute. The proposal amends rule 37 Texas Administrative Code §651.5 and §651.203.

*§651.203. Forensic Disciplines Subject to Commission Licensing; Categories of Licensure.*

(a) Forensic analysis/recognized accreditation. This section describes the forensic disciplines for which accreditation by an accrediting body recognized by the Commission is required by Article 38.01, Code of Criminal Procedure and for which licensing is therefore also required.

(b) By discipline. An individual may apply to the Commission for a Forensic Analyst License for one or more of the disciplines set forth in this section. The specific requirements for obtaining a license in any of the following disciplines may differ depending upon the categories of analysis within the discipline for which the individual is qualified to perform independent casework as set forth in §651.207 of this subchapter (relating to Forensic Analyst Licensing Requirements Including License Term, Fee and Procedure for Denial of Application and Reconsideration). An individual's license shall designate the category or categories of licensure for which the individual has been approved for independent casework and for which the individual has met the requirements set forth in §651.207 of this subchapter as follows:

(1) Seized Drugs. Categories of analysis may include one or more of the following: qualitative determination, quantitative mea-

surement, weight measurement, and volume measurement; Categories of Licensure: Seized Drugs Analyst; Seized Drugs Technician;

(2) Toxicology. Categories of analysis may include one or more of the following: qualitative determination and quantitative measurement; Categories of Licensure: Toxicology Analyst Alcohol only (Non-interpretive); Toxicology Analyst (General, Non-interpretive); Toxicologist (Interpretive); Toxicology Technician;

(3) Forensic Biology. Categories of analysis may include one or more of the following: DNA-STR, DNA-YSTR, DNA-Mitochondrial, DNA-SNP, body fluid identification, relationship testing, microbiology, individual characteristic database, and nucleic acids other than human DNA; Categories of Licensure: DNA Analyst; Forensic Biology Screening Analyst; Analyst of Nucleic Acids other than Human DNA; Forensic Biology Technician;

(4) Firearms/Toolmarks. Categories of analysis may include one or more of the following: physical comparison, determination of functionality, length measurement, trigger pull force measurement, qualitative chemical determination, distance determination, ejection pattern determination, product (make/model) determination[, evaluation of firearm-related evidence for NIBIN suitability, performance of NIBIN entries and individual characteristic database]; Categories of Licensure: Firearms/Toolmarks Analyst; Firearms/Toolmarks Technician;

(5) Materials (Trace). Categories of analysis may include one or more of the following: physical determination, chemical determination, chemical comparison, product (make/model) determination, gunshot residue analysis, footwear and tire tread analysis, and fire debris and explosives analysis (qualitative determination); Categories of Licensure: Materials (Trace) Analyst; Materials (Trace) Technician.

(c) Cross-disciplines. A laboratory may choose to assign a particular discipline or category of analysis to a different administrative section or unit in the laboratory than the designation set forth in this subchapter. Though an individual may perform a category of analysis under a different administrative section or unit in the laboratory, the individual still shall comply with the requirements for the discipline or category of analysis as outlined in this subchapter.

(d) Analysts and Technicians Performing Forensic Analysis on Behalf of the United States Government. Any forensic analyst or technician who performs forensic analysis on behalf of a publicly funded laboratory or law enforcement entity operating under the authority of the United States Government is deemed licensed to perform forensic analysis in Texas for purposes of this subchapter.

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

Filed with the Office of the Secretary of State on January 23, 2023.

TRD-202300253

Leigh Tomlin

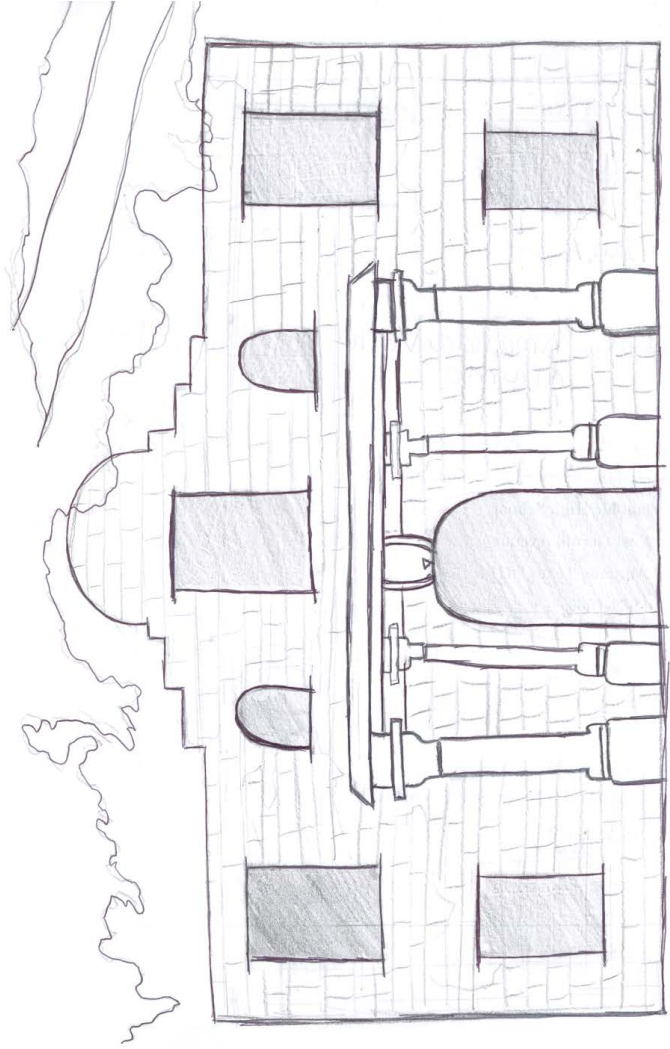
Associate General Counsel

Texas Forensic Science Commission

Earliest possible date of adoption: March 5, 2023

For further information, please call: (512) 936-0661





# 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 371. MEDICAID AND OTHER HEALTH AND HUMAN SERVICES FRAUD AND ABUSE PROGRAM INTEGRITY

The Texas Health and Human Services Commission (HHSC) adopts the repeal of §371.212, concerning Minimum Data Set Assessments; §371.214, concerning Resource Utilization Group Classification System; and §371.216, concerning Waiver of Extrapolation; and adopts new §371.212, concerning Utilization Review of Nursing Facilities; §371.214, concerning HHSC-Approved Online RUG or Other HHSC-Required Training Course; §371.216, concerning Nursing Facility Clinical Records; §371.218, concerning Onsite and Desk Utilization Reviews of Nursing Facilities; §371.220, concerning Exit Conferences; §371.222, concerning Reconsideration of Utilization Review Results; §371.224, concerning Appeals of Reconsideration Results; §371.226, concerning Calculation of Overpayments and Underpayments; §371.228, concerning Recoveries; and §371.230, concerning Waiver of Extrapolation.

The repeal of §§371.212, 371.214, and 371.216 are adopted without changes as published in the October 21, 2022, issue of the *Texas Register* (47 TexReg 6944). The repeals will not be republished.

New §§371.212, 371.214, 371.216, 371.218, 371.220, 371.222, 371.224, 371.226, 371.228, and 371.230 are adopted without changes to the proposed text as published in the October 21, 2022, issue of the *Texas Register* (47 TexReg 6944). The rules will not be republished.

#### BACKGROUND AND PURPOSE

The purpose of the repeals and new rules is to update procedures, modernize language, remove unnecessary or duplicative language, and add the option for desk reviews.

The Office of Inspector General (OIG) Nursing Facility Utilization Review (NFUR) unit performs reviews to evaluate the quality of care, medical necessity, appropriateness, and efficiency of healthcare or services to nursing facility residents. Utilization review may include the assessment of the accuracy of coded items by review of clinical records, business records, observation of the recipient, interviews, and other relevant sources of information.

The replacement of §§371.212, 371.214, and 371.216 with the new sections updates and re-organizes the OIG nursing facility utilization review procedures and provider requirements by:

re-organizing the structure of the NFUR rules; providing procedures for desk reviews; deleting redundant language excerpted from the Resident Assessment Instrument (RAI) User's Manual; adding language that links OIG's use of extrapolation with existing Texas Administrative Code rule §371.35; and providing for the use of a case mix classification system that succeeds resource utilization groups (RUGs).

#### COMMENTS

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

During this period, HHSC received comments from one stakeholder: the Texas Health Care Association. Following is a summary of these comments and HHSC's responses.

Comment: One comment on §371.212(d) recommends the addition of the following sentence: "The length of the look-back period depends on the coding question being completed."

Response: OIG believes an added sentence that describes the circumstances under which the length of the look-back period changes is not necessary to the purpose of the rule. No change was made in response to this comment.

Comment: One comment on §371.218(b)(5) suggests that there may be times when more than three hours may be needed in order to produce the requested records.

Response: OIG recognizes that there will be times when more than three hours is necessary to retrieve records. The rule provides flexibility to OIG to extend the three-hour time frame when OIG determines the requested records are stored off-site or otherwise unavailable for immediate retrieval. No change was made in response to this comment.

Comment: One comment on §371.218(b)(7) requests the specification of a timeframe to submit documents after the exit conference.

Response: Subsection 371.218(b)(8) of the rule provides flexibility for OIG to allow the provider to submit requested documentation after the onsite exit conference. No change was made in response to this comment.

Comment: One comment on §371.218(b)(10) recommends that OIG provide a standard template for a nursing facility to explain why it is not providing requested records rather than a "written statement."

Response: The requirement in §371.218(b)(10) is in current rule §371.214(n) and is current practice. Additionally, subsection (b)(10) contemplates a tailored response; therefore, a standard template would not be appropriate. No change was made in response to this comment.

Comment: One comment on §371.218(c)(1) requests clarification as to how OIG would ensure that the nursing facility receives the records requests made via desk review.

Response: Section 371.218 provides a new "desk review" option for OIG performance of nursing facility utilization reviews. OIG will communicate to stakeholders its process for confirming that records requests are received by providers. No change was made in response to this comment.

Comment: One comment on §371.218(c)(2) expressed concern that the requirement of a notarized affidavit for each minimum data set (MDS) review would be expensive and onerous.

Response: The requirement in §371.218(c)(2) is aligned with current practice and current rule §371.214(n) for records requests for onsite reviews. Under the current practice, each record request correlates to one MDS assessment. Additionally, §371.218(c)(2) gives OIG discretion not to request a signed and notarized affidavit. No change was made in response to this comment.

Comment: One comment on §371.218(c)(3) and (4) requests clarification on the mechanisms of communication between OIG and nursing facilities to ensure that nursing facilities are aware of key deadlines and timelines.

Response: Section 371.218 provides a new "desk review" option for OIG's performance of nursing facility utilization reviews. Sections 371.218(c)(3) and 371.218(c)(4), related to desk reviews, correspond to §371.218(b)(10) and §371.218(b)(11) for onsite reviews, which are aligned with current rules and current practice for onsite reviews. Additionally, §371.218(c)(3) contemplates a tailored response; therefore, a standard template would not be appropriate. HHSC OIG communicates timelines and deadlines when records are requested. No change was made in response to this comment.

Comment: One comment on §371.222(b) suggests that the reconsideration process is unclear.

Response: The requirements in §371.222(b) are aligned with current practice and current rule §371.214(q) for the reconsideration process. No change was made in response to this comment.

Comment: One comment on §371.226 requests that underpayments be defined and the time frame for payment be addressed.

Response: OIG believes that §371.226(a) and (d) appropriately address underpayments and the timing of underpayment payments to nursing facility providers. No change was made in response to this comment.

## SUBCHAPTER C. UTILIZATION REVIEW

### 1 TAC §§371.212, 371.214, 371.216

#### STATUTORY AUTHORITY

The repeals are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.102(a), which grants OIG the responsibility to conduct reviews of fraud, waste, and abuse in the provision and delivery of all health and human services in the state, including services through any state-administered health or human services program that is wholly or partly federally funded, and which provides OIG with the authority to obtain any information or technology necessary to enable it to meet its

responsibilities; Texas Government Code §531.102(a-2), which requires the Executive Commissioner to work in consultation with OIG to adopt rules necessary to implement a power or duty of the office; Texas Government Code §531.102(x), which requires the Executive Commissioner, in consultation with OIG, to adopt rules establishing criteria for determining enforcement and punitive actions with regard to a provider who has violated state law, program rules, or the provider's Medicaid provider agreement; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provides HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas, to administer Medicaid funds, and to adopt rules necessary for the proper and efficient regulations of the Medicaid program; Texas Government Code §531.1131(e) which provides HHSC with the authority to adopt rules necessary to implement this section; and Texas Human Resources Code §32.039, which provides authority to assess administrative penalties and damages and provides due process for persons potentially subject to damages and penalties.

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 20, 2023.

TRD-202300239

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

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Proposal publication date: October 21, 2022

For further information, please call: (512) 491-4058



### 1 TAC §§371.212, 371.214, 371.216, 371.218, 371.220, 371.222, 371.224, 371.226, 371.228, 371.230

#### STATUTORY AUTHORITY

The new rules are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.102(a), which grants OIG the responsibility to conduct reviews of fraud, waste, and abuse in the provision and delivery of all health and human services in the state, including services through any state-administered health or human services program that is wholly or partly federally funded, and which provides OIG with the authority to obtain any information or technology necessary to enable it to meet its responsibilities; Texas Government Code §531.102(a-2), which requires the Executive Commissioner to work in consultation with OIG to adopt rules necessary to implement a power or duty of the office; Texas Government Code §531.102(x), which requires the Executive Commissioner, in consultation with OIG, to adopt rules establishing criteria for determining enforcement and punitive actions with regard to a provider who has violated state law, program rules, or the provider's Medicaid provider agreement; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas

Government Code §531.021(a), which provides HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas, to administer Medicaid funds, and to adopt rules necessary for the proper and efficient regulations of the Medicaid program; Texas Government Code §531.1131(e) which provides HHSC with the authority to adopt rules necessary to implement this section; and Texas Human Resources Code §32.039, which provides authority to assess administrative penalties and damages and provides due process for persons potentially subject to damages and penalties.

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) 491-4058



## CHAPTER 392. PURCHASE OF GOODS AND SERVICES FOR SPECIFIC HEALTH AND HUMAN SERVICES COMMISSION PROGRAMS

### SUBCHAPTER H. DFPS CONTRACTED SERVICES

#### 1 TAC §392.703

The Texas Health and Human Services Commission (HHSC) adopts new §392.703, concerning Unsolicited Proposals for Community-Based Care Services.

The new §392.703 is adopted without changes to the proposed text as published in the November 4, 2022, issue of the *Texas Register* (47 TexReg 7385). This rule will not be republished.

#### BACKGROUND AND JUSTIFICATION

The adoption of new §392.703 is necessary to comply with Senate Bill (S.B.) 1896, 87th Legislature, Regular Session, 2021. S.B. 1896 amended Texas Family Code §264.157 to require DFPS to accept and evaluate unsolicited proposals from entities based in this state to provide community-based care services in geographic areas where DFPS has not implemented community-based care. The statute also requires HHSC, in conjunction with DFPS, to adopt rules to ensure the proposals comply with state procurement laws and rules.

#### COMMENTS

The 31-day comment period ended December 5, 2022. During this period, HHSC did not receive any comments regarding the proposed rule.

#### STATUTORY AUTHORITY

The new section is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of

services by the health and human services agencies, and Texas Family Code §264.157(b), which requires HHSC in conjunction with DFPS to adopt rules to ensure that proposals submitted under the subsection comply with procurement laws and rules.

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

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## TITLE 4. AGRICULTURE

### PART 1. TEXAS DEPARTMENT OF AGRICULTURE

#### CHAPTER 1. GENERAL PROCEDURES

##### SUBCHAPTER J. AGRICULTURAL LIEN DISPUTES

#### 4 TAC §§1.601 - 1.604, 1.608

The Texas Department of Agriculture (Department) adopts amendments to Texas Administrative Code, Title 4, Part 1, Chapter 1, General Procedures, Subchapter J, Agricultural Lien Disputes, §§1.601 - 1.604, and 1.608. The amendments are adopted without changes to the proposed text as published in the December 16, 2022, issue of the *Texas Register* (47 TexReg 8175) and will not be republished.

The Department identified the need for the amendments to Chapter 1, Subchapter J during the 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 16, 2022, issue of the *Texas Register* (47 TexReg 8283).

The amendments to §1.601 make nonsubstantive editorial changes.

The amendment to §1.602 removes a method of submitting a dispute that is no longer utilized.

The amendment to §1.603 corrects a cross reference to §1.602.

The amendment to §1.604 adds the option to participate in the settlement conference virtually to provide more flexibility in settlement participation.

The amendment to §1.608 updates the provision addressing per diem for food and lodging to reflect the Department's current travel policy for employees and officials and removes outdated amounts to account for changing reimbursement rates.

The Department received no comments concerning the proposed amendments.

The amendments are adopted pursuant to Sections 128.012 of the Texas Agriculture Code (Code), which requires the Department by rule to establish a procedure for settling disputes between a claimant supplying agricultural chemicals or labor in the application, delivery, or preparation of agricultural chemicals and a debtor and Section 188.012 of the Code, which requires the Department by rule to establish a procedure for settling disputes between a claimant supplying animal feed and labor and a debtor.

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 18, 2023.

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Skyler Shafer

Assistant General Counsel

Texas Department of Agriculture

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



## CHAPTER 17. MARKETING AND PROMOTION

### SUBCHAPTER B. LIVESTOCK FACILITIES

#### 4 TAC §§17.30 - 17.33

The Texas Department of Agriculture (Department) adopts amendments to Texas Administrative Code, Title 4, Part 1, Chapter 17, Subchapter B (Livestock Facilities), §17.30, concerning Purpose and Definitions; §17.31, concerning Operation of Livestock Facilities; §17.32, concerning Hours of Operation of Livestock Facilities; and §17.33, concerning Access to Livestock Facilities. The amendments are adopted without changes to the proposed text as published in the December 16, 2022, issue of the *Texas Register* (47 TexReg 8187) and will not be republished.

The Department identified the need for the amendments 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 16, 2022 issue of the *Texas Register* (47 TexReg 8284).

The amendments to §17.30 delete an unnecessary definition of "department," as the term is previously defined in 4 Texas Administrative Code §1.1(8). The remaining terms "consignor," "exotic fowl," "exotic livestock," and "livestock facilities," were rearranged in alphabetical order, with changes to the definition of "livestock facilities" as the location of some livestock facilities has changed, and a cross reference to statute added.

The Department adopts an amendment to §17.31, to add a new §17.31(a), to provide notice of the publication and posting locations of the Department's livestock facilities operating policies and procedures. To assist consignors and Department personnel with the day-to-day operation of the livestock facilities, the Department developed livestock facilities operating policies and procedures.

The Department further adopts amendments to §17.31 to break the various fees into paragraphs to make the fee schedule easier to read.

The Department also adopts amendments to §17.31 to specify that livestock must also be accompanied by proper Canadian health papers, if applicable.

The Department further adopts amendments to §17.31 to specify the required method of payment, to remove the term "check," and add the term "declined" in regard to insufficient funds. The Department adopts the changes in terminology to reflect more commonly used electronic payment methods.

