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

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

Opinions

Opinion No. KP-0444

The Honorable Paul Bettencourt

Chair, Senate Committee on Local Government

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

Re: Whether a tax rate increase election under Tax Code section 26.07 authorizes a municipality to "earmark" use of a voter-approved increase in its Maintenance and Operation property tax revenue for purposes other than maintenance or operations; and if not, may an increase in a municipality's Maintenance and Operation property tax be transferred to a local government corporation (created pursuant to Transportation Code chapter 431, subchapter D) to be used for debt service on debt issued by the local government corporation (RQ-0508-KP)

SUMMARY

A truth-in-taxation provision, Texas Tax Code section 26.07 requires a municipality to hold an automatic election if it seeks to increase its tax

rates above a specified amount. It does not authorize a municipality to "earmark" use of a voter-approved increase in its maintenance and operation property tax revenue for debt service.

A court would likely conclude that an agreement wherein a municipality binds itself to transfer in perpetuity an increase in its maintenance and operations property tax and is not subject to an annual appropriation and is prohibited by article XI, section 5 as a pecuniary obligation imposed by contract with no right to terminate at the end of each budget period.

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

TRD-202301897

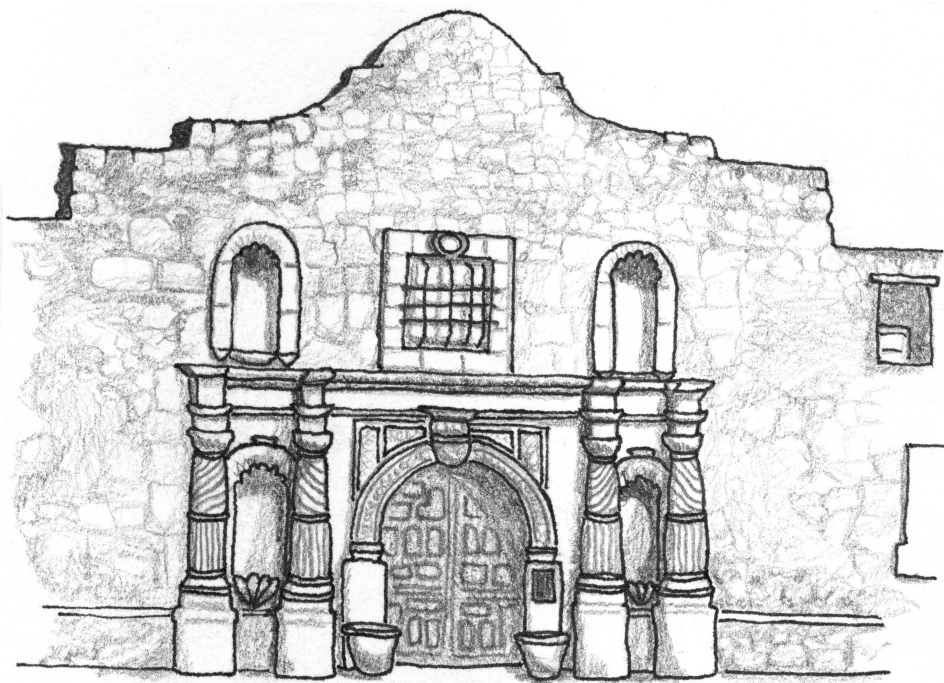
Austin Kinghorn

General Counsel

Office of the Attorney General

Filed: May 23, 2023





PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to

submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

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

TITLE 4. AGRICULTURE

PART 2. TEXAS ANIMAL HEALTH COMMISSION

CHAPTER 40. CHRONIC WASTING DISEASE

4 TAC §40.6

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figures in 4 TAC §40.6 are not included in the print version of the Texas Register. The figures are available in the on-line version of the June 2, 2023, issue of the Texas Register.)

The Texas Animal Health Commission (Commission) proposes amendments to Title 4, Texas Administrative Code, Chapter 40 titled "Chronic Wasting Disease." Specifically, amendments are proposed to §40.6 CWD Movement Restriction Zones.

BACKGROUND AND SUMMARY OF PROPOSED AMENDMENTS

The purpose of this chapter is to prevent and control the incidence of chronic wasting disease (CWD) in Texas by seeking to reduce the risk of interstate and intrastate transmission of CWD in susceptible cervid species. The Commission proposes amendments to §40.6 to clarify, correct, and update information regarding CWD management.

CWD is a degenerative and fatal neurological communicable disease recognized by the veterinary profession that affects susceptible cervid species. CWD can spread through natural movements of infected animals and transportation of live infected animals or carcass parts. Specifically, prions are shed from infected animals in saliva, urine, blood, soft-antler material, feces, or from animal decomposition, which ultimately contaminates the environment in which CWD susceptible species live. CWD has a long incubation period, so animals infected with CWD may not exhibit clinical signs of the disease for months or years after infection. The disease can be passed through contaminated environmental conditions, and may persist for a long period of time. Currently, no vaccine or treatment for CWD exists.

The purpose of the changes to §40.6 is to change the testing requirements for exotic CWD susceptible species to align with federal standards and match state standards for testing native CWD susceptible species in order to increase surveillance of CWD in the state. Additionally, grammatical and editorial changes are proposed for each section for consistency and improved readability.

SECTION-BY-SECTION DISCUSSION

Section 40.6 CWD Movement Restriction Zones

The proposed amendments to §40.6(a) clarify the definition of Exotic CWD Susceptible Species, specifically adding muntjac (*Muntiacus*) and specifying that mule deer, white-tailed deer, and other native species under the jurisdiction of the Texas Parks and Wildlife Department are excluded from that definition and application of §40.6. Amendments to §40.6(c) and (d) change the mortality testing age from 16 months to 12 months and clarify that testing must occur within seven days. The amendments to these subsections also provide information on where test results and lab reports may be submitted. These amendments are intended to increase surveillance in designated containment and surveillance zones and align the requirements with federal standards for CWD testing.

This amendment also updates the geographic depiction in the attached graphic included in §40.6(b)(1)(C) to align with amendments to the rule which went into effect May 17, 2023. Additionally, geographic depictions have been added as attached graphics for each of each movement restriction zones. The attached graphics are designed to assist the readability of these rules and to aid the public in understanding the individual zones.

FISCAL NOTE

Ms. Myra Sines, Chief of Staff for the Texas Animal Health Commission, determined for each year of the first five years the rules are in effect, there are no estimated additional costs or reductions in costs to state or local governments as a result of enforcing or administering the proposed rules. Commission employees will administer and enforce these rules as part of their regular job duties and resources. Ms. Sines also determined for the same period that there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed rules, and the proposed rules do not have foreseeable implications relating to costs or revenues of state governments.

PUBLIC BENEFIT

Ms. Sines determined that for each year of the first five years the proposed rules are in effect, the anticipated public benefits will be the protection of CWD susceptible species by increasing the surveillance of CWD susceptible species which will reduce the inadvertent spread of the disease from CWD susceptible species.

LOCAL EMPLOYMENT IMPACT STATEMENT

The Commission determined that the proposed rules will not impact local economies and, therefore, did not file a request for a local employment impact statement with the Texas Workforce Commission.

MAJOR ENVIRONMENTAL RULE

The Commission determined that Texas Government Code §2001.0225 does not apply to the proposed rules because the specific intent of these rules is not primarily to protect the environment or reduce risks to human health from environmental exposure, and therefore, is not a major environmental rule.

TAKINGS ASSESSMENT

The Commission determined that the proposal does not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. Therefore, the proposed rules are compliant with the Private Real Property Preservation Act in Texas Government Code §2007.043 and do not constitute a taking.

ECONOMIC IMPACT STATEMENT

The Commission determined that the proposed amendments to §40.6 may impact animal agricultural industries, which may meet the definition of a small business or microbusiness pursuant to Texas Government Code, Chapter 2006. Specifically, the Commission determined that the proposed rules may affect herd owners of CWD susceptible species or exotic CWD susceptible species.

The Commission determined that the proposed amendments would not adversely affect herd owners of CWD susceptible species because the amendments do not substantially change the movement, testing, and reporting requirements. The removal of the limit to test only three animal mortalities a year and the lowering of mortality test age for CWD may increase the cost to some herd owners, but the tradeoff in disease surveillance outweighs the potential cost to the herd owner. As such, these amendments to the movement, testing, and reporting requirements will allow the Commission to better monitor CWD in Texas. As a result, the application of the rule will help prevent adverse economic impacts associated with CWD.

Although the Commission does not predict adverse economic impacts to those directly regulated by the Commission, the Commission considered the businesses that may be impacted and regulatory alternatives as part of its rule proposal process. Texas has an unknown number of exotic cervid species that are free-ranging and also maintained on high-fenced premises. Many of those premises are hunting ranches, which are not subject to the seasonal and regulatory hunting restrictions of TPWD. The clarity provided by these amendments should reduce or eliminate any confusion those directly regulated by the Commission may have in reading and interpreting the rules.

REGULATORY FLEXIBILITY ANALYSIS

The Commission considered several alternative methods for achieving the proposed rules' purpose while minimizing adverse economic impacts on small businesses, microbusinesses, and rural communities, as applicable, pursuant to Texas Government Code, Chapter 2006. The following sections analyze the substantive proposed changes that may have direct, adverse economic impacts on regulated parties in the order they are presented in Chapter 40.

The Commission considered an alternative method for achieving the proposed rules' purpose - by not changing the mortality testing requirements - but rejected the alternative because it would frustrate the Commission's ability to carry out Texas Agriculture Code §161.041 and eradicate or control any disease or agent of transmission, even if the agent of transmission is an animal species that is not subject to the jurisdiction of the Commission. This change also aligns the Commission's regulations

with other federal and state regulations over CWD susceptible species. The Commission determined these proposals are necessary to follow the legislative requirement that the Commission protect exotic livestock from certain diseases, specifically CWD.

GOVERNMENT GROWTH IMPACT STATEMENT

In compliance with the requirements of Texas Government Code §2001.0221, for each year of the first five years the proposed rules would be in effect, the Commission determined the following:

The proposed rules will not create or eliminate a government program;

Implementation of the proposed rules will not require the creation of new employee positions or the elimination of existing employee positions;

Implementation of the proposed rules will not require an increase or decrease in future legislative appropriations to the Commission;

The proposed rules will not require an increase or decrease in fees paid to the Commission;

The proposed rules will not create a new regulation;

The proposed rules will expand existing rules, but will not otherwise limit or repeal an existing regulation;

The proposed rules may increase the number of individuals subject to the regulation; and

The proposed rules will not adversely affect this state's economy.

COST TO REGULATED PERSONS

The proposed amendments to §40.6 may impose a cost on a regulated person by increasing the number of animals that may be required to be tested. The Commission determined these proposals are necessary to follow the legislative requirement that the Commission protect exotic livestock from certain diseases, specifically chronic wasting disease. The proposed rules do not otherwise impose a direct cost on a regulated person, state agency, a special district, or a local government within the state. Pursuant to Section 161.041 of the Texas Agriculture Code, Section 2001.0045 of the Texas Government Code does not apply to rules adopted under Section 161.041; therefore, it is unnecessary to amend or repeal any other existing rule.

REQUEST FOR COMMENT

Written comments regarding the proposed amendments may be submitted to Amanda Bernhard, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0719 or by e-mail to comments@tahc.texas.gov. To be considered, comments must be received no later than thirty (30) days from the date of publication of this proposal in the *Texas Register*. When faxing or emailing comments, please indicate "Comments on Chapter 40.6-CWD Rules" in the subject line.

STATUTORY AUTHORITY

The amendments to §40.6 within Chapter 40 of the Texas Administrative Code are proposed under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code.

The Commission is vested by statute, §161.041(a), titled "Disease Control," to protect all livestock, exotic livestock, domestic fowl, and exotic fowl from disease. The Commission is authorized, through §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects live-

stock, exotic livestock, domestic fowl, or exotic fowl, even if the agent of transmission is an animal species that is not subject to the jurisdiction of the Commission.

Pursuant to §161.0415, titled "Disposal of Diseased or Exposed Livestock or Fowl," the Commission may require by order the slaughter of livestock, domestic fowl, or exotic fowl exposed to or infected with certain diseases.

Pursuant to §161.0417, titled "Authorized Personnel for Disease Control," the Commission must authorize a person, including a veterinarian, to engage in an activity that is part of a state or federal disease control or eradication program for animals.

Pursuant to §161.046, titled "Rules," the Commission may adopt rules as necessary for the administration and enforcement of this chapter.

Pursuant to §161.047, titled "Entry Power," Commission personnel are permitted to enter public or private property for the performance of an authorized duty.

Pursuant to §161.048, titled "Inspection of Shipment of Animals or Animal Products," the Commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. An agent of the Commission is entitled to stop and inspect a shipment of animals or animal products being transported in this state to determine if the shipment originated from a quarantined area or herd; or determine if the shipment presents a danger to the public health or livestock industry through insect infestation or through a communicable or non-communicable disease.

Pursuant to §161.049, titled "Dealer Records," the Commission may require a livestock, exotic livestock, domestic fowl, or exotic fowl dealer to maintain records of all livestock, exotic livestock, domestic fowl, or exotic fowl bought and sold by the dealer. The Commission may also inspect and copy the records of a livestock, exotic livestock, domestic fowl, or exotic fowl dealer that relate to the buying and selling of those animals. The Commission, by rule, shall adopt the form and content of the records maintained by a dealer.

Pursuant to §161.054, titled "Regulation of Movement of Animals; Exception," the Commission, by rule, may regulate the movement of animals. The Commission may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce. The Commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. The Commission is authorized, through §161.054(b), to prohibit or regulate the movement of animals into a quarantined herd, premises, or area. The Executive Director of the Commission is authorized, through §161.054(d), to modify a restriction on animal movement, and may consider economic hardship.

Pursuant to §161.0541, titled "Elk Disease Surveillance Program," the Commission, by rule, may establish a disease surveillance program for elk. Such rules include the requirement for persons moving elk in interstate commerce to test the elk for chronic wasting disease. Additionally, provisions must include testing, identification, transportation, and inspection under the disease surveillance program.

Pursuant to §161.0545, titled "Movement of Animal Products," the Commission may adopt rules that require the certification of persons who transport or dispose of inedible animal products, including carcasses, body parts, and waste material. The Commission, by rule, may provide terms and conditions for the is-

suance, renewal, and revocation of a certification under this section.

Pursuant to §161.056(a), titled "Animal Identification Program," the Commission may develop and implement an animal identification program that is no more stringent than a federal animal disease traceability or other federal animal identification program to provide for disease control and enhance the ability to trace disease-infected animals or animals that have been exposed to disease. Section 161.056(d) authorizes the Commission to adopt rules to provide for an animal identification program more stringent than a federal program only for control of a specific animal disease or for animal emergency management.

Pursuant to §161.057, titled "Classification of Areas," the Commission may prescribe criteria for classifying areas in the state for disease control based on sound epidemiological principals and may prescribe control measures for classification areas.

Pursuant to §161.058, titled "Compensation of Livestock or Fowl Owner," the Commission may pay indemnity to the owner of livestock or fowl, if necessary, to eradicate the disease.

Pursuant to §161.060, titled "Authority to Set and Collect Fees," the Commission may charge a fee for an inspection made by the Commission as provided by Commission rule.

Pursuant to §161.061, titled "Establishment," if the Commission determines that a disease listed in §161.041 of this code or an agent of transmission of one of those diseases exists in a place in this state or among livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl, or a place in this state or livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl are exposed to one of those diseases or any agent of transmission of one of those diseases, the Commission shall establish a quarantine on the affected animals or on the affected place. The quarantine of an affected place may extend to any affected area, including a county, district, pasture, lot, ranch, farm, field, range, thoroughfare, building, stable, or stockyard pen. The Commission may, through §161.061(c), establish a quarantine to prohibit or regulate the movement of any article or animal the Commission designates to be a carrier of a disease listed in Section 161.041 or a potential carrier of one of those diseases, if movement is not otherwise regulated or prohibited for an animal into an affected area, including a county district, pasture, lot, ranch, field, range, thoroughfare, building, stable, or stockyard pen.

Pursuant to §161.0615, titled "Statewide or Widespread Quarantine," the Commission may quarantine livestock, exotic livestock, domestic fowl, or exotic fowl in all or any part of this state as a means of immediately restricting the movement of animals potentially infected with disease and shall clearly describe the territory included in a quarantine area.

Pursuant to §161.065, titled "Movement from Quarantined Area; Movement of Quarantined Animals," the Commission may provide a written certificate or written permit authorizing the movement of animals from quarantined places. If the Commission finds animals have been moved in violation of an established quarantine or in violation of any other livestock sanitary law, the Commission shall quarantine the animals until they have been properly treated, vaccinated, tested, dipped, or disposed of in accordance with the rules of the Commission.

Pursuant to §161.081, titled "Importation of Animals," the Commission may regulate the movement of livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl into this state from another state, territory, or country. The Commission,

by rule, may provide the method for inspecting and testing animals before and after entry into this state, and for the issuance and form of health certificates and entry permits.

Pursuant to §161.101, titled "Duty to Report," a veterinarian, a veterinary diagnostic laboratory, or a person having care, custody, or control of an animal shall report the existence of the disease, if required by the Commission, among livestock, exotic livestock, bison, domestic fowl, or exotic fowl to the Commission within 24 hours after diagnosis of the disease.

Pursuant to §161.148, titled "Administrative Penalty," the Commission may impose an administrative penalty on a person who violates Chapter 161 or a rule or order adopted under Chapter 161. The penalty for a violation may be in an amount not to exceed \$5,000.

The proposed rules in this chapter for adoption do not affect other statutes, sections, or codes.

§40.6. CWD Movement Restriction Zones.

(a) Definitions. In addition to the definitions in Section 40.1, the following words and terms, when used in this section, shall have the following meanings:

(1) - (3) (No change.)

(4) Exotic CWD Susceptible Species--A non-native cervid species determined to be susceptible to CWD, which means a species that has had a diagnosis of CWD confirmed by an official test conducted by an approved laboratory. This includes but is not limited to[~~which includes~~] North American elk or wapiti (*Cervus canadensis*), red deer (*Cervus elaphus*), sika [~~Sika~~] deer (*Cervus nippon*), moose (*Alces alces*) reindeer and caribou (*Rangifer tarandus*), muntjac (*Muntiacus*), and any associated subspecies and hybrids. All mule deer, white-tailed deer, and other native species under the jurisdiction of the Texas Parks and Wildlife Department are excluded from this definition and application of this section.

(5) - (6) (No change.)

~~[(7) Native CWD Susceptible Species--All mule deer, white-tailed deer, and other native species under the jurisdiction of the TPWD are excluded from this definition and application of this section.]~~

~~[(8) Processing facility--A stationary facility designed and constructed to store or process CWD susceptible species.]~~

~~[(9) TPWD--The Texas Parks and Wildlife Department.]~~

~~[(10) Unnatural Movement--Any artificially induced movement of a live CWD susceptible species or the carcass of a CWD susceptible species.]~~

(b) Declaration of area restricted for CWD. CWD has been detected in susceptible species in different locations in Texas. This creates a high risk for CWD exposure or infection in CWD susceptible species in those geographic areas. In order to protect other areas of the state from the risk of exposure and spread of CWD, restricted areas, such as containment zones and surveillance zones, are created to protect against the spread of and exposure to CWD and have necessary surveillance to epidemiologically assess the risk. The high-risk areas are delineated as follows:

(1) Containment Zone Boundaries:

(A) Containment Zone 1. That portion of the state within the boundaries of a line beginning in Culberson County where U.S. Highway (U.S.) 62-180 enters from the State of New Mexico;

thence southwest along U.S. 62-180 to Farm-to-Market Road (F.M.) 1111 in Hudspeth County; thence south on F.M. 1111 to I.H. 10 thence west along I.H. 10 to S.H. 20; thence northwest along S.H. 20 to F.M. 1088; thence south along F.M. 1088 to the Rio Grande River; thence northwest along the Rio Grande River to the Texas-New Mexico border.

Figure: 4 TAC §40.6(b)(1)(A)

(B) Containment Zone 2. That portion of the state within the boundaries of a line beginning where I.H. 40 enters from the State of New Mexico in Deaf Smith County; thence east along I.H. 40 to U.S. 385 in Oldham County; thence north along U.S. 385 to the Oklahoma state line.

Figure: 4 TAC §40.6(b)(1)(B)

(C) Containment Zone 3. That portion of the state lying within Bandera, Medina and Uvalde counties and depicted in the following figure and more specifically described by the following latitude-longitude coordinate pairs:

-99.37149088670,	29.63846662930;	-99.37140891920,
29.63848553940,	-99.37060541260,	29.63866345050;
-99.36979991580,	29.63883435770;	-99.36899250760,
29.63899824440;	-99.36818326920,	29.63915509460;
-99.36737228030,	29.63930489330;	-99.36655962200,
29.63944762460;	-99.36574537420,	29.63958327440;
-99.36492961890,	29.63971182950;	-99.36411243690,
29.63983327680;	-99.36329390830,	29.63994760490;
-99.36247411610,	29.64005480240;	-99.36165314010,
29.64015485800;	-99.36083106340,	29.64024776200;
-99.36000796690,	29.64033350600;	-99.35918393260,
29.64041208020;	-99.35835904140,	29.64048347690;
-99.35753337730,	29.64054768950;	-99.35670702030,
29.64060471180;	-99.35588005420,	29.64065453800;
-99.35505256020,	29.64069716300;	-99.35422462000,
29.64073258190;	-99.35339631770,	29.64076079330;
-99.35256773320,	29.64078179120;	-99.35173895150,
29.64079557700;	-99.35091005250,	29.64080214650;
-99.35008112110,	29.64080150020;	-99.34925223720,
29.64079363850;	-99.34842348390,	29.64077856180;
-99.34759494500,	29.64075627050;	-99.34676670140,
29.64072676970;	-99.34593883500,	29.64069005880;
-99.34511142980,	29.64064614450;	-99.34428456550,
29.64059502920;	-99.34345832730,	29.64053671860;
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29.63844877380;	-99.45346228500,	29.63875601010;	29.64085645570;	-99.37678455060,	29.64058182410;
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29.64097571700;	-99.44655976880,	29.64122299300;	<u>Figure: 4 TAC §40.6(b)(1)(C)</u>		
-99.44577787910,	29.64146347570;	-99.44499328210,	<u>[Figure: 4 TAC §40.6(b)(1)(C)]</u>		
29.64169714000;	-99.44420605650,	29.64192396280;	(D) Containment Zone 4. That portion of the state lying within the boundaries of a line beginning in Val Verde County at the International Bridge and proceeding northeast along Spur 239 to U.S. 90; thence north along U.S. 90 to the intersection of U.S. 277/377, thence north along U.S. 277/377 to the U.S. 277/377 bridge at Lake Amistad (29.496183°, -100.913355°), thence west along the southern shoreline of Lake Amistad to International Boundary at Lake Amistad dam, thence south along the Rio Grande River to the International Bridge on Spur 239.		
-99.44341628140,	29.64214392260;	-99.44262403450,	<u>Figure: 4 TAC §40.6(b)(1)(D)</u>		
29.64235699620;	-99.44182939580,	29.64256316420;	(E) Containment Zone 5.		
-99.44103244220,	29.64276240410;	-99.44023325350,	30.33874131980;	-99.64368509530,	-99.64149620530,
29.64295469730;	-99.43943190980,	29.64314002420;	-99.64586372900,	30.33901321630;	30.33881527790;
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29.64436979610;	-99.43213602600,	29.64449168250;	-99.66351745180,	30.34606390020;	30.34484968550;
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Figure: 4 TAC §40.6(b)(1)(E)

(F) Containment Zone 6. That portion of the state within the boundaries of a line beginning in Lubbock County where County Road (C.R.) 3600 intersects with E. Division Street in Slaton; thence west along E. Division Street to S. New Mexico Street; thence northwest along S. New Mexico Street to Railroad Avenue; thence northwest along Railroad Avenue to Industrial Drive; thence northwest along Industrial Drive to U.S. Highway (U.S.) 84; thence northwest along U.S. 84 to State Highway (S.H.) Spur 331; thence northwest along S.H. 331 to S.H. Loop 289; thence north along S.H. Loop 289 to Farm to Market (F.M.) 40; thence east along F.M. 40 to C.R. 3650; thence south along C.R. 3650 to C.R. 6840; thence east along C.R. 6840 to C.R. 3700; thence south along C.R. 3700 to C.R. 3600; thence south along C.R. 3600 to E. Division Street.

Figure: 4 TAC §40.6(b)(1)(F)

(2) Surveillance Zone Boundaries:

(A) Surveillance Zone 1. That portion of the state within the boundaries of a line beginning where U.S. 285 enters from the State of New Mexico in Reeves County; thence southeast along U.S. 285 to R.M. 652; thence west along R.M. 652 to Rustler Springs Rd./FM 3541 in Culberson County; thence south along Rustler Springs Rd./F.M. 3541 to F.M. 2185; thence south along F.M. 2185 to Nevel Road; thence west along Nevel Road to County Road 501; thence south along County Road 501 to Weatherby Road; thence south along Weatherby Road to F.M. 2185; thence southwest along F.M. 2185 to S.H. 54; thence south on S.H. 54 to U.S. 90; thence south along U.S. 90 to the Culberson County line; thence southwest along the Culberson

County line to the Rio Grande River in Hudspeth County; thence north along the Rio Grande River to F.M. 1088; thence northeast along F.M. 1088 to S.H. 20; thence southeast along S.H. 20 to I.H. 10; thence southeast along I.H. 10 to F.M. 1111; thence north on F.M. 1111 to U.S. 62/180; thence east and north along U.S. 62/180 to the New Mexico state line in Culberson County.

Figure: 4 TAC §40.6(b)(2)(A)

(B) Surveillance Zone 2. That portion of the state within the boundaries of a line beginning at the New Mexico state line where U.S. 60 enters Texas; thence northeast along U.S. 60 to U.S. 87 in Randall County; thence south along U.S. 87 to S.H. 217 in Canyon; thence east along S.H. 217 to F.M. 1541; thence north along F.M. 1541 to Loop 335; thence east and north along Loop 335 to S.H. 136; thence northwest along S.H. 136 to N. Lakeside Dr.; thence north along N. Lakeside Dr. to E. Willow Creek Dr.; thence west along E. Willow Creek Dr. to Denton St.; thence north along Denton St. to E. Cherry; thence west along E. Cherry to N. Eastern St.; thence south along N. Eastern St. to E. Willow Creek Dr.; thence west along E. Willow Creek Dr. to U.S. 87; thence north along U.S. 87 to the City of Dumas; thence along the city limits of Dumas to U.S. 287 in Moore County; thence north along U.S. 287 to the Oklahoma state line.

Figure: 4 TAC §40.6(b)(2)(B)

(C) Surveillance Zone 3. That portion of the state not within the CZ described in paragraph (b)(1)(C) of this subsection lying within a line beginning the intersection of F.M. 1250 and U.S. Highway 90 in Hondo in Medina County; thence west along U.S. Highway 90 to F.M. 1574 in Uvalde County; thence south along F.M. 1574 to F.M. 1023 (Garner Field Road); thence west along F.M. 1023 to County Road 373; thence south along County Road 373 to County Road 374; thence west along County Road 374 to F.M. 140; thence northwest along F.M. 140 to F.M. 117; thence north along F.M. 117 to U.S. Highway 83; thence southwest along U.S. Highway 83 to F.M. 1435; thence north along F.M. 1435 to U.S. Highway 90; thence west along U.S. Highway 90 to F.M. 2369; thence northwest along F.M. 2369 to F.M. 1403; thence north along F.M. 1403 to State Highway 55; thence northwest along S.H. 55 to Indian Creek Road; thence northeast along Indian Creek Road to Lower Frio Ranch Road; thence southeast along Lower Frio Ranch Road to Deep Creek; thence southeast along Deep Creek to the U.S. Highway 83; thence north along U.S. Highway 83 to State Highway 127 in Concan; thence southeast along State Highway 127 to the Sabinal River in Uvalde County; thence north along the Sabinal River to F.M. 187; thence north along F.M. 187 to F.M. 470 in Bandera County; thence east along F.M. 470 to Tarpley in Bandera County; thence south along F.M. 462 to 18th Street in Hondo; thence east along 18th Street to State Highway 173; Thence south along State Highway 173 to U.S. Highway 90; thence west along U.S. Highway 90 to Avenue E (F.M. 462); thence south along Avenue E (F.M. 462) to F.M. 1250; thence west along F.M. 1250 to U.S. Highway 90.

Figure: 4 TAC §40.6(b)(2)(C)

(D) Surveillance Zone 4. That portion of the state lying within a line beginning in Val Verde County at the confluence of Sycamore Creek and the Rio Grande River (29.242341°, -100.793906°); thence northeast along Sycamore Creek to U.S. 277; thence northwest on U.S. 277 to Loop 79; thence north along Loop 79 to the Union Pacific Railroad; thence east along the Union Pacific Railroad to Liberty Drive (north entrance to Laughlin Air Force Base); thence north along Liberty Drive to U.S. 90; thence west along U.S. 90 to Loop 79; thence north along Loop 79 to the American Electric Power (AEP) Ft. Lancaster-to-Hamilton Road 138kV transmission line (29.415542°, -100.847993°); thence north along the AEP Ft. Lancaster-to-Hamilton Road 138kV transmission line to a point where the AEP Ft. Lancaster-to-Hamilton Road 138kV transmission line turns

northwest (29.528552°, -100.871618°); thence northwest along the AEP Ft. Lancaster-to-Hamilton Road 138kV transmission line to the AEP Ft. Lancaster-to-Hamilton Road maintenance road (29.569259°, -100.984758°); thence along the AEP Ft. Lancaster-to-Hamilton Road maintenance road to Spur 406; thence northwest along Spur 406 to U.S. 90; thence south along U.S. 90 to Box Canyon Drive; thence west along Box Canyon Drive to Bluebonnet Drive; thence southwest along Bluebonnet Drive to Lake Drive; thence south along Lake Drive to Lake Amistad (29.513298°, -101.172454°), thence southeast along the International Boundary to the International Boundary at the Lake Amistad dam; thence southeast along the Rio Grande River to the confluence of Sycamore Creek (29.242341°, -100.793906°).

Figure: 4 TAC §40.6(b)(2)(D)

(E) Surveillance Zone 5. That portion of the state lying within the boundaries of a line beginning on U.S. 83 at the Kerr/Kimble County line; thence north along U.S. 83 to I.H. 10; thence northwest along on I.H. 10 to South State Loop 481; thence west along South State Loop 481 to the city limit of Junction in Kimble County; thence following the Junction city limit so as to circumscribe the city of Junction before intersecting with F.M. 2169; thence east along F.M. 2169 to County Road (C.R.) 410; thence east along C.R. 410 to C.R. 412; thence south along C.R. 412 to C.R. 470; thence east along C.R. 470 to C.R. 420; thence south along C.R. 420 to F.M. 479; thence east along F.M. 479 to C.R. 443; thence south along C.R. 443 to U.S. 290; thence west along U.S. 290 to I.H. 10; thence southeast along I.H. 10 to the Kerr/Kimble County line; thence west along the Kerr/Kimble County line to U.S. 83.

Figure: 4 TAC §40.6(b)(2)(E)

(F) Surveillance Zone 6. That portion of the state within the boundaries of a line beginning at the intersection of State Highway (S.H.) 207 and Farm to Market (F.M.) 211 in Garza County; thence west along F.M. 211 to U.S. Highway (U.S.) 87 in Lynn County; thence north along U.S. 87 to F.M. 41 in Lubbock County; thence west along FM 41 to F.M. 179; thence north along F.M. 179 to F.M. 2641; thence east along F.M. 2641 to U.S. 62/82; thence east along U.S. 62/82 to S.H. 207 in Crosby County; thence south along S.H. 207 to F.M. 211 in Garza County.

Figure: 4 TAC §40.6(b)(2)(F)

(G) Surveillance Zone 7. That portion of the state lying within the boundaries of a line beginning at S.H. 205; thence southeast along S.H. 205 to U.S. 80; thence east along U.S. 80 to North 4th Street in Wills Point; thence north along North 4th Street to F.M. 751, then north along F.M. 751 to Lake Tawakoni; thence west and north along the Lake Tawakoni shoreline to the confluence of Caddo Creek; thence northwest along Caddo Creek to West Caddo Creek; thence northwest along West Caddo Creek to I.H. 30; thence southwest along I.H. 30 to F.M. 548 to S.H. 205.

Figure: 4 TAC §40.6(b)(2)(G)

(H) Surveillance Zone 8.

Figure: 4 TAC §40.6(b)(2)(H)

(i) That portion of the state within the boundaries of a line beginning at the intersection of Farm to Market (F.M.) Road 624 and U.S. Highway (U.S.) 59 in Live Oak County; thence southwest along U.S. 59 to the intersection of County Road (C.R.) 101 in Duval County; thence southeast along C.R. 101 to North Julian Street in San Diego; thence south along Julian Street to State Highway (S.H.) 44; thence east on S.H. 44 to C.R. 145 in Jim Wells County; thence north along C.R. 145 to C.R. 172; thence east on C.R. 172 to C.R. 170; thence south on C.R. 170 to C.R. 120; thence east on C.R. 120; to U.S. 281; thence north on U.S. 281 to F.M. 624; thence west along F.M. 624 to U.S. 59.

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

(I) the area within the city limits of Freer;

(II) the area within the city limits of Alice;

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

(-a-) U.S. 59 between the city of Freer and the intersection with C.R. 101;

(-b-) U.S. 44 between the city of Freer and the city of Alice; and

(-c-) U.S. 281 between the city of Alice and the intersection with F.M. 624.

(c) Containment Zone (CZ) Requirements:

(1) Movement. No exotic CWD susceptible species may be transported outside the CZ unless from a certified herd [a herd with a Certified Status] as established through §40.3 [§40.3(e)(6)] (relating to CWD Herd Certification Program [for Cervidae]) of this chapter.

(2) (No change.)

(3) Testing. All exotic CWD susceptible species, 12 [16] months of age or older, that are hunter harvested shall be tested for CWD within seven days using an official CWD test. Unless the whole head is submitted for testing, postmortem tissue samples must be collected and prepared by a state or federal animal health official, an accredited veterinarian, or a certified CWD postmortem sample collector. No part of a carcass of an exotic [a] CWD susceptible species, either killed or found dead may be removed from the CZ unless postmortem tissue samples have been [a testable CWD sample from the carcass is] collected and tested using an official CWD test and it is transported in accordance with subsection (e) of this section. The results and laboratory report shall be provided to the commission [or the TPWD] within 14 [30] days of receiving the test results by mail to Texas Animal Health Commission, CWD Susceptible Species Reporting, P.O. Box 12966, Austin, Texas 78711-2966; by fax to (512) 719-0729; or by email to CWD_reports@tahc.texas.gov.

(4) - (7) (No change.)

(d) Surveillance Zone (SZ) Requirements:

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

(3) Testing. All exotic CWD susceptible species, 12 [16] months of age or older, that are hunter harvested shall be tested for CWD within seven days using an official CWD test. Unless the whole head is submitted for testing, postmortem tissue samples must be collected and prepared by a state or federal animal health official, an accredited veterinarian, or a certified CWD postmortem sample collector. No part of a carcass of an exotic [a] CWD susceptible species, either killed or found dead may be removed from the SZ unless postmortem tissue samples have been [a testable CWD sample from the carcass is] collected and tested using an official CWD test and it is transported in accordance with subsection (e) of this section. The results and laboratory report shall be provided to the commission [or the TPWD] within 14 [30] days of receiving the test results by mail to Texas Animal Health Commission, CWD Susceptible Species Reporting, P.O. Box 12966, Austin, Texas 78711-2966; by fax to (512) 719-0729; or by email to CWD_reports@tahc.texas.gov.

(4) - (7) (No change.)

(e) (No change.)

(f) The executive director [Executive Director] may authorize movement. If movement is necessary or desirable to promote the ob-

jectives of this chapter or to minimize the economic impact of the restricted CWD susceptible species without endangering those objectives or the health and safety of other CWD susceptible species within the state, the executive director [Executive Director] may authorize movement in a manner that creates minimal risk to the other CWD susceptible species in the state.

(g) (No change.)

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

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Jeanine Coggeshall

General Counsel

Texas Animal Health Commission

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For further information, please call: (512) 719-0718



TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 1. ADMINISTRATION

SUBCHAPTER A. GENERAL POLICIES AND PROCEDURES

10 TAC §1.10

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC §1.10, Public Comment Procedures. The purpose of the repeal is to eliminate an outdated rule while proposing a new updated rule under separate action.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

1. Bobby Wilkinson, Executive Director, has determined that, for the first five years the repeal would be in effect, the repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous adoption making changes to the rule governing the security of personal information.

2. The repeal does not require a change in work that would require the creation of new employee positions, nor would the repeal reduce work load to a degree that any existing employee positions are eliminated.

