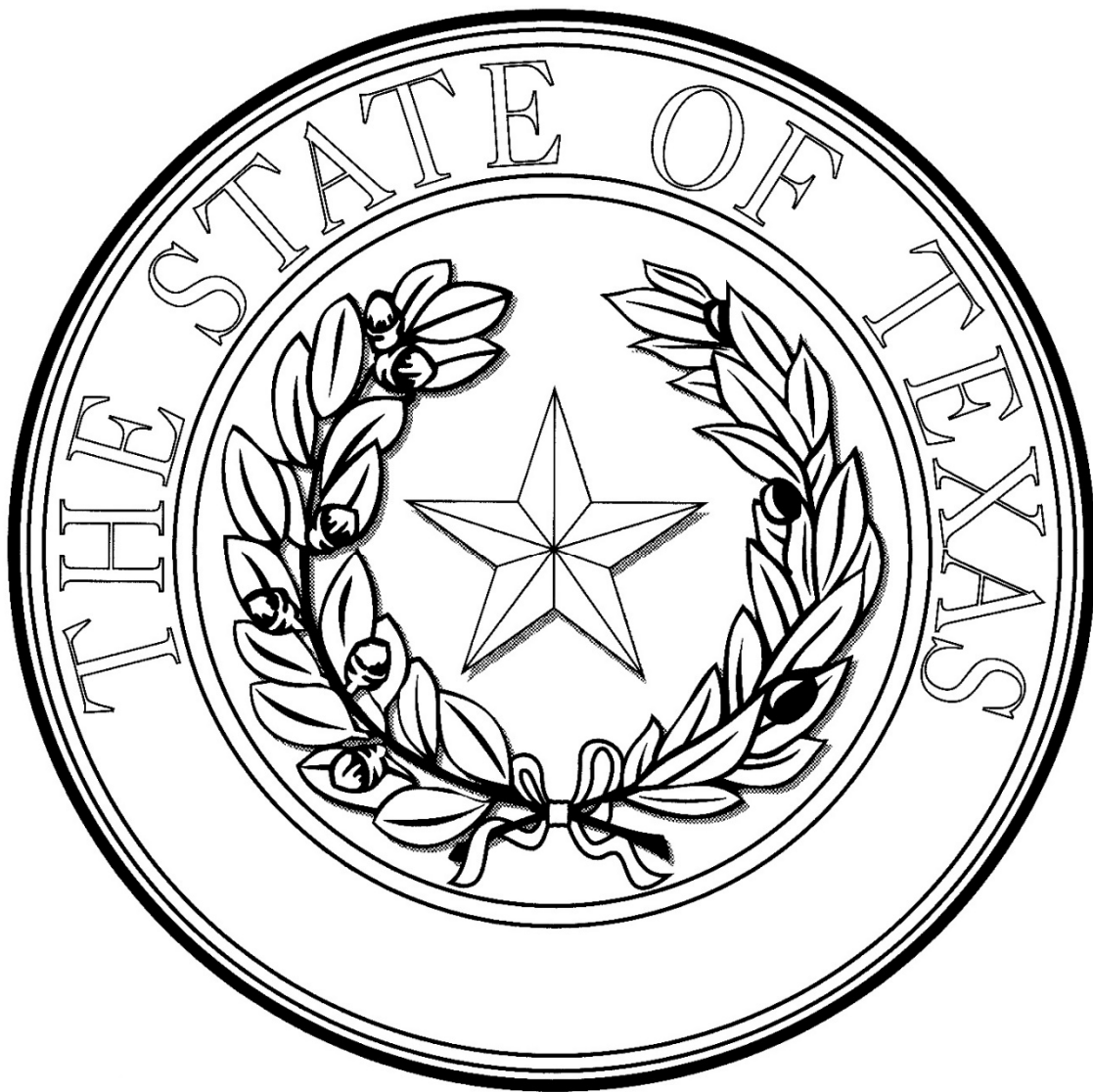

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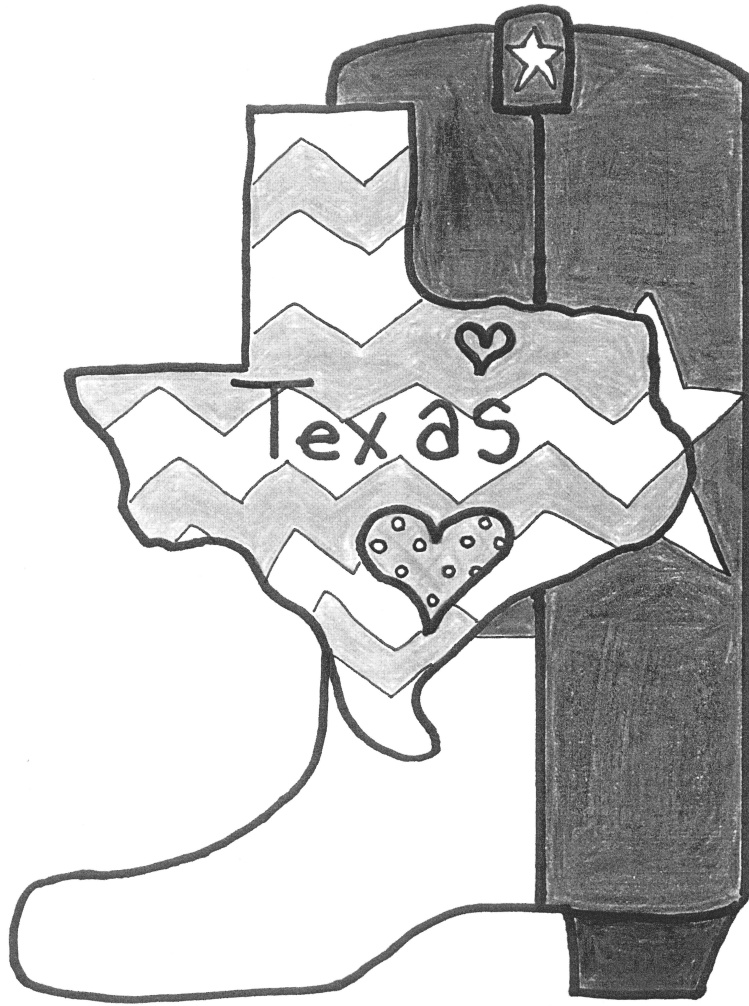
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THE GOVERNOR

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.

Proclamation 41-3962

TO ALL TO WHOM THESE PRESENTS SHALL COME:

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

WHEREAS, the Texas Division of Emergency Management has confirmed that those same drought conditions continue to exist in these and other counties in Texas, with the exception of Polk county;

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

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

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

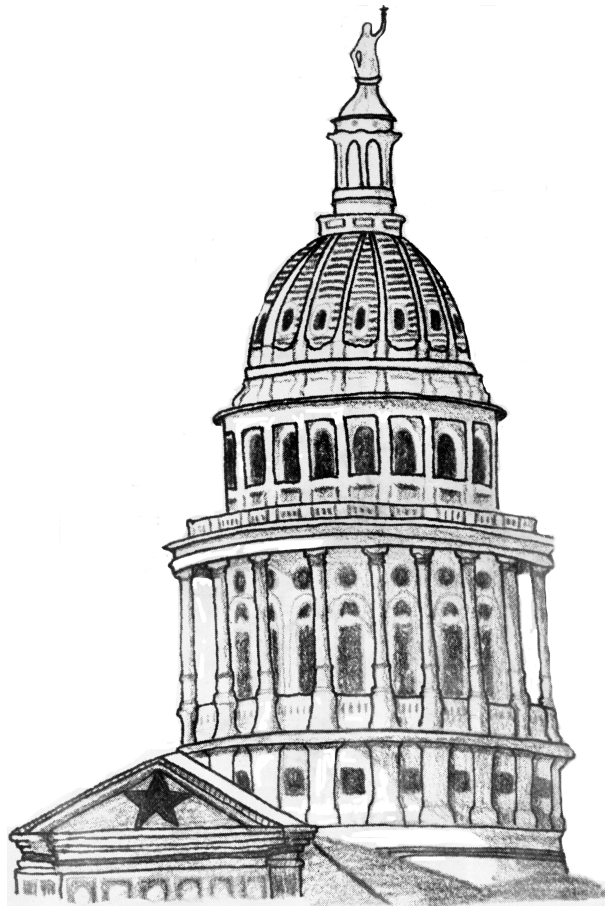
In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 1st day of March, 2023.

Greg Abbott, Governor

TRD-202301010





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 22. EXAMINING BOARDS

PART 15. TEXAS STATE BOARD OF PHARMACY

CHAPTER 283. LICENSING REQUIREMENTS FOR PHARMACISTS

22 TAC §283.2

The Texas State Board of Pharmacy proposes amendments to §283.2, concerning Definitions. The amendments, if adopted, remove the requirement that a residency program be accredited by the American Society of Health System Pharmacists for a resident to be eligible for designation as an extended-intern.

Julie Spier, R.Ph., President, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Ms. Spier has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be to remove an unnecessary distinction between residency programs in relation to pharmacist preceptor requirements. There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

For each year of the first five years the proposed amendments will be in effect, Ms. Spier has determined the following:

- (1) The proposed amendments do not create or eliminate a government program;
- (2) Implementation of the proposed amendments does not require the creation of new employee positions or the elimination of existing employee positions;
- (3) Implementation of the proposed amendments does not require an increase or decrease in the future legislative appropriations to the agency;
- (4) The proposed amendments do not require an increase or decrease in fees paid to the agency;
- (5) The proposed amendments do not create a new regulation;
- (6) The proposed amendments do limit an existing regulation by removing restrictions on eligibility for and maintaining designation as a pharmacist-intern;
- (7) The proposed amendments do not increase or decrease the number of individuals subject to the rule's applicability; and
- (8) The proposed amendments do not positively or adversely affect this state's economy.

Written comments on the amendments may be submitted to Eamon D. Briggs, Deputy General Counsel, Texas State Board of Pharmacy, 1801 Congress Avenue, Suite 13.100, Austin, Texas, 78701-1319, FAX (512) 305-8061. Comments must be received by 5:00 p.m., April 21, 2023.

The amendments are proposed under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§283.2. *Definitions.*

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

- (1) ACPE--Accreditation Council for Pharmacy Education.
- (2) Applicant--An individual having applied for licensure to act as a pharmacist in Texas.
- (3) Approved continuing education--Continuing education which meets the requirements of §295.8 of this title (relating to Continuing Education Requirements).
- (4) Board--The Texas State Board of Pharmacy; all members, divisions, departments, sections, and employees thereof.
- (5) College/School of pharmacy--A college/school of pharmacy whose professional degree program has been approved by the board and is either accredited by:
 - (A) ACPE; or
 - (B) the Canadian Council for Accreditation of Pharmacy Programs for 1993 - 2004 graduates.
- (6) Competency--A demonstrated state of preparedness for the realities of professional pharmacy practice.
- (7) Didactic--Systematic classroom instruction.
- (8) Direct supervision--A pharmacist preceptor or health-care professional preceptor is physically present and on-site at the licensed location of the pharmacy where the pharmacist-intern is performing pharmacist-intern duties.
- (9) Extended-intern--An intern, registered with the board, who has:
 - (A) applied to the board for licensure by examination and has successfully passed the NAPLEX and Texas Pharmacy Ju-

risprudence Examination but lacks the required number of hours of internship for licensure; or

(B) applied to the board to take the NAPLEX and Texas Pharmacy Jurisprudence Examinations within six calendar months after graduation and has either:

(i) graduated and received a professional degree from a college/school of pharmacy; or

(ii) completed all of the requirements for graduation and for receipt of a professional degree from a college/school of pharmacy; or

(C) applied to the board to take the NAPLEX and Texas Pharmacy Jurisprudence Examinations within six calendar months after obtaining full certification from the Foreign Pharmacy Graduate Equivalency Commission; or

(D) applied to the Board for re-issuance of a pharmacist license which has been expired for more than two years but less than ten years and has successfully passed the Texas Pharmacy Jurisprudence Examination, but lacks the required number of hours of internship or continuing education required for licensure; or

(E) been ordered by the Board to complete an internship.

(10) Foreign pharmacy graduate--An individual whose pharmacy degree was conferred by a pharmacy school whose professional degree program has not been accredited by ACPE and approved by the board. An individual whose pharmacy degree was conferred by a pharmacy school that was accredited by the Canadian Council for Accreditation of Pharmacy Programs between 1993 and 2004, inclusively, is not considered a foreign pharmacy graduate.

(11) FPGEC--The Foreign Pharmacy Graduate Equivalency Commission.

(12) Healthcare Professional--An individual licensed as:

(A) a physician, dentist, podiatrist, veterinarian, advanced practice registered nurse, or physician assistant in Texas or another state; or

(B) a pharmacist in a state other than Texas but not licensed in Texas.

(13) Healthcare Professional Preceptor--A healthcare professional serving as an instructor for a Texas college/school-based internship program who is recognized by a Texas college/school of pharmacy to supervise and be responsible for the activities and functions of a student-intern in the internship program.

(14) Internship--A practical experience program that is approved by the board.

(15) MPJE--Multistate Pharmacy Jurisprudence Examination.

(16) NABP--The National Association of Boards of Pharmacy.

(17) NAPLEX--The North American Pharmacy Licensing Examination, or its predecessor, the National Association of Boards of Pharmacy Licensing Examination.

(18) Pharmaceutical care--The provision of drug therapy and other pharmaceutical services defined in the rules of the board and intended to assist in the cure or prevention of a disease, elimination or reduction of a patient's symptoms, or arresting or slowing of a disease process.

(19) Pharmacist Preceptor--A pharmacist licensed in Texas to practice pharmacy who meets the requirements under board rules and is recognized by the board to supervise and be responsible for the activities and functions of a pharmacist-intern in an internship program.

(20) Pharmacist-intern--A student-intern, a resident-intern, or an extended-intern who is participating in a board approved internship program.

(21) Preceptor--A pharmacist preceptor or a healthcare professional preceptor.

(22) Professional degree--A bachelor of science degree in pharmacy or a doctorate of pharmacy degree.

(23) Resident-intern--An individual who is registered with the board and:

(A) has graduated from a college/school of pharmacy; and

(B) is completing a residency program in the state of Texas [accredited by the American Society of Health-System Pharmacists].

(24) State--One of the 50 United States of America, the District of Columbia, and Puerto Rico.

(25) Student-intern--An individual registered with the board who is enrolled in the professional sequence of a college/school of pharmacy and is participating in a board-approved internship program.

(26) Texas Pharmacy Jurisprudence Examination--A licensing exam developed or approved by the Board which evaluates an applicant's knowledge of the drug and pharmacy requirements to practice pharmacy legally in the state of Texas.

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

Filed with the Office of the Secretary of State on March 3, 2023.

TRD-202300983

Julie Spier, R.Ph.

President

Texas State Board of Pharmacy

Earliest possible date of adoption: April 16, 2023

For further information, please call: (512) 305-8026



22 TAC §283.4

The Texas State Board of Pharmacy proposes amendments to §283.4, concerning Internship Requirements. The amendments, if adopted, remove the requirement that a residency program be accredited by the American Society of Health System Pharmacists for a resident to be eligible for designation as an extended-intern and specify that a pharmacist-intern registration expires due to failing the NAPLEX or Texas Pharmacy Jurisprudence Examination only if the intern fails either exam more than once.

Julie Spier, R.Ph., President, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Ms. Spier has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amend-

ments will be to remove an unnecessary restriction on eligibility for an extended internship and an overly punitive barrier to obtaining a license to practice pharmacy. There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

For each year of the first five years the proposed amendments will be in effect, Ms. Spier has determined the following:

- (1) The proposed amendments do not create or eliminate a government program;
- (2) Implementation of the proposed amendments does not require the creation of new employee positions or the elimination of existing employee positions;
- (3) Implementation of the proposed amendments does not require an increase or decrease in the future legislative appropriations to the agency;
- (4) The proposed amendments do not require an increase or decrease in fees paid to the agency;
- (5) The proposed amendments do not create a new regulation;
- (6) The proposed amendments do limit an existing regulation by removing restrictions on eligibility for and maintaining designation as a pharmacist-intern;
- (7) The proposed amendments do not increase or decrease the number of individuals subject to the rule's applicability; and
- (8) The proposed amendments do not positively or adversely affect this state's economy.

Written comments on the amendments may be submitted to Eamon D. Briggs, Deputy General Counsel, Texas State Board of Pharmacy, 1801 Congress Avenue, Suite 13.100, Austin, Texas, 78701-1319, FAX (512) 305-8061. Comments must be received by 5:00 p.m., April 21, 2023.

The amendments are proposed under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§283.4. *Internship Requirements.*

(a) Goals and competency objectives of internship.

(1) The goal of internship is for the pharmacist-intern to attain the knowledge, skills, and abilities to safely, efficiently, and effectively provide pharmacist-delivered patient care to a diverse patient population and practice pharmacy under the laws and regulations of the State of Texas.

(2) The following competency objectives are necessary to accomplish the goal of internship in paragraph (1) of this subsection:

(A) Provides drug products. The pharmacist-intern shall demonstrate competence in determining the appropriateness of prescription drug orders and medication orders; evaluating and selecting products; and assuring the accuracy of the product/prescription dispensing process.

(B) Communicates with patients and patients' agents about prescription drugs. The pharmacist-intern shall demonstrate competence in interviewing and counseling patients and patients' agents on drug usage, dosage, packaging, routes of administration, intended drug use, and storage; discussing drug cautions, adverse effects, and patient conditions; explaining policies on fees and services; relating to patients in a professional manner; and interacting to confirm patient understanding.

(C) Communicates with patients and patients' agents about nonprescription products, devices, dietary supplements, diet, nutrition, traditional nondrug therapies, complementary and alternative therapies, and diagnostic aids. The pharmacist-intern shall demonstrate competence in interviewing and counseling patients and patients' agents on conditions, intended drug use, and adverse effects; assisting in and recommending drug selection; triaging and assessing the need for treatment or referral, including referral for a patient seeking pharmacist-guided self-care; providing information on medical/surgical devices and home diagnostic products; and providing poison control treatment information and referral.

(D) Communicates with healthcare professionals, patients, and patients' agents. The pharmacist-intern shall demonstrate competence in obtaining and providing accurate and concise information in a professional manner and using appropriate oral, written, and nonverbal language.

(E) Practices as a member of the patient's interdisciplinary healthcare team. The pharmacist-intern shall demonstrate competence in collaborating with physicians, other healthcare professionals, patients, and patients' agents to formulate a therapeutic plan. The pharmacist-intern shall demonstrate competence in establishing and interpreting databases, identifying drug-related problems and recommending appropriate pharmacotherapy specific to patient needs, monitoring and evaluating patient outcomes, and devising follow-up plans.

(F) Maintains professional-ethical standards. The pharmacist-intern is required to comply with laws and regulations pertaining to pharmacy practice; to apply professional judgment; to exhibit reliability and credibility in dealing with others; to deal professionally and ethically with colleagues and patients; to demonstrate sensitivity and empathy for patients/care givers; and to maintain confidentiality.

(G) Compounds. The pharmacist-intern shall demonstrate competence in using acceptable professional procedures; selecting appropriate equipment and containers; appropriately preparing compounded non-sterile and sterile preparations; and documenting calculations and procedures. Pharmacist-interns engaged in compounding non-sterile preparations shall meet the training requirements for pharmacists specified in §291.131 of this title (relating to Pharmacies Compounding Non-Sterile Preparations). Pharmacist-interns engaged in compounding sterile preparations shall meet the training requirements for pharmacists specified in §291.133 of this title (relating to Pharmacies Compounding Sterile Preparations).

(H) Retrieves and evaluates drug information. The pharmacist-intern shall demonstrate competence in retrieving, evaluating, managing, and using the best available clinical and scientific publications for answering a drug-related request in a timely fashion and assessing, evaluating, and applying evidence based information to promote optimal health care. The pharmacist-intern shall perform investigations on relevant topics in order to promote inquiry and problem-solving with dissemination of findings to the healthcare community and the public.

(I) Manages general pharmacy operations. The pharmacist-intern shall develop a general understanding of planning, personnel and fiscal management, leadership skills, and policy develop-

ment. The pharmacist-intern shall have an understanding of drug security, storage and control procedures and the regulatory requirements associated with these procedures, and maintaining quality assurance and performance improvement. The pharmacist-intern shall observe and document discrepancies and irregularities, keep accurate records, and document actions. The pharmacist-intern shall attend meetings requiring pharmacy representation.

(J) Participates in public health, community service, or professional activities. The pharmacist-intern shall develop basic knowledge and skills needed to become an effective healthcare educator and a responsible participant in civic and professional organizations.

(K) Demonstrates scientific inquiry. The pharmacist-intern shall develop skills to expand and refine knowledge in the areas of pharmaceutical and medical sciences or pharmaceutical services. This may include data analysis of scientific, clinical, sociological, or economic impacts of pharmaceuticals (including investigational drugs), pharmaceutical care, and patient behaviors, with dissemination of findings to the scientific community and the public.

(b) Hours requirement.

(1) The board requires the number of hours of internship required by ACPE for licensure. These hours may be obtained through one or more of the following methods:

(A) in a board-approved student internship program, as specified in subsection (c) of this section;

(B) in a board-approved extended-internship program, as specified in subsection (d) of this section;

(C) graduation from a college/school of pharmacy. Persons graduating from such programs shall be credited the number of hours obtained and reported by the college; or

(D) internship hours approved and certified to the board by another state board of pharmacy.

(2) Pharmacist-interns participating in an internship may be credited no more than 50 hours per week of internship experience.

(3) Internship hours may be used for the purpose of licensure for no longer than two years from the date the internship is completed.

(c) College-/School-Based Internship Programs.

(1) Internship experience acquired by student-interns.

(A) An individual may be designated a student-intern provided he/she:

(i) submits an application to the board that includes the following information:

(I) name;

(II) addresses, phone numbers, date of birth, and social security number;

(III) college of pharmacy and expected graduation date; and

(IV) any other information requested on the application;

(ii) is enrolled in the professional sequence of a college/school of pharmacy; and

(iii) has met all requirements necessary for the board to access the criminal history records information, including submitting fingerprint information and being responsible for all associated costs.

(B) The terms of the student internship shall be as follows.

(i) The student internship shall be gained concurrent with college attendance, which may include:

(I) partial semester breaks such as spring breaks;

(II) between semester breaks; and

(III) whole semester breaks, provided the student-intern attended the college/school in the immediately preceding semester and is scheduled with the college/school to attend in the immediate subsequent semester.

(ii) The student internship shall be obtained in pharmacies licensed by the board, federal government pharmacies, or in a board-approved program.

(iii) The student internship shall be in the presence of and under the supervision of a healthcare professional preceptor or a pharmacist preceptor.

(C) None of the internship hours acquired outside of a school-based program may be substituted for any of the hours required in a college/school of pharmacy internship program.

(2) Expiration date for student-intern designation.

(A) The student-internship expires if:

(i) the student-intern voluntarily or involuntarily ceases enrollment, including suspension, in a college/school of pharmacy;

(ii) the student-intern fails more than once either the NAPLEX or Texas Pharmacy Jurisprudence Examination specified in this section; or

(iii) the student-intern fails to take either the NAPLEX or Texas Pharmacy Jurisprudence Examination or both within six calendar months after graduation.

(B) The executive director of the board, in his/her discretion, may extend the term of the student internship if administration of the NAPLEX or Texas Pharmacy Jurisprudence Examination is suspended or delayed.

(3) Texas colleges/schools of pharmacy internship programs.

(A) Student-interns completing a board-approved Texas college/school-based structured internship shall be credited the number of hours actually obtained and reported by the college. No credit shall be awarded for didactic experience.

(B) No more than 600 hours of the required number of hours may be obtained under a healthcare professional preceptor except when a pharmacist-intern is working in a federal government pharmacy.

(d) Extended-internship program.

(1) A person may be designated an extended-intern provided he/she has met one of the following requirements:

(A) passed the NAPLEX and Texas Pharmacy Jurisprudence Examination but lacks the required number of internship hours for licensure;

(B) applied to the board to take the NAPLEX and Texas Pharmacy Jurisprudence Examination within six calendar months after graduation and has:

(i) graduated and received a professional degree from a college/school of pharmacy; or

(ii) completed all of the requirements for graduation and receipt of a professional degree from a college/school of pharmacy.

(C) applied to the board to take the NAPLEX and Texas Pharmacy Jurisprudence Examination within six calendar months after obtaining full certification from the Foreign Pharmacy Graduate Equivalency Commission;

(D) applied to the board for re-issuance of a pharmacist license which has expired for more than two years but less than ten years and has successfully passed the Texas Pharmacy Jurisprudence Examination, but lacks the required number of hours of internship or continuing education required for licensure;

(E) is a resident in a residency program [~~accredited by the American Society of Health-System Pharmacists~~] in the state of Texas and has not previously failed more than once either the NAPLEX or Texas Pharmacy Jurisprudence Examination; or

(F) been ordered by the Board to complete an internship.

(2) In addition to meeting one of the requirements in paragraph (1) of this subsection, an applicant for an extended-internship must:

(A) submit an application to the board that includes the following information:

(i) name;

(ii) addresses, phone numbers, date of birth, and social security number; and

(iii) any other information requested on the application; and

(B) meet all requirements necessary for the board to access the criminal history records information, including submitting fingerprint information and being responsible for all associated costs.

(3) The terms of the extended-internship shall be as follows.

(A) The extended-internship shall be board-approved and gained in a pharmacy licensed by the board, or a federal government pharmacy participating in a board-approved internship program.

(B) The extended-internship shall be in the presence of and under the direct supervision of a pharmacist preceptor.

(4) The extended internship remains in effect for two years. However, the internship expires immediately upon:

(A) the failure of the extended-intern to take the NAPLEX and Texas Pharmacy Jurisprudence Examination within six calendar months after graduation or FPGEC certification;

(B) [~~the failure of~~] the extended-intern failing more than once either [~~to pass~~] the NAPLEX or [~~and~~] Texas Pharmacy Jurisprudence Examination specified in this section;

(C) termination of the residency program; or

(D) obtaining a Texas pharmacist license.

(5) The executive director of the board, in his/her discretion, may extend the term of the extended internship if administration

of the NAPLEX or Texas Pharmacy Jurisprudence Examination is suspended or delayed.

(6) An applicant for licensure who has completed less than 500 hours of internship at the time of application shall complete the remainder of the required number of hours of internship and have the preceptor certify that the applicant has met the objectives listed in subsection (a) of this section.

(e) Pharmacist-intern identification.

(1) Pharmacist-interns shall keep documentation of designation as a pharmacist-intern with them at all times they are serving as a pharmacist-intern and make it available for inspection by board agents.

(2) All pharmacist-interns shall wear an identification tag or badge which bears the person's name and identifies him or her as a pharmacist-intern.

(f) Change of address or name.

(1) Change of address. A pharmacist-intern shall notify the board electronically or in writing within 10 days of a change of address, giving the old and new address.

(2) Change of name. A pharmacist-intern shall notify the board in writing within 10 days of a change of name by sending a copy of the official document reflecting the name change (e.g., marriage certificate, divorce decree).

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 March 3, 2023.

TRD-202300984

Julie Spier, R.Ph.

President

Texas State Board of Pharmacy

Earliest possible date of adoption: April 16, 2023

For further information, please call: (512) 305-8026



CHAPTER 291 PHARMACIES

SUBCHAPTER G. SERVICES PROVIDED BY PHARMACIES

22 TAC §291.121

The Texas State Board of Pharmacy proposes amendments to §291.121, concerning Remote Pharmacy Services. The amendments, if adopted, allow remote pharmacy services to be provided using an automated pharmacy system to be provided at healthcare facilities regulated under Chapters 464 and 577, Health and Safety Code.

Julie Spier, R.Ph., President, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Ms. Spier has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will to improve public access to pharmacy services by allowing remote pharmacy services to be provided at more types of healthcare facilities. There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural

communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

For each year of the first five years the proposed amendments will be in effect, Ms. Spier has determined the following:

- (1) The proposed amendments do not create or eliminate a government program;
- (2) Implementation of the proposed amendments does not require the creation of new employee positions or the elimination of existing employee positions;
- (3) Implementation of the proposed amendments does not require an increase or decrease in the future legislative appropriations to the agency;
- (4) The proposed amendments do not require an increase or decrease in fees paid to the agency;
- (5) The proposed amendments do not create a new regulation;
- (6) The proposed amendments do limit an existing regulation by allowing an additional type of healthcare facility to provide remote pharmacy services using an automated pharmacy system;
- (7) The proposed amendments do not increase or decrease the number of individuals subject to the rule's applicability; and
- (8) The proposed amendments do not positively or adversely affect this state's economy.

Written comments on the amendments may be submitted to Eamon D. Briggs, Deputy General Counsel, Texas State Board of Pharmacy, 1801 Congress Avenue, Suite 13.100, Austin, Texas, 78701-1319, FAX (512) 305-8061. Comments must be received by 5:00 p.m., April 21, 2023.

The amendments are proposed under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§291.121. *Remote Pharmacy Services.*

(a) Remote pharmacy services using automated pharmacy systems.

(1) Purpose. The purpose of this section is to provide standards for the provision of pharmacy services by a Class A or Class C pharmacy in a facility that is not at the same location as the Class A or Class C pharmacy through an automated pharmacy system as outlined in §562.109 of the Texas Pharmacy Act.

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

(A) Automated pharmacy system--A mechanical system that dispenses prescription drugs and maintains related transaction information.

(B) Prepackaging--The act of repackaging and relabeling quantities of drug products from a manufacturer's original commercial container, or quantities of unit dosed drugs, into another cartridge

or container for dispensing by a pharmacist using an automated pharmacy system.

(C) Provider pharmacy--The community pharmacy (Class A) or the institutional pharmacy (Class C) providing remote pharmacy services.

(D) Remote pharmacy service--The provision of pharmacy services, including the storage and dispensing of prescription drugs, in remote sites.

(E) Remote site--A facility not located at the same location as a Class A or Class C pharmacy, at which remote pharmacy services are provided using an automated pharmacy dispensing system.

(F) Unit dose--An amount of a drug packaged in a dosage form ready for administration to a particular patient, by the prescribed route at the prescribed time, and properly labeled with name, strength, and expiration date of the drug.

(3) General requirements.

(A) A provider pharmacy may provide remote pharmacy services using an automated pharmacy system to a jail or prison operated by or for the State of Texas, a jail or prison operated by local government or a healthcare facility regulated under Chapter 142, 241, 242, 247, ~~252~~, 252, 464, or 577, Health and Safety Code, provided drugs are administered by a licensed healthcare professional working in the jail, prison, or healthcare facility.

(B) A provider pharmacy may provide remote pharmacy services at more than one remote site.

(C) Before providing remote pharmacy services, the automated pharmacy system at the remote site must be tested by the provider pharmacy and found to dispense accurately. The provider pharmacy shall make the results of such testing available to the board upon request.

(D) A provider pharmacy which is licensed as an institutional (Class C) pharmacy is required to comply with the provisions of §§291.31 - 291.34 of this title (relating to Definitions, Personnel, Operational Standards, and Records, respectively) and this section.

(E) The pharmacist-in-charge of the provider pharmacy is responsible for all pharmacy operations involving the automated pharmacy system located at the remote site including supervision of the automated pharmacy system and compliance with this section.

(F) A pharmacist from the provider pharmacy shall be accessible at all times to respond to patients' or other health professionals' questions and needs pertaining to drugs dispensed through the use of the automated pharmacy system. Such access may be through a 24 hour pager service or telephone which is answered 24 hours a day.

(4) Operational standards.

(A) Application for permission to provide pharmacy services using an automated pharmacy system.

(i) A Class A or Class C Pharmacy shall file a completed application containing all information required by the board to provide remote pharmacy services using an automated pharmacy system.

(ii) Such application shall be resubmitted every two years in conjunction with the application for renewal of the provider pharmacy's license.

(iii) Upon approval of the application, the provider pharmacy will be sent a certificate which must be displayed at the remote site.

(B) Notification requirements.

(i) A provider pharmacy shall notify the board in writing within ten days of a discontinuance of service, or closure of:

(I) a remote site where an automated pharmacy system is operated by the pharmacy; or

(II) a remote pharmacy service at a remote site.

(ii) A provider pharmacy shall comply with appropriate federal and state controlled substance registrations for each remote site if controlled substances are maintained within an automated pharmacy system at the facility.

(iii) A provider pharmacy shall file a change of location and/or name of a remote site as specified in §291.3 of this title (relating to Notifications).

(C) Environment/Security.

(i) A provider pharmacy shall only store drugs at a remote site within an automated pharmacy system which is locked by key, combination or other mechanical or electronic means so as to prohibit access by unauthorized personnel.

(ii) An automated pharmacy system shall be under the continuous supervision of a provider pharmacy pharmacist. To qualify as continuous supervision, the pharmacist is not required to be physically present at the site of the automated pharmacy system if the system is supervised electronically by a pharmacist.

(iii) Automated pharmacy systems shall have adequate security and procedures to:

(I) comply with federal and state laws and regulations; and

(II) maintain patient confidentiality.

(iv) Access to the automated pharmacy system shall be limited to pharmacists or personnel who:

(I) are designated in writing by the pharmacist-in-charge; and

(II) have completed documented training concerning their duties associated with the automated pharmacy system.

(v) Drugs shall be stored in compliance with the provisions of §291.15 of this title (relating to Storage of Drugs) and §291.33(f)(2) of this title including the requirements for temperature and handling of outdated drugs.

(D) Prescription dispensing and delivery.

(i) Drugs shall only be dispensed at a remote site through an automated pharmacy system after receipt of an original prescription drug order by a pharmacist at the provider pharmacy in a manner authorized by §291.34(b) of this title.

(ii) A pharmacist at the provider pharmacy shall control all operations of the automated pharmacy system and approve the release of the initial dose of a prescription drug order. Subsequent doses from an approved prescription drug order may be removed from the automated medication system after this initial approval. Any change made in the prescription drug order shall require a new approval by a pharmacist to release the drug.

(iii) A pharmacist at the provider pharmacy shall conduct a drug regimen review as specified in §291.33(c) of this title prior to releasing a prescription drug order to the automated pharmacy system.

(iv) Drugs dispensed by the provider pharmacy through an automated pharmacy system shall comply with the labeling or labeling alternatives specified in §291.33(c) of this title.

(v) An automated pharmacy system used to meet the emergency medication needs for residents of a remote site must comply with the requirements for emergency medication kits in subsection (b) of this section.

(E) Drugs.

(i) Drugs for use in an automated pharmacy system shall be packaged in the original manufacturer's container or be prepackaged in the provider pharmacy and labeled in compliance with the board's prepackaging requirements for the class of pharmacy.

(ii) Drugs dispensed from the automated pharmacy system may be returned to the pharmacy for reuse provided the drugs are in sealed, tamper evident packaging which has not been opened.

(F) Stocking an automated pharmacy system.

(i) Stocking of drugs in an automated pharmacy system shall be completed by a pharmacist, pharmacy technician, or pharmacy technician trainee under the direct supervision of a pharmacist, except as provided in clause (ii) of this subparagraph.

(ii) If the automated pharmacy system uses removable cartridges or containers to hold drugs, the prepackaging of the cartridges or containers shall occur at the provider pharmacy unless provided by an FDA approved repackager. The prepackaged cartridges or containers may be sent to the remote site to be loaded into the machine by personnel designated by the pharmacist-in-charge provided:

(I) a pharmacist verifies the cartridge or container has been properly filled and labeled;

(II) the individual cartridges or containers are transported to the remote site in a secure, tamper-evident container; and

(III) the automated pharmacy system uses bar-coding, microchip, or other technologies to ensure that the containers are accurately loaded in the automated pharmacy system.

(iii) All drugs to be stocked in the automated pharmacy system shall be delivered to the remote site by the provider pharmacy.

(G) Quality assurance program. A pharmacy that provides pharmacy services through an automated pharmacy system at a remote site shall operate according to a written program for quality assurance of the automated pharmacy system which:

(i) requires continuous supervision of the automated pharmacy system; and

(ii) establishes mechanisms and procedures to routinely test the accuracy of the automated pharmacy system at a minimum of every six months and whenever any upgrade or change is made to the system and documents each such activity.

(H) Policies and procedures of operation.

(i) A pharmacy that provides pharmacy services through an automated pharmacy system at a remote site shall operate according to written policies and procedures. The policy and procedure manual shall include, but not be limited to, the following:

(I) a current list of the name and address of the pharmacist-in-charge and personnel designated by the pharmacist-in-charge to have access to the drugs stored in the automated pharmacy system;

(II) duties which may only be performed by a pharmacist;

(III) a copy of the portion of the written contract or agreement between the pharmacy and the facility which outlines the services to be provided and the responsibilities and accountabilities of each party relating to the operation of the automated pharmacy system in fulfilling the terms of the contract in compliance with federal and state laws and regulations;

(IV) date of last review/revision of the policy and procedure manual; and

(V) policies and procedures for:
(-a-) security;
(-b-) operation of the automated pharmacy system;

(-c-) preventative maintenance of the automated pharmacy system;

- (-d-) sanitation;
- (-e-) storage of drugs;
- (-f-) dispensing;
- (-g-) supervision;
- (-h-) drug procurement;
- (-i-) receiving of drugs;
- (-j-) delivery of drugs; and
- (-k-) recordkeeping.

(ii) A pharmacy that provides pharmacy services through an automated pharmacy system at a remote site shall, at least annually, review its written policies and procedures, revise them if necessary, and document the review.

(iii) A pharmacy providing remote pharmacy services using an automated pharmacy system shall maintain a written plan for recovery from an event which interrupts the ability of the automated pharmacy system to dispense prescription drugs. The written plan for recovery shall include:

(I) planning and preparation for maintaining pharmacy services when an automated pharmacy system is experiencing downtime;

(II) procedures for response when an automated pharmacy system is experiencing downtime; and

(III) procedures for the maintenance and testing of the written plan for recovery.

(5) Records.

(A) Maintenance of records.

(i) Every record required under this section must be:

(I) kept by the provider pharmacy and be available, for at least two years for inspecting and copying by the board or its representative and to other authorized local, state, or federal law enforcement agencies; and

(II) supplied by the provider pharmacy within 72 hours, if requested by an authorized agent of the Texas State Board of Pharmacy. If the pharmacy maintains the records in an electronic format, the requested records must be provided in an electronic format if specifically requested by the board or its representative. Failure to provide the records set out in this section, either on site or within 72 hours, constitutes prima facie evidence of failure to keep and maintain records in violation of the Act.

(ii) The provider pharmacy shall maintain original prescription drug orders for drugs dispensed from an automated pharmacy system in compliance with §291.34(b) of this title.

(iii) if prescription drug records are maintained in a data processing system, the system shall have a workable (electronic) data retention system which can produce a separate audit trail of drug usage by the provider pharmacy and each remote site for the preceding two years as specified in §291.34(e) of this title.

(B) Prescriptions. Prescription drug orders shall meet the requirements of §291.34(b) of this title.

(C) Records of dispensing. Dispensing records for a prescription drug order shall be maintained by the provider pharmacy in the manner required by §291.34(d) or (e) of this title.

(D) Transaction information.

(i) The automated pharmacy system shall electronically record all transactions involving drugs stored in, removed, or dispensed from the system.

(ii) Records of dispensing from an automated pharmacy system for a patient shall be maintained by the providing pharmacy and include the:

- (I) identity of the system accessed;
- (II) identification of the individual accessing the system;
- (III) date of transaction;
- (IV) name, strength, dosage form, and quantity of drug accessed; and
- (V) name of the patient for whom the drug was accessed.

(iii) Records of stocking or removal from an automated pharmacy system shall be maintained by the pharmacy and include the:

- (I) date;
- (II) name, strength, dosage form, and quantity of drug stocked or removed;
- (III) name, initials, or identification code of the person stocking or removing drugs from the system; and
- (IV) name, initials, or identification code of the pharmacist who checks and verifies that the system has been accurately filled.

(E) Patient medication records. Patient medication records shall be created and maintained by the provider pharmacy in the manner required by §291.34(c) of this title.

(F) Inventory.

(i) A provider pharmacy shall:

(I) keep a record of all drugs sent to and returned from a remote site separate from the records of the provider pharmacy and from any other remote site's records; and

(II) keep a perpetual inventory of controlled substances and other drugs required to be inventoried under §291.17 of this title (relating to Inventory Requirements) that are received and dispensed or distributed from each remote site.

(ii) As specified in §291.17 of this title, a provider pharmacy shall conduct an inventory at each remote site. The following is applicable to this inventory.

(I) The inventory of each remote site and the provider pharmacy shall be taken on the same day.

(II) The inventory of each remote site shall be included with, but listed separately from, the drugs of other remote sites and separately from the drugs of the provider pharmacy.

(b) Remote pharmacy services using emergency medication kits.

(1) Purpose. The purpose of this section is to provide standards for the provision of pharmacy services by a Class A or Class C pharmacy in a facility that is not at the same location as the Class A or Class C pharmacy through an emergency medication kit as outlined in §562.108 of the Texas Pharmacy Act.

(2) Definitions. The following words and terms, when used in this subsection, shall have the following meanings, unless the context clearly indicates otherwise. All other words and terms shall have the meanings defined in the Act or §291.31 of this title.

(A) Automated pharmacy system--A mechanical system that dispenses prescription drugs and maintains related transaction information.

(B) Emergency medication kits--Controlled substances and dangerous drugs maintained by a provider pharmacy to meet the emergency medication needs of a resident:

(i) at an institution licensed under Chapter 242 or 252, Health and Safety Code; or

(ii) at an institution licensed under Chapter 242, Health and Safety Code and that is a veterans home as defined by the §164.002, Natural Resources Code, if the provider pharmacy is a United States Department of Veterans Affairs pharmacy or another federally operated pharmacy.

(C) Prepackaging--The act of repackaging and relabeling quantities of drug products from a manufacturer's original commercial container, or quantities of unit dosed drugs, into another cartridge or container for dispensing by a pharmacist using an emergency medication kit.

(D) Provider pharmacy--The community pharmacy (Class A), the institutional pharmacy (Class C), the non-resident pharmacy (Class E) located not more than 20 miles from an institution licensed under Chapter 242 or 252, Health and Safety Code, or the United States Department of Veterans Affairs pharmacy or another federally operated pharmacy providing remote pharmacy services.

(E) Remote pharmacy service--The provision of pharmacy services, including the storage and dispensing of prescription drugs, in remote sites.

(F) Remote site--A facility not located at the same location as a Class A, Class C, Class E pharmacy or a United States Department of Veterans Affairs pharmacy or another federally operated pharmacy, at which remote pharmacy services are provided using an emergency medication kit.

(3) General requirements.

(A) A provider pharmacy may provide remote pharmacy services using an emergency medication kit to an institution regulated under Chapter 242, or 252, Health and Safety Code.

(B) A provider pharmacy may provide remote pharmacy services at more than one remote site.

(C) A provider pharmacy shall not place an emergency medication kit in a remote site which already has a kit from another provider pharmacy except as provided by paragraph (4)(B)(iii) of this subsection.

(D) A provider pharmacy which is licensed as an institutional (Class C) or a non-resident (Class E) pharmacy is required to comply with the provisions of §§291.31 - 291.34 of this title and this section.

(E) The pharmacist-in-charge of the provider pharmacy is responsible for all pharmacy operations involving the emergency medication kit located at the remote site including supervision of the emergency medication kit and compliance with this section.

(4) Operational standards.

(A) Application for permission to provide pharmacy services using an emergency medication kit.

(i) A Class A, Class C, or Class E pharmacy shall file a completed application containing all information required by the board to provide remote pharmacy services using an emergency medication kit.

(ii) Such application shall be resubmitted every two years in conjunction with the application for renewal of the provider pharmacy's license.

(iii) Upon approval of the application, the provider pharmacy will be sent a certificate which must be displayed at the remote site.

(B) Notification requirements.

(i) A provider pharmacy shall notify the board in writing within ten days of a discontinuance of service, or closure of:

(I) a remote site where an emergency medication kit is operated by the pharmacy; or

(II) a remote pharmacy service at a remote site.

(ii) A provider pharmacy shall comply with appropriate federal and state controlled substance registrations for each remote site if controlled substances are maintained within an emergency medication kit at the facility.

(iii) If more than one provider pharmacy provides an emergency kit to a remote site, the provider pharmacies must enter into a written agreement as to the emergency medications supplied by each pharmacy. The written agreement shall include reasons why an additional pharmacy is required to meet the emergency medication needs of the residents of the institution.

(iv) A provider pharmacy shall file a change of location and/or name of a remote site as specified in §291.3 of this title.

(C) Environment/Security.

(i) Emergency medication kits shall have adequate security and procedures to:

(I) prohibit unauthorized access;

(II) comply with federal and state laws and regulations; and

(III) maintain patient confidentiality.

(ii) Access to the emergency medication kit shall be limited to pharmacists and licensed healthcare personnel employed by the facility.

(iii) Drugs shall be stored in compliance with the provisions of §291.15 and §291.33(f)(2) of this title including the requirements for temperature and handling outdated drugs.

(D) Prescription dispensing and delivery.

(i) Drugs in the emergency medication kit shall be accessed for administration to meet the emergency medication needs of a resident of the remote site pursuant to an order from a practitioner. The prescription drug order for the drugs used from the emergency medication kit shall be forwarded to the provider pharmacy in a manner authorized by §291.34(b) of this title.

(ii) The remote site shall notify the provider pharmacy of each entry into an emergency medication kit. Such notification shall meet the requirements of paragraph (5)(D)(ii) of this subsection.

(E) Drugs.

(i) The contents of an emergency medication kit:

(I) may consist of dangerous drugs and controlled substances; and

(II) shall be determined by the consultant pharmacist, pharmacist-in-charge of the provider pharmacy, medical director, and the director of nurses and limited to those drugs necessary to meet the resident's emergency medication needs. For the purpose of this subsection, this shall mean a situation in which a drug cannot be supplied by a pharmacy within a reasonable time period.

(ii) When deciding on the drugs to be placed in the emergency medication kit, the consultant pharmacist, pharmacist-in-charge of the provider pharmacy, medical director, and the director of nurses must determine, select, and record a prudent number of drugs for potential emergency incidents based on:

(I) clinical criteria applicable to each facility's demographics;

(II) the facility's census; and

(III) the facility's healthcare environment.

(iii) A current list of the drugs stored in each remote site's emergency medication kit shall be maintained by the provider pharmacy and a copy kept with the emergency medication kit.

(iv) An automated pharmacy system may be used as an emergency medication kit provided the system limits emergency access to only those drugs approved for the emergency medication kit.

(v) Drugs for use in an emergency medication kit shall be packaged in the original manufacturer's container or prepackaged in the provider pharmacy and labeled in compliance with the board's prepackaging requirements for the class of pharmacy.

(F) Stocking emergency medication kits.

(i) Stocking of drugs in an emergency medication kit shall be completed at the provider pharmacy or remote site by a pharmacist, pharmacy technician, or pharmacy technician trainee under the direct supervision of a pharmacist, except as provided in clause (ii) of this subparagraph.