The Department adopts an amendment to current §17.31(l) by adding "per head" and "per container" as appropriate to clarify fee increments.

The Department adopts new §17.31(n), which provides for consignors to register and obtain an approved reservation prior to the arrival of their shipment at a Department livestock facility. The Department adopts the new subsection to avoid delays that may occur when shipments of livestock arrive at livestock facilities without the necessary documentation, without sufficient, advance notice to accommodate special requirements, or that do not comply with other facility or export requirements.

The Department adopts new §17.31(o), which provides for consignors to contact and discuss any special bio-security related requirements with the Department prior to the arrival of the shipment at a Department livestock facility. The subsection is necessary in order for Department personnel to make the necessary arrangements at the destination facility to properly prepare for the receipt of the shipment. The extent of the required arrangements will vary depending on the nature of the shipment.

The Department adopts new §17.31(p), which provides for Department requirements deemed necessary for the safety and welfare of livestock. The Department is directed by Texas Agriculture Code §146.025 to exercise reasonable care in the handling and movement of animals in the processing facilities of the Department. The Department adopts the new subsection to provide notice to consignors of their obligations regarding the treatment and handling of animals at Department livestock facilities.

The Department adopts new §17.31(q), which prohibits the consumption or possession of alcohol at Department livestock facilities. The Department adopts the new subsection out of consideration for the safety and welfare of animals at the Department's livestock facilities as well as the safety and welfare of users of the facilities and Department personnel.

The Department adopts an amendment to §17.32 to clarify when exports may not occur. The Department also adopts an increase to surcharges that consignors are assessed for use of the Department's livestock facilities during nonbusiness hours. These amendments are necessary to comply with Texas Agriculture Code §12.0144, which requires the Department to set fees in an amount which offset, when feasible, the direct and indirect state costs of administering its regulatory activities. In order to meet this requirement, the Department has reviewed the livestock facility program to provide the best service possible at a reasonable cost to the industry.

The adopted amendments increase the surcharge assessed per shipment from \$50 to \$100 per shipment, and increase the assessment per department employee per hour or portion of hour worked during nonbusiness hours from \$10 to \$50. These changes are necessary to meet the cost recovery require-



ment. Department livestock facility fees, including the adopted increases, remain below alternatives available to consignors and others who may use Department livestock facilities. The Department also adopts nonsubstantive editorial changes to §17.32.

The Department adopts an amendment to §17.33 to specify that parking is allowed in designated areas only and correct a typographical error. Due to the nature and volume of traffic at Department livestock facilities, the specification is necessary to avoid disruptions or traffic conditions that may occur as a result of users parking in non-designated areas.

The Department received no comments regarding the proposed amendments.

The amendments are adopted pursuant to §12.0144 of the Texas Agriculture Code (Code), which authorizes the Department to set fees in an amount that offsets, when feasible, the direct and indirect state costs of administering its regulatory activities; §12.016 of the Code, which authorizes the Department to adopt rules as necessary for the administration of its powers and duties; and §146.021 of the Code, which provides the Department with the authority to operate livestock facilities to receive and hold for processing animals and animal products transported in international trade and establish and collect reasonable fees for yardage, maintenance, feed, medical care, facility use, and other necessary expenses incurred in the course of processing those animals.

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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TRD-202300180

Skyler Shafer

Assistant General Counsel

Texas Department of Agriculture

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



## TITLE 16. ECONOMIC REGULATION

### PART 1. RAILROAD COMMISSION OF TEXAS

#### CHAPTER 13. REGULATIONS FOR COMPRESSED NATURAL GAS (CNG)

The Railroad Commission of Texas (Commission) adopts amendments to §13.1, Applicability, Severability, and Retroactivity; §13.3, Definitions; §13.25, Filings Required for Stationary CNG Installations; §13.40, Manufacturer's Nameplates and Markings on ASME Containers; §13.61, License Categories, Container Manufacturer Registration, Fees, and Application for Licenses, Manufacturer Registrations, and Renewals; §13.63, Self-Insurance Requirements; §13.69, Registration and Transfer of CNG Cargo Tanks or Delivery Units; §13.70, Examination and Exempt Registration Requirements and Renewals; §13.91, Applicability; §13.93, System Protection Requirements; §13.203,

Sections in NFPA 52 Adopted with Additional Requirements or Not Adopted; and §13.301, Adoption by Reference of NFPA 55. The Commission also adopts new §13.33, Reporting Unsafe CNG Activities, and §13.68, CNG Cargo Tank Requirements. Section 13.70 is adopted with a change from the proposed text as published and will be republished. The remaining new and amended rules are adopted without changes to the proposed text as published in the October 28, 2022, issue of the *Texas Register* (47 TexReg 7190) and will not be republished.

The Commission adopts the amendments and new rules to incorporate provisions of Senate Bill 1582 (SB 1582) enacted during the 87th Texas Legislative Session (Regular Session, 2021) and to make additional clarifying changes as discussed in the following paragraphs.

SB 1582 amended section 116.034(e) and (f) of the Natural Resources Code to provide for licensing and registration examination to be performed by a proctoring service. The Commission adopts amendments in §13.70(b)(3)(A)(iii), (b)(3)(C)(v), and (d) to incorporate the use of an online testing or proctoring service and to ensure any required fee is paid to the testing or proctoring service in addition to the Commission's examination fee. Subsection (b)(3)(C)(v) specifies that the use of an online testing or proctoring service may begin upon the rule's effective date; the Commission adopts this rule with a change to indicate the specific effective date of February 7, 2023. Also in §13.70(b), the Commission adopts changes regarding AFS scheduling and registration for courses to reflect current Commission practice. In §13.70(c)(1)(A), the Commission corrects a typographical error that appears in the current rule text. In §13.70(c)(1)(B), the Commission clarifies the delivery truck driver activities to remove references to service work. Most CNG drivers do not perform service work, but if they do, they may take the examination referenced in §13.70(c)(1)(A) to be qualified to perform those activities.

The Commission received one comment on the proposal from the Environmental Integrity Project (EIP). EIP commented on the complaint procedure in new §13.33 and suggested that the rule may dissuade members of the public or employees from reporting unsafe activities for fear of retribution or retaliation if their identities can be revealed as noted in subsections (b) and (c). The Commission makes no change with respect to this comment, but notes that anonymous complaints may be submitted by telephone; only a person who submits the form must include the complainant's information.

Regarding other amendments, the Commission amends §13.1 to make this rule provision consistent with the corresponding rule in Chapter 9 of this title regarding LP-Gas Safety Rules. Amendments in §13.3 delete the definitions of some unused terms.

In §13.25, the Commission corrects a subsection reference and corrects references to the aggregate storage capacity of CNG commercial installations. In §13.25(c)(1), the Commission changes the deadline for submittal of CNG Form 1501 from 10 calendar days to 30 calendar days, which is consistent with the similar rule in Chapter 9.

The Commission adopts new §13.33 to outline the process by which industry members and the public may submit complaints about non-compliance. The text of the new rule is similar to the equivalent rule in Chapter 9. The Commission will adopt CNG Form 1022 separately from these rule amendments.

The Commission adopts amendments in §13.40 to make the rule consistent with the nameplate provisions in Chapter 9.

The Commission adopts amendments in §13.61(b) and new subsection (c) to make the rule consistent with the similar rule in Chapter 9 and redesignates the remaining subsections. In subsection (k), redesignated from subsection (j), and in subsection (p), redesignated from subsection (n), the Commission adds references to Forms 1007A and 1007T. The Commission adopts new subsection (n) to require a 24-hour emergency telephone number, which is also consistent with Chapter 9. In subsection (q)(2), the Commission adds license category "1B" which was inadvertently omitted from previously adopted amendments in Chapter 13. Adopted new §13.61(q)(3) clarifies requirements for DOT and ASME licensees, consistent with provisions in Chapter 9. The Commission also adopts new subsection (r) regarding repair to certain cylinders or tanks, consistent with the same provision recently adopted in Chapter 9.

The Commission adopts an amendment in §13.63 to correct a typographical error.

The Commission adopts new §13.68 regarding CNG cargo tank requirements, which is added for consistency with similar provisions in Chapter 9.

The Commission adopts amendments to §13.69 regarding requirements for registering different types of units to coincide with new forms for registration or transfer of CNG cargo tanks or delivery units, which will be adopted separately. Amendments in newly designated subsection (a)(1) remove the requirement to file a copy of the manufacturer's data report; these reports are not applicable to CNG cargo tanks.

The Commission adopts amendments to §13.91 to better reflect the subject matter included in the subchapter.

The Commission adopts amendments in §13.93(c) to remove paragraph (6) for consistency with the similar provision in Chapter 9.

The Commission corrects typographical errors in the Figure in §13.203 and in §13.301(b)(26).

## SUBCHAPTER A. SCOPE AND DEFINITIONS

### 16 TAC §13.1, §13.3

The Commission adopts the amendments under Texas Natural Resources Code §116.012, which authorizes the Commission to adopt rules and standards relating to compressed natural gas activities to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §116.031(e), which requires a person engaging in the manufacture or fabrication of containers to register with the Commission in accordance with rules adopted by the Commission; and Texas Natural Resources Code §116.034(e) and (f) as amended by Senate Bill 1582 (87th Legislature, Regular Session).

Statutory authority: Texas Natural Resources Code, §§116.012, 116.031, and 116.034.

Cross reference to statute: Texas Natural Resources Code Chapter 116.

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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TRD-202300186

Haley Cochran

Assistant General Counsel, Office of General Counsel  
Railroad Commission of Texas

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Proposal publication date: October 28, 2022

For further information, please call: (512) 475-1295



## SUBCHAPTER B. GENERAL RULES FOR COMPRESSED NATURAL GAS (CNG) EQUIPMENT QUALIFICATIONS

### 16 TAC §§13.25, 13.33, 13.40

The Commission adopts the amendments and new rule under Texas Natural Resources Code §116.012, which authorizes the Commission to adopt rules and standards relating to compressed natural gas activities to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §116.031(e), which requires a person engaging in the manufacture or fabrication of containers to register with the Commission in accordance with rules adopted by the Commission; and Texas Natural Resources Code §116.034(e) and (f) as amended by Senate Bill 1582 (87th Legislature, Regular Session).

Statutory authority: Texas Natural Resources Code, §§116.012, 116.031, and 116.034.

Cross reference to statute: Texas Natural Resources Code Chapter 116.

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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Assistant General Counsel, Office of General Counsel  
Railroad Commission of Texas

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For further information, please call: (512) 475-1295



## SUBCHAPTER C. CLASSIFICATION, REGISTRATION, AND EXAMINATION

### 16 TAC §§13.61, 13.63, 13.68 - 13.70

The Commission adopts the amendments and new rule under Texas Natural Resources Code §116.012, which authorizes the Commission to adopt rules and standards relating to compressed natural gas activities to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §116.031(e), which requires a person engaging in the manufacture or fabrication of containers to register with the Commission in accordance with rules adopted by the Commission; and Texas Natural Resources Code §116.034(e) and (f) as amended by Senate Bill 1582 (87th Legislature, Regular Session).

Statutory authority: Texas Natural Resources Code, §§116.012, 116.031, and 116.034.

Cross reference to statute: Texas Natural Resources Code Chapter 116.

§13.70. *Examination and Exempt Registration Requirements and Renewals.*

(a) Requirements and application for a new certificate.

(1) In addition to NFPA 52 §§1.4.3 and 4.2, and NFPA 55 §4.7, no person shall perform work, directly supervise CNG activities, or be employed in any capacity requiring contact with CNG, unless that individual is employed by a licensee and:

(A) is a certificate holder who is in compliance with renewal requirements in subsection (h) of this section;

(B) is a trainee who complies with subsection (f) of this section; or

(C) holds a current examination exemption pursuant to subsection (g) of this section.

(2) Any person transporting CNG on a public roadway must be properly certified, even if the unit is operated by an ultimate consumer.

(b) Rules examination.

(1) An individual who passes the applicable rules examination with a score of at least 75% will become a certificate holder. AFS will send a certificate to the licensee listed on the CNG Form 1016. If a licensee is not listed on the form, AFS will send the certificate to the individual's personal address.

(A) Successful completion of any required examination shall be credited to and accrue to the individual.

(B) An individual who has been issued a certificate shall make it readily available and shall present the certificate to any Commission employee or agent who requests proof of certification.

(2) An applicant for examination shall bring to the exam site:

(A) a completed CNG Form 1016; and

(B) payment of the applicable fee specified in this subsection;

(3) An individual who files CNG Form 1016 and pays the applicable nonrefundable examination fee may take the rules examination.

(A) Dates and locations of available Commission CNG examinations may be obtained on the Commission's web site. Examinations may be administered:

(i) at the Commission's AFS Training Center in Austin;

(ii) at other designated times and locations around the state; and

(iii) through an online testing or proctoring service.

(B) Individuals or companies may request in writing that examinations be given in their area. AFS shall schedule examinations at its discretion.

(C) Exam fees.

(i) The nonrefundable management-level rules examination fee is \$70.

(ii) The nonrefundable employee-level rules examination fee is \$40.

(iii) The nonrefundable examination fees shall be paid each time an individual takes an examination.

(iv) A military service member, military veteran, or military spouse shall be exempt from the examination fee pursuant to the requirements in §13.76 of this title (relating to Military Fee Exemption). An individual who receives a military fee exemption is not exempt from renewal fees specified in subsection (h) of this section.

(v) Beginning February 7, 2023, individuals who register for an examination to be administered by a testing or proctoring service shall pay any fee required by the testing or proctoring service in addition to paying the examination fee to the Commission.

(D) Time limits.

(i) An applicant shall complete the examination within two hours.

(ii) The examination proctor shall be the official timekeeper.

(iii) An examinee shall submit the examination and the answer sheet to the examination proctor before or at the end of the established time limit for an examination.

(iv) The examination proctor shall mark any answer sheet that was not completed within the time limit.

(E) Each individual who performs CNG activities as an employee of an ultimate consumer or a state agency, county, municipality, school district, or other governmental subdivision shall be properly supervised by his or her employer. Any such individual who is not certified by AFS to perform such CNG activities shall be properly trained by a competent person in the safe performance of such CNG activities.

(c) The following examinations are offered by the Commission.

(1) Employee-level examinations:

(A) The Service and Installation Technician examination qualifies an individual to perform all CNG activities related to stationary CNG systems, including CNG containers, piping, and equipment. The Service and Installation examination does not authorize an individual to fill containers or operate a CNG transport.

(B) The Delivery Truck Driver examination qualifies an individual to operate a cargo tank, load and unload CNG and connect and disconnect transfer hoses, and operate a cylinder delivery unit.

(C) The Cylinder Filler examination qualifies an individual to inspect, fill, disconnect, and connect CNG cylinders.

(2) Management-level examinations:

(A) Category 1 examination qualifies an individual to assemble, repair, test, sell, install, and subframe ASME and DOT containers.

(B) Category 1A examination qualifies an individual to assemble, repair, test, sell, install, and subframe ASME containers.

(C) Category 1B examination qualifies an individual to assemble, repair, test, sell, install, and subframe DOT containers.

(D) Category 2 examination qualifies an individual to sell, install, service, and repair CNG systems, including cylinders.

(E) Category 3 examination qualifies an individual to sell, store, transport for delivery and dispense CNG for use other than

by an ultimate consumer, and to sell, install, service, and repair CNG systems as described in Category 2 and 5 examinations.

(F) Category 4 examination qualifies an individual to test CNG cylinders.

(G) Category 5 examination qualifies an individual to operate a CNG service station, including filling CNG cylinders, or operate a cylinder exchange dealership, including filling CNG cylinders, selling CNG in cylinders, selling CNG cylinders, and replacing cylinder valves.

(d) Within 15 calendar days of the date an individual takes an examination, AFS shall notify the individual of the results of the examination.

(1) If the examination is graded or reviewed by a testing or proctoring service, AFS shall notify the individual of the examination results within 14 days of the date AFS receives the results from the testing or proctoring service.

(2) If the notice of the examination results will be delayed for longer than 90 days after the examination date, AFS shall notify the individual of the reason for the delay before the 90th day. AFS may require a testing or proctoring service to notify an individual of the individual's examination results.

(e) Failure of any examination shall immediately disqualify the individual from performing any CNG related activities covered by the examination which is failed, except for activities covered by a separate examination which the individual has passed.

(1) Any individual who fails an examination administered by the Commission at the Austin location may retake the same examination one additional time during a business day.

(2) Any subsequent examinations shall be taken on another business day, unless approved by the AFS director.

(3) An individual who fails an examination may request an analysis of the individual's performance on the examination.

(f) Trainees.

(1) A licensee or ultimate consumer may employ an individual as a trainee for a period not to exceed 45 calendar days without that individual having successfully completed the rules examination, as specified in subsection (b) of this section, or registered as specified in subsection (g) of this section, subject to the following conditions:

(A) In addition to NFPA 52 §4.2, the trainee shall be directly and individually supervised at all times by an individual who has successfully completed the Commission's rules examination for the areas of work being performed by the trainee.

(B) A trainee who has been in training for a total period of 45 calendar days, in any combination and with any number of employers, shall cease to perform any CNG activities for which the trainee is not certified until the trainee successfully completes the rules examination.

(2) A trainee who fails the rules examination shall immediately cease to perform any CNG related activities covered by the examination failed.

(g) General installers and repairmen exemption.

(1) Any individual who is currently licensed as a master or journeyman plumber by the Texas State Board of Plumbing Examiners or who is currently licensed with a Class A or B Air Conditioning and Refrigeration Contractors License issued by the Texas Department

of Licensing and Regulation, may register with AFS and be granted an exemption to the service and installation technician employee-level examination requirements, provided the applicant:

(A) holds an active license in compliance with Texas Occupations Code, §1302.260, relating to Issuance and Term of License, and §1301.351, relating to License, Endorsement, or Registration Required;

(B) submits a completed CNG Form 1016B;

(C) submits the required \$30 original filing fee, except as described in paragraph (8) of this subsection;

(D) submits a legible copy of a current Air Conditioning and Refrigeration Contractors License or Master/Journeyman Plumbers certificate; and

(E) submits a legible copy of a current picture state-issued identification card or driver's license.

(2) This exemption does not become effective until the examination exemption card is issued by AFS.

(3) The examination exemption accrues to the individual and is nontransferable. An exemption does not allow other individuals to perform CNG related activities under the supervision of the registered individual. Each individual performing CNG related activities must be registered or certified by examination in accordance with subsection (a) of this section.

(4) Any individual granted such exemption shall maintain registered status at all times. Upon failure to maintain registered status, the individual shall immediately cease all affected CNG activities until proper status has been regained.

(5) In order to maintain an exemption, each individual issued an examination exemption card must maintain a valid master or journeyman plumbers license or Class A or B Air Conditioning and Refrigeration Contractors license. Each individual shall also pay a \$20 annual renewal fee to AFS on or before May 31 of each year. Failure to pay the annual renewal fee by May 31 shall result in a lapsed exemption. If an individual's exemption lapses, that individual shall cease all CNG activities until the exemption has been renewed. To renew a lapsed exemption, the individual shall pay the \$20 annual renewal fee plus a \$20 late-filing fee. Failure to do so shall result in the expiration of the examination exemption. If the individual's examination exemption has been expired for more than two years, the individual shall complete all requirements necessary to apply for a new exemption.