3. The repeal does not require additional future legislative appropriations.

4. The repeal does not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.

6. The repeal will repeal an existing regulation, but is associated with the simultaneous readoption making changes to the existing rule for the security of personal information.

7. The repeal will not increase or decrease the number of individuals subject to the rule's applicability.

8. The repeal will not negatively affect this state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated this repeal and determined that the repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The repeal does not contemplate nor authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the repeal as to its possible effects on local economies and has determined that for the first five years the repeal would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed sections would be elimination of an outdated rule while adopting a new updated rule under separate action. There will not be economic costs to individuals required to comply with the repealed section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the repeal is in effect, enforcing or administering the repealed sections does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC COMMENT. The public comment period is open from June 2, 2023 to July 3, 2023. Comment may be submitted to bboston@tdhca.state.tx.us. Comment received after 5:00 Central time on July 3, 2023, will not be considered.

STATUTORY AUTHORITY. The repeal is made pursuant to Tex. Gov't Code, §2306.053, which authorizes the Department to adopt rules.

Except as described herein the repealed section affects no other code, article, or statute.

§1.10. *Public Comment Procedures.*

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 May 22, 2023.

TRD-202301847

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: July 2, 2023

For further information, please call: (512) 475-3959



10 TAC §1.10

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC §1.10, Public Comment Procedures. The purpose of the rule is to govern how public comment can be made at Governing Board meetings.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Bobby Wilkinson, Executive Director, has determined that, for the first five years the rule will be in effect:

1. The new rule does not create or eliminate a government program, but relates to the readoption of this rule which makes changes to the rule governing the security of personal information.

2. The new rule does not require a change in work that would require the creation of new employee positions, nor will it reduce work load to a degree that eliminates any existing employee positions.

3. The new rule does not require additional future legislative appropriations.

4. The new rule will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The new rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.

6. The rule will not limit, expand, or repeal an existing regulation, but merely revises a rule.

7. The new rule does increase or decrease the number of individuals to whom this rule applies.

8. The new rule will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

1. The Department has evaluated this rule and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. This rule provides specific detail on how public comment can be provided at meetings of the Department's governing board. Other than in the case of a small or micro-business that participates at a board meeting, no small or micro-businesses are subject to the rule. If a small or micro-business does participate at a board meeting, merely direct how their comment can be made.

3. The Department has determined that because this rule relates only to a revision to a rule, and the rule changes do not specifically relate to geographic location or business size, there

will be no economic effect on small or micro-businesses or rural communities.

c. **TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043.** The new rule does not contemplate nor authorize a taking by the Department, therefore no Takings Impact Assessment is required.

d. **LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).**

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the new rule has no economic effect on local employment because this rule relates only to requirements of existing and future Department Contractors and echoes state and federal regulations already in effect.

Texas Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that the rule is applicable to all commenters at a meeting, there are no "probable" effects of the new rule on particular geographic regions.

e. **PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5).** Mr. Wilkinson has determined that, for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the new rule will be improved clarity on the process for making comment at a board meeting. There is no economic cost to any individuals required to comply with the new rule.

f. **FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4).** Mr. Wilkinson also has determined that for each year of the first five years the new sections are in effect, enforcing or administering the new sections does not have any foreseeable implications related to costs or revenues of the state or local governments as the implementation of this rule generates no fees, nor requires any cost.

PUBLIC COMMENT. The public comment period is open from June 2, 2023 to July 3, 2023. Comment may be submitted to bboston@tdhca.state.tx.us. Comment received after 5:00 Central time on July 3, 2023, will not be considered.

STATUTORY AUTHORITY. The proposal of the new section is made pursuant to Tex. Gov't Code, §2306.053, which authorizes the Department to adopt rules.

Except as described herein the new section affects no other code, article, or statute.

§1.10. Public Comment Procedures.

(a) **Purpose.** The purpose of this section is to establish procedures for hearing public comment at Governing Board meetings open to the public held by the Texas Department of Housing and Community Affairs in accordance with §2306.032(f) and §2306.066(d) of the Tex. Gov't Code.

(b) **Procedures for taking public comment.**

(1) **At each meeting open to the public the Governing Board (Board) shall provide opportunity for members of the public to make:**

(A) **General public comment after the Board has taken action on all posted agenda items on which it intends to take action, general public comment on matters of relevance to the Department's business, or requests that the Board place specific items on future agendas for consideration. It is the prerogative of the Board Chair to place**

reasonable limits on public comment. Handouts of printed materials are permitted only as provided for in paragraph (6) of this subsection; and

(B) **Specific public comment on each posted agenda item after the presentation made by Department staff and motions made by the Board. For purposes of this rule, the Board may consider the staff's presentation to be staff's written presentation in the Board's meeting book posted on the Department's website, or additional printed materials only as provided for in paragraph (6) of this subsection.**

(2) **The opportunity for general public comment under paragraph (1)(A) of this subsection may not be used to advocate for or against any specific action relating to any posted item or for or against any pending application. The opportunity for any such testimony is to be limited to the appointed time when action on such matter is requested to be formally considered as a posted agenda item as described in paragraph (1)(B) of this subsection.**

(3) **At the time general or specific public comment is taken, speakers should be prepared to come promptly to the podium or other place designated for speakers. They may, if they wish, agree among themselves on an order in which they will speak, or this may be directed by the Board Chair. If a large number of speakers wish to testify, the Chair may, in his or her reasonable discretion, establish appropriate limits on the total amount of time to be devoted to testimony on any given item or items. As each individual speaker begins his or her testimony, they must state on the record their name and on whose behalf they are speaking, and sign in on a sheet provided by staff to indicate the correct spelling of their name and on whose behalf they are speaking.**

(4) **Individuals present at the meeting, who wish to register their position for or against a posted agenda item, but do not wish to speak, may do so by submitting a comment registration form with the secretary of the meeting, or another person designated by the Board Chair. The comment registration form, must state the commenter's name, whom they represent, the action item to which their comment relates, their position, and must be signed by the commenter. At the end of the public comment on the item the Board Chair will have registered positions for and against read into the record. It is the Board Chair's discretion to determine if similar comments submitted are aggregated and reported as a total number providing their position, as opposed to reading all names into the record.**

(5) **Additional limits on public comment.**

(A) **The Board Chair, in her/his sole discretion, may additionally limit the number and length of presentations of public comment, both general and specific, at any time during a meeting based on a consideration of:**

(i) **the number of persons wishing to give public comment;**

(ii) **the number of agenda items to be heard;**

(iii) **the time available for the meeting; and**

(iv) **the risk of losing a quorum of Board members.**

(B) **If the Board Chair limits presentations, she or he will not limit them in a manner that inappropriately favors a particular point of view.**

(C) **The Board Chair may, in her or his reasonable discretion, grant deference to elected officials and other persons who have traveled great distances. Deference to elected officials may include, but is not limited to reading letters from elected officials to the Board into the record.**

(6) Presenting printed materials. An individual providing testimony to the Board may provide printed materials only if they are provided as outlined in subparagraphs (A) - (C) of this paragraph:

(A) In order to ensure that members of the Board and the public are given an opportunity to review any such materials, they must be provided to the Department staff not less than five business days prior to the meeting at which they are to be. This is to enable staff to post them on the Department's website not later than the third day before the date of the meeting, as provided for in Tex. Gov't Code §2306.032(c). They must be made available in Adobe Acrobat (pdf) electronic format;

(B) Department staff will post such materials to the Department's website no later than the third day before the meeting at which they are to be used;

(C) In exceptional circumstances the Board Chair may, in her/his sole discretion, and only after giving Board members an opportunity to object, allow materials to be provided at a meeting in hard copy format provided:

(i) they are delivered to staff prior to the start of the meeting so that staff may log in the materials and the Board Chair may review for acceptance under this subsection. Materials may not be handed directly by the public to a Board member on the dais;

(ii) they are not so voluminous as to cause inordinate delay while members of the Board and public review them;

(iii) they are provided in hard copy format to all members of the public in attendance;

(iv) they are also provided to staff in Adobe Acrobat (pdf) format for inclusion in the electronic records of Board materials available to the public via the Department's website; and

(v) if the materials involve large size photos, maps, charts, or other information to be displayed for the Board, an identical copy must be displayed to the public attendees.

(D) Persons seeking allowance of written materials under subparagraph (C) of this paragraph should be aware that their proffered materials may be disallowed, and they should always be prepared to proceed with a verbal presentation within the time constraints for public speaking at Board meetings.

(E) If materials submitted relate to a competitive Application under any Department program, including Chapters 11 and 13 of this title (relating to Qualified Allocation Plan (QAP) and Multifamily Direct Loan Rule, respectively), such materials provided under either subparagraphs (A) or (C) of this paragraph may be prohibited from presentation to the Board under applicable rules or statute.

(c) To the extent that subsection (b) of this section, or the Board Chair, place limitations on the amount of time that a member of the public may address the Board, a member of the public who addresses the Board through an interpreter will be given at least twice the amount of time as a member of the public who does not require the assistance of an interpreter in order to ensure that non-English speakers receive the same opportunity to address 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 May 22, 2023.

TRD-202301848

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: July 2, 2023

For further information, please call: (512) 475-3959

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TITLE 19. EDUCATION

PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

CHAPTER 231. REQUIREMENTS FOR PUBLIC SCHOOL PERSONNEL ASSIGNMENTS

The State Board for Educator Certification (SBEC) proposes amendments to 19 Texas Administrative Code (TAC) §§231.77, 231.79, 231.173, 231.271, 231.301, 231.381, 231.421, 231.423, 231.463, 231.483, and 231.563; new §231.221 and §231.385; and the repeal of §231.175, concerning requirements for public school personnel assignments. The proposed revisions would incorporate courses approved by the State Board of Education (SBOE), would add certificate areas to the list of credentials appropriate for placement into an assignment, and would incorporate technical edits where needed to improve readability and align citations.

BACKGROUND INFORMATION AND JUSTIFICATION: The SBEC rules in 19 TAC Chapter 231 establish the personnel assignments that correlate with appropriate certifications and are organized as follows: Subchapter A, Criteria for Assignment of Public School Personnel; Subchapter B, Prekindergarten-Grade 6 Assignments; Subchapter C, Grades 6-8 Assignments; Subchapter D, Electives, Disciplinary Courses, Local Credit Courses, and Innovative Courses, Grades 6-12 Assignments; Subchapter E, Grades 9-12 Assignments, Subchapter F, Special Education-Related Services Personnel Assignments, and Subchapter G, Paraprofessional Personnel, Administrators, and Other Instructional and Professional Support Assignments.

These subchapters offer guidance to school districts and educators by providing the list of courses by grade level and subject area and identifying the corresponding certificates and other requirements for placement of individuals into classroom and/or campus assignments.

Proposed revisions to 19 TAC Chapter 231, Subchapter C and Subchapter E, are described below.

Subchapter C. Grades 6-8 Assignments

Titles, Assignments, and Technical Changes

§231.77. Technology Applications, Grades 6-8

The proposed amendment would add Mathematics/Physical Science/Engineering: Grades 6-12 and Mathematics/Physical Science/Engineering: Grades 8-12 to the list of certificates appropriate to teach Technology Applications, Grades 6-8.

§231.79. Career Development, Grades 6-8

The proposed amendment would add the new SBOE-approved course, Career and College Exploration, Grades 6-8, and delete the two courses repealed by the SBOE: College and Career Readiness, Grades 6-8, and Investigating Careers, Grades 6-8. The proposed amendment would also add Mathematics/Physi-

cal Science/Engineering: Grades 6-12 and Mathematics/Physical Science/Engineering: Grades 8-12 to the list of certificates appropriate to teach middle school courses for Career Development, Grades 6-8.

Subchapter E. Grades 9-12 Assignments

Titles, Assignments, and Technical Changes

Division 3. Social Studies, Grades 9-12 Assignments.

The proposed amendment to §231.173, Economics with Emphasis on the Free Enterprise System and Its Benefits, Grades 9-12, would update the title to "Economics and Personal Financial Literacy, Grades 9-12" to incorporate additional course listings from §231.175, Personal Financial Literacy, Grades 9-12, and add the SBOE-approved course, Economics and Personal Financial Literacy, into rule. The list of certificates approved as appropriate to teach these courses and already presented in rule would remain unchanged.

The proposal would repeal §231.175, Personal Financial Literacy, Grades 9-12, as the information from the section has been incorporated in the proposed changes to §231.173, referenced above.

Division 5. Science, Grades 9-12 Assignments.

Proposed new §231.221, Specialized Topics in Science, Grades 9-12, would add this new SBOE-approved course into rule and identify the list of certificates appropriate to teach the course.

Division 9. Career Development, Grades 9-12 Assignments.

The proposed amendment to §231.271, Career Development, Grades 9-12, subsection (a), would add Mathematics/Physical Science/Engineering: Grades 6-12 and Mathematics/Physical Science/Engineering: Grades 8-12 to the list of certificates appropriate for the specified assignments.

Division 11. Architecture and Construction, Grades 9-12 Assignments.

The proposed amendment to §231.301, Principles of Architecture; Principles of Construction, Grades 9-12, would add "any vocational agriculture certificate" to the list of certificates appropriate for the specified assignments.

Division 14. Education and Training, Grades 9-12 Assignments.

The proposed amendment to §231.381, Education and Training, Grades 9-12, would add the new SBOE-approved course, Communication and Technology in Education, Grades 9-12, into rule. All remaining information would remain the same as the certificates listed in rule are appropriate to teach the new course being added.

Proposed new §231.385, Child Development, Child Guidance, or Child Development Associates Foundation, Grades 9-12, would add three new SBOE-approved courses, Child Development, Grades 9-12; Child Guidance, Grades 9-12; and Child Development Associates Foundation, Grades 9-12, into rule and specify the certificates appropriate to serve in these assignments.

Division 17. Health Science, Grades 9-12 Assignments.

The proposed amendment to §231.421, Health Science, Grades 9-12, would update subsection (a) to add the new SBOE-approved course, Pharmacy I, Grades 9-12, and the Medical Assistant, Grades 9-12, course already established in rule. The proposal would delete the Medical Assistant, Grades 9-12, course

reference in subsection (b) and would add the new SBOE-approved course, Practicum in Nursing, Grades 9-12, to subsection (c). All remaining information would remain the same as the certificates listed in rule are appropriate to teach the new courses being added.

The proposed amendment to §231.423, Anatomy and Physiology, Medical Microbiology, Pathophysiology, and Respiratory Therapy I, Grades 9-12, would update the title to include the Respiratory II course. All remaining information would remain the same as the certificates listed in rule are appropriate to teach the new course being added.

Division 19. Human Services, Grades 9-12 Assignments.

The proposed amendment to §231.463, Lifetime Nutrition and Wellness, Grades 9-12, would add Health: Early Childhood-Grade 12 to the list of certificates appropriate for the specified assignment. All remaining information would be renumbered to reflect this update.

Division 20. Information Technology, Grades 9-12 Assignments.

The proposed amendment to §231.483, Digital Media, Grades 9-12, would add "any marketing certificate" to the list of certificates appropriate for the specified assignments. All remaining information would be renumbered to reflect this update.

Division 24. Science, Technology, Engineering, and Mathematics, Grades 9-12 Assignments.

The proposed amendment to §231.563, Principles of Biosciences, Grades 9-12, would add Life Science: Grades 7-12 and Life Science: Grades 8-12, Legacy Master Science Teacher (Grades 8-12), Science: Grades 7-12 and Science: Grades 8-12, Secondary Biology (Grades 6-12), Secondary Science (Grades 6-12), and Secondary Science, Composite (Grades 6-12), to the list of certificates appropriate to teach this course.

FISCAL IMPACT: Emily Garcia, associate commissioner for educator preparation, certification, and enforcement has determined that for the first five years there is no additional fiscal impact on state and local governments and that there are no additional costs to entities required to comply with the proposal.

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

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

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

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

GOVERNMENT GROWTH IMPACT: The Texas Education Agency (TEA) staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would create new regulations and repeal a regulation. The proposal would add proposed new 19 TAC §231.385, Child Development, Child Guidance, or Child Development Associates

Foundation, Grades 9-12, and proposed new 19 TAC §231.221, Specialized Topics in Science, Grades 9-12, to add newly approved courses. The proposal would repeal §231.175, Personal Financial Literacy, Grades 9-12, which would be consolidated as part of 19 TAC §231.173.

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

PUBLIC BENEFIT AND COST TO PERSONS: Emily Garcia, associate commissioner for educator preparation, certification, and enforcement, has determined that for the first five years that the rule will be in effect that the public benefit anticipated as a result of the proposal would be clear guidance for districts on appropriate credentials for placement of individuals into classroom, administrative, and support personnel assignments. The TEA staff has determined there is no anticipated cost to persons who are required to comply with the proposal.

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

ENVIRONMENTAL IMPACT STATEMENT: The proposal does not require an environmental impact analysis because the amendments are not major environmental rules under TGC, §2001.0225.

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

PUBLIC COMMENTS: The public comment period on the proposal begins June 2, 2023, and ends July 3, 2023. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/SBEC_Rules_\(TAC\)/Proposed_State_Board_for_Educator_Certification_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/SBEC_Rules_(TAC)/Proposed_State_Board_for_Educator_Certification_Rules/). The SBEC will take registered oral and written comments on the proposal at the July 21, 2023, meeting in accordance with the SBEC board operating policies and procedures. All requests for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the Department of Educator Preparation, Certification, and Enforcement, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, Attention: Ms. Emily Garcia, associate commissioner for educator preparation, certification, and enforcement, not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on June 2, 2023.

SUBCHAPTER C. GRADES 6-8 ASSIGNMENTS

19 TAC §231.77, §231.79

STATUTORY AUTHORITY. The amendments are proposed under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or

permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.064, which requires the SBEC to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a designation of "legacy" to each master teacher certificate issued and to recognize these certificates until they expire.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code (TEC), §§21.003(a), 21.031(a); 21.041(b)(1) and (2); and 21.064.

§231.77. *Technology Applications, Grades 6-8.*

An assignment in a departmentalized classroom for Technology Applications, Grades 6-8, is allowed with one of the following certificates.

- (1) Elementary teacher certificate plus verification of competency to teach computer literacy.
- (2) Grades 6-12 or Grades 6-8--Computer Information Systems.
- (3) Information Processing Technologies Endorsement (Level I or II).
- (4) Junior High School or High School--Computer Information Systems.
- (5) Secondary Computer Information Systems (Grades 6-12).
- (6) Secondary teacher certificate plus verification of competency to teach computer literacy.
- (7) Technology Applications: Early Childhood-Grade 12.
- (8) Technology Applications: Grades 8-12 (Grade 8 only).
- (9) Mathematics/Physical Science/Engineering: Grades 6-12.
- (10) Mathematics/Physical Science/Engineering: Grades 8-12.

§231.79. *Career Development, Grades 6-8.*

An assignment in a departmentalized classroom for Career and College Exploration, Grades 6-8, [Career Development, College and Career Readiness, or Investigating Careers, Grades 6-8,] for a holder of a valid secondary or all-level certificate is allowed with a Technology Applications: Early Childhood-Grade 12 certificate, a Technology Applications: Grades 8-12 certificate, a Mathematics/Physical Science/Engineering: Grades 6-12 certificate, a Mathematics/Physical Science/Engineering: Grades 8-12 certificate, and any vocational or career and technical education classroom teaching certificate specified in §233.13 of this title (relating to Career and Technical Education (Certificates not requiring experience and preparation in a skill area)) or §233.14 of this title (relating to Career and Technical Education (Certificates requiring experience and preparation in a skill area)).

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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Cristina De La Fuente-Valadez

Director, Rulemaking

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



SUBCHAPTER E. GRADES 9-12 [9 - 12]

ASSIGNMENTS

DIVISION 3. SOCIAL STUDIES, GRADES 9-12 ASSIGNMENTS

19 TAC §231.173

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.064, which requires the SBEC to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a designation of "legacy" to each master teacher certificate issued and to recognize these certificates until they expire.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code (TEC), §§21.003(a), 21.031(a); 21.041(b)(1) and (2); and 21.064.

§231.173. *Economics and Personal Financial Literacy, Grades 9-12 [with Emphasis on the Free Enterprise System and Its Benefits, Grades 9-12].*

An assignment for Economics with Emphasis on the Free Enterprise System and Its Benefits, [or] Economics Advanced Studies, Personal Financial Literacy, or Personal Financial Literacy and Economics, Grades 9-12, is allowed with one of the following certificates.

- (1) Any business certificate.
- (2) Grades 6-12 or Grades 9-12--Economics.
- (3) Grades 6-12 or Grades 9-12--Social Studies.
- (4) Grades 6-12 or Grades 9-12--Social Studies, Composite.
- (5) Junior High School (Grades 9-10 only) or High School--Economics.
- (6) Junior High School (Grades 9-10 only) or High School--Social Science, Composite.
- (7) Secondary Economics (Grades 6-12).

(8) Secondary Social Studies (Grades 6-12).

(9) Secondary Social Studies, Composite (Grades 6-12).

(10) Social Studies: Grades 7-12.

(11) Social Studies: Grades 8-12.

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19 TAC §231.175

STATUTORY AUTHORITY. The repeal is proposed under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.064, which requires the SBEC to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a designation of "legacy" to each master teacher certificate issued and to recognize these certificates until they expire.

CROSS REFERENCE TO STATUTE. The repeal implements Texas Education Code (TEC), §§21.003(a), 21.031(a); 21.041(b)(1) and (2); and 21.064.

§231.175. *Personal Financial Literacy, Grades 9-12.*

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 5. SCIENCE, GRADES 9-12 ASSIGNMENTS

19 TAC §231.221

STATUTORY AUTHORITY. The new section is proposed under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.064, which requires the SBEC to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a designation of "legacy" to each master teacher certificate issued and to recognize these certificates until they expire.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code (TEC), §§21.003(a), 21.031(a); 21.041(b)(1) and (2); and 21.064.

§231.221. Specialized Topics in Science, Grades 9-12.

An assignment for Specialized Topics in Science, Grades 9-12, is allowed with one of the following certificates.

(1) Any science certificate valid for Grades 6-12, Grades 7-12, or Grades 8-12.

(2) Any secondary science teaching field.

(3) Legacy Master Science Teacher (Grades 8-12).

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 9. CAREER DEVELOPMENT, GRADES 9-12 ASSIGNMENTS

19 TAC §231.271

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators;

TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.064, which requires the SBEC to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a designation of "legacy" to each master teacher certificate issued and to recognize these certificates until they expire.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code (TEC), §§21.003(a), 21.031(a); 21.041(b)(1) and (2); and 21.064.

§231.271. Career Development, Grades 9-12.

(a) Subject to the requirements in subsection (e) of this section, an assignment for Career Preparation I, Career Preparation II, or Extended Career Preparation, Grades 9-12, is allowed with one of the following certificates.

(1) Any vocational or career and technical education (CTE) classroom teaching certificate specified in §233.13 of this title (relating to Career and Technical Education (Certificates not requiring experience and preparation in a skill area)) or §233.14 of this title (relating to Career and Technical Education (Certificates requiring experience and preparation in a skill area)).

(2) Any special education certificate so long as, beginning with the 2020-2021 school year, the special education-certified teacher assigned to teach this course shall complete Texas Education Agency-approved training found at tea.texas.gov/cte prior to teaching this course.

(3) Technology Applications: Early Childhood-Grade 12.

(4) Technology Applications: Grades 8-12.

(5) Mathematics/Physical Science/Engineering: Grades 6-12.

(6) Mathematics/Physical Science/Engineering: Grades 8-12.

(b) An assignment for Project-Based Research, Grades 9-12, is allowed with one of the following certificates.

(1) Any vocational or CTE classroom teaching certificate specified in §233.13 of this title or §233.14 of this title.

(2) Technology Applications: Early Childhood-Grade 12.

(3) Technology Applications: Grades 8-12.

(c) An assignment for Applied Mathematics for Technical Professionals, Grades 9-12, is allowed with one of the following certificates.

(1) Any vocational or CTE classroom teaching certificate specified in §233.13 of this title or §233.14 of this title. This assignment requires a bachelor's degree.

(2) Grades 6-12 or Grades 9-12 Mathematics.

(3) Legacy Master Mathematics Teacher (Grades 8-12).

(4) Mathematics: Grades 7-12.

(5) Mathematics: Grades 8-12.

(6) Mathematics/Physical Science/Engineering: Grades 6-12.

- (7) Mathematics/Physical Science/Engineering: Grades 8-12.
- (8) Physics/Mathematics: Grades 7-12.
- (9) Physics/Mathematics: Grades 8-12.
- (10) Secondary Mathematics (Grades 6-12).
- (11) Computer Science: Grades 8-12.
- (12) Grades 6-12 or Grades 9-12--Computer Information Systems.
- (13) Junior High School (Grades 9-10 only) or High School--Computer Information Systems.
- (14) Secondary Computer Information Systems (Grades 6-12).
- (15) Technology Applications: Early Childhood-Grade 12.
- (16) Technology Applications: Grades 8-12.

(d) All teachers assigned to Applied Mathematics for Technical Professionals shall participate in Texas Education Agency-approved training prior to teaching this course effective with the 2019-2020 school year. Specific details about the required training can be found at tea.texas.gov/cte.

(e) The school district is responsible for ensuring that each teacher assigned to Career Preparation I, Career Preparation II, or Extended Career Preparation, Grades 9-12, has completed appropriate training in state and federal requirements regarding work-based learning and safety.

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 11. ARCHITECTURE AND CONSTRUCTION, GRADES 9-12 ASSIGNMENTS

19 TAC §231.301

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B;

TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.064, which requires the SBEC to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a designation of "legacy" to each master teacher certificate issued and to recognize these certificates until they expire.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code (TEC), §§21.003(a), 21.031(a); 21.041(b)(1) and (2); and 21.064.

§231.301. *Principles of Architecture; Principles of Construction, Grades 9-12.*

An assignment for Principles of Architecture or Principles of Construction, Grades 9-12, is allowed with one of the following certificates.

- (1) Agriculture, Food, and Natural Resources: Grades 6-12.
- (2) Agricultural Science and Technology: Grades 6-12.
- (3) Any vocational agriculture certificate.
- (4) [(3)] Any home economics or homemaking certificate.
- (5) [(4)] Family and Consumer Sciences, Composite: Grades 6-12.
- (6) [(5)] Mathematics/Physical Science/Engineering: Grades 6-12.
- (7) [(6)] Mathematics/Physical Science/Engineering: Grades 8-12.
- (8) [(7)] Secondary Industrial Arts (Grades 6-12).
- (9) [(8)] Secondary Industrial Technology (Grades 6-12).
- (10) [(9)] Technology Education: Grades 6-12.
- (11) [(10)] Trade and Industrial Education: Grades 6-12. This assignment requires appropriate work approval.
- (12) [(11)] Trade and Industrial Education: Grades 8-12. This assignment requires appropriate work approval.
- (13) [(12)] Trade and Industrial Workforce Training: Grades 6-12. This assignment requires appropriate work approval.
- (14) [(13)] Vocational Trades and Industry. This assignment requires appropriate work approval.

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DIVISION 14. EDUCATION AND TRAINING, GRADES 9-12 ASSIGNMENTS

19 TAC §231.381, §231.385

STATUTORY AUTHORITY. The amendment and new section are proposed under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.064, which requires the SBEC to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a designation of "legacy" to each master teacher certificate issued and to recognize these certificates until they expire.

CROSS REFERENCE TO STATUTE. The amendment and new section implement Texas Education Code (TEC), §§21.003(a), 21.031(a); 21.041(b)(1) and (2); and 21.064.

§231.381. *Education and Training, Grades 9-12.*

(a) An assignment for Instructional Practices, [or] Principles of Education and Training, or Communication and Technology in Education, Grades 9-12, is allowed with any valid classroom teacher or administrator certificate.

(b) Subject to the requirements in subsection (c) of this section, an assignment for Practicum in Education and Training, Extended Practicum in Education and Training, Practicum in Early Learning, or Extended Practicum in Early Learning, Grades 9-12, is allowed with any valid classroom teacher or administrator certificate.

(c) The school district is responsible for ensuring that each teacher assigned to Practicum in Education and Training, Extended Practicum in Education and Training, Practicum in Early Learning, or Extended Practicum in Early Learning, Grades 9-12, has completed appropriate training in state and federal requirements regarding work-based learning and safety.

§231.385. *Child Development, Child Guidance, or Child Development Associates Foundation, Grades 9-12.*

An assignment for Child Development, Child Guidance, or Child Development Associates Foundation, Grades 9-12, is allowed with one of the following certificates.

- (1) Any home economics or homemaking certificate.
- (2) Family and Consumer Sciences, Composite: Grades 6-12.
- (3) Health Science: Grades 6-12.
- (4) Health Science Technology.
- (5) Health Science Technology Education: Grades 8-12.
- (6) Human Development and Family Studies: Grades 8-12.
- (7) Vocational Health Occupations.
- (8) Vocational Health Science Technology.

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 17. HEALTH SCIENCE, GRADES 9-12 ASSIGNMENTS

19 TAC §231.421, §231.423

STATUTORY AUTHORITY. The amendments are proposed under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.064, which requires the SBEC to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a designation of "legacy" to each master teacher certificate issued and to recognize these certificates until they expire.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code (TEC), §§21.003(a), 21.031(a); 21.041(b)(1) and (2); and 21.064.

§231.421. *Health Science, Grades 9-12.*

(a) An assignment for Health Science Theory, Health Science Clinical, Pharmacology, Pharmacy I, Pharmacy II, Principles of Health Science, [or] World Health Research, or Medical Assistant, Grades 9-12, is allowed with one of the following certificates.

- (1) Health Science: Grades 6-12.
- (2) Health Science Technology Education: Grades 8-12.
- (3) Vocational Health Occupations.
- (4) Vocational Health Science Technology.

(b) An assignment for Medical Terminology [or Medical Assistant], Grades 9-12, is allowed with one of the following certificates.

- (1) Secondary Biology (Grades 6-12).
- (2) Secondary Science (Grades 6-12).
- (3) Secondary Science, Composite (Grades 6-12).
- (4) Health Science: Grades 6-12.

- (5) Health Science Technology Education: Grades 8-12.
- (6) Life Science: Grades 7-12.
- (7) Life Science: Grades 8-12.
- (8) Legacy Master Science Teacher (Grades 8-12).
- (9) Science: Grades 7-12.
- (10) Science: Grades 8-12.
- (11) Vocational Health Occupations.
- (12) Vocational Health Science Technology.

(c) Subject to the requirements in subsection (d) of this section, an assignment for Practicum in Health Science, ~~or~~ Extended Practicum in Health Science, and Practicum in Nursing, Grades 9-12, is allowed with one of the following certificates.

- (1) Health Science: Grades 6-12.
- (2) Health Science Technology Education: Grades 8-12.
- (3) Vocational Health Occupations.
- (4) Vocational Health Science Technology.

(d) The school district is responsible for ensuring that each teacher assigned to Practicum in Health Science or Extended Practicum in Health Science, Grades 9-12, has completed appropriate training in state and federal requirements regarding work-based learning and safety.

§231.423. Anatomy and Physiology, Medical Microbiology, Pathophysiology, ~~and~~ Respiratory Therapy I, and Respiratory Therapy II, Grades 9-12.

(a) An assignment for Anatomy and Physiology, Medical Microbiology, Pathophysiology, ~~or~~ Respiratory Therapy I, or Respiratory Therapy II, Grades 9-12, is allowed with one of the following certificates.

- (1) Secondary Biology (Grades 6-12).
- (2) Secondary Science (Grades 6-12).
- (3) Secondary Science, Composite (Grades 6-12).
- (4) Health Science: Grades 6-12. This assignment requires a bachelor's degree.
- (5) Health Science Technology Education: Grades 8-12. This assignment requires a bachelor's degree.
- (6) Life Science: Grades 7-12.
- (7) Life Science: Grades 8-12.
- (8) Legacy Master Science Teacher (Grades 8-12).
- (9) Science: Grades 7-12.
- (10) Science: Grades 8-12.
- (11) Vocational Health Occupations. This assignment requires a bachelor's degree.
- (12) Vocational Health Science Technology. This assignment requires a bachelor's degree.

(b) All teachers assigned to this course shall participate in Texas Education Agency-approved training prior to teaching this course effective with the 2019-2020 school year. Specific details about the required training can be found at tea.texas.gov/cte.

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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Cristina De La Fuente-Valadez

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DIVISION 19. HUMAN SERVICES, GRADES 9-12 ASSIGNMENTS

19 TAC §231.463

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.064, which requires the SBEC to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a designation of "legacy" to each master teacher certificate issued and to recognize these certificates until they expire.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code (TEC), §§21.003(a), 21.031(a); 21.041(b)(1) and (2); and 21.064.

§231.463. Lifetime Nutrition and Wellness, Grades 9-12.

An assignment for Lifetime Nutrition and Wellness, Grades 9-12, is allowed with one of the following certificates.

- (1) Any home economics or homemaking certificate.
- (2) Family and Consumer Sciences, Composite: Grades 6-12.
- (3) Health: Early Childhood-Grade 12.
- (4) [~~3~~] Health Science: Grades 6-12.
- (5) [~~4~~] Health Science Technology Education: Grades 8-12.
- (6) [~~5~~] Hospitality, Nutrition, and Food Sciences: Grades 8-12.
- (7) [~~6~~] Human Development and Family Studies: Grades 8-12.
- (8) [~~7~~] Vocational Health Occupations.
- (9) [~~8~~] Vocational Health Science Technology.

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 20. INFORMATION TECHNOLOGY, GRADES 9-12 ASSIGNMENTS

19 TAC §231.483

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.064, which requires the SBEC to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a designation of "legacy" to each master teacher certificate issued and to recognize these certificates until they expire.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code (TEC), §§21.003(a), 21.031(a); 21.041(b)(1) and (2); and 21.064.

§231.483. *Digital Media, Grades 9-12.*

An assignment for Digital Media, Grades 9-12, is allowed with one of the following certificates.

- (1) Any business or office education certificate.
 - (2) Any marketing certificate.
 - (3) [(2)] Business and Finance: Grades 6-12.
 - (4) [(3)] Business Education: Grades 6-12.
 - (5) [(4)] Secondary Industrial Arts (Grades 6-12).
 - (6) [(5)] Secondary Industrial Technology (Grades 6-12).
 - (7) [(6)] Technology Education: Grades 6-12.
 - (8) [(7)] Technology Applications: Early Childhood-Grade 12.
 - (9) [(8)] Technology Applications: Grades 8-12.
 - (10) [(9)] Trade and Industrial Education: Grades 6-12.
- This assignment requires appropriate work approval.

(11) [(10)] Trade and Industrial Education: Grades 8-12. This assignment requires appropriate work approval.

(12) [(11)] Trade and Industrial Workforce Training: Grades 6-12. This assignment requires appropriate work approval.

(13) [(12)] Vocational Trades and Industry. This assignment requires appropriate work approval.

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 24. SCIENCE, TECHNOLOGY, ENGINEERING, AND MATHEMATICS, GRADES 9-12 ASSIGNMENTS

19 TAC §231.563

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.064, which requires the SBEC to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a designation of "legacy" to each master teacher certificate issued and to recognize these certificates until they expire.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code (TEC), §§21.003(a), 21.031(a); 21.041(b)(1) and (2); and 21.064.

§231.563. *Principles of Biosciences, Grades 9-12.*

An assignment for Principles of Biosciences, Grades 9-12, is allowed with one of the following certificates.

- (1) Agriculture, Food, and Natural Resources: Grades 6-12.
- (2) Agricultural Science and Technology: Grades 6-12.
- (3) Any vocational agriculture certificate.
- (4) Health Science: Grades 6-12.
- (5) Health Science Technology Education: Grades 8-12.

- 6-12. (6) Mathematics/Physical Science/Engineering: Grades 6-12.
- 8-12. (7) Mathematics/Physical Science/Engineering: Grades 8-12.
- (8) Secondary Industrial Technology (Grades 6-12).
- (9) Secondary Industrial Arts (Grades 6-12).
- (10) Technology Education: Grades 6-12.
- (11) Trade and Industrial Education: Grades 6-12. This assignment requires appropriate work approval.
- (12) Trade and Industrial Education: Grades 8-12. This assignment requires appropriate work approval.
- (13) Trade and Industrial Workforce Training: Grades 6-12. This assignment requires appropriate work approval.
- (14) Vocational Health Occupations.
- (15) Vocational Health Science Technology.
- (16) Life Science: Grades 7-12.
- (17) Life Science: Grades 8-12.
- (18) Legacy Master Science Teacher (Grades 8-12).
- (19) Science: Grades 7-12.
- (20) Science: Grades 8-12.
- (21) Secondary Biology (Grades 6-12).
- (22) Secondary Science (Grades 6-12).
- (23) Secondary Science, Composite (Grades 6-12).

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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TITLE 22. EXAMINING BOARDS

PART 14. TEXAS OPTOMETRY BOARD

CHAPTER 273. GENERAL RULES

22 TAC §§273.7, 273.8, 273.12, 273.14, 273.15

The Texas Optometry Board proposes amendments to 22 TAC Chapter 273, General Rules, §§273.7, 273.8, 273.12, 273.14 and 273.15.