(ii) If the emergency medication kit is an automated pharmacy system which uses bar-coding, microchip, or other technologies to ensure that the containers or unit dose drugs are accurately loaded, the prepackaging of the containers or unit dose drugs shall oc-

cur at the provider pharmacy unless provided by an FDA approved repackager. The prepackaged containers or unit dose drugs may be sent to the remote site to be loaded into the machine by personnel designated by the pharmacist-in-charge provided:

(I) a pharmacist verifies the container or unit dose drug has been properly filled and labeled;

(II) the individual containers or unit dose drugs are transported to the remote site in a secure, tamper-evident container; and

(III) the automated pharmacy system uses bar-coding, microchip, or other technologies to ensure that the containers or unit dose drugs are accurately loaded in the automated pharmacy system.

(iii) All drugs to be stocked in the emergency medication kit shall be delivered to the remote site by the provider pharmacy.

(G) Policies and procedures of operation.

(i) A provider pharmacy that provides pharmacy services through an emergency medication kit at a remote site shall operate according to written policies and procedures. The policy and procedure manual shall include, but not be limited to, the following:

(I) duties which may only be performed by a pharmacist;

(II) a copy of the written contract or agreement between the pharmacy and the facility which outlines the services to be provided and the responsibilities and accountabilities of each party in fulfilling the terms of the contract in compliance with federal and state laws and regulations;

(III) date of last review/revision of the policy and procedure manual; and

(IV) policies and procedures for:
(-a-) security;
(-b-) operation of the emergency medication kit;

(-c-) preventative maintenance of the automated pharmacy system if the emergency medication kit is an automated pharmacy system;

(-d-) sanitation;

(-e-) storage of drugs;

(-f-) dispensing;

(-g-) supervision;

(-h-) drug procurement;

(-i-) receiving of drugs;

(-j-) delivery of drugs; and

(-k-) recordkeeping.

(ii) A pharmacy that provides pharmacy services through an emergency medication kit at a remote site shall, at least annually, review its written policies and procedures, revise them if necessary, and document the review.

(iii) A pharmacy providing remote pharmacy services using an emergency medication kit which is an automated pharmacy system shall maintain a written plan for recovery from an event which interrupts the ability of the automated pharmacy system to provide emergency medications. The written plan for recovery shall include:

(I) planning and preparation for maintaining pharmacy services when an automated pharmacy system is experiencing downtime;

(II) procedures for response when an automated pharmacy system is experiencing downtime; and

(III) procedures for the maintenance and testing of the written plan for recovery.

(5) Records.

(A) Maintenance of records.

(i) Every record required under this section must be:

(I) kept by the provider pharmacy and be available, for at least two years, for inspecting and copying by the board or its representative and to other authorized local, state, or federal law enforcement agencies; and

(II) supplied by the provider pharmacy within 72 hours, if requested by an authorized agent of the Texas State Board of Pharmacy. If the pharmacy maintains the records in an electronic format, the requested records must be provided in an electronic format if specifically requested by the board or its representative. Failure to provide the records set out in this section, either on site or within 72 hours, constitutes prima facie evidence of failure to keep and maintain records in violation of the Act.

(ii) The provider pharmacy shall maintain original prescription drug orders for drugs dispensed from an emergency medication kit in compliance with §291.34(b) of this title.

(B) Prescriptions. Prescription drug orders shall meet the requirements of §291.34(b) of this title.

(C) Records of dispensing. Dispensing records for a prescription drug order shall be maintained by the provider pharmacy in the manner required by §291.34(d) or (e) of this title.

(D) Transaction information.

(i) A prescription drug order shall be maintained by the provider pharmacy as the record of removal of a drug from an emergency medication kit for administration to a patient.

(ii) The remote site shall notify the provider pharmacy electronically or in writing of each entry into an emergency medication kit. Such notification may be included on the prescription drug order or a separate document and shall include the name, strength, and quantity of the drug removed, the time of removal, and the name of the person removing the drug.

(iii) A separate record of stocking, removal, or dispensing for administration from an emergency medication kit shall be maintained by the pharmacy and include the:

(I) date;

(II) name, strength, dosage form, and quantity of drug stocked, removed, or dispensed for administration;

(III) name, initials, or identification code of the person stocking, removing, or dispensing for administration, drugs from the system;

(IV) name, initials, or identification code of the pharmacist who checks and verifies that the system has been accurately filled; and

(V) unique prescription number assigned to the prescription drug order when the drug is administered to the patient.

(E) Inventory.

(i) A provider pharmacy shall:

(I) keep a record of all drugs sent to and returned from a remote site separate from the records of the provider pharmacy and from any other remote site's records; and

(II) keep a perpetual inventory of controlled substances and other drugs required to be inventoried under §291.17 of this title, that are received and dispensed or distributed from each remote site.

(ii) As specified in §291.17 of this title, a provider pharmacy shall conduct an inventory at each remote site. The following is applicable to this inventory.

(I) The inventory of each remote site and the provider pharmacy shall be taken on the same day.

(II) The inventory of each remote site shall be included with, but listed separately from, the drugs of other remote sites and separately from the drugs of the provider pharmacy.

(c) Remote pharmacy services using telepharmacy systems.

(1) Purpose. The purpose of this section is to provide standards for the provision of pharmacy services by a Class A or Class C pharmacy in a healthcare facility that is not at the same location as a Class A or Class C pharmacy through a telepharmacy system as outlined in §562.110 of the Texas Pharmacy Act.

(2) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise. All other words and terms shall have the meanings defined in the Act or §291.31 of this title.

(A) Provider pharmacy--

(i) a Class A pharmacy that provides pharmacy services through a telepharmacy system at a remote dispensing site or at a healthcare facility that is regulated by this state or the United States; or

(ii) a Class C pharmacy that provides pharmacy services through a telepharmacy system at a healthcare facility that is regulated by this state or the United States.

(B) Remote dispensing site--a location licensed as a telepharmacy that is authorized by a provider pharmacy through a telepharmacy system to store and dispense prescription drugs and devices, including dangerous drugs and controlled substances.

(C) Remote healthcare site--a healthcare facility regulated by this state or the United States that is a:

(i) rural health clinic regulated under 42 U.S.C. Section 1395x(aa);

(ii) health center as defined by 42 U.S.C. Section 254b;

(iii) healthcare facility located in a medically underserved area as determined by the United States Department of Health and Human Services;

(iv) healthcare facility located in a health professional shortage area as determined by the United States Department of Health and Human Services; or

(v) a federally qualified health center as defined by 42 U.S.C. Section 1396d(I)(2)(B).

(D) Remote pharmacy service--The provision of pharmacy services, including the storage and dispensing of prescription drugs, drug regimen review, and patient counseling, at a remote site.

(E) Remote site--a remote healthcare site or a remote dispensing site.

(F) Still image capture--A specific image captured electronically from a video or other image capture device.

(G) Store and forward--A video or still image record which is saved electronically for future review.

(H) Telepharmacy system--A system that monitors the dispensing of prescription drugs and provides for related drug use review and patient counseling services by an electronic method which shall include the use of the following types of technology:

- (i) audio and video;
- (ii) still image capture; and
- (iii) store and forward.

(3) General requirements.

(A) A provider pharmacy may provide remote pharmacy services using a telepharmacy system at a:

- (i) remote healthcare site; or
- (ii) remote dispensing site.

(B) A provider pharmacy may not provide remote pharmacy services at a remote healthcare site if a Class A or Class C pharmacy that dispenses prescription drug orders to out-patients is located in the same community, unless the remote healthcare site is a federally qualified health center as defined by 42 U.S.C. Section 1396d(1)(2)(B). For the purposes of this subsection a community is defined as:

- (i) the census tract in which the remote site is located, if the remote site is located in a Metropolitan Statistical Area (MSA) as defined by the United States Census Bureau in the most recent U.S. Census; or
- (ii) within 10 miles of the remote site, if the remote site is not located in an MSA.

(C) A provider pharmacy may not provide remote pharmacy services at a remote dispensing site if a Class A pharmacy is located within 22 miles by road of the remote dispensing site.

(D) If a Class A or Class C pharmacy is established in a community in which a remote healthcare site has been located, the remote healthcare site may continue to operate.

(E) If a Class A pharmacy is established within 22 miles by road of a remote dispensing site that is currently operating, the remote dispensing site may continue to operate at that location.

(F) Before providing remote pharmacy services, the telepharmacy system at the remote site must be tested by the provider pharmacy and found to operate properly. The provider pharmacy shall make the results of such testing available to the board upon request.

(G) A provider pharmacy which is licensed as a Class C pharmacy is required to comply with the provisions of §§291.31 - 291.34 of this title and this section.

(H) A provider pharmacy can only provide pharmacy services at no more than two remote dispensing sites.

(4) Personnel.

(A) The pharmacist-in-charge of the provider pharmacy is responsible for all operations at the remote site including supervision of the telepharmacy system and compliance with this section.

(B) The provider pharmacy shall have sufficient pharmacists on duty such that each pharmacist may supervise no more than two remote sites that are simultaneously open to provide services.

(C) The following duties shall be performed only by a pharmacist at the provider pharmacy:

- (i) receiving an oral prescription drug order for a controlled substance;
- (ii) interpreting the prescription drug order;
- (iii) verifying the accuracy of prescription data entry;
- (iv) selecting the drug product to be stored and dispensed at the remote site;
- (v) interpreting the patient's medication record and conducting a drug regimen review;
- (vi) authorizing the telepharmacy system to print a prescription label at the remote site;
- (vii) performing the final check of the dispensed prescription to ensure that the prescription drug order has been dispensed accurately as prescribed; and
- (viii) counseling the patient.

(D) A pharmacy technician at the remote site may receive an oral prescription drug order for a dangerous drug.

(5) Operational standards.

(A) Application to provide remote pharmacy services using a telepharmacy system.

(i) A Class A or Class C pharmacy shall file a completed application containing all information required by the board to provide remote pharmacy services using a telepharmacy system.

(ii) Such application shall be resubmitted every two years in conjunction with the renewal of the provider pharmacy's license.

(iii) On approval of the application, the provider pharmacy will be sent a license for the remote site, which must be displayed at the remote site.

(iv) If the average number of prescriptions dispensed each day at a remote dispensing site is open for business is more than 125 prescriptions, as calculated each calendar year, the remote dispensing site shall apply for a Class A pharmacy license as specified in §291.1 of this title (relating to Pharmacy License Application).

(B) Notification requirements.

(i) A provider pharmacy shall notify the board in writing within ten days of a discontinuance of service, or closure of a remote site where a telepharmacy system is operated by the pharmacy.

(ii) A provider pharmacy shall comply with appropriate federal and state controlled substance registrations for each remote site, if controlled substances are maintained.

(iii) A provider pharmacy shall file a change of location and/or name of a remote site as specified in §291.3 of this title.

(C) Environment/Security.

(i) A remote site shall be under the continuous supervision of a provider pharmacy pharmacist at all times the site is open to provide pharmacy services. To qualify as continuous supervision, the pharmacist is not required to be physically present at the remote site and shall supervise electronically through the use of the following types of technology:

- (I) audio and video;

(II) still image capture; and

(III) store and forward.

(ii) Drugs shall be stored in compliance with the provisions of §291.15 and §291.33(f)(2) of this title including the requirements for temperature and handling of outdated drugs.

(iii) Drugs for use in the telepharmacy system at a remote healthcare site shall be stored in an area that is:

(I) separate from any other drugs used by the healthcare facility; and

(II) locked by key, combination or other mechanical or electronic means, so as to prohibit access by unauthorized personnel.

(iv) Drugs for use in the telepharmacy system at a remote dispensing site shall be stored in an area that is locked by key, combination, or other mechanical or electronic means, so as to prohibit access by unauthorized personnel.

(v) Access to the area where drugs are stored at the remote site and operation of the telepharmacy system shall be limited to:

(I) pharmacists employed by the provider pharmacy;

(II) licensed healthcare providers, if the remote site is a remote healthcare site; and

(III) pharmacy technicians;

(vi) Individuals authorized to access the remote site and operate the telepharmacy system shall:

(I) be designated in writing by the pharmacist-in-charge; and

(II) have completed documented training concerning their duties associated with the telepharmacy pharmacy system.

(vii) Remote sites shall have adequate security and procedures to:

(I) comply with federal and state laws and regulations; and

(II) maintain patient confidentiality.

(D) Prescription dispensing and delivery.

(i) A pharmacist at the provider pharmacy shall conduct a drug regimen review as specified in §291.33(c) of this title prior to delivery of the dispensed prescription to the patient or patient's agent.

(ii) The dispensed prescription shall be labeled at the remote site with the information specified in §291.33(c) of this title.

(iii) A pharmacist at the provider pharmacy shall perform the final check of the dispensed prescription before delivery to the patient to ensure that the prescription has been dispensed accurately as prescribed. This final check shall be accomplished through a visual check using electronic methods.

(iv) A pharmacist at the provider pharmacy shall counsel the patient or patient's agent as specified in §291.33(c) of this title. This counseling may be performed using electronic methods. Non-pharmacist personnel may not ask questions of a patient or patient's agent which are intended to screen and/or limit interaction with the pharmacist.

(v) If the remote site has direct access to the provider pharmacy's data processing system, only a pharmacist or pharmacy technician may enter prescription information into the data processing system.

(vi) Drugs which require reconstitution through the addition of a specified amount of water may be dispensed by the remote site only if a pharmacy technician, pharmacy technician trainee, or licensed healthcare provider reconstitutes the product.

(vii) A telepharmacy system located at a remote dispensing site may not dispense a schedule II controlled substance.

(viii) Drugs dispensed at the remote site through a telepharmacy system shall only be delivered to the patient or patient's agent at the remote site.

(E) Quality assurance program. A pharmacy that provides remote pharmacy services through a telepharmacy system at a remote site shall operate according to a written program for quality assurance of the telepharmacy system which:

(i) requires continuous supervision of the telepharmacy system at all times the site is open to provide remote pharmacy services; and

(ii) establishes mechanisms and procedures to routinely test the operation of the telepharmacy system at a minimum of every six months and whenever any upgrade or change is made to the system and documents each such activity.

(F) Policies and procedures.

(i) A pharmacy that provides pharmacy services through a telepharmacy system at a remote site shall operate according to written policies and procedures. The policy and procedure manual shall include, but not be limited to, the following:

(I) a current list of the name and address of the pharmacist-in-charge and personnel designated by the pharmacist-in-charge to have:

(-a-) access to the area where drugs are stored at the remote site; and

(-b-) operate the telepharmacy system;

(II) duties which may only be performed by a pharmacist;

(III) if the remote site is located at a remote healthcare site, a copy of the written contact or agreement between the provider pharmacy and the healthcare facility which outlines the services to be provided and the responsibilities and accountabilities of each party in fulfilling the terms of the contract or agreement in compliance with federal and state laws and regulations;

(IV) date of last review/revision of policy and procedure manual; and

(V) policies and procedures for:

(-a-) security;

(-b-) operation of the telepharmacy system;

(-c-) sanitation;

(-d-) storage of drugs;

(-e-) dispensing;

(-f-) supervision;

(-g-) drug and/or device procurement;

(-h-) receiving of drugs and/or devices;

(-i-) delivery of drugs and/or devices; and

(-j-) recordkeeping.

(ii) A pharmacy that provides remote pharmacy services through a telepharmacy system at a remote site shall, at least annually, review its written policies and procedures, revise them if necessary, and document the review.

(iii) A pharmacy providing remote pharmacy services through a telepharmacy system shall maintain a written plan for recovery from an event which interrupts the ability of a pharmacist to electronically supervise the telepharmacy system and the dispensing of prescription drugs at the remote site. The written plan for recovery shall include:

(I) a statement that prescription drugs shall not be dispensed at the remote site, if a pharmacist is not able to electronically supervise the telepharmacy system and the dispensing of prescription drugs;

(II) procedures for response when a telepharmacy system is experiencing downtime; and

(III) procedures for the maintenance and testing of the written plan for recovery.

(6) Additional operational standards for remote dispensing sites.

(A) A pharmacist employed by a provider pharmacy shall make at least monthly on-site visits to a remote site. The remote site shall maintain documentation of the visit.

(B) A pharmacist employed by a provider pharmacy shall be physically present at a remote dispensing site when the pharmacist is providing services requiring the physical presence of the pharmacist, including immunizations.

(C) A remote dispensing site shall be staffed by an on-site pharmacy technician who is under the continuous supervision of a pharmacist employed by the provider pharmacy.

(D) All pharmacy technicians at a remote dispensing site shall be counted for the purpose of establishing the pharmacist-pharmacy technician ratio of the provider pharmacy which, notwithstanding Section 568.006 of the Act, may not exceed three pharmacy technicians for each pharmacist providing supervision.

(E) A pharmacy technician working at a remote dispensing site must:

(i) have worked at least one year at a retail pharmacy during the three years preceding the date the pharmacy technician begins working at the remote dispensing site; and

(ii) have completed a training program on the proper use of a telepharmacy system.

(F) A pharmacy technician at a remote dispensing site may not perform sterile or nonsterile compounding. However, a pharmacy technician may prepare commercially available medications for dispensing, including the reconstitution of orally administered powder antibiotics.

(7) Records.

(A) Maintenance of records.

(i) Every record required under this section must be:

(I) accessible by the provider pharmacy and be available, for at least two years for inspecting and copying by the board or its representative and to other authorized local, state, or federal law enforcement agencies; and

(II) supplied by the provider pharmacy within 72 hours, if requested by an authorized agent of the Texas State Board of Pharmacy. If the pharmacy maintains the records in an electronic format, the requested records must be provided in an electronic format if specifically requested by the board or its representative. Failure to provide the records set out in this section, either on site or within 72 hours, constitutes prima facie evidence of failure to keep and maintain records in violation of the Act.

(ii) The remote site shall maintain original prescription drug orders for medications dispensed from a remote site using a telepharmacy system in the manner required by §291.34(b) of this title and the provider pharmacy shall have electronic access to all prescription records.

(iii) If prescription drug records are maintained in a data processing system, the system shall have a workable (electronic) data retention system which can produce a separate audit trail of drug usage by the provider pharmacy and by each remote site for the preceding two years as specified in §291.34(e) of this title.

(B) Prescriptions. Prescription drug orders shall meet the requirements of §291.34(b) of this title.

(C) Patient medication records. Patient medication records shall be created and maintained at the remote site or provider pharmacy in the manner required by §291.34(c) of this title. If such records are maintained at the remote site, the provider pharmacy shall have electronic access to those records.

(D) Inventory.

(i) A provider pharmacy shall:

(I) keep a record of all drugs ordered and dispensed by a remote site separate from the records of the provider pharmacy and from any other remote site's records;

(II) keep a perpetual inventory of all controlled substances that are received and dispensed or distributed from each remote site. The perpetual inventory shall be reconciled, by a pharmacist employed by the provider pharmacy, at least monthly.

(ii) As specified in §291.17 of this title, a provider pharmacy shall conduct an inventory at each remote site. The following is applicable to this inventory.

(I) The inventory of each remote site and the provider pharmacy shall be taken on the same day.

(II) The inventory of each remote site shall be included with, but listed separately from, the drugs of other remote sites and separately from the drugs at the provider pharmacy.

(III) A copy of the inventory of the remote site shall be maintained at the remote site.

(d) Remote pharmacy services using automated dispensing and delivery systems.

(1) Purpose. The purpose of this section is to provide standards for the provision of pharmacy services by a Class A or Class C pharmacy in a facility that is not at the same location as the Class A or Class C pharmacy through an automated dispensing and delivery system.

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

(A) Automated dispensing and delivery system--A mechanical system that dispenses and delivers prescription drugs to patients at a remote delivery site and maintains related transaction information.

(B) Deliver or delivery--The actual, constructive, or attempted transfer of a prescription drug or device or controlled substance from one person to another, whether or not for a consideration.

(C) Dispense--Preparing, packaging, compounding, or labeling for delivery a prescription drug or device in the course of professional practice to an ultimate user or his agent by or pursuant to the lawful order of a practitioner.

(D) Provider pharmacy--The community pharmacy (Class A) or the institutional pharmacy (Class C) providing remote pharmacy services.

(E) Remote delivery site--A location at which remote pharmacy services are provided using an automated dispensing and delivery system.

(F) Remote pharmacy service--The provision of pharmacy services, including the dispensing and delivery of prescription drugs, in remote delivery sites.

(3) General requirements for a provider pharmacy to provide remote pharmacy services using an automated dispensing and delivery system to dispense and deliver a prescription that is verified by the provider pharmacy to a patient or patient's agent.

(A) The pharmacist-in-charge of the provider pharmacy is responsible for all pharmacy operations involving the automated dispensing and delivery system located at the remote delivery site including supervision of the automated dispensing and delivery system and compliance with this section.

(B) The patient or patient's agent shall receive counseling via a direct link to audio or video communication by a Texas licensed pharmacist who has access to the complete patient medication record (patient profile) maintained by the provider pharmacy prior to the release of any new prescription released from the system.

(C) A pharmacist shall be accessible at all times to respond to patients' or other health professionals' questions and needs pertaining to drugs delivered through the use of the automated dispensing and delivery system. Such access may be through a 24 hour pager service or telephone which is answered 24 hours a day.

(D) The patient or patient's agent shall be given the option whether to use the system.

(E) An electronic notice shall be provided to the patient or patient's agent at the remote delivery site with the following information:

(i) the name and address of the pharmacy that verified the prescription; and

(ii) a statement that a pharmacist is available 24 hours a day, 7 days a week through the use of telephonic communication.

(F) Drugs stored in the automated dispensing and distribution system shall be stored at proper temperatures, as defined in the USP/NF and §291.15 of this title.

(G) A provider pharmacy may only provide remote pharmacy services using an automated dispensing and delivery system to patients at a board-approved remote delivery site.

(H) A provider pharmacy may provide remote pharmacy services at more than one remote delivery site.

(I) Before providing remote pharmacy services, the automated dispensing and delivery system at the remote delivery site must be tested by the provider pharmacy and found to dispense and deliver accurately. The provider pharmacy shall make the results of such testing available to the board upon request.

(J) A provider pharmacy which is licensed as an institutional (Class C) pharmacy is required to comply with the provisions of §§291.31 - 291.34 of this title and this section.

(4) Operational standards.

(A) Application to provide remote pharmacy services using an automated dispensing and delivery system.

(i) A community (Class A) or institutional (Class C) pharmacy shall file a completed application containing all information required by the board to provide remote pharmacy services using an automated dispensing and delivery system.

(ii) Such application shall be resubmitted every two years in conjunction with the application for renewal of the provider pharmacy's license.

(iii) Upon approval of the application, the provider pharmacy will be sent a certificate which must be displayed at the provider pharmacy.

(B) Notification requirements.

(i) A provider pharmacy shall notify the board in writing within ten days of a discontinuance of service.

(ii) A provider pharmacy shall comply with appropriate controlled substance registrations for each remote delivery site if dispensed controlled substances are maintained within an automated dispensing and delivery system at the facility.

(iii) A provider pharmacy shall file an application for change of location and/or name of a remote delivery site as specified in §291.3 of this title.

(C) Environment/Security.

(i) A provider pharmacy shall only store prescription drugs at a remote delivery site within an automated dispensing and delivery system which is locked by key, combination or other mechanical or electronic means so as to prohibit access by unauthorized personnel.

(ii) Access to the automated dispensing and delivery system shall be limited to pharmacists and pharmacy technicians or pharmacy technician trainees under the direct supervision of a pharmacist who:

(I) are designated in writing by the pharmacist-in-charge; and

(II) have completed documented training concerning their duties associated with the automated dispensing and delivery system.

(iii) Drugs shall be stored in compliance with the provisions of §291.15 of this title and §291.33(c)(8) of this title, including the requirements for temperature and the return of undelivered medication to stock.

(iv) the automated dispensing and delivery system must have an adequate security system, including security camera(s), to prevent unauthorized access and to maintain patient confidentiality.

(D) Stocking an automated dispensing and delivery system. Stocking of prescription drugs in an automated dispensing and delivery system shall be completed under the supervision of a pharmacist.

(E) Quality assurance program. A pharmacy that provides pharmacy services through an automated dispensing and delivery system at a remote delivery site shall operate according to a written program for quality assurance of the automated dispensing and delivery system which:

(i) requires continuous supervision of the automated dispensing and delivery system; and

(ii) establishes mechanisms and procedures to routinely test the accuracy of the automated dispensing and delivery system at a minimum of every six months and whenever any upgrade or change is made to the system and documents each such activity.

(F) Policies and procedures of operation.

(i) A pharmacy that provides pharmacy services through an automated dispensing and delivery system at a remote delivery site shall operate according to written policies and procedures. The policy and procedure manual shall include, but not be limited to, the following:

(I) a current list of the names and addresses of the pharmacist-in-charge and all personnel designated by the pharmacist-in-charge to have access to the prescription drugs stored in the automated dispensing and delivery system;

(II) duties which may only be performed by a pharmacist;

(III) a copy of the portion of the written contract or lease agreement between the pharmacy and the remote delivery site location which outlines the services to be provided and the responsibilities and accountabilities of each party relating to the operation of the automated dispensing and delivery system in fulfilling the terms of the contract in compliance with federal and state laws and regulations;

(IV) date of last review/revision of the policy and procedure manual; and

(V) policies and procedures for:

(-a-) security;

(-b-) operation of the automated dispensing and delivery system;

(-c-) preventative maintenance of the automated dispensing and delivery system;

(-d-) sanitation;

(-e-) storage of prescription drugs;

(-f-) supervision;

(-g-) delivery of prescription drugs; and

(-h-) recordkeeping.

(ii) A pharmacy that provides pharmacy services through an automated dispensing and delivery system at a remote delivery site shall, at least annually, review its written policies and procedures, revise them if necessary, and document the review.

(iii) A pharmacy providing remote pharmacy services using an automated dispensing and delivery system shall maintain a written plan for recovery from an event which interrupts the ability of the automated dispensing and delivery system to dispense and deliver prescription drugs. The written plan for recovery shall include:

(I) planning and preparation for maintaining pharmacy services when an automated dispensing and delivery system is experiencing downtime;

(II) procedures for response when an automated dispensing and delivery system is experiencing downtime; and

(III) procedures for the maintenance and testing of the written plan for recovery.

(5) Records.

(A) Maintenance of records.

(i) Every record required under this section must be:

(I) kept by the provider pharmacy and be available, for at least two years for inspecting and copying by the board or its representative and to other authorized local, state, or federal law enforcement agencies; and

(II) supplied by the provider pharmacy within 72 hours, if requested by an authorized agent of the Texas State Board of Pharmacy. If the pharmacy maintains the records in an electronic format, the requested records must be provided in an electronic format if specifically requested by the board or its representative. Failure to provide the records set out in this section, either on site or within 72 hours, constitutes prima facie evidence of failure to keep and maintain records in violation of the Act.

(ii) The provider pharmacy shall have a workable (electronic) data retention system which can produce a separate audit trail of drug delivery and retrieval transactions at each remote delivery site for the preceding two years.

(B) Transaction information.

(i) The automated dispensing and delivery system shall electronically record all transactions involving drugs stored in, removed, or delivered from the system.

(ii) Records of delivery from an automated dispensing and delivery system for a patient shall be maintained by the provider pharmacy and include the:

(I) identity of the system accessed;

(II) identification of the individual accessing the system;

(III) date of transaction;

(IV) prescription number, drug name, strength, dosage form;

(V) number of prescriptions retrieved;

(VI) name of the patient for whom the prescription was retrieved;

(VII) name of prescribing practitioner; and

(VIII) name of pharmacist responsible for consultation with the patient, if required, and documentation that the consultation was performed.

(iii) Records of stocking or removal from an automated dispensing and delivery system shall be maintained by the pharmacy and include the:

(I) count of bulk prescription drugs stored or removed;

(II) number of dispensed prescription packages removed;

(III) name, initials, or identification code of the person stocking or removing prescription drugs from the system; and

(IV) name, initials, or identification code of the pharmacist who checks and verifies that the system has been accurately filled.

(C) The pharmacy shall make the automated dispensing and delivery system and any records of the system, including testing records, available for inspection by the board.

(D) The automated dispensing and delivery system records a digital image of the individual accessing the system to pick-up a prescription and such record is maintained by the pharmacy for two years.

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

Filed with the Office of the Secretary of State on March 3, 2023.

TRD-202300986

Julie Spier, R.Ph.

President

Texas State Board of Pharmacy

Earliest possible date of adoption: April 16, 2023

For further information, please call: (512) 305-8026



CHAPTER 295. PHARMACISTS

22 TAC §295.8

The Texas State Board of Pharmacy proposes amendments to §295.8, concerning Continuing Education Requirements. The amendments, if adopted, clarify the requirements for obtaining continuing education in approved procedures of prescribing and monitoring controlled substances and correct grammatical errors.

Julie Spier, R.Ph., President, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Ms. Spier has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be clear and grammatically correct regulations. There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

For each year of the first five years the proposed amendments will be in effect, Ms. Spier has determined the following:

- (1) The proposed amendments do not create or eliminate a government program;
- (2) Implementation of the proposed amendments does not require the creation of new employee positions or the elimination of existing employee positions;
- (3) Implementation of the proposed amendments does not require an increase or decrease in the future legislative appropriations to the agency;
- (4) The proposed amendments do not require an increase or decrease in fees paid to the agency;

(5) The proposed amendments do not create a new regulation;

(6) The proposed amendments do not limit or expand an existing regulation;

(7) The proposed amendments do not increase or decrease the number of individuals subject to the rule's applicability; and

(8) The proposed amendments do not positively or adversely affect this state's economy.

Written comments on the amendments may be submitted to Eamon D. Briggs, Deputy General Counsel, Texas State Board of Pharmacy, 1801 Congress Avenue, Suite 13.100, Austin, Texas, 78701-1319, FAX (512) 305-8061. Comments must be received by 5:00 p.m., April 21, 2023.

The amendments are proposed under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§295.8. *Change of Employment.*

(a) Authority and purpose.

(1) Authority. In accordance with §559.053 of the Texas Pharmacy Act, (Chapters 551 - 569, Occupations Code), all pharmacists must complete and report 30 contact hours (3.0 CEUs) of approved continuing education obtained during the previous license period in order to renew their license to practice pharmacy.

(2) Purpose. The board recognizes that the fundamental purpose of continuing education is to maintain and enhance the professional competency of pharmacists licensed to practice in Texas, for the protection of the health and welfare of the citizens of Texas.

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

(1) ACPE--Accreditation Council for Pharmacy Education.

(2) Act--The Texas Pharmacy Act, Chapters 551 - 569, Occupations Code.

(3) Approved programs--Live programs, home study, and other mediated instruction delivered by an approved provider or a program specified by the board and listed as an approved program in subsection (e) of this section.

(4) Approved provider--An individual, institution, organization, association, corporation, or agency that is approved by the board.

(5) Board--The Texas State Board of Pharmacy.

(6) Certificate of completion--A certificate or other official document presented to a participant upon the successful completion of an approved continuing education program.

(7) Contact hour--A unit of measure of educational credit which is equivalent to approximately 60 minutes of participation in an organized learning experience.

(8) Continuing education unit (CEU)--A unit of measure of education credit which is equivalent to 10 contact hours (i.e., one CEU = 10 contact hours).

(9) CPE Monitor--A collaborative service from the National Association of Boards of Pharmacy and ACPE that provides an electronic system for pharmacists to track their completed CPE credits.

(10) Credit hour--A unit of measurement for continuing education equal to 15 contact hours.

(11) Enduring Materials (Home Study)--Activities that are printed, recorded, or computer assisted instructional materials that do not provide for direct interaction between faculty and participants.

(12) Initial license period--The time period between the date of issuance of a pharmacist's license and the next expiration date following the initial 30 day expiration date. This time period ranges from eighteen to thirty months depending upon the birth month of the licensee.

(13) License period--The time period between consecutive expiration dates of a license.

(14) Live programs--Activities that provide for direct interaction between faculty and participants and may include lectures, symposia, live teleconferences, workshops, etc.

(15) Standardized pharmacy examination--The North American Pharmacy Licensing Examination (NAPLEX).

(c) Methods for obtaining continuing education. A pharmacist may satisfy the continuing education requirements by either:

(1) successfully completing the number of continuing education hours necessary to renew a license as specified in subsection (a)(1) of this section;

(2) successfully completing during the preceding license period, one credit hour for each year of their license period, which is a part of the professional degree program in a college of pharmacy the professional degree program of which has been accredited by ACPE; or

(3) taking and passing the standardized pharmacy examination (NAPLEX) during the preceding license period as a Texas licensed pharmacist, which shall be equivalent to the number of continuing education hours necessary to renew a license as specified in subsection (a)(1) of this section.

(d) Reporting Requirements.

(1) Renewal of a pharmacist license. To renew a license to practice pharmacy, a pharmacist must report on the renewal application completion of at least thirty contact hours (3.0 CEUs) of continuing education. The following is applicable to the reporting of continuing education contact hours:

(A) at least one contact hour (0.1 CEU) specified in paragraph (1) of this subsection shall be related to Texas pharmacy laws or rules;

(B) for renewals received after August 31, 2021 and before September 1, 2023, at least one contact hour (0.1 CEU) annually, for a total of two contact hours (0.2 CEU) specified in paragraph (1) of this subsection, shall be related to best practices, alternative treatment options, and multi-modal approaches to pain management as specified in §481.0764 of the Texas Health and Safety Code;

(C) not later than the first anniversary of becoming licensed to practice pharmacy, a pharmacist must have completed at least two contact hours (0.2 CEU) specified in paragraph (1) of this subsection

[shall be] related to approved procedures of prescribing and monitoring controlled substances as specified in §481.07635 of the Texas Health and Safety Code [and obtained by September 1, 2021, and must be reported on the next renewal after September 1, 2021];

(D) for renewals received after August 31, 2021 and before September 1, 2023, at least one contact hour (0.1 CEU) specified in paragraph (1) of this subsection shall be related to mental health awareness;

(E) any continuing education requirements which are imposed upon a pharmacist as a part of a board order or agreed board order shall be in addition to the requirements of this section; and

(F) a pharmacist must have completed the human trafficking prevention course required in §116.002 of the Texas Occupations Code.

(2) Failure to report completion of required continuing education. The following is applicable if a pharmacist fails to report completion of the required continuing education:

(A) the license of a pharmacist who fails to report completion of the required number of continuing education contact hours shall not be renewed and the pharmacist shall not be issued a renewal certificate for the license period until such time as the pharmacist successfully completes the required continuing education and reports the completion to the board; and

(B) a pharmacist who practices pharmacy without a current renewal certificate is subject to all penalties of practicing pharmacy without a license, including the delinquent fees specified in the Act, §559.003.

(3) Extension of time for reporting. A pharmacist who has had a physical disability, illness, or other extenuating circumstances which prohibits the pharmacist from obtaining continuing education credit during the preceding license period may be granted an extension of time to complete the continuing [continued] education requirement. The following is applicable for this extension:

(A) the pharmacist shall submit a petition to the board with his/her license renewal application which contains:

(i) the name, address, and license number of the pharmacist;

(ii) a statement of the reason for the request for extension;

(iii) if the reason for the request for extension is health related, a statement from the attending physician(s) treating the pharmacist which includes the nature of the physical disability or illness and the dates the pharmacist was incapacitated; and

(iv) if the reason for the request for the extension is for other extenuating circumstances, a detailed explanation of the extenuating circumstances, and if because of military deployment, documentation of the dates of the deployment;

(B) after review and approval of the petition, a pharmacist may be granted an extension of time to comply with the continuing education requirement which shall not exceed one license renewal period;

(C) an extension of time to complete continuing education credit does not relieve a pharmacist from the continuing education requirement during the current license period; and

(D) if a petition for extension to the reporting period for continuing education is denied, the pharmacist shall:

(i) have 60 days to complete and report completion of the required continuing education requirements; and

(ii) be subject to the requirements of paragraph (2) of this subsection relating to failure to report completion of the required continuing education if the required continuing education is not completed and reported within the required 60-day time period.

(4) Exemptions from reporting requirements.

(A) All pharmacists licensed in Texas shall be exempt from the continuing education requirements in paragraph (1) of this subsection during their initial license period, with the exception of the requirements in paragraph (1)(B), (C), and (F) of this subsection which must be completed during the time periods specified in the subparagraphs.

(B) Pharmacists who are not actively practicing pharmacy shall be granted an exemption to the reporting requirements for continuing education, provided the pharmacists submit a completed renewal application for each license period which states that they are not practicing pharmacy. Upon submission of the completed renewal application, the pharmacist shall be issued a renewal certificate which states that pharmacist is inactive. Pharmacists who wish to return to the practice of pharmacy after being exempted from the continuing education requirements as specified in this subparagraph must:

(i) notify the board of their intent to actively practice pharmacy;

(ii) pay the fee as specified in §295.9 of this title (relating to Inactive License); and

(iii) provide copies of completion certificates from approved continuing education programs as specified in subsection (e) of this section for 30 contact hours (3.0 CEUs). Approved continuing education earned within two years prior to the licensee applying for the return to active status may be applied toward the continuing education requirement for reactivation of the license but may not be counted toward subsequent renewal of the license.

(e) Approved Programs.

(1) Any program presented by an ACPE approved provider subject to the following conditions:

(A) pharmacists may receive credit for the completion of the same ACPE course only once during a license period;

(B) pharmacists who present approved ACPE continuing education programs may receive credit for the time expended during the actual presentation of the program. Pharmacists may receive credit for the same presentation only once during a license period; and

(C) proof of completion of an ACPE course shall contain the following information:

(i) name of the participant;

(ii) title and completion date of the program;

(iii) name of the approved provider sponsoring or cosponsoring the program;

(iv) number of contact hours and/or CEUs awarded;

(v) the assigned ACPE universal program number and a "P" designation indicating that the CE is targeted to pharmacists; and

(vi) either:

(I) a dated certifying signature of the approved provider and the official ACPE logo; or

(II) the CPE Monitor logo.

(2) Courses which are part of a professional degree program or an advanced pharmacy degree program offered by a college of pharmacy which has a professional degree program accredited by ACPE.

(A) Pharmacists may receive credit for the completion of the same course only once during a license period. A course is equivalent to one credit hour for each year of the renewal period.

(B) Pharmacists who teach these courses may receive credit towards their continuing education, but such credit may be received only once for teaching the same course during a license period.

(3) Basic cardiopulmonary resuscitation (CPR) courses which lead to CPR certification by the American Red Cross or the American Heart Association or its equivalent shall be recognized as approved programs. Pharmacists may receive credit for one contact hour (0.1 CEU) towards their continuing education requirement for completion of a CPR course only once during a license period. Proof of completion of a CPR course shall be the certificate issued by the American Red Cross or the American Heart Association or its equivalent.

(4) Advanced cardiovascular life support courses (ACLS) or pediatric advanced life support (PALS) courses which lead to initial ACLS or PALS certification by the American Heart Association or its equivalent shall be recognized as approved programs. Pharmacists may receive credit for twelve contact hours (1.2 CEUs) towards their continuing education requirement for completion of an ACLS or PALS course only once during a license period. Proof of completion of an ACLS or PALS course shall be the certificate issued by the American Heart Association or its equivalent.

(5) Advanced cardiovascular life support courses (ACLS) or pediatric advanced life support (PALS) courses which lead to ACLS or PALS recertification by the American Heart Association or its equivalent shall be recognized as approved programs. Pharmacists may receive credit for four contact hours (0.4 CEUs) towards their continuing education requirement for completion of an ACLS or PALS recertification course only once during a license period. Proof of completion of an ACLS or PALS recertification course shall be the certificate issued by the American Heart Association or its equivalent.

(6) Attendance at Texas State Board of Pharmacy Board Meetings shall be recognized for continuing education credit as follows:

(A) pharmacists shall receive credit for three contact hours (0.3 CEUs) towards their continuing education requirement for attending a full, public board business meeting in its entirety;

(B) a maximum of six contact hours (0.6 CEUs) are allowed for attendance at a board meeting during a license period; and

(C) proof of attendance for a complete board meeting shall be a certificate issued by the Texas State Board of Pharmacy.

(7) Participation in a Texas State Board of Pharmacy appointed Task Force shall be recognized for continuing education credit as follows:

(A) pharmacists shall receive credit for three contact hours (0.3 CEUs) towards their continuing education requirement for participating in a Texas State Board of Pharmacy appointed Task Force; and

(B) proof of participation for a Task Force shall be a certificate issued by the Texas State Board of Pharmacy.

(8) Attendance at programs presented by the Texas State Board of Pharmacy or courses offered by the Texas State Board of Pharmacy as follows:

(A) pharmacists shall receive credit for the number of hours for the program or course as stated by the Texas State Board of Pharmacy; and

(B) proof of attendance at a program presented by the Texas State Board of Pharmacy or completion of a course offered by the Texas State Board of Pharmacy shall be a certificate issued by the Texas State Board of Pharmacy.

(9) Pharmacists shall receive credit toward their continuing education requirements for programs or courses approved by other state boards of pharmacy as follows:

(A) pharmacists shall receive credit for the number of hours for the program or course as specified by the other state board of pharmacy; and

(B) proof of attendance at a program or course approved by another state board of pharmacy shall be a certificate or other documentation that indicates:

(i) name of the participant;

(ii) title and completion date of the program;

(iii) name of the approved provider sponsoring or cosponsoring the program;

(iv) number of contact hours and/or CEUs awarded;

(v) a dated certifying signature of the provider; and

(vi) documentation that the program is approved by the other state board of pharmacy.

(10) Completion of an Institute for Safe Medication Practices' (ISMP) Medication Safety Self Assessment for hospital pharmacies or for community/ambulatory pharmacies shall be recognized for continuing education credit as follows:

(A) pharmacists shall receive credit for three contact hours (0.3 CEUs) towards their continuing education requirement for completion of an ISMP Medication Safety Self Assessment; and

(B) proof of completion of an ISMP Medication Safety Self Assessment shall be:

(i) a continuing education certificate provided by an ACPE approved provider for completion of an assessment; or

(ii) a document from ISMP showing completion of an assessment.

(11) Pharmacists [Pharmacist] shall receive credit for three contact hours (0.3 CEUs) toward their continuing education requirements for taking and successfully passing an initial Board of Pharmaceutical Specialties certification examination administered by the Board of Pharmaceutical Specialties. Proof of successfully passing the examination shall be a certificate issued by the Board of Pharmaceutical Specialties.

(12) Programs approved by the American Medical Association (AMA) as Category 1 Continuing Medical Education (CME) and accredited by the Accreditation Council for Continuing Medical Education subject to the following conditions:

(A) pharmacists may receive credit for the completion of the same CME course only once during a license period;

(B) pharmacists who present approved CME programs may receive credit for the time expended during the actual presentation of the program. Pharmacists may receive credit for the same presentation only once during a license period; and

(C) proof of completion of a CME course shall contain the following information:

(i) name of the participant;

(ii) title and completion date of the program;

(iii) name of the approved provider sponsoring or cosponsoring the program;

(iv) number of contact hours and/or CEUs awarded; and

(v) a dated certifying signature of the approved provider.

(f) Retention of continuing education records and audit of records by the board.

(1) Retention of records. Pharmacists are required to maintain certificates of completion of approved continuing education for three years from the date of reporting the contact hours on a license renewal application. Such records may be maintained in hard copy or electronic format.

(2) Audit of records by the board. The board shall audit the records of pharmacists for verification of reported continuing education credit. The following is applicable for such audits:

(A) upon written request, a pharmacist shall provide to the board documentation of proof for all continuing education contact hours reported during a specified license period(s). Failure to provide all requested records during the specified time period constitutes prima facie evidence of failure to keep and maintain records and shall subject the pharmacist to disciplinary action by the board;

(B) credit for continuing education contact hours shall only be allowed for approved programs for which the pharmacist submits documentation of proof reflecting that the hours were completed during the specified license period(s). Any other reported hours shall be disallowed. A pharmacist who has received credit for continuing education contact hours disallowed during an audit shall be subject to disciplinary action; and

(C) a pharmacist who submits false or fraudulent records to the board shall be subject to disciplinary action by the board.

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

Filed with the Office of the Secretary of State on March 3, 2023.

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Julie Spier, R.Ph.

President

Texas State Board of Pharmacy

Earliest possible date of adoption: April 16, 2023

For further information, please call: (512) 305-8026



PART 39. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS

CHAPTER 851. TEXAS BOARD OF
PROFESSIONAL GEOSCIENTISTS LICENSING
AND ENFORCEMENT RULES
SUBCHAPTER A. DEFINITIONS
22 TAC §851.10

The Texas Board of Professional Geoscientists (TBPG) proposes an amendment concerning the licensure and regulation of Professional Geoscientists in Texas. The TBPG proposes amendments to 22 Texas Administrative Code (TAC) §851.10 regarding Definitions.

BACKGROUND, PURPOSE, AND SUMMARY OF CHANGES

The TBPG recently received public comment asking for the Board to clarify its rules on digital signatures. Upon review, the Board determined it necessary to include provisions in the rules defining and allowing the use of digital signatures for licensees to satisfy the signature requirements of electronic geoscience documents.

The proposed amendment to 22 TAC §851.10 will add sub-section (16) and the term "Digital Signature" and will include a definition of the term.

The proposed amendment to 22 TAC §851.10(16) - (42) will update the list with the addition of "Digital Signatures"

FISCAL NOTE - STATE AND LOCAL GOVERNMENT

Rene D. Truan, Executive Director of the TBPG, has determined that for each fiscal year of the first five years the rules are in effect these proposals have no foreseeable implications relating to cost or revenues of the state or of local governments caused by enforcing or administering the proposed rules.

PUBLIC BENEFIT AND COST

Mr. Truan has also determined that for each year of the first five years the section is in effect, the public will benefit from adoption of the section. The public benefit anticipated from enforcing or administering the sections includes making it less burdensome for licensees to satisfy the signature requirements for electronic geoscience documents by authorizing additional options through which they may sign an electronic geoscience document. Other benefits include ensuring that TBPG rules are clear and consistent as they relate to the signature requirements. There will be no anticipated economic cost to individuals who are required to comply with the proposed sections.

SMALL BUSINESS, MICRO-BUSINESS, LOCAL ECONOMY,
AND RURAL COMMUNITIES ECONOMIC IMPACT ANALYSIS

Mr. Truan has determined that the proposed rule will not have an adverse effect on small businesses, micro-businesses, local economy, or rural communities. Consequently, neither an economic impact statement, a local employment impact statement, nor a regulatory flexibility analysis is required under Texas Government Code §§ 2001.022, 2001.024(a)(6), or 2006.002.

COST TO REGULATED PERSONS (COST-IN/COST-OUT).

This rule proposal is not subject to Texas Government Code § 2001.0045, concerning increasing costs to regulated persons because, as described above in this notice, the proposed amendments do not impose a cost on regulated persons under Government Code §2001.024, including another state agency, a special district, or a local government.