(6) Individuals issued an exemption must maintain a valid master or journeyman plumbers license or ACR Contractors license to renew their Commission registration.

(7) Any individual who is issued an exemption under this subsection agrees to comply with the current edition of the rules in this chapter. In the event the exempt individual surrenders, fails to renew, or has the license revoked either by the Texas State Board of Plumbing Examiners or Texas Department of Licensing and Regulation, that individual shall immediately cease performing any CNG activity granted by this section.

(8) A military service member, military veteran, or military spouse shall be exempt from the original registration fee pursuant to the requirements in §13.76 of this title. An individual who receives a military fee exemption is not exempt from renewal fees specified in subsection (h) of this section.

(h) Requirements for certificate holder renewal.

(1) In order to maintain active status, certificate holders shall renew their certificate or exemption annually as specified in this subsection.

(2) AFS shall notify licensees of any of their employees' pending renewal deadlines and shall notify the individual, if not employed by a licensee, in writing, at the address on file with AFS, no later than March 15 of a year for the May 31 renewal date of that year.

(3) Certificate holders shall pay the nonrefundable \$25 annual certificate renewal fee to AFS on or before May 31 of each year. Individuals who hold more than one certificate shall pay only one annual renewal fee.

(A) Failure to pay the nonrefundable annual renewal fee by the deadline shall result in a lapsed certificate.

(i) To renew a lapsed certificate, the individual shall pay the nonrefundable \$25 annual renewal fee plus a nonrefundable \$20 late-filing fee. Failure to do so shall result in the expiration of the certificate.

(ii) If an individual's certificate lapses or expires, that individual shall immediately cease performance of any CNG activities authorized by the certificate.

(iii) If an individual's certificate has been expired for more than two years from May 31 of the year in which the certificate lapsed, that individual shall comply with the requirements of subsection (a) of this section.

(B) Upon receipt of the annual renewal fee and late filing fee, AFS shall verify that all applicable requirements have been met. After verification, AFS shall renew the certificate and send a copy of the certificate, and the individual may continue or resume CNG activities authorized by that certificate.

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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Haley Cochran  
Assistant General Counsel, Office of General Counsel  
Railroad Commission of Texas  
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For further information, please call: (512) 475-1295



## SUBCHAPTER D. CNG COMPRESSION, STORAGE, AND DISPENSING SYSTEMS

### 16 TAC §13.91, §13.93

The Commission adopts the amendments under Texas Natural Resources Code §116.012, which authorizes the Commission to adopt rules and standards relating to compressed natural gas activities to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §116.031(e), which requires a person engaging in the manufacture or fabrication of containers to register with the Commission in accordance with rules adopted by the Commission; and Texas Natural Resources Code §116.034(e) and (f) as amended by Senate Bill 1582 (87th Legislature, Regular Session).

Statutory authority: Texas Natural Resources Code, §§116.012, 116.031, and 116.034.

Cross reference to statute: Texas Natural Resources Code Chapter 116.

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## SUBCHAPTER G. ADOPTION BY REFERENCE OF NFPA 52 (VEHICULAR GASEOUS FUEL SYSTEMS CODE)

### 16 TAC §13.203

The Commission adopts the amendments under Texas Natural Resources Code §116.012, which authorizes the Commission to adopt rules and standards relating to compressed natural gas activities to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §116.031(e), which requires a person engaging in the manufacture or fabrication of containers to register with the Commission in accordance with rules adopted by the Commission; and Texas Natural Resources Code §116.034(e) and (f) as amended by Senate Bill 1582 (87th Legislature, Regular Session).

Statutory authority: Texas Natural Resources Code, §§116.012, 116.031, and 116.034.

Cross reference to statute: Texas Natural Resources Code Chapter 116.

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## SUBCHAPTER H. ADOPTION BY REFERENCE OF NFPA 55 (COMPRESSED GASES AND CRYOGENIC FLUIDS CODE)

## 16 TAC §13.301

The Commission adopts the amendments under Texas Natural Resources Code §116.012, which authorizes the Commission to adopt rules and standards relating to compressed natural gas activities to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §116.031(e), which requires a person engaging in the manufacture or fabrication of containers to register with the Commission in accordance with rules adopted by the Commission; and Texas Natural Resources Code §116.034(e) and (f) as amended by Senate Bill 1582 (87th Legislature, Regular Session).

Statutory authority: Texas Natural Resources Code, §§116.012, 116.031, and 116.034.

Cross reference to statute: Texas Natural Resources Code Chapter 116.

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 14. REGULATIONS FOR LIQUEFIED NATURAL GAS (LNG)

The Railroad Commission of Texas (Commission) adopts amendments to §14.2004, Applicability, Severability, and Retroactivity; §14.2007, Definitions; §14.2014, Application for License or Manufacturer Registration (New and Renewal); §14.2016, Penalty Guidelines and Enforcement; §14.2019, Examination Requirements and Renewals; §14.2040, Filings Required for Stationary LNG Installations; §14.2043, Temporary Installations; §14.2101, System Protection Requirements; §14.2637, Signs and Labeling; §14.2704, Registration and Transfer of LNG Transports; §14.2707, Testing Requirements; §14.2710, Markings; §14.2725, Exhaust System; and §14.2801, Adoption by Reference of NFPA 52. The Commission also adopts new §14.2050, Reporting Unsafe LNG Activities, and new §14.2053, Manufacturer's Nameplate and Markings on ASME Containers. Section 14.2019 is adopted with a change from the proposed text as published and will be republished. The remaining new and amended rules are adopted without changes to the proposed text as published in the October 28, 2022, issue of the *Texas Register* (47 TexReg 7200) and will not be republished.

The Commission adopts the amendments and new rules to incorporate provisions of Senate Bill 1582 (SB 1582) enacted during the 87th Texas Legislative Session (Regular Session, 2021) and to make additional clarifying changes as discussed in the following paragraphs.

SB 1582 amended section 116.034(e) and (f) of the Natural Resources Code to provide for licensing and registration examination to be performed by a proctoring service. The Commission proposes amendments in §14.2019(b)(3)(A)(iii), (b)(3)(C)(v), and (d) to incorporate the use of an online testing or proctoring service and to ensure any required fee is paid to the testing or proctoring service in addition to the Commission's examination fee. Proposed subsection (b)(3)(C)(v) specifies that the use of an online testing or proctoring service may begin upon the rule's effective date; the Commission adopts this rule with a change to indicate the specific effective date of February 7, 2023. Also in §14.2019(b), the Commission adopts changes regarding AFS scheduling and registration for courses to reflect current Commission practice.

The Commission received one comment on the proposal from the Environmental Integrity Project (EIP). EIP commented on the complaint procedure in new §14.2050 and suggested that the rule may dissuade members of the public or employees from reporting unsafe activities for fear of retribution or retaliation if their identities can be revealed as noted in subsections (b) and (c). The Commission makes no change with respect to this comment, but notes that anonymous complaints may be submitted by telephone; only a person who submits the form must include the complainant's information.

Regarding other amendments, the Commission amends §14.2004 to make this rule provision consistent with the corresponding rule in Chapter 9 of this title regarding LP-Gas Safety Rules. Amendments in §14.2007 delete the definitions of unused terms and make nonsubstantive clarifications in other definitions.

The Commission adopts amendments in §14.2014(f)(1)(B) and in subsection (k)(2) to add references to Forms 2007A and 2007T. The Commission adopts new subsection (i) to require a 24-hour emergency telephone number, which is consistent with Chapter 9, and for clarification as the number is required on Form 2001. New subsection (l)(3) clarifies requirements for DOT and ASME licensees, consistent with provisions in Chapter 9. The Commission also adopts new subsection (m) regarding repair to certain cylinders or tanks, consistent with the same provision recently adopted in Chapter 9.

The Commission amends §14.2016 to correct a typographical error. In §14.2040(b)(1), the Commission changes the deadline for submittal of LNG Form 2501 from 10 calendar days to 30 calendar days, which is consistent with the similar rule in Chapter 9.

In §14.2043(d), the Commission corrects the reference to the additional electrical requirements.

The Commission adopts new §14.2050 to outline the process by which industry members and the public may submit complaints about non-compliance. The text of the new rule is similar to the equivalent rule in Chapter 9. The Commission will adopt LNG Form 2022 separately from these rule amendments.

The Commission adopts new §14.2053 to address nameplate requirements consistent with the equivalent rule in Chapter 9 and concurrent amendments to §13.40.

The Commission amends §14.2101(b)(9) to correct a typographical error.

The Commission adopts new §14.2637(c) to move the requirement from its current location in §14.2710 to better reflect that the requirement applies to mobile installations, not transports.

The Commission adopts amendments to §14.2704, regarding requirements for registering different types of units, to coincide with new forms for registration or transfer of LNG cargo tanks or delivery units, which will be adopted separately.

The Commission adopts an amendment in §14.2707(b) to correct a reference to a 49 Code of Federal Regulations section number.

The Commission amends §14.2710 as previously discussed with §14.2637.

The Commission amends §14.2725 and §14.2801(b)(1) to correct typographical errors.

## SUBCHAPTER A. GENERAL APPLICABILITY AND REQUIREMENTS

### 16 TAC §§14.2004, 14.2007, 14.2014, 14.2016, 14.2019, 14.2040, 14.2043, 14.2050, 14.2053

The Commission adopts the amendments and new rules under Texas Natural Resources Code §116.012, which authorizes the Commission to adopt rules and standards relating to compressed natural gas activities to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §116.031(e), which requires a person engaging in the manufacture or fabrication of containers to register with the Commission in accordance with rules adopted by the Commission; and Texas Natural Resources Code §116.034(e) and (f) as amended by Senate Bill 1582 (87th Legislature, Regular Session).

Statutory authority: Texas Natural Resources Code, § 116.012, 116.031, and 116.034.

Cross reference to statute: Texas Natural Resources Code Chapter 116.

§14.2019. *Examination Requirements and Renewals.*

(a) Requirements and application for a new certificate.

(1) In addition to NFPA 52 §§4.1 and 4.2 and 59A §14.9, no person shall perform work, directly supervise LNG activities, or be employed in any capacity requiring contact with LNG unless that individual:

(A) is a certificate holder who is in compliance with renewal requirements in subsection (g) of this section and is employed by a licensee; or

(B) is a trainee who complies with subsection (f) of this section.

(2) Any person transporting LNG on a public roadway must be properly certified, even if the unit is operated by an ultimate consumer.

(b) Rules examination.

(1) An individual who passes the applicable rules examination with a score of at least 75% will become a certificate holder. AFS will send a certificate to the licensee listed on LNG Form 2016. If a licensee is not listed on the form, AFS will send the certificate to individual's personal address.

(A) Successful completion of any required examination shall be credited to the individual.

(B) An individual who has been issued a certificate shall make the certificate readily available and shall present it to any Commission employee or agent who requests proof of certification.

(2) An applicant for examination shall bring to the exam site:

(A) a completed LNG Form 2016; and

(B) payment of the applicable fee specified in paragraph (3)(B) of this subsection.

(3) An individual who files LNG Form 2016 and pays the applicable nonrefundable examination fee may take the rules examination.

(A) Dates and locations of available Commission LNG examinations may be obtained on the Commission's web site. Examinations may be administered:

(i) at the Commission's AFS Training Center in Austin;

(ii) at other designated times and locations around the state; and

(iii) through an online testing or proctoring service.

(B) Individuals or companies may request in writing that examinations be given in their area. AFS shall schedule examinations at its discretion.

(C) Exam fees.

(i) The nonrefundable management-level rules examination fee is \$70.

(ii) The nonrefundable employee-level rules examination fee is \$40.

(iii) The nonrefundable examination fees shall be paid each time an individual takes an examination.

(iv) A military service member, military veteran, or military spouse shall be exempt from the examination fee pursuant to §14.2015 of this title (relating to Military Fee Exemption). An individual who receives a military fee exemption is not exempt from renewal fees specified in subsection (g) of this section.

(v) Beginning February 7, 2023, individuals who register for an examination to be administered by a testing or proctoring service shall pay any fee required by the testing or proctoring service in addition to paying the examination fee to the Commission.

(D) Time limits.

(i) An applicant shall complete the examination within the time limits specified in this subparagraph.

(I) The employee-level LNG Delivery Truck Driver examination and the management-level Category 35 Retail and Wholesale Dealers examination shall be limited to three hours; and

(II) all other examinations shall be limited to two hours.

(ii) The examination proctor shall be the official timekeeper.

(iii) An examinee shall submit the examination and the answer sheet to the examination proctor before or at the end of the established time limit for an examination.

(iv) The examination proctor shall mark any answer sheet that was not completed within the time limit.

(E) Each individual who performs LNG activities as an employee of an ultimate consumer or a state agency, county, municipality, school district, or other governmental subdivision shall be properly

supervised by his or her employer. Any such individual who is not certified by the Commission to perform LNG activities shall be properly trained by a competent person in the safe performance of such LNG activities.

(c) The following examinations are offered by the Commission.

(1) Employee-level examinations:

(A) The Delivery Truck Driver examination qualifies an individual to operate a transport, load and unload LNG and connect and disconnect transfer hoses, and to perform all activities related to stationary LNG systems, including LNG containers, piping and equipment.

(B) The Service and Installation Technician examination qualifies an individual to perform all CNG activities related to stationary LNG systems, including LNG containers, piping and equipment. The Service and Installation examination does not authorize an individual to fill containers or operate an LNG transport.

(C) The Transport Truck Driver examination qualifies an individual to operate an LNG transport, to load and unload LNG, and connect and disconnect transfer hoses. The Transport Driver examination does not authorize an individual to install or repair transport systems.

(D) The Engine Fuel examination qualifies an individual to install LNG motor fuel containers and LNG motor fuel systems, and replace container valves on motorized vehicles licensed to operate on public roadways. The Engine Fuel examination does not authorize an individual to fill LNG motor fuel containers.

(E) The Motor/Mobile Fuel Filler examination qualifies an individual to inspect and fill motor or mobile fuel containers on vehicles, including recreational vehicles, cars, trucks, and buses. The Motor/Mobile Fuel Dispensing examination does not authorize an individual to fill stationary LNG containers.

(2) Management-level examinations:

(A) Category 15 examination qualifies an individual to assemble, repair, install, test, and sell LNG containers, including LNG motor or mobile fuel containers and systems, and to repair transport and transfer systems for use in Texas.

(B) Category 20 examination qualifies an individual to subframe, test, and sell LNG transport containers, test LNG storage containers, install, test, and sell LNG motor or mobile fuel containers and systems, and install and repair transport systems and motor or mobile fuel systems for use in Texas.

(C) Category 25 examination qualifies an individual to transport LNG by transport, including the loading and unloading of LNG.

(D) Category 30 examination qualifies an individual to sell, repair, service, and install stationary containers and LNG systems.

(E) Category 35 examination qualifies an individual to store, sell, transport, and distribute LNG and all other activities included in this section except manufacture, fabrication, assembly, repair, subframing, and testing of LNG containers.

(F) Category 40 examination qualifies an individual to store, sell, and dispense LNG into motor- and mobile fuel containers.

(G) Category 45 qualifies an individual to sell and install LNG motor or mobile fuel containers, and sell, repair, and install LNG motor or mobile fuel systems.

(H) Category 50 qualifies an individual to test LNG containers, LNG motor fuel systems or mobile fuel systems, transfer systems, and transport systems for the purpose of determining the safety of the containers or systems for LNG service, including the necessary installation, disconnection, reconnection, testing, and repair of LNG motor fuel systems or mobile fuel systems, transfer systems and transport systems involved in the testing of containers.

(d) Within 15 calendar days of the date an individual takes an examination, AFS shall notify the individual of the results of the examination.

(1) If the examination is graded or reviewed by a testing or proctoring service, AFS shall notify the individual of the examination results within 14 days of the date AFS receives the results from the testing or proctoring service.

(2) If the notice of the examination results will be delayed for longer than 90 days after the examination date, AFS shall notify the individual of the reason for the delay before the 90th day. AFS may require a testing or proctoring service to notify an individual of the individual's examination results.

(e) Failure of any examination shall immediately disqualify the individual from performing any LNG related activities covered by the examination which is failed, except for activities covered by a separate examination which the individual has passed.

(1) Any individual who fails an examination administered by the Commission, at the Austin location, may retake the same examination one additional time during a business day.

(2) Any subsequent examination shall be taken on another business day, unless approved by the AFS director.

(3) An individual who fails an examination may request an analysis of the individual's performance on the examination.

(f) Trainees.

(1) A licensee or ultimate consumer may employ an individual as a trainee for a period not to exceed 45 calendar days without that individual having successfully completed the rules examination, as specified in subsection (b) of this section, subject to the following conditions:

(A) In addition to NFPA 52 §4.2, the trainee shall be directly and individually supervised at all times by an individual who has successfully completed the Commission's rules examination for the areas of work being performed by the trainee.

(B) A trainee who has been in training for a total period of 45 days, in any combination and with any number of employers, shall cease to perform any LNG activities for which the trainee is not currently certified, until the trainee successfully completes the rules examination.

(2) A trainee who fails the rules examination shall immediately cease to perform any LNG activities covered by the examination failed.

(g) Requirements for certificate holder renewal.

(1) In order to maintain active status, certificate holders shall renew their certificate annually as specified in this subsection.

(2) AFS shall notify licensees of any of their employees' pending renewal deadlines and shall notify the individual if not employed by a licensee, in writing, at the address on file with AFS no later than March 15 of a year for the May 31 renewal date of that year.



(3) Certificate holders shall pay the nonrefundable \$25 annual certificate renewal fee to AFS on or before May 31 of each year. Individuals who hold more than one certificate shall pay only one annual renewal fee.

(A) Failure to pay the nonrefundable annual renewal fee by the deadline shall result in a lapsed certificate.

(i) To renew a lapsed certificate, the individual shall pay the nonrefundable \$25 annual renewal fee plus a nonrefundable \$20 late-filing fee. Failure to do so shall result in the expiration of the certificate.

(ii) If an individual's certificate lapses or expires, that individual shall immediately cease performance of any LNG activities authorized by the certificate.

(iii) If an individual's certificate has been expired for more than two years from May 31 of the year in which the certificate lapsed, that individual shall comply with the requirements of subsection (b) of this section.

(B) Upon receipt of the annual renewal fee and any late-filing fee, AFS shall verify that all applicable requirements have been met. After verification, AFS shall renew and send a copy of the certificate, and the individual may continue or resume LNG activities authorized by that certificate.

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

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## SUBCHAPTER B. GENERAL RULES FOR ALL STATIONARY LNG INSTALLATIONS

### 16 TAC §14.2101

The Commission adopts the amendments under Texas Natural Resources Code §116.012, which authorizes the Commission to adopt rules and standards relating to compressed natural gas activities to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §116.031(e), which requires a person engaging in the manufacture or fabrication of containers to register with the Commission in accordance with rules adopted by the Commission; and Texas Natural Resources Code §116.034(e) and (f) as amended by Senate Bill 1582 (87th Legislature, Regular Session).