The rules in the Chapter 273 were reviewed by the Board's Administration and Licensing Committee in January 2023 to ensure the licensing and renewal process was efficient and effective. At the January 19, 2023, committee meeting, members voted to move forward with changes to update and modernize the process and to refer the proposal to the Rules Committee. At the April 27, 2023, Rules Committee meeting, the members

concurred with the recommendations of the Administration and Licensing Committee and proposed the following amendments to the licensing and renewal process.

During the April 28, 2023, meeting the Board determined that there continues to be a need for the rules in Chapter 273. The Board has also determined that changes to certain rules as currently in effect are necessary. The specific rules being amended include: §273.7 - Inactive Licenses and Retired License for Volunteer Charity Care (to include splitting one rule into two separate rules for clarification purposes), §273.8 - Renewal of License, §273.12 - Profile Information, and §273.14 - License Applications for Military Service Member, Military Veteran, and Military Spouse. As noted above, the Board proposes to adopt a new rule titled §273.15 - Retired License for Volunteer Charity Care which previously was part of §273.7.

The amendments outlined in this proposal include non-substantive changes to all references from "board" to "Board" and from "executive director" to "Executive Director."

In §273.7 - Inactive Licenses and Retired License for Volunteer Charity Care, the Board proposes to split the rule into two separate rules - one related to Inactive Licenses and one related to Retired License for Volunteer Charity Care. Splitting the rule provides ease of understanding the differences between inactive and retired licenses. In the new §273.7 - Inactive Licenses, the rule eliminates the ability to place a license on inactive status at any time and instead allows it only at renewal.

In the new §273.15 - Retired License for Volunteer Charity Care, the rule moves language previously outlined in §273.7 and also ensures only therapeutic optometrists can update an expired license to a retired license.

In §273.8 - Renewal of License, the Board proposes to update the process to reflect the full transition to the biennial renewal system, clarifies the process for expired licenses to be reinstated under certain circumstances. It ensures the Board's consideration of convictions are in compliance with Chapter 53 of the Occupations Code, and makes other clarifying corrections to ensure the renewal process is both efficient and effective for licensees and Board staff.

In §273.12 - Profile Information, the Board proposes to remove the requirement that licensees provide certain information to the Board upon renewal as the Board no longer collects and disseminates this information. It adds the requirement that a licensee provide a personal email address at renewal.

In §273.14 - License Applications for Military Service Member, Military Veteran, and Military Spouse, the Board proposes to update the definition of "Armed Forces of the United States" to update statutory language, to update the application requirements to ensure military applicants provide the same information as a regular applicant, and changes the initial expiration date of a military license to be the same as a regular applicant. Finally, with the changes to the jurisprudence exam occurring in Chapter 271 - Examination, the Board is requiring military applicants to take the jurisprudence exam prior to licensure instead of prior to the first renewal as this changes no longer create a barrier to expedited licensure.

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

Janice McCoy, Executive Director, has determined that for each of the first five years the amendments are in effect, the public benefit is a more effective and efficient licensing and renewal system for both licensees and Board staff.

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

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

ENVIRONMENT AND TAKINGS IMPACT ASSESSMENT: The agency has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code §2001.0225. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. The agency has determined that the proposed amendments do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action, and therefore does not constitute a taking under Texas Government Code §2007.043.

GOVERNMENT GROWTH IMPACT STATEMENT: During the first five years that the amended rules will be in effect, it is anticipated that the amendments will not create or eliminate a government program as no program changes are proposed. Further, implementation of the amended rule will not require the creation of a new employee position or the elimination of an existing employee position; will not increase or decrease future legislative appropriations to the agency; will not increase or decrease fees paid to the agency; does not impact the number of individuals subject to the rule's applicability; does not positively or adversely impact the state's economy. The amendment does not create a new regulation nor does it expand, limit, or repeal an existing regulation.

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

Amendments to §273.7 - Inactive Licenses and Retired License for Volunteer Charity Care (to include splitting into two rules), §273.8 - Renewal of License, §273.12 - Profile Information, and §273.14 - License Applications for Military Service Member, Military Veteran, and Military Spouse and the creation of new rule §273.15 - Retired License for Volunteer Charity Care are being proposed under the Texas Optometry Act, Texas Occupations Code, §351.151 and Texas Occupations Code Chapter 351, Subchapter F - License Requirements and Subchapter G - License Renewal.

No other sections are affected by the amendments.

§273.7. *Inactive Licenses [and Retired License for Volunteer Charity Care].*

(a) Placing a license on inactive status. A person who is licensed by the Board [board] to practice optometry but who is not en-

gaged in the practice of optometry in this state may place the license on inactive status at the time of license renewal [or during a license year] as follows.

~~[(1)] [To place a license on inactive status at the time of renewal, the] The licensee shall:~~

~~(1) [(A)] complete and submit before the expiration date [of January 1 of each year] a license renewal application provided by the Board [board];~~

~~(2) [(B)] state on the renewal application that the license is to be placed on inactive status and that the licensee shall not practice optometry in Texas while the license is inactive; and~~

~~(3) [(C)] pay the fee for renewal of license as specified in §273.4 of this title (relating to Fees (Not Refundable) [Optometry Fees]). [The fee for renewal of license shall not be subject to the Section 351.153 of the Texas Optometry Act.] Penalty fees as provided by Section 351.304 of the Act, will apply to those received after December 31 of the applicable renewal period.~~

~~[(2) To place a license on inactive status at a time other than the time of license renewal, the licensee shall: }~~

~~[(A) return the current renewal certificate to the board office;]~~

~~[(B) submit a signed statement stating that the licensee shall not practice optometry in Texas while the license is inactive, and the date the license is to be placed on inactive status;]~~

~~[(C) pay the fee for issuance of an amended renewal certificate as specified in §273.4 of this title (relating to Optometry Fees).]~~

(b) Reactivation of an Inactive License.

~~[(1)] A holder of a license that is on inactive status may return the license to active status by:~~

~~(1) [(A)] applying for active status on a form prescribed by the Board [board];~~

~~(2) [(B)] providing proof of completion certificates from approved continuing education programs as specified in Chapter 275 of this title (relating to Continuing Education Requirements) for the number of hours that would otherwise have been required for the renewal of the license. Approved continuing education earned within the two years [calendar year] prior to the licensee applying for the return to active status may be applied toward the continuing education requirement; and~~

~~(3) [(C)] paying the license renewal fee [for issuance of an amended renewal certificate as] specified in §273.4 of this chapter [title] (relating to [Optometry] Fees (Not Refundable)) [;]~~

~~[(D) paying the fee imposed by Section 351.153 of the Act, if the licensee begins practice within the state].~~

~~[(2) If the application for reactivation of the license is made at the time of license renewal, the applicant shall pay the license renewal fee specified in §273.4 of this title (relating to Optometry Fees). If the application for reactivation of the license is made at a time other than the time of license renewal, the applicant shall pay the license renewal fee as well as a fee for issuance of an amended certificate to practice optometry as specified in §273.4 of this title.]~~

(c) Prohibition against practicing optometry in Texas. A holder of a license that is on inactive status shall not practice optometry in this state. The practice of optometry by a holder of a license that

is on inactive status constitutes the practice of optometry without a license.

[(d) Retired License. The Board may issue a Retired License to optometrists or therapeutic optometrists whose only practice is volunteer charity care pursuant to subsections (d) - (k) of this section.]

[(e) Application. An applicant holding a current license may apply for a Retired License by submitting to the Board a completed application with the license fee required by §273.4 of this chapter (relating to Fees (Not Refundable)). There is no charge to apply. A Retired License will not be issued to applicants subject to current or pending disciplinary action. In determining whether to grant retired status, the board shall consider the age, years of practice, and status of the license holder at the time of the application. Applicants must supply proof that the continuing education requirements for a Retired License have been met in §275.1(g)(1) of this title (relating to General Requirements) (Rule 275.1)].

[(f) Application by Expired Licensee. A former licensee whose license has expired for one year or more may apply for a Retired License by submitting to the Board a completed application with the license fee required by §273.4 of this chapter. There is no charge to apply. A Retired License will not be issued to applicants subject to current or pending disciplinary action. Applicants must supply proof of having met the continuing education requirements of §275.1(g)(2) of this title. An applicant for a therapeutic Retired License must have been licensed by the Board as a therapeutic optometrist. An applicant for a therapeutic Retired License whose license has been expired for five years or more must supply proof of a passing score on the jurisprudence examination taken within the one year period prior to the submission of the application. In determining whether to grant retired status, the Board shall consider the age, years of practice, and status of the license holder at the time of the application.]

[(g) Scope of License. The holder of a Retired License may practice optometry or therapeutic optometry in the same manner as an active licensee of the Board, subject to the restrictions contained in this section. A holder of a Retired License may only practice optometry or therapeutic optometry when such practice is without compensation or expectation of compensation (except for the reimbursement of travel and supply expenses) as a direct service volunteer of a charitable organization.]

[(h) Charitable Organization. A charitable organization includes any bona fide charitable, religious, prevention of cruelty to children or animals, youth sports and youth recreational, neighborhood crime prevention or patrol, or educational organization (excluding fraternities, sororities, and secret societies); or other organization organized and operated exclusively for the promotion of social welfare by being primarily engaged in promoting the common good and general welfare of the people in a community, including these types of organizations with a §501(c)(3) or (4) exemption from federal income tax, some chambers of commerce, and volunteer centers certified by the Department of Public Safety.]

[(i) Renewal. A Retired License expires on the same date as a regular license. Prior to renewing the license, the licensee must supply proof that the continuing education requirements for a Retired License have been met. The license renewal fee is set in §273.4 of this title].

[(j) Penalty. The holder of a Retired License shall not receive compensation for the practice of optometry. To do so constitutes the practice of optometry without a license and subjects the optometrist or therapeutic optometrist to the penalties imposed for this violation.]

[(k) Reinstatement of an Active License by a Holder of a Retired License. The Board may reinstate an active license to applicants

who hold a Retired License pursuant to the requirements of this subsection. Applicants may apply for reinstatement by submitting to the Board a completed application with the application fee required by §273.4 of this title. Applicants must supply proof that the continuing education requirements for an active license have been met. If the Board approves the application to reinstate the active license, the Board may issue the license once the requirements of subsection (b)(1)(C) and (D) have been met. An active license will not be issued to a holder of a Retired License who applied for that license under subsection (f) of this section.]

§273.8. Renewal of License.

(a) Expired license.

(1) If a license is not renewed on or before the expiration date, it becomes expired. All licenses renew on a biennial basis. Initial [Beginning January 1, 2021, one-half of licenses must be renewed on a biennial basis. Beginning January 1, 2022, all licenses must be renewed on a biennial basis. Beginning January 1, 2021, initial] licenses expire on the second January 1 after the date the license is first issued [; except for licenses issued pursuant to §273.14 of this title (relating to License Applications for Military Service Member, Military Veteran, and Military Spouse)].

(2) If a person's license has been expired for 90 days or less, the person may renew the license by paying to the Board [board] the amount of one and one-half times the renewal fee.

(3) If a person's license has been expired for longer than 90 days but less than one year, the person may renew the license by paying to the Board [board] the amount of two times the renewal fee.

(4) If a person's license has been expired for one year or longer, the person may not renew the license but may obtain a new license by reapplying and [taking and] passing the jurisprudence exam and complying with the requirements and procedures for obtaining an initial license. However, the Board may reinstate a license without requiring reapplication and reexamination of the jurisprudence examination an expired license of a person who was previously licensed in Texas, is currently licensed in another state, and has been in practice for two years immediately preceding application for reinstatement. The person shall be required to furnish documentation of continuous practice for the two-year period and pay the renewal fee as established by subsection (a)(3) of this section. The person must furnish license verifications from each state in which the person is currently or previously licensed. A license renewal under this section is subject to the same requirements of §351.501 of the Act as a license applicant.

(5) For licenses expired for more than one year, if [If] the person was not licensed as a therapeutic optometrist when the license expired, the person must also complete the requirements for therapeutic license in §§280.1 - 280.3 of this title (relating to Application for Certification Required; Education; Certified Therapeutic Optometrist Examination, respectively) prior to obtaining a new license.

[(5) The board, however, may renew without examination an expired license of a person who was previously licensed in Texas, is currently licensed in another state, and has been in practice for two years immediately preceding application for renewal. The person shall be required to furnish documentation of continuous practice for the two-year period, pay the renewal fee as established by subsection (a)(3) of this section. The person must furnish license verifications from each state in which the person is currently or previously licensed. A license renewal under this section is subject to the same requirements of §351.501 of the Act as a license applicant.]

~~[(6) Written notice of the impending license expiration will be sent to the licensee at the licensee's last known address, according to the records of the board.]~~

~~(6) [(7)] A licensee receiving a felony or misdemeanor criminal conviction as outlined under Occupations Code Chapter 53 [; including deferred adjudication or court ordered community or mandatory supervision, with or without an adjudication of guilt, or revocation of parole, probation or court ordered supervision, other than a Class C Misdemeanor traffic violation,] shall report the [order of] conviction [; deferred adjudication or court ordered community or mandatory supervision, or revocation of parole, probation, or supervision] on the next license renewal. This requirement is in addition to the 30 day reporting requirement in §277.5 of this title (relating to Convictions). This paragraph does not require the reporting of a Class C Misdemeanor traffic violation. The failure of a licensee to report a criminal conviction is deceit, dishonesty and misrepresentation in the practice of optometry and authorizes the Board [board] to take disciplinary action under §351.501 of the Act. The licensee shall furnish any document relating to the criminal conviction as requested by the Board.~~

~~(7) [(8)] Only an active licensee who has provided a complete fingerprint criminal history report to the Board is eligible to renew a license. [During the period 2018 to 2022, one-fifth of current active licensees who have not submitted the report will be notified each year by the Board to provide the report. Licensees so notified shall submit fingerprints to the authority authorized by the Department of Public Safety to take the fingerprints in the form required by that authority. A license will not be renewed until the notified licensee has complied with the requirement to submit fingerprints.]~~

(b) Mandatory Continuing Education for Renewal of License.

(1) The Board [board] may not issue a renewal license to a licensee who has not complied with the mandatory continuing education requirements unless an exemption provided by §275.1 of this title (relating to General Requirements) is applicable.

(2) If a licensee has not fulfilled the required continuing education requirements prior to the license renewal date, the license shall expire. To renew that expired license, the licensee may obtain and provide the Board [board] with certified [attendance] records that the licensee has, since the expiration of the license, completed sufficient hours of approved continuing education courses to satisfy any deficiency. Education obtained for renewal of an expired license cannot be applied toward subsequent renewal of license.

(3) The licensee cannot practice optometry until such time as education is obtained and the expired license has been renewed.

(4) The licensee must pay to the Board [board] the license renewal fee with a late penalty fee authorized by §351.304 of the Act, plus a penalty authorized by §351.308 of the Act [; in an amount equal to the amount of the license renewal fee].

(5) The Executive Director [executive director] shall determine if all requirements for renewal of license have been fulfilled, and will notify the licensee when the practice of optometry can resume.

(6) To practice optometry with an expired license shall constitute the practice of optometry without a license.

(c) Outstanding Administrative Penalty or Failure to Comply with Board Condition.

(1) The Board may refuse to renew a license to a person who has:

(A) not paid an administrative penalty owed to the Board at the time of renewal; or

(B) not complied with a term or condition of a disciplinary order or agreement issued by the Board.

(2) The Board may refuse to renew a license, until such time as:

(A) every administrative penalty payable on or before the time of renewal is paid; or

(B) all terms or conditions of a disciplinary order or agreement issued by the Board are satisfied.

§273.12. Profile Information.

(a) All licensees shall provide, on each application for renewal of license, the information listed in subsection (b). New licensees shall provide the information listed in subsection (b) prior to receiving a license.

(b) Each license holder is required to furnish:

(1) the name of the license holder and the address and telephone number of the license holder's primary practice location; and

(2) a personal email address.

~~[(2) whether the license holder's patient service areas, as applicable, are accessible to disabled persons, as defined by federal law;]~~

~~[(3) the type of language translating services, including translating services for a person with impairment of hearing, that the license holder provides for patients, clients, users, customers, or consumers, as applicable;]~~

~~[(4) if applicable, insurance information, including whether the license holder participates in the state child health plan under Chapter 62, Health and Safety Code, or the Medicaid program;]~~

~~[(5) the education and training received by the license holder, as required by the licensing entity;]~~

~~[(6) any specialty certification held by the license holder;]~~

~~[(7) the number of years the person has practiced as a license holder; and]~~

~~[(8) if applicable, any hospital affiliation of the license holder.]~~

~~[(c) The information listed in subsection (b) shall be furnished when requested by the Board on the license renewal form or, in the case of a new applicant, when requested by letter from the Board.]~~

~~[(d) The Board shall make the information available to the public, including posting the information on the Board's Internet website.]~~

§273.14. License Applications for Military Service Member, Military Veteran, and Military Spouse.

(a) Definitions.

(1) "Military service member" means a person who is on active duty.

(2) "Military spouse" means a person who is married to a military service member.

(3) "Military veteran" means a person who has served on active duty, who was discharged or released from active duty, and who was not dishonorably discharged.

(4) "Active duty" means ~~current~~ full-time military service in the armed forces of the United States or active duty military service as a member of the Texas military forces, as defined by §437.001, Government Code, or similar military service of another state.

(5) "Armed forces of the United States" means the army, navy, air force, space force, coast guard, or marine corps of the United States or a reserve unit of one of those branches of the armed forces.

(b) License eligibility requirements for applicants with military experience.

(1) Verified military service, training, or education will be credited toward the licensing requirements, other than an examination requirement, of an applicant who is a military service member or military veteran.

(2) This subsection does not apply if the applicant holds a restricted license issued by another jurisdiction or has an unacceptable criminal history.

(c) Alternate licensing procedure authorized by Texas Occupations Code §55.004 and §55.005.

(1) Applicants currently licensed in another state.

(A) Application.

(i) The military service member, military veteran or military spouse applicant must be licensed in good standing as a therapeutic optometrist or the equivalent in another state, the District of Columbia, or a territory of the United States that has licensing requirements that are substantially equivalent to the requirements of the ~~[Texas Optometry]~~ Act.

(ii) The military service member, military veteran or military spouse applicant shall submit a completed Military application, including the submission of ~~[a completed Federal Bureau of Investigation fingerprint card provided by the Board, official license verifications from each state in which the applicant is or was licensed, a certified copy of the applicant's birth certificate, a certified copy of the optometry school transcript granting the applicant a doctor of optometry degree, and]~~ proof of the applicant's status as a military service member, military veteran or military spouse along with all documents required under §271.2 of this title.

(iii) A military service member, military veteran, or military spouse licensed in another state is exempt from the application fee in §273.4 of this chapter ~~[title]~~ (relating to Fees (Not Refundable)). Such an applicant is not exempt from exam administration fees charged for an exam administered by an organization or person other than the Board.

(iv) A license issued under this subsection shall be a license to practice therapeutic optometry with the same obligations and duties required of a licensed therapeutic optometrist and subject to the same disciplinary requirements for that license.

(B) License Renewal.

(i) Initial military licenses expire on the second January 1 after the date the license is first issued. [A license issued under this subsection shall expire twelve months subsequent to the date the license is issued. If the license is timely renewed, the licensee may thereafter renew the license by paying the renewal fee not later than January 1 of each year. Beginning 2024, a license issued under this subsection shall expire 24 months subsequent to the date the license is issued.] If the initial license is timely renewed, the licensee may thereafter renew the license by paying the renewal fee prior to the expiration date set in §273.8 of this chapter ~~[title (relating to Renewal of License)]~~.

~~[(ii) Prior to renewing the license for the first time, the military service member, military veteran or military spouse licensee shall take and pass the Texas Jurisprudence Examination.]~~

~~[(ii) [(iii) With the exception of clause (ii) of this subparagraph, the] The requirements for renewing the license are the same as the requirements for renewing an active license.~~

(2) Requirements for license for military requirements for renewing an active service member, military veteran or military spouse applicant not currently licensed to practice optometry who was licensed in Texas within five years of the application submission.

(A) Application.

(i) The military service member, military veteran or military spouse applicant shall submit a completed Military application, including the submission of ~~[a completed Federal Bureau of Investigation fingerprint card provided by the Board, official license verifications from each state in which the applicant is or was licensed, a certified copy of the applicant's birth certificate, a certified copy of the optometry school transcript granting the applicant a doctor of optometry degree, and]~~ proof of the applicant's status as a military service member, military veteran or military spouse along with all documents required under §271.2 of this title.

(ii) An application fee in the same amount as the application fee set out in §273.4 of this chapter ~~[title]~~ must be submitted with the application.

(iii) A license issued under this subsection shall be a license to practice therapeutic optometry with the same obligations and duties required of a licensed therapeutic optometrist and subject to the same disciplinary requirements for that license.

(B) License Renewal.

(i) Initial military licenses expire on the second January 1 after the date the license is first issued. [A license issued under this subsection shall expire twelve months subsequent to the date the license is issued. If the license is timely renewed, the licensee may thereafter renew the license by paying the renewal fee not later than January 1 of each year. Beginning 2024, a license issued under this subsection shall expire 24 months subsequent to the date the license is issued.] If the initial license is timely renewed, the licensee may thereafter renew the license by paying the renewal fee prior to the expiration date set in §273.8 of this chapter ~~[title (relating to Renewal of License)]~~.

~~[(ii) Prior to renewing the license for the first time, the military service member, military veteran or military spouse licensee shall take and pass the Texas Jurisprudence Examination.]~~

~~[(ii) [(iii) With the exception of clause (ii) of this subparagraph, the] The requirements for renewing the license are the same as the requirements for renewing an active license.~~

(d) Alternative method to demonstrate competency. To protect the health and safety of the citizens of this state, a license to practice optometry requires the licensee to obtain a doctorate degree in optometry and passing scores on lengthy and complex nationally accepted examinations. An alternative method to demonstrate competency is not available at this time.

(e) Alternate licensing procedure for military spouse authorized by Texas Occupations Code §55.0041.

(1) Application.

(A) The military spouse applicant must be licensed in good standing as a therapeutic optometrist or the equivalent in another

state, the District of Columbia, or a territory of the United States that has licensing requirements that are substantially equivalent to the requirements of the [Texas Optometry] Act. For purposes of this subsection, the Board finds that every state and territory that issues a therapeutic license to a graduate of an accredited optometry school has licensing requirements that are substantially equivalent to the requirements of the [Texas Optometry] Act.

(B) The military spouse applicant shall submit:

- (i) proof of the spouse's residency in this state and a copy of the spouse's military identification card;
- (ii) a completed Federal Bureau of Investigation fingerprint card provided by the Board;
- (iii) an official license verification from the state in which the applicant is licensed that has licensing requirements substantially equivalent to the [Texas Optometry] Act; and
- (iv) application form [with proof of identity].

(2) License

(A) A license issued under this subsection:

- (i) shall be a license to practice therapeutic optometry with the same obligations and duties required of a licensed therapeutic optometrist and subject to the same disciplinary requirements for that license,
- (ii) will expire three years after the license is issued, or if occurring prior to the expiration of the three-year period, the date when the military spouse is no longer stationed at a military installation in this state, and
- (iii) may not be renewed.

(B) The application and license is exempt from the Texas Jurisprudence Examination and the application fee and initial license fee in §273.4 of this chapter [title].

§273.15. Retired License for Volunteer Charity Care.

(a) Retired License. The Board may issue a Retired License to optometrists or therapeutic optometrists whose only practice is volunteer charity care pursuant to this section.

(b) Application. An optometrist holding a current license may apply for a Retired License by submitting to the Board a completed application with the license fee required by §273.4 of this chapter (relating to Fees (Not Refundable)). There is no charge to apply. A Retired License will not be issued to applicants subject to current or pending disciplinary action. In determining whether to grant retired status, the board shall consider the age, years of practice, and status of the license holder at the time of the application. Applicants must supply proof that the continuing education requirements for a Retired License have been met in §275.1(g)(1) of this title (relating to General Requirements).

(c) Application by Expired Licensee. A former therapeutic optometrist whose license has expired for one year or more may apply for a Retired License by submitting to the Board a completed application with the license fee required by §273.4 of this chapter. There is no charge to apply. A Retired License will not be issued to applicants subject to current or pending disciplinary action. Applicants must supply proof of having met the continuing education requirements of §275.1(g)(2) of this title. An applicant for a Retired License whose license has been expired for five years or more must supply proof of a passing score on the jurisprudence examination taken within the one year period prior to the submission of the application. In determining whether to grant retired status, the Board shall consider the age, years

of practice, and status of the license holder at the time of the application.

(d) Scope of License. The holder of a Retired License may practice optometry or therapeutic optometry in the same manner as an active licensee of the Board, subject to the restrictions contained in this section. A holder of a Retired License may only practice optometry or therapeutic optometry when such practice is without compensation or expectation of compensation (except for the reimbursement of travel and supply expenses) as a direct service volunteer of a charitable organization.

(e) Charitable Organization. A charitable organization includes any bona fide charitable, religious, prevention of cruelty to children or animals, youth sports and youth recreational, neighborhood crime prevention or patrol, or educational organization (excluding fraternities, sororities, and secret societies), or other organization organized and operated exclusively for the promotion of social welfare by being primarily engaged in promoting the common good and general welfare of the people in a community, including these types of organizations with a §501(c)(3) or (4) exemption from federal income tax, some chambers of commerce, and volunteer centers certified by the Department of Public Safety.

(f) Renewal. A Retired License expires on the same date as a regular license. Prior to renewing the license, the licensee must supply proof that the continuing education requirements for a Retired License have been met. The license renewal fee is set in §273.4 of this chapter.

(g) Penalty. The holder of a Retired License shall not receive compensation for the practice of optometry. To do so constitutes the practice of optometry without a license and subjects the optometrist or therapeutic optometrist to the penalties imposed for this violation.

(h) Reinstatement of an Active License by a Holder of a Retired License. Retired licensees may apply for reinstatement by submitting to the Board a completed application with the application fee required by §273.4 of this chapter. Applicants must supply proof that the continuing education requirements for an active license have been met.

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 May 15, 2023.

TRD-202301788

Janice McCoy

Executive Director

Texas Optometry Board

Earliest possible date of adoption: July 2, 2023

For further information, please call: (512) 305-8500



TITLE 25. HEALTH SERVICES

PART 11. CANCER PREVENTION AND RESEARCH INSTITUTE OF TEXAS

CHAPTER 701. POLICIES AND PROCEDURES 25 TAC §701.3

The Cancer Prevention and Research Institute of Texas ("CPRI" or "the Institute") proposes amending 25 Texas Administrative Code §701.3(29) relating to the definition of "Grant

Progress Report" and §701.3(63) relating to the definition of "Scope of Work."

Background and Justification

CPRIT proposes a change to §701.3(63) to amend the defined term, "Scope of Work," to include "specific aims and subaims, if appropriate." Grant applicants submit a Scope of Work with their grant application and, if approved, the Scope of Work becomes part of the grant contract. Currently, the term includes project goals, objectives, timelines and milestones; the proposed amendment would add "aims and subaims." A Request for Applications will specify exactly what a grant applicant must submit to CPRIT, including goals and objectives or aims and subaims.

The proposed amendment to §701.3(29) that defines "Grant Progress Report" removes a reference to "goals and objectives" and replaces it with "Scope of Work" so that the term is used consistently throughout CPRIT's administrative rules. The amendment does not substantively change the meaning of "Grant Progress Report."

Fiscal Note

Kristen Pauling Doyle, Deputy Executive Officer and General Counsel for the Cancer Prevention and Research Institute of Texas, has determined that for the first five-year period the rule change is in effect, there will be no foreseeable implications relating to costs or revenues for state or local government due to enforcing or administering the rules.

Public Benefit and Costs

Ms. Doyle has determined that for each year of the first five years the rule change is in effect the public benefit anticipated due to enforcing the rule will be clarifying grantee reporting obligations and consequences.

Small Business, Micro-Business, and Rural Communities Impact Analysis

Ms. Doyle has determined that the rule change will not affect small businesses, micro businesses, or rural communities.

Government Growth Impact Statement

The Institute, in accordance with 34 Texas Administrative Code §11.1, has determined that during the first five years that the proposed rule change will be in effect:

- (1) the proposed rule change will not create or eliminate a government program;
- (2) implementation of the proposed rule change will not affect the number of employee positions;
- (3) implementation of the proposed rule change will not require an increase or decrease in future legislative appropriations;
- (4) the proposed rule change will not affect fees paid to the agency;
- (5) the proposed rule change will not create new rule;
- (6) the proposed rule change will not expand existing rule;
- (7) the proposed rule change will not change the number of individuals subject to the rule; and
- (8) The rule change is unlikely to have an impact on the state's economy. Although the change is likely to have a neutral impact on the state's economy, the Institute lacks enough data to predict the impact with certainty.

Submit written comments on the proposed rule changes to Ms. Kristen Pauling Doyle, General Counsel, Cancer Prevention and Research Institute of Texas, P.O. Box 12097, Austin, Texas 78711, no later than July 3, 2023. The Institute asks parties filing comments to indicate whether they support the rule revision proposed by the Institute and, if the party requests a change, to provide specific text for the proposed change. Parties may submit comments electronically to kdoyle@cpriti.texas.gov or by facsimile transmission to (512) 475-2563.

Statutory Authority

The Institute proposes the rule change under the authority of the Texas Health and Safety Code Annotated, §102.108, which provides the Institute with broad rule-making authority to administer the chapter. Ms. Doyle has reviewed the proposed amendment and certifies the proposal to be within the Institute's authority to adopt.

There is no other statute, article, or code affected by these rules.

§701.3. Definitions.

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

- (1) Advisory Committee--a committee of experts, including practitioners and patient advocates, created by the Oversight Committee to advise the Oversight Committee on issues related to cancer.
- (2) Allowable Cost--a cost that is reasonable, necessary for the proper and efficient performance and administration of the project, and allocable to the project.
- (3) Annual Public Report--the report issued by the Institute pursuant to Texas Health and Safety Code §102.052 outlining Institute activities, including Grant Awards, research accomplishments, future Program directions, compliance, and Conflicts of Interest actions.
- (4) Authorized Expense--cost items including honoraria, salaries and benefits, consumable supplies, other operating expenses, contracted research and development, capital equipment, construction or renovation of state or private facilities, travel, and conference fees and expenses.
- (5) Approved Budget--the financial expenditure plan for the Grant Award, including revisions approved by the Institute and permissible revisions made by the Grant Recipient. The Approved Budget may be shown by Project Year and detailed budget categories.
- (6) Authorized Signing Official (ASO)--the individual, including designated alternates, named by the Grant Applicant, who is authorized to act for the Grant Applicant or Grant Recipient in submitting the Grant Application and executing the Grant Contract and associated documents or requests.
- (7) Bylaws--the rules established by the Oversight Committee to provide a framework for its operation, management, and governance.
- (8) Cancer Prevention--a reduction in the risk of developing cancer, including early detection, control and/or mitigation of the incidence, disability, mortality, or post-diagnosis effects of cancer.
- (9) Cancer Prevention and Control Program--effective strategies and interventions for preventing and controlling cancer designed to reduce the incidence and mortality of cancer and to enhance the quality of life of those affected by cancer.
- (10) Cancer Prevention and Research Fund--the dedicated account in the general revenue fund consisting of legislative appropriations, gifts, grants, other donations, and earned interest.

(11) Cancer Research--research into the prevention, causes, detection, treatments, and cures for all types of cancer in humans, including basic mechanistic studies, pre-clinical studies, animal model studies, translational research, and clinical research to develop preventative measures, therapies, protocols, medical pharmaceuticals, medical devices or procedures for the detection, treatment, cure or substantial mitigation of all types of cancer and its effects in humans.

(12) Chief Compliance Officer--the individual employed by the Institute to monitor and report to the Oversight Committee regarding compliance with the Institute's statute and administrative rules. The term may also apply to an individual designated by the Chief Compliance Officer to fulfill the duty or duties described herein, unless the context clearly indicates otherwise.

(13) Chief Executive Officer--the individual hired by the Oversight Committee to perform duties required by the Institute's Statute or designated by the Oversight Committee. The term may apply to an individual designated by the Chief Executive Officer to fulfill the duty or duties described herein, unless the context clearly indicates otherwise.

(14) Chief Prevention Officer--the individual hired by the Chief Executive Officer to oversee the Institute's Cancer Prevention program, including the Grant Review Process, and to assist the Chief Executive Officer in collaborative outreach to further Cancer Research and Cancer Prevention. The term may also apply to an individual designated by the Chief Prevention Officer to fulfill the duty or duties described herein, unless the context clearly indicates otherwise.

(15) Chief Product Development Officer--the individual hired by Chief Executive Officer to oversee the Institute's Product Development program for drugs, biologicals, diagnostics, or devices arising from Cancer Research, including the Grant Review Process, and to assist the Chief Executive Officer in collaborative outreach to further Cancer Research and Cancer Prevention. The term may apply to an individual designated by the Chief Product Development Officer to fulfill the duty or duties described herein, unless the context clearly indicates otherwise.

(16) Chief Scientific Officer--the individual hired by the Chief Executive Officer to oversee the Institute's Cancer Research program, including the Grant Review Process, and to assist the Chief Executive Officer in collaborative outreach to further Cancer Research and Cancer Prevention. The term may apply to an individual designated by the Chief Scientific Officer to fulfill the duty or duties described herein, unless the context clearly indicates otherwise.

(17) Code of Conduct and Ethics--the code adopted by the Oversight Committee pursuant to Texas Health and Safety Code §102.109 to provide guidance related to the ethical conduct expected of Oversight Committee Members, Program Integration Committee Members, and Institute Employees.

(18) Compliance Program--a process to assess and ensure compliance by the Oversight Committee Members and Institute Employees with applicable laws, rules, and policies, including matters of ethics and standards of conduct, financial reporting, internal accounting controls, and auditing.

(19) Conflict(s) of Interest--a financial, professional, or personal interest held by the individual or the individual's Relative that is contrary to the individual's obligation and duty to act for the benefit of the Institute.

(20) Encumbered Funds--funds that are designated by a Grant Recipient for a specific purpose.

(21) Financial Status Report--form used to report all Grant Award related financial expenditures incurred in implementation of the Grant Award. This form may also be referred to as "FSR" or "Form 269-A."

(22) Grant Applicant--the public or private institution of higher education, as defined by §61.003, Texas Education Code, research institution, government organization, non-governmental organization, non-profit organization, other public entity, private company, individual, or consortia, including any combination of the aforementioned, that submits a Grant Application to the Institute. Unless otherwise indicated, this term includes the Principal Investigator or Program Director.

(23) Grant Application--the written proposal submitted by a Grant Applicant to the Institute in the form required by the Institute that, if successful, will result in a Grant Award.

(24) Grant Award--funding, including a direct company investment, awarded by the Institute pursuant to a Grant Contract providing money to the Grant Recipient to carry out the Cancer Research or Cancer Prevention project in accordance with rules, regulations, and guidance provided by the Institute.

(25) Grant Contract--the legal agreement executed by the Grant Recipient and the Institute setting forth the terms and conditions for the Cancer Research or Cancer Prevention Grant Award approved by the Oversight Committee.

(26) Grant Management System--the electronic interactive system used by the Institute to exchange, record, and store Grant Application and Grant Award information.

(27) Grant Mechanism--the specific Grant Award type.

(28) Grant Program--the functional area in which the Institute makes Grant Awards, including research, prevention and product development.

(29) Grant Progress Report--the required report submitted by the Grant Recipient at least annually and at the close of the grant award describing the activities undertaken to achieve the Scope of Work [goals and objectives] of the funded project and including information, data and program metrics. Unless the context clearly indicates otherwise, the Grant Progress Report also includes other required reports such as a Historically Underutilized Business and Texas Supplier form, a single audit determination form, an inventory report, a single audit determination form, a revenue sharing form, and any other reports or forms designated by the Institute.

(30) Grant Recipient--the entire legal entity responsible for the performance or administration of the Grant Award pursuant to the Grant Contract. Unless otherwise indicated, this term includes the Principal Investigator, Program Director, or Company Representative.

(31) Grant Review Cycle--the period that begins on the day that the Request for Applications is released for a particular Grant Mechanism and ends on the day that the Oversight Committee takes action on the Grant Award recommendations.

(32) Grant Review Process--the Institute's processes for Peer Review, Program Review and Oversight Committee approval of Grant Applications.

(33) Indirect Costs--the expenses of doing business that are not readily identified with a particular Grant Award, Grant Contract, project, function, or activity, but are necessary for the general operation of the Grant Recipient or the performance of the Grant Recipient's activities.

(34) Institute--the Cancer Prevention and Research Institute of Texas or CPRIT.

(35) Institute Employee--any individual employed by the Institute, including any individual performing duties for the Institute pursuant to a contract of employment. Unless otherwise indicated, the term does not include an individual providing services to the Institute pursuant to a services contract.