GOVERNMENT GROWTH IMPACT STATEMENT

During the first five years that the rule would be in effect:

- (1) the proposed rules do not create or eliminate a government program;
- (2) implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions;
- (3) implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency;
- (4) the proposed rules do not require an increase or decrease in fees paid to the agency;
- (5) the proposed rules do not create a new regulation;
- (6) the proposed rules do not expand, limit, or repeal an existing regulation;
- (7) the proposed rules do not increase or decrease the number of individuals that are subject to the rules' applicability; and
- (8) the proposed rules do not positively or adversely affect this state's economy.

REGULATORY ANALYSIS OF MAJOR ENVIRONMENTAL RULES

Mr. Truan has determined that this proposal is not a "major environmental rule" as defined by Government Code §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. Although Professional Geoscientists and Registered Geoscience Firms play a key role in environmental protection for the state of Texas, this proposal is not specifically intended to protect the environment nor reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

Mr. Truan has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

PUBLIC COMMENT

Comments on the proposed amendment may be submitted in writing to Rene D. Truan, Executive Director, Texas Board of Professional Geoscientists, 1801 Congress Ave, Suite 7.800, Austin, Texas 78701 or by mail to P.O. Box 13225, Austin, Texas 78711 or by e-mail to rtruan@tbpg.texas.gov. Please indicate "Comments on Proposed Rules" in the subject line of all e-mails submitted. Please submit comments within 30 days following publication of the proposal in the *Texas Register*.

STATUTORY AUTHORITY

This section is proposed under the Texas Geoscience Practice Act (the Act), Texas Occupations Code §1002.151, which authorizes the Board to adopt and enforce all rules consistent with the Act as necessary for the performance of its duties and §1002.263, which authorizes the Board to require that a geoscientific report, as defined by the Board, include the signature of

the licensee who prepared or supervised the preparation of the report.

This section affects the Act, Texas Occupations Code §§1002.151 and 1002.263.

§851.10. *Definitions.*

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

(1) Act--Texas Occupations Code, Chapter 1002, cited as the Texas Geoscience Practice Act.

(2) Accredited institutions or programs--An institution or program which holds accreditation or candidacy status from an accreditation organization recognized by the Council for Higher Education Accreditation (CHEA) or other appropriate accrediting entity accepted by the Appointed Board.

(3) Address of record--In the case of an individual or Firm licensed, certified, or registered by the Texas Board of Professional Geoscientists (TBPG), the address which is filed by the licensee with the TBPG.

(4) Advertising or Advertisement--Any non-commercial or commercial message, including, but not limited, to verbal statements, bids, web pages, signage, provider listings, and paid advertisement that promotes geoscience services.

(5) Applicant--An individual making application for a Professional Geoscientist (P.G.) license or a Geoscientist-in-Training (GIT) certification or a firm and/or the Authorized Official of a Firm making application for a Geoscience Firm (Firm) registration.

(6) Application--The forms, information, attachments, and fees necessary to obtain a license as a Professional Geoscientist, the registration of a Firm, or a certification as a Geoscientist-in-Training (GIT).

(7) Appointed Board--Those persons who are appointed by the Governor and confirmed by the Senate and qualify for office who may deliberate, vote, and be counted as a member in attendance of the Texas Board of Professional Geoscientists.

(8) ASBOG®--Association of State Boards of Geology. ASBOG® serves as a connective link among the individual state geology regulatory boards for the planning and preparation of uniform procedures and the coordination of geologic protective measures for the general public. One of ASBOG®'s principal services is to develop standardized written examinations for determining qualifications of applicants seeking licensure as professional geologists. State boards of registration are provided with uniform examinations that are valid measures of competency related to the practice of the profession.

(9) Authorized Official of a Firm (AOF)--The individual designated by a Geoscience Firm to be responsible for submitting the application to TBPG for the initial registration of the Firm; ensuring that the Firm maintains compliance with the registration requirements; ensuring that the Firm renews its registration status for as long as the Firm offers or provides professional geoscience services; ensuring that the designated geoscientist is a currently licensed P.G.; and communicating with the TBPG regarding any matter.

(10) Board staff--The Executive Director and all other staff employed by the Texas Board of Professional Geoscientists (administrative, investigative, and other support staff, etc.).

(11) Cheating--Attempting to obtain, obtaining, providing, or using answers to examination questions by deceit, fraud, dishonesty, or deception.

(12) Complainant--Any individual who has submitted a complaint to the TBPG, as provided in this chapter.

(13) Complaint--An allegation or allegations of wrongful activity related to the practice or offering of professional geoscience services in Texas. A complaint is within the TBPG's jurisdiction if the complaint alleges a violation of statutes or rules applicable to the public practice of geoscience or the requirements of licensure of a Professional Geoscientist (P.G.) or registration by an individual, firm, or other legal entity.

(14) Council of Soil Scientist Examiners (CSSE)--The Council of Soil Science Examiners is a national organization that creates, scores and maintains examinations for State Soil Scientists regulatory programs. CSSE develops professional criteria to confirm that individuals meet and exceed minimum qualifications to practice the profession.

(15) Default--The failure of the Respondent to respond in writing to a notice or appear in person or by legal representative on the day and at the time set for hearing in a contested case or informal conference, or the failure to appear by telephone, e-mail, fax or other electronic media in accordance with the notice of hearing or notice of informal conference. Default results in the actions being taken that were described in the notice of the hearing for a contested case or informal conference in the event of a failure to appear.

(16) Digital Signature--A digital authentication attached to, or clearly associated with, an electronic document. A digital signature that meets the requirements of board rules carries the same weight, authority, and effects as an original signature.

(17) [(46)] Direct supervision--Critical watching, evaluating, and directing of geoscience activities with the authority to review, enforce, and control compliance with all geoscience criteria, specifications, and procedures as the work progresses. Direct supervision will consist of an acceptable combination of: exertion of significant control over the geoscience work, regular personal presence, reasonable geographic proximity to the location of the performance of the work, and an acceptable employment relationship with the supervised individual(s).

(18) [(47)] Discipline--One of three recognized courses of study under which an individual may qualify for a license as a Professional Geoscientist. Geoscience is comprised of the following disciplines: geology, geophysics, and soil science.

(19) [(48)] Executive Director--The individual appointed by the Appointed Board who shall be responsible for managing the day to day affairs of the board, in accordance with the Act.

(20) [(49)] Filed date--The date that the document has been received by the TBPG or, if the document has been mailed to the TBPG, the postmark date of the document.

(21) [(20)] Geology--The discipline of geoscience that addresses the science of the origin, composition, structure, and history of the Earth and its constituent soils, rocks, minerals, fossil fuels, solids, fluids and gases, and the study of the natural and introduced agents, forces, and processes that cause changes in and on the Earth, and is applied with judgment to develop ways to utilize, economically, those natural and introduced agents, forces, and processes for the benefit of mankind. There are many subdivisions of geology, which include, but are not limited to, the following: historical geology, physical geology, economic geology, mineralogy, paleontology, structural geology, mining geology, petroleum geology, physiography, geomorphology, geochemistry, hydrogeology, petrography, petrology, volcanology, stratigraphy, engineering geology, and environmental geology.

(22) [(21)] Geophysics--Refers to that science which involves the study of the physical Earth by means of measuring its natural and induced fields of force, and its responses to natural and induced energy or forces, the interpretation of these measurements, applied with judgment to benefit or protect the public.

(23) [(22)] Geoscience--The science of the Earth and its origin and history, the investigation of the Earth's environment and its constituent soils, rocks, minerals, fossil fuels, solids, and fluids, and the study of the natural and introduced agents, forces, and processes that cause changes in and on the Earth as applied with professional judgment to develop ways to utilize, those natural and introduced agents, forces, and processes for the benefit of the public.

(24) [(23)] Geoscience Firm (Firm)--A firm, corporation, or other business entity that engages in or offers to engage in the practice of professional geoscience before the public in the State of Texas and that is registered by the board to engage in the public practice of geoscience.

(25) [(24)] Geoscience services (also professional geoscience services, and professional geoscience)--Services that must be performed by or under the direct supervision of a Professional Geoscientist and that meet the definition of the practice of geoscience as defined in the Texas Occupations Code, §1002.002(3). A service shall be conclusively considered a professional geoscience service if it is delineated in that section; other services requiring a Professional Geoscientist by contract, or services where the adequate performance of that service requires a geoscience education, training, or experience in the application of special knowledge or judgment of the geological, geophysical or soil sciences to that service shall also be conclusively considered a professional geoscience service. These services may include consulting, investigating, evaluating, analyzing, planning, mapping, and inspecting geoscientific work, and the responsible supervision of those tasks.

(26) [(25)] License--The legal authority granted the holder to actively practice geoscience upon meeting the requirements as set out in the Act and this chapter.

(27) [(26)] License certificate--Any certificate issued by the TBPG showing that a license, registration, or certificate has been granted by the TBPG. A certificate is not valid unless it is accompanied by a card issued by the TBPG that shows the expiration date of the license, registration or certification.

(28) [(27)] License status--The status of a Professional Geoscientist license, Geoscience Firm registration, or GIT certification is one of the following:

(A) Current license--A license, registration, or certification that has not expired.

(B) Expired license--A Professional Geoscientist license that has been expired for less than three years and is therefore renewable, or a Geoscience Firm registration or GIT certification that has been expired for less than one year and is therefore renewable.

(C) Permanently expired license--A license, registration, or certification that is no longer renewable.

(29) [(28)] Licensee--An individual or other entity holding a current Professional Geoscientist license, GIT certificate, or Firm registration.

(30) [(29)] Meritless complaint--a complaint in which the allegations are unfounded or groundless (no legitimate basis for the allegation) or the allegations are unsubstantiated or unverified (no determination could be made as to whether there was any basis for the allegation).

(31) [(30)] Non-jurisdictional complaint--a complaint in which the TBPG has no jurisdiction over the alleged conduct.

(32) [(31)] Person--Any individual, firm, partnership, corporation, association, or other legal public or private entity, including a state agency or governmental subdivision.

(33) [(32)] Professional Geoscientist or P.G.--An individual who holds a license as a Professional Geoscientist issued by the TBPG.

(34) [(33)] Practice for the public--

(A) Providing professional geoscience services:

(i) For a governmental entity in Texas;

(ii) To comply with a rule established by the State of Texas or a political subdivision of the State of Texas; or

(iii) For the public or a firm or corporation in the State of Texas if the practitioner accepts ultimate liability for the work product; and

(B) Does not include services provided for the express use of a firm or corporation by an employee or consultant if the firm or corporation assumes the ultimate liability for the work product.

(35) [(34)] The Public--Any individual(s), client(s), business or public entities, or any member of the general population whose normal course of life might reasonably include an interaction of any sort with or be impacted by professional geoscience services.

(36) [(35)] Registered Firm--A firm that is currently registered with the TBPG.

(37) [(36)] Registrant--An individual whose sole-proprietorship is currently registered with the TBPG or a firm that is currently registered with the TBPG.

(38) [(37)] Respondent--Any individual or firm, licensed or unlicensed, who has been charged with violating any provision of the Act or a rule or order issued by the Appointed Board.

(39) [(38)] Responsible charge--The independent control and direction of geoscience services or the supervision of geoscience services by the use of initiative, skill, and independent judgment.

(40) [(39)] Rule or Board Rule--State agency rules adopted by the Appointed Board and as published in the Texas Administrative Code, Title 22, Part 39, Chapters 850 and 851.

(41) [(40)] Soil Science--Soil science means the science of soils, their classification, origin and history, the investigation and interpretation of physical, chemical, morphological, and biological characteristics of the soil including, among other things, their ability to produce vegetation and the fate and movement of physical, chemical, and biological contaminants.

(42) [(41)] Sole practitioner--An individual Professional Geoscientist who operates a geoscience business and who is in responsible charge of all geoscience work performed by or for the business.

(43) [(42)] TBPG--The Texas Board of Professional Geoscientists, as used in this chapter, is a reference to the whole or any part of the entity that is the Texas Board of Professional Geoscientists.

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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Rene Truan
Executive Director
Texas State Board of Professional Geoscientists
Earliest possible date of adoption: April 16, 2023
For further information, please call: (512) 936-4428



SUBCHAPTER B. P.G. LICENSING, FIRM REGISTRATION, AND GIT CERTIFICATION

22 TAC §851.43

The Texas Board of Professional Geoscientists (TBPG) proposes an amendment concerning the licensure and regulation of Professional Geoscientists in Texas. TBPG proposes amendments to 22 Texas Administrative Code (TAC) §851.43, regarding Geoscientist in Training (GIT) Certification Period and Renewal.

BACKGROUND, PURPOSE, AND SUMMARY OF CHANGES

The GIT certification is for individuals who have met the education requirements for licensure and wish to express their intent to become a Professional Geoscientist while they acquire five years of geoscience work experience.

The proposed amendment to 22 TAC §851.43(a) allows for a GIT certificate to be renewed indefinitely without requiring action by the Appointed Board when all other renewal requirements are met.

The proposed amendment to 22 TAC §851.43(a) removes the restriction that GIT certification renewals after the 8th year may only be granted at the discretion of the Appointed Board.

FISCAL NOTE - STATE AND LOCAL GOVERNMENT

Rene D. Truan, Executive Director of the TBPG, has determined that for each fiscal year of the first five years the rules are in effect these proposals have no foreseeable implications relating to cost or revenues of the state or of local governments caused by enforcing or administering the proposed rules.

PUBLIC BENEFIT AND COST

Mr. Truan has also determined that for each year of the first five years the section is in effect, the public will benefit from adoption of the section. The public benefit anticipated from enforcing or administering the section includes removing restrictions on the renewal of a GIT certification, ensuring geoscience services continue to be available to the public with minimal disruption. There will be no anticipated economic cost to individuals who are required to comply with the proposed sections.

SMALL BUSINESS, MICRO-BUSINESS, LOCAL ECONOMY, AND RURAL COMMUNITIES ECONOMIC IMPACT ANALYSIS

Mr. Truan has determined that the proposed rule will not have an adverse effect on small businesses, micro-businesses, local economy, or rural communities. Consequently, neither an economic impact statement, a local employment impact statement, nor a regulatory flexibility analysis is required under Texas Government Code §§ 2001.022, 2001.024(a)(6), or 2006.002.

COST TO REGULATED PERSONS (COST-IN/COST-OUT)

This rule proposal is not subject to Texas Government Code § 2001.0045, concerning increasing costs to regulated persons because, as described above in this notice, the proposed

amendments do not impose a cost on regulated persons under Government Code §2001.024, including another state agency, a special district, or a local government.

GOVERNMENT GROWTH IMPACT STATEMENT

During the first five years that the rule would be in effect:

- (1) the proposed rules do not create or eliminate a government program;
- (2) implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions;
- (3) implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency;
- (4) the proposed rules do not require an increase or decrease in fees paid to the agency;
- (5) the proposed rules do not create a new regulation;
- (6) the proposed rules do not expand or limit a regulation, but they do repeal an existing regulation that would require a GIT to wait for a future board meeting before being able to renew the GIT certificate after the 8th year;
- (7) the proposed rules do not increase or decrease the number of individuals that are subject to the rules' applicability; and
- (8) the proposed rules do not positively or adversely affect this state's economy.

REGULATORY ANALYSIS OF MAJOR ENVIRONMENTAL RULES

Mr. Truan has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. Although Professional Geoscientists and Registered Geoscience Firms play a key role in environmental protection for the state of Texas, this proposal is not specifically intended to protect the environment nor reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

Mr. Truan has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

PUBLIC COMMENT

Comments on the proposed amendment may be submitted in writing to Rene D. Truan, Executive Director, Texas Board of Professional Geoscientists, 1801 Congress, Suite 7.800, Austin, Texas 78701 or by mail to P.O. Box 13225, Austin, Texas 78711 or by e-mail to rtruan@tbpg.texas.gov. Please indicate "Comments on Proposed Rules" in the subject line of all e-mails submitted. Please submit comments within 30 days following publication of the proposal in the *Texas Register*.

STATUTORY AUTHORITY

This section is proposed under the Texas Geoscience Practice Act (the Act), Texas Occupations Code §1002.151, which authorizes the Board to adopt and enforce all rules consistent with the Act as necessary for the performance of its duties and §1002.352, which authorizes the Board to establish by rule criteria for a Geoscientist in Training.

This section affects the Act, Texas Occupations Code §§1002.151 and 1002.352.

§851.43. GIT Certification Period and Renewal.

(a) An initial GIT certification is valid for one year and may be renewed annually [for a period of up to eight years. Renewals after the eighth year of certification will be granted at the discretion of the Appointed Board].

(b) A GIT certificate expires at the end of the month one year from the date of issuance, and can be renewed annually if the individual:

(1) Submits a GIT Certification Renewal Application (Form J) and pays the fee established by the Appointed Board;

(2) Accumulates eight or more Professional Development Hours (PDH) as described in §851.32 of this chapter throughout the prior certification year to include one hour of ethics training; and

(3) Remains in good standing with the TBPG.

(c) A GIT is exempt from the continuing education requirement during the first renewal period. The continuing education requirement must be met in subsequent renewals.

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 March 3, 2023.

TRD-202300992

Rene Truan

Executive Director

Texas Board of Professional Geoscientists

Earliest possible date of adoption: April 16, 2023

For further information, please call: (512) 936-4428



SUBCHAPTER D. COMPLIANCE AND ENFORCEMENT

22 TAC §851.156

The Texas Board of Professional Geoscientists (TBPG) proposes an amendment concerning the licensure and regulation of Professional Geoscientists in Texas. The TBPG proposes amendments to 22 Texas Administrative Code (TAC) §851.156 regarding Professional Geoscientists Seals and Geoscience Firm Identification.

BACKGROUND, PURPOSE, AND SUMMARY OF CHANGES

The TBPG recently received public comment asking for the Board to clarify its rules on digital signatures. Upon review, the Board determined it necessary to include provisions in the rules defining and allowing licensees to use digital signatures to satisfy the signature requirements for electronic geoscience documents.

The proposed amendment in 22 TAC §851.156(b) replaces the term "Computer" with "Electronically or digitally" to be more precise and consistent throughout the rules.

The proposed amendment to 22 TAC §851.156(f) adds "to seal a paper document" to clarify that the section is referring to a physical document.

The proposed amendment to 22 TAC §851.156(g) and (g)(1) adds "or digital seal and digital signature" to include the use of digital seals and digital signatures.

The proposed amendment to 22 TAC §851.156(g)(1) adds a new subparagraph (C), which includes the requirements a digital signature must meet the listed requirements to be acceptable to the Board.

The proposed amendment to 22 TAC §851.156(g)(2)(B) would add "an acceptable" and "physical" to better clarify that this is an acceptable method of using a physical seal and physical signature to seal and sign an electronic document.

The proposed amendment to 22 TAC §851.156(g)(2), (g)(2)(A), and (i) replaces the words "an electronically" with "a computer" for consistency and clarity.

The proposed amendment to 22 TAC §851.156(g)(2) adds a new subparagraph (C), which includes a graphic depicting an example of an acceptable digital signature.

The proposed amendment to 22 TAC §851.156(i) adds "digital signature" to the list of acceptable methods.

FISCAL NOTE - STATE AND LOCAL GOVERNMENT

Rene D. Truan, Executive Director of the TBPG, has determined that for each fiscal year of the first five years the rules are in effect these proposals have no foreseeable implications relating to cost or revenues of the state or of local governments caused by enforcing or administering the proposed rules.

PUBLIC BENEFIT AND COST

Mr. Truan has also determined that for each year of the first five years the section is in effect, the public will benefit from adoption of the section. The public benefit anticipated from enforcing or administering the sections includes making it less burdensome for licensees to satisfy the signature requirements for electronic geoscience documents by authorizing additional options through which they may sign an electronic geoscience document. Other benefits include ensuring that TBPG rules are clear and consistent as they relate to the signature requirements. There will be no anticipated economic cost to individuals who are required to comply with the proposed sections.

SMALL BUSINESS, MICRO-BUSINESS, LOCAL ECONOMY, AND RURAL COMMUNITIES ECONOMIC IMPACT ANALYSIS

Mr. Truan has determined that the proposed rule will not have an adverse effect on small businesses, micro-businesses, local economy, or rural communities. Consequently, neither an economic impact statement, a local employment impact statement, nor a regulatory flexibility analysis is required under Texas Government Code §§ 2001.022, 2001.024(a)(6), or 2006.002.

COST TO REGULATED PERSONS (COST-IN/COST-OUT).

This rule proposal is not subject to Texas Government Code § 2001.0045, concerning increasing costs to regulated persons because, as described above in this notice, the proposed amendments do not impose a cost on regulated persons under

Government Code §2001.024, including another state agency, a special district, or a local government.

GOVERNMENT GROWTH IMPACT STATEMENT

During the first five years that the rule would be in effect:

- (1) the proposed rules do not create or eliminate a government program;
- (2) implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions;
- (3) implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency;
- (4) the proposed rules do not require an increase or decrease in fees paid to the agency;
- (5) the proposed rules do not create a new regulation;
- (6) the proposed rules do not expand, limit, or repeal an existing regulation;
- (7) the proposed rules do not increase or decrease the number of individuals that are subject to the rules' applicability; and
- (8) the proposed rules do not positively or adversely affect this state's economy.

REGULATORY ANALYSIS OF MAJOR ENVIRONMENTAL RULES

Mr. Truan has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. Although Professional Geoscientists and Registered Geoscience Firms play a key role in environmental protection for the state of Texas, this proposal is not specifically intended to protect the environment nor reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

Mr. Truan has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

PUBLIC COMMENT

Comments on the proposed amendment may be submitted in writing to Rene D. Truan, Executive Director, Texas Board of Professional Geoscientists, 1801 Congress Ave., Suite 7.800, Austin, Texas 78701 or by mail to P.O. Box 13225, Austin, Texas 78711 or by e-mail to rtruan@tbpg.texas.gov. Please indicate "Comments on Proposed Rules" in the subject line of all e-mails submitted. Please submit comments within 30 days following publication of the proposal in the *Texas Register*.

STATUTORY AUTHORITY

This section is proposed under the Texas Geoscience Practice Act (the Act), Texas Occupations Code §1002.151, which authorizes the Board to adopt and enforce all rules consistent

with the Act as necessary for the performance of its duties and §1002.263, which authorizes the Board to require that a geoscientific report, as defined by the Board, include the signature of the licensee who prepared or supervised the preparation of the report.

This section affects the Act, Texas Occupations Code §§1002.151 and 1002.263.

§851.156. Professional Geoscientists Seals and Geoscience Firm Identification.

(a) The purpose of the Professional Geoscientist's seal is to show that professional geoscience services were performed by a qualified licensed Professional Geoscientist and to identify the Professional Geoscientist who performed the geoscience services.

(b) The Professional Geoscientist seal shall be of the design shown in this subsection. Physical seals of two different sizes will be acceptable: a pocket seal (the size commercially designated as 1-5/8-inch seal) or desk seal (commercially designated as a two-inch seal). Electronically or digitally [Computer]-applied seals may be of a reduced size provided that the Professional Geoscientist's full name and license number are clearly legible. The Professional Geoscientist's name on the seal shall be the same name on the license certificate issued by the TBPG.

Figure: 22 TAC §851.156(b) (No change.)

(c) A Professional Geoscientist shall seal only documents that contain geoscience services performed by or under the Professional Geoscientist's direct supervision. Upon sealing, the Professional Geoscientist takes full professional responsibility for geoscience services that are provided through the sealed document.

(d) It shall be misconduct to knowingly sign or seal any geoscience document if its use or implementation may endanger the public health, safety, and welfare.

(e) It shall be unlawful for a license holder whose license has been revoked, suspended, or has expired to sign or affix a seal on any document.

(f) All seals utilized by a license holder to seal a paper document shall be capable of leaving a permanent ink or impression on the document.

(g) Electronically conveyed geoscience documents requiring a seal must contain an electronic seal and electronic signature or digital seal and digital signature. Such seals should conform to the design requirements set forth in this section.

(1) A Professional Geoscientist must employ reasonable security measures to make the document unalterable. The Professional Geoscientist shall maintain the security of his/her electronic seal and electronic signature, or digital seal and digital signature. The following methods are allowed:

(A) The Professional Geoscientist may electronically copy the original hard copy of the document that bears his/her seal, original signature, and date and transmit this document in a secure electronic format.

(B) The Professional Geoscientist may create an electronic seal and electronic signature for use in transmitting geoscientific documents by making a secure electronic graphic of the Professional Geoscientist's original seal and signature.

(C) A digital signature, as defined in 22 TAC §851.10, which can be generated by using either public key infrastructure or signature dynamics technology, must be: unique to the person using it, capable of verification, under the sole control of the person using it,

and linked to a document in such a manner that the digital signature is invalidated if any data in the document is changed and/or deleted.

(2) The use of a computer [an electronically]-generated signature is not allowed by changing the word processing font from a "normal text" to a signature/handwriting font.

(A) Shown below is a sample of an unauthorized signature consisting of a computer [electronically]-generated signature using the Lucida Handwriting font.

Figure: 22 TAC §851.156(g)(2)(A) (No change.)

(B) Shown below is a sample of an acceptable [a] digital image of a geoscientist's physical seal and original signature saved as a digital image (JPEG Format, for example).

Figure: 22 TAC §851.156(g)(2)(B) (No change.)

(C) Shown below is a sample of an acceptable digital seal accompanied by a digital signature.

Figure: 22 TAC §851.156(g)(2)(C)

(h) Preprinting of blank forms with a Professional Geoscientist's seal is prohibited.

(i) Signature reproductions, including but not limited to, rubber stamps, decals or other replicas, and computer [electronically]-generated signatures shall not be used in lieu of the Professional Geoscientist's actual signature, digital signature, or a true digital graphic copy of the actual signature.

(j) A Professional Geoscientist shall take reasonable steps to ensure the security of the Professional Geoscientist's physical or electronically-generated seals at all times. In the event of loss of a seal, the Professional Geoscientist will immediately give written notification of the facts concerning the loss to the Executive Director.

(k) Professional Geoscientists shall affix an unobscured seal, original signature, and date of signature to the originals of all documents containing the final version of any geoscience document as outlined in subsection (l) of this section before such document is released from their control.

(l) Preliminary documents released from a P.G.'s control shall identify the purpose of the document, the Professional Geoscientist(s) of record and the Professional Geoscientist license number(s), and the release date by placing the following text or similar wording instead of a seal: "This document is released for the purpose of (Examples: interim review, mark-up, drafting) under the authority of (Example: Leslie H. Doe, P.G. 0112) on (date). It is not to be used for (Examples: construction, bidding, permit) purposes."

(m) The Professional Geoscientist shall sign, seal, and date the original title sheet or a signature page of geoscience documents, specifications, details, calculations, or estimates, and each sheet of maps, drawings, cross sections, or other figures representing geoscientific services carried out under the supervision of the geoscientist, regardless of size or binding.

(n) All unbound geoscience documents, including but not limited to, research reports, opinions, recommendations, evaluations, addenda, and geoscience software shall bear the Professional Geoscientist's printed name, date, signature, and the designation "P.G." or other terms allowed under §1002.251 of the Act, unless the geoscience service is exempt under §1002.252 of the Texas Occupations Code. Electronic correspondence of this type shall include an electronic signature as described in subsection (f) of this section or be followed by a hard copy containing the Professional Geoscientist's printed name, date, signature, and the designation "P.G." or other terms allowed under §1002.251 of the Act.

(o) Geoscience services performed by more than one Professional Geoscientist shall be sealed in a manner such that all geoscience can be clearly attributed to the responsible Professional Geoscientist(s). When sealing plans or documents on which two or more Professional Geoscientists have worked, the seal of each Professional Geoscientist shall be placed on the plan or document with a notation describing the geoscience services done under each Professional Geoscientist's responsible charge.

(p) Licensed employees of the state, its political subdivisions, or other public entities are responsible for sealing their original geoscience documents; however, such licensed employees engaged in review and evaluation for compliance with applicable law or regulation of documents containing geoscience services submitted by others, or in the preparation of general planning documents, a proposal for decision in a contested case or any similar position statement resulting from a compliance review, need not seal the review reports, planning documents, proposals for decision, or position statements.

(q) When a Professional Geoscientist elects to use standards or general guideline specifications, those items shall be clearly labeled as such, shall bear the identity of the publishing entity, and shall be:

(1) Individually sealed by the Professional Geoscientist; or

(2) Specified on an integral design/title/contents sheet that bears the Professional Geoscientist's seal, signature, and date with a statement authorizing its use.

(r) Alteration of a sealed document without proper notification to the responsible Professional Geoscientist is misconduct or an offense under the Act.

(s) A license holder is not required to use a seal for a document for which the license holder is not required to hold a license under Texas Occupations Code, Chapter 1002.

(t) All geoscience documents released, issued, or submitted by a licensee shall clearly indicate the Geoscience Firm name and registration number by which the Professional Geoscientist is employed. If the Professional Geoscientist is employed by a local, State, or Federal Government agency or a firm that is exempt from the requirement of registration under Texas Occupations Code, Chapter 1002, Subchapter H, then only the name of the agency or firm shall be required.

(u) TBPG also considers a document to meet the sealing requirement if a reader or user of the document can determine that the original document is complete and unaltered from that which was subsequently placed under seal.

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 March 3, 2023.

TRD-202300989

Rene Truan

Executive Director

Texas Board of Professional Geoscientists

Earliest possible date of adoption: April 16, 2023

For further information, please call: (512) 936-4428



TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 300. MANUFACTURE,
DISTRIBUTION, AND RETAIL SALE OF
CONSUMABLE HEMP PRODUCTS
SUBCHAPTER A. GENERAL PROVISIONS

25 TAC §300.104

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), proposes an amendment to §300.104, concerning the manufacturing and processing of hemp products for smoking.

BACKGROUND AND PURPOSE

The proposed amendment to §300.104 will remove the prohibition of "distribution" and "retail sale" of hemp products for smoking.

House Bill 1325, 86th Legislature, Regular Session, 2019, established Texas Health and Safety Code, Chapter 443, Manufacture, Distribution, and Sale of Consumable Hemp Products (CHPs). Texas Health and Safety Code §443.204(4) prohibits "the processing or manufacturing of a consumable hemp product for smoking."

On June 24, 2022, as a result of *Texas Dep't of State Health Servs. v. Crown Distrib. LLC*, 647 S.W.3d 648 (Tex.2022), the Texas Supreme Court upheld the ban on the manufacturing and processing of consumable hemp products for smoking within the state of Texas. The amendment complies with the ruling in *Texas Dep't of State Health Servs. v. Crown Distrib. LLC* and Texas Health and Safety Code §443.204(4).

SECTION-BY-SECTION SUMMARY

The proposed amendment to §300.104 deletes the words "distribution" and "retail sale" from the prohibition of hemp products for smoking. The proposed amendment also revises the title of the rule to "Manufacturing and Processing of Hemp Products for Smoking" for consistency with the rule text.

FISCAL NOTE

Donna Sheppard, Chief Financial Officer, has determined that for each year of the first five years that the rule will be in effect, enforcing or administering the rule does not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

DSHS has determined that during the first five years that the rule will be in effect:

- (1) the proposed rule will not create or eliminate a government program;
- (2) implementation of the proposed rule will not affect the number of DSHS employee positions;
- (3) implementation of the proposed rule will result in no assumed change in future legislative appropriations;
- (4) the proposed rule will not affect fees paid to DSHS;
- (5) the proposed rule will not create a new rule;
- (6) the proposed rule will not expand, limit, or repeal an existing rule; and

(7) the proposed rule will not change the number of individuals subject to the rule.

(8) DSHS has insufficient information to determine the proposed rule's effect on the state's economy.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Donna Sheppard, Chief Financial Officer, has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. Despite the lawsuit and temporary injunction, the manufacturing and processing of CHPs for smoking is prohibited by Texas Health and Safety Code §443.204(4). A small business manufacturing hemp for smoking that obtained a CHP License from DSHS while litigation was pending should not now be counted as an economic loss either to the small business or to a rural community. The prohibition of manufacturing and processing is in H.B. 1325 that established Texas Health and Safety Code, Chapter 443 in 2019. The lifting of the regulatory prohibition of retail sale should encourage more small businesses to participate and have, if any, a positive effect on small businesses and rural communities.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule is necessary to protect the health, safety, and welfare of the residents of Texas.

PUBLIC BENEFIT AND COSTS

Dr. Timothy Stevenson, Associate Commissioner, Consumer Protection Division, has determined that for each year of the first five years the rule is in effect, the public benefit will be alignment of an agency rule with statutory authority and clarity as to the legality of economic activity related to hemp.

Donna Sheppard has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule. Many, if not most, of the firms engaged in the distribution or retail sale of consumable hemp products for smoking also either distribute or sell at retail non-smokable products such as Cannabidiol (CBD) oil or CBD gummies, with the result that many distributors and retailers of hemp products for smoking already have the Food Wholesaler License (distributors) or the Retail Hemp Registration (retailers). While there are undoubtedly unregistered retailers of consumable hemp products for smoking in Texas, it is likely that most of those are also retailers of other CHPs.

TAKINGS IMPACT ASSESSMENT

DSHS has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

PUBLIC COMMENT

Written comments on the proposal may be submitted to Joe Williams, Texas Department of State Health Services, Consumable Hemp Products Program, P.O. Box 149347, Mail Code 1987, Austin, Texas 78714-9347; 1100 West 49th Steet, Austin, Texas 78756-3199; or by email to dshshempprogram@dshs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule "22R119" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Health and Safety Code, Chapter 443, which provides that the Executive Commissioner of HHSC may adopt rules for the efficient enforcement of Texas Health and Safety Code, Chapter 443; and Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of health and human services by DSHS, and for the administration of Texas Health and Safety Code, Chapter 1001.

The amendment implements Texas Government Code §531.0055 and Texas Health and Safety Code, Chapters 443 and 1001.

§300.104. Manufacturing and [Manufacture:] Processing[, Distribution, and Retail Sale] of Hemp Products for Smoking.

The manufacturing and [manufacture:] processing[, distribution, or retail sale] of consumable hemp products for smoking is prohibited.

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 February 28, 2023.

TRD-202300939

Cynthia Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: April 16, 2023

For further information, please call: (512) 834-6753



TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 301. IDD-BH CONTRACTOR ADMINISTRATIVE FUNCTIONS

SUBCHAPTER G. MENTAL HEALTH COMMUNITY SERVICES STANDARDS

DIVISION 2. ORGANIZATIONAL STANDARDS

26 TAC §301.327

The Texas Health and Human Services Commission (HHSC) proposes an amendment to §301.327, concerning Access to Mental Health Community Services.

BACKGROUND AND PURPOSE

The purpose of the proposal is to broaden the type of staff qualified to answer and screen crisis hotline calls for local mental health authorities (LMHAs), local behavioral health authorities (LBHAs), and their subcontractors. The proposed amendment allows staff members trained in crisis screening to conduct the crisis calls in addition to staff members who are credentialed as a Qualified Mental Health Professional-Community Services (QMHP-CS). This will also assist LMHAs, LBHAs, and their contractors to broaden recruiting and applicant pools thereby potentially reducing call wait times and answering more calls within the required timeframe.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §301.327(d) substitutes "LBHAs, as defined by Texas Health and Safety Code §533.0356," for "managed care organization" because these rules are intended to govern the LBHA's and LMHA's provision of crisis hotline services and requirements relating to an MCO's responsibility are covered elsewhere. The proposed amendment also establishes requirements for staff member training in crisis screening by LMHAs, LBHAs, and their subcontractors and as provided in the LMHA and LBHA contract with HHSC. This addition clarifies who trains staff for crisis hotlines in alignment with Crisis Services Standards.

The proposed amendment references the training language added for staff members trained in crisis screening and removes the requirements for a QMHP-CS to begin the telephone screening if a call is identified as a potential crisis. This change allows any staff trained in crisis screening to respond to calls that are identified as a potential crisis, rather than only a QMHP-CS.

The proposed amendment allows any staff trained in crisis screening to take action to address emergency situations, activate the immediate screening and assessment processes, and provide, or obtain mental health community services or other interventions to stabilize the crisis.

The proposed amendment also includes minor grammatical changes, updates cross references and replaces a term for accuracy.

FISCAL NOTE

Trey Wood, HHSC Chief Financial Officer, has determined that for each year of the first five years that the rule will be in effect, enforcing and administering the rules as proposed does not have foreseeable implications related to costs or revenues of state or local government.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rule will be in effect:

- (1) the proposed rule will not create or eliminate a government program;
- (2) implementation of the proposed rule will not affect the number of HHSC employee positions;
- (3) implementation of the proposed rule will result in no assumed change in future legislative appropriations;
- (4) the proposed rule will not affect fees paid to HHSC;
- (5) the proposed rule will not create a new rule;
- (6) the proposed rule will expand the existing rule;

(7) the proposed rule will not change the number of persons subject to the rule; and

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

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. This rule will not have an adverse economic effect on small businesses, micro-businesses, or rural communities because none of those entities operate a Mental Health Community Services Crisis Hotline.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule is necessary to protect the health, safety, and welfare of the residents of Texas; does not impose a cost on regulated persons; and is amended to reduce the burden or responsibilities imposed on regulated persons by the rule.

PUBLIC BENEFIT AND COSTS

Sonja Gaines, Deputy Executive Commissioner for Behavioral Health Services, has determined that for each year of the first five years the rule is in effect, the public benefit is an increase in response rates and reduced call waiting for crisis hotline calls.

Trey Wood has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because there are no increased costs or fees for those required to comply with the rule as proposed.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 701 W. 51st Street, Austin, Texas 78751; or emailed to HHSRulesCoordinationOffice@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 22R115" in the subject line.

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Health and

Safety Code §533.0345(a), which requires the Executive Commissioner of HHSC to by rule develop model program standards for mental health services for use by each state agency that provides or pays for mental health services; §533.0356(i), which allows the Executive Commissioner of HHSC to adopt rules to govern the operations of local behavioral health authorities; and §534.052(a), which requires the Executive Commissioner of HHSC to adopt rules, including standards, the Executive Commissioner considers necessary and appropriate to ensure the adequate provision of community-based mental health services through an LMHA under Chapter 534.

The amendments affect Texas Government Code §531.0055 and Health and Safety Code §533.0345(a), §533.0356(i), and §534.052(a).

§301.327. *Access to Mental Health Community Services.*

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

(d) Timely services based on need. The LMHA or local behavioral health authority (LBHA), as defined at Texas Health and Safety Code §533.0356 [and MCO] must arrange mental health services for an individual within the following time frames.

(1) Crisis services.

(A) Hotline calls. For all calls to the toll-free crisis hotline:

(i) [the call must be answered by] a staff member must answer each call within 30 seconds, on average, at least 95 percent of the time; [and]

(ii) the LMHA, LBHA, or their subcontractors must train a staff member in crisis screening to conduct a crisis hotline screening as provided in the LMHAs' and LBHAs' contract with the Texas Health and Human Services Commission; and

(iii) [(ii)] if the staff member determines the call is [identified as] a potential crisis, a staff member trained in crisis screening, in accordance with clause (ii) of this subparagraph, [QMHP-CS] must begin a telephone screening [immediately but] no later than one minute after the determination is made [call is so identified].

(B) Emergency care services. If a staff member determines during a screening [it is determined] that an individual is experiencing a crisis that may require emergency care services, the staff member trained in crisis screening, in accordance with subparagraph (A)(ii) of this paragraph, [QMHP-CS] must:

(i) take immediate action to address the emergency situation to ensure the safety of all parties involved;

(ii) activate the immediate screening and assessment processes as described in §301.351 of this subchapter (relating to Crisis Services) [§412.324 of this title (relating to Crisis Services)]; and

(iii) provide or obtain mental health community services or other necessary interventions to stabilize the crisis.

(C) Urgent care services. If the screening indicates that an individual needs urgent care services, a QMHP-CS must within eight hours of the initial incoming hotline call or notification of a potential crisis situation:

(i) perform a face-to-face assessment; and

(ii) provide or obtain mental health community services or other necessary interventions to stabilize the crisis.

(2) Routine care services. If the screening indicates that an individual needs routine care services, a QMHP-CS must perform

a uniform assessment within 14 days after the screening. If the assessment indicates an LOC for routine care services, the individual must begin receiving services immediately. When the provision of the service package is not possible because services are at capacity, the individual must be referred to an available practitioner appropriate to meet the individual's needs or be placed on a waiting list for services, subject to the following exceptions:

(A) individuals eligible for Medicaid who are determined to be in need of Mental Health Case Management, under Chapter 306, Subchapter E [~~Chapter 412, Subchapter I~~] of this title, or Mental Health Rehabilitative Services, under Chapter 306, Subchapter F [~~Chapter 419, Subchapter L~~] of this title, cannot be placed on a waiting list and must be served.

(B) individuals eligible for Medicaid who are determined to need services other than Mental Health Case Management, under Chapter 306, Subchapter E [~~Chapter 412, Subchapter I~~] of this title, and Mental Health Rehabilitative Services, under Chapter 306, Subchapter F [~~Chapter 419, Subchapter L~~] of this title, must be referred to appropriate, available practitioners of that service. Only if an appropriate Medicaid practitioner is not available may the individual be placed on a waiting list. All efforts undertaken to refer Medicaid individuals must be documented.

(c) - (i) (No change.)

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

Filed with the Office of the Secretary of State on February 28, 2023.

TRD-202300938

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: April 16, 2023

For further information, please call: (512) 672-4255



CHAPTER 554. NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION

SUBCHAPTER X. REQUIREMENTS FOR MEDICAID-CERTIFIED FACILITIES

26 TAC §554.2312

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes the repeal of §554.2312, concerning Surety Bonds or Letters of Credit.

BACKGROUND AND PURPOSE

The purpose of the proposal is to align the Texas Administrative Code to current HHSC's policies and procedures concerning surety bonds or letters of credit. The current rule provides an optional procedure for the issuance of a surety bond to expedite the release of vendor holds. Under the current rule, the surety bond may only be issued after all cost reports have been submitted and recoupments pertaining to staffing have been paid in full. HHSC's standard procedure is to release the vendor hold after the provider submits the cost report and any recoupment is

paid in full. Recoupments are offset against new claims or held payments. The standard procedure is efficient, and the optional surety bond procedure has not been utilized by providers to expedite the release of vendor holds. The existing rule was last amended in 2004.

SECTION-BY-SECTION SUMMARY

The proposed repeal of §554.2312 deletes the rule because more efficient procedures have made the rule obsolete.

FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years that the repeal will be in effect, enforcing or administering the repeal does not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years the repeal will be in effect:

- (1) the proposed repeal will not create or eliminate a government program;
- (2) implementation of the proposed repeal will not affect the number of HHSC employee positions;
- (3) implementation of the proposed repeal will result in no assumed change in future legislative appropriations;
- (4) the proposed repeal will not affect fees paid to HHSC;
- (5) the proposed repeal will not create a new rule;
- (6) the proposed repeal will repeal existing rule;
- (7) the proposed repeal will not change the number of individuals subject to the rule; and
- (8) the proposed repeal will not affect the state's economy.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities.

The rule does not apply to small or micro-businesses, or rural communities.

LOCAL EMPLOYMENT IMPACT

The proposed repeal will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this repeal because the repeal does not impose a cost on regulated persons.

PUBLIC BENEFIT AND COSTS

Victoria Grady, Director of Provider Finance, has determined that for each year of the first five years the repeal is in effect, the public benefit will be increased transparency related to HHSC's policies and procedures regarding surety bonds or letters of credit.

Trey Wood, Chief Financial Officer, has determined that there are no anticipated economic costs to persons who are required to comply with the proposed rule because the proposed repeal removes the requirement for providers and aligns the Texas Administrative Code to HHSC's policies and procedures.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

PUBLIC COMMENT

Written comments on the proposal may be submitted to HHSC Provider Finance Department, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030, or by email to PFD-LTSS@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 22R107" in the subject line.

STATUTORY AUTHORITY

The repeal is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b-1), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Texas Human Resources Code Chapter 32.

The repeal affects Texas Government Code §531.0055 and Texas Human Resources Code Chapter 32.

§554.2312. *Surety Bonds or Letters of Credit.*

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 February 28, 2023.

TRD-202300937

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: April 16, 2023

For further information, please call: (512) 867-7817



CHAPTER 745. LICENSING

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes in Title 26, Texas Administrative Code (TAC), Chapter 745, Subchapter B, Child Care and Other Operations that We Regulate, new §745.43; new Subchapter I, Non-Enforcement Voluntary Actions §§745.5001,

745.5003, 745.5051, 745.5101, 745.5103, 745.5151, 745.5153, 745.5155, 745.5157, 745.5159, 745.5161, and 745.5201; and new Subchapter K, Inspections, Investigations, and Confidentiality §§745.8401, 745.8403, 745.8405, 745.8407, 745.8409, 745.8411, 745.8413, 745.8415, 745.8417, 745.8441, 745.8443, 745.8445, 745.8447, 745.8449, 745.8481, 745.8483, 745.8485, 745.8487, 745.8489, 745.8491, 745.8493, 745.8581, 745.8583, and 745.8585.

BACKGROUND AND PURPOSE

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

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

DFPS has now adopted new rules applicable to the DFPS responsibilities in Title 40, Chapter 707. Accordingly, and to support this transition of the regulation of child care from DFPS to HHSC, CCR proposed new rules in Title 26, Chapter 745, Subchapter B and new Subchapters I and K. The proposed repeal of Title 40, Chapter 745, Subchapter K, are published elsewhere in this issue of the *Texas Register*.

In addition, in the proposed rules CCR is (1) removing rules directly related to any DFPS responsibilities, including the investigation of child abuse, neglect, and exploitation, as DFPS has rules to address those responsibilities; (2) updating the rules with current practices; and (3) updating the rules for better readability and understanding.

SECTION-BY-SECTION SUMMARY

Proposed new §745.43 describes the requirements for a relative-only listed family home. The proposed rule has the content from repealed 40 TAC §745.8427. There are no substantive changes to the proposed rule.

Proposed new §745.5001 clarifies that a voluntary action under Subchapter K is not an enforcement action and describes in a chart the different types of voluntary actions that an operation may take. The chart has content from repealed 40 TAC §745.8511 and §745.8521(a) and (b). Additional content (1) clarifies that an operation may not reapply after withdrawing an application if the operation is ineligible to reapply because we have taken an enforcement action against the operation; (2) clarifies that after a temporary relocation of 90 days, an operation must request that CCR amend the operation's permit with a new address; and (3) increases the maximum period of time for a voluntary suspension for a child day care operation to two years, which makes the time period consistent for both residential and day care operations.

Proposed new §745.5003 describes how an operation taking a voluntary action affects CCR's ability to impose an enforcement action. The proposed rule has the content from repealed 40 TAC §745.8515. Additional content clarifies that CCR may impose an enforcement action if the operation applies for another permit after voluntary closure.

Proposed new §745.5051 describes whether notice and approval by CCR are required before an operation may take a voluntary action. The proposed rule has the content regarding approval from repealed 40 TAC §745.8513 and regarding notice from repealed 40 TAC §§745.8517(1), 745.8523, and 745.8533. However, the new chart adds content that (1) updates the approval requirements, which do not require CCR approval to withdraw an application or voluntarily close, and (2) requires written notice for all voluntary actions, including the withdrawal of an application.