Statutory authority: Texas Natural Resources Code, §§116.012, 116.031, and 116.034.

Cross reference to statute: Texas Natural Resources Code Chapter 116.

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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Railroad Commission of Texas

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For further information, please call: (512) 475-1295



## SUBCHAPTER G. ENGINE FUEL SYSTEMS

### 16 TAC §14.2637

The Commission adopts the amendments under Texas Natural Resources Code §116.012, which authorizes the Commission to adopt rules and standards relating to compressed natural gas activities to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §116.031(e), which requires a person engaging in the manufacture or fabrication of containers to register with the Commission in accordance with rules adopted by the Commission; and Texas Natural Resources Code §116.034(e) and (f) as amended by Senate Bill 1582 (87th Legislature, Regular Session).

Statutory authority: Texas Natural Resources Code, §§116.012, 116.031, and 116.034.

Cross reference to statute: Texas Natural Resources Code Chapter 116.

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

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## SUBCHAPTER H. LNG TRANSPORTS

### 16 TAC §§14.2704, 14.2707, 14.2710, 14.2725

The Commission adopts the amendments under Texas Natural Resources Code §116.012, which authorizes the Commission to adopt rules and standards relating to compressed natural gas activities to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §116.031(e), which requires a person engaging in the manufacture or fabrication of containers to register with the Commission in accordance with rules adopted by the Commission; and Texas Natural Resources

Code §116.034(e) and (f) as amended by Senate Bill 1582 (87th Legislature, Regular Session).

Statutory authority: Texas Natural Resources Code, §§116.012, 116.031, and 116.034.

Cross reference to statute: Texas Natural Resources Code Chapter 116.

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

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## SUBCHAPTER I. ADOPTION BY REFERENCE OF NFPA 52 (VEHICULAR GASEOUS FUEL SYSTEMS CODE)

### 16 TAC §14.2801

The Commission adopts the amendments under Texas Natural Resources Code §116.012, which authorizes the Commission to adopt rules and standards relating to compressed natural gas activities to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §116.031(e), which requires a person engaging in the manufacture or fabrication of containers to register with the Commission in accordance with rules adopted by the Commission; and Texas Natural Resources Code §116.034(e) and (f) as amended by Senate Bill 1582 (87th Legislature, Regular Session).

Statutory authority: Texas Natural Resources Code, §§116.012, 116.031, and 116.034.

Cross reference to statute: Texas Natural Resources Code Chapter 116.

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 22. EXAMINING BOARDS

## PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

### CHAPTER 501. RULES OF PROFESSIONAL CONDUCT

#### SUBCHAPTER A. GENERAL PROVISIONS

##### 22 TAC §501.55

The Texas State Board of Public Accountancy adopts an amendment to §501.55, concerning Definition of Acronyms, without changes to the proposed text as published in the December 16, 2022, issue of the *Texas Register* (47 TexReg 8214) and will not be republished.

The TSCPA (Texas Society of CPAs) has been branded with the name TXCPA. This rule references the old name and should be updated.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7842



### CHAPTER 502. PEER ASSISTANCE

##### 22 TAC §502.2

The Texas State Board of Public Accountancy adopts an amendment to §502.2, concerning Texas State Board of Public Accountancy Policy Statement of the Peer Assistance Oversight Committee, without changes to the proposed text as published in the December 16, 2022, issue of the *Texas Register* (47 TexReg 8215) and will not be republished.

The TSCPA (Texas Society of CPAs) has been branded with the name TXCPA. This rule references the old name and should be updated.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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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For further information, please call: (512) 305-7842



## CHAPTER 505. THE BOARD

### 22 TAC §505.10

The Texas State Board of Public Accountancy adopts an amendment to §505.10, concerning Board Committees, without changes to the proposed text as published in the December 16, 2022, issue of the *Texas Register* (47 TexReg 8217) and will not be republished.

The TSCPA (Texas Society of CPAs) has been branded with the name TXCPA. This rule references the old name and should be updated.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7842



## CHAPTER 511. ELIGIBILITY

### SUBCHAPTER D. CPA EXAMINATION

#### 22 TAC §511.80

The Texas State Board of Public Accountancy adopts an amendment to §511.80, concerning Granting of Credit, without changes

to the proposed text as published in the December 16, 2022, issue of the *Texas Register* (47 TexReg 8219) and will not be republished.

A CPA has 18 months to pass all parts of the Uniform CPA exam. Beginning in January 2024, however, the Uniform CPA exam will be restructured. The restructuring is likely to limit the CPA candidate's opportunities to test and could cause delays in exam score reporting. Because of the possibility of delays and other reasonably unforeseeable or uncontrollable events, this proposed revision would authorize the Executive Director to extend the 18 months to accommodate delays from the restructuring and other reasonably unforeseeable or uncontrollable events.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7842



## CHAPTER 523. CONTINUING PROFESSIONAL EDUCATION

### SUBCHAPTER C. ETHICS RULES: INDIVIDUALS AND SPONSORS

#### 22 TAC §523.132

The Texas State Board of Public Accountancy adopts an amendment to §523.132, concerning Board Authorized Ethics Instructors, without changes to the proposed text as published in the December 16, 2022, issue of the *Texas Register* (47 TexReg 8221) and will not be republished.

The TSCPA (Texas Society of CPAs) has been branded with the name TXCPA. This rule references the old name and should be updated.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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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TRD-202300218

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Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7842



## CHAPTER 527. PEER REVIEW

### 22 TAC §527.3

The Texas State Board of Public Accountancy adopts an amendment to §527.3, concerning Standards for Peer Reviews and Sponsoring Organizations, without changes to the proposed text as published in the December 16, 2022, issue of the *Texas Register* (47 TexReg 8222) and will not be republished.

The TSCPA (Texas Society of CPAs) has been branded with the name TXCPA. This rule references the old name and should be updated.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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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TRD-202300219

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Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7842



### 22 TAC §527.6

The Texas State Board of Public Accountancy adopts an amendment to §527.6, concerning Reporting to the Board, without changes to the proposed text as published in the December 16, 2022, issue of the *Texas Register* (47 TexReg 8223) and will not be republished.

The TSCPA (Texas Society of CPAs) has been branded with the name TXCPA. This rule references the old name and should be updated.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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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J. Randel (Jerry) Hill

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Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7842



### 22 TAC §527.7

The Texas State Board of Public Accountancy adopts an amendment to §527.7, concerning Peer Review Oversight Board, without changes to the proposed text as published in the December 16, 2022, issue of the *Texas Register* (47 TexReg 8224) and will not be republished.

The TSCPA (Texas Society of CPAs) has been branded with the name TXCPA. This rule references the old name and should be updated.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7842



## TITLE 26. HEALTH AND HUMAN SERVICES

# PART 1. HEALTH AND HUMAN SERVICES COMMISSION

## CHAPTER 307. BEHAVIORAL HEALTH PROGRAMS

The Texas Health and Human Services Commission (HHSC) adopts amendments to §307.155, concerning Definitions; §307.163, concerning Assessment, Reassessment, Court Reporting, and Extension; §307.165, concerning Discharge Requirements; §307.167, concerning Data; §307.169, concerning Written Policies and Procedures; §307.175, concerning Compliance with Statutes and Rules; the repeal of §307.157, concerning Criteria for Admission to an Outpatient Competency Restoration Program; §307.159, concerning Recommendation Regarding Outpatient Competency Restoration Program Admission; and new §307.157, concerning Recommendation Regarding Outpatient Competency Restoration Program Admission; and §307.159, concerning Admission to an Outpatient Competency Restoration Program.

Section 307.157 is adopted with changes to the proposed text as published in the October 14, 2022, issue of the *Texas Register* (47 TexReg 6809). This rule will be republished.

Sections 307.155, 307.159, 307.163, 307.165, 307.167, 307.169, and 307.175, and the repeals of §307.157 and §307.159 are adopted without changes to the proposed text as published in the October 14, 2022, issue of the *Texas Register* (47 TexReg 6809). These rules will not be republished.

### BACKGROUND AND JUSTIFICATION

The adopted rules implement Senate Bill 49, 87th Legislature, Regular Session, 2021 which amended Texas Code of Criminal Procedure Article 46B relating to when competency restoration services begin and when an extension of the initial restoration period begins. In addition, HHSC adopts amendments to clarify statutory requirements and language for consistency and understanding, reorder requirements in the order in which processes occur, and update and add cross references.

### COMMENTS

The 31-day comment period ended November 16, 2022.

During this period, HHSC received comments regarding the proposed rules from the Texas Medical Association. A summary of comments relating to the rules and HHSC's responses follows.

Comment: The commenter recommended replacing the word "qualified" in §307.157(a) with a person "who is legally authorized under Texas' scope of licensure law" to conduct assessments.

Response: HHSC agrees and revised the rule by clarifying the qualifications necessary to conduct assessments are pursuant to state license, permit, or other legal authorization.

Comment: The commenter suggested clarifying §307.157(b)(1) regarding the circumstance when an outpatient competency restoration (OCR) provider must admit an individual to an OCR program by adding "and the OCR program is available for the individual."

Response: HHSC declined to revise the rule in response to this comment. Code of Criminal Procedure (CCP) Articles 46B.0711 and 46B.072 require that the court find that the treatment pro-

posed by the comprehensive treatment plan will be available to, and will be provided to, the defendant.

Comment: The commenter suggested clarifying §307.159(a) regarding who the OCR provider must admit into an OCR program upon receipt of a court order by adding, an OCR provider "that has recommended an individual for admission into an OCR program in accordance with §307.157(b)(1)."

Response: HHSC declined to revise the rule in response to this comment. It is outside the scope of HHSC's authority to set additional requirements for when an OCR provider must comply with a court order requiring an individual to participate in an OCR program.

## SUBCHAPTER D. OUTPATIENT COMPETENCY RESTORATION

**26 TAC §§307.155, 307.157, 307.159, 307.163, 307.165, 307.167, 307.169, 307.175**

### 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 Health & Safety Code §§534.052 and 534.058, which authorize the Executive Commissioner to develop rules and standards of care for services provided by local mental health authorities and its subcontractors; and Texas Code of Criminal Procedure Articles 46B.0095, 46B.0711, 46B.072, 46B.0735, 46B.077, 46B.079, 46B.080, 46B.0805, 46B.082, 46B.083, and 46B.086, which set forth requirements for OCR programs.

*§307.157. Recommendation Regarding Outpatient Competency Restoration Program Admission.*

(a) The OCR provider must assess the individual to determine if OCR services are appropriate by ensuring the following assessments are conducted by a person qualified to conduct the assessments pursuant to their state license, permit, or other legal authorization:

- (1) a clinical assessment, including substance use history; and
- (2) a violence risk assessment utilizing a validated risk assessment tool.

(b) If an OCR provider determines that OCR services are appropriate for an individual, the provider must:

- (1) inform the court, in writing, that the individual is being recommended for admission into the OCR program; and
- (2) develop and submit a comprehensive treatment plan to the court in accordance with Texas Code of Criminal Procedure, Article 46B.0711(c)(1) or 46B.072(c)(1) as applicable, identifying the persons responsible for providing treatment to the individual and listing services the individual will be provided, including:

- (A) competency restoration education;
- (B) access to housing resources;
- (C) access to transportation resources; and
- (D) a regimen of medical, psychiatric, or psychological care or treatment.

(c) If an OCR provider determines that OCR services are inappropriate for an individual, the provider must:

(1) inform the court, in writing, of the individual's ineligibility for admission into the OCR program; and

(2) document reasons for ineligibility in the individual's medical record.

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

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Karen Ray

Chief Counsel

Health and Human Services Commission

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For further information, please call: (512) 695-6936



## 26 TAC §307.157, §307.159

### STATUTORY AUTHORITY

The repeals are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health & Safety Code §§534.052 and 534.058, which authorize the Executive Commissioner to develop rules and standards of care for services provided by local mental health authorities and its subcontractors; and Texas Code of Criminal Procedure Articles 46B.0095, 46B.0711, 46B.072, 46B.0735, 46B.077, 46B.079, 46B.080, 46B.0805, 46B.082, 46B.083, and 46B.086, which set forth requirements for OCR programs.

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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TRD-202300248

Karen Ray

Chief Counsel

Health and Human Services Commission

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## TITLE 31. NATURAL RESOURCES AND CONSERVATION

### PART 10. TEXAS WATER DEVELOPMENT BOARD

#### CHAPTER 363. FINANCIAL ASSISTANCE PROGRAMS

## SUBCHAPTER J. STATE PARTICIPATION PROGRAM

### 31 TAC §§363.1001 - 363.1004, 363.1006 - 363.1008, 363.1012, 363.1013

The Texas Water Development Board (TWDB) adopts 31 Texas Administrative Code §§363.1001 - 363.1004, 363.1006 - 363.1008, 363.1012, and 363.1013 related to the State Participation Program. The proposal is adopted without changes as published in the October 21, 2022, issue of the *Texas Register* (47 TexReg 6968). The rules will not be republished.

#### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED AMENDMENT.

The TWDB adopts amendments to 31 TAC §§363.1001 - 363.1004, 363.1006 - 363.1008, 363.1012, and 363.1013 concerning the State Participation Program. The 86th Texas Legislature passed House Bill 1052 that revised Water Code Chapter 16 regarding the provisions of the State Participation Program.

The bill added interregional water supply projects as eligible projects for funding from the state participation account. It included a condition that at least half of the funds used in a fiscal year from the account be used for interregional water projects that benefit multiple water planning regions. The bill requires the board to establish selection criteria to prioritize interregional water supply project applications received. The bill also requires the board and the Texas Commission on Environmental Quality to enter into a memorandum of understanding for the expedited approval of permits for interregional water supply projects.

The bill also created a State Participation Account II to provide financial assistance for the development of desalination or aquifer storage and recovery facilities through the acquisition of a facility or ownership interest in a facility. Facilities receiving funding must be included in the state water plan. The bill required the board to establish a point system to prioritize desalination or aquifer storage and recovery facility financial assistance applications received. The issuance of bonds for these projects will be limited to \$200 million. If the board has not provided financial assistance for a desalination or aquifer storage and recovery facility before September 1, 2024, the board will be unable to do so after that date.

#### SECTION BY SECTION DISCUSSION OF ADOPTED AMENDMENTS.

##### 31 TAC §363.1001 *Scope of Subchapter*

Section 363.1001 is amended to clarify that the rule requirements related to applicants and participating entities do not apply when the TWDB is acting singly in implementing a project.

##### 31 TAC §363.1002 *Definition of Terms*

Section 363.1002(2) is amended to add "interregional" to the definition of facility.

Section 363.1002(6) is added to define the term "State Participation Account II."

Section 363.1002(7) is renumbered to accommodate the addition of Section 363.1002(6).

##### 31 TAC §363.1003 *Board Participation*

Section 363.1003(a) is added to clarify that the section does not apply to use of the State Participation Account II. Section

363.1003(c) is added to state that the Board may waive the excess capacity limitations of subsection (b) upon showing of good cause. The Board may do this at its sole discretion. The excess capacity limitations set in this rule are not required by statute.

Section 363.1003(b) is renumbered to accommodate the addition of Section 363.1003(a) and amended to delete "Texas Water Development Fund I," which has been replaced by the Texas Water Development Fund II.

#### *31 TAC §363.1004 Application for Assistance*

Section 363.1004(10)(F) is amended to reflect legislative changes made by HB 3339, 86th Legislative Session.

#### *31 TAC §363.1006 Prioritization System*

Section 363.1006(a) is amended to allow prioritization and consideration for commitment at any point during the year. This will create greater flexibility for the TWDB and potential applicants. Sections 363.1006(a) and (c) are also amended to clarify that interregional water supply projects will be prioritized separately from other projects.

#### *31 TAC §363.1007 Prioritization Criteria*

Section 363.1007(b) is amended to mention the exception of newly added subsection (c).

Section 363.1007(c) is added to provide prioritization criteria for interregional water supply projects.

#### *31 TAC §363.1008 Determination*

Section 363.1008(a) is amended to mention the exception of the newly added subsection for the State Participation Account II.

Section 363.1008(a)(5) is amended to add "interregional" regarding the facility.

Section 363.1008(b) is added to list required Board findings for State Participation II projects, as required by HB 1052.

#### *31 TAC §363.1012 Requirements of Application*

Section 363.1012 is amended to correct punctuation.

#### *31 TAC §363.1013 Notice of Participating Political Subdivision and Others*

Section 363.1013 is amended to correct punctuation.

#### REGULATORY IMPACT ANALYSIS DETERMINATION (Texas Government Code §2001.0225)

The TWDB reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the rulemaking is not subject to Texas Government Code §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the rulemaking is to implement legislative changes.

Even if the rule were a major environmental rule, Texas Government Code §2001.0225 still would not apply to this rulemaking because Texas Government Code §2001.0225 only applies to a major environmental rule, the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state

law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: (1) does not exceed any federal law; (2) does not exceed an express requirement of state law; (3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and (4) is not adopted solely under the general powers of the agency, but rather Texas Water Code §§16.131, 16.145, 16.146, 16.182, and 17.957. Therefore, this rule does not fall under any of the applicability criteria in Texas Government Code §2001.0225.

#### TAKINGS IMPACT ASSESSMENT (Texas Government Code §2007.043)

The TWDB evaluated the rule amendments and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this rule is to implement legislative changes. The rule would substantially advance this stated purpose by adding language related to the legislative changes.

The TWDB's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this rule because this is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code §2007.003(b)(4). The TWDB is the agency that provides financial assistance for the construction of water projects through the State Participation Program.

Nevertheless, the TWDB further evaluated this rule and performed an assessment of whether it constitutes a taking under Texas Government Code Chapter 2007. Promulgation and enforcement of this rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject rule does not affect a landowner's rights in private real property because this rulemaking does not burden, restrict, or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the rule. In other words, this rule requires compliance with state law regarding financing water supply projects. Therefore, the rule does not constitute a taking under Texas Government Code, Chapter 2007.

#### PUBLIC COMMENTS (Texas Government Code §2001.033(a)(1))

The public comment period ended November 21, 2022. No comments were received and no changes were made.

#### STATUTORY AUTHORITY (Texas Government Code §2001.033(a)(2))

The amendment is adopted under the authority of Texas Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Water Code §§16.131, 16.145, 16.146, 16.182, and 17.957.

This rulemaking affects Texas Water Code, Chapter 16, Subchapters E and F.

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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TRD-202300235

Ashley Harden

General Counsel

Texas Water Development Board

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For further information, please call: (512) 463-7686



## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### PART 5. TEXAS BOARD OF PARDONS AND PAROLES

#### CHAPTER 145. PAROLE

##### SUBCHAPTER A. PAROLE PROCESS

###### 37 TAC §§145.1, 145.2, 145.6, 145.7, 145.13, 145.14

The Texas Board of Pardons and Paroles adopts amendments to 37 TAC Chapter 145, Subchapter A, §145.1, §145.2, §145.6, §145.7, §145.13, and §145.14 concerning parole process. The rules are adopted with changes to the proposed text as published in the November 25, 2022 issue of the *Texas Register* (47 TexReg 7858). The rules will be republished.