(36) Intellectual Property Rights--any and all of the following and all rights in, arising out of, or associated therewith, but only to the extent resulting from the Grant Award:

(A) The United States and foreign patents and utility models and applications therefore and all reissues, divisions, re-examinations, renewals, extensions, provisionals, continuations and such claims of continuations-in-part as are entitled to claim priority to the aforesaid patents or patent applications, and equivalent or similar rights anywhere in the world in Inventions and discoveries;

(B) All trade secrets and rights in know-how and proprietary information;

(C) All copyrights, whether registered or unregistered, and applications therefore, and all other rights corresponding thereto throughout the world excluding scholarly and academic works such as professional articles and presentations, lab notebooks, and original medical records; and

(D) All mask works, mask work registrations and applications therefore, and any equivalent or similar rights in semiconductor masks, layouts, architectures or topography.

(37) Invention--any method, device, process or discovery that is conceived and/or reduced to practice, whether patentable or not, by the Grant Recipient in the performance of work funded by the Grant Award.

(38) License Agreement--an understanding by which an owner of Technology and associated Intellectual Property Rights grants any right to make, use, develop, sell, offer to sell, import, or otherwise exploit the Technology or Intellectual Property Rights in exchange for consideration.

(39) Matching Funds--the Grant Recipient's Encumbered Funds equal to one-half of the Grant Award available and not yet expended that are dedicated to the research that is the subject of the Grant Award. For public and private institutions of higher education, this includes the dollar amount equivalent to the difference between the indirect cost rate authorized by the federal government for research grants awarded to the Grant Recipient and the five percent (5%) Indirect Cost limit imposed by §102.203(c), Texas Health and Safety Code.

(40) Numerical Ranking Score--the score given to a Grant Application by the Review Council that is substantially based on the final Overall Evaluation Score submitted by the Peer Review Panel, but also signifies the Review Council's view related to how well the Grant Application achieves program priorities set by the Oversight Committee, the overall Program portfolio balance, and any other criteria described in the Request for Applications.

(41) Overall Evaluation Score--the score given to a Grant Application during the Peer Review Panel review that signifies the reviewers' overall impression of the Grant Application. Typically it is the average of the scores assigned by two or more Peer Review Panel members.

(42) Oversight Committee--the Institute's governing body, composed of the nine individuals appointed by the Governor, Lieutenant Governor, and the Speaker of the House of Representatives.

(43) Oversight Committee Member--any person appointed to and serving on the Oversight Committee.

(44) Patient Advocate--a trained individual who meets the qualifications set by the Institute and is appointed to a Scientific Research and Prevention Programs Committee to specifically represent the interests of cancer patients as part of the Peer Review of Grant Applications assigned to the individual's committee.

(45) Peer Review--the review process performed by Scientific Research and Prevention Programs Committee members and used by the Institute to provide guidance and recommendations to the Program Integration Committee and the Oversight Committee in making decisions for Grant Awards. The process involves the consistent application of standards and procedures to produce a fair, equitable, and objective evaluation of scientific and technical merit, as well as other relevant aspects of the Grant Application. When used herein, the term applies individually or collectively, as the context may indicate, to the following review process(es): Preliminary Evaluation, Individual Evaluation by Primary Reviewers, Peer Review Panel discussion and Review Council prioritization.

(46) Peer Review Panel--a group of Scientific Research and Prevention Programs Committee members conducting Peer Review of assigned Grant Applications.

(47) Prevention Review Council--the group of Scientific Research and Prevention Programs Committee members designated as the chairpersons of the Peer Review Panels that review Cancer Prevention program Grant Applications. This group includes the Review Council chairperson.

(48) Primary Reviewer--a Scientific Research and Prevention Programs Committee member responsible for individually evaluating all components of the Grant Application, critiquing the merits according to explicit criteria published in the Request for Applications, and providing an individual Overall Evaluation Score that conveys the general impression of the Grant Application's merit.

(49) Principal Investigator, Program Director, or Company Representative--the single individual designated by the Grant Applicant or Grant Recipient to have the appropriate level of authority and responsibility to direct the project to be supported by the Grant Award.

(50) Product Development Review Council--the group of Scientific Research and Prevention Programs Committee Members designated as the chairpersons of the Peer Review Panels that review Grant Applications for the development of drugs, biologics, diagnostics, or devices arising from earlier-stage Cancer Research. This group includes the Review Council chairperson.

(51) Product Development Prospects--the potential for development of products, services, or infrastructure to support Cancer Research efforts, including but not limited to pre-clinical, clinical, manufacturing, and scale up activities.

(52) Program Income--income from fees for services performed, from the use or rental of real or personal property acquired with Grant Award funds, and from the sale of commodities or items fabricated under the Grant Contract. Except as otherwise provided, Program Income does not include rebates, credits, discounts, refunds, etc. or the interest earned on any of these items. Interest otherwise earned in excess of \$250 on Grant Award funds is considered Program Income.

(53) Program Integration Committee--the group composed of the Chief Executive Officer, the Chief Scientific Officer, the Chief Product Development Officer, the Commissioner of State Health Services, and the Chief Prevention Officer that is responsible for submit-

ting to the Oversight Committee the list of Grant Applications the Program Integration Committee recommends for Grant Awards.

(54) Project Results--all outcomes of a Grant Award, including publications, knowledge gained, additional funding generated, and any and all Technology and associated Intellectual Property Rights.

(55) Project Year--the intervals of time (usually 12 months each) into which a Grant Award is divided for budgetary, funding, and reporting purposes. The effective date of the Grant Contract is the first day of the first Project Year.

(56) Real Property--land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.

(57) Relative--a person related within the second degree by consanguinity or affinity determined in accordance with §§573.021 - 573.025, Texas Government Code. For purposes of this definition:

(A) examples of an individual within the second degree by consanguinity are a child, grandchild, parent, grandparent, brother, sister;

(B) a husband and wife are related to each other in the first degree of affinity. For other relationship by affinity, the degree of relationship is the same as the degree of the underlying relationship by consanguinity;

(C) an individual adopted into a family is considered a Relative on the same basis as a natural born family member; and

(D) an individual is considered a spouse even if the marriage has been dissolved by death or divorce if there are surviving children of that marriage.

(58) Request for Applications--the invitation released by the Institute seeking the submission of Grant Applications for a particular Grant Mechanism. It provides information relevant to the Grant Award to be funded, including funding amount, Grant Review Process information, evaluation criteria, and required Grant Application components. The Request for Applications includes any associated written instructions provided by the Institute and available to all Grant Applicants.

(59) Review Council--the term used to generally refer to one or more of the Prevention Review Council, the Product Development Review Council, or Scientific Review Council.

(60) Scientific Research and Prevention Programs Committee--a group of experts in the field of Cancer Research, Cancer Prevention or Product Development, including trained Patient Advocates, appointed by the Chief Executive Officer and approved by the Oversight Committee for the purpose of conducting Peer Review of Grants Applications and recommending Grant Awards. A Peer Review Panel is a Scientific Research and Prevention Programs Committee, as is a Review Council.

(61) Scientific Research and Prevention Programs Committee Member--an individual appointed by the Chief Executive Officer and approved by the Oversight Committee to serve on a Scientific Research and Prevention Programs Committee. Peer Review Panel Members are Scientific Research and Prevention Programs Committee Members, as are Review Council Members.

(62) Scientific Review Council--the group of Scientific Research and Prevention Programs Committee Members designated as the chairpersons of the Peer Review Panels that review Cancer Research Grant Applications. This group includes the Review Council chairperson.

(63) Scope of Work--the goals and objectives or specific aims and subaims, if appropriate, of the Cancer Research or Cancer Prevention project, including the timeline and milestones to be achieved.

(64) Senior Member or Key Personnel--the Principal Investigator, Project Director or Company Representative and other individuals who contribute to the scientific development or execution of a project in a substantive, measurable way, whether or not the individuals receive salary or compensation under the Grant Award.

(65) Technology--any and all of the following resulting or arising from work funded by the Grant Award:

(A) Inventions;

(B) Third-Party Information, including but not limited to data, trade secrets and know-how;

(C) databases, compilations and collections of data;

(D) tools, methods and processes; and

(E) works of authorship, excluding all scholarly works, but including, without limitation, computer programs, source code and executable code, whether embodied in software, firmware or otherwise, documentation, files, records, data and mask works; and all instantiations of the foregoing in any form and embodied in any form, including but not limited to therapeutics, drugs, drug delivery systems, drug formulations, devices, diagnostics, biomarkers, reagents and research tools.

(66) Texas Cancer Plan--a coordinated, prioritized, and actionable framework that helps to guide statewide efforts to fight the human and economic burden of cancer in Texas.

(67) Third-Party Information--generally, all trade secrets, proprietary information, know-how and non-public business information disclosed to the Institute by Grant Applicant, Grant Recipient, or other individual external to the Institute.

(68) Tobacco--all forms of tobacco products, including but not limited to cigarettes, cigars, pipes, water pipes (hookah), bidis, kreteks, electronic cigarettes, smokeless tobacco, snuff and chewing tobacco.

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 May 19, 2023.

TRD-202301843

Heidi McConnell

Chief Operating Officer

Cancer Prevention and Research Institute of Texas

Earliest possible date of adoption: July 2, 2023

For further information, please call: (512) 305-8487



CHAPTER 703. GRANTS FOR CANCER PREVENTION AND RESEARCH

25 TAC §§703.6, 703.7, 703.10, 703.21, 703.25

The Cancer Prevention and Research Institute of Texas ("CPRIT" or "the Institute") proposes amending 25 Texas Administrative Code §§703.6, 703.7, 703.10, 703.21, and 703.25 to consistently use the term "Scope of Work" throughout the Chapter.

Background and Justification

Section 701.3 defines "Scope of Work" and currently includes the goals, objectives, timelines and milestones of a grant project. The proposed amendments to Chapter 703 replace inconsistent iterations of goals and objectives with the consistent use of Scope of Work. The proposed amendments do not change any substantive requirements in Chapter 703.

Fiscal Note

Kristen Pauling Doyle, Deputy Executive Officer and General Counsel for the Cancer Prevention and Research Institute of Texas, has determined that for the first five-year period the rule change is in effect, there will be no foreseeable implications relating to costs or revenues for state or local government due to enforcing or administering the rules.

Public Benefit and Costs

Ms. Doyle has determined that for each year of the first five years the rule change is in effect the public benefit anticipated due to enforcing the rule will be clarifying grantee reporting obligations and consequences.

Small Business, Micro-Business, and Rural Communities Impact Analysis

Ms. Doyle has determined that the rule change will not affect small businesses, micro businesses, or rural communities.

Government Growth Impact Statement

The Institute, in accordance with 34 Texas Administrative Code §11.1, has determined that during the first five years that the proposed rule change will be in effect:

- (1) the proposed rule change will not create or eliminate a government program;
- (2) implementation of the proposed rule change will not affect the number of employee positions;
- (3) implementation of the proposed rule change will not require an increase or decrease in future legislative appropriations;
- (4) the proposed rule change will not affect fees paid to the agency;
- (5) the proposed rule change will not create new rule;
- (6) the proposed rule change will not expand existing rule;
- (7) the proposed rule change will not change the number of individuals subject to the rule; and
- (8) The rule change is unlikely to have an impact on the state's economy. Although the change is likely to have a neutral impact on the state's economy, the Institute lacks enough data to predict the impact with certainty.

Submit written comments on the proposed rule changes to Ms. Kristen Pauling Doyle, General Counsel, Cancer Prevention and Research Institute of Texas, P.O. Box 12097, Austin, Texas 78711, no later than July 3, 2023. The Institute asks parties filing comments to indicate whether they support the rule revision proposed by the Institute and, if the party requests a change, to provide specific text for the proposed change. Parties may submit comments electronically to kdoyle@cprit.texas.gov or by facsimile transmission to (512) 475-2563.

Statutory Authority

The Institute proposes the rule change under the authority of the Texas Health and Safety Code Annotated, §102.108, which provides the Institute with broad rule-making authority to administer the chapter. Ms. Doyle has reviewed the proposed amendment and certifies the proposal to be within the Institute's authority to adopt.

There is no other statute, article, or code affected by these rules.

§703.6. Grant Review Process.

(a) For all Grant Applications that are not administratively withdrawn by the Institute for noncompliance or otherwise withdrawn by the Grant Applicant, the Institute shall use a two-stage Peer Review process.

(1) The Peer Review process, as described herein, is used to identify and recommend meritorious Cancer Research projects, including those projects with Cancer Research Product Development prospects, and evidence-based Cancer Prevention and Control projects for Grant Award consideration by the Program Integration Committee and the Oversight Committee.

(2) Peer Review will be conducted pursuant to the requirements set forth in Chapter 702 of this title (relating to Institute Standards on Ethics and Conflicts, Including the Acceptance of Gifts and Donations to the Institute) and Chapter 102, Texas Health and Safety Code.

(b) The two stages of the Peer Review Process used by the Institute are:

(1) Evaluation of Grant Applications by Peer Review Panels; and

(2) Prioritization of Grant Applications by the Prevention Review Council, the Product Development Review Council, or the Scientific Review Council, as may be appropriate for the Grant Program.

(c) Except as described in subsection (e) of this section, the Peer Review Panel evaluation process encompasses the following actions, which will be consistently applied:

(1) The Institute distributes all Grant Applications submitted for a particular Grant Mechanism to one or more Peer Review Panels.

(2) The Peer Review Panel chairperson assigns each Grant Application to no less than two panel members that serve as the Primary Reviewers for the Grant Application. Assignments are made based upon the expertise and background of the Primary Reviewer in relation to the Grant Application.

(3) The Primary Reviewer is responsible for individually evaluating all components of the Grant Application, critiquing the merits according to explicit criteria published in the Request for Applications, and providing an individual Overall Evaluation Score that conveys the Primary Reviewer's general impression of the Grant Application's merit. The Primary Reviewers' individual Overall Evaluation Scores are averaged together to produce a single initial Overall Evaluation Score for the Grant Application.

(4) The Peer Review Panel meets to discuss the Grant Applications assigned to the Peer Review Panel. If there is insufficient time to discuss all Grant Applications, the Peer Review Panel chairperson determines the Grant Applications to be discussed by the panel. The chairperson's decision is based largely on the Grant Application's initial Overall Evaluation Score; however, a Peer Review Panel member may request that a Grant Application be discussed by the Peer Review Panel.

(A) If a Grant Application is not discussed by the Peer Review Panel, then the initial Overall Evaluation Score serves as the final Overall Evaluation Score for the Grant Application. The Grant Application is not considered further during the Grant Review Cycle.

(B) If a Grant Application is discussed by the Peer Review Panel, each Peer Review Panel member submits a score for the Grant Application based on the panel member's general impression of the Grant Application's merit and accounting for the explicit criteria published in the Request for Applications. The submitted scores are averaged together to produce the final Overall Evaluation Score for the Grant Application.

(i) The panel chairperson participates in the discussion but does not score Grant Applications.

(ii) A Primary Reviewer has the option to revise his or her score for the Grant Application after panel discussion or to keep the same score submitted during the initial review.

(C) If the Peer Review Panel recommends changes to the Grant Award funds amount requested by the Grant Applicant or to the Scope of Work [~~goals and objectives or timeline~~] for the proposed project, then the recommended changes and explanation shall be recorded at the time the final Overall Evaluation Score is set.

(5) At the conclusion of the Peer Review Panel evaluation, the Peer Review Panel chairperson submits to the appropriate Review Council a list of Grant Applications discussed by the panel ranked in order by the final Overall Evaluation Score. Any changes to the Grant Award funding amount or to the Scope of Work [~~project goals and objectives or timeline~~] recommended by the Peer Review Panel shall be provided to the Review Council at that time.

(d) The Review Council's prioritization process for Grant Award recommendations encompasses the following actions, which will be consistently applied:

(1) The Review Council prioritizes the Grant Application recommendations across all the Peer Review Panels by assigning a Numerical Ranking Score to each Grant Application that was discussed by a Peer Review Panel. The Numerical Ranking Score is substantially based on the final Overall Evaluation Score submitted by the Peer Review Panel, but also takes into consideration how well the Grant Application achieves program priorities set by the Oversight Committee, the overall Program portfolio balance, and any other criteria described in the Request for Applications.

(2) The Review Council's recommendations are submitted simultaneously to the presiding officers of the Program Integration Committee and Oversight Committee. The recommendations, listed in order by Numerical Ranking Score, shall include:

(A) An explanation describing how the Grant Application meets the Review Council's standards for Grant Award funding;

(B) The final Overall Evaluation Score assigned to the Grant Application by the Peer Review Panel, including an explanation for ranking one or more Grant Applications ahead of another Grant Application with a more favorable final Overall Evaluation Score; and

(C) The specified amount of the Grant Award funding for each Grant Application, including an explanation for recommended changes to the Grant Award funding amount or to the Scope of Work [~~goals and objectives or timeline~~].

(3) A Grant Award recommendation is not final until the Review Council formally submits the recommendation to the presiding officers of the Program Integration Committee and the Oversight Committee. The Program Integration Committee, and, if appropriate, the

Oversight Committee must make a final decision on the Grant Award recommendation in the same state fiscal year that the Review Council submits its final recommendation.

(e) Circumstances relevant to a particular Grant Mechanism or to a Grant Review Cycle may justify changes to the dual-stage Peer Review process described in subsections (c) and (d) of this section. Peer Review process changes the Institute may implement are described in this subsection. The list is not intended to be exhaustive. Any material changes to the Peer Review process, including those listed in this subsection, shall be described in the Request for Applications or communicated to all Grant Applicants.

(1) The Institute may use a preliminary evaluation process if the volume of Grant Applications submitted pursuant to a specific Request for Applications is such that timely review may be impeded. The preliminary evaluation will be conducted after Grant Applications are assigned to Peer Review Panels but prior to the initial review described in subsection (c) of this section. The preliminary evaluation encompasses the following actions:

(A) The criteria and the specific Grant Application components used for the preliminary evaluation shall be stated in the Request for Applications;

(B) No less than two Peer Review Panel members are assigned to conduct the preliminary evaluation for a Grant Application and provide a preliminary score that conveys the general impression of the Grant Application's merit pursuant to the specified criteria; and

(C) The Peer Review Panel chairperson is responsible for determining the Grant Applications that move forward to initial review as described in subsection (c) of this section. The decision will be based upon preliminary evaluation scores. A Grant Application that does not move forward to initial review will not be considered further, and the average of the preliminary evaluation scores received becomes the final Overall Evaluation Score for the Grant Application.

(2) The Institute shall assign all Grant Applications submitted for recruitment of researchers and clinicians to the Scientific Review Council.

(A) The Scientific Review Council members review all components of the Grant Application, evaluate the merits according to explicit criteria published in the Request for Applications, and, after discussion by the Review Council members, provide an individual Overall Evaluation Score that conveys the Review Council member's recommendation related to the proposed recruitment.

(B) The individual Overall Evaluation Scores are averaged together for a final Overall Evaluation Score for the Application.

(C) If more than one recruitment Grant Application is reviewed by the Scientific Review Council during the Grant Review Cycle, then the Scientific Review Council shall assign a Numerical Ranking Score to each Grant Application to convey its prioritization ranking.

(D) If the Scientific Review Council recommends a change to the Grant Award funds requested by the Grant Application, then the recommended change and explanation shall be recorded at the time the final Overall Evaluation Score is set.

(E) The Scientific Review Council's recommendations shall be provided to the presiding officer of the Program Integration Committee and to the Oversight Committee pursuant to the process described in subsection (d) of this section.

(3) The Institute may assign continuation Grant Applications to the appropriate Review Council.

(A) The Review Council members review all components of the Grant Application, evaluate the merits according to explicit criteria published in the Request for Applications, and, after discussion by the Review Council members, provide an individual Overall Evaluation Score that conveys the Review Council member's recommendation related to the progress and continued funding.

(B) The individual Overall Evaluation Scores are averaged together for a final Overall Evaluation Score for the Application.

(C) If more than one continuation Grant Application is reviewed by the Review Council during the Grant Review Cycle, then the Review Council shall assign a Numerical Ranking Score to each continuation Grant Application to convey its prioritization ranking.

(D) If the Review Council recommends a change to the Grant Award funds or to the Scope of Work [~~scope of work or timeline~~] requested by the continuation Grant Application, then the recommended change and explanation shall be recorded at the time the final Overall Evaluation Score is set.

(E) The Review Council's recommendations shall be provided to the presiding officer of the Program Integration Committee and to the Oversight Committee pursuant to the process described in subsection (d) of this section.

(4) The Institute's Peer Review process described in subsections (c) and (d) of this section may include the following additional process steps for Product Development of Cancer Research Grant Applications:

(A) A Grant Applicant may be invited to deliver an in-person presentation to the Peer Review Panel. The Product Development Review Council chairperson is responsible for deciding which Grant Applicants will make in-person presentations. The decision is based upon the initial Overall Evaluation Scores of the primary reviewers following a discussion with Peer Review Panel members, as well as explicit criteria published in the Request for Applications.

(i) Peer Review Panel members may submit questions to be addressed by the Grant Applicant at the in-person presentation.

(ii) A Grant Application that is not presented in-person will not be considered further. The average of the primary reviewers' initial Overall Evaluation Scores will be the final Overall Evaluation Score for the Grant Application.

(iii) Following the in-person presentation, each Peer Review Panel member submits a score for the Grant Application based on the panel member's general impression of the Grant Application's merit and accounting for the explicit criteria published in the Request for Applications. The submitted scores are averaged together to produce the final Overall Evaluation Score for the Grant Application.

(B) A Grant Application may undergo business operations and management due diligence review and an intellectual property review. The Peer Review Panel submits a list of applications recommended for due diligence review to the Product Development Review Council. The Product Development Review Council decides which Grant Applications submitted by the Peer Review Panel will undergo business operations and management due diligence and intellectual property review. The decision is based upon the Grant Application's final Overall Evaluation Score, but also takes into consideration how well the Grant Application achieves program priorities set by the Oversight Committee, the overall Program portfolio balance, and any other criteria described in the Request for Applications. A Grant Application that is not recommended for due diligence and intellectual property review will not be considered further.

(i) Business operations and management due diligence may be conducted by an outside vendor, contracted by the Institute or by members of the Product Development Review Council.

(ii) It will be at the Institute's discretion as to who to use to perform business operations and management due diligence; factors may include volume of work and expertise required.

(C) After receipt of the business operations and management due diligence and intellectual property reviews for a Grant Application, the Product Development Review Council and the Primary Reviewers meet to determine whether to recommend the Grant Application for a Grant Award based upon the information set forth in the due diligence and intellectual property reviews. The Product Development Review Council may recommend changes to the Grant Award budget and Scope of Work. [~~goals and objectives or timeline~~]

(D) The Product Development Review Council assigns a Numerical Ranking Score to each Grant Application recommended for a Grant Award.

(f) Institute Employees and Oversight Committee members may attend Peer Review Panel and Review Council meetings. If an Institute Employee or an Oversight Committee member attends a Peer Review Panel meeting or a Review Council meeting, the attendance shall be recorded and the Institute Employee or Oversight Committee member shall certify in writing compliance with the Institute's Conflict of Interest rules. The Institute Employee's and Oversight Committee member's attendance at the Peer Review Panel meeting or Review Council meeting is subject to the following restrictions:

(1) Unless waived pursuant to the process described in Chapter 702, §702.17 of this title (relating to Exceptional Circumstances Requiring Participation), Institute Employees and Oversight Committee members shall not be present for any discussion, vote, or other action taken related to a Grant Applicant if the Institute Employee or Oversight Committee member has a Conflict of Interest with that Grant Applicant; and

(2) The Institute Employee or Oversight Committee member shall not participate in a discussion of the merits, vote, or other action taken related to a Grant Application, except to answer technical or administrative questions unrelated to the merits of the Grant Application and to provide input on the Institute's Grant Review Process.

(g) The Institute's Chief Compliance Officer shall observe meetings of the Peer Review Panel and Review Council where Grant Applications are discussed.

(1) The Chief Compliance Officer shall document that the Institute's Grant Review Process is consistently followed, including observance of the Institute's established Conflict of Interest rules, and that participation by Institute employees, if any, is limited to providing input on the Institute's Grant Review Process and responding to committee questions unrelated to the merits of the Grant Application. Institute Program staff shall not participate in a discussion of the merits, vote, or any other action taken related to a Grant Application.

(2) The Chief Compliance Officer shall report to the Oversight Committee prior to a vote on the award recommendations specifying issues, if any, that are inconsistent with the Institute's established Grant Review Process.

(3) Nothing herein shall prevent the Institute from contracting with an independent third party to serve as a neutral observer of meetings of the Peer Review Panel and/or the Review Council where Grant Applications are discussed and to assume the reporting responsibilities of the Chief Compliance Officer described in this subsection. In the event that the independent third party observes the meeting of the

Peer Review Panel and/or the Review Council, then the independent third party reviewer shall issue a report to the Chief Compliance Officer specifying issues, if any, that are inconsistent with the Institute's established Grant Review Process.

(h) Excepting a finding of an undisclosed Conflict of Interest as set forth in §703.9 of this chapter (relating to Limitation on Review of Grant Process), the Review Council's decision to not include a Grant Application on the prioritized list of Grant Applications submitted to the Program Integration Committee and the Oversight Committee is final. A Grant Application not included on the prioritized list created by the Review Council shall not be considered further during the Grant Review Cycle.

(i) At the time that the Peer Review Panel or the Review Council concludes its tasks for the Grant Review Cycle, each member shall certify in writing that the member complied with the Institute's Conflict of Interest rules. An Institute Employee or an Oversight Committee member attending one or more Peer Review Panel meetings during the Grant Review Cycle shall certify compliance with the Institute's Conflict of Interest rules.

(j) The Institute shall retain a review record for a Grant Application submitted to the Institute, even if the Grant Application did not receive a Grant Award. Such records will be retained by the Institute's electronic Grant Management System. The records retained by the Institute must include the following information:

(1) The final Overall Evaluation Score and Numerical Ranking Score, if applicable, assigned to the Grant Application;

(2) The specified amount of the Grant Award funding for the Grant Application, including an explanation for recommended changes to the Grant Award funding amount or to the Scope of Work [goals and objectives or timeline];

(3) The Scientific Research and Prevention Programs Committee that reviewed the Grant Application;

(4) Conflicts of Interest, if any, with the Grant Application identified by a member of the Scientific Research and Prevention Programs Committee, the Review Council, the Program Integration Committee, or the Oversight Committee; and

(5) Documentation of steps taken to recuse any member or members from the Grant Review Process because of disclosed Conflicts of Interest.

(k) For purposes of this rule, a Peer Review Panel chairperson or a Review Council chairperson that is unable to carry out his or her assigned duties due to a Conflict of Interest with regard to one or more Grant Applications or for any other reason may designate a co-chairperson from among the appointed Scientific Research and Prevention Programs committee members to fulfill the chairperson role. Such designation shall be recorded in writing and include the specific time and extent of the designation.

§703.7. Program Integration Committee Funding Recommendation.

(a) The Institute uses a Program Review process undertaken by the Institute's Program Integration Committee to identify and recommend for funding a final list of meritorious Cancer Research projects, including those projects with Cancer Research Product Development prospects, and evidence-based Cancer Prevention and Control Program projects that are in the best overall interest of the State.

(b) Program Review shall be conducted pursuant to the requirements set forth in Chapter 702 of this title (relating to Institute Standards on Ethics and Conflicts, Including the Acceptance of Gifts and Donations to the Institute) and Chapter 102, Texas Health and Safety Code.

(c) The Program Integration Committee shall meet pursuant to a schedule established by the Chief Executive Officer, who serves as the Committee's presiding officer, to consider the prioritized list of Grant Applications submitted by the Prevention Review Council, the Product Development Review Council, or the Scientific Review Council.

(d) The Program Integration Committee shall approve by a majority vote a final list of Grant Applications recommended for Grant Awards to be provided to the Oversight Committee, including a list of Grant Applications, if any, that have been deferred until a future meeting of the Program Integration Committee. In composing the final list of Grant Applications recommended for Grant Award funding, the Program Integration Committee shall:

(1) Substantially base the list upon the Grant Award recommendations submitted by the Review Council.

(2) To the extent possible, give priority for funding to Grant Applications that:

(A) Could lead to immediate or long-term medical and scientific breakthroughs in the area of Cancer Prevention or cures for cancer;

(B) Strengthen and enhance fundamental science in Cancer Research;

(C) Ensure a comprehensive coordinated approach to Cancer Research and Cancer Prevention;

(D) Are interdisciplinary or interinstitutional;

(E) Address federal or other major research sponsors' priorities in emerging scientific or Technology fields in the area of Cancer Prevention, or cures for cancer;

(F) Are matched with funds available by a private or nonprofit entity and institution or institutions of higher education;

(G) Are collaborative between any combination of private and nonprofit entities, public or private agencies or institutions in this state, and public or private institutions outside this state;

(H) Have a demonstrable economic development benefit to this state;

(I) Enhance research superiority at institutions of higher education in this state by creating new research superiority, attracting existing research superiority from institutions not located in this state and other research entities, or enhancing existing research superiority by attracting from outside this state additional researchers and resources;

(J) Expedite innovation and commercialization, attract, create, or expand private sector entities that will drive a substantial increase in high-quality jobs, and increase higher education applied science or Technology research capabilities; and

(K) Address the goals of the Texas Cancer Plan.

(3) Document the factors considered in making the Grant Award recommendations, including any factors not listed in paragraph (2) of this subsection;

(4) Explain in writing the reasons for not recommending a Grant Application that was recommended for a Grant Award by the Review Council or for deferring a Grant Application recommendation until a future meeting date;

(5) Specify the amount of Grant Award funding for each Grant Application.

(A) Unless otherwise specifically stated, the Program Integration Committee adopts the changes to the Grant Award amount recommended by the Review Council.

(B) If the Program Integration Committee approves a change in the Grant Award amount that was not recommended by the Review Council, then the Grant Award amount and a written explanation for the change shall be provided.

(6) Specify changes, if any, to the Grant Application's Scope of Work [goals and objectives or timeline] recommended for a Grant Award and provide an explanation for the changes made;

(7) Address how the funding recommendations meet the annual priorities for Cancer Prevention, Cancer Research and Product Development programs and affect the Institute's overall Grant Award portfolio established by the Oversight Committee; and

(8) Provide a list of deferred Grant Applications, if any.

(e) In the event that the Program Integration Committee's vote on the final list of Grant Award recommendations or deferrals is not unanimous, then the Program Integration Committee Member or Members not voting with the majority may submit a written explanation to the Oversight Committee for the vote against the final list of Grant Award recommendations or deferrals. The explanation may include the Program Integration Committee Member or Members' recommended prioritized list of Grant Award recommendations or deferrals.

(f) The Program Integration Committee's decision to not include a Grant Application on the prioritized list of Grant Applications submitted to the Oversight Committee is final. A Grant Application not included on the prioritized list created by the Program Integration Committee shall not be considered further during the Grant Review Cycle, except for the following:

(1) In the event that the Program Integration Committee's vote on the final list of Grant Award recommendations is not unanimous, then, upon a motion of an Oversight Committee Member, the Oversight Committee may also consider the Grant Award recommendations submitted by the non-majority Program Integration Committee Member or Members;

(2) A finding of an undisclosed Conflict of Interest as set forth in §703.9 of this chapter (relating to Limitation on Review of Grant Process); or

(3) A decision by the Program Integration Committee to defer a decision to include a Grant Application on the prioritized list of Grant Applications submitted to the Oversight Committee until a future meeting of the Program Integration Committee, subject to subsection (k).

(g) The Chief Compliance Officer shall attend and observe Program Integration Committee meetings to document compliance with Chapter 102, Texas Health and Safety Code and the Institute's administrative rules.

(h) At the time that the Program Integration Committee's final Grant Award recommendations are formally submitted to the Oversight Committee, the Chief Executive Officer shall prepare a written affidavit for each Grant Application recommended by the Program Integration Committee containing relevant information related to the Grant Application recommendation.

(1) Information to be provided in the Chief Executive Officer's affidavit may include:

(A) The Peer Review process for the recommended Grant Application, including:

(i) The Request for Applications applicable to the Grant Application;

(ii) The number of Grant Applications submitted in response to the Request for Applications;

(iii) The name of the Peer Review Panel reviewing the Grant Application;

(iv) Whether a preliminary review process was used by the Peer Review Panel for the Grant Mechanism in the Grant Review Cycle;

(v) An overview of the Conflict of Interest process applicable to the Grant Review Cycle noting any waivers granted; and

(vi) A list of all final Overall Evaluation Scores for all Grant Applications submitted pursuant to the same Grant Mechanism, de-identified by Grant Applicant;

(B) The final Overall Evaluation Score and Numerical Ranking Score assigned for the Grant Applications recommended during the Peer Review process; and

(C) A high-level summary of the business operations and management due diligence and intellectual property reviews, if applicable, conducted for a Cancer Research Product Development Grant Application.

(2) In the event that the Program Integration Committee's final Grant Award recommendations are not unanimous and the Program Integration Committee Member or Members in the non-majority recommend Grant Applications not included on the final list of Grant Award recommendations, then the Chief Executive Officer shall also prepare a written affidavit for each Grant Application recommended by the non-majority Program Integration Committee Member or Members.

(i) To the extent that the information or documentation for one Grant Application is the same for all Grant Applications recommended for Grant Award funding pursuant to the same Grant Mechanism, it shall be sufficient for the Chief Executive Officer to provide the information or documentation once and incorporate by reference in each subsequent affidavit.

(j) At least three business days prior to the Oversight Committee meeting held to consider the Grant Applications for Grant Award funding, the Chief Executive Officer shall provide a list of Grant Applications, if any, recommended for an advance of Grant Award funds upon execution of the Grant Contract. The list shall include the reasons supporting the recommendation to advance funds.

(k) The Program Integration Committee's decision to defer the final Grant Award recommendation for a Grant Application is only effective for the state fiscal year in which the Program Integration Committee's deferral decision is made.

(1) A Grant Application that is deferred by the Program Integration Committee and is pending a final Grant Award recommendation at the end of the state fiscal year shall be considered not recommended for a Grant Award without further action from the Program Integration Committee.

(2) A Grant Application that is deferred and pending a final Grant Award recommendation at the end of the state fiscal year may be resubmitted by the Grant Applicant in a subsequent review cycle. Such resubmission will not count against the resubmission limit, if any, stated in the Request for Applications.

§703.10. *Awarding Grants by Contract.*

(a) The Oversight Committee shall negotiate on behalf of the state regarding the awarding of grant funds and enter into a written contract with the Grant Recipient.

(b) The Oversight Committee may delegate Grant Contract negotiation duties to the Chief Executive Officer and the General Counsel for the Institute. The Chief Executive Officer may enter into a written contract with the Grant Recipient on behalf of the Oversight Committee.