Proposed new §745.5101 describes the requirements for an operation that temporarily relocates. The proposed rule has the content from repealed 40 TAC §745.8517. However, the proposed rule updates and more fully explains the requirements. The rule also adds content to require an operation to meet documentation and reporting requirements for the emergency relocation of a residential child care operation that are outlined in minimum standards.

Proposed new §745.5103 states that CCR will conduct an inspection before or as soon as possible after a relocation to determine whether the temporary location complies with the applicable statutes, rules, and minimum standards. The rule also clarifies that CCR will consider the following factors when deciding whether to approve a temporary location that does not comply with minimum standards: (1) the anticipated length of stay at the operation; (2) the degree of deviation from minimum standards; and (3) whether there is risk to children.

Proposed new §745.5151 lists the reasons that an operation may request a voluntary suspension of a permit. The proposed rule has the content from repealed 40 TAC §745.8519. However, three additional reasons have been added to the list: (1) enrollment is too low to operate; (2) a staffing shortage; and (3) a declared disaster.

Proposed new §745.5153 describes how an operation requests a voluntary suspension. The proposed rule has the content from repealed 40 TAC §745.8523. There are no substantive changes to the proposed rule.

Proposed new §745.5155 describes the actions CCR may take in response to a request for a voluntary suspension based on certain factors. The proposed rule has the content from repealed 40 TAC §745.8525. However, CCR is updating the structure of the question and the rule. The rule also adds factors to consider when approving or denying a voluntary suspension, including (1) confirming that the operation will not care for children during the voluntary suspension period; (2) the length of time planned for a suspension; and (3) whether the request meets one of the reasons for the suspension. In addition, CCR is deleting the right to an administrative review for the denial of a request for a voluntary suspension, but CCR is adding this right to Title 26, Chapter 745, Subchapter M, Administrative Reviews and Due Process Hearings; the Subchapter M rules are anticipated to be adopted in January 2023.

Proposed new §745.5157 describes the responsibilities of the operation during the voluntary suspension period. The proposed rule has the content from repealed 40 TAC §745.8521(c) and

§745.8527. However, a change to the content clarifies that as soon as possible, but no later than 24 hours after Licensing notifies the operation of the approval of the voluntary suspension, the operation must notify the parents of any children attending or enrolled in the operation of the voluntary suspension, including the dates of the voluntary suspension period.

Proposed new §745.5159 describes what must occur before an operation may reopen and begin operating at the end of the voluntary suspension period. The proposed rule has the content from repealed 40 TAC §745.8529. Additional content clarifies that CCR will conduct an inspection within 15 days to determine whether the operation is meeting all applicable statutes, rules, and minimum standards before the operation is given permission by CCR to reopen and operate.

Proposed new §745.5161 describes what happens if an operation does not begin operating at the end of a voluntary suspension period. The proposed rule has the content from repealed 40 TAC §745.8531. Additional content clarifies that the operation may request an extension if the voluntary suspension period was for less than two years.

Proposed new §745.5201 describes how to voluntarily close an operation. The proposed rule has the content from repealed 40 TAC §745.8533. Additional content requires the operation to (1) notify parents timely; (2) surrender its permit; and (3) meet documentation and reporting requirements for the emergency relocation of a residential child care operation that are outlined in minimum standards.

Proposed new §745.8401 describes who may inspect or investigate an operation. The proposed rule includes most of the content from repealed 40 TAC §745.8401. Additional content clarifies that (1) CCR may inspect or investigate a child care program to determine whether the program is subject to regulation; (2) DFPS may investigate an allegation of child abuse, neglect, or exploitation; and (3) CCR may inspect an operation during or after a DFPS child abuse, neglect, or exploitation investigation. CCR is moving the portion of repealed 40 TAC §745.8401 relating to "CCR may inspect or investigate during the hours of operation" to proposed new §745.8405(b).

Proposed new §745.8403 describes the actions CCR may take during an inspection or investigation. The proposed rule has the content from repealed 40 TAC §745.8403 and §745.8405. Additional content clarifies that these actions may also include a walkthrough of the operation.

Proposed new §745.8405 describes when CCR may inspect and investigate different types of operations. The proposed rule includes the portion of the content from repealed 40 TAC §745.8401 relating to CCR inspecting and investigating during the hours of operation and the content from repealed 40 TAC §745.8407. Additional content (1) updates the description for the types of operations; (2) updates that CCR investigates a listed family home that is not a relative-only listed family home after receiving a report of a deficiency of the new minimum standards for listed family homes; (3) clarifies that for all operation types, except relative-only listed family homes and foster homes, "we (CCR) may inspect" (in the repealed rule it was "we inspect") because CCR is not required to inspect Priority 5 complaints; (4) updates the timeframe for inspecting registered child care homes to at least once every two years, or at least once every year if the home is receiving a subsidy for a child in care through the Texas Workforce Commission (TWC); (5) adds two situations to be consistent with current policy when CCR

investigates in foster homes: (A) any deficiency in a licensing statute, rule, or minimum standard when law enforcement responds to or has previously responded to a family violence call at the foster home; and (B) a deficiency involving child-placing agency staff; (6) adds situations for investigations of adoptive homes to be consistent with policy: (A) CCR will investigate reports involving child-placing agency staff; and (B) for other reports of a deficiency in a licensing statute, rule, or minimum standard, CCR may investigate or assign to the child-placing agency to investigate; and (7) states that if a child-placing agency main office or branch office is not open between 8:00 a.m. and 5:00 p.m., Monday through Friday, the child-placing agency must ensure that the office and employees are available upon CCR's request to inspect or investigate the agency.

Proposed new §745.8407 describes how often CCR may inspect or investigate an operation. The proposed rule has the content from repealed 40 TAC §745.8409. There are no substantive changes to the proposed rule.

Proposed new §745.8409 describes when inspections and investigations must be unannounced or announced. The proposed rule has the content from repealed 40 TAC §745.8411. Additional content updates that inspections for registered child care homes must be unannounced (1) once every year if the home is receiving a subsidy for a child in care through TWC; or (2) once every two years if the home is not receiving a subsidy for a child in care through TWC.

Proposed new §745.8411 describes an operation's responsibilities when CCR conducts an inspection or investigation. The proposed rule has the content from repealed 40 TAC §745.8413 and §745.8425. Additional content clarifies that (1) the responsibility not to interfere or delay an inspection or investigation applies to both CCR and DFPS and includes providing access to all areas of the operation and all records; and (2) if anyone at the operation refuses access or prevents or delays an inspection or investigation CCR may issue a deficiency and seek a court order to comply or impose an enforcement action.

Proposed new §745.8413 describes what CCR may inspect and investigate at the operation. The proposed rule has the content from repealed 40 TAC §§745.8415, 745.8417, and 745.8419. Additional content clarifies that records include audio and visual records.

Proposed new §745.8415 describes how CCR investigates an anonymous report. The proposed rule has the content from repealed 40 TAC §745.8421. Additional content clarifies that CCR evaluates an anonymous report by (1) checking the operation's compliance history for similar allegations and deficiencies; and (2) contacting the operation and collaterals. In addition, there are significant updates to the wording for better understanding and readability.

Proposed new §745.8417 describes what CCR will post on the Search Texas Child Care website about the findings from an anonymous report investigation. The proposed rule has the content from repealed 40 TAC §745.8423. While there are no changes to the content of this rule, there are significant updates to the wording for better understanding and readability.

Proposed new §745.8441 describes when CCR will notify an operation of the purpose of an unannounced inspection or investigation. The proposed rule has the content from repealed 40 TAC §745.8441 and §745.8443. Additional content clarifies that (1) CCR will notify the person in charge of an investigation at the time of the first contact with the operation unless an exception

applies; or (2) if the exception applies, then CCR will notify the person in charge, designee, administrator, director, or primary caregiver as soon as possible after CCR determines that doing so will not compromise the investigation. In addition, there are significant updates to the wording for better understanding and readability.

Proposed new §745.8443 describes whom CCR will notify of the outcome of an inspection or investigation. The proposed rule replaces the content from repealed 40 TAC §745.8445 by clarifying that CCR will notify (1) the operation of the outcome of the inspection or investigation by providing a completed inspection form or notification letter to the designee, director, administrator, or primary caregiver, and the person in charge if one of the other persons is not available during the exit interview; and (2) the reporter of the outcome of an investigation, unless the reporter is anonymous or there is a reasonable likelihood that the notification will jeopardize the reporter's safety.

Proposed new §745.8445 describes what the notification of the outcome of the inspection or investigation to the operation and the outcome of the investigation to the reporter will include. The proposed rule has the content from repealed 40 TAC §745.8447. However, additional content clarifies that the notification to the operation will also include any statutes, rules, or minimum standards that CCR investigated and whether the operation was in compliance. In addition, CCR is deleting the portion of repealed 40 TAC §745.8447 currently requiring "corrections necessary for compliance" because CCR does not provide this information in the notice.

Proposed new §745.8447 describes what an operation must do if CCR notifies the operation of a deficiency. The proposed rule has the content from repealed 40 TAC §745.8449. Additional content clarifies that an operation must correct the deficiency (1) within the timeframe CCR specified, unless CCR approves an extension that the operation requests; or (2) if CCR approves a request for an extension, within the new timeframe CCR specified. The operation may also request a new extension.

Proposed new §745.8449 describes who will provide notices related to investigations of child abuse, neglect, and exploitation. DFPS provides notifications regarding child abuse, neglect, and exploitation according to the DFPS rules, including (1) notification to CCR of the DFPS investigation findings, any evidence regarding possible minimum standard deficiencies, and any safety plan implemented; and (2) for an investigation in a residential child care operation, notification to the residential child care operation of the investigation findings and the name of the person alleged or designated as a perpetrator of child abuse, neglect, or exploitation. CCR will provide notification to an operation of any deficiencies within 10 days of receiving the results from a DFPS child abuse, neglect, or exploitation investigation.

Proposed new §745.8481 describes what types of child care records CCR maintains, including a record for each (1) operation that applies for a permit; (2) regulated operation; (3) program or operation that is investigated as a possible unregulated operation; (4) exemption determination; and (5) individual who applies for an administrator's license. The rule also describes the types of electronic and hard copy records maintained in a child care record that are subject to retention periods that may affect the availability of a record.

Proposed new §745.8483 describes the portions of a child care record that are confidential, including (1) an open investigation, including (A) CCR interviews with operation staff, foster parents

or other caregivers, children, or any other person; and (B) internal discussions by or among CCR staff; (2) reporter information; (3) information obtained from another agency that is confidential; (4) legally private information, including (A) a person's social security number; (B) a foster home screening, adoptive home screening, and post-placement adoptive report; and (C) any information pertaining to a pending court case where the state is a party; (5) information that would interfere with a law enforcement or DFPS investigation; (6) the location of a family violence or trafficking shelter or information pertaining to an individual receiving services at one of these shelters; and (7) any photograph or recording of a child.

Proposed new §745.8485 states that an operation may not record, listen to, or eavesdrop on (1) CCR interviews with operation staff, foster parents or other caregivers, children, or any other person; or (2) internal discussions by or among CCR staff. However, an individual is not prohibited from recording a CCR interview with the individual.

Proposed new §745.8487 describes exceptions to proposed new §745.8483, which would allow the confidential portions of a child care record to be released to the public or certain persons, including the release of (1) information concerning an investigation once it has been completed, unless otherwise confidential; (2) a foster home screening, adoptive home screening, and post-placement report to the subject of the screening or report or to protect the health or safety of a child; (3) the location of a family violence or trafficking shelter in a CCR public hearing; and (4) any photograph or recording of a child as noted in proposed new §745.8491.

Proposed new §745.8489 describes the situations when certain individuals may get copies of the confidential portions of a child care record under proposed new §745.8483 unless the release of the information would endanger the life or safety of an individual. These exceptions include (1) HHSC staff and volunteers to perform their assigned duties; (2) DFPS staff and volunteers to perform their assigned duties; (3) the staff and volunteers of a single source continuum contractor that contracts with DFPS to perform the SSCC's duties under Texas Family Code; (4) law enforcement personnel investigating a crime; (5) an administrative law judge for a case arising out of an inspection, investigations, or enforcement action; (6) any other person authorized by state or federal law; and (7) any other person ordered by a judge under certain circumstances. CCR is also clarifying that a person or entity that receives confidential information under this rule may not release it to an unauthorized person or entity.

Proposed new §745.8491 describes who may review or have a copy of a photograph or recording of a child that is confidential under proposed new §745.8483. The individuals noted in proposed new §745.8489 and the parent of the child may get a copy of the photograph or recording. The following persons may review the photograph or recording but not get a copy: (1) attorney ad litem, guardian ad litem, or court appointed special advocate; and (2) the operation cited for a deficiency during which the photograph was taken, or recording was made. CCR is also clarifying that a person or operation that receives a photograph, recording, or documentation of a child under this rule may not release it to an unauthorized person or entity.

Proposed new §745.8493 describes when CCR will release information related to child abuse, neglect, or exploitation investigation conducted by DFPS. DFPS child abuse, neglect, and exploitation investigations remain confidential. A person must request DFPS investigation information from DFPS. DFPS may

release DFPS investigation information to (1) an operation to support a deficiency assessed against the operation, so long as confidential information is redacted; or (2) any other person or entity authorized by state or federal law to have a copy. CCR is also clarifying that an operation, person, or entity that receives DFPS investigation information under this rule may not release the information to an unauthorized person or entity.

Proposed new §745.8581 describes technical assistance. The proposed rule has the content from repealed 40 TAC §745.8581. There are no substantive changes to the proposed rule.

Proposed new §745.8583 describes when CCR provides technical assistance. The proposed rule has the content from repealed 40 TAC §745.8583. Additional content clarifies that CCR may provide technical assistance at any time, including on the inspection form or investigation letter, regardless of whether the operation is deficient or in compliance.

Proposed new §745.8585 describes why an administrative review is not allowed for technical assistance. The proposed rule has the content from repealed 40 TAC §745.8585. There are no substantive changes to the proposed rule.

FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years that the proposed rules will be in effect, enforcing or administering the rules do not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the proposed rules will be in effect:

- (1) the proposed rules will not create or eliminate a government program;
- (2) implementation of the proposed rules will not affect the number of HHSC employee positions;
- (3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;
- (4) the proposed rules will not affect fees paid to HHSC;
- (5) the proposed rules will create new rules;
- (6) the proposed rules will not expand, limit, or repeal existing rules;
- (7) the proposed rules will not change the number of individuals subject to the rules; and
- (8) the proposed rules will not affect the state's economy.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities.

There is no adverse economic effect on small businesses, micro-businesses, or rural communities from this proposal because there is no requirement to alter current business practices, and there are no new fees imposed.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to the proposed rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas; do not impose a cost on regulated persons; and are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

PUBLIC BENEFIT AND COSTS

Rachel Ashworth-Mazerolle, Associate Commissioner for Child Care Regulation, has determined that for each year of the first five years the proposed rules are in effect, the public benefit will be that the rules will be (1) easier to locate in the title of Texas Administrative Code that relates specifically to HHSC; (2) updated to no longer include DFPS responsibilities; and (3) consistent with legislative changes.

Trey Wood has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because the proposed rules in Title 26 are replacing and updating repealed rules from Title 40. The updated rules do not impose any additional costs on persons that are required to comply with the rules.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

PUBLIC COMMENT

Questions about the content of this proposal may be directed by email to Gerry.Williams@hhs.texas.gov.

Written comments on the proposal may be submitted to Gerry Williams, Rules Writer, Child Care Regulation, HHSC, E-550, P.O. Box 149030, Austin, Texas 78714-9030; or by email to CCRRules@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 22R083" in the subject line.

SUBCHAPTER B. CHILD CARE AND OTHER OPERATIONS THAT WE REGULATE

26 TAC §745.43

STATUTORY AUTHORITY

The new section is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of DFPS to HHSC. In addition, Texas Human Resources Code (HRC) §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of HRC.

The new section affects Texas Government Code §531.0055 and HRC §§42.042, 42.044, 42.0449, 42.0523 and 42.065.

§745.43. What are the requirements for a relative-only listed family home?

The permit holder for a relative-only listed family home must:

- (1) Operate within the limits of its permit;
- (2) Ensure there is no immediate risk to the health or safety of a child while in care;
- (3) Ensure any medication given to a child in care is administered according to Texas Human Resources Code §42.065;
- (4) Request background checks as required in Subchapter F of this chapter (relating to Background Checks);
- (5) Ensure that each child is free from abuse, neglect, and exploitation while in care;
- (6) Pay all required fees as outlined in Subchapter E of this chapter (relating to Fees); and
- (7) Comply with all other applicable laws and rules.

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

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Karen Ray

Chief Counsel

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



SUBCHAPTER I. NON-ENFORCEMENT

VOLUNTARY ACTIONS

DIVISION 1. OVERVIEW OF VOLUNTARY ACTIONS

26 TAC §745.5001, §745.5003

STATUTORY AUTHORITY

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

The new sections affect Texas Government Code §531.0055 and HRC §§42.042, 42.044, 42.0449, 42.0523 and 42.065.

§745.5001. What are the different types of voluntary actions that an operation may take?

- (a) A voluntary action under this subchapter is not an enforcement action.
- (b) The following chart lists the voluntary actions that are available for all operation types:

Figure: 26 TAC §745.5001(b)

§745.5003. How does my taking a voluntary action affect Licensing's ability to impose an enforcement action against my operation?

(a) We may impose an enforcement action against your operation:

- (1) Even if you have taken a voluntary action; and
- (2) Any time while the voluntary action is in effect.

(b) If your action is voluntary suspension or voluntary closure, we may also impose the enforcement action:

- (1) When you reopen your operation after your voluntary suspension ends; or
- (2) If you apply for another permit after your voluntary closure; for example, if your operation met the requirements for probation when you voluntarily closed your operation, we may include a condition on your new permit that your operation is on probation.

(c) We may also determine that an enforcement action is unnecessary because of your voluntary action.

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DIVISION 2. NOTICE AND APPROVAL

26 TAC §745.5051

STATUTORY AUTHORITY

The new section is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of DFPS to HHSC. In addition, Texas Human Resources Code (HRC) §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of HRC.

The new section affects Texas Government Code §531.0055 and HRC §§42.042, 42.044, 42.0449, 42.0523 and 42.065.

§745.5051. What notice and approval are required for a voluntary action?

The following chart notes whether notice to and approval by Licensing are required before an operation may take the voluntary action:

Figure: 26 TAC §745.5051

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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DIVISION 3. TEMPORARY RELOCATION

26 TAC §745.5101, §745.5103

STATUTORY AUTHORITY

The new section is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of DFPS to HHSC. In addition, Texas Human Resources Code (HRC) §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of HRC.

The new section affects Texas Government Code §531.0055 and HRC §§42.042, 42.044, 42.0449, 42.0523 and 42.065.

§745.5101. What must I do when I temporarily relocate my operation because of a renovation or damage that makes the operation temporarily unsuitable for child care?

You must:

(1) Complete the notice requirements in §745.5051 of this subchapter (relating to What notice and approval is required for a voluntary action?):

(2) Prior to a planned temporary relocation:

(A) Obtain any inspections at the temporary location that are identified in the applicable minimum standards, which may include fire, sanitation, and gas leak inspections;

(B) Ensure the temporary location complies with applicable licensing statutes, rules, and minimum standards;

(C) Allow us to conduct an inspection under §745.5103 of this division (relating to What actions will Licensing take after receiving a notice that you are temporarily relocating?); and

(D) Obtain our approval for any aspect of the temporary location that does not comply with the applicable licensing statutes, rules, and minimum standards; and

(3) For an emergency relocation:

(A) Complete each step in paragraph (1) of this section as soon as possible after the relocation; and

(B) If you are a residential child care operation, meet any additional reporting and documentation requirements under:

(i) §748.303(e)(1) and (3) of this title (relating to When must I report and document a serious incident?); or

(ii) §749.503(e)(1) and (3) of this title (relating to When must I report and document a serious incident?).

§745.5103. What actions will Licensing take after receiving a notice that you are temporarily relocating?

(a) We will conduct an inspection before or as soon as possible after the relocation to determine whether the temporary location complies with the applicable licensing statutes, rules, and minimum standards.

(b) We will consider the following when deciding whether to approve a temporary location that does not comply with minimum standards:

- (1) The anticipated length of stay at the temporary location;
- (2) The degree of deviation from minimum standards; and
- (3) Whether there is a risk to children considering the activities and services that the operation offers.

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DIVISION 4. VOLUNTARY SUSPENSION

26 TAC §§745.5151, 745.5153, 745.5155, 745.5157, 745.5159, 745.5161

STATUTORY AUTHORITY

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

The new sections affect Texas Government Code §531.0055 and HRC §§42.042, 42.044, 42.0449, 42.0523 and 42.065.

§745.5151. For what reasons may I request a voluntary suspension of my permit?

You may request a voluntary suspension of your permit because you are unable to operate for a specific time period for the following reasons:

- (1) You are repairing or making changes to your operation;
- (2) You do not have children in care or enrollment is too low for you to operate; or
- (3) You are unable to operate due to:
 - (A) Illness;
 - (B) An extended absence;
 - (C) A staffing shortage;
 - (D) Personal reasons; or
 - (E) A declared disaster.

§745.5153. How do I request a voluntary suspension?

You must submit a written request for a voluntary suspension to your Licensing representative. In your request, you must include:

(1) The reason that you are requesting a voluntary suspension from §745.5151 of this division (relating to For what reasons may I request a voluntary suspension of my permit?);

(2) The proposed dates for the suspension to begin and end;

(3) Plans to resume operating; and

(4) A statement about how you will meet the applicable licensing statutes, rules, and minimum standards at the end of the suspension period.

§745.5155. What actions may Licensing take after receiving written notice that you are requesting a voluntary suspension?

After we receive your written request for a voluntary suspension, we may approve, deny, or add conditions to your request to voluntarily suspend your permit based on the following factors:

(1) Whether an enforcement action is currently pending or we are considering imposing an enforcement action against your operation;

(2) Whether we can confirm that you do not plan to care for children during the voluntary suspension period;

(3) The length of the time you plan to suspend your permit; and

(4) Whether your request meets one of the reasons of §745.5151 of this division (relating to For what reasons may I request a voluntary suspension?).

§745.5157. What are my responsibilities during the voluntary suspension period?

(a) As soon as possible, but no later than 24 hours after we notify you of our approval, you must notify the parents of any children attending or enrolled in your operation of the voluntary suspension, including the dates of the voluntary suspension period.

(b) During the voluntary suspension period, you must:

(1) Not have children in care;

(2) Notify us at least 15 days before resuming operation, as required by §745.5159 of this division (relating to What must occur before I may reopen and begin operating at the end of the voluntary suspension period?);

(3) Return the permit to us during the suspension period;

(4) Meet the permit renewal requirements in Subchapter D, Division 12 of this chapter (relating to Permit Renewal), if applicable, so your permit does not expire while under voluntary suspension; and

(5) Remit all fees due during the suspension period.

§745.5159. What must occur before I may reopen and begin operating at the end of the voluntary suspension period?

(a) You must notify us in writing at least 15 days before you plan to begin operating.

(b) We will conduct an inspection within 15 days to determine whether you are meeting all applicable licensing statutes, rules, and minimum standards.

(c) After the inspection, we will determine whether to give you permission to reopen and operate.

(d) You may reopen only if we give you permission to operate after conducting the inspection.

§745.5161. What if I do not begin operating at the end of the voluntary suspension period?

If you have not met the requirements of §745.5159 of this division (relating to What must occur before I may reopen and begin operating at the end of the voluntary suspension period?) and do not begin operating at the end of the voluntary suspension period:

(1) You may request an extension if your voluntary suspension was for less than two years;

(2) You may voluntarily close your operation; or

(3) We may take an enforcement action, including revoking your permit.

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DIVISION 5. VOLUNTARY CLOSURE

26 TAC §745.5201

STATUTORY AUTHORITY

The new section is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of DFPS to HHSC. In addition, Texas Human Resources Code (HRC) §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of HRC.

The new section affects Texas Government Code §531.0055 and HRC §§42.042, 42.044, 42.0449, 42.0523 and 42.065.

§745.5201. How do I voluntarily close my operation?

(a) You must notify the parents of any children that you are voluntarily closing your operation as provided in this chart:

Figure: 26 TAC §745.5201(a)

(b) When you voluntarily close your operation, you must:

(1) Notify us as soon as possible, but no later than 10 days after you close your operation; and

(2) Surrender your permit. If you want to operate again after you voluntarily close your operation, you will have to apply for a new permit.

(c) Residential child care operations that are closing in response to a disaster or an emergency must meet the reporting and documentation requirements of §748.303(e)(2) of this title (relating to When must I report and document a serious incident?), and §749.503(e)(2) of this title (relating to When must I report and document a serious incident?), including making a report to us and the parents as soon as possible, but no later than 24 hours after the incident.

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

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SUBCHAPTER K. INSPECTIONS, INVESTIGATIONS, AND CONFIDENTIALITY DIVISION 1. OVERVIEW OF INSPECTIONS AND INVESTIGATIONS

**26 TAC §§745.8401, 745.8403, 745.8405, 745.8407,
745.8409, 745.8411, 745.8413, 745.8415, 745.8417**

STATUTORY AUTHORITY

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

The new sections affect Texas Government Code §531.0055 and HRC §§42.042, 42.044, 42.0449, 42.0523 and 42.065.

§745.8401. Who may inspect or investigate an operation under this division?

(a) An authorized representative of Licensing may inspect or investigate:

(1) An operation that is subject to regulation under Texas Human Resources Code (HRC) Chapter 42 to:

(A) Monitor the operation's compliance with licensing statutes, rules, and minimum standards; and

(B) Investigate an allegation of non-compliance with licensing statutes, rules, and minimum standards; and

(2) An unlicensed program providing care to children to determine whether the program is subject to regulation by Licensing.

(b) An authorized representative of the Texas Department of Family and Protective Services (DFPS) may investigate an operation that is subject to regulation under HRC Chapter 42 to investigate an allegation of child abuse, neglect, or exploitation as described in Title 40, Part 19, Chapter 707, Subchapter C, Child Care Investigations.

(c) An authorized representative of Licensing may inspect under subsection (a) of this section during or after a DFPS investigation under subsection (b) of this section.

§745.8403. What actions may Licensing take during an inspection or investigation?

During an inspection or investigation, we may take actions that reduce the risk to children and protect the health, safety, and well-being of children in care, including:

- (1) Evaluating whether the operation is subject to regulation;
- (2) Conducting a walkthrough of the operation;
- (3) Verifying compliance with licensing statutes, rules, and minimum standards;
- (4) Assessing the risk to children in the operation;
- (5) Assisting the operation with identifying problems contributing to deficiencies in licensing statutes, rules, and minimum standards;
- (6) Offering technical assistance;
- (7) Gathering information; and
- (8) Making a fair, accurate, and impartial decision regarding your compliance with licensing statutes, rules, and minimum standards.

§745.8405. When does Licensing inspect or investigate an operation or program?

(a) The following chart describes when we inspect or investigate an operation:

Figure: 26 TAC §745.8405(a)

(b) We may inspect or investigate your operation or program during its hours of operation.

(c) If you operate a child-placing agency main office or branch office that is not open between 8:00 a.m. and 5:00 p.m., Monday through Friday, you must ensure that the office and employees are available upon our request for the purpose of inspecting or investigating your agency.

§745.8407. How often may Licensing inspect or investigate my operation?

We may inspect or investigate your operation as often as is necessary to verify compliance with licensing statutes, rules, and minimum standards or to complete an investigation.

§745.8409. Are inspections and investigations announced or unannounced?

(a) One inspection every year must be unannounced for a:

- (1) Licensed operation;
- (2) Certified operation; and

(3) Registered child-care home that is receiving a subsidy for a child in care through the Texas Workforce Commission (TWC).

(b) One inspection every two years must be unannounced for a registered child-care home that is not receiving a subsidy for a child in care through TWC.

(c) All other inspections and investigations may be announced or unannounced.

§745.8411. What are my responsibilities when Licensing or the Texas Department of Family and Protective Services inspects or investigates my operation?

(a) You must ensure that no one at your operation interferes with an inspection or investigation by Licensing or an investigation by the Department of Family and Protective Services (DFPS).

(b) You must ensure your operation:

(1) Admits the Licensing or DFPS representatives to the operation;

(2) Provides access to all areas of the operation;

(3) Provides access to all records; and

(4) Does not delay or prevent the Licensing or DFPS representatives from conducting an inspection or investigation.

(c) If anyone at your operation refuses to admit, refuses access, or prevents or delays a Licensing or DFPS representative from visiting, inspecting, or investigating the operation, Licensing may take any or all of the following actions:

(1) Issue the operation a deficiency;

(2) Impose an enforcement action as specified in Subchapter L of this chapter (relating to Enforcement Actions); or

(3) Seek a court order granting Licensing access to the operation and records maintained by the operation.

§745.8413. What can Licensing inspect or investigate?

(a) We may inspect and investigate any part of your operation that could affect the health, safety, or well-being of children. This includes access to:

(1) All records of the operation, including child records, personnel records, and any audio or visual records;

(2) Any area of the building, home, or grounds where your operation is located; and

(3) Any equipment the operation uses when providing care.

(b) We may interview anyone who may have information relevant to an inspection or investigation when we are at an operation during the inspection or investigation, including:

(1) A child;

(2) An employee; or

(3) Any other person.

(c) Regarding our access to records of the operation during an inspection or investigation, we:

(1) Determine what records that we need to review; and

(2) May make or take copies of any records from the operation.

§745.8415. How does Licensing investigate an anonymous report?

(a) If an anonymous report contains an allegation that the health or safety of children is at risk, we will investigate the report and any alleged deficiencies.

(b) If an anonymous report does not contain an allegation that the health or safety of children is at risk, we will evaluate the anonymous report to determine whether any alleged deficiency has a factual basis.

(c) To evaluate the anonymous report, we:

(1) Check the operation's compliance history for similar allegations or deficiencies; and

(2) Contact the operation and collaterals.

(d) If we find a factual basis for at least one alleged deficiency, we will investigate the anonymous report.

(e) If we do not find a factual basis for any of the alleged deficiencies, we will administratively close the anonymous report.

§745.8417. What will Licensing post on its Search Texas Child Care website about findings from the investigation of an anonymous report?

After investigating an anonymous report:

(1) We will not post a record of the report on the Search Texas Child Care website if we do not find a factual basis for any of the alleged deficiencies in the report;

(2) We will post a record of the report and the findings on the Search Texas Child Care website if:

(A) We determine the operation had any deficiencies;
and

(B) The operation waives its right to an administrative review for any deficiency, or any deficiency is upheld in the administrative review process.

(3) We will post any additional deficiency on the Search Texas Child Care website that:

(A) We observed during an inspection related to the investigation; and

(B) The operation waives its right to an administrative review for the deficiency, or the deficiency is upheld after the administrative review process.

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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DIVISION 2. NOTIFICATION

26 TAC §§745.8441, 745.8443, 745.8445, 745.8447, 749.8449

STATUTORY AUTHORITY

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

The new sections affect Texas Government Code §531.0055 and HRC §§42.042, 42.044, 42.0449, 42.0523 and 42.065.

§745.8441. When will we notify the operation of the purpose of an unannounced inspection or investigation?

(a) For an announced or unannounced inspection, we will notify the person in charge of the operation of the purpose of the inspection at the time of the inspection.

(b) For an investigation regarding a statute, rule, or minimum standard deficiency, we will notify the person in charge of the operation of the nature of the allegation made in the report when we first contact the operation, except as provided in subsection (c) of this section.

(c) When we first contact an operation, we do not have to notify the person in charge of the operation of the nature of the allegation made in the report if:

(1) The allegation is against the person in charge, designee, administrator, director, or primary caregiver; or

(2) We have a reason to believe that disclosing the nature of the allegation may compromise the investigation.

(d) If we did not notify the person in charge of the nature of the allegation as explained in subsection (c) of this section, then we will notify the person in charge, designee, administrator, director, or primary caregiver for the operation as soon as possible after we determine that doing so will not compromise the investigation.

§745.8443. Whom will Licensing notify of the outcome of an inspection or investigation?

(a) Once an inspection or investigation is complete, we will notify the operation of the outcome of the inspection or investigation by providing a completed inspection form or notification letter to the:

(1) Designee, director, administrator, or primary caregiver;
and

(2) Person in charge, if the designee, director, administrator, or primary caregiver is not available during the exit interview.

(b) We will also notify the reporter of the outcome of an investigation, unless:

(1) There is a reasonable likelihood that notifying the reporter will jeopardize the reporter's safety; or

(2) The reporter is anonymous.

§745.8445. What will the notification of the outcome of the inspection or investigation include?

(a) The notification of the outcome of the inspection or investigation sent to the operation will include:

(1) Any licensing statutes, rules, or minimum standards that we investigated and whether the operation was in compliance;

(2) The specifics of any deficiency that we found during an investigation or inspection;

(3) The date by which you must comply with a particular licensing statute, rule, or minimum standard; and

(4) Your right to an administrative review to dispute any deficiency that we found.

(b) The notification of the outcome of the investigation we send to the reporter will include:

(1) Whether we found any deficiencies during the investigation; and

(2) A reference to the Search Texas Child Care website.

§745.8447. What must I do if Licensing notifies me of a deficiency?

(a) You must:

(1) Correct the deficiency within the timeframe that we specified, unless we approve an extension as provided in subsections (c) and (d) of this section; and

(2) Meet all licensing statutes, rules, and minimum standards.

(b) You may dispute the deficiency by requesting an administrative review; see Title 26, Chapter 745, Subchapter M, Division 1 (relating to Administrative Reviews).

(c) We may extend the timeframe we specified to correct a cited deficiency if you send us a written request that:

(1) Includes a reason for an extension, and we determine that:

(A) There is cause for the extension; and

(B) Extending the time frame would not pose an immediate danger to children in care; or

(2) States you have requested an administrative review of the deficiency, and we determine that extending the timeframe would not pose an immediate danger to children in care.

(d) If you request an extension, we will notify you:

(1) Whether we approve or deny your request for an extension to the compliance date; and

(2) If we approve your request, what the new compliance date is.

(e) If we approve your request for an extension, you must correct the deficiency within the new timeframe we specified or request a new extension.

§745.8449. Who provides notices related to investigations of child abuse, neglect, and exploitation?

(a) The Texas Department of Family and Protective Services (DFPS) provides notifications regarding child abuse, neglect, and exploitation investigations, as provided in Title 40, Part 19, Chapter 707, Subchapter C, Division 3 (relating to Notification), including:

(1) Notification to Licensing of the investigation findings, any evidence gathered regarding possible minimum standard deficiencies, and any safety plan implemented; and

(2) For an investigation in a residential child care operation, notification to the residential child care operation of the investigation findings and the name of the person alleged or designated as a perpetrator of child abuse, neglect, or exploitation.

(b) Licensing will notify you of any statute, rule, or minimum standard deficiencies within 10 days after receiving the results from a DFPS child abuse, neglect, or exploitation investigation.

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DIVISION 3. CONFIDENTIAL RECORDS

26 TAC §§745.8481, 745.8483, 745.8485, 745.8487,
745.8489, 745.8491, 745.8493

STATUTORY AUTHORITY

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

The new sections affect Texas Government Code §531.0055 and HRC §§42.042, 42.044, 42.0449, 42.0523 and 42.065.

§745.8481. What types of child care records does Licensing maintain?

(a) We maintain a record for each:

(1) Operation that applies for a permit;

(2) Regulated operation (a regulated operation's record was previously known as the operation's monitoring file);

(3) Program or operation that we investigate as a possible unregulated operation;

(4) Exemption determination that we make under §745.131 of this chapter (relating to How does a person or entity request that Licensing determine whether a program is exempt?) and any information that we gather to make such a determination; and

(5) Individual who applies for an administrator's license.

(b) Each record consists of one of the following or a combination of both:

(1) Electronic records maintained in the Child Care Licensing Automated Support System (CLASS), including information related to inspections and investigations that we conduct; and

(2) A hard copy or any digital files of information that is not included in CLASS, such as:

(A) Pictures;

(B) Applications;

(C) Forms with signatures;

(D) Correspondence from an applicant, permit holder, or others involved in the regulatory process; and

(E) Other supporting documentation.

(c) Records that we maintain are subject to retention periods that may affect the availability of a record that a person may request.

§745.8483. What portions of a child care record are confidential?

We can provide most portions of a child care record to the public. However, the following lists the portions of a child care record that are confidential and will not be released to the public in any manner, unless noted as an exception in §745.8487 of this division (relating to Are there any exceptions that allow the portions of a child care record that are confidential to be released to the public or certain persons?):

(1) Information concerning an open investigation, including:

(A) Interviews with operation staff, foster parents or other caregivers, children, or any other person; and

(B) Internal discussions by or among Licensing staff;

(2) The name of the reporter and any information that identifies the reporter;

(3) Information received or obtained from another agency, entity, or person, if that information is confidential under law, including information related to background checks as explained further in Subchapter F of this title (relating to Background Checks);

(4) Any private information that is confidential under state or federal law, including:

(A) A person's social security number;

(B) A foster home screening, adoptive home screening, and post-placement adoptive report; and

(C) Any information pertaining to pending court cases where the state is a party;

(5) Any information that would interfere with an ongoing law enforcement investigation or prosecution or with a Texas Department of Family and Protective Services child abuse, neglect, or exploitation investigation;

(6) The location of a family violence shelter or a victims of trafficking shelter center as defined by Texas Government Code §552.138;

(7) Information pertaining to an individual who received services at a family violence shelter or a victims of trafficking shelter center;

(8) Any photograph, audio or visual recording, or documentation of a child; and

(9) Any other information that is confidential under state or federal law.

§745.8485. Can an operation record the inspection or investigation process?

(a) In order to preserve the integrity and confidentiality of the Licensing inspection and investigation process, an operation or any person acting on the operation's behalf may not make a visual or audio recording, listen to, or eavesdrop on any:

(1) Licensing interview with operation staff, foster parents or other caregivers, children, or any other person; or

(2) Internal discussion by or among Licensing staff.

(b) This section does not prohibit an individual from recording a Licensing interview with the individual.

§745.8487. Are there any exceptions that allow the portions of a child care record that are confidential to be released to the public or certain persons?

Notwithstanding §745.8483 of this division (relating to What portions of a child care record are confidential?), the below exceptions allow certain portions of a child care record that are confidential to be released in the following manner:

(1) Information obtained during an open investigation is confidential under §745.8483(1) of this division, but the information is no longer confidential under that section once the investigation is completed.

(2) A foster home screening, adoptive home screening, and post-placement adoptive report is confidential under §745.8483(4)(B) of this division, but the screening or report may be released to:

(A) The individual who is the subject of the screening or report; or

(B) Any other person, if the Associate Commissioner for Child Care Regulation or designee determines the release of the screening or report is necessary to protect the health or safety of a child.

(3) The location of a family violence shelter or a victims of trafficking shelter center is confidential under §745.8483(6) of this division, except for when the location of the shelter or center must be provided in a public hearing under Texas Human Resources Code §42.0461 because the shelter or center is a general residential operation that will provide services to children with emotional disorders. The operation does not have to identify that the operation intends to provide services to victims of human trafficking.

(4) Any photograph, audio or visual recording, or documentation of a child is confidential under §745.8483(8) of this division, unless it is releasable under §745.8491 of this division (relating to Who can review or have a copy of a photograph, audio or visual recording, or documentation of a child that is in our records?).

§745.8489. Who may get a copy of the portions of a child care record that are confidential?

(a) Notwithstanding §745.8483 of this division (relating to What portions of a child care record are confidential?), we may provide a copy of the portions of a child care record that are confidential to the following persons and entities in the relevant situations:

(1) Texas Health and Human Services Commission (HHSC) staff, including volunteers, as necessary to perform their assigned duties;

(2) Texas Department of Family and Protective Services (DFPS) staff, including volunteers, as necessary to perform their assigned duties;

(3) A single source continuum contractor (SSCC) that contracts with DFPS to provide community-based care in Texas Family Code, Subchapter B-1, Chapter 264, as necessary for the SSCC's staff, including volunteers, to perform the SSCC's duties under that subchapter;

(4) Law enforcement personnel for the purpose of investigating a crime that is related to the record;

(5) An administrative law judge or judge of a competent jurisdiction in a civil or criminal case arising out of a related inspection, investigation, or enforcement action; and

(6) Any other person authorized by state or federal law to have a copy.

(b) Notwithstanding subsection (a) of this section, Licensing, in consultation with the HHSC Legal Services Division, may withhold any information in its records if the release of that information would endanger the life or safety of any individual.

(c) Notwithstanding §745.8483 of this division, a judge of a competent jurisdiction may order us to disclose otherwise confidential information if:

(1) A party in a matter before the judge files a motion requesting the judge to compel us to disclose the information and provides notice to HHSC and any other interested parties;

(2) After conducting a hearing and reviewing the information, including an audio or visual recording, the judge determines that disclosure is essential to the administration of justice and will not endanger the life or safety of any individual; and

(3) The judge includes in the disclosure order any safeguards that the court finds appropriate.

(d) Any person or entity that receives a copy of the portions of a child care record that are confidential under this section:

(1) May only use the confidential information for the purpose or duty that authorized the release of the confidential information; and

(2) May not release the confidential information to any person or entity that is not authorized to have the confidential information under this section.

§745.8491. Who can review or have a copy of a photograph, audio or visual recording, or documentation of a child that is in our records?

(a) In addition to the persons and entities identified in §745.8489 of this division (relating to Who may get a copy of the portions of a child care record that are confidential?):

(1) The parent of the child may get a copy of a photograph, audio or visual recording, or documentation of the child that is in our records; and

(2) The following persons may review a photograph, audio or visual recording, or documentation of a child in our records, but may not have a copy:

(A) Attorney ad litem, guardian ad litem, or court appointed special advocate of a child; and

(B) The operation cited for a deficiency from the inspection or investigation during which the photograph was taken or the audio or visual recording, or documentation was made.

(b) Any person or operation that receives a copy of a photograph, recording, or documentation of a child under subsection (a)(2) of this section:

(1) May only use it for the purpose or duty that authorized the release of the photograph, recording, or documentation of a child; and

(2) May not release it to any person or entity that is not authorized to have the photograph, recording, or documentation of a child under this section.

§745.8493. Will Licensing release any information related to a child abuse, neglect, or exploitation investigation conducted by the Texas Department of Family and Protective Services (DFPS)?

(a) DFPS investigations of child abuse, neglect, or exploitation remain confidential after DFPS provides the information to Licensing as described in Texas Human Resources Code §40.042(f).

(b) A person must request information related to an investigation conducted by DFPS from DFPS.

(c) We may release information related to a DFPS investigation in our records to:

(1) An operation to support a licensing statute, rule, or minimum standard deficiency that we assessed against the operation, so long as we redact any confidential information; or

(2) Any other person or entity authorized by state or federal law to have a copy.

(d) Any operation, person, or entity that receives information related to a DFPS child abuse, neglect, or exploitation investigation under this section:

(1) May only use the DFPS investigation information for the purpose or duty that authorized the release of the information; and

(2) May not release the DFPS investigation information to any other person or entity that is not authorized to have the information under 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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Karen Ray

Chief Counsel

Health and Human Services Commission

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



DIVISION 4. TECHNICAL ASSISTANCE

26 TAC §§745.8581, 745.8583, 745.8585

STATUTORY AUTHORITY

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

The new sections affect Texas Government Code §531.0055 and HRC §§42.042, 42.044, 42.0449, 42.0523 and 42.065.

§745.8581. What is technical assistance?

(a) Technical assistance is additional information or clarification we provide to help you understand and comply with licensing statutes, rules, and minimum standards.

(b) Technical assistance is not a deficiency or an enforcement action. Our provision of technical assistance does not affect our ability to issue a deficiency or take an enforcement action.

§745.8583. When does Licensing provide technical assistance?

We may provide technical assistance orally or in writing:

(1) At any time during or at the conclusion of an inspection or investigation, including on the inspection form or investigation letter, regardless of whether the operation is deficient or in compliance with a particular licensing statute, rule, or minimum standard;

(2) As part of the ongoing regulatory process; or

(3) At your request.

§745.8585. May I request an administrative review for technical assistance that Licensing provided?

No. We provide technical assistance to help you understand and comply with licensing statutes, rules, and minimum standards. Technical assistance does not include a decision or action you may challenge through an administrative review. If we provide you with technical assistance in addition to citing you for a deficiency, you will have the right to request an administrative review related to the deficiency but not the technical assistance.

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 748. MINIMUM STANDARDS FOR GENERAL RESIDENTIAL OPERATIONS

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §748.105, concerning What are the requirements for my personnel policies and procedures, §748.363, concerning What information must the personnel record of an employee include, and §748.505, concerning What minimum qualifications must all employees meet; and new §748.751, concerning What are the requirements for obtaining and verifying an applicant's employment history, and §748.753, concerning What are the requirements for completing an applicant's reference checks, in Texas Administrative Code, Title 26, Chapter 748, Minimum Standards for General Residential Operations.

BACKGROUND AND PURPOSE

The purpose of the proposal is to adopt rules in Chapter 748 to support the June 9, 2022, court filing regarding the June 6, 2022, status hearing in the MD v. Abbott litigation. The filing, signed by the court, refers to an agreement by HHSC to initiate rule-making to require operations to contact all an applicant's job references prior to commencement of employment. In addition to this court filing, CCR has determined that the rules will improve the safety of children in care in general residential operations by requiring a more thorough vetting of prospective employees. Accordingly, HHSC Child Care Regulation (CCR) is proposing new and amended rules to establish (1) employment history verification standards that require a General Residential Operation (GRO) to obtain and verify the most recent five years of an applicant's employment history; and (2) applicant reference check requirements that require a GRO to complete reference checks for each applicant by obtaining at least two references and contacting each of those references as part of an operation's pre-employment screening process.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §748.105 (1) adds a requirement that a GRO's personnel policies and procedures include written procedures for screening applicants to determine suitability for any position for which the GRO is considering them; the procedures must include (A) employment history verification as required in proposed new §748.751; and (B) reference checks as required in proposed new §748.753; (2) updates punctuation in the rule; and (3) updates the numbering of the paragraphs accordingly.

The proposed amendment to §748.363 (1) adds a requirement that a GRO include in an employee's personnel record documentation that the GRO has (A) verified employment history as required in proposed new §748.751; and (B) conducted reference checks as required in proposed new §748.753; (2) updates

punctuation in the rule; and (3) updates the numbering of the paragraphs accordingly.

The proposed amendment to §748.505 (1) adds a requirement that employees must have cleared a pre-employment screening in which the GRO determined the employee is suitable for the employee's position; the pre-employment screening must include (A) employment history verification as required in proposed new §748.751; and (B) reference checks as required in proposed new §748.753; (2) updates a reference; and (3) updates punctuation in the rule.

Proposed new Division 8, Pre-Employment Screening, in Subchapter E, Personnel, adds new rules related to employment history verification and employee reference checks.