The amendments are adopted to provide edits for uniformity and consistency throughout the rules and to correct grammatical errors.

No public comments were received regarding adoption of these amendments.

The amended rules are adopted under §508.036, §508.0441, §508.045, §508.141, and §508.149 Government Code. Section 508.036 requires the Board to adopt rules relating to the decision-making processes used by the board and parole panels. Section 508.0441 and Section 508.045 authorize the Board to adopt reasonable rules as proper or necessary relating to the eligibility of an offender for release to mandatory supervision and to act on matters of release to mandatory supervision. Section 508.141 provides the Board authority to adopt policy establishing the date on which the board may reconsider for release an inmate who has previously been denied release. Section 508.149 provides authority for the discretionary release of offenders on mandatory supervision.

###### §145.1. Parole Decision-Maker.

(a) Unless otherwise provided, parole decisions shall be made by two-thirds vote of a parole panel. The Board is the parole release decision-maker of persons convicted of a capital felony offense, who are eligible for parole, or an offense under Sections 20A.03, 21.02, 21.11(a)(1), and 22.021, Penal Code, or who are required under Section 508.145(c), Government Code to serve 35 calendar years before becoming eligible for parole review. In these cases, the Board may grant parole only upon a two-thirds vote. The Board is not required to meet as a body to perform this duty.

(b) In all other matters of parole and mandatory supervision and revocation of parole and mandatory supervision, three-member parole panels are parole decision makers. A parole panel may consider any eligible offender for release and, upon a majority vote of the panel, may approve or deny release to supervision. If a majority of the panel does not concur, the case is forwarded to a panel, designated by the Presiding Officer (Chair), to revote. The members of a parole panel are not required to meet as a body to perform these decision-making duties.

###### §145.2. Standard Parole Guidelines.

(a) Parole panels are vested with complete discretion in making parole decisions to accomplish the mandatory duties found in Chapter 508, Government Code.

(b) Parole guidelines have been adopted by the Board to assist parole panels in the selection of possible candidates for release. Parole guidelines are applied as a basis, but not as the exclusive criteria, upon which parole panels base release decisions.

(1) The parole guidelines consist of a risk assessment instrument and an offense severity scale. Combined, these components serve as an instrument to guide parole release decisions.

(2) The risk assessment instrument includes two sets of components, static and dynamic factors.

(A) Static factors include:

(i) Age at first admission to a juvenile or adult correctional facility;

(ii) History of supervisory release revocations for felony offenses;

(iii) Prior incarcerations;

(iv) Employment history; and

(v) The commitment offense.

(B) Dynamic factors include:

(i) The offender's current age;

(ii) Whether the offender is a confirmed security threat group (gang) member;

(iii) Education, vocational and certified on-the-job training programs completed during the present incarceration;

(iv) Prison disciplinary conduct; and

(v) Current prison custody level.

(3) Scores from the risk assessment instrument are combined with an offense severity rating for the sentenced offense of record to determine a parole candidate's guidelines level.

(c) The adoption and use of the parole guidelines do not imply the creation of any parole release formula, or a right or expectation by an offender to parole based upon the guidelines. The risk assessment instrument and the offense severity scale, while utilized for research and reporting, are not to be construed so as to mandate either a favorable or unfavorable parole decision. The parole guidelines serve as an aid in the parole decision process and the parole decision shall be at the discretion of the Board and the voting parole panel.

(d) The Board is authorized to revise the parole guidelines as warranted.

###### §145.6. Notification of Parole Panel Decision.

(a) An offender considered for parole or mandatory supervision shall be notified of the parole panel's decision in writing.



(b) Consideration and notification of the parole panel's decision includes any cumulative, pre-final consecutive sentence.

(c) Upon considering a case for parole or mandatory supervision, the parole panel shall make a record of its decision and the reasons for its decision on the minute sheet of the offender's file.

(d) Reasons for the parole panel's decision include but are not limited to the following:

- (1) criminal history;
- (2) nature of offense;
- (3) drug or alcohol involvement;
- (4) institutional adjustment;
- (5) adjustment during periods of supervision;
- (6) participation in the TDCJ-CID proposed or specialized programs;
- (7) time served;
- (8) felony offense committed while incarcerated;
- (9) discretionary mandatory supervision;
- (10) gang affiliation;
- (11) other.

(e) Parole approval will be indicated by "A" and denial will be indicated by "D."

*§145.7. Initial Review.*

(a) The Board shall conduct an initial review of an offender, who is eligible to be released on parole, no later than the 180th day of the offender's admission to the TDCJ CID.

(b) The Board shall identify the classes or programs listed in the Individual Treatment Plans as the classes or programs that the Board intends to require the offender to complete before releasing the offender on parole. TDCJ shall provide the offender with a copy of the Individual Treatment Plan, which includes a list of classes or programs.

(c) Before the offender is approved for release on parole, the offender must agree to participate in the classes or programs described by the Individual Treatment Plan. Refusal to participate in the classes or programs described by the Individual Treatment Plan shall be considered by the Board when reviewing the offender for parole.

(d) The identification of any classes or programs under subsection (b) of this section shall have no effect on any discretionary decision made by the Board regarding any offender and does not imply a right or expectation by an offender to parole based upon the completion of the classes or programs.

*§145.13. Action upon Review; Consecutive (Cumulative) Felony Sentencing.*

(a) This section applies only to an offender sentenced to serve consecutive sentences if each sentence in the series is for an offense committed on or after September 1, 1987.

(b) A parole panel shall review for parole consideration consecutive felony sentencing cases as determined and in the sequence submitted by the TDCJ.

(c) If the case under parole consideration is a pre-final consecutive felony sentencing case, the parole panel may:

- (1) defer for request and receipt of further information;
- (2) vote CU/FI (Month/Year Cause Number), designate the date on which the offender would have been eligible for release on

parole if the offender had been sentenced to serve a single sentence. This date shall be within a three-year incarceration period following the panel decision;

(3) vote CU/NR (Month/Year Cause Number), deny favorable parole action and set the next review date at one year from the panel decision date. If the offender is serving an offense under Section 508.149(a), Government Code, or second or third degree under Section 22.04, Penal Code; the next review date (month/year) may be set at any date in the five-year incarceration period following the panel decision date, but in no event shall it be less than one (1) calendar year from the panel decision date; or

(4) vote CU/SA (Month/Year Cause Number): If the offender is serving an offense under Section 508.149(a), Government Code, or second or third degree under Section 22.04, Penal Code deny release and order serve-all, but in no event shall this be utilized if the offender's maximum expiration date is over five (5) years from the date of the panel decision. If the offender is not serving an offense under Section 508.149(a), Government Code, deny release and order serve-all, but in no event shall this be utilized if the offender's maximum expiration date is over one (1) year from the date of the panel decision.

(d) If the case under parole consideration is the last and final in a series of consecutive felony sentencing cases, the case shall be reviewed under §145.12 of this title (relating to Action upon Review).

(e) When a parole panel reviews for parole consideration a consecutive felony sentencing case, the parole panel shall indicate the Cause Number of the consecutive felony sentencing case it is considering.

*§145.14. Action upon Review; Release to Mandatory Supervision.*

(a) This section applies only to an offender eligible for release to mandatory supervision if the sentence is for an offense committed on or after September 1, 1996.

(b) If the TDCJ-CID determines that release of the offender will occur because the offender will reach the projected release date, the case will be processed as follows:

(1) the offender shall be provided written notice of the discretionary mandatory review and shall have 30 days from the receipt of the notice to submit, in writing, information to the Board; and

(2) after the expiration of the 30 day time period, the case shall be referred to a parole panel who will consider the case for release to mandatory supervision no earlier than 60 days of the offender's projected release date.

(c) Upon considering a case for release to mandatory supervision, a parole panel may:

- (1) defer for request and receipt of further information;
- (2) vote DMS Month/Year, deny release to mandatory supervision and set the next mandatory supervision review date one year from the panel decision date; or
- (3) vote RMS, release to mandatory supervision.

(d) Subsection (c) of this section applies to all subsequent reconsiderations for release to mandatory supervision.

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 20, 2023.

TRD-202300228

Bettie Wells  
General Counsel  
Texas Board of Pardons and Paroles  
Effective date: February 9, 2023  
Proposal publication date: November 25, 2022  
For further information, please call: (512) 406-5478



## PART 15. TEXAS FORENSIC SCIENCE COMMISSION

### CHAPTER 651. DNA, CODIS, FORENSIC ANALYSIS, AND CRIME LABORATORIES

#### SUBCHAPTER A. ACCREDITATION

##### 37 TAC §651.7

The Texas Forensic Science Commission ("Commission") adopts an amendment to rule to 37 Texas Administrative Code §651.7 without changes to the text as published in the December 16, 2022, issue of the *Texas Register* (47 TexReg 8251) to exempt the activity of determination of National Integrated Ballistic Information Network (NIBIN) suitability of firearms evidence, limited to triaging or grouping multiple items of evidence for NIBIN entry and assessing a set of test fires for purposes of NIBIN entry, as well as the corresponding NIBIN entry of these items. The rule will not be republished. The proposed amendments exempt certain firearm/toolmark forensic activities related to determination of NIBIN suitability and NIBIN entry performed in any setting but particularly clarify the exemption from accreditation and licensing requirements for law enforcement agencies who perform these activities outside the accredited laboratory setting in collaboration with federal

agencies exempt from accreditation and licensing requirements. The Commission adoption is necessary to reflect changes made by the Commission at its October 7, 2022 quarterly meeting. The adoption is made in accordance with the Commission's accreditation authority under Code of Criminal Procedure, Art. 38.01 § 4-d(2), which establishes that the Commission may modify or remove crime laboratory accreditation exemptions, and the Commission's rulemaking authority under Art. 38.01 § 3-a, which directs the Commission to adopt rules necessary to implement Code of Criminal Procedure, Art. 38.01.

Summary of Comments. No comments were received regarding the amendments to this section.

Statutory Authority. The adoption is made under Tex. Code Crim. Proc. art 38.01 §§ 4-d(2) and (3)-a.

Cross reference to statute. The proposal affects rule Code of Criminal Procedure art. 38.01 §4-d(2).

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 23, 2023.

TRD-202300254

Leigh Tomlin

Associate General Counsel

Texas Forensic Science Commission

Effective date: February 12, 2023

Proposal publication date: December 16, 2022

For further information, please call: (512) 936-0661



# 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

Department of Savings and Mortgage Lending

### Title 7, Part 4

On behalf of the Finance Commission of Texas (commission), the Department of Savings and Mortgage Lending (department) files this notice of its intent to review and consider for re-adoption, re-adoption with amendments, or repeal by the commission the following chapters of 7 TAC Part 4:

Chapter 52, Charter Applications (§§52.1 - 52.15);

Chapter 53, Additional Offices (§§53.1 - 53.5, 53.7 - 53.10, 53.17, 53.18);

Chapter 57, Change of Office Location or Name (§§57.1 - 57.4);

Chapter 61, Hearings (§§61.1 - 61.3);

Chapter 63, Fees and Charges (§§63.1 - 63.9, 63.11 - 63.13, 63.15);

Chapter 64, Books, Records, Accounting Practices, Financial Statements, Reserves, Net Worth, Examinations, Complaints (§§64.1 - 64.10);

Chapter 65, Loans and Investments (§§65.1 - 65.21, 65.23, 65.24);

Chapter 67, Savings and Deposit Accounts (§§67.1 - 67.3, 67.6 - 67.13, 67.15, 67.17);

Chapter 69, Reorganization, Merger, Consolidation, Acquisition, and Conversion (§§69.1 - 69.11);

Chapter 71, Change of Control (§§71.1 - 71.8); and

Chapter 73, Subsidiary Corporations (§§73.1 - 73.6).

The review will be conducted in accordance with Government Code §2001.039. The department, in conducting the rule review, will assess whether the reasons for originally adopting the rules continue to exist. Each rule will be reviewed to determine whether it is obsolete, reflects current policy considerations and procedures of the department, and whether it is in compliance with Government Code Chapter 2001 (Administrative Procedure Act).

Written comments regarding the rule review, and whether the reasons for initially adopting the sections under review continue to exist, should be submitted to Iain A. Berry, General Counsel, at 2601 North Lamar Blvd., Suite 201, Austin, Texas 78705-4294, or by email to [rules.comments@sml.texas.gov](mailto:rules.comments@sml.texas.gov). All comments must be received within 30 days of publication of this notice. Any proposed changes to the rules resulting from rule review will be published separately in the Proposed Rules section of the *Texas Register* and will be open for public comment at that time, prior to potential adoption by the commission.

TRD-202300291

Iain A. Berry

General Counsel

Department of Savings and Mortgage Lending

Filed: January 24, 2023



Texas Water Development Board

### Title 31, Part 10

The Texas Water Development Board (TWDB) files this notice of intent to review the rules in 31 Texas Administrative Code, Title 31, Part 10, Chapter 353, Subchapters B, D, E, F, and I.

This review is being conducted in accordance with the requirements of the Texas Government Code §2001.039, which requires state agencies to review and consider for re-adoption each of their rules every four years.

The TWDB will consider whether the initial factual, legal, and policy reasons for adopting each rule in these chapters and subchapters continue to exist and whether these rules should be repealed, readopted, or readopted with amendments.

Written comments on this notice may be submitted by mail to Office of General Counsel, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, by email to [rules.comments@twdb.texas.gov](mailto:rules.comments@twdb.texas.gov), or by fax to (512) 475-2053. Comments will be accepted until 5:00 p.m. of the 31st day following publication in the *Texas Register*. Include "Chapter 353, Subchapters B, D, E, F, and I" in the subject line of any comments submitted.

TRD-202300255

Ashley Harden

General Counsel

Texas Water Development Board

Filed: January 23, 2023



The Texas Water Development Board (TWDB) files this notice of intent to review the rules in 31 Texas Administrative Code, Title 31, Part 10, Chapter 380, Alternative Dispute Resolution, Subchapter B, Negotiation of Contract Disputes, Subchapter C, Mediation of Contract Disputes, and Subchapter D, Assisted Negotiation Processes.

This review is being conducted in accordance with the requirements of the Texas Government Code, §2001.039, which requires state agencies to review and consider for re-adoption each of their rules every four years.

The TWDB will consider whether the initial factual, legal, and policy reasons for adopting each rule in these chapters and subchapters continue to exist and whether these rules should be repealed, readopted, or readopted with amendments.

Written comments on this notice may be submitted by mail to Office of General Counsel, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, by email to [rulescomments@twdb.texas.gov](mailto:rulescomments@twdb.texas.gov), or by fax to (512) 475-2053. Comments will be accepted until 5:00 p.m. of the 31st day following publication in the *Texas Register*. Include "Chapter 380, Subchapters B, C, and D" in the subject line of any comments submitted.

TRD-202300256  
Ashley Harden  
General Counsel  
Texas Water Development Board  
Filed: January 23, 2023



## Adopted Rule Reviews

Texas Department of Agriculture

### Title 4, Part 1

The Texas Department of Agriculture, on behalf of the State Seed and Plant Board (Board), files this notice that the Board has completed its review of Texas Administrative Code, Title 4, Part 1, Chapter 10, Seed Certification Standards pursuant to Texas Government Code §2001.039. The notice of proposed rule review was published in the July 16, 2021, issue of the *Texas Register* (46 TexReg 4379). No comments were received as a result of the notice.

The Board finds that the reasons for initially adopting the rules in Chapter 10 continue to exist and readopts the rules without changes.

TRD-202300212  
Skyler Shafer  
Assistant General Counsel  
Texas Department of Agriculture  
Filed: January 19, 2023



The Texas Department of Agriculture (the Department) adopts the review of Texas Administrative Code, Title 4, Part 1, Chapter 22, Nursery Products and Floral Items, comprised of §22.1 (Definitions), §22.2 (Application), §22.3 (Nursery/Floral Registration Classifications and Fees), §22.4 (Stop-sale Order and Appeal), §22.5 (Violations and Penalties), and §22.6 (Integrated Pest Management Plans). The

review was conducted in accordance with the requirements of Texas Government Code, §2001.039 (Agency Review of Existing Rules).

Notice of intent to review the rules was published in the Review of Agency Rules section of the October 7, 2022, issue of the *Texas Register* (47 TexReg 6635). No comments were received from the public during the proposed rule review. In addition, prior to publishing formal notice of this rule review, the Department issued an informal advance notice of the proposed rule review to stakeholders; no comments were received in response to this notice.

The Department finds that the reasons for initially adopting the rules in Chapter 22 continue to exist. The Department readopts §§22.1-22.6 with no changes.

TRD-202300300  
Skyler Shafer  
Assistant General Counsel  
Texas Department of Agriculture  
Filed: January 25, 2023



Texas Alcoholic Beverage Commission

### Title 16, Part 3

The Texas Alcoholic Beverage Commission (TABC, agency, or commission) adopts the review of 16 Texas Administrative Code §§31.2, 31.12, and 31.13 in accordance with Texas Government Code §2001.039. The notice of intent to review rules was published in the November 25, 2022, issue of the *Texas Register* (47 TexReg 7931).

The commission received no comments regarding the proposed rule review.

The Commission has assessed whether the reasons for adopting or readopting the rules continue to exist. The Commission finds that §§31.2, 31.12, and 31.13 are needed, reflect current legal and policy considerations, and reflect current procedures of the Commission. The reasons for initially adopting the rules continue to exist. The Commission, therefore, readopts 16 Texas Administrative Code §§31.2, 31.12, and 31.13. This concludes the review of §§31.2, 31.12, and 31.13 of the Commission's rules.