(c) The Grant Contract shall include the following provisions:

(1) If any portion of the Grant Contract has been approved by the Oversight Committee to be used to build a capital improvement, the Grant Contract shall specify that:

(A) The state retains a lien or other interest in the capital improvement in proportion to the percentage of the Grant Award amount used to pay for the capital improvement; and

(B) If the capital improvement is sold, then the Grant Recipient agrees to repay to the state the Grant Award used to pay for the capital improvement, with interest, and share with the state a proportionate amount of any profit realized from the sale;

(2) Terms relating to Intellectual Property Rights and the sharing with the Institute of revenues generated by the sale, license, or other conveyance of such Project Results consistent with the standards established by this chapter;

(3) Terms relating to publication of materials created with Grant Award funds or related to the Cancer Research or Cancer Prevention project that is the subject of the Grant Award, including an acknowledgement of Institute funding and copyright ownership, if applicable:

(A) Acknowledgment of Institute funding must include the grant number of every Institute-funded grant contributing to the work memorialized in the publication; and

(B) Subparagraph (A) of this paragraph is effective beginning September 1, 2021;

(4) Repayment terms, including interest rates, to be enforced if the Grant Recipient has not used Grant Award funds for the purposes for which the Grant Award was intended;

(5) A statement that the Institute does not assume responsibility for the conduct of the Cancer Research or Cancer Prevention project, and that the conduct of the project and activities of all investigators are under the scope and direction of the Grant Recipient;

(6) A statement that the Cancer Research or Cancer Prevention project is conducted with full consideration for the ethical and medical implications of the project and that the project will comply with all federal and state laws regarding the conduct of the Cancer Research or Prevention project;

(7) Terms related to the Standards established by the Oversight Committee in Chapter 701 of this title (relating to Policies and Procedures) to ensure that Grant Recipients, to the extent reasonably possible, demonstrate good faith effort to purchase goods and services for the Grant Award project from suppliers in this state and from historically underutilized businesses as defined by Chapter 2161, Texas Government Code, and any other state law;

(8) An agreement by the Grant Recipient to submit to regular inspection reviews of the Grant Award project by Institute staff during normal business hours and upon reasonable notice to ensure compliance with the terms of the Grant Contract and continued merit of the project;

(9) An agreement by the Grant Recipient to submit Grant Progress Reports to the Institute on a schedule specified by the Grant Contract that includes information on a grant-by-grant basis quantifying the amount of additional research funding, if any, secured as a result of Institute funding;

(10) An agreement that, to the extent possible, the Grant Recipient will evaluate whether any new or expanded preclinical testing, clinical trials, Product Development, or manufacturing of any real or intellectual property resulting from the award can be conducted in this state, including the establishment of facilities to meet this purpose;

(11) An agreement that the Grant Recipient will abide by the Texas Grant Management Standards (TxGMS) published by the Comptroller of Public Accounts Statewide Procurement Division, if applicable, unless one or more standards conflicts with a provision of the Grant Contract, Chapter 102, Texas Health and Safety Code, or the Institute's administrative rules. Such interpretation of the Institute rules and TxGMS shall be made by the Institute;

(12) An agreement that the Grant Recipient is under a continuing obligation to notify the Institute of any adverse conditions that materially impact the Scope of Work [~~milestones and objectives included~~] in the Grant Contract;

(13) An agreement that the design, conduct, and reporting of the Cancer Research or Prevention project will not be biased by conflicting financial interest of the Grant Recipient or any individuals associated with the Grant Award. This duty is fulfilled by certifying that an appropriate written, enforced Conflict of Interest policy governs the Grant Recipient;

(14) An agreement regarding the amount, schedule, and requirements for payment of Grant Award funds, if such advance payments are approved by the Oversight Committee in accordance with this chapter. Notwithstanding the foregoing, the Institute may require that up to ten percent of the final tranche of funds approved for the Grant Award must be expended on a reimbursement basis. Such reimbursement payment shall not be made until close out documents described in this section and required by the Grant Contract have been submitted and approved by the Institute;

(15) An agreement to provide quarterly Financial Status Reports and supporting documentation for expenses submitted for reimbursement or, if appropriate, to demonstrate how advanced funds were expended;

(16) A statement certifying that, as of June 14, 2013, the Grant Recipient has not made and will not make a contribution, during the term of the Grant Contract, to the Institute or to any foundation established specifically to support the Institute;

(17) A statement specifying the agreed effective date of the Grant Contract and the period in which the Grant Award funds must be spent. If the effective date specified in the Grant Contract is different from the date the Grant Contract is signed by both parties, then the effective date shall control;

(18) A statement providing for reimbursement with Grant Award funds of expenses made prior to the effective date of the Grant Contract at the discretion of the Institute. Pre-contract reimbursement shall be made only in the event that:

(A) The expenses are allowable pursuant to the terms of the Grant Contract;

(B) The request is made in writing by the Grant Recipient and approved by the Chief Executive Officer; and

(C) The expenses to be reimbursed were incurred on or after the date the Grant Award recommendation was approved by the Oversight Committee;

(19) Requirements for closing out the Grant Contract at the termination date, including the submission of a Financial Status Report, a final Grant Progress Report, an equipment inventory, a HUB and Texas Business report, a revenue sharing form, a single audit determination report form and a list of contractual terms that extend beyond the termination date;

(20) A certification of dedicated Matching Funds equal to one-half of the amount of the Research Grant Award that includes the name of the Research Grant Award to which the matching funds are to be dedicated, as specified in Section §703.11 of this chapter (relating to Requirement to Demonstrate Available Funds for Cancer Research Grants);

(21) The project deliverables as described by the Grant Application and stated in the Scope of Work for the Grant Contract reflecting modifications, if any, approved during the Peer Review process or during Grant Contract negotiation;

(22) An agreement that the Grant Recipient shall notify the Institute and seek approval for a change in effort for any of the Senior Members or Key Personnel of the research or prevention team listed on the Grant Application, including any proposed temporary leave of absence of a Principal Investigator, Program Director, or Company Representative;

(23) An agreement that the Grant Recipient is legally responsible for the integrity of the fiscal and programmatic management of the organization; and

(24) An agreement that the Grant Recipient is responsible for the actions of its employees and other research collaborators, including third parties, involved in the project. The Grant Recipient is responsible for enforcing its standards of conduct, taking appropriate action on individual infractions, and, in the case of financial conflict of interest, informing the Institute if the infraction is related to a Grant Award.

(d) The Grant Recipient's failure to comply with the terms and conditions of the Grant Contract may result in termination of the Grant Contract, pursuant to the process prescribed in the Grant Contract, and trigger repayment of the Grant Award funds.

§703.21. Monitoring Grant Award Performance and Expenditures.

(a) The Institute, under the direction of the Chief Compliance Officer, shall monitor Grant Awards to ensure that Grant Recipients comply with applicable financial, administrative, and programmatic terms and conditions and exercise proper stewardship over Grant Award funds. Such terms and conditions include requirements set forth in statute, administrative rules, and the Grant Contract.

(b) Methods used by the Institute to monitor a Grant Recipient's performance and expenditures may include:

(1) Financial Status Reports Review--The Institute shall review Grant Award expenditures reported by Grant Recipients on the quarterly Financial Status Reports and supporting documents to determine whether expenses charged to the Grant Award are:

(A) Allowable, allocable, reasonable, necessary, and consistently applied regardless of the source of funds; and

(B) Adequately supported with documentation such as cost reports, receipts, third party invoices for expenses, or payroll information.

(2) Timely submission of Grant Award Reports--The Institute shall monitor the submission of all required reports and implement a process to ensure that Grant Award funds are not disbursed to a Grant Recipient with one or more delinquent reports.

(3) Grant Progress Reports--The Institute shall review Grant Progress Reports to determine whether sufficient progress is made consistent with the Scope of Work [~~scope of work and timeline~~] set forth in the Grant Contract.

(A) The Grant Progress Reports shall be submitted at least annually, but may be required more frequently pursuant to Grant Contract terms or upon request and reasonable notice of the Institute.

(B) Unless specifically stated otherwise herein, the annual Grant Progress Report shall be submitted within sixty (60) days after the anniversary of the effective date of the Grant Contract. The annual Grant Progress Report shall include at least the following information:

(i) An affirmative verification by the Grant Recipient of compliance with the terms and conditions of the Grant Contract;

(ii) A description of the Grant Recipient's progress made toward completing the Scope of Work [~~scope of work~~] specified by the Grant Contract, including information, data, and program metrics regarding the achievement of the Scope of Work [~~project goals and timelines~~];

(iii) The number of new jobs created and the number of jobs maintained for the preceding twelve month period as a result of Grant Award funds awarded to the Grant Recipient for the project;

(iv) An inventory of the equipment purchased for the project in the preceding twelve month period using Grant Award funds;

(v) A verification of the Grant Recipient's efforts to purchase from suppliers in this state more than 50 percent goods and services purchased for the project with grant funds;

(vi) A Historically Underutilized Businesses report;

(vii) Scholarly articles, presentations, and educational materials produced for the public addressing the project funded by the Institute;

(viii) The number of patents applied for or issued addressing discoveries resulting from the research project funded by the Institute;

(ix) A statement of the identities of the funding sources, including amounts and dates for all funding sources supporting the project;

(x) A verification of the amounts of Matching Funds dedicated to the research that is the subject of the Grant Award for the period covered by the annual report, which shall be submitted pursuant to the timeline in §703.11 of this title (relating to Requirement to Demonstrate Available Funds for Cancer Research Grants). In order to receive disbursement of grant funds, the most recently due verification of the amount of Matching Funds must be approved by CPRIT;

(xi) All financial information necessary to support the calculation of the Institute's share of revenues, if any, received by the Grant Recipient resulting from the project; and

(xii) A single audit determination form, which shall be submitted pursuant to the timeline in §703.13 of this title (relating to Audits and Investigations).

(C) Notwithstanding subparagraph (B) of this paragraph, in the event that the Grant Recipient and Institute execute

the Grant Contract after the effective date of the Grant Contract, the Chief Program Officer may approve additional time for the Grant Recipient to prepare and submit the outstanding reports. The approval shall be in writing and maintained in the Institute's electronic Grants Management System. The Chief Program Officer's approval may cover more than one report and more than one fiscal quarter.

(D) In addition to annual Grant Progress Reports, a final Grant Progress Report shall be filed no more than ninety (90) days after the termination date of the Grant Contract. The final Grant Progress Report shall include a comprehensive description of the Grant Recipient's progress made toward completing the Scope of Work [scope of work] specified by the Grant Contract, as well as other information specified by the Institute.

(E) The Grant Progress Report will be evaluated pursuant to criteria established by the Institute. The evaluation shall be conducted under the direction of the Chief Prevention Officer, the Chief Product Development Officer, or the Chief Scientific Officer, as may be appropriate. Required financial reports associated with the Grant Progress Report will be reviewed by the Institute's financial staff. In order to receive disbursement of grant funds, the final progress report must be approved by CPRIT.

(F) If the Grant Progress Report evaluation indicates that the Grant Recipient has not demonstrated progress in accordance with the Grant Contract, then the Chief Program Officer shall notify the Chief Executive Officer and the General Counsel for further action.

(i) The Chief Program Officer shall submit written recommendations to the Chief Executive Officer and General Counsel for actions to be taken, if any, to address the issue.

(ii) The recommended action may include termination of the Grant Award pursuant to the process described in §703.14 of this chapter (relating to Termination, Extension, and Close Out of Grant Contracts, and De-Obligation of Grant Award Funds).

(G) If the Grant Recipient fails to submit required financial reports associated with the Grant Progress Report, then the Institute financial staff shall notify the Chief Executive Officer and the General Counsel for further action.

(H) In order to receive disbursement of grant funds, the most recently due progress report must be approved by CPRIT.

(I) If a Grant Recipient fails to submit the Grant Progress Report within 60 days of the anniversary of the effective date of the Grant Contract, then the Institute shall not disburse any Grant Award funds as reimbursement or advancement of Grant Award funds until such time that the delinquent Grant Progress Report is approved.

(J) In addition to annual Grant Progress Reports, Product Development Grant Recipients shall submit a Grant Progress Report at the completion of specific tranches of funding specified in the Award Contract. For the purpose of this subsection, a Grant Progress Report submitted at the completion of a tranche of funding shall be known as "Tranche Grant Progress Report."

(i) The Institute may specify other required reports, if any, that are required to be submitted at the time of the Tranche Grant Progress Report.

(ii) Grant Funds for the next tranche of funding specified in the Grant Contract shall not be disbursed until the Tranche Grant Progress Report has been reviewed and approved pursuant to the process described in this section.

(K) A Grant Award in the prevention program with a Grant Contract effective date within the last quarter of a state fiscal

year (June 1-August 31) will have an initial reporting period beginning September 1 of the following state fiscal year.

(4) Desk Reviews--The Institute may conduct a desk review for a Grant Award to review and compare individual source documentation and materials to summary data provided during the Financial Status Report review for compliance with financial requirements set forth in the statute, administrative rules, and the Grant Contract.

(5) Site Visits and Inspection Reviews--The Institute may conduct a scheduled site visit to a Grant Recipient's place of business to review Grant Contract compliance and Grant Award performance issues. Such site visits may be comprehensive or limited in scope.

(6) Audit Reports--The Institute shall review audit reports submitted pursuant to §703.13 of this chapter (relating to Audits and Investigations).

(A) If the audit report findings indicate action to be taken related to the Grant Award funds expended by the Grant Recipient or for the Grant Recipient's fiscal processes that may impact Grant Award expenditures, the Institute and the Grant Recipient shall develop a written plan and timeline to address identified deficiencies, including any necessary Grant Contract amendments.

(B) The written plan shall be retained by the Institute as part of the Grant Contract record.

(c) All required Grant Recipient reports and submissions described in this section shall be made via an electronic grant portal designated by the Institute, unless specifically directed to the contrary in writing by the Institute.

(d) The Institute shall document the actions taken to monitor Grant Award performance and expenditures, including the review, approvals, and necessary remedial steps, if any.

(1) To the extent that the methods described in subsection (b) of this section are applied to a sample of the Grant Recipients or Grant Awards, then the Institute shall document the Grant Contracts reviewed and the selection criteria for the sample reviewed.

(2) Records will be maintained in the electronic Grant Management System as described in §703.4 of this chapter (relating to Grants Management System).

(e) The Chief Compliance Officer shall be engaged in the Institute's Grant Award monitoring activities and shall notify the General Counsel and Oversight Committee if a Grant Recipient fails to meaningfully comply with the Grant Contract reporting requirements and deadlines, including Matching Funds requirements.

(f) The Chief Executive Officer shall report to the Oversight Committee at least annually on the progress and continued merit of each Grant Program funded by the Institute. The written report shall also be included in the Annual Public Report. The report should be presented to the Oversight Committee at the first meeting following the publication of the Annual Public Report.

(g) The Institute may rely upon third parties to conduct Grant Award monitoring services independently or in conjunction with Institute staff.

(h) If a deadline set by this rule falls on a Saturday, Sunday, or federal holiday as designated by the U.S. Office of Personnel Management, the required filing may be submitted on the next business day. The Institute will not consider a required filing delinquent if the Grant Recipient complies with this subsection.

§703.25. *Grant Award Budget.*

(a) The Grant Contract shall include an Approved Budget that reflects the amount of the Grant Award funds to be spent for each Project Year.

(b) All expenses charged to a Grant Award must be budgeted and reported in the appropriate budget category.

(c) Actual expenditures under each category should not exceed budgeted amounts authorized by the Grant Contract as reflected on the Approved Budget for each Grant Award.

(d) Recipients may make transfers between or among lines within budget categories listed on the Approved Budget so long as the transfer fits within the Scope of Work [~~scope of the Grant Contract~~] and the total Approved Budget; is beneficial to the achievement of the Scope of Work [~~project objectives~~]; and is an efficient, effective use of Grant Award funds.

(e) Except as provided herein, all budget changes or transfers require Institute approval.

(1) The Grant Recipient may make budget changes or transfers without prior approval from the Institute for expenses not specified in the equipment category if:

(A) The total dollar amount of all changes of any single line item (individually and in the aggregate) within budget categories other than equipment is 10% or less of the total budget for the applicant grant year;

(B) The transfer will not increase or decrease the total grant budget; and

(C) The transfer will not materially change the nature, performance level, or Scope of Work [~~scope of the project~~].

(2) The Institute may reverse one or more budget changes or transfers under paragraph (1) of this subsection [~~subsection (1)~~] if the Institute determines that the Grant Recipient made multiple individual budget changes or transfers within the same category that, if considered together, would require Institute approval.

(f) A Grant Recipient awarded a Grant Award for a multiyear project that fails to expend the total Project Year budget may carry forward the unexpended budget balance to the next Project Year.

(1) If the amount of the unexpended balance for a budget line item in a Project Year exceeds twenty-five percent (25%) or more of the total budget line item amount for that year, Institute approval is required before the Grant Recipient may carry forward the unexpended balance to the next Project Year.

(2) For a budget carry forward requiring Institute approval, the Grant Recipient must provide justification for why the total Grant Award amount should not be reduced by the unexpended balance.

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 May 19, 2023.

TRD-202301844

Heidi McConnell

Chief Operating Officer

Cancer Prevention and Research Institute of Texas

Earliest possible date of adoption: July 2, 2023

For further information, please call: (512) 305-8487



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 443. CERTIFICATION CURRICULUM MANUAL

37 TAC §§443.1, 443.3, 443.5, 443.7, 443.9

The Texas Commission on Fire Protection (commission) proposes amendments to 37 Texas Administrative Code Chapter 443, Certification Curriculum Manual, §443.1, Approval by the Curriculum and Testing Committee, §443.3, Approval by the Texas Commission on Fire Protection, §443.5, Effective Date of New or Revised Curricula and Training Programs Required by Law or Rule, §443.7, Effective Date of New or Revised Curricula and Training Programs Which are Voluntary, and §443.9, National Fire Protection Association Standard.

BACKGROUND AND PURPOSE

The purpose of the proposed amendments to the rule is to reflect changes to how the Commission will accept proposed changes to the Curriculum Manual. Previously, proposed changes were filtered through the Fire Fighter Advisory Committee to the Commission for final approval. The Commission is proposing that the Curriculum and Testing Committee will now take any proposed changes directly to the Commission.

FISCAL NOTE IMPACT ON STATE AND LOCAL GOVERNMENT

Michael Wisko, Agency Chief, has determined that for each year of the first five-year period the proposed amendments are in effect, there will be no significant fiscal impact to state government or local governments as a result of enforcing or administering these amendments as proposed under Texas Government Code §2001.024(a)(4).

PUBLIC BENEFIT AND COST NOTE

Mr. Wisko has also determined under Texas Government Code §2001.024(a)(5) that for each year of the first five years the amendments are in effect the public benefit will be accurate, clear, and concise rules.

LOCAL ECONOMY IMPACT STATEMENT

There is no anticipated effect on the local economy for the first five years that the proposed amendments are in effect; therefore, no local employment impact statement is required under Texas Government Code §2001.022 and 2001.024(a)(6).

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

Mr. Wisko has determined there will be no impact on rural communities, small businesses, or micro-businesses as a result of implementing these amendments. Therefore, no economic impact statement or regulatory flexibility analysis, as provided by Texas Government Code §2006.002, is required.

GOVERNMENT GROWTH IMPACT STATEMENT

The agency has determined under Texas Government Code §2006.0221 that during the first five years the amendments are in effect:

- (1) the rules will not create or eliminate a government program;
- (2) the rules will not create or eliminate any existing employee positions;
- (3) the rules will not require an increase or decrease in future legislative appropriation;
- (4) the rules will not result in a decrease in fees paid to the agency;
- (5) the rules will not create a new regulation;
- (6) the rules will not expand a regulation;
- (7) the rules will not increase the number of individuals subject to the rule; and
- (8) the rules are not anticipated to have an adverse impact on the state's economy.

TAKINGS IMPACT ASSESSMENT

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

COSTS TO REGULATED PERSONS

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

ENVIRONMENTAL IMPACT STATEMENT

The commission has determined that the proposed amendments do not require an environmental impact analysis because the amendments are not major environmental rules under Texas Government Code §2001.0225.

REQUEST FOR PUBLIC COMMENT

Comments regarding the proposed amendments may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register*, to Michael Wisko, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768, or e-mailed to amanda.khan@tcfp.texas.gov.

STATUTORY AUTHORITY

The amended rule is proposed under Texas Government Code §419.008, which authorizes the commission to adopt or amend rules to perform the duties assigned to the commission. The rule is also proposed under Texas Government Code §419.032, which authorizes the commission to adopt rules establishing the requirements for certification; and §419.036, which authorizes the commission to adopt rules establishing the requirements for certification.

CROSS-REFERENCE TO STATUTE

No other statutes, articles, or codes are affected by these amendments.

§443.1. *Approval by the Curriculum and Testing [Fire Fighter Advisory] Committee.*

(a) All proposals for new or revised curricula and training programs must be submitted to the Fire Fighter Advisory Committee for approval.

(b) The Curriculum and Testing [Fire Fighter Advisory] Committee may:

(1) submit proposals to a subcommittee formed of members of the Curriculum and Testing [Fire Fighter Advisory] Committee for study and review before approval; or

(2) submit proposals to an advisory committee formed of members of the fire service who are recommended by the Curriculum and Testing [Fire Fighter Advisory] Committee and appointed by the commission to report to the Curriculum and Testing [Fire Fighter Advisory] Committee, for study and review before approval.

(c) All proposals approved by the Curriculum and Testing [Fire Fighter Advisory] Committee shall be placed on the next scheduled meeting agenda of the Texas Commission on Fire Protection.

§443.3. *Approval by the Texas Commission on Fire Protection.*

(a) All proposals for new or revised curricula and training programs approved by the Curriculum and Testing [Fire Fighter Advisory] Committee must receive final approval by the Texas Commission on Fire Protection.

(b) Proposals not approved by the commission shall be sent back to the committee for further development. The commission shall indicate to the committee the reasons that the proposals were not approved.

§443.5. *Effective Date of New or Revised Curricula and Training Programs Required by Law or Rule.*

(a) New curricula and training programs will become effective on January 1 of the year following final approval by the commission or on the date specified by the commission.

(b) Changes to curricula and training programs will become effective on January 1 of the year following final approval by the commission or on the date specified by the commission.

(c) Changes to curricula and training programs which involve reference materials will become effective on January 1 of the year following final approval by the commission or on the date specified by the commission, as recommended by the Curriculum and Testing [Fire Fighter Advisory] Committee, depending on the impact the change will have on the curricula or training programs.

(d) Changes to curricula and training programs that involve a safety consideration as determined by the Curriculum and Testing [Fire Fighter Advisory] Committee shall become effective immediately following final approval by the commission.

§443.7. *Effective Date of New or Revised Curricula and Training Programs Which Are Voluntary.*

(a) New curricula and training programs will become effective on the date recommended by the Curriculum and Testing [Fire Fighter Advisory] Committee and specified by the commission.

(b) Changes to curricula and training programs will become effective on the date recommended by the Curriculum and Testing [Fire Fighter Advisory] Committee and specified by the commission.

(c) Changes to curricula and training programs that involve a safety consideration as determined by the Curriculum and Testing [Fire Fighter Advisory] Committee shall become effective immediately following final approval by the commission.

§443.9. *National Fire Protection Association Standard.*

(a) All curricula and training programs must, as a minimum, meet the standards, to include manipulative skills objectives and knowledge objectives, of the current NFPA standard pertaining to the

discipline, if such a standard exists and is subject to subsection (c) of this section.

(b) New curricula and training programs presented to the Curriculum and Testing [~~Fire Fighter Advisory~~] Committee must, as a minimum, meet the standards of the current edition of the applicable NFPA standard for the discipline, if such a standard exists.

(c) If an [a] NFPA standard is adopted or an existing NFPA standard is revised, all curricula and training programs must meet the standards of the new or revised applicable NFPA standard within three years of the official adoption date of the applicable NFPA standard.

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 May 15, 2023.

TRD-202301786

Mike Wisko

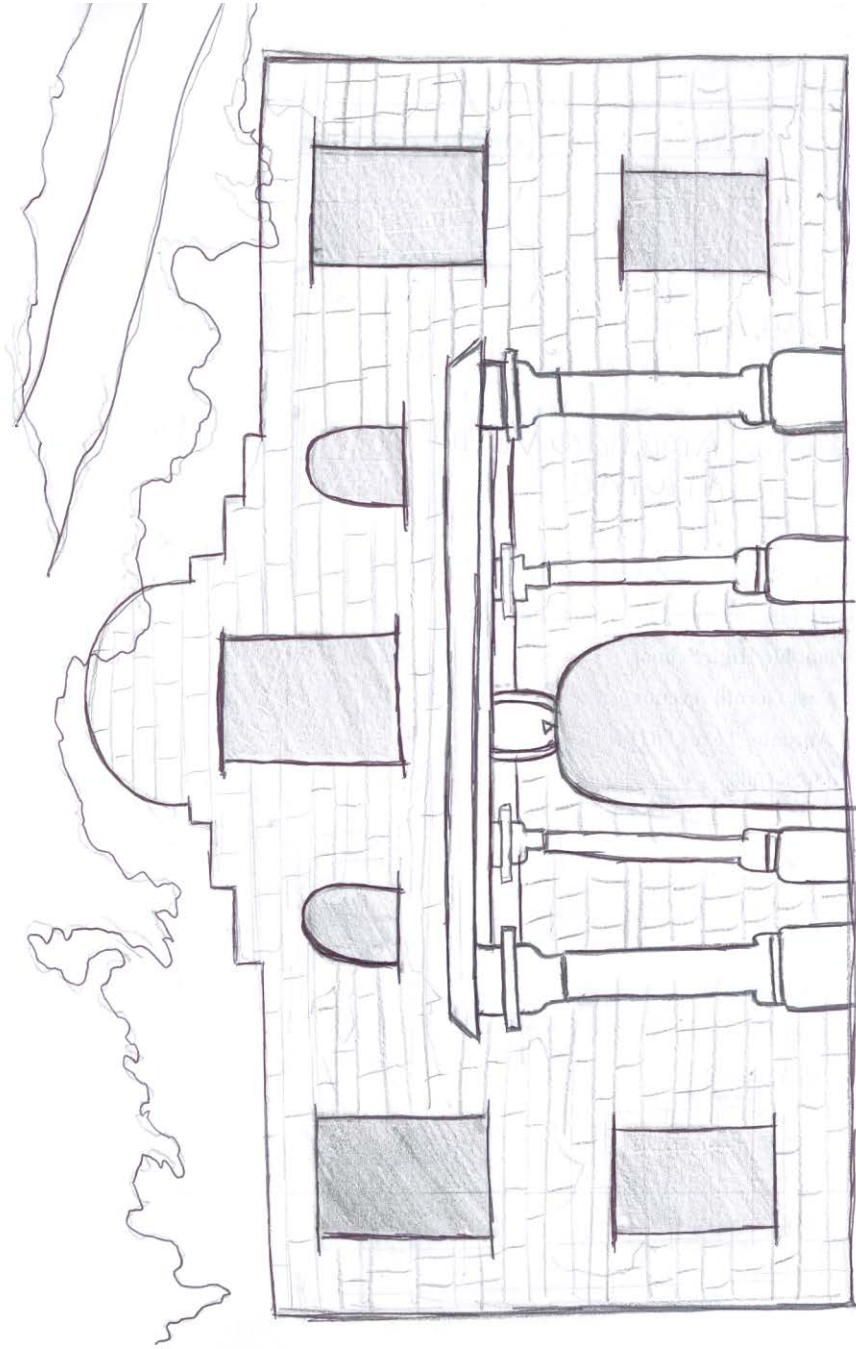
Agency Chief

Texas Commission on Fire Protection

Earliest possible date of adoption: July 2, 2023

For further information, please call: (512) 936-3841





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 37. PUBLIC SAFETY AND CORRECTIONS

PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 443. CERTIFICATION CURRICULUM MANUAL

37 TAC §§443.1, 443.3, 443.5, 443.7, 443.9

The Texas Commission on Fire Protection withdraws the proposed amendments to §§443.1, 443.3, 443.5, 443.7 and 443.9,

which appeared in the December 23, 2022, issue of the *Texas Register* (47 TexReg 8519).

Filed with the Office of the Secretary of State on May 15, 2023.

TRD-202301785

Mike Wisko

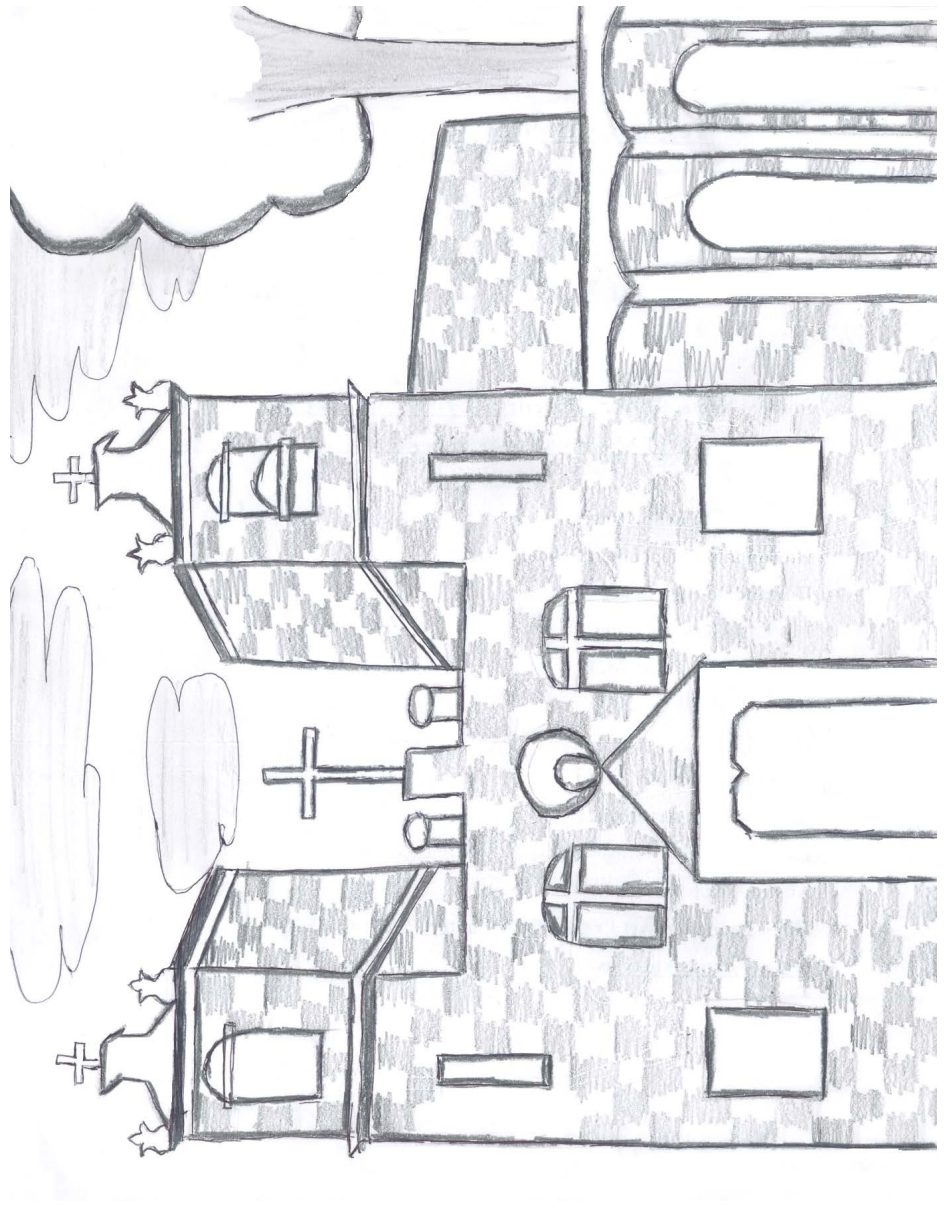
Agency Chief

Texas Commission on Fire Protection

Effective date: May 15, 2023

For further information, please call: (512) 936-3841





ADOPTED RULES

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

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 353. MEDICAID MANAGED CARE SUBCHAPTER R. TELECOMMUNICATIONS IN MANAGED CARE SERVICE COORDINATION AND ASSESSMENTS

1 TAC §§353.1501 - 353.1506

The Texas Health and Human Services Commission (HHSC) adopts new §353.1501, concerning Purpose; §353.1502, concerning Definitions; §353.1503, concerning Use of Telecommunications in Assessments; §353.1504, concerning Use of Telecommunications in Service Coordination and Service Management; §353.1505, concerning Additional Requirements for Assessments and Service Coordination in STAR+PLUS and STAR Kids; and §353.1506, concerning Additional Requirements for Assessments and Service Management.

Sections 353.1502 and 353.1504 are adopted without changes to the proposed text as published in the December 30, 2022, issue of the *Texas Register* (47 TexReg 8811). These rules will not be republished.

Sections 353.1501, 353.1503, 353.1505, and 353.1506 are adopted with changes to the proposed text as published in the December 30, 2022, issue of the *Texas Register* (47 TexReg 8811). These rules will be republished.

BACKGROUND AND JUSTIFICATION

The adopted rules are necessary to implement Texas Government Code, §533.039, added by House Bill (H.B.) 4, 87th Texas Legislature, Regular Session, 2021. Section 533.039 requires HHSC to adopt rules to establish policies and procedures that allow a Medicaid managed care organization (MCO) to conduct assessments and provide care coordination services using telecommunications and information technology (IT), to the extent permitted by federal law.

Assessments conducted for managed care members enrolled in a home and community-based services (HCBS) waiver or for services such as attendant care (i.e., personal assistance services and personal care services) and Community First Choice are not medical services. Assessments are performed by Medicaid MCOs. Federal law requires states to conduct annual assessments to determine eligibility for HCBS waivers. Assessments are also required to determine a member's need for state plan services such as attendant care and Community First Choice.

HHSC consulted with the Centers for Medicare & Medicaid Services (CMS) for guidance related to the implementation of H.B. 4. CMS advised that HHSC must deploy an assessment method that is adequate to develop a person-centered plan that meets the requirements in Title 42 Code of Federal Regulations (42 CFR) §441.301(c)(2). CMS further advised that HHSC must meet the health and welfare assurances in 42 CFR §441.302 and determine if its assessment tools require in-person visual observations.

To implement Texas Government Code, §533.039, and to ensure compliance with federal regulations, the adopted rules: (1) establish requirements for the use of telecommunications in Medicaid managed care for service coordination and assessments conducted by MCOs that contract with HHSC; (2) require MCOs to conduct in-person initial assessments and annual reassessments using the HHSC-developed tools in STAR+PLUS, STAR Kids, and STAR Health, for waiver services and services requiring a functional assessment, such as personal assistance services, personal care services, and Community First Choice; (3) require a change in condition assessment that requires or potentially requires a change in the Resource Utilization Group (RUG) level to be conducted in person; (4) for change in condition assessments that do not require or potentially require a change in the RUG level, allow an MCO to offer members a choice of audio-visual communication in place of in-person, if the MCO obtains and documents member or member legally authorized representative (LAR) verbal consent; and (5) for limited circumstances, allow MCOs to submit, in a manner and format prescribed by HHSC, an exceptions policy for required in-person assessments for approval by HHSC.

In addition, the adopted rules: (1) allow an MCO to offer members in STAR+PLUS and STAR Kids a choice of audio-visual communication for service coordination in place of an in-person visit, if no assessment is occurring; (2) specify the requirements for audio-visual service coordination, including the responsibility of the MCO to obtain and document member or member LAR verbal consent for the use of audio-visual communication during a service coordination visit; (3) allow the STAR Health MCO to offer a choice of audio-visual or telephonic communication service management in place of an in-person visit if no assessment is occurring; (4) prohibit the use of IT, including text or email, as the sole means of conducting an assessment or service coordination, but allow their use to supplement audio-visual or in-person assessments and service coordination visits; (5) as outlined in Texas Government Code, §533.039, allow HHSC to require an MCO to discontinue service coordination or assessments using telecommunications on a case-by-case basis, if HHSC determines that the discontinuation is in the best interest of the member; (6) contain additional requirements related to assessments and service management in STAR Health, similar to the requirements for STAR+PLUS and STAR Kids; and (7) require

an MCO to honor a member's request in STAR+PLUS, STAR Kids, and STAR Health for in-person service coordination or assessments unless HHSC issues direction to MCOs during a declared state of disaster that service coordination or assessments must be conducted using audio-only communication or audio-visual communication.

In §353.1501, the adopted rules also establish July 1, 2023, as the MCO compliance date for the rules contained in Subchapter R to allow sufficient time for MCOs to implement the rules.

COMMENTS

The 31-day comment period ended January 30, 2023.

During this period and the public hearing held on January 11, 2023, HHSC received comments regarding the proposed rules from eleven commenters, including the Texas Association of Health Plans (TAHP) (two commenters), the Texas Association for Home Care and Hospice (TAHCH) (two commenters), the Texas e-Health Alliance (TeHA), Red River Health Care Systems, Inc., and Videra Health. In addition, HHSC received comments from four Medicaid MCO employees including a manager of service coordinators for STAR Kids and two service coordinators.

A summary of comments relating to the rules and HHSC's responses follows.

Comment: TAHP commented that the proposed rules lacked the intended flexibility of H.B. 4 to allow assessments and service coordination to be done by telehealth and require unnecessary in-person assessments that conflict with H.B. 4. Similarly, TeHA is concerned that the proposed rules overly limit the use of telecommunications. TAHP stated H.B. 4 requires, to the extent permitted by federal law, that HHSC improve access to care by allowing MCOs to do assessments and provide care coordination services using telecommunications or IT. TAHP recommended eliminating any in-person assessments beyond the initial waiver eligibility determination for the HCBS waiver population. TAHP further commented that H.B. 4 contains no consideration for initial assessments, annual reassessments, or RUG changes as a factor for in-person assessments and instead, the legislature expressly defers to MCOs. TAHP noted, and agrees with, the acknowledgement from the Texas Legislature that there are situations where virtual assessments are not appropriate but indicated that the legislation requires MCOs to make this determination based on an individual's request.

Response: HHSC respectfully disagrees with the comments and declines to make changes to the rules in response to these comments. HHSC is permitting flexibility within the adopted rules to the extent allowed by statute. Texas Government Code Section 533.039(b) directs HHSC to establish policies and procedures by rule that allow a Medicaid MCO to conduct assessments and provide care coordination services using telecommunications or IT to the extent permitted by federal law. In establishing these policies and procedures, Texas Government Code §533.039(b) requires HHSC to consider several factors and does not require HHSC to defer to MCOs to make this determination based on an individual's request. Factors include "whether the commission determines using the telecommunications or information technology is appropriate under the circumstances." In addition, it is an HHSC responsibility as the single state Medicaid agency to establish processes to determine eligibility for HCBS waivers, and assessments are a part of the eligibility determination. HHSC is also responsible for ensuring Medicaid members have access to appropriate services and meeting the health and

welfare assurances in 42 CFR §441.302. HHSC determined that it is not aligned with federal regulations, or appropriate to use telecommunications or IT to conduct an initial assessment or annual reassessment that determines waiver eligibility or a member's functional needs. Several components of the assessment tools require in-person observation, including observation of the member's home environment to document and address potential risks and member needs. Appropriate assessment requires an in-person view to fully see the details of the living space, condition and size of durable medical equipment, and other in-home supports, and to observe an individual's abilities for activities of daily living and instrumental activities of daily living, and other factors.