Proposed new §748.751 outlines the requirements for obtaining and verifying an applicant's employment history prior to employment. The proposed rule requires a GRO to (1) obtain the previous five years of the applicant's employment history in writing; (2) verify the applicant's employment history by contacting (A) each employer included in the five year employment history; or (B) the applicant's three most recent employers, at a minimum, if the five year employment history includes more than three employers; and (3) for any applicant hired, maintain in the applicant's personnel file documentation of (A) the applicant's employment history that the GRO is required to obtain; (B) the results of any contact with previous employers related to employment verification; and (C) if unable to contact or obtain information from an employer, any refusal by the employer to provide required information or diligent efforts to contact the employer, unless the employer is permanently unreachable, in which case, the GRO must document the reason for that determination. The proposed new rule also provides examples of reasons an employer might be permanently unreachable and specifies that the rule applies to applicants who seek employment with the GRO on or after the date the rule is effective.

Proposed new §748.753 outlines the requirements for completing an applicant's reference checks prior to employment. The proposed rule requires a GRO to (1) obtain from each applicant two references from unrelated individuals who can speak to whether the applicant is suitable to work with or around children; (2) contact each reference, through an interview or in writing, to verify the applicant's suitability to work with or around children; (3) for any reference check the GRO is unsuccessful in completing, document (A) diligent efforts to contact each reference, which must include more than one attempt; and (B) the GRO's assessment of the applicant's is suitability to work with or around children; and (4) document and maintain in the personnel file specific information for each applicant hired. The proposed new rule also requires at least one reference check to be with a current or prior employer who is familiar with the applicant's history and performance if the applicant is currently or was previously employed in a role providing care or services to children within the past five years. In addition, the proposed rule specifies that the rule applies to applicants who seek employment with the GRO on or after the date the rule is effective.

FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years that the rules will be in effect, enforcing or administering the rules does not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rules will be in effect:

- (1) the proposed rules will not create or eliminate a government program;
- (2) implementation of the proposed rules will not affect the number of HHSC employee positions;
- (3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;
- (4) the proposed rules will not affect fees paid to HHSC;
- (5) the proposed rules will create new rules;
- (6) the proposed rules will expand existing rules;
- (7) the proposed rules will not change the number of individuals subject to the rules; and
- (8) the proposed rules will not affect the state's economy.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Trey Wood has also determined that there could be an adverse economic effect on small businesses and micro-businesses, but no adverse effect on rural communities.

Texas Government Code Chapter 2006 defines a small business as one that is for-profit with fewer than 100 employees. A micro-business is one that is for-profit with not more than 20 employees. Based on data obtained from the 2021 CCR Data Book, there were approximately 319 GROs required to comply with the rules on August 31, 2021. Based on two surveys conducted in 2010 and 2021, CCR estimates that approximately 65 percent of the GROs do not meet the definition of a small business or micro-business because they are either not for-profit or have 100 or more employees. Of the approximately 112 GROs (319 x 35 percent) that meet the definition of a small business or micro-business, CCR estimates that approximately 50 percent (56) of them are small businesses and 50 percent (56) of them are micro-businesses. No rural communities have a license as a GRO.

There is a projected economic impact for small businesses and micro-businesses from proposed §§748.105, 748.751, and 748.753.

Amended §748.105 requires an operation to add to its personnel policies written procedures for screening applicants to determine suitability for employment. The procedures must include verification of employment history and applicant reference checks. Historically, operations have indicated a labor cost to update policies and procedures to bring them into compliance with proposed rule changes. HHSC does not have enough information to determine these costs as developing the procedures will vary greatly with current business practice and individual business structure.

New §748.751 and §748.753 require a GRO to implement specific employment history verification and applicant reference check requirements. It is likely that some GROs currently have personnel and processes in place to conduct these tasks, or at least portions of the required tasks. Although some GROs may do this as current business practice, those that do not may incur a labor cost to allocate personnel resources to conduct the employment history verifications and reference checks. Due to the variability in existing processes across GROs, HHSC does not have enough information to determine the economic costs for persons required to comply with the rules as proposed.

HHSC determined that alternative methods to achieve the purpose of the proposed rules for small businesses, micro-businesses, or rural communities would not be consistent with ensuring the health and safety of children residing in GROs in Texas.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas.

PUBLIC BENEFIT AND COSTS

Rachel Ashworth-Mazerolle, Associate Commissioner for Child Care Regulation, has determined that for each year of the first five years the rules are in effect, the public will benefit through an effort to improve the safety of children in care by requiring a more thorough vetting of prospective employees in general residential operations.

Trey Wood has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules, other than the costs noted under the small businesses, micro-businesses, and rural community impact analysis.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Aimee Belden by email at Aimee.Belden@hhs.texas.gov.

Written comments on the proposal may be submitted to Aimee Belden, Rules Writer, Child Care Regulation, Texas Health and Human Services Commission, E-550, P.O. Box 149030, Austin, Texas 78714-9030; or by email to CCRRules@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 22R118" in the subject line.

SUBCHAPTER C. ORGANIZATION AND ADMINISTRATION

DIVISION 1. REQUIRED PLANS AND POLICIES, INCLUDING DURING THE APPLICATION PROCESS

26 TAC §748.105

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner

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

The amendments affect Texas Government Code §531.0055 and Texas Human Resources Code §42.042.

§748.105. What are the requirements for my personnel policies and procedures?

Your personnel policies and procedure must:

(1) Include an organizational chart showing the administrative, professional, and staffing structures and lines of authority;

(2) Include written job descriptions, including minimum qualifications and job responsibilities for each position;

(3) Include written procedures for screening applicants to determine suitability for any position for which you are considering an applicant. These procedures must include:

(A) Verifying an applicant's employment history as required by §748.751 of this chapter (relating to What are the requirements for obtaining and verifying an applicant's employment history?); and

(B) Conducting reference checks as required by §748.753 of this chapter (relating to What are the requirements for completing an applicant's reference checks?);

(4) [(3)] Include a written professional staffing plan that:

(A) Demonstrates that the number, qualifications, and responsibilities of professional positions, including the child-care administrator, are appropriate for the size and scope of your services and that workloads are reasonable enough to meet the needs of the children in care;

(B) Describes in detail the qualifications, duties, responsibilities, and authority of professional positions; for each position, the plan must show whether employment is on a full-time, part-time, or continuing consultative basis; and for part-time and consulting positions, the plan must specify the number of hours and frequency of services;

(C) Documents your staffing patterns, including your child/caregiver ratios, hours of coverage, and plans for providing backup caregivers in emergencies; and

(D) Identifies, if you provide treatment services, your ability to have enough caregivers, including caregivers who are awake throughout the night to supervise children 24 hours a day, including frequent one-to-one monitoring whenever necessary to meet the needs of a particular child; [-]

(5) [(4)] Include written training requirements for employees and caregivers; [-]

(6) [(5)] Include policies on whether your operation allows individual caregivers to take children away from the operation for day or overnight visits. The policy must require obtaining the parent's written approval prior to allowing overnight visits with staff. The policy must also address the issue outlined in §748.685(e) of this chapter (relating to What responsibilities does a caregiver have when supervising a child or children?); [-]

(7) [(6)] Comply with background check requirements outlined in Subchapter F of Chapter 745 of this title (relating to Background Checks); [-]

(8) [(7)] Require your employees to report serious incidents and suspected abuse, neglect, or exploitation. An employee who suspects abuse, neglect, or exploitation must report the employee's suspicion directly to the Texas Abuse and Neglect Hotline, as directed by Texas Family Code §261.101(b). An employee may not delegate the responsibility to make a report, and you may not require an employee to seek approval to file a report or to notify you that a report was made; [-]

(9) [(8)] Require that all employees and consulting, contracting, and volunteer professionals who work with a child and others with access to information about a child be informed in writing of their responsibility to maintain child confidentiality; and [-]

(10) [(9)] Include either the model drug testing policy or a written drug testing policy that meets or exceeds the criteria in the model policy provided in §745.4151 of this title (relating to What drug testing policy must my residential child-care operation have?).

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

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Karen Ray

Chief Counsel

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SUBCHAPTER D. REPORTS AND RECORD KEEPING

DIVISION 3. PERSONNEL RECORDS

26 TAC §748.363

STATUTORY AUTHORITY

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

The amendments affect Texas Government Code §531.0055 and Texas Human Resources Code §42.042.

§748.363. What information must the personnel record of an employee include?

For each employee, the personnel record must include:

(1) Documentation showing the date of employment;

(2) Documentation showing how the person meets the minimum age and qualifications for the position;

(3) Documentation that your operation has:

(A) Verified employment history as required by §748.751 of this chapter (relating to What are the requirements for obtaining and verifying an applicant's employment history?); and

(B) Conducted reference checks as required by §748.753 of this chapter (relating to What are the requirements for completing an applicant's reference checks?);

(4) [(3)] A current job description;

(5) [(4)] Evidence of any valid professional licensures, certifications, or registrations the person must have to meet qualifications for the position, such as a current renewal card or a letter from the credentialing entity verifying that the person has met the required renewal criteria;

(6) [(5)] A copy of the record of tuberculosis screening conducted prior to the person having contact with children in care showing that the employee is free of contagious tuberculosis as provided in §748.1583 of this title (relating to Who must have a tuberculosis (TB) examination?);

(7) [(6)] A notarized *Licensing Affidavit for Applicants for Employment* form as specified in Human Resources Code[?] §42.059;

(8) [(7)] A statement signed and dated by the employee documenting that the employee has read a copy of the operational policies required by §748.103 of this title (relating to What policies and procedures must I submit for Licensing's approval as part of the application process?);

(9) [(8)] A statement signed and dated by the employee indicating the employee must immediately report any suspected incident of child abuse, neglect, or exploitation to the Texas Abuse and Neglect Hotline and to the operation's administrator or administrator's designee;

(10) [(9)] Proof of request for background checks required by Chapter 745, Subchapter F of this title (relating to Background Checks);

(11) [(10)] For each person who transports a child, a copy of:

(A) The person's valid driver's license; or

(B) A driver's license check conducted through the Texas Department of Public Safety within the last 12 months;

(12) [(11)] A record of training, including the date of the training, the number of training hours, and the curriculum covered;

(13) [(12)] Any documentation of the person's performance with the operation; and

(14) [(13)] The date and reason for the person's separation, if applicable.

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SUBCHAPTER E. PERSONNEL
DIVISION 1. GENERAL REQUIREMENTS

26 TAC §748.505

STATUTORY AUTHORITY

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

The amendments affect Texas Government Code §531.0055 and Texas Human Resources Code §42.042.

§748.505. *What minimum qualifications must all employees meet?*

(a) An employee's behavior or health status must not present a danger to children in care.

(b) Each employee must:

(1) Meet the requirements in Subchapter F of Chapter 745 of this title (relating to Background Checks);

(2) Have a record of a tuberculosis screening showing the employee is free of contagious TB as provided in §748.1583 of this chapter [title] (relating to Who must have a tuberculosis (TB) examination);

(3) Be physically, mentally, and emotionally capable of performing assigned tasks and have the skills necessary to perform assigned tasks; [and]

(4) Complete a notarized *Licensing Affidavit for Applicants for Employment* form, as specified in Human Resources Code[?] §42.059; and [-]

(5) Have cleared a pre-employment screening assessment in which you determined the employee's suitability for the employee's position. The screening must have included:

(A) Verification of employment history as required by §748.751 of this subchapter (relating to What are the requirements for obtaining and verifying an applicant's employment history?); and

(B) Reference checks, as required by §748.753 of this subchapter (relating to What are the requirements for completing an applicant's reference checks?).

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Chief Counsel

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DIVISION 8. PRE-EMPLOYMENT SCREENING

26 TAC §748.751, §748.753

STATUTORY AUTHORITY

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

The new sections affect Texas Government Code §531.0055 and Texas Human Resources Code §42.042.

§748.751. What are the requirements for obtaining and verifying an applicant's employment history?

(a) Before hiring an applicant for a position, you must:

(1) Obtain in writing the applicant's employment history for the last five years; and

(2) Verify whether the applicant was employed as described in the applicant's employment history by contacting:

(A) Each employer included in the five-year employment history; or

(B) The applicant's three most recent employers, at a minimum, if the five-year employment history includes more than three employers; and

(b) If you hire the applicant, you must maintain documentation of the following in the applicant's personnel file:

(1) The applicant's employment history required by subsection (a)(1) of this section; and

(2) The results of any contact with an applicant's previous employers related to employment verification.

(3) If you are unable to contact an employer or obtain the information described in subsection (a)(2) of this section from an employer:

(A) Any refusal by the employer to provide the information; or

(B) Your diligent efforts to contact the employer, which must include more than one attempt to contact the employer, unless the employer is permanently unreachable. If the employer is permanently unreachable, your documentation must include the reason why you made that determination. Examples of an employer being unreachable include:

(i) The employer is out of business and there is no alternative contact information to obtain information from the employer; or

(ii) The employer was an individual who is deceased.

(c) This rule applies only to applicants who seek employment with your operation on or after August 9, 2023.

§748.753. What are the requirements for completing an applicant's reference checks?

(a) Before hiring an applicant for a position, you must complete the applicant's reference checks by:

(1) Obtaining from the applicant the name and contact information of at least two individuals unrelated to the applicant who can serve as references by answering questions related to the applicant's suitability to work with or around children; and

(2) Contacting each of the two required references to verify that the applicant is suitable to work with or around children. You may contact the reference through an interview or in writing.

(b) For an applicant who is currently or was previously employed in a position responsible for providing care or services to children within the past five years, at least one of the reference checks required in subsection (a) of this section must be a current or prior employer who has supervised or is otherwise familiar with the history and performance of the applicant in that capacity.

(c) For any reference check you are unsuccessful in completing as required by subsection (a) or (b) of this section, you must document:

(1) Your diligent efforts to contact the reference, which must include more than one attempt to contact the reference; and

(2) Your assessment of the applicant's suitability to work with or around children.

(d) For each person you hire, you must maintain in the employee's personnel file:

(1) Documentation of each reference check that includes:

(A) The reference's name;

(B) The relation of the reference to the applicant;

(C) The reference's contact information;

(D) The date you completed the check;

(E) Information you obtained from the check, documented as:

(i) A summary of the interview; or

(ii) A copy of the written information provided by the reference; and

(F) If you conducted the check through an interview, the name of the person who interviewed the reference; and

(2) If you were unsuccessful in completing a reference check, documentation required by subsection (c) of this section.

(e) This rule applies only to applicants who seek employment with your operation on or after August 9, 2023.

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

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Karen Ray

Chief Counsel

Health and Human Services Commission

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



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 745. LICENSING

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes in Texas Administrative Code (TAC), Title 40, Chapter 745, the repeal of Subchapter K, Inspections and Investigations, which consists of §§745.8401, 745.8403, 745.8405, 745.8407, 745.8409, 745.8411, 745.8413, 745.8415, 745.8417, 745.8419, 745.8421, 745.8423, 745.8425, 745.8427, 745.8441, 745.8443, 745.8445, 745.8447, 745.8449, 745.8451, 745.8453, 745.8455, 745.8481, 745.8483, 745.8485, 745.8487, 745.8489, 745.8491, 745.8493, 745.8495, 745.8511, 745.8513, 745.8515, 745.8517, 745.8519, 745.8521, 745.8523, 745.8525, 745.8527, 745.8529, 745.8531, 745.8533, 745.8551, 745.8553, 745.8555, 745.8557, 745.8559, 745.8561, 745.8581, 745.8583, and 745.8585.

BACKGROUND AND PURPOSE

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

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

DFPS adopted rules applicable to DFPS responsibilities in Title 40, Chapter 707. In addition, the proposal of Title 26, Chapter 745, Subchapter B, Child Care and Other Operations that We Regulate, new Subchapter I, Non-Enforcement Voluntary Actions, and new Subchapter K, Inspections, Investigations, and Confidentiality, containing new rules applicable to CCR responsibilities, are published elsewhere in this issue of the *Texas Register*. Accordingly, CCR is proposing the repeal of Title 40, Chapter 745, Subchapter K, including the repeal of the corresponding rules.

SECTION-BY-SECTION SUMMARY

The proposed repeal deletes rules that are no longer necessary because the rules relating to DFPS have already been addressed by DFPS in Title 40, Chapter 707, and the rules relating to CCR are being proposed by HHSC in Title 26, Chapter 745, Subchapters B, I, and K.

FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years that the proposed repeal will be in effect, enforcing or administering the repeal do not have foreseen

able implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the proposed repeal will be in effect:

- (1) the proposed repeal will not create or eliminate a government program;
- (2) implementation of the proposed repeal will not affect the number of HHSC employee positions;
- (3) implementation of the proposed repeal will result in no assumed change in future legislative appropriations;
- (4) the proposed repeal will not affect fees paid to HHSC;
- (5) the proposed repeal will not create new rules;
- (6) the proposed repeal will repeal existing rules;
- (7) the proposed repeal will not change the number of individuals subject to the rules; and
- (8) the proposed repeal will not affect the state's economy.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities.

There is no adverse economic effect on small businesses, micro-businesses, or rural communities from this proposal because there is no requirement to alter current business practices, and there are no new fees imposed.

LOCAL EMPLOYMENT IMPACT

The proposed repeals will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to the proposed repeal because the repeal does not impose a cost on regulated persons and are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

PUBLIC BENEFIT AND COSTS

Rachel Ashworth-Mazerolle, Associate Commissioner for Child Care Regulation, has determined that for each year of the first five years the proposed repeal is in effect, the public benefit will be that the rules will be easier to locate in the title of the Texas Administrative Code that relates specifically to HHSC or DFPS and consistent with legislative changes.

Trey Wood has also determined that for the first five years the proposed repeal is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because the proposed rules in Title 26 are replacing and updating repealed rules from Title 40. The updated rules do not impose any additional costs on persons that are required to comply with the rules.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposed repeal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

PUBLIC COMMENT

Questions about the content of this proposal may be directed by email to Gerry.Williams@hhs.texas.gov.

Written comments on the proposal may be submitted to Gerry Williams, Rules Writer, Child Care Regulation, HHSC, E-550, P.O. Box 149030, Austin, Texas 78714-9030; or by email to CCRRules@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be post-marked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 22R083" in the subject line.

SUBCHAPTER K. INSPECTIONS AND INVESTIGATIONS

DIVISION 1. OVERVIEW OF INSPECTIONS AND INVESTIGATIONS

40 TAC §§745.8401, 745.8403, 745.8405, 745.8407, 745.8409, 745.8411, 745.8413, 745.8415, 745.8417, 745.8419, 745.8421, 745.8423, 745.8425, 745.8427

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of DFPS to HHSC. In addition, Texas Human Resources Code (HRC) §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42.

The proposed repeals affect Texas Government Code §531.0055 and HRC §42.042.

- §745.8401. *Who has the right to conduct an inspection or investigation?*
- §745.8403. *What is the purpose of an inspection?*
- §745.8405. *What is the purpose of an investigation?*
- §745.8407. *When will Licensing inspect and/or investigate an operation?*
- §745.8409. *How often may Licensing inspect or investigate my operation?*
- §745.8411. *Are inspections and investigations announced or unannounced?*
- §745.8413. *Must I allow Licensing to inspect and/or investigate my operation?*
- §745.8415. *What can Licensing inspect and/or investigate?*
- §745.8417. *Can Licensing read all of the records during an inspection or investigation?*
- §745.8419. *Can Licensing staff take copies of records from my operation?*
- §745.8421. *Will Licensing investigate anonymous reports?*
- §745.8423. *Will the findings of an anonymous report be posted on the Department's Internet website, Search Texas Child Care?*
- §745.8425. *What will happen if I do not allow Licensing to inspect and/or investigate all areas of my operation?*

§745.8427. *What are the expectations for a listed family home?*

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

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Karen Ray

Chief Counsel

Department of Family and Protective Services

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



DIVISION 2. NOTIFICATION

40 TAC §§745.8441, 745.8443, 745.8445, 745.8447, 745.8449, 745.8451, 745.8453, 745.8455

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of DFPS to HHSC. In addition, Texas Human Resources Code (HRC) §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42.

The proposed repeals affect Texas Government Code §531.0055 and HRC §42.042.

- §745.8441. *How will Licensing notify me of the purpose of an unannounced inspection or investigation?*
- §745.8443. *If Licensing does not notify my operation of the nature of the allegation during an investigation, to whom will Licensing convey this information?*
- §745.8445. *Whom will Licensing inform of the inspection and/or investigation results?*
- §745.8447. *What will the notification include?*
- §745.8449. *What must I do if Licensing notifies me of a deficiency?*
- §745.8451. *Who notifies parents an investigator interviewed their child during an abuse/neglect investigation?*
- §745.8453. *If Licensing instructs me to notify a parent that his child was a victim of abuse or neglect or all parents that child abuse or neglect occurred in my operation, what information must I give to the parents and when?*
- §745.8455. *Can PRS hold me responsible for abuse without identifying me as the perpetrator?*

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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Chief Counsel

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DIVISION 3. CONFIDENTIALITY

40 TAC §§745.8481, 745.8483, 745.8485, 745.8487, 745.8489, 745.8491, 745.8493, 745.8495

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of DFPS to HHSC. In addition, Texas Human Resources Code (HRC) §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42.

The proposed repeals affect Texas Government Code §531.0055 and HRC §42.042.

§745.8481. *Is information in my operation's monitoring file confidential?*

§745.8483. *Will you tell me who made the report that resulted in the investigation of my operation?*

§745.8485. *Are investigations confidential?*

§745.8487. *What information can Licensing release to the public after the completion of the abuse or neglect investigation?*

§745.8489. *What portions of the child abuse or neglect investigation must Licensing keep in the operation's monitoring file?*

§745.8491. *Who can obtain information from the confidential portions of an abuse or neglect investigation file?*

§745.8493. *Are there any portions of Licensing records that Licensing may not release to anyone?*

§745.8495. *Who can review or have a copy of a photograph or an audio or visual recording, depiction, or documentation of a child that is in Licensing records?*

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

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Chief Counsel

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DIVISION 4. VOLUNTARY ACTIONS

40 TAC §§745.8511, 745.8513, 745.8515, 745.8517, 745.8519, 745.8521, 745.8523, 745.8525, 745.8527, 745.8529, 745.8531, 745.8533

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of DFPS to HHSC. In addition, Texas Human

Resources Code (HRC) §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42.

The proposed repeals affect Texas Government Code §531.0055 and HRC §42.042.

§745.8511. *What are the different types of voluntary actions that an operation may take?*

§745.8513. *Must Licensing approve all voluntary actions?*

§745.8515. *Can I prevent Licensing from taking a corrective or adverse action by taking a voluntary action?*

§745.8517. *What must I do when I temporarily relocate my operation because of damage or renovation?*

§745.8519. *Can I voluntarily suspend my permit?*

§745.8521. *How long can I voluntarily suspend my permit?*

§745.8523. *How do I request voluntary suspension?*

§745.8525. *Will Licensing automatically grant me a properly requested voluntary suspension?*

§745.8527. *What are my responsibilities during the voluntary suspension period?*

§745.8529. *How do I resume operation at the end of the voluntary suspension period?*

§745.8531. *What if I do not resume operation at the end of the voluntary suspension period?*

§745.8533. *What if I intend to voluntarily close my operation?*

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

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Karen Ray

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DIVISION 5. ABUSE AND NEGLECT

40 TAC §§745.8551, 745.8553, 745.8555, 745.8557, 745.8559, 745.8561

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of DFPS to HHSC. In addition, Texas Human Resources Code (HRC) §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42.

The proposed repeals affect Texas Government Code §531.0055 and HRC §42.042.

§745.8551. *What is the purpose of this division?*

§745.8553. *Who works "under the auspices of an operation"?*

§745.8555. *What do the following words mean when Licensing investigates abuse, neglect, or exploitation?*

§745.8557. *What is abuse?*

§745.8559. *What is neglect?*

§745.8561. *When will Licensing use the "reasonable and prudent parent standard" in conducting an investigation of a child-placing agency or general residential operation?*

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

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Karen Ray

Chief Counsel

Department of Family and Protective Services

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



DIVISION 6. TECHNICAL ASSISTANCE

40 TAC §§745.8581, 745.8583, 745.8585

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of DFPS to HHSC. In addition, Texas Human Resources Code (HRC) §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42.

The proposed repeals affect Texas Government Code §531.0055 and HRC §42.042.

§745.8581. *What is technical assistance?*

§745.8583. *When does Licensing provide technical assistance?*

§745.8585. *May I request an administrative review for technical assistance offered?*

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

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Karen Ray

Chief Counsel

Department of Family and Protective Services

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TITLE 43. TRANSPORTATION

PART 15. DENTON COUNTY TAX-ASSESSOR COLLECTOR

CHAPTER 430. MOTOR VEHICLE TITLE SERVICES

43 TAC §§430.1 - 430.16

The Denton County Tax Assessor-Collector proposes amendments to 43 TAC §§430.1 - 430.16, relating to the regulation of motor vehicle title services in Denton County, Texas.

The proposed amendments to 43 TAC §§430.1 - 430.16 include the following.

A definition of the term "Applicant Business," which is used in §430.6 and §430.7 of the existing chapter but not defined, has been added to §430.1 for clarification purposes (proposed as renumbered §430.1(a)).

The term "Denton County Tax Assessor-Collector" is used throughout the existing chapter. In a few sections, the term "county assessor-collector" is used. The proposed amendments delete these terms from existing §§430.1 - 430.16 and in each case replace the deleted term with the term "DCTAC." In §430.15(b), (d) and (e) and §430.16, the word "Officeholder" has been added after the term "DCTAC" as applicable to clarify that the described action/decision is performed/made by the person who holds the office of the DCTAC. Definitions of the terms "DCTAC" and "DCTAC Officeholder" have been added to §430.1 (proposed as renumbered §430.1(c)).

The terms "licensed MVTS," "licensed motor vehicle title service" and "licensed title service" are used in numerous sections of the existing chapter. A definition of these terms has been added to §430.1 (proposed as renumbered §430.1(d)) for clarification purposes, and capitalization of these terms has been removed (changed to lower-case) as applicable throughout the chapter for purposes of conformity.

The terms "licensed MVTSR," "licensed runner" and "licensed title service runner" are used in numerous sections of the existing chapter. A definition has been added to §430.1 (proposed as renumbered §430.1(e)) for clarification purposes, and capitalization of these terms has been removed (changed to lower-case) as applicable throughout the chapter for purposes of conformity.

A definition of the term "motor vehicle title application" has been added to §430.1 (proposed §430.1(g)) for clarification purposes.

Minor changes have been made to existing subsections (a) - (e) of §430.1 for purposes of clarity, and capitalization of the terms defined in these sections has been removed (changed to lower-case) as applicable throughout the chapter for purposes of conformity. Subsections (a), (b), (c), (d) and (e) of §430.1 have been renumbered to (b), (f), (h), (i) and (j), respectively.

Language has been added to/deleted from §430.2(a) for the purpose of clarifying that "entity" means "business entity" and to distinguish between a "person" and an "entity."

Language has been added to/deleted from §430.3(2), and subsection (3) has been added for the purpose of clarifying the section's meaning.

Language has been added to/deleted from §430.5(a) and (a)(1) for the purpose of clarifying the section's meaning. The word "non-refundable" has been added to §430.5(a)(2) for the purpose of clarifying that the application fee is non-refundable.

Language has been added to/deleted from §430.6(b)(5). The purpose of this change is to add the requirement that each title service license applicant must provide a copy of its current lease for each location/office where business is to be conducted. Requiring tangible proof of the applicant's claim to the location/office

will provide DCTAC with more reliable assurance that business will actually be conducted within the county.

Language has been added to/deleted from the first sentence of §430.8(a) for the purpose of clarifying its meaning. The following language has also been added to §430.8(a): "An on-site visit to any or all of the business locations listed on the applicant's TSLA form (§430.6(c)(5)) may be performed at the option DC-TAC. Upon notification by DCTAC, applicant shall, in coordination with DCTAC, schedule for each location listed in the DCTAC notification an on-site visit at which the applicant will be present. Failure or refusal by applicant to schedule and carry out any such requested on-site visit shall be grounds for dismissal of the application." This new requirement/process is intended to deter attempts to list false location information in an application.

Language has been added to/deleted from §430.8(b) for the purpose of clarifying its meaning.

The word "coercive" has been added to §430.13(a)(5). The proposed addition is intended to provide additional clarity concerning the type of behavior that may result in revocation. The DC-TAC makes this addition to clarify/warn that a licensee's attempt to coerce a DCTAC employee to accept/process any application that does not meet the criteria for processing/acceptance will constitute a cause for license revocation.

Subsections (a)(8), (9), (10) and (11) have been added to §430.13. The proposed additions are intended to provide additional clarity concerning the presentation of motor vehicle applications and the causes for which DCTAC may deny or revoke a license.

The first sentence of §430.14(a) has been amended as follows: "The DCTAC may suspend a license if the licensee or any applicant for the license in delinquent in the payment of property taxes or criminal fines or fees to Denton County." The intent of this change is to make licensee's or applicant's failure to pay property taxes owed to Denton County a cause for license suspension.

The Denton County Tax Assessor-Collector, Michelle French, proposes these amendments for the purpose of providing improved accuracy and clarity to the chapter, and for the purpose of enhancing its provisions to better ensure compliance and to better guard against attempts to subvert its requirements by undetected fraud.

Ms. French has determined that for the first five-year period the proposed amendments to 43 TAC §§430.1 - 430.16 are in effect, there will be no fiscal impact for state or local government. The proposed amendments do not create or eliminate any government programs or employee positions. The proposed amendments do not require an increase or decrease in future legislative appropriations or fees paid to the Denton County Tax Assessor-Collector. The proposed amendments do not increase or decrease the number of individuals subject to 43 TAC §§430.1 - 430.16. The proposed amendments do not impact the state's economy. The proposed amendments do not create or repeal regulation, but enhance and clarify the existing regulations set forth in 43 TAC §§430.1 - 430.16.

Ms. French 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 enforcement of the rules will be to reduce vehicle theft and related document fraud.

Comments on the proposed amendments may be submitted to Stacey Dvoracek, Denton County Chief Deputy, Denton

County Tax Office, 1505 E. McKinney Street, Denton, Texas 76209-4525. The deadline for all comments is 30 days after publication in the *Texas Register*.

Statutory authority

Texas Transportation Code Chapter 520, Subchapter E authorizes a county tax assessor-collector to adopt rules pertaining to the licensing of motor vehicle title services. Specifically, Section 520.059(b) states that the county tax assessor-collector shall adopt rules that establish grounds for the denial, suspension, revocation or reinstatement of a license and rules that establish procedures for disciplinary action.

The proposal does not affect any other statutes, articles, or codes.

§430.1. *Definitions.*

(a) The term "Applicant Business" means a business entity for which a motor vehicle title service license is sought by application, in accordance with these rules, of its partners, officers, or directors.

(b) [(a)] "Application." Except where otherwise expressly stated herein, the term "application" ["~~Application~~"] includes all documentation submitted with a motor vehicle title service application form (TSLA Form) [~~Motor Vehicle Title Service Application Form~~] or motor vehicle title service runner application (TSRA Form) [~~Motor Vehicle Title Service Runner Application Form~~].

(c) The term "DCTAC" means the Office of the Denton County Tax Assessor-Collector, except that the term "DCTAC Officeholder" means the person who holds the Office of Denton County Tax Assessor-Collector. The term "DCTAC Officeholder" includes a person who holds the Office by election or, in the event of a vacancy, by appointment.

(d) The terms "licensed MVTS," "licensed motor vehicle title service" and "licensed title service" each mean a motor vehicle title service that holds a current and valid license, issued by the DCTAC under these Rules, to act as a motor vehicle title service in Denton County.

(e) The terms "licensed MVTSR," "licensed runner," and "licensed title service runner" each mean a motor vehicle title service runner that holds a current and valid license, issued by the DCTAC, to act as a title service runner for a licensed MVTS.

(f) [(b)] The term "motor [~~Motor~~] vehicle" has the meaning assigned by Texas Transportation Code §501.002.

(g) The term "motor vehicle title application" in §430.13(a)(7), (8) and (10) of this chapter (relating to Denial or Revocation of License) herein includes all documentation submitted with a motor vehicle title application.

(h) [(e)] The term "motor [~~Motor~~] vehicle title service" or "MVTS" means any person or entity that for compensation directly or indirectly assists other persons in obtaining title documents, in either written or electronic form, by submitting, transmitting, or sending applications for title documents to the appropriate government agencies.

(i) [(d)] The term "title [~~Title~~] documents" means motor vehicle title applications, motor vehicle registration renewal applications, motor vehicle mechanic's lien title applications, motor vehicle storage lien title applications, motor vehicle temporary registration permits, motor vehicle title application transfers occasioned by the death of the title holder, motor vehicle inquiries, license plate and/or sticker replacement or any other motor vehicle related transaction.

(j) [(e)] The terms "title [~~Title~~] service runner," "runner" and ["~~Runner~~," or] or "MVTSR" each means any person employed by a

licensed motor vehicle title service to submit or present title documents to the DCTAC [county tax assessor-collector] on behalf of that licensed motor vehicle title service.

§430.2. License Required.

(a) A person or business entity may not act as a motor vehicle title service in Denton County unless the person or entity [it] holds a motor vehicle title service license [Motor Vehicle Title Service License] issued by the DCTAC [Denton County Tax Assessor-Collector] under these Rules.

(b) A person may not act as a title service runner for a motor vehicle title service unless that person holds a motor vehicle title service license [Motor Vehicle Title Service License] issued by the DCTAC [Denton County Tax Assessor-Collector] under these Rules. A person may hold only one MVTS runner license [Runner License] at a time.

(c) A person commits an offense if the person violates a provision of Title 7, Subtitle A, Chapter 520, Subchapter C of the Texas Transportation Code or a rule adopted by the DCTAC [Denton County Tax Assessor-Collector] under Subchapter E, §§520.051 - 520.063 of the Texas Transportation Code. Such an offense is a Class A misdemeanor.

§430.3. Eligible Applicants.

A person may not apply for a motor vehicle title service license or motor vehicle title service runner license [Motor Vehicle Title Service License or Motor Vehicle Title Service License Runner License] unless the person is:

(1) at least 18 years of age on the date the application is submitted; and

(2) authorized to handle financial transactions for [whether representing] himself/herself or another; and

(3) if the application seeks a motor vehicle title service license for a business entity, authorized to handle financial transactions for that business entity.

§430.4. Criminal Background Check.

Each applicant [Applicant] for a license must submit to a criminal background check.

§430.5. Submission of Application.

(a) Each license application [Applicant] must be submitted by the applicant, in person, at any DCTAC location during business hours. The application must be complete and include all required documentation. To submit the completed application, applicant must, at the time of the submission [submit his/her completed application form, including all required documentation, in person to the Tax Assessor/Collector or the Tax Assessor/Collector's designated representative. The Tax Assessor/Collector or the Tax Assessor/Collector's designated representative will accept the completed Application provided Applicant]:

(1) presents a valid Texas driver's license and a valid Social Security Card or, if applicable, a U.S.-issued alien identification card issued by the Department of Homeland Security, and permits a copy of both to be made for DCTAC records [the Tax Assessor/Collector or Tax Assessor/Collector's designated representative to make a copy of both]; and

(2) pays the non-refundable application [Application] fee.

§430.6. Completion of Motor Vehicle Title Service License Application.

(a) A motor vehicle title service [Motor Vehicle Title Service] ("MVTS") license application [License Application] will not be considered complete under §430.5 of this chapter (relating to Submission

of Application) unless all applicable information identified on the title service license application [Title Service License Application] form ("TSLA Form") has been provided, all required documentation has been attached, and the applicant [Applicant] identified on the TSLA Form has executed the Applicant Affidavit section of the Form as described in subsection (c) of this section. If Applicant Business is a partnership, each partner must submit a separate application. If Applicant Business is a corporation, each officer and director must submit a separate application and identify the state of incorporation on that application.

(b) The following documents must be submitted with and attached to the signed and completed TSLA Form:

(1) A copy of applicant's [Applicant's] valid Texas driver's license and valid Social Security Card, or if applicable, a U.S.-issued alien identification card by the Department of Homeland Security;

(2) an original or certified copy of:

(A) if Applicant Business is a DBA, each applicable Assumed Name Certificate.

(B) if Applicant Business is a corporation, the applicable Articles of Incorporation.

(C) if Applicant Business is a partnership, the applicable Partnership Agreement.

(3) all forms required by the DCTAC [Denton County Tax Assessor-Collector], signed and completed as required by the DCTAC [Denton County Tax Assessor-Collector].

(c) Each applicant [Applicant] shall provide all information indicated on the TSLA Form, which information shall include but is not limited to:

(1) Applicant name, address, telephone number, social security number, date of birth, Texas Driver's license number, citizenship status, and what position the applicant [Applicant] holds in the Applicant Business (i.e. owner, principal, director, officer, partner);

(2) Applicant Business name, physical address, mailing address, and telephone number(s);

(3) identification of Applicant Business type (i.e., DBA, Corporation or Partnership);

(4) name under which Service will conduct business (if different than Applicant Business name);

(5) the physical address(es) (including any applicable suite number(s) of each location/office from which the service [Service] will conduct business (a P.O. Box will not be accepted), [and] a corresponding photo, with address numbers clearly visible, of each location/building where business is to be conducted, and a copy of the applicant's current lease for each such location/office;

(6) the name(s), as applicable, of:

(A) each individual with any ownership interest in the Applicant Business; and

(B) each principal, officer or director of Applicant Business.

(7) whether the applicant [Applicant] or Applicant Business has previously applied for an MVTS license (or permit), the result of the previous application, and whether the applicant [Applicant] or Applicant Business has ever held an MVTS license (or permit) that was revoked or suspended;

(8) Applicant Business federal tax identification number; and

(9) Applicant Business state sales tax number.

(d) Each applicant [Applicant] shall execute the Applicant Affidavit Section of the TSRA Form, attesting to the following:

(1) that information provided in and with the application is true and accurate; and

(2) that applicant [Applicant] freely grants the DCTAC [Denton County Tax Assessor-Collector] and local law enforcement agencies permission to conduct a criminal background investigation on applicant [Applicant] and/or Applicant Business [Applicant's business].

§430.7. Completion of Title Service Runner License Application.

(a) A motor vehicle title service runner application [Motor Vehicle Title Service Runner License Application] will not be considered complete under §430.5 of this chapter (relating to Submission of Application) unless all applicable information identified on the title service runner application [Title Service Runner License Application] form ("TSRA Form") has been provided, all required documentation has been attached, and the applicant [Applicant] identified on the TSRA Form has executed the Applicant Affidavit section of the TSRA Form as described in subsection (c) of this section. The following documents must be submitted with and attached to the signed and completed TSRA Form:

(1) a copy of applicant's [Applicant's] valid Texas driver's license and valid Social Security Card, or if applicable, a U.S.-issued alien identification card by the Department of Homeland Security;

(2) all forms required by the DCTAC [Denton County Tax Assessor-Collector], signed and completed as required by the DCTAC [Denton County Tax Assessor-Collector]; and

(3) sworn affidavits of each owner, partner, officer or director of the licensed title service [Licensed Title Service] identified on the TSRA Form, stating that the licensed title service [Licensed Title Service] (which must be identified specifically in the statement by name and License No.) employs applicant [Applicant] and authorizes him/her to submit or present title documents to the DCTAC [Denton County Tax Assessor-Collector] on its behalf.

(b) Applicants shall provide all information indicated on the TSRA Form, which information shall include but is not limited to:

(1) the name of the licensed motor vehicle title service for which the applicant [Applicant] seeks a license to submit or present title documents, the MVTS License Number, and date of issue;

(2) the name, office address and office phone of the title service owner, officer or employee who will supervise applicant [Applicant];

(3) Applicant name, address, telephone number, social security number, date of birth, Texas Driver's license number, and citizenship status;

(4) whether the applicant [Applicant] has previously applied for a MVTS or MVTSR license (or permit), the result of the previous application(s), and whether the applicant [Applicant] or applicant business [Applicant Business] has ever held an MVTS or MVTSR [MVTS Runner] license (or permit) that was revoked or suspended; and

(5) a sworn affidavit stating that the applicant [Applicant] is employed by the licensed motor vehicle title service identified on the application [Application] and authorized by that motor vehicle title

service to submit or present title documents to the DCTAC [county tax assessor-collector].

(c) Each applicant [Applicant] shall execute the Applicant Affidavit section [Section] of the TSRA Form, attesting to the following:

(1) that information provided in and with the application is true and accurate;

(2) that applicant [Applicant] is employed by the title service [Title Service] identified in Section 1 of the application [Application] to submit or present title documents to the DCTAC [Denton County Tax Assessor-Collector] under Chapter 520 of the Texas Transportation Code; and

(3) that applicant [Applicant] freely grants the DCTAC [Denton County Tax Assessor-Collector] and local law enforcement agencies permission to conduct a criminal background investigation on applicant [Applicant] and/or Applicant's Business [business].

§430.8. Application Review/Applicant Background Check/Applicant Interview.

(a) After submission [acceptance] of a completed application, [Denton County Tax Assessor-Collector will conduct] an initial review of the application will be conducted [Application]. If information known to or obtained by the DCTAC [Denton County Tax Assessor-Collector] conflicts or appears to conflict with information supplied in the application, [Application, Denton County Tax Assessor-Collector may ask] the applicant may be asked [Applicant] to provide additional clarifying or verifying information. An on-site visit to any or all of the business locations listed on an applicant's TSRA Form (§430.6(c)(5) (relating to Completion of Motor Vehicle Title Service License Application)) may be performed at the option of DCTAC. Upon notification by DCTAC, applicant shall, in coordination with the DCTAC, schedule for each location listed in the DCTAC notification an on-site visit at which the applicant will be present. Failure or refusal by applicant to schedule and carry out any such requested on-site visit shall be grounds for dismissal of the application.

(b) Following initial application review under subsection (a) of this section, [Denton County Tax Assessor-Collector will conduct] the applicant background [Applicant Background] check will be conducted. Upon completion of this process, interviews for eligible applicants [Applicants] will be scheduled according to DCTAC [Denton County Tax Assessor-Collector] office needs/staff availability. Applicants are responsible for reserving open interview slots, which will be assigned [by Denton County Tax Assessor-Collector] on a first-come, first-served basis. No license may issue unless each person required to apply for the requested license has completed the interview process. During the interview process, Denton County Tax Assessor-Collector may question Applicant applicant may be asked to provide additional information and/or request additional documentation for the purpose of establishing applicant's [Applicant's] business reputation and character.

(c) Applicants will be notified of the outcome of an application within 30 days of the date the interview process is completed. Such notice will be sent by certified mail to runner license applicants [Runner License Applicants] at the home address listed on the application [Application] and to title service license applicants [Title Service License Applicants] at the business mailing address listed on the application [Application].

§430.9. License.

(a) License No./Effective Date. Each license granted will be assigned a number. The effective date of issuance is the date upon which notice is sent under §430.8(c) of this chapter (relating to Application Review/Applicant Background Check/Applicant Interview).

(b) Original. Each licensee shall be issued one original license.

(c) A title service shall process all work at the DCTAC [Denton] Main office for the first forty-five (45) days of the license period, after which the title service may process work at any DCTAC [Denton County Tax Assessor-Collector] location. A title service whose license is renewed under §430.12(a) - (d) of this chapter (relating to License Renewal) may, upon the commencement of the renewal period, process work at any DCTAC [Denton County Tax Assessor-Collector] location.

§430.10. *Records/Reporting.*

(a) MVTS

(1) Each licensed MVTS must inform DCTAC [Denton County Tax Assessor-Collector] of a change to its primary physical and/or mailing address by submitting a written address change request form to the DCTAC [Denton County Tax Assessor-Collector]. DCTAC [Denton County Tax Assessor-Collector] shall update the address information upon receipt of such request.

(2) A licensed MVTS shall report a change to its principals, partners, owners, officers, or directors as provided in §430.14(b)(1) of this chapter (relating to Suspension).

(3) Each licensed MVTS must keep on file at its principal place of business:

(A) the original MVTS license and application [Application] (including all submitted documentation); and

(B) a copy of each license issued to a MVTSR runner [Runner] for that MVTS, and of the application [Application] (including all submitted documentation) submitted by each such licensed MVTSR [runner].

(b) Runner.

(1) In order to submit or present documents on behalf of an MVTS, a valid runner license must be presented. A licensed runner may submit or present title documents to the DCTAC [county tax assessor-collector] only on behalf of the licensed motor vehicle title service for which he/she is a licensed runner.

(2) Each licensed runner [Runner] must inform DCTAC [Denton County Tax Assessor-Collector] if his/her home address has changed by submitting a written home address change request to DCTAC [Denton County Tax Assessor-Collector]. Upon receipt of such request, DCTAC [Denton County Tax Assessor-Collector] will update the runner's [Runner's] home address information.

§430.11. *License Fees.*

(a) All license [License] fees must be paid by business check on account in the applying (title service license [Title Service License]) or employing (title service runner license [Title Service Runner License]) title service's [Title Service's] name, unless the DCTAC [Denton County Tax Assessor-Collector] in its sole discretion agrees to accept other forms of payment. Other forms of payment will not be considered accepted except as authorized in writing by the DCTAC [Denton County Tax Assessor-Collector].

(b) The fee for a motor vehicle title service license shall be \$200 for the initial application and \$200 for each annual renewal.

(c) The fee for a title service runner license shall be \$50 for the initial application and \$50 for each annual renewal.

(d) The fee for replacement of a license issued under §430.9(b) of this chapter (relating to License), lost title service license or title service runner license shall be \$10.

§430.12. *License Renewal.*

(a) A license issued under these rules expires on the first anniversary of the date of issuance and may be renewed annually on or before the expiration date on payment of the required renewal fee.

(b) A person who is otherwise eligible to renew a license may renew an unexpired license by paying to the DCTAC [county tax assessor-collector] before the expiration date of the license the required renewal fee. A person whose license has expired may not engage in activities that require a license until the license has been renewed.

(c) If a license has been expired for 90 days or less, the person/entity (as applicable), may renew the license by paying to the DCTAC [county tax assessor-collector] 1-1/2 times the required renewal fee.

(d) If a license has been expired for longer than 90 days but less than one year, the person/entity (as applicable), may renew the license by paying to the DCTAC [county tax assessor-collector] two times the required renewal fee.

(e) If a license has been expired for one year or longer, the person/entity (as applicable) may not renew the license. The person/entity may obtain a new license by complying with the requirements and procedures for obtaining an original license.

(f) Notwithstanding subsection (e) of this section, if a person/entity (as applicable) was licensed in this state, moved to another state, and has been doing business in the other state for the two years preceding application, the person/entity may renew an expired license. The person must pay to the DCTAC [county tax assessor-collector] a fee that is equal to two times the required renewal fee for the license.

(g) Before the 30th day preceding the date on which a license expires, the DCTAC [county tax assessor-collector] shall notify the license holder of the impending expiration. The notice must be in writing and sent to the license holder's last known address according to the records of the DCTAC [county tax assessor-collector].