TRD-202300288  
Shana Horton  
Rules Attorney  
Texas Alcoholic Beverage Commission  
Filed: January 24, 2023



# **TABLES &**

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# **GRAPHICS**

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word “Figure” followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

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Figure: 19 TAC §3.19(f)(2)

<b>Potential Annual Penalties under TEC Chapter 51, Subchapter E-2</b>		
<b>Statute and Rule Violations</b>	<b>Institutional Failure to Maintain Substantial Compliance Related to</b>	<b>Potential Annual Penalty</b>
Tex. Educ. Code §51.252; §3.5	Reporting Required for Certain Incidents	\$60,000
Tex. Educ. Code §51.253; §3.6	Administrative Reporting Requirements	\$2,000 per day
Tex. Educ. Code §51.255(c); §3.8	Failure to Report or False Report (Termination)	\$30,000
Tex. Educ. Code §51.256; §3.17	Confidentiality	\$60,000
Tex. Educ. Code §51.257(a); §3.18	Retaliation Prohibited	\$30,000

<b>Potential Annual Penalties under TEC Chapter 51, Subchapter E-3</b>		
<b>Statute and Rule Violations</b>	<b>Institutional Failure to Maintain Substantial Compliance Related to</b>	<b>Potential Annual Penalty</b>
Tex. Educ. Code §51.282; §3.4	Policy Requirements	\$5,000
Tex. Educ. Code §51.282; §3.4	Policy Accessibility	\$5,000
Tex. Educ. Code §51.282; §3.4	Policy Orientation for Students	\$5,000
Tex. Educ. Code §51.282; §3.4	Outreach Program for Students and Employees	\$5,000
Tex. Educ. Code §51.282; §3.4	Policy Review	\$5,000
Tex. Educ. Code §51.283; §3.7	Electronic Reporting Option	\$5,000
Tex. Educ. Code §51.284; §3.5(e)	Amnesty for Students Reporting Certain Incidents	\$30,000
Tex. Educ. Code §51.285; §3.19	Victim Request Not to Investigate	\$5,000
Tex. Educ. Code §51.286; §3.10	Disciplinary Process for Certain Violations	\$30,000
Tex. Educ. Code §51.287; §§3.11, 3.30	Student Withdrawal or Graduation Pending Disciplinary Charges	\$30,000
Tex. Educ. Code §51.288; §3.12	Trauma Informed Investigation Training	\$5,000

Tex. Educ. Code §51.289; §3.13	Memoranda of Understanding Required	\$5,000
Tex. Educ. Code §51.290; §§3.14, 3.15	Responsible and Confidential Employee; Student Advocate	\$30,000
Tex. Educ. Code §51.291; §3.17	Confidentiality	\$60,000
Tex. Educ. Code §51.293; §3.16	Equal Access	\$5,000





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.

## Texas Department of Agriculture

### Extension of Public Comment Period

The Texas Department of Agriculture (Department) published proposed new 4 TAC Chapter 12, Weights And Measures, Subchapter I, Electric Vehicle Charging Stations, in the December 23, 2022, issue of the *Texas Register* (47 TexReg 8377). The Department is extending the end date of the public comment period on proposed new 4 TAC Chapter 12, Subchapter I from January 23, 2023, to March 24, 2023.

Comments on the proposal may be submitted by mail to Mr. J. Christopher Gee, Lead Assistant General Counsel, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, or by email to [Chris.Gee@TexasAgriculture.gov](mailto:Chris.Gee@TexasAgriculture.gov).

For further information, please contact Ms. Christina Osborn, Director for Consumer Product Protection, at (512) 463-5706.

TRD-202300249

Skyler Shafer

Assistant General Counsel

Texas Department of Agriculture

Filed: January 20, 2023



## Central Texas Workforce Development Board

### Public Notice: Workforce Solutions of Central Texas, Strategic Plan 2021-2024 Two-Year Modification

The Board of Directors for Workforce Solutions of Central Texas (WSCT) is responsible for the planning and oversight of workforce programs throughout the Texas counties of Bell, Coryell, Hamilton, Lampasas, Milam, Mills, and San Saba. As part of its planning responsibility, WSCT releases this public notice announcing opportunity for the public to review modifications to its strategic plan covering fiscal years 2021-2024. This announcement is published in the area's two largest newspapers and on the Workforce website. Date of publication is January 24, 2023. The plan modifications are available to the public beginning on January 24, 2023 at <https://workforcesolutions-ctx.com/reports-and-insights/>

Public Input: A public comment period will begin on January 25, 2023 and end on February 28, 2023. WSCT will also accept public comments in an open meeting on February 23, 2023. Comments will be

accepted as an agenda item of the Board's regularly scheduled business meeting; business meetings are open to the public. Adjustments to the Plan, including demand and target occupations will be made, as appropriate, based on input gathered during the comment period and public meeting. All comments and adjustments will be submitted to the Texas Workforce Commission as part of the Board's strategic plan on March 1, 2023.

TRD-202300275

Susan Kamas

Executive Director

Central Texas Workforce Development Board

Filed: January 24, 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 01/30/23 - 02/05/23 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 01/30/23 - 02/05/23 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-202300289

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: January 24, 2023



## Court of Criminal Appeals

### Final Order Amending TRAP 39.7

# Court of Criminal Appeals of Texas

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Misc. Docket No. 23-001

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## Final Approval of Amendments to Texas Rule of Appellate Procedure 39.7

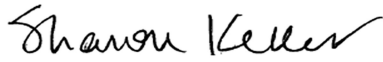
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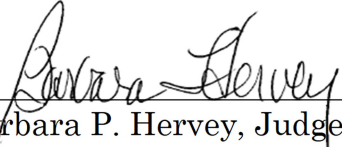
**ORDERED** that:

1. On September 30, 2022, and October 4, 2022, respectively, the Supreme Court of Texas (in Misc. Dkt. No. 22-9089) and the Court of Criminal Appeals (in Misc. Dkt. No. 22-007) preliminarily approved amendments to Texas Rule of Appellate Procedure 39.7 and invited public comment.
2. The comment period has expired, and no additional changes have been made to the amendments. This Order gives final approval to the amendments set forth in Supreme Court of Texas Misc. Dkt. No. 22-9089 and Court of Criminal Appeals Misc. Dkt. No. 22-007, effective February 1, 2023.
3. The Clerk is directed to:
  - a. file a copy of this Order with the Secretary of State;
  - b. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;
  - c. send a copy of this Order to each elected member of the Legislature; and
  - d. submit a copy of this Order for publication in the *Texas Register*.

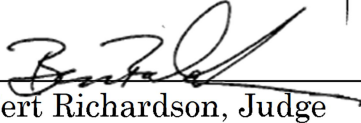
Dated: January 24, 2023.



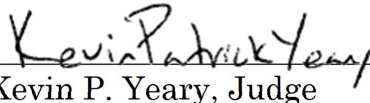
Sharon Keller, Presiding Judge



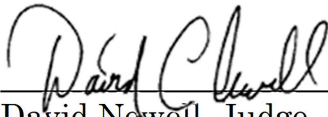
Barbara P. Hervey, Judge



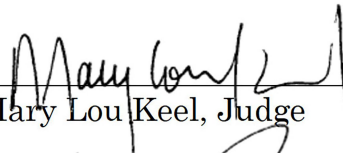
Bert Richardson, Judge



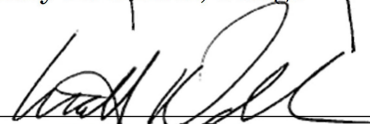
Kevin P. Yeary, Judge



David Newell, Judge



Mary Lou Keel, Judge



Scott Walker, Judge



Michelle Slaughter, Judge



Jesse F. McClure, Judge

TRD-202300292  
Deana Williamson  
Clerk of the Court  
Court of Criminal Appeals  
Filed: January 24, 2023

◆ ◆ ◆  
**Credit Union Department**

**Application to Expand Field of Membership**

Notice is given that the following applications have been filed with the Credit Union Department (Department) and are under consideration.

An application was received from Hockley County School Employees Credit Union #1, Levelland, Texas, to expand its field of membership. The proposal would permit members of Levelland Lobo Booster Club (Lobo Booster Club), Texas, to be eligible for membership in the credit union.

An application was received from Hockley County School Employees Credit Union #2, Levelland, Texas, to expand its field of membership. The proposal would permit members of Smyer Band Booster Club (Band Booster Club), Texas, to be eligible for membership in the credit union.

An application was received from Hockley County School Employees Credit Union #3, Levelland, Texas, to expand its field of membership. The proposal would permit members of South Plains College Texan Club (Texan Club), Texas, to be eligible for membership in the credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236 or downloading the form at <http://www.cud.texas.gov/page/bylaw-charter-applications>. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-202300210  
Michael S. Riepen  
Commissioner  
Credit Union Department  
Filed: January 18, 2023



#### Notice of Final Action Taken

In accordance with the provisions of 7 TAC §91.103, the Credit Union Department provides notice of the final actions taken on the following applications:

Field of Membership - Approved

Texas Dow Employees Credit Union (Lake Jackson) - See *Texas Register* dated on November 25, 2022.

Articles of Incorporation Change - Approved

Plus4 Credit Union (Houston) - See *Texas Register* dated on November 25, 2022.

TRD-202300209  
Michael S. Riepen  
Commissioner  
Credit Union Department  
Filed: January 18, 2023



### Education Service Center, Region 16

#### Official Notice for Election of Places 4 and 5 on the Board of Directors of Region 16 Education Service Center

Persons interested in filing for positions on the Board of Directors of Region 16 Education Service Center, an organization that provides educational services to 61 school districts and three charter schools in the north 26 counties of the Texas Panhandle, may do so at the office of the Executive Director (5800 Bell Street, Amarillo, Texas) during regular office hours (8 a.m. to 5 p.m.) Monday through Thursday, (8 a.m. to 4 p.m.) Friday, beginning Wednesday, February 1, 2023. Deadline for filing is Monday, February 20, 2023, at 5 p.m.

Interested persons may file in person or, upon request, may receive a filing form by mail with the return by certified mail postmarked no later than 4 p.m., February 20, 2023.

Phone: (806) 677-5015; Mailing address: 5800 Bell Street, Amarillo, Texas 79109-6230.

The Board of Directors shall be elected by place. The following places (by counties) that are up for election are described as follows:

#### Place and Counties

Place 4: Counties of Hansford, Hemphill, Hutchinson, Lipscomb, Ochilree and Roberts

Place 5: That part of Potter and Randall counties included in the boundaries of the Amarillo Independent School District

To hold the office of an Education Service Center Board of Director, one must:

--Be a United States of America citizen;

--Be at least 18 years of age;

--Be a resident of the region served and of the geographic area included in the place designated outlined above;

To hold the office of Board member, one may not:

--Be engaged professionally in education;

--Be a member of a board of any educational agency or institution.

Should there be an uncontested election; the Region 16 ESC Board has determined that no election will be held.

TRD-202300213  
Dr. Tanya Larkin  
Executive Director  
Education Service Center, Region 16  
Filed: January 19, 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 **March 7, 2023**. TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO

should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on **March 7, 2023**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission's enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: Argos USA LLC; DOCKET NUMBER: 2021-1403-AIR-E; IDENTIFIER: RN102753456; LOCATION: Houston, Harris County; TYPE OF FACILITY: concrete batch plant; RULES VIOLATED: 30 TAC §106.6(b), Permit by Rule Registration Number 17445, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$3,375; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: City of Berryville; DOCKET NUMBER: 2022-1381-UTL-E; IDENTIFIER: RN101390003; LOCATION: Berryville, Henderson County; TYPE OF FACILITY: retail public utility, exempt utility, or provider or conveyor of potable or raw water service that furnishes water service; RULE VIOLATED: TWC, §13.1394(b)(2), by failing to adopt and submit to the TCEQ for approval an emergency preparedness plan that demonstrates the facility's ability to provide emergency operations; PENALTY: \$500; ENFORCEMENT COORDINATOR: Miles Wehner, (512) 239-2813; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(3) COMPANY: City of Itasca; DOCKET NUMBER: 2022-1207-UTL-E; IDENTIFIER: RN101385771; LOCATION: Itasca, Hill 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: \$600; ENFORCEMENT COORDINATOR: Claudia Bartley, (512) 239-1116; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(4) COMPANY: City of Overton; DOCKET NUMBER: 2021-1062-PWS-E; IDENTIFIER: RN103934733; LOCATION: Overton, Rusk County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.41(c)(3)(I), by failing to fine grade the well site so that the site is free from depressions, reverse grades, or areas too rough for proper ground maintenance so as to ensure that the surface water will drain away from the well; 30 TAC §290.42(I), by failing to compile and maintain a thorough and up-to-date plant operations manual for operator review and reference; 30 TAC §290.43(c)(3), by failing to maintain the facility's storage tanks in strict accordance with current American Water Works Association standards with an overflow pipe that terminates downward with a gravity-hinged and weighted cover tightly fitted with no gap over 1/16 inch; 30 TAC §290.46(d)(2)(A) and §290.110(b)(4) and Texas Health and Safety Code, §341.0315(c), by failing to maintain a disinfectant residual of at least 0.2 milligrams per liter of free chlorine throughout the distribution system at all times; 30 TAC §290.46(f)(2) and (3)(E)(iv), by failing to maintain water works operation and maintenance records and make them readily available for review by the Executive Director upon request; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the system's facilities and equipment; 30 TAC §290.46(m)(4), by failing to maintain all water treatment units, storage and pressure maintenance facilities,

distribution system lines, and related appurtenances in a watertight condition and free from excessive solids; 30 TAC §290.46(s)(2)(C)(i), by failing to verify the accuracy of the manual disinfectant residual analyzer at least once every 90 days using chlorine solutions of known concentrations; and 30 TAC §290.118(a) and (b), by failing to meet the maximum secondary constituent level for color of 15 color units; PENALTY: \$7,326; ENFORCEMENT COORDINATOR: Ronica Rodriguez, (361) 881-6990; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(5) COMPANY: Oxy Vinyls, LP; DOCKET NUMBER: 2021-1101-AIR-E; IDENTIFIER: RN100225879; LOCATION: Deer Park, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §116.115(c) and §122.143(4), New Source Review Permit Number 4673B, Special Conditions Number 1, Federal Operating Permit Number O3018, General Terms and Conditions and Special Terms and Conditions Number 15, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$7,950; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$3,180; ENFORCEMENT COORDINATOR: Mackenzie Mehlmann, (512) 239-2572; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(6) COMPANY: PETRO HUB, LLC dba Charge Up 17; DOCKET NUMBER: 2022-0711-PST-E; IDENTIFIER: RN101789121; LOCATION: Longview, Gregg County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.10(b)(2), by failing to assure that all underground storage tank (UST) recordkeeping requirements are met; and 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: \$3,344; ENFORCEMENT COORDINATOR: Janet Rivera, (512) 239-4573; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(7) COMPANY: Ranch Hills Water Supply Corporation; DOCKET NUMBER: 2022-1416-UTL-E; IDENTIFIER: RN101459832; LOCATION: Helotes, Bandera County; TYPE OF FACILITY: retail public utility, exempt utility, or provider or conveyor of potable or raw water service that furnishes water service; RULE VIOLATED: TWC, §13.1394(b)(2), by failing to adopt and submit to the TCEQ for approval an emergency preparedness plan that demonstrates the facility's ability to provide emergency operations; PENALTY: \$500; ENFORCEMENT COORDINATOR: Amanda Conner, (512) 239-2521; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(8) COMPANY: Susan E. Cole dba Blue Ridge Water System and Donald R. Cole dba Blue Ridge Water System; DOCKET NUMBER: 2022-1437-UTL-E; IDENTIFIER: RN104709860; LOCATION: Weatherford, Parker County; TYPE OF FACILITY: retail public utility, exempt utility, or provider or conveyor of potable or raw water service that furnishes water service; RULE VIOLATED: TWC, §13.1394(b)(2), by failing to adopt and submit to the TCEQ for approval an emergency preparedness plan that demonstrates the facility's ability to provide emergency operations; PENALTY: \$600; ENFORCEMENT COORDINATOR: Samantha Salas, (512) 239-1543; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(9) COMPANY: TEXAS WATER SYSTEMS, INCORPORATED; DOCKET NUMBER: 2022-1343-UTL-E; IDENTIFIER: RN101376705; LOCATION: Longview, Gregg 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: \$635; ENFORCEMENT COORDINATOR: Nick Lohret, (512) 239-4495; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(10) COMPANY: Undine Texas, LLC; DOCKET NUMBER: 2022-1461-UTL-E; IDENTIFIER: RN101252534; LOCATION: Conroe, 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: Miles Wehner, (512) 239-2813; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-202300274

Gitanjali Yadav

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: January 24, 2023



## Enforcement Orders

A field citation was adopted regarding JHHB LLC, Docket No. 2021-0207-WQ-E on January 24, 2023 assessing \$875 in administrative penalties. Information concerning any aspect of this citation 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 Cotton Land Acquisition Inc., Docket No. 2021-0838-PWS-E on January 24, 2023 assessing \$520 in administrative penalties with \$104 deferred. Information concerning any aspect of this order may be obtained by contacting Ronica Rodriguez, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding VMAX CONSTRUCTION, INC., Docket No. 2021-0985-WQ-E on January 24, 2023 assessing \$1,875 in administrative penalties with \$375 deferred. Information concerning any aspect of this order may be obtained by contacting Ellen Ojeda, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Carroll & Sons Investments, LLC dba Eagle Resorts RV Park, Docket No. 2021-1361-PWS-E on January 24, 2023 assessing \$700 in administrative penalties with \$140 deferred. Information concerning any aspect of this order may be obtained by contacting Miles Wehner, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Lennie Williams dba ASAP Tires, Docket No. 2021-1477-MSW-E on January 24, 2023 assessing \$2,625 in administrative penalties with \$525 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 Sweeny Cogeneration LLC, Docket No. 2021-1544-AIR-E on January 24, 2023 assessing \$4,500 in administrative penalties with \$900 deferred. Information concerning

any aspect of this order may be obtained by contacting Desmond Martin, 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 Avalon Point Water Services, LLC, Docket No. 2022-0181-PWS-E on January 24, 2023 assessing \$250 in administrative penalties with \$50 deferred. Information concerning any aspect of this order may be obtained by contacting Ecko Beggs, 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 WF EXPRESS, INC. dba BIGS 3806, Docket No. 2022-0519-PST-E on January 24, 2023 assessing \$4,188 in administrative penalties with \$837 deferred. Information concerning any aspect of this order may be obtained by contacting Horus Garcia, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Moriah TFS Operations, LLC, Docket No. 2022-0524-AIR-E on January 24, 2023 assessing \$2,250 in administrative penalties with \$450 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 H4 FAIRVIEW, L.P. dba Fairview Mobile Home Community, Docket No. 2022-0563-PWS-E on January 24, 2023 assessing \$4,500 in administrative penalties with \$900 deferred. Information concerning any aspect of this order may be obtained by contacting Carlos Molina, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Miramar Brands Inc. dba 7-Eleven Store 39047, Docket No. 2022-0569-PST-E on January 24, 2023 assessing \$3,750 in administrative penalties with \$750 deferred. Information concerning any aspect of this order may be obtained by contacting Courtney Gooris, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Brookshire Brothers, Inc. dba Brookshire Brothers 64, Docket No. 2022-0570-PST-E on January 24, 2023 assessing \$7,500 in administrative penalties with \$1,500 deferred. Information concerning any aspect of this order may be obtained by contacting Courtney Gooris, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Undine Texas, LLC, Docket No. 2022-0582-PWS-E on January 24, 2023 assessing \$1,611 in administrative penalties with \$322 deferred. Information concerning any aspect of this order may be obtained by contacting Miles Wehner, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding CAL'S CONVENIENCE, INC. dba Stripes 270 - 80002126, Docket No. 2022-0618-PST-E on January 24, 2023 assessing \$3,750 in administrative penalties with \$750 deferred. Information concerning any aspect of this order may be obtained by contacting Sushil Modak, 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 Oak Meadows RV Park at Canyon Lake LLC, Docket No. 2022-0635-PWS-E on January 24, 2023 assessing \$3,625 in administrative penalties with \$725 deferred.