Comment: TAHP commented there is no federal law or CMS guidance provided to HHSC prohibiting the use of telehealth for assessments and service coordination.

Response: HHSC declines making changes in response to this comment. HHSC agrees that Title XIX of the Social Security Act does not expressly prohibit the use of telecommunications for assessments and care coordination services. However, CMS provided guidance to HHSC instructing the agency to determine if its assessment tools require in-person visual observations to assure health and welfare of waiver participants. This guidance is based on federal regulations at 42 CFR § 441.301 and §441.302 that implement Section 1915(c) of the Social Security Act regarding HCBS waivers. HHSC determined that the assessments tools require in-person visual observations.

Comment: TAHP and the TeHA said there is a lack of evidence that conducting these assessments and visits via telehealth jeopardizes the safety and welfare of Texas Medicaid recipients, and many members may be at greater risk if in-person visits are required. TAHP asserted that HHSC has an additional oversight tool to ensure member safety, because the HHSC Managed Care Long-term Services and Supports Utilization Review staff complete utilization reviews annually in STAR+PLUS HCBS and the STAR Kids Medically Dependent Children Program (MDCP) to determine if MCOs are appropriately assessing and enrolling members in services.

Response: HHSC respectfully disagrees with the commenters and declines to make changes in response to this comment. Prior to the COVID-19 public health emergency (PHE), all assessments and face-to-face service coordination were conducted in-person. The COVID-19 PHE accelerated widespread use of virtual assessments in a short period of time. There is a lack of studies comparing client outcomes between in-person assessments and virtual assessments. The HHSC Medicaid and CHIP Services Utilization Review (UR) team does not validate assessments. The UR team completes URs annually to determine if MCOs are utilizing the correct assessment forms, completing assessments in a timely manner, enrolling members in waiver services, and providing needed services. The UR team pulls a statistically valid sample to review, several months after the assessment was conducted.

Comment: TAHP stated that HHSC references certain questions in the assessment tools that require in-person assessments, including evaluating the current condition of durable medical equipment, determining the member's ability to hear and understand others, and assessing current wounds. TAHP further commented that it is unclear why audiology and wound care services can be provided via telemedicine and in fact, several physical, occupational, and speech therapy services can be a service approved for telemedicine under H.B. 4, but a member

cannot be assessed for non-clinical purposes using audio-visual capabilities.

Response: HHSC respectfully disagrees with the commenter and declines to make changes in response to this comment. HHSC does not allow remote delivery of audiology and wound care services in fee-for-service Medicaid, as detailed in the Texas Medicaid Provider Procedures Manual. The only physical, occupational, and speech therapy services that can be delivered remotely are those where the service can still be clinically effective if delivered remotely and in compliance with an individual provider's license. In addition, these services are not equivalent to the assessments required to establish Medicaid eligibility for waiver services.

Comment: TAHP and TeHA commented that HHSC did not allow flexibility provided by H.B. 4 for members or families to decide how they access care and recommended that members and their families should be able to make the decision whether assessments and service coordination are conducted in-person. An MCO employee commented that HHSC should allow families the option to choose telehealth delivery, and that this would support family choice to restrict visitors for medically fragile members.

Response: HHSC appreciates the comment and agrees that members should have a choice between in-person and audio-visual communication for service coordination and assessments that are appropriate for telehealth delivery, but HHSC declines to make changes in response to this comment. It is an HHSC responsibility as the single state Medicaid agency to establish processes to determine eligibility for HCBS waivers, to ensure people have access to appropriate services, and to meet the health and welfare assurances in 42 CFR §441.302, and this responsibility cannot be delegated to the member.

Comment: TAHP and TeHA commented that in-person requirements exacerbate the nursing workforce shortage. An MCO service coordinator commented that they are still able to meet members needs at home, and hope that HHSC will consider how their productivity has increased. TAHP noted that telehealth delivery reduces gaps in care, supports continuity of care, promotes the triple aim, and reduces the cost of health care. TeHA also noted that telehealth improves timeliness of assessment, and that in-person requirements increase costs for the state.

Response: HHSC acknowledges that remote delivery of all assessments may have the potential to reduce staff costs for some MCOs and alleviate nursing workforce challenges facing MCOs. However, this potential does not outweigh the responsibility for HHSC to ensure the delivery of appropriate assessments that comply with federal regulations and ensure members receive appropriate services. HHSC declines to make changes in response to this comment.

Comment: TAHCH requested that the language "without the presence of a member" in §353.1503(a)(5), (b)(4), and (c)(5) be clarified to mean the presence of the member must be in person.

Response: HHSC agrees with this request and revised §353.1503(a)(5), (b)(4), and (c)(5) by adding "in-person."

Comment: TAHP and an MCO employee expressed concern that some families do not want an in-person assessment and families who decline an in-person assessment will lose their services. Both commenters expressed a desire for members to be able to request an exception to the in-person requirement.

Response: Federal regulations require that assessments be conducted annually to determine a member's eligibility for

waiver programs such as STAR+PLUS HCBS and MDCP or services such as Community First Choice. Members cannot be determined eligible for these programs and services without an assessment. These rules require that the annual assessments be conducted in person. However, in response to the commenters' concerns HHSC revised §353.1503 to add paragraph (8) in subsection (a), paragraph (7) in subsection (b) and paragraph (8) in subsection (c) to establish a process to allow MCOs, for limited circumstances, to submit an exceptions policy for required in-person assessments for approval by HHSC.

Comment: TAHP commented the rules conflict with the Administrative Procedures Act when it "(1) contravenes specific statutory language; (2) runs counter to the general objectives of the underlying [statute]; or (3) imposes additional burdens, conditions, or restrictions in excess of or inconsistent with the relevant statutory provisions." TAHP continued that Texas Government Code §533.039(e) states that a Medicaid managed care organization shall, for a recipient of HCBS for which the commission requires in-person visits, conduct: (1) at least one in-person visit with the recipient to make an initial waiver eligibility determination; and (2) additional in-person visits with the recipient if necessary, as determined by the managed care organization." TAHP stated that if an MCO determines, pursuant to §533.039(e)(2), that an in-person visit is not necessary to conduct an assessment, then the requirements in these proposed rules would directly contravene the specific statutory language.

Response: HHSC respectfully disagrees with the commenter that the rules contravene Texas Government Code §533.039(e)(2) and declines to make changes in response to this comment. HHSC is furthering the objectives of this statute by allowing appropriate assessments and service coordination to be delivered remotely that were not allowed prior to the PHE and would have ended with the PHE if not for this legislation. Further, HHSC is permitting flexibility within the rules to the extent allowed by federal law and implementing regulations as directed by the statute.

Comment: TeHA and TAHP commented that the COVID-19 pandemic made it clear that telehealth is an effective and safe tool that can be used not only for medical care, but for service coordination and assessments in the Medicaid program. MCOs have learned that telehealth can reach vulnerable patient groups, and can improve access for patients with transportation, parking, or cost barriers. Telehealth can also expand access to care, reduce disease exposures, and reduce patient demand at facilities.

Response: HHSC appreciates the comment and agrees that there are many benefits to telehealth such as expanding access, reaching vulnerable groups, and reducing patient demand at facilities. However, using telehealth for clinical care that a member would have to travel to receive at a facility, such as physician visits, is different from using it to assess a member's eligibility for waiver and other long term services and supports using prescribed tools in the member's home. The COVID-19 PHE accelerated widespread use of virtual assessments in a short period of time. There is a lack of studies comparing client outcomes between in-person assessments and virtual assessments. Several components of the assessment tools require in-person observation, including observation of the member's home environment to document and address potential risks and member needs. HHSC declines to make changes in response to this comment.

Comment: TAHP suggested that HHSC adjust the definition of "covered services" in §353.1502(8) to include only those ser-

VICES that are medically necessary based on the federal requirement.

Response: HHSC respectfully disagrees and declines to make this change to the definition of "covered services" because the definition mirrors the definition currently found in 1 TAC §353.2 (relating to Definitions).

Comment: TAHCH commented that the rules should clarify that MCOs should document the member's verbal approval to use audio-visual communication in their own systems, as this is the least administratively burdensome method to capture member approvals and would not require the creation of new processes.

Response: HHSC agrees with the commenter but declines to make changes in response to this comment. Sections 353.1505 and 353.1506 already allow MCOs to use their discretion on how to document verbal consent, but the MCOs must be able to produce documentation of verbal consent for audit and compliance purposes.

Comment: An MCO service coordinator asked who will provide the personal protection equipment (PPE), citing costs and protection for nursing staff. Another service coordinator expressed concerns about communicable diseases such as COVID and gun violence with a return to in-person assessments.

Response: HHSC acknowledges the commenter's concerns but declines to make changes in response to this comment. It is the responsibility of the MCOs to address workplace safety concerns and provide PPE for their employees as appropriate.

Comment: TAHCH commented that overall, TAHCH supports the use of telecommunications when appropriate in Medicaid managed care for service coordination and assessments conducted by MCOs. However, conducting all assessments and service coordination activities via telecommunications for Medicaid members has not proved entirely valuable as recently implemented. TAHCH commented in support of in-person assessments for initial assessments and reassessments to ensure a more accurate assessment picture and improve the quality and accuracy of the patient's needs. TAHCH asserted that without in-person assessments, basic assessment techniques that include observation are missed, and providers report that clients are appealing decisions more than in the past.

Response: HHSC appreciates the comment.

Comment: TAHCH cited significant concerns related to §353.1504(a)(8) that requires MCOs to provide service coordination in accordance with §353.609 of this chapter (relating to Service Coordination). TAHCH supports the regulatory language in this rule regarding coordination of care between MCOs and providers. However, TAHCH cited concerns with MCO service coordination delivery, including an urgent need for improvement in communication between MCOs and providers. Other providers represented by TAHCH report working with good MCO service coordinators, but say they have an unreasonable client workload. In regard to administrative tasks, service coordinators may not contact the provider representative immediately, and often are unable to give a definitive answer to providers. TAHCH recommended requiring MCOs to conduct Interdisciplinary Team (IDT) meetings between the patient, provider, and MCO to drastically improve communication between MCOs and providers.

Response: HHSC appreciates the comment and agrees that IDT meetings help to improve communication and the coordination of a member's services. However, HHSC declines making

changes to address IDT meeting requirements because making these changes are outside the scope of this project and will require additional analysis.

Comment: TAHCH recommended that §353.1505(a) include Health Insurance Portability and Accountability Act (HIPAA)-compliant language.

Response: HHSC agrees with this recommendation and revised §353.1505(a) and §353.1506(a) by adding "HIPAA-compliant."

Comment: TAHCH asked that MCOs be required to invite the member's informal supports, attendant, and provider agency representative when performing assessments.

RESPONSE: HHSC agrees with the commenter but declines to make changes because it is outside the scope of this project. However, MCOs must allow informal supports, attendants, and providers to be present during the assessment, as specified in the person-centered planning requirements in 42 CFR §441.301 and §441.450, if that is the member's choice.

Comment: TAHCH submitted a comment from a provider stating the MCOs are asking providers to ensure members answer their phones and are terminating services when the MCO cannot reach the member by phone. At times, the MCOs are making no home visit attempts.

Response: HHSC declines to make changes in response to this comment. During the PHE, HHSC implemented flexibilities to allow telephone assessments if in-person and telehealth are not feasible. MCOs must return to conducting initial assessments and annual reassessments in person for MDCP and STAR+PLUS HCBS waiver under the rules. Providers can submit specific managed care complaints by emailing HHSC at HPM_Complaints@hhsc.state.tx.us.

Comment: TAHCH and Red River Health Care Systems commented there are no consequences to the MCOs when they do not follow the rules. TAHCH cited examples of complaints, including failure to comply with IDT rules, failure to give complete and accurate authorizations, and failure of the MCO case managers to return the client's phone calls timely.

Response: HHSC declines to make changes in response to this comment. Providers can submit specific managed care complaints by emailing HPM_Complaints@hhsc.state.tx.us.

Comment: TAHCH submitted a comment from a provider asking why HHSC is not implementing audio-visual allowances in the Community Attendant Services (CAS) Program and the Family Care (FC) Program rather than catering to the failures of the MCOs. Red River Health Care Systems, Inc. reiterated this point for the CAS, FC and Primary Home Care (PHC) Programs.

Response: HHSC declines making changes in response to this comment. These rules address the H.B. 4 requirement to develop rules for the use of telecommunications in Medicaid managed care service coordination and assessments. The CAS, FC, and PHC Programs are fee-for-service programs that are not offered through Medicaid managed care.

Comment: Videra Health recommended that virtual assessments be allowed where clinical evidence demonstrates that it is an effective substitute for an in-person visit. The commenter stated that while they agree there are some situations where an in-person visit is warranted, they cited the Patient Health Questionnaire-9 and General Anxiety Disorder-7 as assessment tools that can be administered through automated technology with clinical evidence backing the efficacy. The commenter

expressed concern that the rule would have a negative impact on patients and providers, would result in fewer patients being assessed, and would limit improved outcomes.

Response: HHSC respectfully disagrees and declines to make changes to the rule in response to this comment. The specific assessment tools referenced by the commenter are not the HHSC assessment tools that must be used to determine eligibility for HCBS waivers or functional needs.

Comment: Red River Health Care Systems, Inc. commented that all visits should be in person because MCOs are not sending representatives to see the member or meeting their needs. They commented that many clients have limited cell phone minutes, and that Medicaid clients are not being provided with equipment to conduct an appropriate assessment of the client's home surroundings and living conditions.

Response: HHSC appreciates the comment but respectfully declines to make changes to the rules in response to this comment. H.B. 4 requires HHSC to allow assessments and service coordination using telecommunications to the extent permitted by federal law. To protect the health and safety of members, the rules require in-person initial assessments, annual reassessments, and change in condition assessments affecting or potentially affecting the RUG level to be conducted in person. Under the rules, MCOs may offer members a choice of in-person or audio-visual communication for service coordination if no initial, annual reassessment, or change in condition assessment affecting or potentially affecting the RUG level is occurring. In addition, the rules allow MCOs to offer members a choice of audio-visual communication in place of an in-person change in condition assessment as long as the assessment does not require or potentially require a change in the RUG level. MCOs must ensure appropriate equipment and access are available at the remote location to enable a telehealth visit when authorized.

Comment: TAHCH provided a comment from a provider expressing that clients in rural communities have limited resources, live at the poverty level, and have only government issued phones with limited minutes. The provider asked if the MCO was going to reimburse the provider or provide a way for the client to use telecommunications. The provider further stated that their attendants do not have the resources to assist the client with the call. TAHCH provided a comment from another provider who stated that the MCOs will ask them to contact the client and let them know to answer a call from the MCO.

Response: HHSC acknowledges the commenters concerns but declines to make changes in response to this comment. MCOs will be required by contract to ensure that members have all resources needed for an effective audio-visual service coordination visit or assessment. For contractually required face-to-face service coordination, MCOs must give members a choice of in-person or audio-visual service coordination, unless an assessment is occurring during the visit in which case the visit must be done in person. Under the rules, most assessments, including waiver assessments and functional assessments, must be conducted in person.

Comment: One individual asked for clarification if a face-to-face visit is required for all "level 1, 2, and 3 members" once per year regardless of assessment type.

Response: All STAR Kids members must have at least one in-person assessment per year because the STAR Kids Screening and Assessment Instrument must be administered annually for all STAR Kids members regardless of service coordination

level. STAR+PLUS Level 1 and 2 members must have at least one in-person service coordination visit per year, even if the member needs no assessments (e.g., Medical Necessity/Level of Care and functional assessments) during the year. Level 3 STAR+PLUS members are required by contract to receive two telephonic service coordination visits annually, and the adopted rules clarify at §353.1505(i) that when telephonic service coordination visits are authorized by contract, these visits may continue to be provided by telephonic communication. HHSC declines to make changes in response to this comment.

HHSC revised §353.1501 to establish July 1, 2023, as the date Medicaid MCOs must be fully compliant with the rules contained in Subchapter R. The revision allows MCOs sufficient time to implement the rules.

STATUTORY AUTHORITY

The new sections are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021, which provides HHSC with the authority to act as the single state agency designated to administer the federal medical assistance program in Texas and to adopt rules and standards for program administration; and Texas Government Code §533.039(b) which directs HHSC, by rule, to establish policies and procedures allowing managed care organizations to conduct assessments and care coordination services using telecommunications or information technology.

§353.1501. Purpose.

This subchapter establishes requirements for the use of telecommunications in Medicaid managed care for service coordination and assessments conducted by managed care organizations (MCOs) contracted with the Texas Health and Human Services Commission. Medicaid MCOs must be fully compliant with the rules contained in this subchapter no later than July 1, 2023.

§353.1503. Use of Telecommunications in Assessments.

(a) STAR+PLUS.

(1) STAR+PLUS managed care organizations (MCOs) must conduct initial assessments and annual reassessments using HHSC-developed tools for STAR+PLUS HCBS Program eligibility in-person.

(2) STAR+PLUS MCOs must conduct all initial and annual assessments using HHSC-developed tools for functionally necessary covered services such as personal assistance services, Community First Choice services, and day activity and health services, in-person.

(3) Change in condition assessments that require or potentially require a change in the Resource Utilization Group (RUG) level must be conducted in-person.

(4) MCOs may offer to STAR+PLUS members a choice of audio-visual communication in place of in-person change in condition assessments, as long as the assessment does not require or potentially require a change in the RUG level.

(A) When an MCO conducts a change in condition assessment using audio-visual communication, verbal consent must be obtained and documented, and a HIPAA-compliant audio-visual communication product must be used.

(B) If verbal consent for audio-visual communication is not received, the MCO must use in-person communication.

(C) The MCO must inform members who utilize audio-visual communication for change in condition assessments that the member's services will be subject to the following:

(i) The MCO must monitor services for fraud, waste, and abuse.

(ii) The MCO must determine whether additional social services or supports are needed.

(iii) The MCO must ensure that verbal consent to use telecommunications is documented in writing.

(5) A STAR+PLUS MCO may not conduct an initial assessment, annual reassessment, or change in condition assessment without the in-person presence of the member.

(6) During a declared state of disaster, HHSC may issue direction to STAR+PLUS MCOs regarding whether initial, annual renewal, or change in condition assessments may be conducted through audio-visual or audio-only communication for STAR+PLUS members who reside in the area subject to the declared state of disaster.

(7) STAR+PLUS MCOs must adhere to §353.1153 of this chapter (relating to STAR+PLUS Home and Community Based Services (HCBS) Program) for STAR+PLUS assessments and service planning, and §353.1(c) of this chapter (relating to Purpose) regarding compliance with all terms of the contract with HHSC.

(8) For limited circumstances, STAR+PLUS MCOs may submit, in a manner and format prescribed by HHSC, an exceptions policy for required in-person assessments for approval by HHSC. The policy must be developed by the MCO's clinical staff, such as the Chief Medical Director or the Director's designee.

(b) STAR Kids.

(1) The STAR Kids MCO must administer the initial assessment and annual reassessments using the HHSC-developed STAR Kids assessment tool in-person.

(2) Change in condition assessments that require or potentially require a change in the RUG level must be conducted in-person.

(3) MCOs may offer STAR Kids members a choice of audio-visual communication in place of in-person change in condition assessments, as long as the assessment does not require or potentially require a change in the RUG level.

(A) When an MCO conducts a change in condition assessment using audio-visual communication, verbal consent must be obtained and documented, and a HIPAA-compliant audio-visual communication product must be used.

(B) If verbal consent for audio-visual communication is not received, the MCO must use in-person communication.

(C) The MCO must inform members who utilize audio-visual communication for change in condition assessments that the member's services will be subject to the following:

(i) The MCO must monitor services for fraud, waste, and abuse.

(ii) The MCO must determine whether additional social services or supports are needed.

(iii) The MCO must ensure that verbal consent to use telecommunications is documented in writing.

(4) A STAR Kids MCO may not conduct an assessment without the in-person presence of the member.

(5) During a declared state of disaster, HHSC may issue direction to STAR Kids MCOs regarding whether initial, annual renewal, or change in condition assessments may be conducted through audio-visual or audio-only communication for STAR Kids members who reside in the area subject to the declared state of disaster.

(6) STAR Kids MCOs must adhere to §353.1155 of this chapter (relating to Medically Dependent Children Program) for assessments and service planning, and §353.1(c) of this chapter regarding compliance with all terms of the contract with HHSC.

(7) For limited circumstances, STAR Kids MCOs may submit, in a manner and format prescribed by HHSC, an exceptions policy for required in-person assessments for approval by HHSC. The policy must be developed by the MCO's clinical staff, such as the Chief Medical Director or the Director's designee.

(c) STAR Health.

(1) The STAR Health MCO must administer the HHSC-developed assessment tool for initial Medically Dependent Children Program (MDCP) eligibility and annual reassessments in -person.

(2) The STAR Health MCO must conduct all initial and annual reassessments using HHSC-developed tools for functionally necessary covered services such as personal assistance services, personal care services, and Community First Choice services, in -person.

(3) Change in condition assessments that require or potentially require a change in the RUG level must be conducted in-person.

(4) MCOs may offer STAR Health members a choice of audio-visual communication in place of in-person change in condition assessments, as long as the assessment does not require or potentially require a change in the RUG level.

(A) When an MCO conducts a change in condition assessment using audio-visual communication, verbal consent must be obtained and documented, and a HIPAA-compliant audio-visual communication product must be used.

(B) If verbal consent for audio-visual communication is not received, the MCO must use in-person communication.

(C) The MCO must inform members who utilize audio-visual communication for change in condition assessments that the member's services will be subject to the following:

(i) The MCO must monitor services for fraud, waste, and abuse.

(ii) The MCO must determine whether additional social services or supports are needed.

(iii) The MCO must ensure that verbal consent to use telecommunications is documented in writing.

(5) A STAR Health MCO may not conduct an assessment without the in-person presence of the member.

(6) During a declared state of disaster, HHSC may issue direction to STAR Health MCOs regarding whether initial, annual renewal, or change in condition assessments may be conducted through audio-visual or audio-only communication for STAR Health members who reside in the area subject to the declared state of disaster.

(7) A STAR Health MCO must adhere to §353.1155 of this chapter for MDCP assessments and service planning, and §353.1(c) of this chapter regarding compliance with all terms of the contract with HHSC.

(8) For limited circumstances, a STAR Health MCO may submit, in a manner and format prescribed by HHSC, an exceptions

policy for required in-person assessments for approval by HHSC. The policy must be developed by the MCO's clinical staff, such as the Chief Medical Director or the Director's designee.

§353.1505. Additional Requirements for Assessments and Service Coordination in STAR+PLUS and STAR Kids.

(a) Information technology, including HIPAA-compliant text or email, may supplement audio-visual communication or in-person assessments, but may not be used as the sole means of conducting an assessment or service coordination visit.

(b) When a managed care organization (MCO) conducts an assessment or service coordination visit using telecommunications, the MCO must:

(1) monitor the health care services provided to the recipient for evidence of fraud, waste, and abuse;

(2) determine whether additional social services or supports are needed;

(3) document verbal consent to use telecommunications; and

(4) adhere to HIPAA, including the use of a HIPAA-compliant audio-visual communication product.

(c) HHSC may, on a case-by-case basis, require an MCO to discontinue telecommunications for the delivery of service coordination or assessments if HHSC determines that the discontinuation is in the best interest of the member.

(d) An MCO may conduct additional in-person visits with members, as determined by the MCO.

(e) MCOs must have a means to document verbal consent to the use of telecommunications for the delivery of assessments or service coordination.

(f) Where HHSC contractually requires face-to-face service coordination, the MCOs may conduct these visits in-person or using audio-visual means. Audio-visual may not be used if an assessment is being conducted during the service coordination visit, unless HHSC issues direction allowing audio-visual assessments during a declared state of disaster.

(g) MCOs may not leave blank fields in assessment tools, including tools to evaluate home and community-based service needs, nursing needs, and functional needs. Audio-visual is not an appropriate means of assessing a member if it results in blank fields.

(h) MCOs must explain to the member or the member's LAR what verbal consent means, and what the member or member's LAR is consenting to.

(1) The verbal consent for audio-visual communication in place of an in-person visit applies only to that visit.

(2) Verbal consent must be obtained for each service coordination visit conducted using audio-visual communication in place of an in-person visit.

(i) When telephonic service coordination visits are authorized by contract, these visits may continue to be provided by telephonic communication.

(j) An MCO must honor a member's request to receive service coordination or assessments in-person. Only when HHSC issues direction to MCOs during a declared state of disaster that service coordination or assessments must be conducted using audio-visual or audio-only communication due to the specific nature of a governor declared disaster, may an MCO deny a member's request for an in-person visit.

(k) MCOs may use their discretion on how to document verbal consent in a HIPAA-compliant manner. However, MCOs must be able to produce the documentation of verbal consent for audit and compliance purposes.

§353.1506. Additional Requirements for Assessments and Service Management in STAR Health.

(a) Information technology, including HIPAA-compliant text or email, may supplement audio-visual or in-person assessments, but may not be used as the sole means of conducting an assessment or service management visit.

(b) When a managed care organization (MCO) conducts an assessment or service management visit using telecommunications, the MCO must:

(1) monitor the health care services provided to the recipient for evidence of fraud, waste, and abuse;

(2) determine whether additional social services or supports are needed;

(3) document verbal consent to use telecommunications; and

(4) adhere to HIPAA, including the use of a HIPAA-compliant audio-visual communication product.

(c) HHSC may, on a case-by-case basis, require an MCO to discontinue telecommunications for the delivery of service management or assessments if HHSC determines that the discontinuation is in the best interest of the member.

(d) An MCO may conduct additional in-person visits with members, as determined by the MCO.

(e) MCOs must have a means to document verbal consent to the use of telecommunications for the delivery of assessments or service management.

(f) Audio-visual may not be used if an initial or annual assessment for the Medically Dependent Children Program or functionally necessary covered services is being conducted, unless HHSC issues direction allowing audio-visual assessments during a declared state of disaster.

(g) MCOs may not leave blank fields in assessment tools, including tools to evaluate home and community-based service needs, nursing needs, and functional needs. Audio-visual is not an appropriate means of assessing a member if it results in blank fields.

(h) MCOs must explain to the member or medical center what verbal consent means, and what the member or medical center is consenting to.

(1) The verbal consent for an audio-visual in place of an in-person visit applies only to that visit.

(2) Verbal consent must be obtained for each audio-visual service coordination visit conducted in place of an in-person visit.

(i) When telephonic screenings or service management visits are authorized by contract, these visits may continue to be provided by telephonic communication.

(j) An MCO must honor a member's request to receive service management or assessment in person. Only when HHSC issues direction to MCOs during a declared state of disaster that service management or assessments must be conducted using audio-visual or audio-only communication due to the specific nature of a governor declared disaster, may an MCO deny a member's request for in-person contact.

(k) MCOs may use their discretion on how to document verbal consent in a HIPAA-compliant manner. However, MCOs must be able to produce the documentation of verbal consent for audit and compliance purposes.

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

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 109. BUDGETING, ACCOUNTING, AND AUDITING

SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING FINANCIAL ACCOUNTABILITY

19 TAC §109.1001

The Texas Education Agency (TEA) adopts an amendment to §109.1001, concerning financial accountability ratings. The amendment is adopted with changes to the proposed text as published in the February 10, 2023 issue of the *Texas Register* (48 TexReg 607) and will be republished. The adopted amendment updates financial accountability rating information and rating worksheets for school districts and open-enrollment charter schools, including adjustments required under Texas Education Code (TEC), §39.087, as added by House Bill (HB) 1525, 87th Texas Legislature, Regular Session, 2021. The adopted amendment also addresses adjustments for scores and ratings upon appeal for the indicator for the timely submission of a complete annual financial report.

REASONED JUSTIFICATION: Section 109.1001 includes the financial accountability rating system and rating worksheets that explain the indicators that TEA will analyze to assign financial accountability ratings for school districts and open-enrollment charter schools. The rule also specifies the minimum financial accountability rating information that a school district or an open-enrollment charter school is to report to parents and taxpayers in the district.

The adopted amendment clarifies the financial accountability rating indicators terminology used to determine each school district's and charter school's rating for the 2022-2023 rating year and subsequent years. The adopted amendment also includes some pandemic-related adjustments to the Financial Integrity Rating System of Texas (FIRST) based on TEC, §39.082(b) and (d), which require that the FIRST system include uniform indicators that measure the financial management performance and future financial solvency of a school district or open-enrollment

charter school and that the commissioner evaluate indicators at least once every three years. Consequently, all school districts will pass Indicator 5 and be awarded the maximum points for Indicators 10 and 15 for School FIRST; all charter schools will be awarded the maximum points for Indicators 10 and 16 under Charter FIRST; and certain federal funds will be added to the administrative cost ratio calculation for Indicator 13 for School FIRST and Indicator 14 for Charter FIRST. At adoption, a change was made to specify that all school districts will be awarded the maximum points for Indicator 14 under School FIRST and that all charter schools will be awarded the maximum points for Indicator 15 under Charter FIRST.

Adopted new subsection (e)(7) has been added, including new Figure: 19 TAC §109.1001(e)(7) that clarifies terminology and calculations for School FIRST indicators for years subsequent to the 2021-2022 rating year.

Adopted new subsection (f)(7) has been added, including new Figure: 19 TAC §109.1001(f)(7) that clarifies terminology and calculations for Charter FIRST indicators for years subsequent to the 2021-2022 rating year.

The worksheets, dated June 2023, differ from the current worksheets, dated October 2021, as follows.

Figure: 19 TAC §109.1001(e)(7)

The calculation for Indicator 5 has been revised to use total net position instead of unrestricted net position in the calculation, and the scoring for Indicator 5 has changed from a critical pass or fail indicator with a ceiling for passing only the second part of the indicator to a ceiling indicator for both parts. In response to public comment, Indicator 5 was modified at adoption to allow school districts with a numeric growth indicator of 1,000 students in membership over five years to pass the indicator.

The statement that Indicator 10 will not be utilized for the 2021-2022 rating year has been deleted.

In response to public comment, Indicator 11 was modified at adoption to allow school districts with a numeric growth indicator of 1,000 students in membership over five years to pass the indicator.

In response to public comment, clarification has been added to Indicator 12 to specify that the interest and sinking value will be used as the assessed property value in the calculation for Indicator 12, and the wording for Indicator 12 has been revised to read, "What is the correlation between future debt requirements and the district's assessed property value?"

The calculation for Indicator 13 has been revised to include funds 266, 281, 282, and 283 in the calculation for the administrative cost ratio.

The statement that Indicator 15 will not be utilized for the 2021-2022 rating year has been deleted.

Indicator 17 has been revised to include the auditor's disclosure of substantial doubt about the school district's ability to continue as a going concern. The wording for Indicator 17 has been revised to read, "Did the external independent auditor report that the AFR was free of any instance(s) of material weakness in internal controls over financial reporting and compliance for local, state, or federal funds and free from substantial doubt about the school district's ability to continue as a going concern? (The AICPA defines material weakness.) (If the school district fails Indicator 17, the maximum points and highest rating that the school

district may receive is 79 points, C = Meets Standard Achievement.)"

Indicator 20 has been revised to read, "Did the school district's administration and school board members discuss any changes and/or impact to local, state, and federal funding at a board meeting within 120 days before the district adopted its budget?"

Figure: 19 TAC §109.1001(f)(7)

The statement that Indicator 10 will not be utilized for the 2021-2022 rating year has been deleted.

The calculation for Indicator 14 has been revised to add funds 266, 281, 282, and 283 in the calculation for the administrative cost ratio.

The statement that Indicator 16 will not be utilized for the 2021-2022 rating year has been deleted.

Indicator 18 has been revised to include the auditor's disclosure of substantial doubt about the charter school's ability to continue as a going concern. The wording for Indicator 18 has been revised to read, "Did the external independent auditor report that the AFR was free of any instance(s) of material weakness in internal controls over financial reporting and compliance for local, state, or federal funds and free from substantial doubt about the charter school's ability to continue as a going concern? (The AICPA defines material weakness.) (If the charter school fails Indicator 18, the maximum points and highest rating that the charter school may receive is 79 points, C = Meets Standard Achievement.)"

Indicator 21 has been removed as an indicator for Charter FIRST.

Adopted new §109.1001(n)(9)(A) and (B) has been added to describe adjustments for scores and ratings upon appeal for the indicator for the timely submission of a complete annual financial report, which is currently Indicator 1 for School FIRST and Charter FIRST.

SUMMARY OF COMMENTS AND AGENCY RESPONSES:
The public comment period on the proposal began February 10, 2023, and ended March 13, 2023. Following is a summary of public comments received and corresponding agency responses.

School FIRST Indicator 5

Comment: Concerning proposed Figure: 19 TAC §109.1001(e)(7), the Texas Association of School Business Officials (TASBO) recommended that the agency amend the definition for fast-growing districts by adding a numeric growth indicator in addition to the current percentage-based calculation. Specifically, TASBO recommended that the agency revise Indicator 5 to recognize the growth of districts that either increase by 7% (students in membership) or that grow by at least 1,500 students over a five-year period.

Response: The agency agrees that a numeric growth indicator should be added to Indicator 5 as an alternative to pass the indicator. Instead of a 1,500 student growth indicator, however, the agency added a numeric growth indicator of 1,000 students in membership over five years to Indicator 5 to allow school districts to pass the indicator.

School FIRST Indicator 7

Comment: Concerning proposed Figure: 19 TAC §109.1001(e)(7), a school district administrator and the Texas

Association of School Administrators (TASA) proposed that the agency consider making the cash/investment reserve scoring uniform among school districts and charter schools.

Response: The agency disagrees that the number of days of cash on hand required to receive 10 points for Indicator 7 should be adjusted to align with the number of days of cash on hand required for charter schools to receive 10 points. This indicator measures the number of days of expenses that could be paid from existing cash and cash equivalents. Charter schools have a lower cash threshold because they generally receive cash monthly in near equal amounts whereas school districts may not receive cash for several months, depending on their payment schedule, so they need to have larger cash reserves to ensure cash is available to meet expenses. Although charter schools may receive 10 points in Charter FIRST for having 60 or more days of cash on hand, only a range of 66% to 82% of charter schools over the past five rating years have had 60 or more days of cash on hand as compared to a range of 90% to 97% of school districts over the same period of time. Additionally, 80% to 93% of school districts have had 90 or more days of cash on hand over the past five rating years and received 10 points. The agency has maintained language as proposed concerning Indicator 7.

School FIRST Indicator 8

Comment: Concerning proposed Figure: 19 TAC §109.1001(e)(7), a school district administrator and TASA proposed that the agency consider making the current ratio scoring uniform among school districts and charter schools. The administrator also stated that using a lower liquidity threshold for charter schools may provide stakeholders with a false sense of financial stability. TASA stated that independent school districts are held to a higher standard under FIRST when measuring assets to liabilities to cover short-term debt.

Response: The agency disagrees that the current assets to current liabilities ratio required to receive 10 points for Indicator 8 should be adjusted to align with the ratio required for charter schools to receive 10 points. Charter schools have a lower ratio requirement because they generally receive cash monthly in near equal amounts whereas school districts may not receive cash for several months, depending on their payment schedule, so they need to have a greater amount of current assets to ensure their short-term obligations can be met. About 80% of school districts have had a current assets to current liabilities ratio of 3.0 or greater over the past five rating years and received the maximum points of 10 for the indicator. Charter schools may receive the maximum points of 10 points in Charter FIRST for having a current assets to current liabilities ratio of 2.0 or greater and a comparable range of 77% to 89% of charter schools have met that ratio over the past five rating years. The agency has maintained language as proposed concerning Indicator 8.

School FIRST Indicator 9

Comment: Concerning proposed Figure: 19 TAC §109.1001(e)(7), a school district administrator proposed that the agency consider making the days of cash on hand threshold uniform among school districts and charter schools. The administrator stated that Indicator 9 holds school districts to a higher standard than charter schools. The administrator stated that school districts that do not meet the initial measurement (revenues exceed expenditures) for Indicator 9 pass the indicator if the days of cash on hand is 60 or more while charter

schools that do not meet the initial measurement pass the indicator if the days of cash on hand is 40 days or more.

Response: The agency disagrees that if the initial measure for Indicator 9 is not met and that the number of days of cash on hand required to receive the maximum points of 10 should be adjusted to align with the number of days of cash on hand required for charter schools to receive the maximum points of 5 points for Indicator 9 in Charter FIRST. Charter schools have a lower cash threshold because they generally receive cash monthly in near equal amounts whereas school districts may not receive cash for several months, depending on their payment schedule, so they need to have larger cash reserves to ensure cash is available to meet expenses. Additionally, almost all school districts, about 98%, receive the maximum points for Indicator 9 year after year. The agency has maintained language as proposed concerning Indicator 9.