§430.13. *Denial or Revocation of License.*

(a) Grounds for the denial (after completed application [Application] submission) or revocation of a license include, but are not limited to:

(1) past or present submission by licensee or any applicant for the license, of a license application or related document to the DCTAC [Denton County Tax Assessor-Collector] that contains false information or that by its submission constitutes a misrepresentation of fact;

(2) the licensee or any applicant for the license has been convicted of any felony, any crime of moral turpitude, or deceptive business practice for which the sentence completion date is fewer than five years from the application date;

(3) licensee or any applicant for the license has been criminally or civilly sanctioned for the unauthorized practice of law by any government or quasi-government body with jurisdiction to do so;

(4) One or more than one of the affiants described in §430.7(a)(3) of this chapter (relating to Completion of Title Service Runner License Application) has withdrawn his/her affidavit or otherwise informed DCTAC [Denton County Tax Assessor-Collector] that applicant [Applicant] is not employed and authorized to submit title documents on behalf of the title service identified in the application;

(5) disruptive, coercive, or aggressive behavior by a licensee or any applicant for the license at any DCTAC [Denton County Tax Assessor-Collector] location that in the opinion of the DCTAC [Denton County Tax Assessor-Collector] creates a security concern;

(6) any dishonest, fraudulent, or criminal activity by a licensee or any applicant for the license; ~~and/or~~

(7) failure to pay fines and/or fees identified in a suspension notice under §430.14(a) of this chapter (relating to Suspension) within 30 days of the suspension's effective date;[-]

(8) submission of a motor vehicle title application to the DCTAC that contains false information that the submitting MVTS knew or should have known was false;

(9) runner presentation of motor vehicle title application documents that were not prepared and delivered to the runner for submission by a licensed title service;

(10) any violation of these Rules, Chapter 520, Subchapter E of the Texas Transportation Code, Title 43 TAC Chapter 217, Subchapter A, or any other applicable law by a licensed MVTS or licensed MVTSR;

(11) runner presentation of a motor vehicle title application prepared and delivered to runner for submission by a licensed MVTS, if runner has, removed, added or otherwise altered the contents of the application as delivered by the MVTS to the runner for submission.

(b) Upon its determination that a license should be denied or revoked, ~~DCTAC [Denton County Tax Assessor-Collector]~~ shall send notice of denial/revocation to the applicant(s)/licensee by certified mail. Notice of any license denial shall be sent to each applicant at the home address listed on his/her application form. Notice of a ~~runner [Runner]~~ license revocation shall be sent to the most recent home address on file. Notice of a title service license ~~[Title Service License]~~ revocation shall be sent to the attention of "all" MVTS partners, owners, officers, directors, or principals (as applicable) at the most recent primary physical business address on file for licensee. The notice shall identify the grounds that warrant the determination.

(c) Revocation - effective date. Revocation shall be effective upon the date notice described in subsection (b) of this section is sent.

(d) A licensee whose license is denied or revoked may not apply for any license before the first anniversary of the date of the revocation. No applicant for a license that has been denied or revoked may apply for any license before the first anniversary of the date of revocation.

§430.14. Suspension.

(a) Suspension for unpaid fines/fees. The ~~DCTAC [Denton County Tax Assessor-Collector]~~ may suspend a license if the licensee or any applicant for the license is delinquent in the payment of property taxes or criminal fines or fees owed to Denton County.

(1) Suspension notice. ~~DCTAC [Denton County Tax Assessor-Collector]~~ shall send notice of suspension, which notice shall include a statement identifying the unpaid fines/fees, by certified mail. Notice of suspension of a Runner license under this section shall be sent to the most recent home address on file for licensee. Notice of a Title Service license suspension under this section shall be sent to the attention of "all" MVTS partners, owners, officers, directors, or principals (as applicable) at the most recent primary physical business address on file for licensee. Suspension shall become effective upon the date notice is sent. Failure to pay the fines/fees identified in the suspension notice within 30 days of the suspension date shall result in revocation of the license.

(2) A license suspended under ~~[this]~~ subsection (a) of this section will be reinstated if, within 30 days of the suspension's effective date, licensee provides ~~DCTAC [Denton County Tax Assessor-Collector]~~ with notice that includes a certified copy of the Denton County invoice showing that the fines/fees identified in the suspension notice

have been paid in full. Licensee may deliver such notice in writing by certified mail, return receipt requested, in which case notice will be considered received by ~~DCTAC [Denton County Tax Assessor-Collector]~~ on the date the return is signed. Licensee may deliver such notice in person by presenting a certified copy of the paid invoice at a ~~DCTAC [Denton County Tax Assessor-Collector]~~ location, in which case notice shall be considered received when the ~~DCTAC [Denton County Tax Assessor-Collector]~~ issues licensee a copy of the file-stamped invoice submitted. If ~~DCTAC [Denton County Tax Assessor-Collector]~~ becomes aware that, within 30 days of suspension, the fee/fines identified in the suspension notice were paid in full, the ~~DCTAC [Denton County Tax Assessor-Collector]~~ is not required but may elect to reinstate the suspended license without notice from licensee.

(b) Automatic Suspension.

(1) A title service ~~[Title Service]~~ license shall be automatically suspended upon the addition or replacement of any of the title service's ~~[Title Service's]~~ principals, partners, officers, owners or directors. A title service ~~[Title Service]~~ shall immediately deliver written notice of any such addition or replacement and the license issued under §430.12(b) of this chapter (relating to License Renewal) to ~~DCTAC [Denton County Tax Assessor-Collector]~~ by certified mail, return receipt requested.

(2) Within ten (10) days of becoming a new principal, partner, owner, officer or director in a title service ~~[Title Service]~~ described in paragraph (1) of this subsection, a person may submit an MVTS license application that meets the criteria set forth in §430.5 of this chapter (relating to Submission of Application) and §430.6 of this chapter (relating to Completion of Vehicle Title Service License Application). If the application is granted following completion of the process set forth in §430.8 of this chapter (relating to Application Review/Applicant Background Check/Applicant Interview), the license shall become effective again on the date notice is sent under §430.8(c)(2) of this chapter. In this event, the license shall expire on the anniversary or its original effective date.

(3) If the completed application of a prospective principal, partner, owner, officer or director in a licensed MVTS is received, reviewed and approved in accordance with §§430.5, 430.6, and 430.8 of this chapter before the prospective position is actually assumed, the license will not become ineffective under paragraph (1) of this subsection when the applicant assumes that position.

§430.15. Appeals.

(a) An applicant/licensee may appeal the denial/revocation of a license by filing a written appeal request with the ~~DCTAC [Denton County Tax Assessor-Collector]~~ within 30 days of the date notice is sent under §430.13(b) of this chapter (relating to Denial or Revocation of License). Any information/documentation in support of such appeal must be submitted with the appeal request.

(b) The ~~DCTAC Officeholder [Denton County Tax Assessor-Collector]~~ shall appoint a Review Board consisting of five members. At least one member of the Review Board shall be a law enforcement officer. The ~~DCTAC Officeholder [Denton County Tax Assessor-Collector]~~ may appoint one or more ~~DCTAC [Denton County Tax Assessor-Collector]~~ employees to serve on the Board. Provided at least one law enforcement officer is in attendance, appeals shall be reviewed at a meeting of at least three members of the Board. Such meetings shall be held periodically as determined by the ~~DCTAC Officeholder [Denton County Tax Assessor-Collector]~~.

(c) Timely filed appeals will be scheduled for review at the next Review Board meeting, which meeting shall take place no less than sixty (60) days following the filing of the appeal. An applicant/licensee whose appeal is under review may attend the meeting and, at

the Board's discretion, provide testimony in support of the appeal. The Board also has discretion to consider documentation not timely provided under subsection (a) of this section.

(d) Recommendation. The law enforcement officer in attendance shall preside over the meeting and determine when each appeal has been sufficiently considered, discussed and reviewed by the members in attendance. Following such determination, each member in attendance shall state and briefly describe the reasons for his/her opinion as to whether the action appealed should be sustained. Thereafter, the presiding law enforcement officer shall independently make a written recommendation to the DCTAC Officeholder [~~Denton County Tax Assessor-Collector~~]. The written recommendation shall be signed by the presiding officer and shall identify which, if any, of the other members in attendance did not agree with it.

(e) Within (15) days of receiving the presiding officer's written recommendation, the DCTAC Officeholder [~~Denton County Tax Assessor-Collector~~] shall make a final determination on the appeal. The DCTAC Officeholder [~~Denton County Tax Assessor-Collector~~] shall consider the presiding officer's recommendation before making the final determination.

(f) The DCTAC [~~Denton County Tax Assessor-Collector~~] shall send notice of its final determination to the applicant(s)/licensee by certified mail as follows:

(1) License denial - to each applicant at the home address listed on his/her application form.

(2) Runner License revocation - to the most recent home address on file.

(3) Title Service License revocation - to the attention of all partners, owners, officers, directors, or principals (as applicable) at the most recent primary physical business address on file.

§430.16. *Amendment of Rules.*

The DCTAC Officeholder [~~County Tax Assessor-Collector~~] may amend these rules in his/her sole discretion and as deemed necessary at any time.

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 March 3, 2023.

TRD-202301008

Michelle French

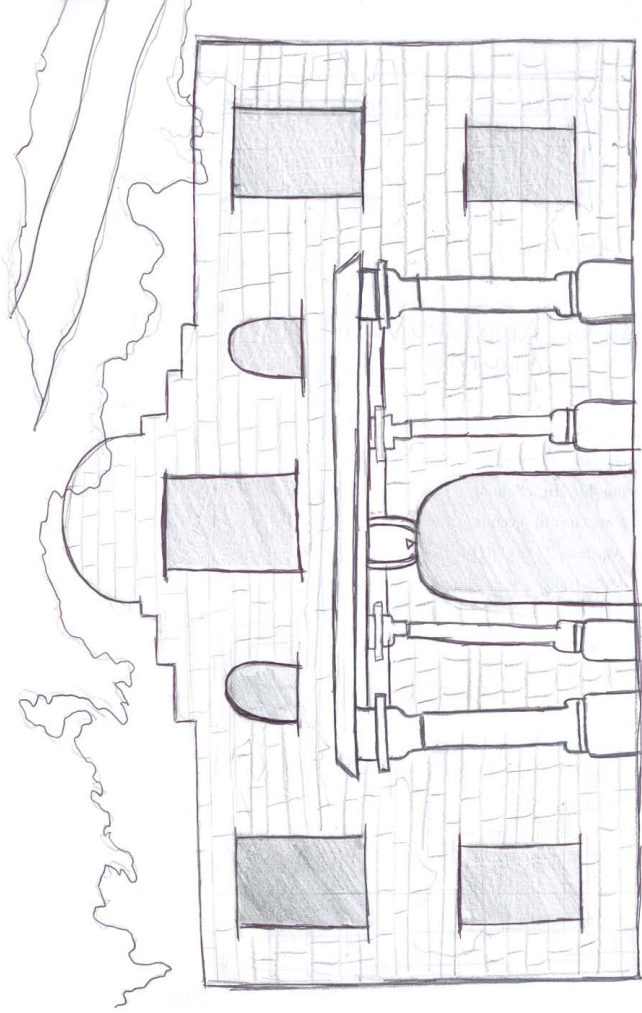
Denton County Tax Assessor-Collector

Denton County Tax Assessor-Collector

Earliest possible date of adoption: April 16, 2023

For further information, please call: (940) 349-3500





WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 150. COMMISSIONER'S RULES CONCERNING EDUCATOR APPRAISAL

SUBCHAPTER AA. TEACHER APPRAISAL

19 TAC §150.1014

The Texas Education Agency withdraws the proposed amendment to §150.1014, which appeared in the December 16, 2022, issue of the *Texas Register* (47 TexReg 8200).

Filed with the Office of the Secretary of State on March 3, 2023.

TRD-202300988

Cristina De La Fuente-Valadez

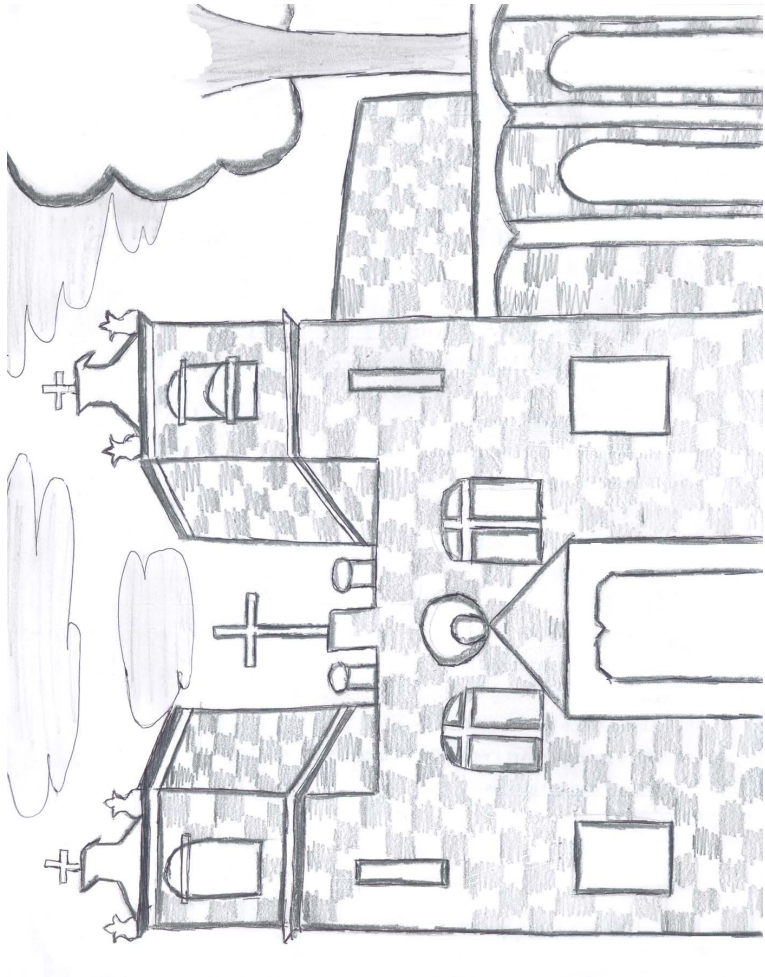
Director, Rulemaking

Texas Education Agency

Effective date: March 3, 2023

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





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 8. TEXAS JUDICIAL COUNCIL

CHAPTER 173. INDIGENT DEFENSE GRANTS

The Texas Indigent Defense Commission (Commission) is a permanent Standing Committee of the Texas Judicial Council. The Commission adopts the repeal of §§173.101 - 173.109, 173.201 - 173.205, 173.301 - 173.311, and 173.401 - 173.402, concerning rules for grant administration as published in the September 30, 2022, issue of the *Texas Register* (47 TexReg 6333). The Commission adopts new §§173.101, 173.103 - 173.109, 173.201 - 173.205, 173.301 - 173.303, 173.305 - 173.307, 173.309 - 173.311, and 173.402, concerning rules for grant administration without changes to the proposed text published in the September 30, 2022, issue of the *Texas Register* (47 TexReg 6333) and will not be republished. The Commission adopts new §§173.102, 173.304, 173.308, and 173.401 concerning rules for grant administration with changes to the proposed text published in the September 30, 2022, issue of the *Texas Register* (47 TexReg 6333) and will be republished.

The rules establish the guidelines for the administration of the Commission's grant program, which is designed to promote compliance by counties with the requirements of state law relating to indigent defense. The new sections also implement Texas Government Code §79.037(a)(2)(E) to establish procedures for awarding and administering grants to nonprofit corporations to provide indigent defense services.

The commission received no comments on the proposed repeal of the rules or the proposed new rules.

SUBCHAPTER A. GENERAL FUNDING PROGRAM PROVISIONS

1 TAC §§173.101 - 173.109

The repeal of the rules is adopted under the Texas Government Code §79.037. The Commission is authorized to distribute funds, including grants, to counties for indigent defense services under the Texas Government Code §79.037. This section further authorizes the Commission to monitor grants and enforce compliance with grant terms and to develop policies to ensure funds are allocated and distributed to counties in a fair manner. The Commission interprets §79.037(c) to require the Commission to adopt rules governing the process for distributing grant funds. No other statutes, articles, or codes are affected by the adopted repeal of the rules.

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

Filed with the Office of the Secretary of State on March 3, 2023.

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Wesley Shackelford

Deputy Director

Texas Judicial Council

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For further information, please call: (512) 936-6994



1 TAC §§173.101 - 173.109

The new rules are adopted under the Texas Government Code §79.037. The Commission is authorized to distribute funds, including grants, to counties for indigent defense services under the Texas Government Code §79.037. This section further authorizes the Commission to monitor grants and enforce compliance with grant terms and to develop policies to ensure funds are allocated and distributed to counties in a fair manner. The Commission interprets §79.037(c) to require the Commission to adopt rules governing the process for distributing grant funds. No other statutes, articles, or codes are affected by the adopted new rules.

§173.102. Definitions.

The following words and terms, when used in this chapter, will have the following meanings, unless otherwise indicated:

(1) "Applicant" is a county or other eligible entity that has submitted a grant application, grant renewal documentation, or other request for funding from the Commission.

(2) "Application" is any formal request for funding submitted to the Commission.

(3) "Program income" means gross income earned by the grantee that is directly generated by a supported activity of the grant or earned as a result of the grant award during the period of performance. Program income includes, but is not limited to, fees for services performed.

(4) "Crime" means

(A) a misdemeanor punishable by confinement; or

(B) a felony.

(5) "Defendant" means a person accused of a crime or a juvenile offense.

(6) "Improvement Grant" means discretionary funding awarded on a competitive basis to implement or expand new programs or processes in Texas counties designed to improve the quality of indigent defense services, promote and assist counties' compliance with the requirements of state law relating to indigent defense, or

build the knowledge base regarding indigent defense through research, program evaluation, or pilot projects.

(7) "Extraordinary Disbursement Grant" means discretionary funding to reimburse a county for actual extraordinary expenses for providing indigent defense services in a case or series of cases causing a financial hardship for the county.

(8) "Fair Defense Account" is an account in the general revenue fund that may be appropriated to the Commission for the purpose of implementing the Texas Fair Defense Act.

(9) "Fiscal Monitor" is an employee of the Commission who monitors counties' fiscal processes and records to ensure that financial data reported to the Commission is accurate and that grant funds are spent appropriately in accordance with the Texas Fair Defense Act, the Texas Grant Management Standards promulgated by the Comptroller, and other applicable rules and standards.

(10) "Formula Grant" means funding awarded to counties through a formula approved by the Commission.

(11) "Grant" is a funding award made by the Commission to a Texas county or other eligible entity.

(12) "Grantee" means a county or other eligible entity that is the recipient of a grant or other funds from the Commission.

(13) "Juvenile offense" means conduct committed by a person while younger than 17 years of age that constitutes:

- (A) a misdemeanor punishable by confinement; or
- (B) a felony.

(14) "Special condition" means a prerequisite placed on a grant because of a need for information, clarification, or submission of an outstanding requirement of the grant that may result in a hold being placed on the Commission-funded portion of a grant project.

(15) "Sustainability Grant" means a type of Improvement Grant that is discretionary funding awarded to assist counties in maintaining regional public defender programs.

(16) "Technical Support Grant" means a type of Improvement Grant awarded for special projects to improve the quality of indigent defense services through research, program evaluation, or pilot projects that raise the knowledge base about indigent defense, and may establish processes that can be generalized to similar situations in other counties.

(17) "Texas Indigent Defense Commission" (Commission) is the governmental entity established and governed by §79.002 of the Texas Government Code.

(18) "TxGMS" means the Texas Grant Management Standards promulgated by the Office of the Comptroller.

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 Judicial Council

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SUBCHAPTER B. ELIGIBILITY AND FUNDING REQUIREMENTS

1 TAC §§173.201 - 173.205

The repeal of the rules is adopted under the Texas Government Code §79.037. The Commission is authorized to distribute funds, including grants, to counties for indigent defense services under the Texas Government Code §79.037. This section further authorizes the Commission to monitor grants and enforce compliance with grant terms and to develop policies to ensure funds are allocated and distributed to counties in a fair manner. The Commission interprets §79.037(c) to require the Commission to adopt rules governing the process for distributing grant funds. No other statutes, articles, or codes are affected by the repeal of the 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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1 TAC §§173.201 - 173.205

The new rules are adopted under the Texas Government Code §79.037. The Commission is authorized to distribute funds, including grants, to counties for indigent defense services under the Texas Government Code §79.037. This section further authorizes the Commission to monitor grants and enforce compliance with grant terms and to develop policies to ensure funds are allocated and distributed to counties in a fair manner. The Commission interprets §79.037(c) to require the Commission to adopt rules governing the process for distributing grant funds. No other statutes, articles, or codes are affected by the adopted new 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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SUBCHAPTER C. ADMINISTERING GRANTS

1 TAC §§173.301 - 173.311

The repeal of the rules is adopted under the Texas Government Code §79.037. The Commission is authorized to distribute funds, including grants, to counties for indigent defense services under the Texas Government Code §79.037. This section further authorizes the Commission to monitor grants and enforce compliance with grant terms and to develop policies to ensure funds are allocated and distributed to counties in a fair manner. The Commission interprets §79.037(c) to require the Commission to adopt rules governing the process for distributing grant funds. No other statutes, articles, or codes are affected by the repeal of the 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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1 TAC §§173.301 - 173.311

The new rules are adopted under the Texas Government Code §79.037. The Commission is authorized to distribute funds, including grants, to counties for indigent defense services under the Texas Government Code §79.037. This section further authorizes the Commission to monitor grants and enforce compliance with grant terms and to develop policies to ensure funds are allocated and distributed to counties in a fair manner. The Commission interprets §79.037(c) to require the Commission to adopt rules governing the process for distributing grant funds. No other statutes, articles, or codes are affected by the adopted new rules.

§173.304. *Expenditure Reports.*

(a) Recipients of grants must submit program expenditure reports to the Commission in addition to the annual expenditure report required for all counties under Texas Government Code §79.036(e).

(b) The Commission will provide the appropriate forms and instructions for expenditure reports and deadlines for their submission. The financial officer shall be responsible for submitting the expenditure reports.

(c) Grantees must ensure that actual expenditures are comprehensively documented. Documentation may include, but is not limited to, ledgers, purchase orders, travel records, time sheets, earnings statements, bank statements, credit card statements, other payroll documentation, invoices, receipts, contracts, mileage records or maps, and other documentation that verifies the expenditure amount, allowability, and appropriateness to the funded program. Expenditure documentation must be provided to the Commission upon request.

§173.308. *Term of Grant.*

(a) The term of a grant shall be specified in the Statement of Grant Award or other funding document.

(b) If a grantee wishes to terminate a grant in whole or in part before the end of the award period, the grantee must notify the Commission in writing. The Commission or its designee will arrange with

the grantee an early termination of the award, which may include transfer or disposal of property and return of unused funds.

(c) The Commission may terminate any grant, in whole or in part, when:

(1) the grantee and the executive director of the Commission agree to do so;

(2) the grantee fails to comply with any term, condition, statute, rule, regulation, or guideline;

(3) indigent defense funds are no longer available;

(4) operational conditions exist that make it unlikely that grant or program objectives will be accomplished; or

(5) The grantee has acted in bad faith.

(d) A grantee may submit a written request for an extension of the funding period. The Commission must receive requests for funding extensions at least 30 days prior to the end of the funding period. The executive director of the Commission may approve extensions of the funding period for up to six months. Requests to extend the funding period beyond six months of the original term must be approved by the Commission.

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 D. MONITORING AND AUDITS

1 TAC §173.401, §173.402

The repeal of the rules is adopted under the Texas Government Code §79.037. The Commission is authorized to distribute funds, including grants, to counties for indigent defense services under the Texas Government Code §79.037. This section further authorizes the Commission to monitor grants and enforce compliance with grant terms and to develop policies to ensure funds are allocated and distributed to counties in a fair manner. The Commission interprets §79.037(c) to require the Commission to adopt rules governing the process for distributing grant funds. No other statutes, articles, or codes are affected by the adopted repeal of the 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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1 TAC §173.401, §173.402

The new rules are adopted under the Texas Government Code §79.037. The Commission is authorized to distribute funds, including grants, to counties for indigent defense services under the Texas Government Code §79.037. This section further authorizes the Commission to monitor grants and enforce compliance with grant terms and to develop policies to ensure funds are allocated and distributed to counties in a fair manner. The Commission interprets §79.037(c) to require the Commission to adopt rules governing the process for distributing grant funds. No other statutes, articles, or codes are affected by the adopted new rules.

§173.401. *Fiscal Monitoring.*

(a) The Commission or its designees will monitor the activities of grantees as necessary to ensure that Commission grant funds are used for authorized purposes in compliance with laws, regulations, and the provisions of grant agreements.

(b) The monitoring program may consist of formal audits, monitoring reviews, and technical assistance. The Commission or its designees may implement monitoring through on-site review at the grantee location or through a desk review based on grantee reports. In addition, the Commission or its designees may require grantees to submit relevant information to the Commission to support any monitoring review. The Commission may contract with an outside provider to conduct the monitoring.

(c) Grantees must make available to the Commission or its designees all requested records relevant to a monitoring review. The Commission or its designees may make unannounced monitoring visits at any time. Failure to provide adequate documentation upon request may result in disallowed costs or other remedies for noncompliance as detailed under §173.307 of this chapter (relating to Remedies for Non-compliance).

(d) After a monitoring review, the fiscal monitor shall issue a report to the authorized official and financial officer as soon as is practicable, but no later than 90 days following the final submission of requested county financial data, unless a documented exception is provided by the executive director. The report shall contain each finding of noncompliance.

(e) Within 60 days of the date the report is issued, the authorized official or financial officer shall respond in writing to each finding of non-compliance and shall describe the proposed corrective action to be taken by the grantee. The grantee may request the executive director to grant an extension of up to 60 days.

(f) The corrective action plan will include the:

- (1) titles of the persons responsible for implementing the corrective action plan;
- (2) corrective action to be taken; and
- (3) anticipated completion date.

(g) If the grantee believes corrective action is not required for a noted deficiency, the response will include an explanation, specific reasons, and supporting documentation.

(h) The Commission or its designees will approve the corrective action plan and may require modifications prior to approval. The grantee's replies and the approved corrective action plan, if any, will become part of the final report.

(i) The grantee will correct deficiencies identified in the final report within the time frame specified in the corrective action plan.

(j) The fiscal monitor shall conduct an additional on-site visit or remote follow-up review when the fiscal monitor determines that the report includes significant noncompliance findings. The follow-up visit or desk review shall occur within 12 months following receipt of a county's response to the report. The fiscal monitor shall review a grantee's implementation of corrective actions and shall report to the grantee and Commission any remaining issues not corrected. Within 30 days of the date the follow-up report is issued by the fiscal monitor, the authorized director or financial officer shall respond in writing to each finding of noncompliance, and shall describe the proposed corrective action to be taken by the grantee. The grantee may request the director to grant an extension of up to 30 days.

(k) If a grantee fails to respond to a monitoring report or follow-up report within the required time, then a certified letter will be sent to the authorized official, financial officer, county judge, local administrative district court judge, local administrative statutory county court judge, and chair of the juvenile board notifying them that formula grant payments will be automatically withheld if no response to the report is received by the Commission within 10 days of receipt of the letter. The Commission may also authorize withholding of improvement grant funds. If funds are withheld under this section, then the funds will not be reinstated until the Commission or the Grants and Reporting Committee approves the release of the funds.

(l) If a grantee fails to correct any noncompliance findings, the Commission may impose a remedy under §173.307 of this title.

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Wesley Shackelford

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Texas Judicial Council

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PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 366. MEDICAID ELIGIBILITY FOR WOMEN, CHILDREN, YOUTH, AND NEEDY FAMILIES

SUBCHAPTER D. MEDICAID FOR BREAST AND CERVICAL CANCER

1 TAC §§366.403, 366.405, 366.409

The Texas Health and Human Services Commission (HHSC) adopts amendments to §366.403, concerning Definitions; §366.405, concerning Eligible Group; and §366.409, concerning Application Requirements and Processing.

The amendments to §366.403 and §366.405 are adopted without changes to the proposed text as published in the December 9, 2022, issue of the *Texas Register* (47 TexReg 8079). These rules will not be republished.

The amendment §366.409 is adopted with changes to the proposed text as published in the December 9, 2022, issue of the *Texas Register* (47 TexReg 8079). This rule will be republished.

BACKGROUND AND JUSTIFICATION

The amendments are necessary to update rules related to the application process for Medicaid for Breast and Cervical Cancer (MBCC) and correct outdated language. The amendments include updates to reference current statute, program titles, and clarification of the role of HHSC. The proposed amendments are also necessary to reflect the transition of authority from the Texas Department of State Health Services (DSHS) to HHSC and other non-substantive administrative updates.

COMMENTS

The 31-day comment period ended on January 9, 2023.

During this period, HHSC received comments regarding the proposed rules from the Texas Medical Association (TMA). A summary of comments relating to the rules and HHSC's response follows.

Comment: TMA expressed concerns that amendments to §366.409 could cause unintended violations of Texas laws on scope of practice, as some program providers may not be permitted to diagnose medical conditions based on their licensure. TMA suggested new language to clarify that the rules are not intended to conflict with licensure guidelines.

Response: HHSC agrees and revises the rule as suggested.

STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which authorize HHSC to administer the federal medical assistance (Medicaid) program. The rules are specifically authorized by Texas Human Resources Code §32.024(y) and (y-1).

§366.409. *Application Requirements and Processing.*

(a) An applicant is identified through the Texas Health and Human Services Commission (HHSC) Breast and Cervical Cancer Services (BCCS) Program.

(b) A BCCS Program provider, acting only to the extent permitted by applicable scope of licensure laws under the Texas Occupations Code, screens and diagnoses qualifying medical conditions and makes a determination of presumptive eligibility.

(c) BCCS Program providers have been designated as qualified entities for presumptive eligibility determinations.

(d) A BCCS Program provider sends the applicant's application packet containing the provider's determination of presumptive eli-

gibility and an application for assistance to HHSC within five working days after the date the presumptive eligibility determination is made. HHSC determines eligibility no later than 15 days from the application's file date.

(e) The period of presumptive Medicaid eligibility is specified in 42 U.S.C. §1396r-1b(b)(1) as beginning with the date a qualified entity determines eligibility under the State Plan, based upon preliminary information, and ends with (and includes) the earlier of:

(1) the date an eligibility determination is made by HHSC; or

(2) the last day of the month following the month presumptive eligibility was determined.

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 February 28, 2023.

TRD-202300954

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

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For further information, please call: (512) 438-3098



CHAPTER 393. INFORMAL DISPUTE RESOLUTION AND INFORMAL RECONSIDERATION

1 TAC §393.3

The Texas Health and Human Services Commission (HHSC) adopts an amendment to 1 Texas Administrative Code (TAC) §393.3, concerning Informal Dispute Resolution for Texas Home Living (TxHmL) and Home and Community-Based Service (HCS) providers.

Section 393.3 is adopted without changes to the proposed text as published in the December 9, 2022, issue of the *Texas Register* (47 TexReg 8081). This rule will not be republished.

BACKGROUND AND JUSTIFICATION

The amendment is necessary to ensure the Informal Dispute Resolution (IDR) rule aligns with current regulatory processes. House Bill 2590, 85th Legislature, Regular Session, 2017 required HHSC to develop and contract IDR services for HCS and TxHmL providers. Section 393.3 was originally adopted on February 15, 2021, and reflected the regulatory and IDR processes at the time of adoption. Since adoption, regulatory processes were modified for HCS and TxHmL providers and some of the changes impacted the IDR process. Amending the rule will ensure the rule aligns with current practices and terminology.

COMMENTS

The 31-day comment period ended January 9, 2023.

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

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; Texas Human Resources Code §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program; and Texas Human Resources Code §161.0892(a), which provides that the Executive Commissioner of HHSC by rule establish an informal dispute resolution process for HCS and TxHmL waiver providers.

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

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Karen Ray

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For further information, please call: (512) 589-8618



TITLE 4. AGRICULTURE

PART 12. TEXAS A&M FOREST SERVICE

CHAPTER 216. RURAL VOLUNTEER FIRE DEPARTMENT ASSISTANCE PROGRAM

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

Texas A&M Forest Service (Agency) adopts an amendment to Chapter 216 of the Texas Administrative Code, Title 4, Part 12, §§216.1, 216.2, 216.4 - 216.6 and 216.9, concerning the Rural Volunteer Fire Department Assistance Program, without changes to the proposed text as published in the January 20, 2023, issue of the *Texas Register* (48 TexReg 191) and will not be republished.

The adopted amendment adds language to provide clarity, provide the addition of the agency's online grant application system, provide more specifications to award criteria, change how grant applications are ranked, remove requested funding as a factor in application ratings, and divide funds by branch instead of region for other equipment.

No comments were received regarding adoption of the amendment.

Texas A&M Forest Service has adopted the amendment pursuant to Texas Government Code, §614.102, which authorizes the agency director to adopt rules considered necessary for the administration of the program and Texas Government Code,

§614.106, which mandates that the agency adopt rules to administer the program.

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: (979) 458-7341



TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 150. COMMISSIONER'S RULES CONCERNING EDUCATOR APPRAISAL SUBCHAPTER AA. TEACHER APPRAISAL

19 TAC §150.1012, §150.1013

The Texas Education Agency (TEA) adopts amendments to §150.1012 and §150.1013, concerning teacher appraisal. The amendment to §150.1012 is adopted with changes to the proposed text as published in the December 16, 2022 issue of the *Texas Register* (47 TexReg 8201) and will be republished. The amendment to §150.1013 is adopted without changes to the proposed text as published in the December 16, 2022 issue of the *Texas Register* (47 TexReg 8201) and will not be republished. The adopted amendments to §150.1012 and §150.1013 update the requirements for a district's local designation system and establish fees and requirements for a district's local designation system renewal.

REASONED JUSTIFICATION: Texas Education Code (TEC), §21.3521, establishes a local optional teacher designation system, and TEC, §48.112, establishes a teacher incentive allotment. Section 150.1012 implements the statutes by establishing the requirements for school districts and charter schools to implement local teacher designation systems. Section 150.1013 implements the statutes by establishing designation requirements for National Board teachers. Section 150.1014 implements the statutes by specifying performance standards for teacher designations.

Following is a description of the adopted amendment to §150.1012.

The adopted amendment to §150.1012(a)(2)(B) establishes the fee required for district local designation system renewal. This change provides clarity to districts on the fee associated with local designation system renewal.

Based on public comment, language has been added in §150.1012(a)(2) to specify that the district is responsible for the fees, not the teachers put forth for designation. This change provides clarity on who can pay the fees.

The adopted amendment to §150.1012(b)(1)(D) removes a canceled certificate as a reason a teacher cannot be designated under an approved local optional teacher designation system and adds permanent surrender as a reason a teacher cannot be designated. This change aligns with the other sanctions in rule that invalidate a certification based on disciplinary action.

The adopted figure in §150.1012(c)(1)(C) describes the referenced statutorily based framework. This change clarifies what is required for approval each year.

The adopted amendment to 150.1012(e) replaces program evaluation with program submission. This change aligns language with the expectations of local designation systems.

Adopted new language in §150.1012(f)(1) establishes the requirements for local designation system renewal approval. This change clarifies when a renewal application is required, the process to be used, and how many applications must be submitted for entities with multiple systems.

The adopted amendment to §150.1012(f)(2)(B) replaces program evaluation with program submission. This change aligns language with the expectations of local designation systems.

The adopted amendment to §150.1012(f)(3)(D) removes a canceled certificate as a reason a teacher cannot be designated and adds permanent surrender as a reason a teacher cannot be designated. This change aligns with the other sanctions in rule that invalidate a certification based on disciplinary action.

The adopted amendment to §150.1012(g)(2) clarifies that reimbursed fees pursuant to §150.1012(a)(2) shall be paid in full from the district to the charter partner. This change ensures that fees are reimbursed in full.

Following is a description of the adopted amendment to §150.1013.

The adopted amendment to §150.1013(b)(1)(C) removes a canceled certificate as a reason a teacher cannot be designated and adds permanent surrender as a reason a teacher cannot be designated. This change aligns with the other sanctions in rule that invalidate a certification based on disciplinary action.

Following is a description of the withdrawn amendment to §150.1014.

TEA proposed an amendment to §150.1014 that would have clarified performance standards to be used through the 2022-2023 school year and established performance standards to be used starting with the 2023-2024 school year.

Based on public comment, TEA has determined that the proposed changes are unnecessary and has withdrawn the proposed amendment to §150.1014. The withdrawal of §150.1014 can be found in the Withdrawn Rules section of this issue of the *Texas Register*.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began December 16, 2022, and ended January 23, 2023. Following is a summary of public comments received and agency responses.

Comment: The Texas Impact Network commented that only the district should be responsible for the fees referenced in §150.1012(a)(2).

Response: The agency agrees and has amended §150.1012(a)(2) at adoption to reflect that the district must be responsible for the fees.

Comment: The Texas Classroom Teachers Association commented that the pretest, expected growth target, and post-test used for each eligible teaching assignment should remain in the figure in §150.1012(c)(1)(C).

Response: The agency disagrees as this information is found in other sections of the figure in §150.1012(c)(1)(C).

Comment: The Texas State Teacher Association (TSTA) commented that proposed changes to §150.1012(a)(2)(B) would promote the inaccessibility of the teacher incentive allotment to their members.

Response: The agency disagrees as the proposed changes to §150.1012(a)(2)(B) are district-level fees.

Comment: The Texas Impact Network and TSTA commented that there should only be one set of performance standards referenced in §150.1014 because the standards are the same in §150.1014(b) and (c).

Response: The agency agrees and has withdrawn the proposed amendment to §150.1014 to more clearly reference one set of performance standards.

STATUTORY AUTHORITY. The amendments are adopted under Texas Education Code (TEC), §21.3521, as amended by House Bill (HB) 1525, 87th Texas Legislature, Regular Session, 2021, which specifies that the commissioner of education (1) shall ensure that local optional teacher designation systems meet the statutory requirements for the system; (2) shall prioritize high needs campuses; (3) shall enter into a memorandum of understanding with Texas Tech University regarding the assessment of local iterations of the local optional teacher designation system; (4) shall periodically conduct evaluations of the effectiveness of the local optional teacher designation system; (5) may adopt fees, which are exempted from the requirements of Texas Government Code, §2001.0045 and §2001.0221, to implement the local optional teacher designation system; and (6) may adopt rules to implement the local optional teacher designation system; and TEC, §48.112, as amended by HB 1525, 87th Texas Legislature, Regular Session, 2021, which requires the commissioner (1) to designate rural campuses and annually make available to the public a list of campuses with projected allotment amounts per teacher designation at each campus; and (2) assign an average point value to a student enrolled in the Texas School for the Deaf and the Texas School for the Blind and Visually Impaired.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code, §21.3521 and §48.112, as amended by House Bill 1525, 87th Texas Legislature, Regular Session, 2021.

§150.1012. Local Optional Teacher Designation System.

(a) General provisions.

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

(A) Beginning of course--The first nine weeks of a year-long course or the first six weeks of a semester course.

(B) Charter school--A Texas public school that meets one of the following criteria:

(i) is operated by a charter holder under an open-enrollment charter granted either by the State Board of Education or

commissioner of education pursuant to Texas Education Code (TEC), §12.101, identified with its own county district number;

(ii) has a charter granted under TEC, Chapter 12, Subchapter C, and is eligible for benefits under TEC, §11.174 and §48.252;

(iii) has a charter granted under TEC, §29.259, and Human Resources Code, §221.002; or

(iv) has a charter granted under TEC, §11.157(b).

(C) Classroom teacher--An educator, as defined by TEC, §5.001, who is employed by a school district and who, not less than an average of four hours each day, teaches in an academic instructional setting or a career and technical instructional setting. This term does not include an educational aide or a full-time administrator.

(D) Data capture year--The school year in which the teacher observation and student growth measure data is collected based on the proposed local teacher designation system.

(E) Designated teacher--An exemplary, master, or recognized teacher.

(F) Eligible teaching assignment--An assignment based on campus, subject taught, or grade taught.

(G) End of course--The last twelve weeks of a year-long course or the last six weeks of a semester course.

(H) National Board certification-- Certification issued by the National Board for Professional Teaching Standards.

(I) Provisional approval--Conditional approval of a school district local optional teacher designation system that would require resubmission of system review, data validation, additional required documentation, video submission, and/or other technical assistance for further data submission.

(J) Reliability--The degree to which an instrument used to measure teacher performance and student growth produces stable and consistent results.

(K) Rural--A campus within a school district with fewer than 5,000 enrolled students that is categorized as a rural, non-metropolitan: stable, or non-metropolitan: fast growing district type by the Texas Education Agency (TEA); a campus within a school district with fewer than 5,000 enrolled students categorized as rural by the National Center for Education Statistics; or a campus defined in TEC, §48.112(a)(1).

(L) School district--The definition of a school district includes charter schools as defined in subparagraph (B) of this paragraph.

(M) Student growth--Student academic progress achieved in response to the pedagogical practices of teachers, as measured at the individual teacher level by one or more measures of student growth aligned to the standards of the course.

(N) Teacher category--One or more eligible teaching assignments evaluated with the same teacher observation rubric, student growth measure, and optional components and weighting as defined in a district's local designation system.

(O) Teacher observation--One or more observations of a teacher instructing students for a minimum of 45 minutes or multiple observations that aggregate to at least 45 minutes.

(P) Texas Student Data System (TSDS)--Data collected annually during the Class Roster Winter Submission.

(Q) Validity--The degree to which an instrument used to measure teacher performance and student growth measures what it is intended to measure.

(2) Fees for teacher incentive allotment teacher designation and system renewal. A school district requesting approval of a teacher designation system or renewal of such a system shall pay the applicable fees listed in subparagraphs (A) and (B) of this paragraph. The following fees must be paid by the district and cannot be paid by the teachers submitted for designation:

(A) a \$500 fee for each teacher submitted for designation to TEA; and

(B) a \$2,500 system renewal fee for districts where all campuses meet the definition of rural pursuant to paragraph (1)(K) of this subsection the year prior to renewal application submission or a \$10,000 system renewal fee for districts where not all campuses meet the definition of rural pursuant to paragraph (1)(K) of this subsection.

(b) Teacher eligibility.

(1) Teachers eligible to earn or receive designations under an approved local optional teacher designation system must meet the following requirements:

(A) the teacher is employed by the recommending school district or charter partner pursuant to subsection (a)(1)(B)(ii) or (iv) of this section in a role ID coded as 087 (Teacher) and corresponding class roles of 01, 02, or 03, if applicable, in TSDS for 90 days at 100% of the day (equivalent to four and one-half months or a full semester) or 180 days at 50-99% of the day and compensated for that employment. A charter partner operating under subsection (a)(1)(B)(ii) or (iv) of this section is required to report teacher-level data in TSDS or provide teacher-level data to its partner school district for reporting by the district in TSDS;

(B) the teacher was employed by the recommending school district or charter partner pursuant to subsection (a)(1)(B)(ii) or (iv) of this section during the year the teacher's effectiveness was collected in alignment with the recommended designation;

(C) the teacher is not currently designated under a local optional teacher designation system, unless the teacher is being recommended for a higher designation; and

(D) the teacher does not have a suspension, revocation, permanent surrender, or surrender of a certificate issued by the State Board for Educator Certification and is not found on the registry of persons not eligible for employment in public schools under TEC, §22.092, and Chapter 153, Subchapter EE, of this title (relating to Commissioner's Rules Concerning Registry of Persons Not Eligible for Employment in Public Schools).

(2) School districts are eligible to receive funding for each designated teacher if the teacher meets the requirements in paragraph (1)(A) of this subsection for each district. TEA may exercise administrative discretion to determine the eligibility of a teacher if a district disputes TSDS data. Disputes must be received by TEA by the second Friday in May each year; however, TEA may exercise administrative discretion to allow disputes to be considered outside of this timeline.

(c) Application procedures and approval process.

(1) The following provisions apply to applications submitted under this section.

(A) If TEA determines that an application is incomplete, TEA may provide the applicant with notice of the deficiency and an opportunity to submit missing required information. If the missing

required information is not submitted within seven business days after the original submission deadline, the application will be denied.

(B) If TEA determines that a system application does not meet the standards established under TEC, §21.3521, and this section, TEA shall permit the applicant to resubmit the application by June 30. If no resubmission is made by the deadline, the application will be denied.

(C) Applicants that are determined to meet the standards established under TEC, §21.3521 and §48.112, and the requirements of the statutorily based framework provided in the figure in this subparagraph shall be approved.
Figure: 19 TAC §150.1012(c)(1)(C)

(D) Applications that are determined to meet the standards established under TEC, §21.3521 and §48.112, and this section shall be approved for an initial term of five years. Applications that are determined to need ongoing support may result in provisional approval.

(2) The application shall include the following for each eligible teaching assignment:

(A) components of a local system for issuing designations, including:

(i) a teacher observation component that contains:

(I) a plan for calibration, using the rubric approved under subclause (II) of this clause, that includes congruence among appraisers, a review of teacher observation data and the correlation between teacher observation and student growth data, and implementation of next steps; and

(II) an approved teacher observation rubric including the Texas Teacher Evaluation and Support System, Marzano's Teacher Evaluation Model and rubric created by the National Institute for Excellence in Teaching and The Danielson Group, or another rubric that is based on observable, job-related behaviors that are described with progressive descriptors for each dimension, including alignment to §149.1001 of this title (relating to Teacher Standards) and a clear proficiency indicator. A school district may be required to provide teacher observation videos if the ratings cannot be verified from the data submitted; and

(ii) a specified student growth component by measure and/or assessment that:

(I) if using a student learning objective, is aligned to the Texas Student Learning Objectives (SLO) process described on the TEA website for SLOs at <https://texas.slo.org>;

(II) if using a portfolio method, demonstrates that student work is aligned to the standards of the course, demonstrates mastery of standards, utilizes a skills proficiency rubric, and includes criteria for scoring various artifacts;

(III) if using school district- or teacher-created assessments, is aligned to the standards of the course and conforms to a district rubric for district- or teacher-created assessments. A school district must approve district- or teacher-created assessments for the purpose of determining student growth by using a district process and rubric for approval of such assessments. Assessments must measure beginning of course to end of course or from end of course from the previous course to end of current course;

(IV) if using a school district- or teacher-created assessment in conjunction with a third-party assessment, is aligned to the standards of the course and conforms to a district rubric for district- or teacher-created assessments. A school district must approve

district- or teacher-created assessments for the purpose of determining student growth by using a district process and rubric for approval of such assessments. Assessments must measure beginning of course to end of course or from end of course from the previous course to end of current course;

(V) if using third-party assessments with third-party accompanying growth targets, is aligned to the standards for the course and contains questions that cover a range of student skill levels. Assessments must measure beginning of course to end of course or from end of course from the previous course to end of current course; or

(VI) if using third-party assessments with district-created growth targets, is aligned to the standards of the course and contains questions that cover a range of student skill levels. Assessments must measure beginning of course to end of course or from end of course from the previous course to end of current course. Mid-year data may be used in instances where the student was not present for the beginning of course administration.