Information concerning any aspect of this order may be obtained by contacting Samantha Salas, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Wolcott and Seay Realty, LLC, Docket No. 2022-0649-PWS-E on January 24, 2023 assessing \$238 in administrative penalties with \$47 deferred. Information concerning any aspect of this order may be obtained by contacting Ecko Beggs, 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 LAKEVIEW HILLS PROPERTY OWNERS ASSOCIATION, Docket No. 2022-0704-PWS-E on January 24, 2023 assessing \$1,737 in administrative penalties with \$347 deferred. Information concerning any aspect of this order may be obtained by contacting Miles Wehner, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding SAI BUSINESS INVESTMENTS LLC dba Seago Pantry, Docket No. 2022-0724-PST-E on January 24, 2023 assessing \$5,650 in administrative penalties with \$1,130 deferred. Information concerning any aspect of this order may be obtained by contacting Stephanie McCurley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding E. M. C. Water Supply Corporation, Docket No. 2022-0740-PWS-E on January 24, 2023 assessing \$1,425 in administrative penalties with \$285 deferred. Information concerning any aspect of this order may be obtained by contacting Claudia Bartley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Bruce's, Inc., Docket No. 2022-0878-WQ-E on January 24, 2023 assessing \$875 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Mark Gamble, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Schrader Construction Co., Inc., Docket No. 2022-1126-WQ-E on January 24, 2023 assessing \$875 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Katelyn Tubbs, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding 4F Custom Homes and Framing, Inc., Docket No. 2022-1182-WQ-E on January 24, 2023 assessing \$875 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Harley Hobson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Matrix Demolition LLC, Docket No. 2022-1183-WQ-E on January 24, 2023 assessing \$875 in administrative penalties. Information concerning any aspect of this citation 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.

A field citation was adopted regarding Danny Ray Peters, Docket No. 2022-1184-OSI-E on January 24, 2023 assessing \$175 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Mark Gamble, Enforcement Coordinator at

(512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding James A. Bush Jr., Docket No. 2022-1185-WOC-E on January 24, 2023 assessing \$175 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Katelyn Tubbs, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202300306

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: January 25, 2023



## Enforcement Orders

An agreed order was adopted regarding Big Diamond, LLC dba Valero Corner Store 0406 and dba Valero Corner Store 1062, Docket No. 2018-1698-PST-E on January 25, 2023 assessing \$17,051 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 Josefa Lomas, Docket No. 2020-0795-MSW-E on January 25, 2023 assessing \$1,312 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Misty James, 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 INEOS USA LLC, Docket No. 2020-1257-AIR-E on January 25, 2023 assessing \$162,225 in administrative penalties with \$32,445 deferred. Information concerning any aspect of this order may be obtained by contacting Amanda Diaz, 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 NORTHERN HILLS DEVELOPMENT CO., INC., Docket No. 2021-0274-MLM-E on January 25, 2023 assessing \$11,297 in administrative penalties with \$2,259 deferred. Information concerning any aspect of this order may be obtained by contacting Carlos Molina, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Albemarle Corporation, Docket No. 2021-0333-AIR-E on January 25, 2023 assessing \$12,230 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 Red River Authority of Texas, Docket No. 2021-0893-MWD-E on January 25, 2023 assessing \$14,625 in administrative penalties with \$2,925 deferred. Information concerning any aspect of this order may be obtained by contacting Ellen Ojeda, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding BAZE CHEMICAL, INC. dba Baze Chemical Palestine, Docket No. 2021-0984-MLM-E on January 25, 2023 assessing \$68,183 in administrative penalties with \$13,636 deferred. Information concerning any aspect of this order may be

obtained by contacting Courtney Gooris, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Albemarle Corporation, Docket No. 2021-1154-AIR-E on January 25, 2023 assessing \$8,510 in administrative penalties. 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 YES Estates TX, LLC, Docket No. 2021-1329-MWD-E on January 25, 2023 assessing \$18,105 in administrative penalties with \$3,621 deferred. Information concerning any aspect of this order may be obtained by contacting Alejandro Laje, 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 CSWR-Texas Utility Operating Company, LLC, Docket No. 2022-0027-PWS-E on January 25, 2023 assessing \$11,000 in administrative penalties with \$2,200 deferred. Information concerning any aspect of this order may be obtained by contacting Samantha Duncan, 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 Flint Hills Resources Ingle-side, LLC, Docket No. 2022-0029-AIR-E on January 25, 2023 assessing \$15,300 in administrative penalties with \$3,060 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 Huxley, Docket No. 2022-0072-PWS-E on January 25, 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 L AND B TRADING INC dba Stanleys Ice House, Docket No. 2022-0279-PST-E on January 25, 2023 assessing \$10,869 in administrative penalties with \$2,173 deferred. Information concerning any aspect of this order may be obtained by contacting Melissa Anderson, 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 EUBANK EXCAVATION, L.L.C., Docket No. 2022-0334-WQ-E on January 25, 2023 assessing \$8,500 in administrative penalties with \$1,700 deferred. Information concerning any aspect of this order may be obtained by contacting Mark Gamble, 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 ALINA FOOD MART INC, Docket No. 2022-0341-PST-E on January 25, 2023 assessing \$9,244 in administrative penalties with \$1,848 deferred. Information concerning any aspect of this order may be obtained by contacting Carolyn 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 Southwestern Bell Telephone Company, Docket No. 2022-0349-PST-E on January 25, 2023 assessing \$11,576 in administrative penalties with \$2,315 deferred. Information concerning any aspect of this order may be obtained by contacting

Courtney Gooris, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding PETROLEUM TRANSPORT, INC., Docket No. 2022-0351-PST-E on January 25, 2023 assessing \$49,350 in administrative penalties with \$9,870 deferred. Information concerning any aspect of this order may be obtained by contacting Janet Rivera, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Circle K Stores Inc., Docket No. 2022-0367-AIR-E on January 25, 2023 assessing \$8,438 in administrative penalties with \$1,687 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 Circle K Stores Inc., Docket No. 2022-0368-AIR-E on January 25, 2023 assessing \$8,663 in administrative penalties with \$1,732 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 Circle K Stores Inc., Docket No. 2022-0369-AIR-E on January 25, 2023 assessing \$8,438 in administrative penalties with \$1,687 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 Circle K Stores Inc., Docket No. 2022-0378-AIR-E on January 25, 2023 assessing \$8,438 in administrative penalties with \$1,687 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 Balcones Resources, Inc., Docket No. 2022-0411-MLM-E on January 25, 2023 assessing \$8,494 in administrative penalties with \$1,698 deferred. Information concerning any aspect of this order may be obtained by contacting Stephanie McCurley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Shell Pipeline Company LP, Docket No. 2022-0419-AIR-E on January 25, 2023 assessing \$12,500 in administrative penalties. 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 EXCEL AIRCRAFT, L.L.C., Docket No. 2022-0448-WQ-E on January 25, 2023 assessing \$8,125 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, 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 Big Spring ISD, Docket No. 2022-0490-PST-E on January 25, 2023 assessing \$9,000 in administrative penalties with \$1,800 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 City of Austin, Docket No. 2022-0515-AIR-E on January 25, 2023 assessing \$9,000 in administrative penalties with \$1,800 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.

TRD-202300307

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: January 25, 2023



### Notice of District Petition

Notice issued January 23, 2023

TCEQ Internal Control No. D-11072022-011; HK Riley's Pointe, LLC. and Jack's Reserve, LTD. (Petitioners) filed a petition for creation of Hays County Municipal Utility District No. 9 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The amended petition states that: (1) the Petitioner holds title to a majority in value of the land to be included in the proposed District; (2) there is one lienholder, First State Bank of Uvalde, on the property to be included in the proposed District and information provided indicates that the lienholder consents to the creation of the proposed District; (3) the proposed District will contain approximately 475.393 acres located within Hays County, Texas; and (4) all of the land within the proposed District is within the extraterritorial jurisdiction of the City of San Marcos, Texas. By Ordinance No. 2022-06, passed and adopted on January 4, 2022, the City of San Marcos, Texas, gave its consent to the creation of the proposed District, pursuant to Texas Water Code §54.016.

The petition further states that the proposed District will: (1) purchase, design, construct, acquire, maintain, own, operate, repair, improve, and extend a waterworks and sanitary sewer system for residential and commercial purposes; (2) construct, acquire, improve, extend, maintain, and operate works, improvements, facilities, plants, equipment, and appliances helpful or necessary to provide more adequate drainage for the proposed District; (3) control, abate, and amend local storm waters or other harmful excesses of water; and (4) purchase, construct, acquire, maintain, own, operate, repair, improve, and extend such additional facilities, including roads, systems, plants, and enterprises as shall be consonant with all of the purposes for which the proposed District is created. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioners that the cost of said project will be approximately \$106,900,000 (\$69,500,000 for water, wastewater, and drainage plus \$37,400,000 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-202300302

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: January 25, 2023



### Notice of District Petition

Notice issued January 23, 2023

TCEQ Internal Control No. D-11292022-045; SA Scarecrow, L.P. (Petitioner) filed a petition for creation of Guadalupe County Municipal Utility District No. 6 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 51 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner is the owner of the majority 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 173.827 acres, more or less, located within Guadalupe County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of the City of Santa Clara (City); and (5) the City has consented to creation of the District by resolution adopted on March 28, 2022. The petition further states that the proposed District will construct, purchase, acquire, maintain, own and operate water, wastewater, drainage, road and park and recreational facilities within the proposed District. It further states that the planned residential and commercial development of the area and the present and future inhabitants of the area will be benefited by the above-referenced work, which will promote the purity and sanitary condition of the State's waters and the public health and welfare of the community.

According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioner, from the information available at this time, that the cost of said project will be approximately \$20,000,000 (\$12,400,000 for utilities and \$7,600,000 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-202300303

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: January 25, 2023



#### Notice of District Petition

Notice issued January 23, 2023

TCEQ Internal Control No. D-12012022-001; Pulte Homes of Texas, L.P. (Petitioner) filed a petition for creation of Montgomery County Municipal Utility District No. 224 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 51 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner is the owner of all 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 79.910 acres, more or less, located within Montgomery County, Texas; (4) the proposed District is within the extraterritorial jurisdiction of the City of Montgomery (City); and (5) the City has consented to creation of the District by resolution adopted on October 25, 2022. The petition further states that the proposed District will construct, purchase, acquire, maintain, own and operate water, wastewater, drainage, road and park and recreational facilities within the proposed District. It further states that the planned residential and commercial development of the area and the present

and future inhabitants of the area will be benefited by the above-referenced work, which will promote the purity and sanitary condition of the State's waters and the public health and welfare of the community.

According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioner, from the information available at this time, that the cost of said project will be approximately \$13,440,000 (\$11,760,000 for utilities and \$1,680,000 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-202300304

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: January 25, 2023



#### Notice of District Petition

Notice issued January 23, 2023

TCEQ Internal Control No. D-12162022-044; Lackland Kaufman County Development, LLC, (Petitioner) filed a petition for creation of Harvest Run Municipal Utility District of Kaufman County (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner holds title to a

majority in value of the land to be included in the proposed District; (2) there are two lienholders, InterBank and Captex Bank, on the property to be included in the proposed District and the lienholders consent to the creation of the proposed District; (3) the proposed District will contain approximately 143.18 acres located within Kaufman County, Texas; and (4) all of the land within the proposed District is wholly within the corporate limits of the City of Talty, Texas (the "City").

By Resolution No. 2022-11, passed and adopted on September 20, 2022, the City of Talty, Texas, gave its consent to the creation of the proposed District, pursuant to Texas Water Code §54.016. The petition further states that the proposed District will: (1) purchase, construct, acquire, improve, or extend inside or outside of its boundaries any and all works, improvements, facilities, plants, equipment, and appliances necessary or helpful to supply and distribute water for municipal, domestic, and commercial purposes; (2) collect, transport, process, dispose of and control domestic, and commercial wastes; (3) gather, conduct, divert, abate, amend and control local storm water or other local harmful excesses of water in the District; (4) design, acquire, construct, finance, improve, operate, and maintain macadamized, graveled, or paved roads and turnpikes, or improvements in aid of those roads; and (5) purchase, construct, acquire, improve, or extend inside or outside of its boundaries such additional facilities, systems, plants, and enterprises as shall be consonant with all of the purposes for which the proposed District is created. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioners that the cost of said project will be approximately \$5,620,000 (\$4,570,000 for water, wastewater, and drainage plus \$1,050,000 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-202300305

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: January 25, 2023



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

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) staff is providing an opportunity for written public comment on the listed Agreed Order (AO) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AO, the commission shall allow the public an opportunity to submit written comments on the proposed AO. TWC, §7.075, requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **March 7, 2023**. TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of the proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on March 7, 2023**. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, TWC, §7.075, provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: Paghna Khuon dba Sweet Stop; DOCKET NUMBER: 2021-0066-PST-E; TCEQ ID NUMBER: RN102241510; LOCATION: 1100 West Grand Avenue, Marshall, Harrison 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 in a manner which will detect a release at a frequency of at least once every 30 days; and 30 TAC §334.7(d)(1)(C) and (3), by failing to provide written notice to the agency of any change or additional information concerning the UST system within 30 days from the date of the occurrence of the change or addition; PENALTY: \$5,000; STAFF ATTORNEY: Marilyn Norrod, Litigation, MC 175, (512) 239-5916; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

TRD-202300276

Gitanjali Yadav

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: January 24, 2023

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## Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent the Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **March 7, 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 each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on March 7, 2023**. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on the DO shall be submitted to the commission in **writing**.

(1) COMPANY: Elosio Carreon; DOCKET NUMBER: 2021-0707-PST-E; TCEQ ID NUMBER: RN102717493; LOCATION: 306 Southwest 1st Street, Roby, Fisher County; TYPE OF FACILITY: temporarily out-of-service underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.606, by failing to maintain required operator training certification documentation on-site and make them available for inspection upon request by agency personnel; 30 TAC §334.7(d)(1)(A) and (3), by failing to provide an amended registration for any change or additional information to the agency regarding the UST system within 30 days from the date of the occurrence of change or addition; 30 TAC §334.54(b)(2), by failing to maintain all piping, pumps, manway, tank access points and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons; 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; and 30 TAC §37.867(a), by failing to ensure that a temporarily out-of-service UST system is emptied no later than the 90th day after the coverage of financial assurance terminates; PENALTY: \$11,375; STAFF ATTORNEY: Barrett Hollingsworth, Litigation, MC 175, (512) 239-0657; REGIONAL OFFICE: Abilene Re-

gional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(2) COMPANY: Travis Morgan; DOCKET NUMBER: 2021-0299-MSW-E; TCEQ ID NUMBER: RN111182234; LOCATION: 550 East Fifth Street, Channing, Hartley County; TYPE OF FACILITY: unauthorized municipal solid waste (MSW) site; RULE VIOLATED: 30 TAC §330.15(a) and (c), by causing, suffering, allowing, or permitting the unauthorized disposal of MSW; PENALTY: \$3,750; STAFF ATTORNEY: Taylor Pearson, Litigation, MC 175, (512) 239-5937; REGIONAL OFFICE: Amarillo Regional Office, 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

TRD-202300277

Gitanjali Yadav

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: January 24, 2023

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## Notice of Water Quality Application

The following notice was issued on January 20, 2023:

The following notice does not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin Texas 78711-3087 WITHIN (30) DAYS FROM WHEN THE NOTICE IS PUBLISHED IN THE *TEXAS REGISTER*.

### INFORMATION SECTION

City of Richmond has applied for a minor amendment to Texas Pollutant Discharge Elimination System Permit No. WQ0010258004 to authorize the addition of an Interim II phase at an annual average flow not to exceed 1,220,000 gallon per day and also decrease the final flow 3.0 MGD to 2.05 MGD. The facility is located approximately 8,715 feet east of the intersection of U.S. Highway 59 and Farm-to-Market Road 762 in Fort Bend County, Texas 77469.

TRD-202300301

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: January 25, 2023

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## 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 January 7, 2023 to January 20, 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 27, 2023. The public comment period for this project will close at 5:00 p.m. on Sunday, February 26, 2023.

FEDERAL AGENCY ACTIVITIES:

**Applicant:** Texas Department of Transportation (TxDOT) Houston District

**Location:** The project site is located in Dickinson Bayou/Galveston Bay along State Highway (SH) 146 and SH 96 between Dickinson Bayou and Highway 518, near Kemah, in Galveston County, Texas.

**Latitude & Longitude (NAD 83):** 29.462722, - 94.973337

**Project Description:** TxDOT proposes to widen the existing four-lane divided highway to a six-lane divided highway between Farm-to-Market (FM) Road 518 and SH 96 and construct a grade separated intersection at SH 146 and SH 96 near Kemah. The proposed roadway widening project would result in the permanent loss of 17.58 acres of jurisdictional wetlands (3.36 acres were previously permitted under SWG-2007-00769 in 2018) at 19 single and complete crossings. The purpose of the expansion is to accommodate future traffic volumes, increase availability for hurricane evacuation, and upgrade permeability and drainage; therefore, the overall project purpose is to increase safety of the traveling public and mitigate flooding. (3.36 acres were previously permitted under SWG-2007-00769 in 2018) at 19 single and complete crossings. The applicant proposes to mitigate for the proposed impacts by purchasing 34.37 credits from the Coastal Bottomlands Mitigation Bank for 14.18 acres of permanent wetland impacts and 0.6 Functional Capacity Units (FCUs) at Gulf Plains Mitigation Bank for tidal wetlands.

**Type of Application:** U.S. Army Corps of Engineers permit application # SWG-2022-00540. This application will be reviewed pursuant to Section 404 of the Clean Water Act.

**CMP Project No:** 23-1113-F2

**Applicant:** U.S. Fish and Wildlife Service

**Location:** The project site is located in the Gulf Intracoastal Waterway (GIWW), along the banks of the Brazoria National Wildlife Refuge from Essex Bayou to north of Nicks Cut, in Brazoria County, Texas.

**Latitude & Longitude (NAD 83):**

Begin 28.982964, -95.269203

End 29.03880, -95.228108

**Project Description:** The applicant proposes to discharge 39,788 cubic yards of rock over 10.5 acres of open water bottom during the construction of 4 rock breakwater segments, totaling 4.7 miles. The breakwaters are intended to minimize shoreline erosion along the banks of the Brazoria National Wildlife Refuge. The breakwaters will range between 20 - 30 feet wide and 3 feet in height from the bay bottom in average depths of 2 feet. The breakwater design incorporates fish passages every 400 feet. A portion of the breakwaters will be constructed within government easements associated with Dredge Material Placement Areas 75B, 75C, 76, and 77.

The applicant has stated that they have avoided and minimized the environmental impacts by using clean rock material and employing construction best management practices, including gentle rock placement methods, to limit turbidity in the water column. Mitigation is not proposed.

The project site consists of the shallow, open bay bottoms of the GIWW along a section that is bordered by the Brazoria National Wildlife Refuge. The shoreline has experienced heavy erosion due to wave and wind action that has resulted in coastal marsh degradation and loss. There are no special aquatic sites within the project footprint

**Type of Application:** U.S. Army Corps of Engineers permit application # SWG-2022-00135. 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.