School FIRST Indicator 10

Comment: Concerning proposed Figure: 19 TAC §109.1001(e)(7), a school district administrator commented that Indicator 10 will not result in an accurate depiction of districts' financial integrity because of dramatic changes to both district budgets and enrollments due to the coronavirus disease (COVID-19) beginning with school year 2019-2020 and extending through school year 2021-2022. The administrator stated that hold harmless was awarded to districts in all three years used to calculate the grade for the 2022-2023 FIRST rating. The administrator further stated that TEA suspended Indicator 10 in the current grading period due to challenges that student attendance projections and hold harmless state funding presented as a result of COVID-19 and that it makes sense to suspend it again for the FIRST grading year that will include all three COVID-19 years (2019-2020, 2020-2021, and 2021-2022).

Response: The agency agrees that Indicator 10 should not be evaluated for School FIRST rating year 2022-2023. The agency has maintained language as proposed concerning Indicator 10; however, all school districts will receive the maximum of 10 points for Indicator 10 for rating year 2022-2023.

School FIRST Indicator 11

Comment: Concerning proposed Figure: 19 TAC §109.1001(e)(7), TASBO recommended that the agency amend the definition for fast-growing districts by adding a numeric growth indicator in addition to the current percentage-based calculation. A school district administrator commented that fast-growing school districts receive a scoring reprieve, but using a percentage increase of students in membership does not accurately reflect the different circumstances of growing school districts. The administrator further commented that a school district's ability to rely on Interest and Sinking (I&S) tax revenues, likely from a growing tax base, to service new debt is not considered when scoring this indicator.

Response: The agency disagrees that Indicator 11 should be replaced with the ratio of debt to assessed value but agrees that a numeric growth indicator should be added as an alternative to pass the indicator. Instead of a 700 student growth indicator, however, the agency added a numeric growth indicator of 1,000 students in membership over five years to Indicator 11 to allow school districts to pass the indicator.

School FIRST Indicator 12

Comment: Concerning proposed Figure: 19 TAC §109.1001(e)(7), TASBO recommended that the agency use the I&S property value in the calculation for Indicator 12 for districts with Chapter 313 agreements, which will be higher than the Maintenance & Operations value and which TASBO believes is a better reflection of the district's ability to pay. TASBO also recommended Indicator 12 be reworded because the current wording implies that districts that lose points on this indicator may be at risk of debt default. Additionally, TASBO recommended that enrollment growth be factored into the calculation for Indicator 12 with different ranges of points for districts that are growing rapidly as compared to other districts.

Response: The agency disagrees that enrollment growth should be factored into the calculation for Indicator 12 with different ranges of points but agrees that the I&S property value should be used in the calculation. The agency modified Figure: 19 TAC §109.1001(e)(7) at adoption to specify the I&S value as the assessed property value that is used in the calculation for Indicator 12 for all school districts. Additionally, the agency reworded Indicator 12 to read, "What is the correlation between future debt requirements and the district's assessed property value?"

School FIRST Indicator 13

Comment: Two administrators and TASA commented that the administrative cost ratio scoring criteria is unfair and should be uniform among school districts and charter schools.

Response: The agency disagrees that administrative cost ratio scoring should be uniform between school districts and charter schools primarily because of economies of scale that are generally experienced by school districts having a greater number of students. The agency has maintained language as proposed concerning Indicator 13.

School FIRST Indicator 15

Comment: Concerning proposed Figure: 19 TAC §109.1001(e)(7), a school district administrator commented that Indicator 15 will not result in an accurate depiction of districts' financial integrity because of dramatic changes to enrollments due to COVID-19 beginning with school year 2019-2020 and extending through school year 2021-2022. The administrator proposed that Indicator 15 be suspended for the 2022-2023 rating year.

Response: The agency agrees that Indicator 15 should not be evaluated for School FIRST rating year 2022-2023. The agency has maintained language as proposed concerning Indicator 15; however, all school districts will receive the maximum of 5 points for this indicator for rating year 2022-2023.

School FIRST Indicator 20

Comment: Concerning proposed Figure: 19 TAC §109.1001(e)(7), TASA commented that under the proposed changes, independent school district (ISD) administrators and trustees would be required to discuss any changes and/or impact to local, state, and federal funding at a publicly held school board meeting within 120 days prior to the district adopting its budget to receive points under FIRST and that there is no corresponding requirement for charter schools. TASA stated that charter school boards should be accountable to all taxpayers who fund their schools and hold public meetings in the same manner and circumstances as community-based ISDs, including when their FIRST rating changes.

Response: The agency agrees that charter schools should be accountable to the public but disagrees that changes should be made to School FIRST Indicator 20 or that an additional indicator should be added to Charter FIRST for the 2022-2023 rating year. Section 109.1001(q)(3)(A)(ii) requires charter schools to report their financial management performance under each FIRST indicator for the current and previous year's financial accountability ratings. Charter schools report their attendance every six weeks and generally receive cash monthly in near equal amounts; so, settle-ups may not have an impact as significant as that for school districts who may not receive cash for several months, depending on their payment schedule. Additionally, House Bill 3, 86th Texas Legislature, 2019, amended the TEC to fund school districts based on current property values as compared to previous year values. Therefore, a discussion regarding funding for school districts is vital prior to adopting the budget. The agency has maintained language as proposed concerning Indicator 20.

Charter FIRST Indicator 1

Comment: Concerning proposed Figure: 19 TAC §109.1001(f)(7), Texas Public Charter Schools Association (TPCSA) and a governmental charter school administrator commented that Indicator 1 should be a ceiling indicator and not a critical indicator. TPCSA also suggested that the appeal process allow an appeal for any reason on Indicator 1 so TEA can consider additional information about the failure for timely annual financial and compliance report (AFR) submission. TPCSA also recommended adding language that would assign points based on when the charter holder submits the AFR.

Response: The agency disagrees that Indicator 1 should be a ceiling indicator. The agency has maintained language as proposed concerning Indicator 1. The agency, however, has added language in §109.1001(n)(9) that allows the commissioner to adjust the overall score and rating to a passing score and rating upon appeal of Indicator 1 if the certificate of the board and the audit opinion letter from the external auditor for the charter school's AFR were signed on or before the due date of the AFR as required in TEC, §44.008.

Charter FIRST Indicator 2

Comment: Concerning proposed Figure: 19 TAC §109.1001(f)(7), a governmental charter school administrator and TPCSA commented that Indicator 2 should be a ceiling indicator and not a critical indicator. TPCSA also recommended adding language that would assign points based on the number of a charter holder's modified opinions and modifications.

Response: The agency disagrees that Indicator 2 should be a ceiling indicator based on a number of issues identified by an auditor. A modified opinion reported in an audit report indicates that the auditor concluded, based on the audit evidence obtained, that the financial statements as a whole are materially misstated or that the auditor was unable to obtain sufficient appropriate audit evidence to conclude that the financial statements as a whole are free from material misstatement. The auditor, however, does not report the number of misstatements in the audit report. The agency has maintained language as proposed concerning Indicator 2.

Charter FIRST Indicator 3

Comment: Concerning proposed Figure: 19 TAC §109.1001(f)(7), a governmental charter school administrator and TPCSA commented that Indicator 3 should be a ceiling

indicator and not a critical indicator. TPCSA also recommended adding language that would assign points based on compliance with the terms of a debt agreement and whether an appeal to TEA is granted.

Response: The agency disagrees that Indicator 3 should be a ceiling indicator for the 2022-2023 rating year and not a critical indicator. Compliance with payment terms of debt agreements is critical to a charter school's financial health and can help mitigate financial risk by ensuring that it has a manageable debt service burden. Additionally, non-compliance with debt agreements can trigger various penalties and fees and make it more expensive and harder for a charter school to borrow in the future. The agency has maintained language as proposed concerning Indicator 3.

Charter FIRST Indicator 4

Comment: Concerning proposed Figure: 19 TAC §109.1001(f)(7), TPCSA requested that Indicator 4 no longer be a critical indicator and recommended that it be a ceiling indicator. TPCSA also stated that Indicator 4 should be amended to provide 30 days from when the public charter school receives official notice of a warrant hold and recommended adding language that would assign points based on when the charter holder rectifies a warrant hold.

Response: The agency disagrees that scoring for Indicator 4 should be amended to ceilings for four different conditions. The indicator already allows a charter school to pass the indicator with a ceiling of 95 points for the overall score if the charter school had a warrant hold that was cleared within 30 days. The agency has maintained language as proposed concerning Indicator 4.

Charter FIRST Indicator 5

Comment: Concerning proposed Figure: 19 TAC §109.1001(f)(7), TPCSA and a governmental charter school administrator commented that Indicator 5 should be revised to exclude the effect of any deferred inflows or outflows of resources related to pension plans on the total net asset balance. TPCSA requested that Indicator 5 no longer be a critical indicator and recommended that it be a ceiling indicator.

Response: The agency disagrees that the calculation for Indicator 5 for governmental charter schools should exclude the effect of deferred inflows and outflows of resources related to pension plans. The calculation includes the addition of pension expense, other post-employment benefits (OPEB), and net pension liabilities (NPL) to total net position to exclude their effect in the calculation for Indicator 5; however, deferred outflows and deferred inflows of resources related to pensions are the portions of the effects not recognized in pension expense. The agency also disagrees that Indicator 5 should no longer be a critical indicator. Although Indicator 5 for School FIRST was changed from a critical indicator to a ceiling indicator, the agency disagrees that Indicator 5 for Charter FIRST should no longer be a critical indicator. The implementation of Governmental Accounting Standards Board (GASB) 68 and 75 had a significant impact on school districts' net position balance, but nonprofit charter schools are not subject to GASB. Additionally, 99% of charter schools met the requirements to pass Indicator 5 for the 2021-2022 Charter FIRST ratings by having a positive total net assets balance or at least a 7% growth in student membership over five years or year or year for new charter schools. The agency has maintained language as proposed concerning Indicator 5.

Charter FIRST Indicator 6

Comment: Concerning proposed Figure: 19 TAC §109.1001(f)(7), TPCSA and a governmental charter school administrator commented that Indicator 6 should be revised to exclude the effect of OPEB, NPL, and deferred inflows or outflows of resources related to pension plans on total net assets.

Response: The agency disagrees that the calculation for Indicator 6 should exclude the effect of OPEB, NPL, and deferred inflows and outflows of resources related to pension plans on total net assets. Indicator 6 is a calculation of the average change in total net assets over three years, not a single year, so the impact of OPEB, NPL, and deferred inflows or outflows of resources related to pension plans are comparable per year. The agency has maintained language as proposed concerning Indicator 6.

Charter FIRST Indicator 10

Comment: Concerning proposed Figure: 19 TAC §109.1001(f)(7), a governmental charter school administrator commented that Indicator 10 should be revised to allow a 15% variance (instead of a 10% variance) when comparing budgeted revenues to actual revenues for the last three fiscal years. TPCSA commented that many public charter schools have less than 1,000 enrolled students and small changes in average daily attendance (ADA) can adversely impact the public charter school's budget. Additionally, TPCSA stated that any unexpected revenue source, including a grant from TEA or the federal government, can change a public charter school's budget and that Charter FIRST indicators should not discourage a public charter school from applying for TEA grants. TPCSA also added that new public charter schools in their first year of operation experience significant budget changes and should not be penalized for experiencing budget volatility or receiving grants from TEA. TPCSA proposed tiering the points for Indicator 10 and stating that TEA may only use this calculation if the charter holder has been in operation for two years and that the charter holder's first year of operations shall be excluded if it causes the charter holder to lose points.

Response: The agency agrees that there may be challenges with budgeting revenues for certain charter schools with student enrollment that is based on circumstances outside of the control of the charter school. Indicator 10 will not be evaluated for Charter FIRST rating year 2022-2023. The agency has maintained language as proposed concerning Indicator 10; however, all charter schools will receive the maximum of 10 points for Indicator 10 for rating year 2022-2023.

Charter FIRST Indicator 13

Comment: Concerning proposed Figure: 19 TAC §109.1001(f)(7), a governmental charter school administrator commented that Indicator 13 appears to measure the impact of long-term debt on a school's operations and that the indicator should be revised to divide long-term indebtedness (bonds and loans), excluding OPEB and NPL, by total assets to determine a ratio. Additionally, the administrator provided a point scale for the ratio and added that a charter school should automatically pass Indicator 13 if the charter school's change of students in membership over five years is 7% or more. The administrator also commented that Indicator 11 for independent school districts uses the ratio of long-term liabilities to total assets to determine long-term solvency and that by making the revision, Indicator 13 would be comparable to the one independent school districts use to measure the impact of long-term

borrowings on long-term solvency. TPCSA commented that for government charter schools, OPEB and NPL should be excluded from the calculation for Indicator 13.

Response: The agency disagrees that Indicator 13 should be revised to divide long-term indebtedness, excluding OPEB and NPL, by total assets. The calculation for Indicator 11 for Charter FIRST already determines the long-term liabilities to total assets ratio with the point scale that was suggested by the administrator as well as allows a charter school to automatically pass the indicator if the charter school's change of students in membership over five years is 7% or more. The agency has maintained language as proposed concerning Indicator 13.

Charter FIRST Indicator 14

Comment: Concerning proposed Figure: 19 TAC §109.1001(f)(7), TPCSA commented that since COVID-19, TEA has encouraged and even required Texas school systems to hire administrative staff, including staff to manage TEA COVID-19 and safety-related grants and HB 4545 tutoring requirements. TPCSA recommended that the calculation for Indicator 14 be a three-year average to account for uncontrollable volatility. TPCSA further stated that Indicator 15 and other indicators include a three-year average.

Response: The agency agrees that some schools hired additional staff to support positions funded by grants in response to the COVID-19 pandemic but disagrees that the administrative cost ratio calculation should be averaged over three years. A high administrative cost ratio may suggest that a charter school needs to adjust its administrative processes to reduce costs and improve efficiency. The agency, however, made a modification to Figure 19 TAC §109.1001(f)(7) for Indicator 14 to include Elementary and Secondary School Emergency Relief I, II, III, and supplemental funds in the calculation for the administrative cost ratio.

Charter FIRST Indicator 15

Comment: Concerning proposed Figure: 19 TAC §109.1001(f)(7), TPCSA commented that many public charter schools have less than 1,000 enrolled students and have experienced, and are still experiencing, unanticipated declines in student enrollment due to COVID-19. TPCSA also stated that since COVID-19, TEA has encouraged and even required Texas school systems to hire staff, including staff to manage TEA COVID-19 and safety-related grants and HB 4545 tutoring requirements. TPCSA stated that regardless of declines in student enrollment, mid-year rapid personnel changes are not possible because of these TEA grant requirements. TPCSA recommended tiering the points for the Indicator 15.

Response: The agency agrees that some schools hired additional staff to support positions funded by grants in response to the COVID-19 pandemic. Therefore, Indicator 15 will not be evaluated for Charter FIRST rating year 2022-2023. The agency has maintained language as proposed concerning Indicator 15; however, all charter schools will receive the maximum of 10 points for Indicator 15 for rating year 2022-2023.

Charter FIRST Indicator 16

Comment: Concerning proposed Figure: 19 TAC §109.1001(f)(7), a governmental charter school administrator commented that Indicator 16 should be revised to allow for wider fluctuations in enrollment and attendance impacting schools with smaller numbers of students. The administrator provided a point scale and stated that the revised indicator

would be more comparable to School FIRST Indicator 15 to measure actual average daily attendance (ADA) compared to estimated ADA. The administrator also stated that charter schools serving students in residential correctional facilities and residential treatment centers experience fluctuations in daily enrollment that can be greater than 10%. TPCSA commented that many public charter schools have less than 1,000 enrolled students and have experienced, and are still experiencing, unanticipated declines in student enrollment due to COVID-19. TPCSA also stated that minor changes in student populations can have an outsized impact on ADA. For Indicator 16, TPCSA recommended a three-year average to account for uncontrollable ADA volatility, much more variance for smaller charter holders, and a revision to allow for wider fluctuations in ADA for schools with smaller numbers of students. Additionally, TPCSA stated that provisions should be made for public charter schools serving students in residential correctional facilities and residential treatment centers that experience changes in daily enrollment that can be greater than 10% and who do not have control over the number of students enrolling in their school.

Response: The agency agrees that there may be challenges with estimating ADA for certain charter schools with student enrollment that is based on circumstances outside of the control of the charter school but disagrees that ADA should be averaged over three years. Indicator 16 will not be evaluated for Charter FIRST rating year 2022-2023. The agency has maintained language as proposed concerning Indicator 16; however, all charter schools will receive the maximum of five points for Indicator 16 for rating year 2022-2023.

Charter FIRST Indicator 17

Comment: Concerning proposed Figure: 19 TAC §109.1001(f)(7), TPCSA and a governmental charter school administrator commented that Indicator 17 should be clarified to state that the data in the Public Education Information Management System should be within 3% of all expenses in the financial audit report reported in the Statement of Revenues, Expenditures, and Changes in Fund Balance for governmental charter schools. TPCSA added that government charter schools should be on a modified accrual basis and a three-year average for Indicator 17.

Response: The agency agrees that the source of data used in the calculation for Indicator 17 for governmental charter schools should be clarified but disagrees that the calculation should be averaged over three years. The agency has maintained language as proposed concerning Indicator 17. Although the expenses reported in the Statement of Revenues, Expenditures, and Changes in Fund Balances are used in the calculation for Indicator 17 for governmental charter schools, clarification on the sources of data used for governmental charter schools will be provided in a different manner.

Charter FIRST Indicator 19

Comment: Concerning proposed Figure: 19 TAC §109.1001(f)(7), TPCSA stated that a 10-point loss for Indicator 19 is excessive and recommended partial credit for the indicator. TPCSA suggested that a charter school should receive five points if the charter holder has one instance of material noncompliance and receive zero points if the charter holder has two or more instances of noncompliance.

Response: The agency disagrees that the point scale for Indicator 19 should be modified to zero, five, or ten points based on

the number of instances of material noncompliance. Depending on the severity of the noncompliance, one instance of material noncompliance can have a significant impact on the financial statements or the overall financial position of a charter school. The agency has maintained language as proposed concerning Indicator 19

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §12.104, as amended by Senate Bill (SB) 1365, 87th Texas Legislature, Regular Session, 2021, which subjects open-enrollment charter schools to the prohibitions, restrictions, or requirements relating to public school accountability and special investigations under TEC, Chapter 39, Subchapters A, B, C, D, F, G, and J, and TEC, Chapter 39A; TEC, §39.082, which requires the commissioner to develop and implement a financial accountability rating system for public schools and establishes certain minimum requirements for the system, including an appeals process; TEC, §39.083, which requires the commissioner to include in the financial accountability system procedures for public schools to report and receive public comment on an annual financial management report; TEC, §39.085, which requires the commissioner to adopt rules to implement TEC, Chapter 39, Subchapter D, which addresses financial accountability for public schools; TEC, §39.087, as added by House Bill 1525, 87th Texas Legislature, Regular Session, 2021, which requires the commissioner to adjust the financial accountability rating system under TEC, §39.082, to account for the impact of financial practices necessary as a response to the coronavirus disease (COVID-19) pandemic, including adjustments required to account for federal funding and funding adjustments under TEC, Chapter 48, Subchapter F; and TEC, §39.151, as amended by SB 1365, 87th Texas Legislature, Regular Session, 2021, which requires the commissioner to provide a process by which a school district or an open-enrollment charter school can challenge an agency decision related to academic or financial accountability under TEC, Chapter 39, including a determination of consecutive school years of unacceptable performance ratings. This process must include a committee to make recommendations to the commissioner. These provisions collectively authorize and require the commissioner to adopt the financial accountability system rules, which implement each requirement of statute applicable to school districts and open-enrollment charter schools.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §§12.104, as amended by Senate Bill (SB) 1365, 87th Texas Legislature, Regular Session, 2021; 39.082; 39.083; 39.085; 39.087, as added by House Bill 1525, 87th Texas Legislature, Regular Session, 2021; and 39.151, as amended by SB 1365, 87th Texas Legislature, Regular Session, 2021.

§109.1001. Financial Accountability Ratings.

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

(1) Annual Financial Report (AFR)--The audited annual report required by the Texas Education Code (TEC), §44.008, that is due to the Texas Education Agency (TEA) by no later than 150 days after the close of a school district's or an open-enrollment charter school's fiscal year.

(2) Ceiling indicator--An upper limit (the maximum score) at which a score from a standard limit of a specific indicator will result regardless of overall points.

(3) Debt--An amount of money owed to a person, bank, company, or other organization.

(4) Electronic submission--The TEA electronic data feed format required for use by school districts, open-enrollment charter schools, and regional education service centers (ESCs).

(5) Financial Integrity Rating System of Texas (FIRST)--The financial accountability rating system administered by the TEA in accordance with the TEC, §39.082 and §39.085. The system provides additional transparency to public education finance and meaningful financial oversight and improvement for school districts (School FIRST) and open-enrollment charter schools and charter schools operated by a public institution of higher education under TEC, Chapter 12, Subchapters D and E (Charter FIRST).

(6) Fiscal year--The fiscal year of a school district or an open-enrollment charter school, which begins on July 1 or September 1 of each year, as determined by the board of trustees of the district or the governing body of the charter holder in accordance with the TEC, §44.0011.

(7) Foundation School Program (FSP)--The program established under the TEC, Chapters 41, 42, and 46, or any successor program of state-appropriated funding for school districts in this state.

(8) Open-enrollment charter school--A charter school authorized by the commissioner of education under TEC, Chapter 12, Subchapter D.

(9) Public institution of higher education (IHE)--A public college or university eligible to operate a school district; an open-enrollment charter school; or a TEC, Chapter 12, Subchapter E, charter school authorized by the commissioner.

(10) Summary of Finances (SOF) report--The document of record for FSP allocations. An SOF report is produced for each school district and open-enrollment charter school by the TEA division responsible for state funding that describes the school district's or open-enrollment charter school's funding elements and FSP state aid.

(11) Texas Student Data System Public Education Information Management System (TSDS PEIMS)--The system that school districts and open-enrollment charter schools use to load, validate, and submit their data to the TEA.

(12) Warrant hold--The process by which state payments issued to payees indebted to the state, or payees with a tax delinquency, are held by the Texas Comptroller of Public Accounts until the debt is satisfied in accordance with the Texas Government Code, §403.055.

(b) The TEA will assign a financial accountability rating to each school district, open-enrollment charter school, and charter school operated by a public IHE under TEC, Chapter 12, Subchapters D and E, as required by the TEC, §39.082.

(c) The commissioner will evaluate the rating system every three years as required by the TEC, §39.082, and may modify the system in order to improve the effectiveness of the rating system. If the rating system has been modified, the TEA will communicate changes to ratings criteria and their effective dates to school districts, open-enrollment charter schools, and charter schools operated by public IHEs.

(d) The TEA will use the following sources of data in calculating the financial accountability indicators for school districts, open-enrollment charter schools, and charter schools operated by public IHEs.

(1) AFR. For each school district, open-enrollment charter school, and charter school operated by a public IHE, the TEA will use audited financial data in the district's or charter's AFR. The AFR, submitted as an electronic submission through the TEA website, must

include data required in the Financial Accountability System Resource Guide (FASRG) adopted under §109.41 of this title (relating to Financial Accountability System Resource Guide).

(2) TSDS PEIMS. The TEA will use TSDS PEIMS data submitted by the school district, open-enrollment charter school, or charter school operated by a public IHE in the calculation of the financial accountability indicators.

(3) Warrant holds. The TEA will use warrant holds as reported by the Texas Comptroller of Public Accounts in the calculation of the financial accountability indicators.

(4) FSP. The TEA will use the average daily attendance (ADA) information used for FSP funding purposes for the school district, open-enrollment charter school, or charter school operated by a public IHE in the calculation of the financial accountability indicators.

(e) The TEA will base the financial accountability rating of a school district on its overall performance on the financial measurements, ratios, and other indicators established by the commissioner, as shown in the figures provided in this subsection. Financial accountability ratings for a rating year are based on the data from the immediate prior fiscal year.

(1) The financial accountability rating indicators for rating year 2014-2015 are based on fiscal year 2014 financial data and are provided in the figure in this paragraph entitled "School FIRST - Rating Worksheet Dated August 2015 for rating year 2014-2015." Figure: 19 TAC §109.1001(e)(1) (No change.)

(2) The financial accountability rating indicators for rating year 2015-2016 are based on fiscal year 2015 financial data and are provided in the figure in this paragraph entitled "School FIRST - Rating Worksheet Dated August 2015 for rating year 2015-2016." Figure: 19 TAC §109.1001(e)(2) (No change.)

(3) The financial accountability rating indicators for rating year 2016-2017 are based on fiscal year 2016 financial data and are provided in the figure in this paragraph entitled "School FIRST - Rating Worksheet Dated December 2016 for rating year 2016-2017." Figure: 19 TAC §109.1001(e)(3) (No change.)

(4) The financial accountability rating indicators for rating years 2017-2018, 2018-2019, and 2019-2020 are based on financial data from fiscal years 2017, 2018, and 2019, respectively, and are provided in the figure in this paragraph entitled "School FIRST - Rating Worksheet Dated April 2020 for rating years 2017-2018 through 2019-2020." The financial accountability rating indicators for rating years 2017-2018, 2018-2019, and 2019-2020 will use the same calculations and scoring method provided in the figure in this paragraph. Figure: 19 TAC §109.1001(e)(4) (No change.)

(5) The financial accountability rating indicators for rating year 2020-2021 are based on fiscal year 2020 financial data and are provided in the figure in this paragraph entitled "School FIRST - Rating Worksheet Dated October 2021 for rating year 2020-2021." The financial accountability rating indicators for rating years after 2020-2021 will use the same calculations and scoring method provided in the figure in this paragraph. Figure: 19 TAC §109.1001(e)(5) (No change.)

(6) The financial accountability rating indicators for rating year 2021-2022 are based on fiscal year 2021 financial data and are provided in the figure in this paragraph entitled "School FIRST - Rating Worksheet Dated October 2021 for rating year 2021-2022." The financial accountability rating indicators for rating years after 2021-2022 will use the same calculations and scoring method provided in the figure in this paragraph.

Figure: 19 TAC §109.1001(e)(6) (No change.)

(7) The financial accountability rating indicators for rating year 2022-2023 are based on fiscal year 2022 financial data and are provided in the figure in this paragraph entitled "School FIRST - Rating Worksheet Dated June 2023 for rating year 2022-2023." The financial accountability rating indicators for rating years after 2022-2023 will use the same calculations and scoring method provided in the figure in this paragraph.

Figure: 19 TAC §109.1001(e)(7)

(8) The specific calculations and scoring methods used in the financial accountability rating worksheets for school districts for rating years prior to 2014-2015 remain in effect for all purposes with respect to those rating years.

(f) The TEA will base the financial accountability rating of an open-enrollment charter school on its overall performance on the financial measurements, ratios, and other indicators established by the commissioner, as shown in the figures provided in this subsection. Financial accountability ratings for a rating year are based on the data from the immediate prior fiscal year.

(1) The financial accountability rating indicators for rating year 2014-2015 are based on fiscal year 2014 financial data and are provided in the figure in this paragraph entitled "Charter FIRST - Rating Worksheet Dated August 2015 for rating year 2014-2015."

Figure: 19 TAC §109.1001(f)(1) (No change.)

(2) The financial accountability rating indicators for rating year 2015-2016 are based on fiscal year 2015 financial data and are provided in the figure in this paragraph entitled "Charter FIRST - Rating Worksheet Dated August 2015 for rating year 2015-2016."

Figure: 19 TAC §109.1001(f)(2) (No change.)

(3) The financial accountability rating indicators for rating year 2016-2017 are based on fiscal year 2016 financial data and are provided in the figure in this paragraph entitled "Charter FIRST - Rating Worksheet Dated August 2015 for rating year 2016-2017."

Figure: 19 TAC §109.1001(f)(3) (No change.)

(4) The financial accountability rating indicators for rating years 2017-2018, 2018-2019, and 2019-2020 are based on financial data from fiscal years 2017, 2018, and 2019, respectively, and are provided in the figure in this paragraph entitled "Charter FIRST - Rating Worksheet Dated April 2020 for rating year 2017-2018." The financial accountability rating indicators for rating years 2017-2018, 2018-2019, and 2019-2020 will use the same calculations and scoring method provided in the figure in this paragraph.

Figure: 19 TAC §109.1001(f)(4) (No change.)

(5) The financial accountability rating indicators for rating year 2020-2021 are based on fiscal year 2020 financial data and are provided in the figure in this paragraph entitled "Charter FIRST - Rating Worksheet Dated October 2021 for rating year 2020-2021." The financial accountability rating indicators for rating years after 2020-2021 will use the same calculations and scoring method provided in the figure in this paragraph.

Figure: 19 TAC §109.1001(f)(5) (No change.)

(6) The financial accountability rating indicators for rating year 2021-2022 are based on fiscal year 2021 financial data and are provided in the figure in this paragraph entitled "Charter FIRST - Rating Worksheet Dated October 2021 for rating year 2021-2022." The financial accountability rating indicators for rating years after 2021-2022 will use the same calculations and scoring method provided in the figure in this paragraph.

Figure: 19 TAC §109.1001(f)(6) (No change.)

(7) The financial accountability rating indicators for rating year 2022-2023 are based on fiscal year 2022 financial data and are provided in the figure in this paragraph entitled "Charter FIRST - Rating Worksheet Dated June 2023 for rating year 2022-2023." The financial accountability rating indicators for rating years after 2022-2023 will use the same calculations and scoring method provided in the figure in this paragraph.

Figure: 19 TAC §109.1001(f)(7)

(8) The specific calculations and scoring methods used in the financial accountability rating worksheets for open-enrollment charter schools for rating years prior to 2014-2015 remain in effect for all purposes with respect to those rating years.

(g) The TEA will base the financial accountability rating of a charter school operated by a public IHE on its overall performance on the financial measurements, ratios, and other indicators established by the commissioner, as shown in the figures provided in this subsection. Financial accountability ratings for a rating year are based on the data from the immediate prior fiscal year.

(1) The financial accountability rating indicators for rating year 2016-2017 are based on fiscal year 2016 financial data and are provided in the figure in this paragraph entitled "IHE Charter FIRST - Rating Worksheet Dated June 2019 for rating years 2016-2017 through 2019-2020." The financial accountability rating indicators for rating years 2016-2017 through 2019-2020 will use the same calculations and scoring method provided in the figure in this paragraph.

Figure: 19 TAC §109.1001(g)(1) (No change.)

(2) The financial accountability rating indicators for rating year 2020-2021 are based on fiscal year 2020 financial data and are provided in the figure in this paragraph entitled "IHE Charter FIRST - Rating Worksheet Dated June 2019 for rating year 2020-2021." The financial accountability rating indicators for rating years after 2020-2021 will use the same calculations and scoring method provided in the figure in this paragraph.

Figure: 19 TAC §109.1001(g)(2) (No change.)

(h) The types of financial accountability ratings that school districts or open-enrollment charter schools may receive for the rating year 2014-2015 are as follows.

(1) P for pass. This rating applies only to the financial accountability rating for rating year 2014-2015 based on fiscal year 2014 financial data. In accordance with the procedures established in this section, a school district or an open-enrollment charter school will receive a P rating if it scores within the applicable range established by the commissioner for a P rating.

(2) F for substandard achievement. This rating applies to the financial accountability rating for rating year 2014-2015 based on fiscal year 2014 financial data. In accordance with the procedures established in this section, a school district or an open-enrollment charter school will receive an F rating if it scores within the applicable range established by the commissioner for an F rating.

(i) The types of financial accountability ratings that school districts or open-enrollment charter schools may receive for the rating year 2015-2016 and all subsequent rating years are as follows.

(1) A for superior achievement. Beginning with the financial accountability rating for rating year 2015-2016 and all subsequent rating years, in accordance with the procedures established in this section, a school district or an open-enrollment charter school will receive an A rating if it scores within the applicable range established by the commissioner for an A rating.

(2) B for above standard achievement. Beginning with the financial accountability rating for rating year 2015-2016 and all subsequent rating years, in accordance with the procedures established in this section, a school district or an open-enrollment charter school will receive a B rating if it scores within the applicable range established by the commissioner for a B rating.

(3) C for standard achievement. Beginning with the financial accountability rating for rating year 2015-2016 and all subsequent rating years, in accordance with the procedures established in this section, a school district or an open-enrollment charter school will receive a C rating if it scores within the applicable range established by the commissioner for a C rating.

(4) F for substandard achievement. Beginning with the financial accountability rating for rating year 2015-2016 and all subsequent rating years, in accordance with the procedures established in this section, a school district or an open-enrollment charter school will receive an F rating if it scores within the applicable range established by the commissioner for an F rating.

(5) No Rating. Beginning with the financial accountability rating for rating year 2016-2017 and all subsequent rating years, in accordance with the procedures established in this section, a school district receiving territory due to an annexation order by the commissioner under the TEC, §13.054, or consolidation under the TEC, Chapter 49, Subchapter H, will not receive a rating for two consecutive rating years beginning with the rating year that is based on financial data from the fiscal year in which the order of annexation becomes effective. After the second rating year, the receiving district will be subject to the financial accountability rating system established by the commissioner in this section.

(j) The types of financial accountability ratings that charter schools operated by public IHEs may receive for the rating year 2016-2017 and all subsequent rating years are as follows.

(1) P for pass. Beginning with the financial accountability rating for rating year 2016-2017 and all subsequent rating years, in accordance with the procedures established in this section, a charter school operated by a public IHE will receive a P rating if it scores within the applicable range established by the commissioner for a P rating.

(2) F for substandard achievement. Beginning with the financial accountability rating for rating year 2016-2017 and all subsequent rating years, in accordance with the procedures established in this section, a charter school operated by a public IHE will receive an F rating if it scores within the applicable range established by the commissioner for an F rating.

(k) The commissioner may lower a financial accountability rating based on the findings of an action conducted under the TEC, Chapter 39 or 39A, or change a financial accountability rating in cases of disaster, flood, extreme weather conditions, fuel curtailment, or another calamity.

(l) A financial accountability rating remains in effect until replaced by a subsequent financial accountability rating.

(m) The TEA will issue a preliminary financial accountability rating to a school district, an open-enrollment charter school, or a charter school operated by a public IHE on or before August 8 of each year. The TEA will base the financial accountability rating for a rating year on the data from the fiscal year preceding the rating year.

(1) The TEA will not delay the issuance of the preliminary or final rating if a school district, an open-enrollment charter school, or a charter school operated by a public IHE fails to meet the statutory

deadline under the TEC, §44.008, for submitting the AFR. Instead, the school district, open-enrollment charter school, or charter school operated by a public IHE will receive an F rating for substandard achievement.

(2) If the TEA receives an appeal of a preliminary rating, described by subsection (n) of this section, the TEA will issue a final rating to the school district, open-enrollment charter school, or charter school operated by a public IHE no later than 60 days after the deadline for submitting appeals.

(3) If the TEA does not receive an appeal of a preliminary rating, described by subsection (n) of this section, the preliminary rating automatically becomes a final rating 31 days after issuance of the preliminary rating.

(n) A school district, an open-enrollment charter school, or a charter school operated by a public IHE may appeal its preliminary financial accountability rating through the following appeals process.

(1) The TEA division responsible for financial accountability must receive a written appeal no later than 30 days after the TEA's release of the preliminary rating. The appeal must include adequate evidence and additional information that supports the position of the school district, open-enrollment charter school, or charter school operated by a public IHE. Appeals received 31 days or more after TEA issues a preliminary rating will not be considered.

(2) A data error attributable to the TEA is a basis for an appeal. If a preliminary rating contains a data error attributable to the TEA, a school district or an open-enrollment charter school may submit a written appeal requesting a review of the preliminary rating.

(3) A school district, an open-enrollment charter school, or a charter school operated by a public IHE may appeal any other adverse issue it identifies in the preliminary rating.

(4) The TEA will only consider appeals that would result in a change of the preliminary rating.

(5) The TEA division responsible for financial accountability will select an external review panel to independently oversee the appeals process.

(6) The TEA division responsible for financial accountability will submit the information provided by the school district, open-enrollment charter school, or charter school operated by a public IHE to the external review panel members for review.

(7) Each external review panel member will examine the appeal and supporting documentation and will submit his or her recommendation to the TEA division responsible for financial accountability.

(8) The TEA division responsible for financial accountability will compile the recommendations and forward them to the commissioner.

(9) The commissioner will make a final ratings decision.

(A) The commissioner may adjust a score for an indicator or the overall score upon appeal of the indicator(s) by the school district, open-enrollment charter school, or charter school operated by a public IHE.

(B) Upon appeal of the indicator for the timely submission of a complete AFR, the commissioner may adjust the overall score and rating as described in clauses (i)-(iii) of this subparagraph if the certificate of the board and the audit opinion letter from the external auditor for the school district's or charter school's AFR were signed on or before the due date of the AFR as required in TEC, §44.008.

(i) For a school district or charter school that has a failed preliminary FIRST rating with 85 to 100 points, deduct 15 points from the total points for an overall passing score if no other critical indicators were failed.