(B) test administration processes for all student growth that will lead to validity and reliability of results, including:

(i) test security protocols;

(ii) testing windows;

(iii) testing accommodations; and

(iv) annual training for test administrators; and

(C) data for all teachers in eligible teaching assignments, including student growth, and observation data for all teachers in eligible teaching assignments for the data capture year in alignment with TEC, §21.351 or §21.352. Multi-year data shall include student growth and observation data from the same year and teacher category. Single-year data shall include student growth and observation data from the same teacher category. TEA may exercise administrative discretion regarding the requirements of this subparagraph in situations in which data is difficult to provide due to circumstances beyond a district's control and the district would otherwise be unable to provide sufficient data for application consideration.

(d) System expansion, spending modifications, and changes. School districts must apply for approval through the system application process the year prior to implementation if:

(1) adding new eligible teaching assignments or campuses (if started with less than all campuses in the district);

(2) adding a new teacher observation rubric;

(3) changing a previously approved teacher observation rubric;

(4) adding new student growth measures;

(5) changing the student growth measure used by an eligible teaching assignment;

(6) adding or changing the third-party assessment used in a student growth measure;

(7) adding or changing the type of assessment used in a student growth measure;

(8) removing a student growth measure used by an eligible teaching assignment;

(9) removing an eligible teaching assignment; or

(10) modifying a district's spending plan. TEA may exercise administrative discretion to allow spending modifications outside of the approval timeline outlined in this subsection.

(e) Monitoring and annual program submission of approved local designation systems.

(1) For the program submission, approved school districts shall submit the following information regarding a local teacher designation system and associated spending:

(A) the distribution of allotment funds from the previous school year in accordance with the funding provisions of subsection (g) of this section;

(B) a response and implementation plan to annual surveys developed by TEA administered to teachers, campus principals, and human resources personnel gauging the perception of a school district's local designation system; and

(C) teacher observations and student growth measure data for all teachers in eligible teaching assignments if school districts are submitting new teacher designations collected in alignment with §150.1003(b)(5) and (1)(3) of this title (relating to Appraisals, Data Sources, and Conferences). TEA reserves the right to request data for the purposes of performance evaluation and investigation based on data review outcomes. TEA may exercise administrative discretion in circumstances where data is difficult to provide and a district would otherwise be unable to provide sufficient data for application consideration.

(2) Outcomes of the annual program submission may lead to a review, pursuant to TEC, §48.272(e), and subject to the period of review limitation in TEC, §48.272(f), of the local optional designation system that may be conducted at any time at the discretion of the TEA staff.

(f) Continuing approval and renewal.

(1) Approved local optional teacher designation systems are subject to review at least once every five years. However, a review may be conducted at any time at the discretion of TEA. The renewal application is required in a district's fourth year of system approval and will follow the process and requirements outlined in subsection (c) of this section.

(A) Charter management organizations that operate approved systems with multiple campus district numbers shall submit an application for each system at the time of required renewal.

(B) Systems with provisional approval in a district's fourth year shall renew in the year after receiving system approval.

(2) Approval of local optional designation systems are voidable by TEA for one or more of the following reasons:

(A) failure to fulfill all local optional designation system requirements as defined in this section;

(B) failure to comply with annual program submission requirements;

(C) failure to comply with the provisions of TEC, §21.3521 and §48.112;

(D) failure to implement the local optional teacher designation system as approved by TEA;

(E) failure to remove district employees from the designation determination process who have a conflict of interest and acted in bad faith to influence designations; or

(F) at the discretion of the commissioner.

(3) Approval of individual teacher designations are voidable by TEA for one or more of the following reasons:

(A) a teacher has not fulfilled all designation requirements;

(B) the school district at which the designation was earned has had its local optional designation system voided;

(C) the National Board for Professional Teaching Standards revokes a National Board certification that provided the basis for a teacher's designation;

(D) the suspension, revocation, permanent surrender, or surrender of a certificate issued by the State Board for Educator Certification to a designated teacher;

(E) the addition of the designated teacher to the registry of persons not eligible for employment in public schools under TEC, §22.092, and Chapter 153, Subchapter EE, of this title;

(F) the district issued a designation in bad faith by not removing a district employee from the designation determination process who had a conflict of interest; or

(G) at the discretion of the commissioner.

(g) Funding.

(1) State funding.

(A) School districts will receive teacher incentive allotment funds based on prior-year estimates. The final amount will be based on data from the current school year as provided in subparagraph (D) of this paragraph. Any difference from the estimated amount will be addressed as part of the Foundation School Program settle-up process according to the provisions in TEC, §48.272.

(B) A school district is eligible to earn the base allotment for each designated teacher assigned to a zero-enrollment campus, a campus with fewer than 20 students, a juvenile justice alternative education program, a disciplinary alternative education program, a residential facility, or central administration if the designated teacher meets the requirements in subsection (b)(2) of this section, plus the multiplier based on the school district's average student point value and rural status, if applicable.

(C) Funding for teachers who work at multiple campuses shall be calculated and split equally among the campuses where the employee is working in a role coded as 087 (Teacher) in TSDS at each campus.

(D) Designated teacher campus and district of employment shall be determined annually by data collected in TSDS.

(E) School districts shall annually verify and confirm teacher designations and corresponding allotments.

(F) TEA may exercise administrative discretion to redirect or recalculate funds to the district where the designated teacher works if a district disputes TSDS data. Disputes must be received by the second Friday in May each year; however, TEA may exercise administrative discretion to allow disputes to be considered outside of this timeline.

(G) The average point value and rural status for the Texas School for the Deaf and the Texas School for the Blind and Visually Impaired will be calculated by utilizing the home districts of the schools' students.

(2) Status and use of state funds. A school district that receives teacher incentive allotment funding must comply with the requirements of TEC, §48.112, including the requirement that at least

90% of each allotment must be used for compensation of teachers employed at the campus at which the teacher for whom the district received the allotment is employed. School districts that receive funding for designated teachers employed by the charter partner for charter partnerships pursuant to subsection (a)(1)(B)(ii) or (iv) of this section shall pass along at least 90% of the teacher incentive allotment funding and 100% of fees pursuant to subsection (a)(2) of this section paid by the charter partner to the charter partner. Charter partners and districts shall work together to ensure that the spending requirements of TEC, §48.112, are met.

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

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Cristina De La Fuente Valadez

Director, Rulemaking

Texas Education Agency

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



TITLE 22. EXAMINING BOARDS

PART 6. TEXAS BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS

CHAPTER 133. LICENSING FOR ENGINEERS SUBCHAPTER C. PROFESSIONAL ENGINEER LICENSE APPLICATION REQUIREMENTS

22 TAC §§133.21, 133.23, 133.25, 133.27

The Texas Board of Professional Engineers and Land Surveyors (Board) adopts amendments to 22 Texas Administrative Code, Chapter 133, Subchapter C, specifically §§133.21, 133.23, 133.25, and 133.27, regarding the application requirements for licensure of professional engineers in Texas, without changes to the proposed text as published in the December 30, 2022, issue of the *Texas Register* (47 TexReg 8876). The rules will not be republished.

REASONED JUSTIFICATION FOR RULE ADOPTION

The adopted rules primarily include citation clarifications to conform with other rule amendments, and they clarify rule language. The amendments are related to revisions of Chapter 133, Subchapter H, which clarify the procedure to determine which license applications can be approved directly and which need additional review and information prior to approval. The amended rules add a procedure by which applicants whose applications have been initially rejected may seek review of the agency's decision to reject the application.

PUBLIC COMMENT

Pursuant to §2001.029 of the Texas Government Code, the Board gave all interested persons a reasonable opportunity to provide oral and/or written commentary concerning the adoption

of the rules. The 30-day public comment period began on December 30, 2022, and ended January 30, 2023. The Board received one comment urging the board to consider arrests in addition to convictions when considering an application. Texas Occupations Code 53 only allows for consideration of convictions, so no change was made to the proposed rules.

STATUTORY AUTHORITY

The rule amendments are adopted pursuant to Texas Occupations Code §§1001.101 and 1001.202, which authorize the Board to regulate engineering and land surveying and to make and enforce all rules and regulations and bylaws consistent with the Act as are necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practices of engineering and land surveying in this state. The rules are also adopted under Texas Occupations Code §§1001.302 and 1001.303, concerning license eligibility and application requirements. These adopted rules implement Occupations Code §§53.001 to 53.153.

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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Lance Kinney

Executive Director

Texas Board of Professional Engineers and Land Surveyors

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For further information, please call: (512) 440-7723



SUBCHAPTER F. REFERENCE DOCUMENTATION

22 TAC §133.53

The Texas Board of Professional Engineers and Land Surveyors (Board) adopts amendments to 22 Texas Administrative Code, Chapter 133, Subchapter F, specifically §133.53, regarding reference statements submitted for an applicant seeking licensure as a professional engineer in Texas, without changes to the proposed text as published in the December 30, 2022, issue of the *Texas Register* (47 TexReg 8880). The rule will not be republished.

REASONED JUSTIFICATION FOR RULE ADOPTION

The adopted rule primarily includes citation clarifications and conforming changes based on other rule amendments and clarifies rule language. The amendments are related to revisions of Chapter 133, Subchapter H, which clarify the procedure to determine which license applications can be approved directly and which need additional review and information prior to approval.

PUBLIC COMMENT

Pursuant to §2001.029 of the Texas Government Code, the Board gave all interested persons a reasonable opportunity to provide oral and/or written commentary concerning the adoption of the rules. The 30-day public comment period began on December 30, 2022, and ended January 30, 2023. The Board received no public comments concerning this rule.

STATUTORY AUTHORITY

The rule amendments are adopted pursuant to Texas Occupations Code §§1001.101 and 1001.202, which authorize the Board to regulate engineering and land surveying and make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practices of engineering and land surveying in this state. The rules are also adopted under Texas Occupations Code §§1001.302 and 1001.303, concerning license eligibility and application requirements.

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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Lance Kinney

Executive Director

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SUBCHAPTER H. REVIEW PROCESS OF APPLICATIONS AND LICENSE ISSUANCE

22 TAC §§133.81, 133.83, 133.85, 133.87, 133.89, 133.97, 133.101

The Texas Board of Professional Engineers and Land Surveyors (Board) adopts amendments to 22 Texas Administrative Code, Chapter 133, Subchapter H, specifically §§133.81, 133.83, 133.85, 133.87, 133.97, and new 133.101, regarding the review process for applications for licensure of professional engineers in Texas, without changes to the proposed text as published in the December 30, 2022, issue of the *Texas Register* (47 TexReg 8881). The rules will not be republished. Section 133.89 is adopted with a minor non-substantive change and will be republished.

REASONED JUSTIFICATION FOR RULE ADOPTION

The rules under 22 Texas Administrative Code, Chapter 133 implement Texas Occupations Code, Chapter 1001, the Texas Engineering Practice Act, specifically those provisions in Chapter 1001 that concern license applications. The adopted rules streamline and clarify the Board's application and review process for registration as a professional engineer. Plus, for an applicant whose application is proposed or recommended for denial due to a criminal conviction, the adopted rules add the opportunity for the applicant to request a hearing at the State Office of Administrative Hearings (SOAH) per Texas Occupations Code Chapter 53.

PUBLIC COMMENT

Pursuant to §2001.029 of the Texas Government Code, the Board gave all interested persons a reasonable opportunity to provide oral and/or written commentary concerning the adoption of the rules. The 30-day public comment period began on December 30, 2022, and ended January 30, 2023. The Board received one comment urging the board to consider arrests

in addition to convictions when considering an application. Texas Occupations Code 53 only allows for consideration of convictions, so no change was made to the proposed rules.

STATUTORY AUTHORITY

The adopted rules are proposed pursuant to Texas Occupations Code §§1001.201 and 1001.202, which authorize the Board to regulate engineering and land surveying and make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practices of engineering and land surveying in this state. These adopted rules implement Occupations Code §§53.001 to 53.153.

§133.89. *Administratively Withdrawn Applications.*

(a) An application may go into Administratively Withdrawn status per §133.83 of this chapter (relating to Processing, Review, and Evaluation of Applications).

(b) To reactivate an administratively withdrawn application, the applicant, no later than six months after the application goes into Administratively Withdrawn status, must submit:

- (1) a reactivation fee as established by the board;
- (2) a new application form complete and with signatures;
- (3) updated supplementary experience records for the time period since the application was first submitted; and
- (4) documentation of submittal of fingerprints for criminal history record check as required by §1001.272 of the Act, unless previously submitted to the board.

(c) An application that goes into Administratively Withdrawn status will be deemed to have been withdrawn by the applicant six months after it enters that status unless, before the six-month period expires, the applicant corrects all deficiencies and submits all necessary documentation to make the application complete and ready for technical review.

(d) An application that is deemed to have been withdrawn by the applicant per subsection (c) of this section cannot be reactivated. To be considered for a license, an applicant will be required to submit a new application.

(e) Applications that have been deemed to have been withdrawn by the applicant will be reported to the Board.

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

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Lance Kinney

Executive Director

Texas Board of Professional Engineers and Land Surveyors

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For further information, please call: (512) 440-7723



22 TAC §133.99

The Texas Board of Professional Engineers and Land Surveyors (Board) adopts the repeal of 22 Texas Administrative Code §133.99, relating to Processing of Applications with a Criminal

Conviction, without changes to the proposed text as published in the December 30, 2022, issue of the *Texas Register* (47 TexReg 8886). The rule will not be republished.

REASONED JUSTIFICATION FOR RULE ADOPTION

The repealed rule contains the current policies and procedures for the evaluation of applications referring to a criminal conviction, including criteria and factors to be considered per Texas Occupations Code, Chapter 53. Adoption of other rules that were published as proposed rules in the same edition of *Texas Register* as the proposal for this repeal make §133.99 unnecessary. Adopted new rules 22 Texas Administrative Code §140.1 and §140.3 address the effect of criminal conviction on applications filed with the Board, with engineering and land surveying applications addressed in separate rules.

PUBLIC COMMENT

Pursuant to §2001.029 of the Texas Government Code, the Board gave all interested persons a reasonable opportunity to provide oral and/or written commentary concerning the adoption of the rules. The 30-day public comment period began on December 30, 2022, and ended January 30, 2023. The Board received no public comment on this repeal.

STATUTORY AUTHORITY

The rule is repealed pursuant to Texas Occupations Code §§1001.201 and .202, which authorize the Board to regulate engineering and land surveying and to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practices of engineering and land surveying in this state. The adopted repeal affects Texas Occupations Code, sections 53.001 to .153, concerning consequences of criminal conviction.

No other codes, articles, or statutes are affected by this 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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Lance Kinney

Executive Director

Texas Board of Professional Engineers and Land Surveyors

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For further information, please call: (512) 440-7723



CHAPTER 134. LICENSING, REGISTRATION, AND CERTIFICATION FOR SURVEYORS SUBCHAPTER C. LAND SURVEYOR APPLICATION REQUIREMENTS

22 TAC §§134.21, 134.23, 134.25

The Texas Board of Professional Engineers and Land Surveyors (Board) adopts amendments to 22 Texas Administrative Code, Chapter 134, Subchapter C, specifically §§134.21, 134.23, and 134.25, regarding the application requirements for registration of professional land surveyors in Texas, without changes to the

proposed text as published in the December 30, 2022, issue of the *Texas Register* (47 TexReg 8887). The rules will not be republished.

REASONED JUSTIFICATION FOR RULE ADOPTION

The adopted rules primarily include citation clarifications to conform with other rule amendments, and they clarify rule language. The amendments are related to revisions of Chapter 134, Subchapter H, which clarify the procedure to determine which registration applications can be approved directly and which need additional review and information prior to approval. The amended rules add a procedure by which applicants whose applications have been initially rejected may seek review of the agency's decision to reject the application.

PUBLIC COMMENT

Pursuant to §2001.029 of the Texas Government Code, the Board gave all interested persons a reasonable opportunity to provide oral and/or written commentary concerning the adoption of the rules. The 30-day public comment period began on December 30, 2022, and ended January 30, 2023. The Board received one comment urging the board to consider arrests in addition to convictions when considering an application. Texas Occupations Code 53 only allows for consideration of convictions, so no change was made to the proposed rules.

STATUTORY AUTHORITY

The rule amendments are adopted pursuant to Texas Occupations Code §§ 1001.101 and 1001.202, which authorize the Board to regulate engineering and land surveying and to make and enforce all rules and regulations and bylaws consistent with the Act as are necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practices of engineering and land surveying in this state. The rules are also adopted under Texas Occupations Code §§1071.252, 1071.254, and 1071.259, concerning registration eligibility and application requirements. These adopted rules implement Occupations Code §§53.001 to 53.153.

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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Executive Director

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SUBCHAPTER F. REFERENCE DOCUMENTATION

22 TAC §134.53

The Texas Board of Professional Engineers and Land Surveyors (Board) adopts amendments to 22 Texas Administrative Code, Chapter 134, Subchapter F, specifically §134.53, regarding reference statements submitted for an applicant seeking registration as a professional land surveyors in Texas, without changes to the proposed text as published in the December 30, 2022, is-

sue of the *Texas Register* (47 TexReg 8891). The rule will not be republished.

REASONED JUSTIFICATION FOR RULE ADOPTION

The adopted rule primarily includes citation clarifications and conforming changes based on other rule amendments and clarifies rule language. The amendments are related to revisions of Chapter 134, Subchapter H, which clarify the procedure to determine which license applications can be approved directly and which need additional review and information prior to approval.

PUBLIC COMMENT

Pursuant to §2001.029 of the Texas Government Code, the Board gave all interested persons a reasonable opportunity to provide oral and/or written commentary concerning the adoption of the rules. The 30-day public comment period began on December 30, 2022, and ended January 30, 2023. The Board received no comments concerning this rule.

STATUTORY AUTHORITY

The rule amendments are adopted pursuant to Texas Occupations Code §§ 1001.101 and 1001.202, which authorize the Board to regulate engineering and land surveying and make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practices of engineering and land surveying in this state. The rules are also adopted under Texas Occupations Code §§1071.252, 1071.254, and 1071.259, concerning registration eligibility and application requirements.

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 March 3, 2023.

TRD-202300979

Lance Kinney

Executive Director

Texas Board of Professional Engineers and Land Surveyors

Effective date: March 23, 2023

Proposal publication date: December 30, 2022

For further information, please call: (512) 440-7723



SUBCHAPTER H. REVIEW PROCESS OF APPLICATIONS AND REGISTRATION ISSUANCE

22 TAC §§134.81, 134.83, 134.85, 134.87, 134.89, 134.97, 134.101

The Texas Board of Professional Engineers and Land Surveyors (Board) adopts amendments to 22 Texas Administrative Code, Chapter 134, Subchapter H, specifically §§134.81, 134.83, 134.85, 134.87, 134.89, 134.97, and new 134.101, regarding the review process of applications and registration issuance for professional land surveyors in Texas, without changes to the proposed text as published in the December 30, 2022, issue of the *Texas Register* (47 TexReg 8892). The rules will not be republished.

REASONED JUSTIFICATION FOR RULE ADOPTION

The rules under 22 Texas Administrative Code, Chapter 134 implement Texas Occupations Code, Chapter 1071, specifically those provisions in Chapter 1071 that concern registration applications. The adopted rules streamline and clarify the Board's application and review process for registration as a professional land surveyor. Plus, for an applicant whose application is proposed to be denied due to a criminal-history issue, the adopted rules add the opportunity for the applicant to request a hearing at the State Office of Administrative Hearings (SOAH) per Texas Occupations Code, Chapter 53.

PUBLIC COMMENT

Pursuant to §2001.029 of the Texas Government Code, the Board gave all interested persons a reasonable opportunity to provide oral and/or written commentary concerning the adoption of the rules. The 30-day public comment period began on December 30, 2022, and ended January 30, 2023. The Board received one comment urging the board to consider arrests in addition to convictions when considering an application. Texas Occupations Code 53 only allows for consideration of convictions, so no change was made to the proposed rules.

STATUTORY AUTHORITY

The rules are adopted pursuant to Texas Occupations Code §§1001.201 and 1001.202, which authorize the Board to regulate engineering and land surveying and make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practices of engineering and land surveying in this state. These adopted rules implement Occupations Code §§53.001 to 53.153.

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 March 3, 2023.

TRD-202300980

Lance Kinney

Executive Director

Texas Board of Professional Engineers and Land Surveyors

Effective date: March 23, 2023

Proposal publication date: December 30, 2022

For further information, please call: (512) 440-7723



CHAPTER 140. CRIMINAL HISTORY AND CONVICTIONS

SUBCHAPTER A. CRIMINAL HISTORY AND CONVICTIONS

22 TAC §140.1, §140.3

The Texas Board of Professional Engineers and Land Surveyors (Board) adopts a new chapter and new rules under 22 Texas Administrative Code Part 6. The Board adopts new Chapter 140, Subchapter A, regarding the evaluation of applications for professional engineers and professional land surveyors with criminal convictions, and adopts new rule §140.1, relating to Criminal History and Convictions for Engineers and new rule §140.3, relating to Criminal History and Convictions for Land Surveyors, without changes to the proposed text as published in the Decem-

ber 30, 2022, issue of the *Texas Register* (47 TexReg 8896). The rules will not be republished.

REASONED JUSTIFICATION FOR RULE ADOPTION

The adopted rules under 22 Texas Administrative Code, Chapter 140, implement Texas Occupations Code, Chapter 1001 and Chapter 1071, regarding processing of applications for engineers and land surveyors, respectively. The adopted rules set out the framework that will be used for the evaluation of applications with a criminal history and conviction per Texas Occupations Code Chapter 53. The adopted rules replace current Board Rule §133.99, and instead of addressing engineering and land surveying in one rule, the Board has adopted a separate rule to address each profession.

PUBLIC COMMENT

Pursuant to §2001.029 of the Texas Government Code, the Board gave all interested persons a reasonable opportunity to provide oral and/or written commentary concerning the adoption of the rules. The 30-day public comment period began on December 30, 2022, and ended January 30, 2023. The Board received one comment urging the board to consider arrests in addition to convictions when considering an application. Texas Occupations Code 53 only allows for consideration of convictions, so no change was made to the proposed rules.

STATUTORY AUTHORITY

The new rules are adopted pursuant to Texas Occupations Code §§1001.201 and 1001.202, which authorize the Board to regulate engineering and land surveying and make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practices of engineering and land surveying in this state. These adopted rules implement Occupations Code §§53.001 to 53.153.

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 March 3, 2023.

TRD-202300981

Lance Kinney

Executive Director

Texas Board of Professional Engineers and Land Surveyors

Effective date: March 23, 2023

Proposal publication date: December 30, 2022

For further information, please call: (512) 440-7723



TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 91. CANCER

SUBCHAPTER A. CANCER REGISTRY

25 TAC §91.11, §91.12

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), adopts amendments to §91.11,

concerning Requests for Statistical Cancer Data; and §91.12, concerning Requests and Release of Confidential Cancer Data. The amendments to §91.11 and §91.12 are adopted without changes to the proposed text as published in the December 9, 2022, issue of the *Texas Register* (47 TexReg 8086) and therefore will not be republished.

BACKGROUND AND JUSTIFICATION

The amendments are necessary to comply with 45 Code of Federal Regulations §46.114 (updated in 2018) that requires research institutions to use a single institutional review board for federally supported research involving more than one institution.

The amendments will allow the state to remain eligible for federal grants and maintain compliance with Texas Health and Safety Code, Chapter 82 (Texas Cancer Incidence Reporting Act).

COMMENTS

The 31-day comment period ended Monday, January 9, 2023.

During this period, DSHS did not receive any comments regarding the proposed rules.

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code, §82.006, which authorizes the Executive Commissioner of HHSC to adopt rules considered necessary to implement the Texas Cancer Incidence Reporting Act; and by Texas Health and Safety Code, §1001.075, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001.

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 February 28, 2023.

TRD-202300950

Cynthia Hernandez

General Counsel

Department of State Health Services

Effective date: March 20, 2023

Proposal publication date: December 9, 2022

For further information, please call: (512) 776-3633



TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 371. BREAST AND CERVICAL CANCER SERVICES

26 TAC §§371.1, 371.3, 371.5, 371.7, 371.9, 371.11, 371.13, 371.15

The Texas Health and Human Services Commission (HHSC) adopts amendments to Texas Administrative Code (TAC) Title 26, Part 1, §371.1, concerning Purpose; §371.3, concerning Federal Authorization and Requirements; §371.5, concerning Providers; §371.7, concerning Client Eligibility Requirements; §371.9, concerning Screening Requirements; §371.11, concerning Follow-up and Case Management Requirements; §371.13, concerning Payment for Services; and §371.15, concerning Client Fees.

The amendments to §§371.1, 371.3, 371.5, 371.7, 371.9, 371.11, 371.13, and 371.15 are adopted without changes to the proposed text as published in the December 9, 2022, issue of the *Texas Register* (47 TexReg 8098). These rules will not be republished.

BACKGROUND AND JUSTIFICATION

The amendments are necessary to update rules related to program services for the Breast and Cervical Cancer Services (BCCS) program. The proposed amendments include updates to reflect current clinical recommendations, statutes, and program titles, and to clarify the roles of BCCS contractors and HHSC staff. The proposed amendments are also necessary to reflect the transition of authority from the Texas Department of State Health Services (DSHS) to HHSC and other non-substantive administrative updates.

COMMENTS

The 31-day comment period ended on January 9, 2023.

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

STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules as necessary to carry out the commission's duties.

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 February 28, 2023.

TRD-202300956

Karen Ray

Chief Counsel

Health and Human Services Commission

Effective date: March 20, 2023

Proposal publication date: December 9, 2022

For further information, please call: (512) 438-3098



CHAPTER 550. LICENSING STANDARDS FOR PRESCRIBED PEDIATRIC EXTENDED CARE CENTERS

The Texas Health and Human Services Commission (HHSC) adopts in Texas Administrative Code (TAC) Title 26, Part 1,

Chapter 550, Licensing Standards for Prescribed Pediatric Extended Care Centers, amendments to §550.5, concerning Definitions; §550.309, concerning Nursing Director and Alternate Nursing Director Qualifications and Conditions; §550.1102 concerning Transportation and Safety Conditions; and §550.1208, concerning Food Preparation.

Amended §§550.5, 550.309, 550.1102, and 550.1208 are adopted without changes to the proposed text as published in the December 9, 2022, issue of the *Texas Register* (47 TexReg 8101). These rules will not be republished.

BACKGROUND AND JUSTIFICATION

The amendments are necessary to update licensing standards for Prescribed Pediatric Extended Care Centers. The amendments add a definition for the term "premises," remove the term "public health disaster declaration," and update nursing degree requirements for the nursing director and alternate nursing director and staffing ratio requirements. The amendments also update outdated references to Texas Food Establishment rules, correct rule references that became outdated as a result of the administrative transfer of rules from 40 TAC Chapter 15 to 26 TAC Chapter 550, and reflect the transfer of functions from the Texas Department of Aging and Disability Services to HHSC.

COMMENTS

The 31-day comment period ended January 9, 2023. During this period, HHSC did not receive any comments regarding the proposed amendments.

SUBCHAPTER A. PURPOSE, SCOPE, LIMITATIONS, COMPLIANCE, AND DEFINITIONS

26 TAC §550.5

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; and Texas Health and Safety Code §248A.101, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to implement Texas Health and Safety Code §248A, including rules prescribing minimum standards to protect the health and safety of minors being served in prescribed pediatric extended care centers.

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

Filed with the Office of the Secretary of State on February 28, 2023.

TRD-202300943

Karen Ray

Chief Counsel

Health and Human Services Commission

Effective date: March 20, 2023

Proposal publication date: December 9, 2022

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

◆ ◆ ◆
SUBCHAPTER C. GENERAL PROVISIONS
DIVISION 2. ADMINISTRATION AND
MANAGEMENT

26 TAC §550.309

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; and Texas Health and Safety Code §248A.101, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to implement Texas Health and Safety Code §248A, including rules prescribing minimum standards to protect the health and safety of minors being served in prescribed pediatric extended care centers.

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

Filed with the Office of the Secretary of State on February 28, 2023.

TRD-202300944

Karen Ray

Chief Counsel

Health and Human Services Commission

Effective date: March 20, 2023

Proposal publication date: December 9, 2022

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

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SUBCHAPTER D. TRANSPORTATION

26 TAC §550.1102

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; and Texas Health and Safety Code §248A.101, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to implement Texas Health and Safety Code §248A, including rules prescribing minimum standards to protect the health and safety of minors being served in prescribed pediatric extended care centers.

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

Filed with the Office of the Secretary of State on February 28, 2023.

TRD-202300945

Karen Ray
Chief Counsel

Health and Human Services Commission

Effective date: March 20, 2023

Proposal publication date: December 9, 2022

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

◆ ◆ ◆
SUBCHAPTER E. BUILDING REQUIREMENTS

26 TAC §550.1208

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; and Texas Health and Safety Code §248A.101, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to implement Texas Health and Safety Code §248A, including rules prescribing minimum standards to protect the health and safety of minors being served in prescribed pediatric extended care centers.

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

Filed with the Office of the Secretary of State on February 28, 2023.

TRD-202300946

Karen Ray

Chief Counsel

Health and Human Services Commission

Effective date: March 20, 2023

Proposal publication date: December 9, 2022

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

◆ ◆ ◆
CHAPTER 745. LICENSING
SUBCHAPTER D. APPLICATION PROCESS
DIVISION 12. PERMIT RENEWAL

26 TAC §745.475, §745.477

The Texas Health and Human Services Commission (HHSC) adopts amendments to §745.475, concerning What does a completed renewal application for a permit include, and §745.477, concerning What happens after Licensing receives my renewal application, in Texas Administrative Code, Title 26, Chapter 745, Licensing, Subchapter D, Application Process, Division 12, Permit Renewal.

Amended §745.475 and §745.477 are adopted without changes to the proposed text as published in the November 18, 2022, issue of the *Texas Register* (47 TexReg 7651). These rules will not be republished.

BACKGROUND AND JUSTIFICATION

The amendments are necessary to implement the portions of Senate Bill (S.B.) 225, 87th Legislature, Regular Session, 2021, that amended Texas Human Resources Code (HRC) §42.050(c) and §42.052(f-2). These amendments change the time period that HHSC Child Care Regulation (CCR) must review for patterns of violations when evaluating whether to renew a license, certification, or registration from two to five years. CCR is also adopting a rule amendment to remove requirements that a completed renewal application include verifications from the provider that they have corrected deficiencies and paid all fees and administrative penalties that the provider owed; these provider verifications are not part of the current business process, and CCR conducts these verifications when processing a renewal application.

COMMENTS

The 31-day comment period ended December 19, 2023. During this period, HHSC received two comments regarding the rules: one commenter represented a child-placing agency, Texas Foster Care and Adoption, and one commenter represented a licensed child-care center, Avance. A summary of comments related to the rules and HHSC's responses follows.

Comment: Regarding §745.477, one commenter disagreed with the change expanding CCR's review of compliance history to five years, instead of two years, when evaluating whether to renew an operation's permit. This commenter stated that many people at the commenter's operation are trying to overcome compliance issues left from a previous Chief Executive Officer, and a five-year review of compliance history resulted in the operation being placed on Heightened Monitoring.

Response: HHSC disagrees with the commenter and declines to revise the rule. HRC §42.050(c) and §42.052(f-2) require CCR to evaluate five years of history for patterns of noncompliance.

Comment: One commenter made general recommendations that CCR: (1) consider creating "degree of violations with matrix and levels"; (2) support providers using a coaching model to improve compliance history; and (3) require all providers to attend a meeting to input on the new system, tools, and processes developed.

Response: This comment is not related to a specific rule in this project. As part of current business practice, CCR staff review an operation's compliance history during inspections, provide technical assistance, and answer questions. CCR accepts suggestions for regulatory changes. HHSC staff also participate in and facilitate meetings with providers. However, HHSC does not have the statutory authority to require attendance at these meetings or to create a meeting described in this comment.

STATUTORY AUTHORITY

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

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

Filed with the Office of the Secretary of State on February 28, 2023.

TRD-202300957

Karen Ray

Chief Counsel

Health and Human Service Commission

Effective date: March 20, 2023

Proposal publication date: November 18, 2022

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



TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER A. GENERAL RULES

34 TAC §3.4

The Comptroller of Public Accounts adopts the repeal of existing §3.4, concerning tax refunds for wages paid to an employee receiving financial assistance, without changes to the proposed text as published in the January 27, 2023, issue of the *Texas Register* (48 TexReg 341). The rule will not be republished.

The comptroller repeals the existing section as the content is out of date and no longer comports with its statutory authority and will adopt a new version under the same number and title. The repeal of §3.4 will be effective as of the date the new §3.4 takes effect.

The comptroller did not receive any comments regarding adoption of the repeal.

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

This section implements Tax Code §111.109.

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 February 28, 2023.

TRD-202300948

Jenny Burleson

Director, Tax Policy

Comptroller of Public Accounts

Effective date: March 20, 2023

Proposal publication date: January 27, 2023

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



34 TAC §3.4

The Comptroller of Public Accounts adopts new §3.4, concerning tax refunds for wages paid to an employee receiving financial assistance, without changes to the proposed text as published

in the January 27, 2023, issue of the *Texas Register* (48 TexReg 342). The rule will not be republished.

The new section replaces existing §3.4, which the comptroller is repealing. The comptroller has not updated §3.4 since its original implementation in 1995, and the statutory authority for the section has changed. New §3.4 is intended to bring the section in line with the current statute which provides for a tax refund program that is administered in conjunction with the Texas Workforce Commission (TWC). The intent of the program is to encourage the employment of individuals who are receiving federal Aid to Families with Dependent Children.

Tax Code, §111.109 (Tax Refund for Wages Paid to Employee Receiving Aid to Families With Dependent Children) reads in its entirety: "The comptroller shall issue a refund for a tax paid by a person to this state in the amount of a tax refund voucher issued by the Texas Workforce Commission under Subchapter H, Chapter 301, Labor Code, subject to the provisions of that subchapter."

Based on the limited language in the statute, the comptroller adopts new §3.4 to include only information under the purview of the comptroller. Subsection (a) outlines the basics of the program.

Subsection (b) explains the eligibility requirements and procedure for requesting a refund. The employer must first submit their application to the TWC. TWC will certify eligibility of the employer and the maximum allowable refund based on the requirements in the Labor Code. This refund amount is referred to in the statute as "the amount of a tax refund voucher." The rule refers to this generally as the "certified amount" since there is not a separate voucher provided to the comptroller. If an employer is eligible for the refund, TWC provides the certification of eligibility and refund amount to the comptroller who then processes the refund request.

Subsection (c) discusses the limitation on the amount of the refund. The refund may not exceed the lesser of the amount certified by TWC or the net tax paid to the state. In order to determine the net tax paid to the state, the comptroller reviews the tax payments reflected in its systems. As paragraph (c)(1) explains, if

the certified amount exceeds the net tax paid to the state, the comptroller may contact the employer to determine if additional Texas tax was paid by the employer on its purchases. If the employer can prove that it paid Texas tax on purchases during the appropriate calendar year, the comptroller will include those payments in the net tax paid by the employer to the state. Paragraph (c)(2) explains that if the certified amount still exceeds the amount of tax paid to the state, the refund request will be granted in part, up to the amount of tax paid, but will also be denied in part. This limitation enforces the statute which allows a refund only for the amount of tax "paid" by an employer.

The comptroller did not receive any comments regarding adoption of the amendment.

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

This section implements Tax Code, §111.109 (Tax Refund for Wages Paid to Employee Receiving Aid to Families with Dependent Children).

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

Filed with the Office of the Secretary of State on February 28, 2023.

TRD-202300949

Jenny Burleson

Director, Tax Policy

Comptroller of Public Accounts

Effective date: March 20, 2023

Proposal publication date: January 27, 2023

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





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

State Board of Educator Certification

Title 19, Part 7

The State Board for Educator Certification (SBEC) proposes the review of Title 19, Texas Administrative Code (TAC), Chapter 232, General Certification Provisions, pursuant to the Texas Government Code (TGC), §2001.039.

As required by the TGC, §2001.039, the SBEC will accept comments as to whether the reasons for adopting 19 TAC Chapter 232 continue to exist.

The comment period on the review of 19 TAC Chapter 232 begins March 17, 2023, and ends April 17, 2023. A form for submitting public comments on the proposed rule review is available on the Texas Education Agency (TEA) website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/SBEC_Rules_\(TAC\)/State_Board_for_Educator_Certification_Rule_Review/](https://tea.texas.gov/About_TEA/Laws_and_Rules/SBEC_Rules_(TAC)/State_Board_for_Educator_Certification_Rule_Review/). The SBEC will take registered oral and written comments on the review of 19 TAC Chapter 232 at the April 28, 2023 meeting in accordance with the SBEC board operating policies and procedures.

TRD-202301022

Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

Filed: March 8, 2023



The State Board for Educator Certification (SBEC) proposes the review of Title 19, Texas Administrative Code (TAC), Chapter 249, Disciplinary Proceedings, Sanctions, and Contested Cases, pursuant to the Texas Government Code (TGC), §2001.039.

As required by the TGC, §2001.039, the SBEC will accept comments as to whether the reasons for adopting 19 TAC Chapter 249 continue to exist.

The comment period on the review of 19 TAC Chapter 249 begins March 17, 2023, and ends April 17, 2023. A form for submitting

public comments on the proposed rule review is available on the Texas Education Agency (TEA) website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/SBEC_Rules_\(TAC\)/State_Board_for_Educator_Certification_Rule_Review/](https://tea.texas.gov/About_TEA/Laws_and_Rules/SBEC_Rules_(TAC)/State_Board_for_Educator_Certification_Rule_Review/). The SBEC will take registered oral and written comments on the review of 19 TAC Chapter 249 at the April 28, 2023, meeting in accordance with the SBEC board operating policies and procedures.

TRD-202301021

Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

Filed: March 8, 2023



Adopted Rule Reviews

Texas Commission on Fire Protection

Title 37, Part 13

The Texas Commission on Fire Protection (commission) adopts the review of Texas Administrative Code, Title 37, Part 13, Chapter 401, concerning Administrative Practices and Procedures. The review was conducted pursuant to Texas Government Code, Chapter 2001, §2001.039.

The commission received no comments on the proposed rule review.

The commission has determined that the reasons for initially adopting the rule continue to exist and readopts the chapter without changes.

This concludes the review of Texas Administrative Code, Title 37, Part 13, Chapter 401.

TRD-202300974

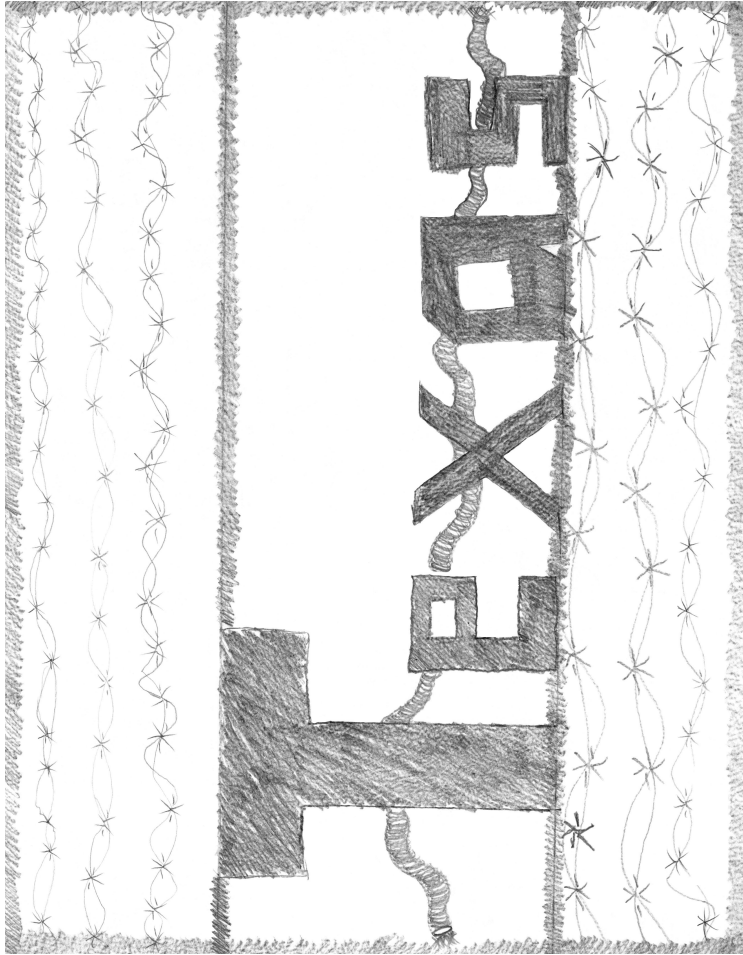
Mike Wisko

Agency Chief

Texas Commission on Fire Protection

Filed: March 2, 2023





TABLES &

GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word “Figure” followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 19 TAC §150.1012(c)(1)(C)

Local Optional Teacher Designation System Application Statutorily Based Framework

Component	Requirements
Includes a teacher observation component and a percent weight is assigned	<ul style="list-style-type: none"> • Includes a teacher observation component as part of the local teacher designation system and assigns a clear percent weight for it. • For teachers who teach more than one content area/grade level, it is clear which content area/grade level will be used for purpose of TIA for all the teachers in each respective eligible teacher category.
Includes a Student Growth component and a percent weight is assigned	<ul style="list-style-type: none"> • Uses approved student growth measures as part of the local teacher designation system for all eligible teaching assignments, and clearly identifies which student growth measures apply to which eligible teaching assignments. • A clear percent weight of the student growth component is assigned.
Teacher Observation Rubric and Appraiser Certification	<ul style="list-style-type: none"> • District uses an approved teacher observation rubric that is based on observable, job-related behaviors that are described with progressive descriptors for each dimension, including alignment to §149.1001 of this title (relating to Teacher Standards) and a clear proficiency indicator. • Thorough training/certification is required for all appraisers. Calibration component required during certification. • Recertification of appraisers required at minimum every 3 years.
Reliability of teacher appraisers within and across campuses	<ul style="list-style-type: none"> • Calibration among appraisers both within and among campuses, including district leadership, is required at least once a year. (Note: for districts with fewer than 3 appraisers districtwide, calibration component includes partnering with additional trained appraisers, such as teacher leaders, ESC partners, etc.) • Appraisers calibrate on scoring using the district’s teacher observation rubric at least annually by conducting a multi-appraiser observation either in-person or on video. • District has reviewed the TIA Statewide Performance Standards with teachers as an overall guide for how to determine designation levels.
District review of teacher observation trends	<ul style="list-style-type: none"> • Principals and principal supervisors review campus-based teacher observation trends at least quarterly by grade/subject/appraiser. • For districts with more than one campus: District leaders review districtwide teacher observation trends at least quarterly by grade/subject/campus/appraiser. • District explains how it addresses lack of appraiser calibration in both ratings and aligned evidence for ratings.
District reviews correlation of teacher observation and student growth data and develops plan to address any issues	<ul style="list-style-type: none"> • Campus leaders review the correlation of teacher observation data to student growth data at the campus level at least once a year. • For districts with more than one campus, district leaders review the district-wide correlation of teacher observation and student growth data. • The district explains how it identifies and addresses lack of correlation between teacher observation data and student growth data.

Observation/feedback schedule	<ul style="list-style-type: none"> • All teachers in eligible teaching assignments receive at least one 45 min. observation or multiple observations that aggregate to 45 min. during their data capture year, including scores on all observable domains. • Full teacher observation and student growth measures are required for all teachers in eligible teaching assignments during the data capture year. • If using multi-year appraisal system, both teacher observation data and student growth data are from the same school year.
Student Learning Objectives: Rationale	<ul style="list-style-type: none"> • District has a clear rationale for using SLOs as a student growth measure in their local teacher designation system.
Student Learning Objectives: Validity in administration of the SLO	<ul style="list-style-type: none"> • District requires training annually on the administration of SLOs. • District provides guidance, protocols, and rubrics for the administration of assignments, projects, and tasks that are used as part of the SLO body of evidence.
Student Learning Objectives: Updated SLO training	<ul style="list-style-type: none"> • District received SLO training or plans to have SLO training prior to beginning of the data capture year.
Student Learning Objectives: Alignment to texasslo.org	<ul style="list-style-type: none"> • District's SLO system aligns to the process described on TexasSLO.org.
Student Learning Objectives: Requirements for writing an SLO	<ul style="list-style-type: none"> • District ensures that all SLOs used are aligned to the standards for the course and focus on a foundational skill that is addressed throughout the school year.
Student Learning Objectives: Requirements for approving an SLO	<ul style="list-style-type: none"> • All SLOs are approved by teacher appraisers who follow guidance for approving SLOs as listed on the Texas SLO website.
Student Learning Objectives: Security of the body of evidence	<ul style="list-style-type: none"> • District has protocols in place to ensure the security of student assessment/assignment documents used in the SLO.
Student Learning Objectives: Requirements of the body of evidence	<ul style="list-style-type: none"> • Five or more pieces of student work comprise the body of evidence.
Student Learning Objectives: Setting Expected Growth Targets	<ul style="list-style-type: none"> • District uses the Initial Skill profile and the Targeted Skill Profile (TSP), based on multiple data points to set individual expected growth targets for each student at the beginning of the year.
Student Learning Objectives: Determining students' end of year growth	<ul style="list-style-type: none"> • District uses the body of evidence of student work as it aligns to students' expected growth targets on the TSP to determine whether students met their targeted growth at the end of the year.
Portfolios: Rationale	<ul style="list-style-type: none"> • District has a clear rationale for using portfolios as a student growth measure in their local teacher designation system.
Portfolios: Validity and reliability in portfolio assignment administration	<ul style="list-style-type: none"> • District has protocols in place to ensure the valid administration of all assignments/projects to be used as part of the student portfolio. • Teachers are trained in procedures for administration of portfolio assignments.
Portfolios: Security of portfolios	<ul style="list-style-type: none"> • District has procedures in place to ensure the security of all portfolio documents and provides training to teachers regarding portfolio security.