**CMP Project No:** 23-1122-F2

FEDERAL AGENCY ACTIONS:

**Applicant:** Harris County Toll Road Authority

**Location:** The project site is the Sam Houston Tollway East located 0.98 miles south of I-10 to 0.68 miles south of SH 225, Harris County, Texas.

**Project Description:** The purpose of the Categorical Exclusion (CE) re-evaluation is to evaluate the social, economic, and environmental impacts resulting from the proposed design changes. The re-evaluation also serves to update the CE due to the passage of time and any changes in the affected environment.

Proposed design changes include the following:

Main span superstructure redesign over the channel (originally concrete segmental cable-stayed, now composite steel-concrete cable-stayed). No change in navigational clearances is proposed.

Addition of an attached shared use path (SUP) to the east side of the Northbound Sam Houston Tollway East, increasing the total bridge footprint width over the navigable channel from 173'-7.75" to 182'-0".

Right of way (ROW) acquisition due to the addition of the SUP of 1.5 acres. Additionally, the proposed project would require 2.96 acres of temporary construction easement (TCE). This additional ROW and TCE would be located on the east side (northbound bridge) of the Sam Houston Tollway East. The majority of the SUP would be elevated and located above the new ROW.

**Type of Application:** U.S. Coast Guard Bridge Permit Exemption Re-evaluation.

**CMP Project No:** 23-1119-F1

**Applicant:** Moore Harkin CUD

**Location:** The project site is located on a 0.912-acre lot containing approximately 0.508 acre of palustrine wetlands at 3107 11th Street in Port Aransas, Nueces County, Texas.

**Latitude & Longitude (NAD 83):**

Project Site Location: 27.80724, -97.07846

Mitigation Site Location: 27.83285, -97.05177

**Project Description:** The applicant proposes to place approximately 4,840 cubic yards (CY) of sand/fill base material into 0.508 acre of palustrine wetlands in order to develop six residential lots with a private access road that will include a firetruck turnaround.

As compensatory mitigation for proposed impacts, the applicant proposes to:

A. Enhance and restore freshwater (open/emergent) habitat and function to a silted-in freshwater emergent detention pond via mechanical excavation and reshaping to remove silt, as well as the clearing and removal of *Typha domingensis* inundation:

0.77 acre (33,624 sq.ft./ 1,089 cy) freshwater emergent habitat.

B. Enhancements to the primary outfall ditch and small 62' lateral ditch by mechanically cutting and reshaping to remove silt, as well as placement of weir:

0.30 acre (12,780 sq.ft./ 1,135 cy) salt marsh, freshwater emergent habitat.

The proposed mitigation site is the detention pond, associated weir, and primary outfall ditch located on Mustang Island in Port Aransas within the I.B. Magee Beach Park, between Beach Street and East Cotter Avenue, southeast of the Aransas Pass Channel and approximately 2.5 miles northeast of the project site. All enhanced areas, including the detention pond, weir, and primary outfall ditch, associated with the proposed mitigation will be protected in perpetuity by a deed restriction, conservation easement, or an equivalent legal instrument.

**Type of Application:** U.S. Army Corps of Engineers permit application # SWG-2020-00833. This application will be reviewed pursuant to 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:** 23-1116-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-202300297

Mark Havens

Chief Clerk, Deputy Land Commissioner

General Land Office

Filed: January 25, 2023



## Texas Health and Human Services Commission

Revised Public Notice - Texas State Plan Amendment

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. This public notice is to correct the effective date, listed as March 1, 2021, on the notice posted to the *Texas Register* January 20, 2023, which serves the same purpose. The proposed amendment has an updated effective date of March 11, 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 the proposed amendment will be made available for review at HHSC local offices.

**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) 438-5835

### 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-202300224

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: January 20, 2023



## Texas Higher Education Coordinating Board

Notice of Opportunity to Comment on Proposed Field of Study Curriculum for Nursing

The Texas Higher Education Coordinating Board (THECB or Coordinating Board) staff is providing an opportunity for written public comment on a revision of the Field of Study Curriculum (FOSC) for Nursing.

Texas Education Code (TEC) Chapter 61, Subchapter S, establishes policies to facilitate statewide transfer, including the FOSC. Institutions must accept partially or fully completed Field of Study Curricula for academic credit toward the degree program in which the transfer student enrolls (TEC §61.823). The Coordinating Board has promulgated rules related to transfer policy in 19 Texas Administrative Code (TAC) Chapter 1, Subchapter V, and Chapter 4, Subchapter B. Posting requirements may be found in 19 TAC §§4.33(f) and 1.239(b).

The Nursing Discipline-Specific Subcommittee met on October 12-13, 2022, to consider and make recommendations to the Texas Transfer Advisory Committee regarding the FOSC for this discipline. On December 7, 2022, the Texas Transfer Advisory Committee adopted the subcommittee recommendations for the designated Texas Core Curriculum courses and the Discipline Foundation Courses and recommended their submission to the Commissioner of Higher Education for final approval.

The recommended courses are as follows:

Designated Core Courses in the Field of Study: PSYC 2301: General Psychology; ENGL 1301: Composition I; ENGL 1302: Composition II; MATH 1342: Elementary Statistical Methods; BIOL 2401/2301 + 2101 (Anatomy and Physiology I); and BIOL 2402/2302 + 2102 (Anatomy and Physiology II).

Discipline Foundation Courses (10 semester credit hours): PSYC 2314: Lifespan Growth & Development; BIOL 2420/2320 + 2120 (Microbiology for Non-Science Majors); and BIOL 1322/HECO 1322 (Nutrition and Diet Therapy).

In addition to these courses, each general academic institution will have the opportunity to submit to the Coordinating Board six (6) semester credit hours of Directed Electives selected by the institution from the Academic Course Guide Manual. The complete FOOSC will consist of the Designated Core Courses and Discipline Foundation Courses listed above, as well as Directed Electives selected by the relevant general academic institutions in compliance with the transfer rules in TAC Chapter 4, Subchapter B, including §§4.23(4), 4.32(b)(3), and 4.33.

General academic institutions will be required to transfer these courses and apply them for academic credit towards degree programs with majors in the following CIP Code:

51.3801: Registered Nursing/Registered Nurse

Written comments about the proposed changes must be sent to Elizabeth Mayer, Assistant Commissioner for Academic and Health Affairs, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711, or via email to Elizabeth.Mayer@highered.texas.gov. Comments must be received by 5:00 p.m., March 4, 2023, to be considered.

TRD-202300294

Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

Filed: January 24, 2023



### Notice of Opportunity to Comment on Proposed Field of Study Curriculum for Psychology

The Texas Higher Education Coordinating Board (THECB or Coordinating Board) staff is providing an opportunity for written public comment on a revision of the Field of Study Curriculum (FOOSC) for Psychology.

Texas Education Code (TEC) Chapter 61, Subchapter S, establishes policies to facilitate statewide transfer, including the FOOSC. Institutions must accept partially or fully completed Field of Study Curricula for academic credit toward the degree program in which the transfer student enrolls (TEC §61.823). The Coordinating Board has promulgated rules related to transfer policy in 19 Texas Administrative Code (TAC) Chapter 1, Subchapter V, and Chapter 4, Subchapter B. Posting requirements may be found in 19 TAC §§4.33(f) and 1.239(b).

The Psychology Discipline-Specific Subcommittee met on May 10-11, 2022, to consider and make recommendations to the Texas Transfer Advisory Committee regarding the FOOSC for this discipline. On December 7, 2022, the Texas Transfer Advisory Committee adopted the subcommittee recommendations for the designated Texas Core Curriculum courses and the Discipline Foundation Courses and recommended their submission to the Commissioner of Higher Education for final approval.

The recommended courses are as follows:

Designated Core Courses in the Field of Study: PSYC 2301: General Psychology.

Discipline Foundation Courses (9 semester credit hours): PSYC 2314: Lifespan Growth & Development; PSYC 2317: Statistical Methods in Psychology; and PSYC 2319: Social Psychology.

In addition to these courses, each general academic institution will have the opportunity to submit to the Coordinating Board nine (9) semester credit hours of Directed Electives selected by the institution from the Academic Course Guide Manual. The complete FOOSC will consist of the Designated Core Courses and Discipline Foundation Courses listed above, as well as Directed Electives selected by the relevant general academic institutions in compliance with the transfer rules in TAC Chapter 4, Subchapter B, including §§4.23(4), 4.32(b)(3), and 4.33.

General academic institutions will be required to transfer these courses and apply them for academic credit towards degree programs with majors in the following CIP Code:

42.0101: Psychology, General

Written comments about the proposed changes must be sent to Elizabeth Mayer, Assistant Commissioner for Academic and Health Affairs, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711, or via email to Elizabeth.Mayer@highered.texas.gov. Comments must be received by 5:00 p.m., March 4, 2023, to be considered.

TRD-202300293

Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

Filed: January 24, 2023



## Texas Department of Insurance

### Company Licensing

Application to do business in the state of Texas for Atlantic Capital Life Assurance Company, a foreign life, accident and/or health company. The home office is in Atlanta, Georgia.

Application for Pavonia Life Insurance Company of Michigan, a foreign life, accident and/or health company, to change its name to Revolv One Insurance Company. The home office is in Spring Lake, Michigan.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of John Carter, 1601 Congress Ave., Suite 6.900, Austin, Texas 78711.

TRD-202300299

Justin Beam

Chief Clerk

Texas Department of Insurance

Filed: January 25, 2023



### Correction of Error

The Texas Department of Insurance proposed the repeal of 28 TAC §19.1905 in the January 13, 2023, issue of the *Texas Register* (48 TexReg 125). Due to an error by the Texas Register, the repeal was published with an incorrect Title number listed. The Title was incorrectly shown as 29 at the beginning of the proposed repeal. The correct text should be shown as follows:

◆            ◆            ◆

## Texas Lottery Commission

### Scratch Ticket Game Number 2475 "JACKPOT Millions"

#### 1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2475 is "JACKPOT Millions". The play style is "key number match".

#### 1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2475 shall be \$20.00 per Scratch Ticket.

#### 1.2 Definitions in Scratch Ticket Game No. 2475.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 02, 03, 04, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 5X SYMBOL, \$20.00, \$40.00, \$100, \$200, \$500, \$1,000, \$10,000 and \$1,000,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:



Figure 1: GAME NO. 2475 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
06	SIX
07	SVN
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
27	TWSV
28	TWET
29	TWNI

30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
41	FRON
42	FRTO
43	FRTH
44	FRFR
45	FRFV
46	FRSX
47	FRSV
48	FRET
49	FRNI
50	FFTY
5X SYMBOL	WINX5
\$20.00	TWY\$
\$40.00	FRTY\$
\$100	ONHN
\$200	TOHN
\$500	FVHN
\$1,000	ONTH
\$10,000	10TH
\$1,000,000	TPPZ

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2475), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 025 within each Pack. The format will be: 2475-0000001-001.

H. Pack - A Pack of the "JACKPOT Millions" Scratch Ticket Game contains 025 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The Packs will alternate. One will show the front of Ticket 001 and back of 025 while the other fold will show the back of Ticket 001 and front of 025.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "JACKPOT Millions" Scratch Ticket Game No. 2475.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "JACKPOT Millions" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose fifty-nine (59) Play Symbols. If a player matches any of the YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. If the player reveals a "5X" symbol, the player wins 5 TIMES the prize for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

#### 2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly fifty-nine (59) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Scratch Ticket shall be intact;
6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly fifty-nine (59) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the fifty-nine (59) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the fifty-nine (59) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

#### 2.2 Programmed Game Parameters.

A. GENERAL: The top Prize Symbol will appear on every Ticket, unless restricted by other parameters, play action or prize structure.

B. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

C. KEY NUMBER MATCH: No matching non-winning YOUR NUMBERS Play Symbols on a Ticket.

D. KEY NUMBER MATCH: No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 20 and \$20).

E. KEY NUMBER MATCH: No matching WINNING NUMBERS Play Symbols on a Ticket.

F. KEY NUMBER MATCH: A non-winning Prize Symbol will never match a winning Prize Symbol.

G. KEY NUMBER MATCH: A Ticket may have up to five (5) matching non-winning Prize Symbols, unless restricted by other parameters, play action or prize structure.

H. KEY NUMBER MATCH: The "5X" (WINX5) Play Symbol will only appear on intended winning Tickets, as dictated by the prize structure.

I. JACKPOT BONUS: A non-winning Prize Symbol in a JACKPOT BONUS play area will never match a winning Prize Symbol in the other JACKPOT BONUS play area.

J. JACKPOT BONUS: A Ticket will not have matching non-winning Prize Symbols across the two (2) JACKPOT BONUS play areas.

### 2.3 Procedure for Claiming Prizes.

A. To claim a "JACKPOT Millions" Scratch Ticket Game prize of \$20.00, \$40.00, \$100, \$200 or \$500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$40.00, \$100, \$200 or \$500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "JACKPOT Millions" Scratch Ticket Game prize of \$1,000, \$10,000 or \$1,000,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "JACKPOT Millions" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is \$1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

2. in default on a loan made under Chapter 52, Education Code;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "JACKPOT Millions" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "JACKPOT Millions" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

### 3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto.

Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 9,000,000 Scratch Tickets in Scratch Ticket Game No. 2475. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2475 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$20.00	1,080,000	8.33
\$40.00	720,000	12.50
\$100	450,000	20.00
\$200	118,125	76.19
\$500	22,125	406.78
\$1,000	500	18,000.00
\$10,000	50	180,000.00
\$1,000,000	4	2,250,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 3.76. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2475 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2475, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-202300308

Bob Biard  
General Counsel  
Texas Lottery Commission  
Filed: January 25, 2023

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### North Central Texas Council of Governments

Request for Proposals To Perform the North Oak Cliff  
Conceptual Engineering Study and Support the Upper Trinity  
River Transportation and Stormwater Infrastructure (TSI)  
Project

The North Central Texas Council of Governments (NCTCOG) is requesting written proposals from consultant firms to perform the North Oak Cliff Conceptual Engineering Study and Support the Upper Trinity River Transportation and Stormwater Infrastructure (TSI) Project. For the TSI Project firms will provide expert advice and capability on transportation-focused project tasks, including issues related to construction and feasibility for the project team currently involved in the study. For the North Oak Cliff Project: The future configuration and

functionality of thoroughfare streets and viaducts between Downtown Dallas and North Oak Cliff is impacted by infrastructure age, changes to the Dallas levee flood control system, economic development opportunities, and context-sensitive design. Effectiveness of future planning and concept engineering associated with these issues will account for the assessment and mitigation of vulnerabilities associated with climate change impacts.

Proposals must be received no later than 5:00 p.m., Central Time, on **Friday, March 3, 2023**, to Jeff Neal, Senior Program Manager, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011 and electronic submissions to TransRFPs@nctcog.org. The Request for Proposals will be available at www.nctcog.org/rfp by the close of business on Friday, February 3, 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-202300311

R. Michael Eastland

Executive Director

North Central Texas Council of Governments

Filed: January 25, 2023

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**Northern Trinity Groundwater Conservation District**

NTGCD Notice of Meeting to Adopt DFCs

**NOTICE OF PUBLIC MEETING TO ADOPT DESIRED FUTURE CONDITIONS ON THURSDAY, FEBRUARY 9, 2023, AT 2:00 P.M.**

**NOTICE IS HEREBY GIVEN** to all interested persons in Tarrant County, Texas:

That the Board of Directors of the Northern Trinity Groundwater Conservation District ("District") will hold a public meeting at 2:00 p.m., Thursday, February 9, 2023, to accept public comment and consider adoption of the Desired Future Conditions ("DFCs") for the groundwater resources within the District pursuant to Section 36.108(d-4) of the Texas Water Code.

The District developed the Desired Future Conditions as required by Chapter 36 of the Texas Water Code with other groundwater conservation districts in Groundwater Management Area 8 ("GMA 8"); the other districts in GMA 8 include Central Texas Groundwater Conservation District; Clearwater Underground Water Conservation District; Middle Trinity Groundwater Conservation District; North Texas Groundwater Conservation District; Post Oak Savannah Groundwater Conservation District; Prairielands Groundwater Conservation District; Red River Groundwater Conservation District; Saratoga Underground Water Conservation District; Southern Trinity Groundwater Conservation District; and Upper Trinity Groundwater Conservation District.

At a GMA 8 joint planning meeting held on November 4, 2021, the district representatives adopted the following DFCs for the groundwater resources in GMA 8 as required by Chapter 36 of the Texas Water Code.

The proposed Desired Future Conditions for the District are based on the total average number of feet of drawdown in water levels in the

aquifers/layers through calendar year 2080 as follows: District-wide and County-wide average aquifer drawdown through 2080 of (in feet by aquifer/layer): 6' in Woodbine; 105' in Paluxy; 163' in Glen Rose; 348' in Twin Mountain; 177' in Antlers.

The public meeting will be held on Thursday, February 9, 2023, at 2:00 p.m. at 1100 Circle Dr., Fort Worth, Texas 76119. Comments on the Desired Future Conditions may be presented in written or verbal form at the meeting. Written comments may also be submitted prior to the meeting by email at coreyjones@ntgcd.com or by mail or in person at 1100 Circle Dr., Suite 300, Fort Worth, Texas 76119.

Questions or requests for additional information should be directed to Corey Jones, General Manager, by phone at (817) 249-2062, by email at coreyjones@ntgcd.com, by mail or in person at 1100 Circle Drive, Suite 300, Fort Worth, Texas 76119. The District is committed to compliance with the Americans with Disabilities Act (ADA). Any person who needs special accommodations should contact District staff at (817) 249-2062 at least 48 hours in advance if accommodation is needed.

TRD-202300211

Corey Jones

General Manager

Northern Trinity Groundwater Conservation District

Filed: January 18, 2023

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**Panhandle Regional Planning Commission**

Legal Notice

Under the Workforce Innovation and Opportunity Act (WIOA) §108 (20 Code of Federal Regulations §679.500-580), two years after its initial submission, each Local Workforce Development Board is required to modify its comprehensive four-year Board plan that identifies and describes policies and procedures as well as local activities, and submit it to the State. The Panhandle Regional Planning Commission (PRPC), and the Panhandle Workforce Development Board (PWDB) will submit, to the Texas Workforce Commission (TWC), the two-year modification of the Panhandle Workforce Development Board Plan for Program Years 2021-2024, on March 1, 2023.

Interested parties may examine the proposed modification of the Board Plan on the PRPC website at: <http://theprpc.org/programs/workforcedevelopment/default.html>. Copies may also be requested by email using the contact information listed below.

PRPC will accept written public comments on the Board Plan submitted by February 28, 2023. Written comments may be sent to Leslie Hardin, Workforce Development Program Manager, by email: [lhardin@theprpc.org](mailto:lhardin@theprpc.org), or by mail: Panhandle Regional Planning Commission, P.O. Box 9257, Amarillo, Texas 79105-9257.

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TRD-202300298

Leslie Hardin

Workforce Development Program Manager

Panhandle Regional Planning Commission

Filed: January 25, 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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