Portfolios: Artifacts to be included in the portfolio	<ul style="list-style-type: none"> District has clear guidelines for what is required for a student task/assignment/project to be included as part of the student portfolio.
Portfolios: Number of artifacts	<ul style="list-style-type: none"> Student portfolios consist of more than one artifact.
Portfolios: Development of Scoring Rubric	<ul style="list-style-type: none"> Portfolio rubric required to align to content standards of the course and required to specify what students need to know and be able to do across at least four different skill levels. District identifies which roles will be responsible for creating and approving portfolio scoring rubrics.
Portfolios: Scoring artifacts based on the rubric	<ul style="list-style-type: none"> District has clear plan for who will use the scoring rubric to assess student portfolios, including a selection and training process for all scorers. District requires training annually on the scoring of rubrics.
Portfolios: Setting student expected growth targets	<ul style="list-style-type: none"> There are clear procedures and guidelines for how to set student expected growth targets at the beginning of the year using a portfolio system.
Portfolios: Calculation of a teacher's end of year student growth	<ul style="list-style-type: none"> Clear and published procedures exist for how student growth data based on the portfolio is calculated for each individual student and how this data is used to determine the teachers' end of year student growth rating for teachers in all applicable eligible teaching assignments.
Value-Added Measures: Rationale	<ul style="list-style-type: none"> District has a clear rationale for using VAM as a student growth measure in their local teacher designation system.
Value-Added Measures: Assessments used to calculate VAM	<ul style="list-style-type: none"> District uses state-approved or nationally normed, standards-aligned assessments to calculate VAM for all teacher groups using this measure.
Value-Added Measures: Multiple Years of Student Data	<ul style="list-style-type: none"> VAM calculation based on multi-year data
Value-Added Measures: Setting expected growth targets	<ul style="list-style-type: none"> District has clear and well-communicated procedures for how VAM is used to set expected growth targets.
Value-Added Measures: Calculation of a teacher's end of year student growth rating	<ul style="list-style-type: none"> Clear and published procedures exist for how student growth data based on VAM is calculated for each individual student and for how this data is used to determine the teachers' end-of-year student growth rating for teachers in all teachers in applicable eligible teaching assignments.
Value-Added Measures: Calculation of VAM	<ul style="list-style-type: none"> District uses 3rd party statisticians or has a local process to run statistical VAM calculations that includes multi-year data on a nationally normed or criterion-referenced test.
Value-Added Measures: Locally calculated VAM	<ul style="list-style-type: none"> District has clear and specific policies and procedures for how they calculate VAM locally that are informed by the standards used for calculating statewide value-added measures.

Pre-Test/Post-Test: Validity and reliability of pre-test/post-test	<ul style="list-style-type: none"> District explains how each assessment used aligns to the standards/content covered in each respective course.
Pre-Test/Post-Test: Administration of pre-test/post-test	<ul style="list-style-type: none"> District identifies the protocols and training it gives annually on the valid and reliable administration and security of each specific pre-test/post-test used.
Pre-Test/Post-Test: Setting expected growth targets	<ul style="list-style-type: none"> District has clear procedures in place for how to set valid expected growth targets at the beginning of the year using the pre-test.
Pre-Test/Post-Test: Calculating end of year student growth	<ul style="list-style-type: none"> District has clear procedures for how to determine students' end of year growth based on the pre-test, expected growth target, and post-test.
Pre-Test/Post-Test: Requirements for writing standards aligned pre-tests/post-tests	<ul style="list-style-type: none"> District has rigorous protocols in place for writing district-created assessments that align to the standards of the course and that follow best practices in assessment design. District requires qualifications to be able to design district-created tests that include, at minimum, in-depth content knowledge of the subject matter/grade level being assessed and which positions are authorized to do so.
Pre-Test/Post-Test: Process to review and approve district-created pre-tests/post-tests	<ul style="list-style-type: none"> All district-created pre-tests/post-tests require a rigorous approval process including multiple levels of review, checks for alignment to standards of the course, and for the ability of the tests to measure student growth across a wide variety of student ability levels (stretch of the test).
Spending: Distribution of Allotment Funds	<ul style="list-style-type: none"> District spends at least 90% of TIA funds on teacher compensation on the campuses where the designated teachers work. District spends no more than 10% of TIA funds at the district level to support rollout and implementation of TIA and/or to support teachers in earning a TIA designation through professional development. District has plans to expend all allotment funds by August 31st, annually. District has clear plans for how to spend any funds reserved at the district level to support the local designation system. Compliance with §48.112 is required for full readiness.

Figure: 22 TAC §851.156(g)(2)(C)



Signature valid

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Date: 2013.05.06 21:02:36 -05:00
Reason: I'm the author
Location: USA

Valid signature

Figure: 26 TAC §745.5001(b)

<u>Voluntary Actions</u>	<u>Description of Voluntary Action</u>
<u>(1) Withdrawal of Application</u>	<p><u>(A) You withdraw your application before we decide whether to issue or deny you a permit.</u></p> <p><u>(B) If you withdraw your application, you may reapply for a permit later, unless you are ineligible to reapply because we have taken an enforcement action as provided in §745.5003 of this division (relating to How does my taking a voluntary action affect Licensing's ability to impose an enforcement action against my operation?).</u></p>
<u>(2) Temporary Relocation</u>	<p><u>You relocate your operation for a period of up to 90 days due to renovation or damage to the operation that makes it temporarily unsuitable for child care. After 90 days you must request that Licensing amend the permit with a new address.</u></p>
<u>(3) Voluntary Suspension</u>	<p><u>You request to suspend your permit for a:</u></p> <p><u>(A) Specific reason in §745.5151 of this subchapter (relating to For what reasons may I request a voluntary suspension of my permit?); and</u></p> <p><u>(B) Specific period, up to a maximum of two years.</u></p>
<u>(4) Voluntary Closure</u>	<p><u>You choose to close your operation after we have issued you a permit.</u></p>

Figure: 26 TAC §745.5051

<u>Voluntary Actions</u>	<u>Notice to Licensing</u>	<u>Approval by Licensing</u>
(1) <u>Withdrawal of application</u>	(A) <u>Written notice is required; otherwise, we will continue to process the application and deny or issue the permit.</u>	(B) <u>Not required.</u>
(2) <u>Temporary relocation</u>	(A)(i) <u>Written notice is required as soon as possible, but no later than 24 hours after the operation temporarily moves or begins providing care at any location not noted on the operation's permit.</u> (A)(ii) <u>For a residential child care operation, notice can be through a report to the Statewide Intake Division of the Texas Department of Family and Protective Services.</u>	(B) <u>Licensing must inspect and approve the new location before or as soon as possible after the operation relocates.</u>
(3) <u>Voluntary suspension</u>	(A) <u>A written request is required as noted in §745.5153 of this subchapter (relating to How do I request a voluntary suspension?).</u>	(B) <u>Licensing must inspect and approve the permitted location before the operation may reopen after the voluntary suspension.</u>
(4) <u>Voluntary closure</u>	(A) <u>Written notice is required as noted in §745.5201(b) and (c) of this subchapter (relating to How do I voluntarily close my operation?).</u>	(B) <u>Not required.</u>

Figure: 26 TAC §745.5201(a)

<u>If you are:</u>	<u>You must provide notification:</u>
<u>(1) Voluntarily closing due to an emergency,</u>	<u>(A) Immediately to the parents of any children attending your operation when you close; and</u> <u>(B) As soon as possible, but no later than the 24 hours after closing, to the parents of other children enrolled in your operation.</u>
<u>(2) Voluntarily closing, but not due to an emergency,</u>	<u>As soon as possible, but no later than 24 hours after you determine you will be voluntarily closing, to the parents of any children attending or enrolled in your operation.</u>

Figure: 26 TAC §745.8405(a)

<u>Type of Operation</u>	<u>Inspection</u>	<u>Investigation</u>
<p><u>(1) Listed Family Home, excluding Relative-Only Listed Family Homes (see paragraph (2) of this section)</u></p>	<p><u>We may inspect as part of an investigation.</u> <u>Note: We do not inspect prior to the issuance of a listing, nor do we conduct routine inspections in a listed family home.</u></p>	<p><u>We investigate when we have received a report of a deficiency in a licensing statute, rule, or minimum standard.</u></p>
<p><u>(2) Relative-Only Listed Family Home, which only provides care to children related to the primary caregiver and receives a federal subsidy from the Texas Workforce Commission.</u></p>	<p><u>We may inspect as part of an investigation.</u> <u>Note: We do not inspect prior to the issuance of a listing, nor do we conduct routine inspections in a relative-only listed family home.</u></p>	<p><u>We investigate when we have received a report of a deficiency under §745.43(1) – (4) of this chapter (relating to What are the requirements for a relative-only listed family home?).</u></p>
<p><u>(3) Registered Child-Care Home</u></p>	<p><u>We inspect prior to the issuance of the registration;</u> <u>We inspect at least once every two years after issuance of the registration, or at least once every year if the home is receiving a subsidy for a child in care through the Texas Workforce Commission; and</u></p> <ul style="list-style-type: none"> • <u>We may inspect as part of an investigation.</u> 	<p><u>We investigate when we have received a report of a deficiency in a licensing statute, rule, or minimum standard.</u></p>
<p><u>(4) Licensed or Certified Operation</u></p>	<ul style="list-style-type: none"> • <u>We inspect prior to the issuance of the license or certification;</u> • <u>We inspect at least once every year; and</u> • <u>We may inspect as part of an investigation.</u> 	<p><u>We investigate when we have received a report of a deficiency in a licensing statute, rule, or minimum standard.</u></p>

<p><u>(5) Foster Home</u></p>	<ul style="list-style-type: none"> • <u>We will periodically inspect a random sample of foster homes; and</u> • <u>We may inspect as part of an investigation.</u> 	<p><u>We investigate when we have received a report of:</u></p> <ul style="list-style-type: none"> ○ <u>A serious incident pertaining to a child under six years of age;</u> ○ <u>A deficiency in a licensing statute, rule, or minimum standard that is weighted high in a home where a foster child under six years of age is placed;</u> ○ <u>Any deficiency in a licensing statute, rule, or minimum standard when law enforcement responds to or has previously responded to a family violence call at the foster home; and</u> ○ <u>A deficiency involving agency staff.</u> <ul style="list-style-type: none"> • <u>We may investigate other reports of a deficiency in a licensing statute, rule, or minimum standard or assign them to the agency to investigate.</u>
<p><u>(6) Adoptive Home</u></p>	<p><u>We may inspect as part of an investigation.</u></p>	<p><u>We investigate when we have received a report of a deficiency involving agency staff.</u></p> <p><u>We may investigate other reports of a deficiency in a licensing statute, rule, or minimum standard or assign them to the agency to investigate.</u></p>
<p><u>(7) Small Employer-Based Child Care</u></p>	<ul style="list-style-type: none"> • <u>We inspect prior to the issuance of the compliance certificate; and</u> • <u>We may inspect as part of an investigation.</u> 	<p><u>We investigate when we have received a report of a deficiency in a licensing statute or rule.</u></p>

<p><u>(8) Shelter Care</u></p>	<ul style="list-style-type: none">• <u>We inspect prior to the issuance of the compliance certificate; and</u>• <u>We may inspect as part of an investigation.</u>	<p><u>We investigate when we have received a report of deficiency in a licensing statute, rule, or minimum standard.</u></p>
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IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Coastal Bend Workforce Development Board

Request for Statement of Qualifications for Independent Evaluator Services (RFQ No. 23-04)

Workforce Solutions Coastal Bend (WFSCB) is requesting qualifications from experienced and professional firms or individuals to provide independent evaluator services. A minimum of three (3) independent evaluators with the knowledge/experience in quality systems, quality management and performance excellence will be selected to review and score proposals received by WFSCB in response to an RFP for the management and operation of the career center system, including youth development services. One evaluator will be selected as the Lead Evaluator.

The RFQ will be available on Monday, March 20, 2023, at 2:00 p.m. Central Time and can be accessed on our website at: www.workforcesolutionscb.org or by contacting Esther Velazquez at (361) 885-3013 or esther.velazquez@workforcesolutionscb.org.

Proposals are due on Monday, April 10, 2023, at 4:00 p.m. Central Time. Responses should be submitted via email to esther.velazquez@workforcesolutionscb.org or may be hand delivered or mailed to: Workforce Solutions Coastal Bend, 400 Mann Street, Suite 800, Corpus Christi, Texas 78401.

Workforce Solutions Coastal Bend is an Equal Opportunity Employer/Program. Auxiliary aids and services are available upon request to individuals with disabilities. Relay Texas: (800) 735-2989 (TDD) and (800) 735-2988 or 711 (Voice). Historically Underutilized Businesses (HUBs) are encouraged to apply.

TRD-202301000
Esther Velazquez
Contract and Procurement Specialist
Coastal Bend Workforce Development Board
Filed: March 3, 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, 303.005 and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 03/13/23 - 03/19/23 is 18% for consumer¹/Agricultural/Commercial² credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 03/13/23 - 03/19/23 is 18% for Commercial over \$250,000.

The monthly ceiling as prescribed by §303.005 and §303.009³ for the period of 03/01/23 - 03/31/23 is 18% for Consumer/Agricultural/Commercial credit through \$250,000.

The monthly ceiling as prescribed by §303.005 and §303.009 for the period of 03/01/23 - 03/31/23 is 18% for Commercial over \$250,000.

¹ Credit for personal, family or household use.

² Credit for business, commercial, investment or other similar purpose.

³ For variable rate commercial transactions only.

TRD-202301020
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: March 7, 2023

Texas Education Agency

Notice of Extension Concerning Request for Prekindergarten Progress Monitoring Instrument Submissions

Filing Authority. Texas Education Code, §29.169(c)

The Texas Education Agency (TEA) filed a Request for Prekindergarten Progress Monitoring Instrument Submissions in the December 30, 2022 issue of the *Texas Register* (47 TexReg 9057).

TEA is extending the deadline for submission of prekindergarten progress monitoring instruments for inclusion on the *Commissioner's List of Approved Prekindergarten Progress Monitoring Instruments*. The completed *Prekindergarten Submission Form* with all attachments embedded must be emailed to klsanti@uh.edu no later than 3:00 p.m. (Central Time) on Friday, April 14, 2023.

To accommodate the extended deadline, implementation of the instruments will begin in the 2024-2025 school year, and the list will be titled *2024-2027 Commissioner's List of Approved Prekindergarten Progress Monitoring Instruments*.

Further Information.

For clarifying information, contact the TEA Early Childhood Education Division at (512) 463-8886.

TRD-202301025
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: March 8, 2023

Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency, 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 **April 17, 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 **April 17, 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: BOBCAT TRUCKING, INCORPORATED; DOCKET NUMBER: 2020-1611-AIR-E; IDENTIFIER: RN110941234; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: rock crusher; RULES VIOLATED: 30 TAC §116.610(a) and Texas Health and Safety Code, §382.085(b), by failing to obtain authorization prior to constructing or modifying a source of air contaminants; PENALTY: \$1,876; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(2) COMPANY: City of Christine; DOCKET NUMBER: 2022-1246-UTL-E; IDENTIFIER: RN101439701; LOCATION: Christine, Atascosa 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: \$610; ENFORCEMENT COORDINATOR: Nick Lohret-Froio, (512) 239-4495; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(3) COMPANY: Deaf Smith County Fresh Water Supply District 1; DOCKET NUMBER: 2022-1144-UTL-E; IDENTIFIER: RN101392405; LOCATION: Hereford, Deaf Smith County; TYPE OF FACILITY: retail public utility, exempt utility, or provider or conveyor of potable or raw water service that furnishes water service; RULE VIOLATED: TWC, §13.1394(b)(2), by failing to adopt and submit to the TCEQ for approval an emergency preparedness plan that demonstrates the facility's ability to provide emergency operations; PENALTY: \$510; ENFORCEMENT COORDINATOR: Nick Lohret-Froio, (512) 239-4495; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(4) COMPANY: JW Sands, LLC; DOCKET NUMBER: 2021-1527-AIR-E; IDENTIFIER: RN110059409; LOCATION: Von Ormy, Bexar County; TYPE OF FACILITY: sand processing plant; RULES VIOLATED: 30 TAC §101.20(1) and §116.115(b)(2)(F) and (c), 40 Code of Federal Regulations (CFR) §60.8(f)(1) and §60.732(a), New Source Review (NSR) Permit Number 156623, Special Conditions (SC) Number 14, and Texas Health and Safety Code (THSC), §382.085(b), by failing to comply with the maximum allowable emissions rate and fail-

ing to comply with the emissions limit; and 30 TAC §101.20(1) and §116.115(c), 40 CFR §60.8(a), NSR Permit Number 156623, SC Number 14, and THSC, §382.085(b), by failing to submit a copy of each performance test report within 60 days after the test has been completed; PENALTY: \$131,000; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(5) COMPANY: RANDOLPH WATER SUPPLY CORPORATION; DOCKET NUMBER: 2022-1222-UTL-E; IDENTIFIER: RN101236891; LOCATION: Randolph, Fannin 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: \$620; ENFORCEMENT COORDINATOR: Nick Lohret-Froio, (512) 239-4495; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: Ray A. Harlow; DOCKET NUMBER: 2021-1481-MWD-E; IDENTIFIER: RN101519064; LOCATION: Lufkin, Angelina County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.65 and §305.125(2) and TWC, §26.121(a)(1), by failing to maintain authorization to discharge wastewater into or adjacent to any water in the state; PENALTY: \$10,400; ENFORCEMENT COORDINATOR: Ellen Ojeda, (512) 239-2581; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(7) COMPANY: RS PATEL, INCORPORATED dba Quick Way Food Store 7; DOCKET NUMBER: 2022-0779-PST-E; IDENTIFIER: RN103012837; LOCATION: Watauga, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.7(d)(3) and (e)(2), by failing to provide an amended registration for any change or additional information regarding the underground storage tank (UST) system within 30 days of the occurrence of the change or addition; 30 TAC §334.45(c)(3)(A), by failing to securely anchor emergency shutoff valves at the base of all dispensers; 30 TAC §334.48(e), §334.50(b)(1)(A), and TWC, §26.3475(c)(1), by failing to ensure that all release detection equipment is maintained in good operating condition and functioning in accordance with agency practices and manufacturer's specification, and failing to monitor the USTs for releases at a frequency of at least once every 30 days; and 30 TAC §334.49(a)(4) and TWC, §26.3475(d), by failing to provide corrosion protection for the UST system; PENALTY: \$10,125; ENFORCEMENT COORDINATOR: Stephanie McCurley, (512) 239-2607; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: TEXAS WATER SYSTEMS, INCORPORATED; DOCKET NUMBER: 2022-1323-UTL-E; IDENTIFIER: RN101440592; LOCATION: Gilmer, Upshur 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: \$1,020; ENFORCEMENT COORDINATOR: Nick Lohret-Froio, (512) 239-4495; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(9) COMPANY: TEXAS WATER SYSTEMS, INCORPORATED; DOCKET NUMBER: 2022-1324-UTL-E; IDENTIFIER: RN101195238; LOCATION: Tyler, Smith County; TYPE OF FACILITY: retail public utility, exempt utility, or provider or conveyor of potable or raw water service that furnishes water service; RULE VIO-

LATED: 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: \$1,040; ENFORCEMENT COORDINATOR: Nick Lohret-Froio, (512) 239-4495; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(10) COMPANY: West Texas Commercial Properties LLC dba Hop In 430457; DOCKET NUMBER: 2022-0638-PST-E; IDENTIFIER: RN101898070; LOCATION: Abilene, Taylor County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.72, by failing to report a suspected release to the TCEQ within 24 hours of discovery; and 30 TAC §334.74, by failing to investigate and confirm all suspected releases of regulated substances requiring reporting under 30 TAC §334.72 within 30 days; PENALTY: \$16,476; ENFORCEMENT COORDINATOR: Courtney Gooris, (817) 588-5863; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

TRD-202301009

Gitanjali Yadav

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: March 3, 2023



Enforcement Orders

An agreed order was adopted regarding Chevron Phillips Chemical Company LP, Docket No. 2020-0850-AIR-E on March 8, 2023 assessing \$13,200 in administrative penalties with \$2,640 deferred. Information concerning any aspect of this order may be obtained by contacting Danielle Porras, 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 7-ELEVEN, INC. dba 7-Eleven Store 41667, Docket No. 2021-0616-PST-E on March 8, 2023 assessing \$24,964 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.

A default order was adopted regarding Vernon Session and Ruby Session, Docket No. 2021-0621-PST-E on March 8, 2023 assessing \$1,575 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Cynthia Sirois, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Corpus Christi Liquefaction, LLC, Docket No. 2021-1033-AIR-E on March 8, 2023 assessing \$114,750 in administrative penalties with \$22,950 deferred. Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Valero Refining-Texas, L.P., Docket No. 2021-1206-AIR-E on March 8, 2023 assessing \$44,250 in administrative penalties with \$8,850 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 Coleman County Special Utility District, Docket No. 2021-1332-PWS-E on March 8, 2023 assessing \$8,540 in administrative penalties. Information concerning any as-

pect 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 City of Log Cabin, Docket No. 2021-1417-MWD-E on March 8, 2023 assessing \$10,375 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 Undine Texas, LLC, Docket No. 2022-0108-PWS-E on March 8, 2023 assessing \$9,819 in administrative penalties with \$1,963 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 WINTERS OIL PARTNERS, L.P. dba Athens Shell Food Mart, Docket No. 2022-0710-PST-E on March 8, 2023 assessing \$38,276 in administrative penalties with \$7,655 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 City of Buffalo Gap, Docket No. 2022-0809-PWS-E on March 8, 2023 assessing \$1,437 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Corinna Willis, 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 KELLEY SAND AND EXCAVATION, INC., Docket No. 2022-0877-WQ-E on March 8, 2023 assessing \$12,602 in administrative penalties with \$2,520 deferred. Information concerning any aspect of this order may be obtained by contacting Laura Draper, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202301027

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: March 8, 2023



Notice of Opportunity to Comment on an Agreed Order of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Order (AO) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AO, the commission shall allow the public an opportunity to submit written comments on the proposed AO. TWC, §7.075, requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **April 17, 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. Ad-

ditional 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 April 17, 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: BARKSDALE WATER SUPPLY CORPORATION; DOCKET NUMBER: 2020-0247-PWS-E; TCEQ ID NUMBER: RN101258440; LOCATION: 60 North Broadway Street, Barksdale, Edwards County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §§290.42(c)(1), 290.110(e)(2) and (6), 290.111(a)(2) and (h), and 290.122(b)(2)(A) and (f), by failing to provide a minimum treatment consisting of coagulation with direct filtration and adequate disinfection for groundwater under the influence of surface water (GUI) at the facility's treatment plant, failed to issue public notification and submit a copy of the public notification, accompanied with a signed Certificate of Delivery, to the executive director regarding the failure to provide minimum treatment for the months of September and October 2019 and regarding the failure to install filtration for the month of September 2019, and failed to submit Surface Water Monthly Operating Reports for systems that use GUI for the months of September and October 2019; PENALTY: \$5,850; STAFF ATTORNEY: Taylor Pearson, Litigation, MC 175, (512) 239-5937; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

TRD-202301014

Gitanjali Yadav

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: March 7, 2023



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 **April 17, 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 April 17, 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: Brand Technologies (TX), Inc.; DOCKET NUMBER: 2019-0983-MSW-E; TCEQ ID NUMBERS: RN105880892 and RN110761160; LOCATIONS: East Kelly Rail Transloading 438 Tayman Street, San Antonio, Bexar County and Brand Technologies (TX) 16456 Old Corpus Christi, Elmendorf, Bexar County; TYPE OF FACILITY: two transloading and storage service facilities; RULE VIOLATED: 30 TAC §330.15(a) and (c), by causing, suffering, allowing, or permitting the unauthorized disposal of municipal solid waste; PENALTY: \$2,500; STAFF ATTORNEY: Clayton Smith, Litigation, MC 175, (512) 239-6224; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(2) COMPANY: Fast Recycling, Inc.; DOCKET NUMBER: 2021-0639-MSW-E; TCEQ ID NUMBER: RN105566442; LOCATION: 3201 Dalworth Street, Arlington, Tarrant County; TYPE OF FACILITY: scrap tire storage facility; RULES VIOLATED: 30 TAC §328.55(3), by failing to maintain a copy of the TCEQ scrap tire generator restriction notice at the designated place of business; 30 TAC §328.56(d)(4), by failing to monitor tires stored outside for vectors and to utilize appropriate vector control measures at least once every two weeks; 30 TAC §328.57(d) and §328.58(f), by failing to retain all manifests, work orders, and invoices showing the collection and disposition of all used or scrap tires and tire pieces for a period of at least three years; 30 TAC §328.60(a), by failing to obtain a scrap tire storage site registration for the Facility prior to storing more than 500 used or scrap tires on the ground or 2,000 used or scrap tires in enclosed and lockable containers; 30 TAC §328.57(c)(1), by failing to obtain a scrap tire transporter registration before transporting used and/or scrap tires; and 30 TAC §328.63(d)(6), by failing to submit a scrap tire facility annual summary of activities, no later than March 1 of each year; PENALTY: \$49,649; STAFF ATTORNEY: Marilyn Norrod, Litigation, MC 175, (512) 239-5916; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Gerald Holmes; DOCKET NUMBER: 2021-0870-MLM-E; TCEQ ID NUMBER: RN111112348; LOCATION: 112 South 1st Street in Nederland, Jefferson County, Texas; TYPE OF FACILITY: unauthorized municipal solid waste (MSW) disposal site; RULES VIOLATED: 30 TAC §330.15(a)(2) and (c), by causing, suffering, allowing, or permitting the unauthorized disposal of MSW in such a manner to cause the creation and maintenance of a nuisance; and Texas Health and Safety Code, §382.085(a) and (b) and 30 TAC §101.4, by failing to prevent nuisance odor conditions; PENALTY: \$7,500; STAFF ATTORNEY: Cynthia Sirois, Litigation, MC 175, (512) 239-3392; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(4) COMPANY: Kelly Chittum; DOCKET NUMBER: 2020-0715-MSW-E; TCEQ ID NUMBER: RN103719712; LOCATION: 17066 County Road 406, Abilene, Jones County; TYPE OF FACILITY:

unauthorized disposal site; RULES VIOLATED: 30 TAC §330.15(a) and (c), by causing, suffering, allowing, or permitting the unauthorized disposal of municipal solid waste; PENALTY: \$3,937; STAFF ATTORNEY: Clayton Smith, Litigation, MC 175, (512) 239-6224; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

TRD-202301015
Gitanjali Yadav
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: March 7, 2023



Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions of OLMOS EQUIPMENT, INC. SOAH Docket No. 582-23-12835 TCEQ Docket No. 2019-0973-MLM-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - March 23, 2023
William P. Clements Building
300 West 15th Street, 4th Floor
Austin, Texas 78701

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed July 21, 2022 concerning assessing administrative penalties against and requiring certain actions of OLMOS EQUIPMENT, INC., for violations in Bexar County, Texas, of: Tex. Water Code § 26.3475(a), (c)(1), and (d); Tex. Health & Safety Code § 371.041; 30 Texas Administrative Code §§37.815(a) and (b), 324.4(l), 324.15, 330.15(c), 334.49(a)(2), and 334.50(b)(l)(A) and (b)(2); and 40 C.F.R. § 279.22(b) and (d)(3).

The hearing will allow OLMOS EQUIPMENT, INC., the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford OLMOS EQUIPMENT, INC., the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. **Upon failure of OLMOS EQUIPMENT, INC. to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes.** OLMOS EQUIPMENT, INC., the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Tex. Water Code § 7.054; Tex. Water Code chs. 7 and 26; Tex. Health & Safety Code chs. 361 and 371; 30 Texas Administrative Code chs. 37, 70, 324, 330, and 334; and 40 C.F.R. Part 279; Tex. Water Code § 7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Texas Administrative Code

§70.108 and §70.109 and ch. 80, and 1 Texas Administrative Code ch. 155.

Further information regarding this hearing may be obtained by contacting Megan L. Grace, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Sheldon Wayne, Staff Attorney, Office of Public Interest Counsel, Mail Code 103, at the same P.O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at www.tceq.texas.gov/goto/efilings or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

In accordance with 1 Texas Administrative Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

TRD-202301024
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 8, 2023



Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions of STL Developer, LLC SOAH Docket No. 582-23-12834 TCEQ Docket No. 2022-0376-MSW-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - March 23, 2023
William P. Clements Building
300 West 15th Street, 4th Floor
Austin, Texas 78701

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed September 20, 2022, concerning assessing administrative penalties against and requiring certain actions of STL Developer, LLC, for violations in Webb County, Texas, of: 30 Texas Administrative Code §330.15(a) and (c), and §330.955(h).

The hearing will allow STL Developer, LLC, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford

STL Developer, LLC, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. **Upon failure of STL Developer, LLC to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes.** STL Developer, LLC, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Tex. Water Code § 7.054 and ch. 7, Tex. Health & Safety Code ch. 361, and 30 Texas Administrative Code chs. 70 and 330; Tex. Water Code § 7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Texas Administrative Code §70.108, §70.109 and ch. 80, and 1 Texas Administrative Code ch. 155.

Further information regarding this hearing may be obtained by contacting Marilyn Norrod, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Sheldon Wayne, Staff Attorney, Office of Public Interest Counsel, Mail Code 103, at the same P.O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at www.tceq.texas.gov/goto/efilings or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

In accordance with 1 Texas Administrative Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

TRD-202301023

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: March 8, 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 February 20, 2023 to March 3, 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, March 10, 2023. The public comment period for this project will close at 5:00 p.m. on Sunday, April 9, 2023.

FEDERAL AGENCY ACTIVITIES:

Applicant: Bureau of Ocean Energy Management (BOEM)

Location: The Texas Coast Region Galveston Wind Energy Area (WEA) Lease Areas consist of Galveston I: OCS-G 37335 Galveston II: OCS-G 37336.

Project Description: The applicant proposes to issue commercial wind energy leases within the Galveston WEA following which site characterization and site assessment activities are expected to take place that would determine whether the lease is suitable for commercial-scale wind energy production. Proposed lease area Galveston I consists of 102,480 acres and Galveston II consists of 96,786 acres. The lease would not authorize the lessee to construct or operate any wind energy project on the Outer Continental Shelf. Issuance of leases would allow lessees only the exclusive right to submit plans for BOEM's consideration and approval. BOEM is seeking comments and recommendations on proposed lease stipulations and how many Lease Areas from the Texas Coast Region should be offered in the Final Sale Notice.

Type of Application: BOEM proposed commercial wind energy lease sale.

CMP Project No: 23-1171-F2

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. 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.

TRD-202301017

Mark Havens

Chief Clerk, Deputy Land Commissioner

General Land Office

Filed: March 7, 2023

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Texas Department of Insurance

Company Licensing

Application for Ohio National Life Assurance Corporation, a foreign life, accident and/or health company, to change its name to Augustar Life Assurance Corporation. The home office is in Cincinnati, Ohio.

Application for American Service Insurance Company, Inc., a foreign fire and/or casualty company, to change its name to OnStar National Insurance Company. The home office is in Orland Park, Illinois.

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-202301026

Justin Beam

Chief Clerk

Texas Department of Insurance

Filed: March 8, 2023

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Texas Lottery Commission

Scratch Ticket Game Number 2467 "QUICK \$500"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2467 is "QUICK \$500". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2467 shall be \$5.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2467.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 02, 03, 04, 06, 07, 08, 09, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 5X SYMBOL, 10X SYMBOL, \$5.00, \$10.00, \$20.00, \$25.00, \$50.00, \$100 and \$500.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2467 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
06	SIX
07	SVN
08	EGT
09	NIN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
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
5X SYMBOL	WINX5
10X SYMBOL	WINX10
\$5.00	FIV\$
\$10.00	TEN\$
\$20.00	TWY\$
\$25.00	TWV\$
\$50.00	FFTY\$
\$100	ONHN
\$500	FVHN

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2467), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 2467-0000001-001.

H. Pack - A Pack of the "QUICK \$500" Scratch Ticket Game contains 075 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The Packs will alternate. One will show the front of Ticket 001 and back of 075 while the other fold will show the back of Ticket 001 and front of 075.

I. Non-Winning 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 "QUICK \$500" Scratch Ticket Game No. 2467.

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 "QUICK \$500" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose forty-five (45) 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" Play Symbol, the player wins 5 TIMES the prize for that symbol. If the player reveals a "10X" Play Symbol, the player wins 10 TIMES the prize for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly forty-five (45) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Scratch Ticket shall be intact;
6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;
8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The Scratch Ticket must not be counterfeit in whole or in part;
10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly forty-five (45) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the forty-five (45) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the forty-five (45) 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 prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 20 and \$20).

D. KEY NUMBER MATCH: No matching non-winning YOUR NUMBERS Play Symbols on a Ticket.

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 six (6) 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. KEY NUMBER MATCH: The "10X" (WINX10) Play Symbol will only appear on intended winning Tickets, as dictated by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "QUICK \$500" Scratch Ticket Game prize of \$5.00, \$10.00, \$20.00, \$25.00, \$50.00, \$100 or \$500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$25.00, \$50.00, \$100 or \$500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. As an alternative method of claiming a "QUICK \$500" Scratch Ticket Game prize, the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is \$1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;
2. in default on a loan made under Chapter 52, Education Code;
3. in default on a loan guaranteed under Chapter 57, Education Code; or
4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

D. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "QUICK \$500" 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 "QUICK \$500" 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 7,080,000 Scratch Tickets in Scratch Ticket Game No. 2467. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2467 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$5.00	731,600	9.68
\$10.00	542,800	13.04
\$20.00	94,400	75.00
\$25.00	141,600	50.00
\$50.00	94,400	75.00
\$100	24,780	285.71
\$500	4,720	1,500.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.33. 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. 2467 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. 2467, 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-202301013
 Bob Biard
 General Counsel
 Texas Lottery Commission
 Filed: March 7, 2023



Scratch Ticket Game Number 2481 "50X LUCKY"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2481 is "50X LUCKY". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2481 shall be \$5.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2481.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 02, 03, 04, 06, 07, 08, 09, 11, 12, 13, 14, 15, 16, 17, 18, 19, 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, 5X SYMBOL, 10X SYMBOL, 50X SYMBOL, \$5.00, \$10.00, \$20.00, \$25.00, \$50.00, \$100, \$200, \$500, \$1,000 and \$100,000.

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. 2481 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
06	SIX
07	SVN
08	EGT
09	NIN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
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
5X SYMBOL	WINX5
10X SYMBOL	WINX10
50X SYMBOL	WINX50
\$5.00	FIV\$
\$10.00	TEN\$
\$20.00	TWY\$
\$25.00	TWFV\$
\$50.00	FFTY\$
\$100	ONHN
\$200	TOHN
\$500	FVHN
\$1,000	ONTH
\$100,000	100TH

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 (2481), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 2481-0000001-001.

H. Pack - A Pack of the "50X LUCKY" Scratch Ticket Game contains 075 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket 001 will be shown on the front of the Pack; the back of Ticket 075 will be revealed on the back of the Pack. All packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack. Every other Pack will reverse; i.e., reverse order will be: the back of Ticket 001 will be shown on the front of the Pack and the front of Ticket 075 will be shown on the back of the Pack.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "50X LUCKY" Scratch Ticket Game No. 2481.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "50X LUCKY" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose forty-five (45) 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" Play Symbol, the player wins 5 TIMES the prize for that symbol. If the player reveals a "10X" Play Symbol, the player wins 10 TIMES the prize for that symbol. If the player reveals a "50X" Play Symbol, the player wins 50 TIMES the prize for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly forty-five (45) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Scratch Ticket shall be intact;

6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly forty-five (45) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the forty-five (45) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the forty-five (45) 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. Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

B. A Ticket can win as indicated by the prize structure.

C. A Ticket can win up to twenty (20) times.

D. On winning and Non-Winning Tickets, the top cash prizes of \$1,000 and \$100,000 will each appear at least once, except on Tickets winning twenty (20) times and with respect to other parameters, play action or prize structure.

E. No matching non-winning YOUR NUMBERS Play Symbols will appear on a Ticket.

F. Non-winning Prize Symbols will not match a winning Prize Symbol on a Ticket.

G. Tickets winning more than one (1) time will use as many WINNING NUMBERS Play Symbols as possible to create matches, unless restricted by other parameters, play action or prize structure.

H. No matching WINNING NUMBERS Play Symbols will appear on a Ticket.

I. All YOUR NUMBERS Play Symbols, excluding the "5X" (WINX5), "10X" (WINX10) and "50X" (WINX50) Play Symbols, will never equal the corresponding Prize Symbol (i.e., \$20 and 20 and \$25 and 25).

J. On all Tickets, a Prize Symbol will not appear more than five (5) times, except as required by the prize structure to create multiple wins.

K. On Non-Winning Tickets, a WINNING NUMBERS Play Symbol will never match a YOUR NUMBERS Play Symbol.

L. The "5X" (WINX5) Play Symbol will never appear more than once on a Ticket.

M. The "5X" (WINX5) Play Symbol will win 5 TIMES the prize for that Play Symbol and will win as per the prize structure.

N. The "5X" (WINX5) Play Symbol will never appear on a Non-Winning Ticket.

O. The "5X" (WINX5) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

P. The "10X" (WINX10) Play Symbol will never appear more than once on a Ticket.

Q. The "10X" (WINX10) Play Symbol will win 10 TIMES the prize for that Play Symbol and will win as per the prize structure.

R. The "10X" (WINX10) Play Symbol will never appear on a Non-Winning Ticket.

S. The "10X" (WINX10) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

T. The "50X" (WINX50) Play Symbol will never appear more than once on a Ticket.

U. The "50X" (WINX50) Play Symbol will win 50 TIMES the prize for that Play Symbol and will win as per the prize structure.

V. The "50X" (WINX50) Play Symbol will never appear on a Non-Winning Ticket.

W. The "50X" (WINX50) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

X. The "5X" (WINX5) Play Symbol will never appear on the same Ticket as the "50X" (WINX50) Play Symbol.

Y. The "10X" (WINX10) Play Symbol will never appear on the same Ticket as the "50X" (WINX50) Play Symbol.

Z. The "5X" (WINX5) and "10X" (WINX10) Play Symbols can only appear together on the same winning Ticket, as indicated by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "50X LUCKY" Scratch Ticket Game prize of \$5.00, \$10.00, \$20.00, \$25.00, \$50.00, \$100, \$200, \$250 or \$500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$25.00, \$50.00, \$100, \$200, \$250 or \$500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "50X LUCKY" Scratch Ticket Game prize of \$1,000 or \$100,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "50X LUCKY" 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 "50X LUCKY" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "50X LUCKY" 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 7,200,000 Scratch Tickets in Scratch Ticket Game No. 2481. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2481 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$5.00	896,000	8.04
\$10.00	528,000	13.64
\$20.00	112,000	64.29
\$25.00	96,000	75.00
\$50.00	79,000	91.14
\$100	19,000	378.95
\$200	4,020	1,791.04
\$250	4,600	1,565.22
\$500	3,000	2,400.00
\$1,000	77	93,506.49
\$100,000	7	1,028,571.43

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.13. 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. 2481 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. 2481, 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-202301016
 Bob Biard
 General Counsel
 Texas Lottery Commission
 Filed: March 7, 2023

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North Central Texas Council of Governments

Request for Proposals for Platform Available to Measure the Performance of the Traffic Signals in the Dallas-Fort Worth Region

The North Central Texas Council of Governments (NCTCOG), in coordination with transportation partner agencies through a Request for Proposal (RFP), is soliciting for a platform with data available to measure the performance of the traffic signals in the 10-county Dallas-Fort Worth Air Quality Nonattainment Area. The desired platform should be capable to track performance measures to monitor and track signal performance by user-defined days and hours. The performance measures will indicate signal and corridors as candidates for applying traffic signal improvements, such as retiming. The desired platform should be able to track performance measures such as signal delay; red/green arrival; travel times; turning movement counts; and pass through. The platform will require multiple individual user accounts from multiple municipalities and their consultants. The populated data and database generated throughout the duration of the contract is to be archived and made available by the vendor to NCTCOG at the completion of the con-

tract. The selected firm(s) will host and provide any necessary data, databases, software, and provide training for the full functional traffic signal performance measures platform as described in the Scope of Work. NCTCOG may consider a software as a service platform.

Proposals must be received no later than 5:00 p.m., Central Time, on **Friday, April 14, 2023**, to Natalie Bettger, 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, March 17, 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-202301019

R. Michael Eastland
Executive Director

North Central Texas Council of Governments
Filed: March 7, 2023



Request for Proposals for Unmanned Aircraft Systems Airspace Awareness Pilot Program

The North Central Texas Council of Governments (NCTCOG) is requesting written proposals from qualified firms(s) to provide a tool that will enable residents and businesses to fly safe and also inform the public of local drone operations by providing live data on areas of potential risk, advisories for local events or emergencies, and other flight planning features at no cost to NCTCOG. Enabling residents and businesses to fly safe, by providing live data on areas of potential risk, advisories for local events or emergencies, and other flight planning features.

Proposals must be received no later than 5:00 p.m., Central Time, on **Friday, April 14, 2023**, to Ernest Huffman, 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, March 17, 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-202301018

R. Michael Eastland
Executive Director

North Central Texas Council of Governments
Filed: March 7, 2023



Texas Department of Transportation

Public Hearing Notice - Statewide Transportation Improvement Program

The Texas Department of Transportation (department) will hold a public hearing on Thursday, April 6, 2023, at 10:00 a.m. Central Standard Time (CST) to receive public comments on the February 2023 Quarterly Revisions to the Statewide Transportation Improvement Program (STIP) for FY 2023-2026. The hearing will be conducted via electronic means. Instructions for accessing the hearing will be published on the department's website at: <https://www.txdot.gov/inside-txdot/get-involved/about/hearings-meetings.html>

The STIP reflects the federally funded transportation projects in the FY 2023-2026 Transportation Improvement Programs (TIPs) for each Metropolitan Planning Organization (MPO) in the state. The STIP includes both state and federally funded projects for the nonattainment areas of Dallas-Fort Worth, El Paso, Houston and San Antonio. The STIP also contains information on federally funded projects in rural areas that are not included in any MPO area, and other statewide programs as listed.

Title 23, United States Code, §134 and §135 require each designated MPO and the state, respectively, to develop a TIP and STIP as a condition to securing federal funds for transportation projects under Title 23 or the Federal Transit Act (49 USC §5301, et seq.). Section 134 requires an MPO to develop its TIP in cooperation with the state and affected public transit operators and to provide an opportunity for interested parties to participate in the development of the program. Section 135 requires the state to develop a STIP for all areas of the state in cooperation with the designated MPOs and, with respect to non-metropolitan areas, in consultation with affected local officials, and further requires an opportunity for participation by interested parties as well as approval by the Governor or the Governor's designee.

A copy of the proposed February 2023 Quarterly Revisions to the FY 2023-2026 STIP will be available for review, at the time the notice of hearing is published, on the department's website at: <https://www.txdot.gov/inside-txdot/division/transportation-planning/stips.html>.

Persons wishing to speak at the hearing may register in advance by notifying Lori Morel, Transportation Planning and Programming Division, at (512) 810-6663 no later than 12:00 p.m. CST on Wednesday, April 5, 2023. Speakers will be taken in the order registered and will be limited to three minutes. Speakers who do not register in advance will be taken at the end of the hearing. Any interested person may offer comments or testimony; however, questioning of witnesses will be reserved exclusively to the presiding authority as may be necessary to ensure a complete record. While any persons with pertinent comments or testimony will be granted an opportunity to present them during the course of the hearing, the presiding authority reserves the right to restrict testimony in terms of time or repetitive content. Groups, organizations, or associations should be represented by only one speaker. Speakers are requested to refrain from repeating previously presented testimony.

The public hearing will be conducted in English. Persons who have special communication or accommodation needs and who plan to participate in the hearing are encouraged to contact the Transportation Planning and Programming Division, at (512) 810-6663. Requests should be made at least three working days prior to the public hearing. Every reasonable effort will be made to accommodate the needs.

Interested parties who are unable to participate in the hearing may submit comments regarding the proposed February 2023 Quarterly Revisions to the FY 2023-2026 STIP to Humberto Gonzalez, P.E., Director of the Transportation Planning and Programming Division, P.O. Box 149217, Austin, Texas 78714-9217. In order to be considered, all written comments must be received at the Transportation Planning and Programming office by 4:00 p.m. CST on Monday, April 17, 2023.

TRD-202301011

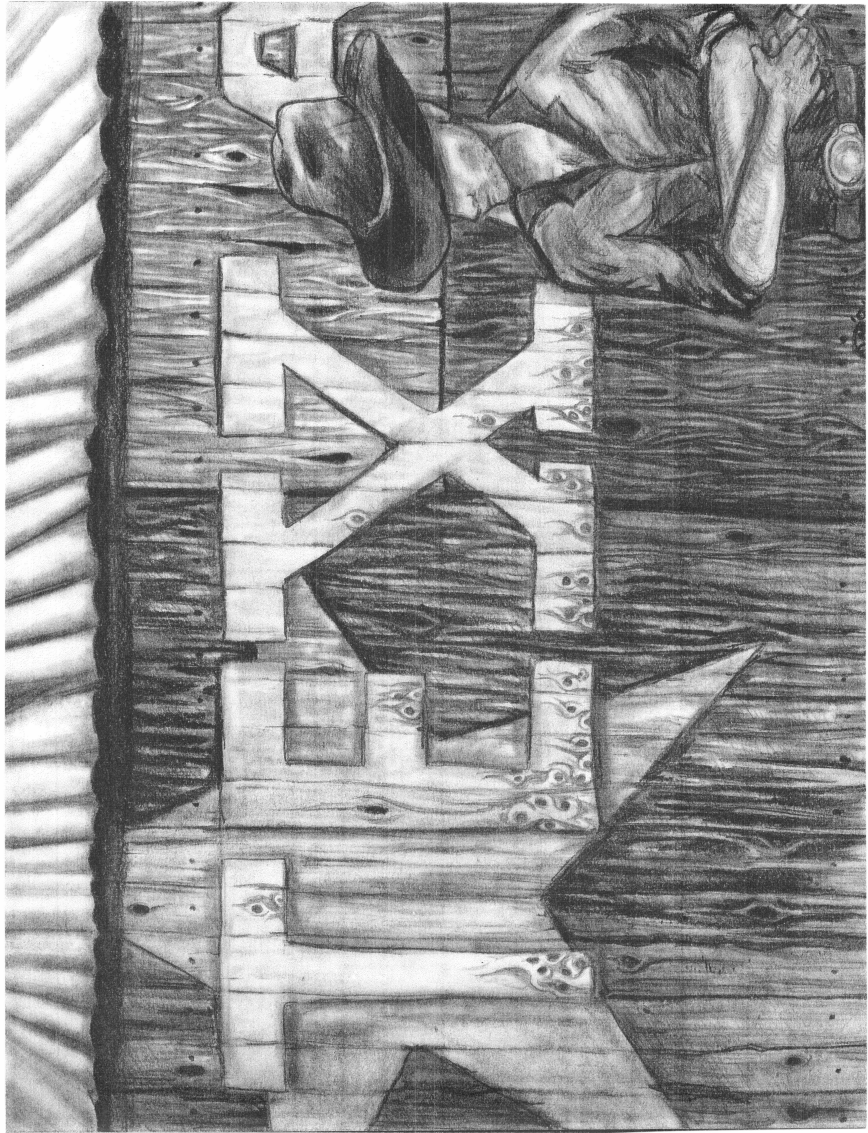
Becky Blewett

Deputy General Counsel

Texas Department of Transportation

Filed: March 6, 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 48 (2023) is cited as follows: 48 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written “48 TexReg 2 issue date,” while on the opposite page, page 3, in the lower right-hand corner, would be written “issue date 48 TexReg 3.”

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: <http://www.sos.state.tx.us>. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State’s website at <http://www.sos.state.tx.us/tac>.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
26. Health and Human Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to Update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule’s *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION Part 4. Office of the Secretary of State Chapter 91. Texas Register

1 TAC §91.1.....950 (P)

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