(ii) For a school district or charter school that has a failed preliminary FIRST rating with 70 to 84 points, adjust the overall score to 70 points for an overall passing score if no other critical indicators were failed.

(iii) For a school district or charter school that has a failed preliminary FIRST rating with total points less than the threshold for an overall passing score and/or the school district or charter school failed any other critical indicators, no adjustment to the points will be made for the overall score.

(o) A final rating issued by the TEA under this section may not be appealed under the TEC, §7.057, or any other law or rule.

(p) A financial accountability rating by a voluntary association is a local option of the school district, open-enrollment charter school, or charter school operated by a public IHE, but it does not substitute for a financial accountability rating by the TEA.

(q) Each school district, open-enrollment charter school, and charter school operated by a public IHE is required to report information and financial accountability ratings to parents, taxpayers, and other stakeholders by implementing the following reporting procedures.

(1) Each school district, open-enrollment charter school, and charter school operated by a public IHE must prepare and distribute an annual financial management report in accordance with this subsection.

(2) Each school district, open-enrollment charter school, and charter school operated by a public IHE must provide the public with an opportunity to comment on the report at a public hearing.

(3) The annual financial management report for a school district, an open-enrollment charter school, or a charter school operated by a public IHE must include:

(A) a description of its financial management performance based on a comparison, provided by the TEA, of its performance on the indicators established by the commissioner and reflected in this section. The report will contain information that discloses:

(i) state-established standards; and

(ii) the financial management performance of the school district, open-enrollment charter school, or charter school operated by a public IHE under each indicator for the current and previous year's financial accountability ratings;

(B) any descriptive information required by the commissioner, including:

(i) a copy of the superintendent's current employment contract or other written documentation of employment if no contract exists. This must disclose all compensation and benefits paid to the superintendent. The school district, open-enrollment charter school, or charter school operated by a public IHE may publish the superintendent's employment contract on its website instead of publishing it in the annual financial management report;

(ii) a summary schedule for the fiscal year (12-month period) of expenditures paid on behalf of the superintendent and each board member and total reimbursements received by the superintendent and each board member. This includes transactions on the credit card(s), debit card(s), stored-value card(s), and any other similar instrument(s) of the school district, open-enrollment charter

school, or charter school operated by a public IHE to cover expenses incurred by the superintendent and each board member. The summary schedule must separately report reimbursements for meals, lodging, transportation, motor fuel, and other items. The summary schedule of total reimbursements should not include reimbursements for supplies and materials that were purchased for the operation of the school district, open-enrollment charter school, or charter school operated by a public IHE;

(iii) a summary schedule for the fiscal year of the dollar amount of compensation and fees received by the superintendent from an outside school district, open-enrollment charter school, charter school operated by a public IHE, or any other outside entity in exchange for professional consulting or other personal services. The schedule must separately report the amount received from each entity;

(iv) a summary schedule for the fiscal year of the total dollar amount of gifts that had a total economic value of \$250 or more received by the executive officers and board members. This reporting requirement applies only to gifts received by the executive officers and board members (and their immediate family as described by Government Code, Chapter 573, Subchapter B, Relationships by Consanguinity or by Affinity) of the school district, open-enrollment charter school (or charter holder), or charter school operated by a public IHE (or charter holder) from an outside entity that received payments from the school district, open-enrollment charter school (or charter holder), or charter school operated by a public IHE (or charter holder) in the prior fiscal year and to gifts from competing vendors that were not awarded contracts in the prior fiscal year. This reporting requirement does not apply to reimbursement by an outside entity for travel-related expenses when the purpose of the travel was to investigate matters directly related to an executive officer's or board member's duties or to investigate matters related to attendance at education-related conferences and seminars with the primary purpose of providing continuing education (this exclusion does not apply to trips for entertainment purposes or pleasure trips). This reporting requirement excludes an individual gift or a series of gifts from a single outside entity that had a total economic value of less than \$250 per executive officer or board member; and

(v) a summary schedule for the fiscal year of the dollar amount received by board members for the total amount of business transactions with the school district, open-enrollment charter school (or charter holder), or charter school operated by a public IHE (or charter holder). This reporting requirement is not to duplicate the items disclosed in the summary schedule of reimbursements received by board members; and

(C) any other information the board of trustees of the school district, open-enrollment charter school, or charter school operated by a public IHE determines to be useful.

(4) The board of trustees of each school district, open-enrollment charter school, or charter school operated by a public IHE must hold a public hearing on the annual financial management report within two months after receiving a final financial accountability rating. The public hearing must be held at a location in the facilities of the school district, open-enrollment charter school, or charter school operated by a public IHE. The board must give notice of the hearing to owners of real estate property in the geographic boundaries of the school district, open-enrollment charter school, or charter school operated by a public IHE and to parents of school district, open-enrollment charter school, or charter school operated by a public IHE students. In addition to other notice required by law, the board must provide notice of the hearing:

(A) to a newspaper of general circulation in the geographic boundaries of the school district, each campus of an open-enrollment charter school, or each campus of a charter school operated by a public IHE in one posting prior to holding the public meeting, providing the time and place of the hearing. The notice in the newspaper may not be earlier than 30 days or later than 10 days before the date of the hearing. If no newspaper is published in the county in which the district's central administration office is located or within the geographic boundaries of an open-enrollment charter school's campus or campus of a charter school operated by a public IHE, then the board must publish the notice in the county nearest to the county seat of the county in which the district's central administration office is located or in which the campus of the open-enrollment charter school or the campus of a charter school operated by a public IHE is located; and

(B) through electronic mail to the mass communication media serving the school district, open-enrollment charter school, or charter school operated by a public IHE, including, but not limited to, radio and television.

(5) At the hearing, the school district, open-enrollment charter school, or charter school operated by a public IHE must provide the annual financial management report to the attending parents and taxpayers.

(6) The school district, open-enrollment charter school, or charter school operated by a public IHE must retain the annual financial management report for at least three years after the public hearing and make it available to parents and taxpayers upon request.

(7) Each school district, open-enrollment charter school, or charter school operated by a public IHE that received an F rating must file a corrective action plan with the TEA, prepared in accordance with instructions from the commissioner, within one month after the public hearing of the school district, open-enrollment charter school, or charter school operated by a public IHE. The commissioner may require certain information in the corrective action plan to address the factor(s) that may have contributed to the F rating for a school district, open-enrollment charter school, or charter school operated by a public IHE.

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 May 17, 2023.

TRD-202301814

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 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

CHAPTER 73. CONTINUING EDUCATION

22 TAC §73.2

The Texas Board of Chiropractic Examiners (Board) adopts an amendment to 22 TAC §73.2 (Failure to Meet Continuing Edu-

cation Requirements) without changes to the text as published in the March 10, 2023, issue of the *Texas Register* (48 TexReg 1400), and thus will not be republished. The amendment simply clarifies that the Board will determine a licensee is out of compliance of the licensee's continuing education requirements by means of a 10% random audit by the Board. This change from a 100% audit of licensees' continuing education hours to a random audit was recommended by the Sunset Commission.

The Board received one comment concerning the amendment from the Texas Medical Association (TMA). TMA expressed concern that the amendment arguably could somehow be read as possibly precluding the Board from enforcing its continuing education requirements by any means other than through a random compliance audit.

While the Board appreciates TMA's recommendation to rewrite the rule, the Board respectfully declines. Texas Occupations Code §201.501 (Disciplinary Powers of the Board) gives the Board the authority to discipline a licensee for any violation of Occupations Code Chapter 201 or rule adopted by the Board, which includes the Board's continuing education rules in 22 TAC Chapter 73. This rule amendment does not alter that in the slightest.

The amended rule is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic, and Texas Occupations Code §201.356, which authorizes the Board to adopt rules relating to licensee continuing education requirements.

No other statutes or rules are affected by this adopted amended rule.

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

Filed with the Office of the Secretary of State on May 19, 2023.

TRD-202301833

Christopher Burnett

General Counsel

Texas Board of Chiropractic Examiners

Effective date: June 8, 2023

Proposal publication date: March 10, 2023

For further information, please call: (512) 305-6700

TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 1. GENERAL ADMINISTRATION

The commissioner of the Texas Department of Insurance (TDI) adopts amendments to 28 TAC §§1.208 - 1.210, 1.601, 1.602, 1.705, 1.804, and 1.2803, concerning administrative procedures. The commissioner adopts §§1.208 - 1.210, 1.601, and 1.602 with changes to the proposed text published in the January 13, 2023, issue of the *Texas Register* (48 TexReg 102). These sections will be republished. Changes to §§1.208 - 1.210 and §1.602 are nonsubstantive and revised for consistency with agency drafting style, and §1.601 is revised in response to

public comment. The commissioner adopts §§1.705, 1.804, and 1.2803 without changes to the proposed text. These sections will not be republished.

REASONED JUSTIFICATION. The adopted amendments are necessary to update TDI's mailing address and physical address where they are listed in Chapter 1 to reflect TDI's move from its previous location in the William P. Hobby Building at 333 Guadalupe Street in Austin, Texas 78701, to the Barbara Jordan State Office Building at 1601 Congress Avenue in Austin, Texas 78701. Adopted amendments also revise email addresses and other contact information, where appropriate, to ensure that the rules have TDI's current information. The amendments also update rule language for consistency with current TDI plain language preferences and drafting practices. While the amendments relating to consumer notices build in time for compliance, nothing prevents a regulated person from providing TDI's updated contact information to consumers immediately.

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

Section 1.208. Applicability. The adopted amendments remove "Purpose and" in the section title and remove rule text from §1.208(a), which describes the purpose of the section, because it is no longer necessary to include in the rule. The amendments also redesignate the remaining subsections to reflect the removal of §1.208(a) and update implementation dates, where necessary. Documents provided to consumers or the public that include TDI contact information must be updated by July 1, 2023, though the section allows use of documents printed before January 1, 2023, until September 1, 2023. In addition, amendments revise references to sections, remove "(HMO)," and replace "chapter" with "title" to conform with current agency drafting style and plain language preferences.

The text of §1.208 as proposed has been changed to add the titles to the citations of §1.209 and §1.210 to reflect current agency drafting style.

Section 1.209. Telephone, Fax, Email Address, Website Address, and Department Addresses in Rules, Forms. Section 1.209 clarifies that current addresses and contact information for TDI should be used as a substitute when text in a TDI rule references outdated TDI contact information. The adopted amendments add 333 Guadalupe Street, Austin, Texas 78701 as an old address for TDI and provide the updated Congress Avenue address as the substitute. The amendments also add TDI's outdated mailing address to rule text and provide the agency's new mailing address for use as the substitute.

The amendments restructure the section by deleting the subsection (a) designation and replacing subsection (b) with paragraph (3) to reflect the new section structure. The amendments revise the figure citation to "Figure: 28 TAC §1.209(2)" to reflect the adopted rule structure. The amendments also delete §1.209(c), which references a chart listing rules and forms affected by the rule on TDI's rule website. The chart will, however, remain on TDI's website as a reference for rules containing phone numbers that changed in 2014.

The amendments make nonsubstantive changes to replace the word "facsimile" with the word "fax" as it appears in the section title and in the text of the section for consistency with Figure: 28 TAC §1.209(2). The amendments replace "street address" with "department addresses" as it appears in the section title to reflect the inclusion of mailing addresses in the section. The amendments also update internal citations and replace the word

"chapter" with "title" and "HMO" with "health maintenance organizations (HMOs)" to reflect current agency plain language preferences and drafting style.

The text of §1.209 as proposed has been changed to add the title of §1.208 in a citation to the section and to amend the font used in Figure: 28 TAC §1.209(2) to reflect current agency drafting style.

Section 1.210. Notice to Customers. Section 1.210 requires insurers and HMOs that issued policies that do not expire but are currently in effect to provide customers with an "Important Notice" in §1.601 and §1.602 by a specific date. The adopted amendments replace the reference to the "Important Notice" with "notice forms required" for accuracy with the current rule language in §1.601. The amendments also update the date that regulated entities must comply with the rule to September 1, 2023.

Nonsubstantive changes include replacing "chapter" with "title" and "HMOs" with "health maintenance organizations" to reflect current agency plain language preferences and drafting style.

The text of §1.210 as proposed has been changed to add the titles to the citations of §1.601 and §1.602 to reflect current agency drafting style.

Section 1.601. Notice of Toll-Free Telephone Numbers and Information and Complaint Procedures. Section 1.601 includes notices insurers and HMOs must provide to consumers that contain TDI contact information. The adopted amendments update TDI's mailing and email address in these notices, which are in Figure: 28 TAC §1.601(a)(2)(B) and Figure: 28 TAC §1.601(a)(2)(C). The adopted amendments also revise §1.601(e) to require that insurers and HMOs begin providing the updated notice forms in information to policyholders by July 1, 2023.

The adopted amendments also make nonsubstantive changes to remove the statement "the following information" and replace the word "font" with "type" to conform with current agency drafting style.

The contents of Figure: 28 TAC §1.601(a)(2)(C) have been changed from the version included in the proposal in response to comment by updating an email address where policyholders who have an unresolved problem with their premium may request assistance.

Section 1.602. Notice of Website. Section 1.602 specifies contact information for TDI that insurers identified in the section must provide to consumers. The adopted amendments update TDI's mailing address in Figure: 28 TAC §1.602(b)(1)(C), and the amended text in §1.602(b)(1)(C) requires that insurers begin providing the updated notice of website form to policyholders by July 1, 2023.

The amendments also clarify which implementation date applies to Figure: 28 TAC §1.602(b)(1)(C) and Figure: 28 TAC §1.602(b)(2) and that insurers must include the language in subparagraphs (A) and (B) of §1.602(b)(1) in the notice required under §1.601(a)(2) with each policy specified.

The amendments remove reference to the word "internet" in the section title and the word "and" in §1.602(b)(1)(A). Amendments also replace the word "font" with "type," "who" with "that," "Helpinsure.com" with "HelpInsure.com" and the statement "top 25" with "top-25" to conform with current agency drafting style and plain language preferences.

The contents of Figure: 28 TAC §1.602(b)(1)(C) have been changed from the version included in the proposal to correct punctuation by replacing a parenthesis with a bracket.

Section 1.705. Review. Section 1.705 provides the process for a person affected by an action taken by an associate or deputy commissioner under 28 TAC Chapter 1, Subchapter F, to petition the commissioner for review of the action. The adopted amendments update the mailing address and add the Chief Clerk email address where any affected person may file a petition.

The amendments also revise capitalization, replace the statement "pursuant to" with "under," and replace the word "shall" with either "must" or "will" as appropriate, to reflect agency drafting style and plain language preferences.

Section 1.804. Manner of Notice. Section 1.804 identifies locations where TDI and State Fire Marshal's Office (SFMO) previously posted notices. The adopted amendments remove existing §1.804(a) because TDI and SFMO no longer post hard copy notices at the agency's physical location. Because §1.804(a) is removed, the designation "(b)" is also removed. Amendments also clarify how notice under §1.804 will be delivered to applicants and provide, as an example, delivery of the notice through a designated email address.

Section 1.2803. Notice About Certain Information Laws and Practices. Section 1.2803 contains a notice regarding information TDI collects. The adopted amendments update the contact information provided in Figure: 28 TAC §1.2803(a) to remove the specific TDI division to contact. Instead, the amendments provide the dedicated email address where individuals requesting record corrections may submit their request; update a reference to TDI's website address; and, to promote clarity and prevent consumer confusion, remove a reference to an outdated title of the website where procedures for making corrections can be found. Finally, the amendments replace the word "subchapter" with "section" to incorporate the notice under §1.2803 on the new effective date for the section. Amendments also replace the word "shall" with "will" and the words "Internet site" and "web page" with "website" to conform with current agency drafting style and plain language preferences.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Commenter: TDI received one comment from the National Council on Compensation Insurance (NCCI). The commenter was in support of the proposal with changes.

Comment on §1.601.

Comment. A commenter requests that TDI amend two instances of the NCCI complaint email provided in Figure: 28 TAC §1.601(a)(2)(C) from "regulatoryoperations@ncci.com" to disputeresolution@ncci.com.

Agency Response. TDI agrees and has changed the NCCI email provided in the toll-free notice form.

SUBCHAPTER A. RULES OF PRACTICE AND PROCEDURE

DIVISION 2. RULE MAKING PROCEDURES

28 TAC §§1.208 - 1.210

STATUTORY AUTHORITY. The commissioner adopts amendments to 28 TAC §§1.208 - 1.210 under Insurance Code §521.005(a)(2) and §36.001.

Insurance Code §521.005(a)(2) provides that each insurance policy delivered or issued for delivery in this state must include a brief written notice that includes TDI's name and address.

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

§1.208. *Applicability.*

(a) This section and §1.209 of this title (relating to Telephone, Fax, Email Address, Website Address, and Department Addresses in Rules, Forms) and §1.210 of this title (relating to Notice to Customers) apply to all documents or information provided to consumers or the public that include TDI contact information, including contracts, policies, evidences of coverage, bonds, certificates of insurance, and notices delivered, issued for delivery, or renewed in this state, and subject to regulation under the Insurance Code, except as specified in §1.210 of this title.

(b) Documents and information described in subsection (a) of this section and issued on or after July 1, 2023, must reflect the current TDI contact information described in §1.209 of this title, except as provided by subsection (c) of this section and §1.210 of this title.

(c) Notwithstanding subsection (b) of this section, insurers, health maintenance organizations, and other regulated persons may continue to use and issue documents and information described in subsection (a) of this section until September 1, 2023, if the documents or information were printed before January 1, 2023.

(d) Documents and information described in subsection (a) of this section that were approved or filed, whichever is applicable, before January 1, 2023, may be delivered or issued for delivery without refileing.

§1.209. *Telephone, Fax, Email Address, Website Address, and Department Addresses in Rules, Forms.*

The purpose of this section is to update TDI rules and to require insurers, health maintenance organizations (HMOs), and other regulated persons to update old references to TDI telephone numbers, fax numbers, email addresses, the website address, and TDI mailing addresses with the new contact information as follows.

(1) Where a section in Title 28, Part 1 references the domain name "tdi.state.tx.us" in a website or email address, this section substitutes "tdi.texas.gov" as the new domain name. Insurers, HMOs, and other regulated persons must update all their documents and information described in §1.208(a) of this title (relating to Applicability) to reflect the current domain name.

(2) Where a section in Title 28, Part 1 references any of the following telephone or fax numbers, this section substitutes the new number as referenced in Figure: 28 TAC §1.209(2). Insurers, HMOs, and other regulated persons must update all their documents and information described in §1.208(a) of this title to reflect the current telephone and fax numbers.
Figure: 28 TAC §1.209(2)

(3) Where a section in Title 28, Part 1 references the address at 1110 San Jacinto Boulevard, Austin, Texas 78701 or 333 Guadalupe Street, Austin, Texas 78701, this section substitutes 1601 Congress Avenue, Austin, Texas, 78701. Where a section in Title 28, Part 1 references the Texas Department of Insurance mailing address as P.O. Box 149104, Austin, Texas 78714-9104, this section substitutes P.O. Box 12030, Austin, Texas 78711-2030. Insurers, HMOs, and other regulated persons must update all their documents and information described in §1.208(a) to reflect the new address.

§1.210. Notice to Customers.

For contracts, plans, or policies that are in effect but do not expire, insurers and health maintenance organizations must notify their customers by providing the applicable updated notice forms required in §1.601 of this title (relating to Notice of Toll-Free Telephone Numbers and Information and Complaint Procedures) and §1.602 of this title (relating to Notice of Website), not later than September 1, 2023. This section does not apply to title insurance agents or title insurance companies.

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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Jessica Barta

General Counsel

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SUBCHAPTER E. NOTICE OF TOLL-FREE TELEPHONE NUMBERS AND PROCEDURES FOR OBTAINING INFORMATION AND FILING COMPLAINTS

28 TAC §1.601, §1.602

Insurance Code §32.104(b) provides that the commissioner adopt appropriate wording for the notice of the internet website required by Insurance Code Chapter 32, Subchapter D.

Insurance Code §521.005(a)(2) provides that each insurance policy delivered or issued for delivery in this state must include a brief written notice that includes TDI's name and address.

Insurance Code §521.005(b) provides that the commissioner adopt appropriate wording for the notice required by the section.

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

§1.601. Notice of Toll-Free Telephone Numbers and Information and Complaint Procedures.

(a) Purpose and applicability.

(1) The purpose of this section is to provide the means for insurers and health maintenance organizations (HMOs) to comply with the notice requirements of Insurance Code §521.103, concerning Information Included in Evidence of Coverage or Policy; §521.005, concerning Notice to Accompany Policy; and §521.056, concerning Information Bulletin to Accompany Policy. Compliance with this section is deemed compliance with these notice requirements.

(2) The notice must be provided at the time of delivery with all policies, bonds, annuity contracts, certificates, or evidences of coverage that are delivered, issued for delivery, or renewed in Texas by insurers or HMOs. When insurers add a certificate holder, annuitant, or enrollee to a group policy or group plan, insurers must also provide the notice when the certificate, annuity contract, or evidence of coverage is delivered.

(A) The notice must appear on a full, separate page with no text other than that provided in this section. The notice must be prominently placed in any package of documents it is delivered with, and it must be the first, second, or third page of the set of documents.

(B) The form of the notice must be consistent with Figure: 28 TAC §1.601(a)(2)(B) and the requirements of subsection (b) of this section. The form of notice is not required to be filed with the department.

Figure: 28 TAC §1.601(a)(2)(B)

(C) The form of the notice for workers' compensation must be consistent with Figure: 28 TAC §1.601(a)(2)(C) and the requirements of subsection (b) of this section. The form of notice is not required to be filed with the department.

Figure: 28 TAC §1.601(a)(2)(C)

(b) Notice requirements. The text may be single spaced, but it must include at least one blank line between each paragraph. The Spanish portion of the notice is required for personal automobile, homeowners, life, accident, and health policies, certificates, and evidences of coverage. The notice may include the letterhead of the insurer or HMO and any automated form identification numbers.

(1) The notice must include a title and telephone number for the insurer or HMO. At its option, the insurer or HMO may provide the name and telephone number of an agent, third-party administrator, managing general agent, or employee benefits coordinator. The telephone number must be in bold type and be preceded and followed by one blank line. The insurer or HMO must provide a toll-free telephone number, unless one of the exemptions in subparagraphs (A) - (C) of this paragraph applies. For purposes of this section, a toll-free telephone number is one that any covered person can use to get information or make a complaint without incurring long-distance calling expenses. An insurer or HMO is exempt from providing a toll-free number:

(A) when the insurer's or HMO's gross initial premium receipts collected in Texas are less than \$2 million a year;

(B) with respect to fidelity, surety, or guaranty bonds;

(C) if it is a surplus lines insurer.

(2) The notice must include a mailing address and email address for the insurer or HMO. The notice may include a company's URL address.

(3) The notice must be in a type size no smaller than 10 point.

(c) Exceptions to maintenance of toll-free number. Any exception claimed under subsection (b)(1)(A) of this section must be based on gross initial premium receipts collected in Texas during the previous calendar year. This information and any other data that the company relied on to determine if it was entitled to an exception is subject to examination by the department. Failure by any insurer or HMO to maintain the information required in this paragraph, or failure to provide information to the department on request, constitutes grounds for enforcement action that may result in the cancellation, revocation, or suspension of the insurer's or HMO's certificate of authority. Any insurer or HMO claiming an exception must retain and provide to the department on request:

(1) the statutory basis for the exception; and

(2) the amount of gross initial premium receipts collected in Texas for the calendar year immediately preceding the year for which an exception is claimed. The gross initial premium receipts collected may be documented either by:

(A) the annual statement submitted by the insurer or HMO; or

(B) records maintained for each new policy written during a calendar year that include the policy number, the effective date of the policy, and the amount of initial premium received, including any membership fees, assessments, dues, and any other considerations for that insurance.

(d) Providing notice. Insurers and HMOs will not need to refile previously approved policies, bonds, annuity contracts, certificates, or evidences of coverage, but they must provide the notice in the manner required by this section.

(e) Implementation date. Insurers and HMOs must begin using the notice form described in subsection (a)(2) of this section no later than July 1, 2023. Insurers and HMOs may continue using the previous notice form until that time.

§1.602. Notice of Website.

(a) Purpose and applicability.

(1) The purpose of this section is to establish the form and content of the notice required under Insurance Code §32.104(b), concerning Duties of Insurer.

(2) This section applies to insurers that comprise the top-25 insurance groups in the national market and that issue residential property insurance or personal automobile insurance policies in this state, including a Lloyd's plan, a reciprocal or interinsurance exchange, a county mutual insurance company, a farm mutual insurance company, the Texas Windstorm Insurance Association, the FAIR Plan Association, and the Texas Automobile Insurance Plan Association.

(3) This section applies to all residential property insurance and personal automobile insurance policies that are delivered, issued for delivery, or renewed in this state on or after January 1, 2008.

(b) Notice requirements. Insurers must comply with either subsection (b)(1) or (b)(2) of this section or may opt to comply with both.

(1) Notwithstanding the requirements in §1.601(a)(2) of this title (relating to Notice of Toll-Free Telephone Numbers and Information and Complaint Procedures), the insurer must include the text in subparagraphs (A) and (B) of this paragraph in the notice required under §1.601(a)(2) of this title with each policy specified. The text must be in a type size no smaller than 10 point. The heading "To compare policies and prices" must be in bold type. The website address "HelpInsure.com" must be in bold type and must be preceded by one blank line.

(A) "To compare policies and prices: Visit HelpInsure.com to compare prices and coverages on home and auto insurance policies. The website is a service of the Texas Department of Insurance and the Office of Public Insurance Counsel" in the English portion.

(B) "Para comparar pólizas y precios: Visite HelpInsure.com para comparar precios y coberturas en pólizas de seguro para el hogar y automóvil. El sitio web es un servicio del Departamento de Seguros de Texas y de la Oficina del Asesor Público de Seguros (Office of Public Insurance Counsel, por su nombre en inglés)" in the Spanish portion.

(C) Insurers must begin using the notice form described in this paragraph no later than July 1, 2023. Insurers may continue using the previous notice form until that time.

Figure: 28 TAC §1.602(b)(1)(C)

(2) The insurer must provide the following notice in a conspicuous manner with each policy. The notice must be printed in type

size that is at least as large as the type used for the main body of the policy, and it must be preceded and followed by at least one blank line. "Insurance Website Notice" and "Aviso del Sitio Web de Seguros" must be in all capital letters and bold type and "HelpInsure.com" must be in bold type. Insurers must begin using the notice described in this paragraph no later than May 1, 2020. Insurers may continue using the previous notice until that time.

Figure: 28 TAC §1.602(b)(2) (No change.)

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 F. SUMMARY PROCEDURES FOR ROUTINE MATTERS

28 TAC §1.705

Insurance Code §36.103(d) provides that the commissioner may adopt rules relating to an application for review under Insurance Code §36.103 and consideration of the application.

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

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SUBCHAPTER G. NOTICE AND PROCESSING PERIODS FOR PERMIT APPLICATIONS

28 TAC §1.804

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

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

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SUBCHAPTER BB. FORMS PRIVACY NOTICE

28 TAC §1.2803

Government Code §559.004 requires each state governmental body to establish a reasonable procedure through which an individual is entitled to have the state governmental body correct information about the individual the state possesses that is incorrect.

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

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TITLE 34. PUBLIC FINANCE

PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

CHAPTER 25. MEMBERSHIP CREDIT

The Teacher Retirement System of Texas (TRS) adopts amendments to the following rules in Chapter 25 (relating to Membership Credit) in Part 3 of Title 34 of the Texas Administrative Code: §25.4 and §25.6 under Subchapter A (relating to General Provisions and Procedures); §§25.25, 25.31, 25.35, and 25.36 under Subchapter B (relating to Compensation); §25.113 of Subchapter H (relating to Joint Service with Employees Retirement System); §25.123 of Subchapter I (relating to Verification of Service or Compensation); §25.131 of Subchapter J (relating to Creditable Time and School Year); §25.152 of Subchapter K (relating to Developmental Leave); and §25.172 of Subchapter M (relating to Optional Retirement Program). The amendments are adopted without changes to the proposed text as originally published in the March 10, 2023, issue of the *Texas Register* (48 TexReg 1429), and the rules will not be republished.

REASONED JUSTIFICATION

TRS adopts these amendments to eleven rules in Chapter 25 of TRS rules to, in part, conform with changes made to the laws relating to service credit transfers between the Employees Retirement System of Texas (ERS) and TRS. TRS also adopts these amendments to implement the determinations made by the TRS Board of Trustees in TRS's recently adopted rule review (47 TexReg 4859).

First, TRS amends §25.113 (relating to Transfer of Credit between TRS and ERS) in order to ensure the rule conforms with recent legislative changes to the plan terms of the ERS retirement plan that impact TRS members who wish to transfer ERS service credit to TRS or TRS service credit to ERS. Senate Bill 321, which was passed last year during the 87th legislative session, created a mandatory cash-balance plan under Chapter 820, Government Code for ERS members who begin their membership on or after September 1, 2022. Importantly, ERS members who participate in this cash balance plan are no longer eligible to transfer their ERS service to TRS or their TRS service to ERS. In addition, TRS members who have not maintained an ERS membership established prior to September 1, 2022 will no longer be able to reinstate withdrawn service for the purpose of transfer to TRS. For these reasons, TRS amends §25.113, which governs transfers of service credit between the TRS and ERS retirement plans, so that the rule conforms to these limits on the ability of ERS cash-balance members to transfer credit to TRS or to ERS and to reinstate ERS service credit.

In addition to these amendments to §25.113, TRS also amends ten other rules, which were all recommended for amendment during TRS's recently completed rule review process. The amendments to these rules are primarily reference and terminology updates, deletions of outdated provisions, and other nonsubstantive and/or conforming changes. A detailed rule-by-rule description of the amendments is provided below.

SECTION-BY-SECTION SUMMARY

Amended §25.4 (relating to Substitutes) clarifies that the deadlines for verifying substitute service are the same as the deadlines to verify unreported service. This is a rule that was identified for amendment during TRS's recently adopted rule review.

Amended §25.6 (relating to Part-time or Temporary Employment) deletes the former standard for part-time and temporary employment, in particular how part-time employment can be combined to qualify as eligible TRS employment. This standard changed in 2015, and the former standard no longer needs to be in the rule. This is a rule that was identified for amendment during TRS's recently adopted rule review.

Amended §25.25 (relating to Required Deposits) deletes the reference to specific member contribution rates in the rule and replaces the reference with a reference to all applicable rates for member contributions under Section 825.402, Government Code so as to incorporate any future changes to member contribution rates under that section. This is a rule that was identified for amendment during TRS's recently adopted rule review.

Amended §25.31 (relating to Percentage Limits on Compensation Increases) deletes outdated provisions regarding documentation of compensation increases and exceptions for compensation increases that no longer apply to current school years. This is a rule that was identified for amendment during TRS's recently adopted rule review.

Amended §25.35 (relating to Employer Payments for New Members) updates the reference to the deadline under Government

Code § 830.102 for electing to participate in the Optional Retirement Program. This is a rule that was identified for amendment during TRS's recently adopted rule review.

Amended §25.36 (relating to Employer Payments for Members Not Covered under the Federal Old-Age, Survivors, and Disability Insurance Program) changes its title as this contribution type now applies to all public schools, except institutions of higher education, and regional education service centers, not only employers that do not participate in the federal Old-Age, Survivors, and Disability Insurance Program. This is a rule that was identified for amendment during TRS's recently adopted rule review.

Amended §25.113 provides that members of the ERS cash balance benefit plan are not eligible to transfer TRS service credit to ERS or ERS service credit to TRS. In addition, amended §25.113 provides that TRS members cannot reinstate withdrawn ERS service credit for the purposes of transfer to TRS unless the members are current ERS members and their membership began prior to September 1, 2022.

Amended §25.123 (relating to Certification) deletes the notarization requirement from this certification in anticipation of possibly moving this requirement to online submission forms. In addition, amended §25.123 updates a reference to a Texas Education Agency rule. This is a rule that was identified for amendment during TRS's recently adopted rule review.

Amended §25.131 (relating to Required Service) updates the reference to the process for verifying substitute service to conform with the clarifying changes made to TRS Rule § 25.4 as described above. This is a rule that was identified for amendment during TRS's recently adopted rule review.

Amended §25.152 (relating to Eligibility, Cost, and Payment for Developmental Leave Credit) deletes reference to the process of purchasing developmental leave credit at the prior cost before actuarial cost was implemented in 2011. This is a rule that was identified for amendment during TRS's recently adopted rule review.

Amended §25.172 (relating to ORP and TRS) updates terminology and procedures relating to certain optional retirement program (ORP) requirements for consistency with Chapter 830, Government Code and the rules of the Texas Higher Education Coordinating Board, including when an individual who has elected to participate in ORP must return to membership in TRS or may remain in ORP. This is a rule that was identified for amendment during TRS's recently adopted rule review.

COMMENTS

No comments on the proposed adoption of the amendments were received.

SUBCHAPTER A. SERVICE ELIGIBLE FOR MEMBERSHIP

34 TAC §§25.4, 25.6

STATUTORY AUTHORITY

The amended rules are adopted under the authority of Government Code §822.001, which provides standards for membership in the TRS retirement system; Government Code §823.201, which authorizes the board of trustees to adopt rules for the granting of membership service credit; and Government Code §825.102, which authorizes the board of trustees to adopt rules for the transaction of the business of the board.

CROSS-REFERENCE TO STATUTE

The amended rules affect the following statutes: Government Code §822.001, which relates to membership requirements; and Government Code §825.403, relating to collection of member's contributions.

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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Don Green

Chief Financial Officer

Teacher Retirement System of Texas

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For further information, please call: (512) 542-6506



SUBCHAPTER B. COMPENSATION

34 TAC §§25.25, 25.31, 25.35, 25.36

STATUTORY AUTHORITY

The amended rules are adopted under the authority of Government Code §825.110, which authorizes TRS to adopt rules that include a percentage limitation on the amount of increases in annual compensation that may be subject to credit and deposit during a member's final years of employment; Government Code §825.402, which provides the rates for member contributions; Government Code §825.4035, which relates to employer contributions for certain employed members; Government Code §825.4041, which provides for employer contributions due during the first 90 days of a new members employment; Government Code §830.102, which provides the deadline to elect to participate in ORP; and Government Code §825.102, which authorizes the board of trustees to adopt rules for the transaction of the business of the board.

CROSS-REFERENCE TO STATUTE

The amended rules affect the following statutes: Government Code §825.110, which authorizes TRS to adopt rules that include a percentage limitation on the amount of increases in annual compensation that may be subject to credit and deposit during a member's final years of employment; Government Code §825.402, which provides the rates for member contributions; Government Code §825.4035, which relates to employer contributions for certain employed members; Government Code §825.4041, which provides for employer contributions due during the first 90 days of a new members employment; and Government Code §830.102, relating to the option to participate in ORP.

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

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SUBCHAPTER H. JOINT SERVICE WITH EMPLOYEES RETIREMENT SYSTEM

34 TAC §25.113

STATUTORY AUTHORITY

The amended rules are adopted under the authority of Government Code §805.0015, which provides that credit transfers between ERS and TRS does not apply to ERS members subject to the cash-balance benefit plan provided under Chapter 820, Government Code; Government Code §805.009, which provides that TRS may adopt rules relating to the administration of Chapter 805, Government Code; and Government Code §825.102, which authorizes the board of trustees to adopt rules for the transaction of the business of the board.

CROSS-REFERENCE TO STATUTE

The amended rules affect the following statutes: Government Code §805.0015, relating to the applicability of credit transfers between ERS and TRS for ERS members subject to the cash-balance benefit plan under Chapter 820, Government Code; and Government Code § 825.002, which relates to eligibility to transfer credit between ERS and TRS and the eligibility for TRS members to reinstate withdrawn ERS service credit for the purpose of transfer to TRS.

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SUBCHAPTER I. VERIFICATION OF SERVICE OR COMPENSATION

34 TAC §25.123

STATUTORY AUTHORITY

The amended rule is adopted under the authority of Government Code §825.403, which relates to the collection of member contributions and the proof of service that must be provided to TRS for TRS to grant credit for member contributions that were previously required but not paid; and Government Code §825.102, which authorizes the board of trustees to adopt rules for the transaction of the business of the board.

CROSS-REFERENCE TO STATUTE

The amended rule affects the following statutes: Government Code §825.403, relating to the collection of member contributions.

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 J. CREDITABLE TIME AND SCHOOL YEAR

34 TAC §25.131

STATUTORY AUTHORITY

The amended rule is adopted under the authority of Government Code §822.001, which provides standards for membership in the TRS retirement system; Government Code §823.201, which authorizes the board of trustees to adopt rules for the granting of membership service credit; and Government Code §825.102, which authorizes the board of trustees to adopt rules for the transaction of the business of the board.

CROSS-REFERENCE TO STATUTE

The amended rule affects the following statutes: Government Code §822.001, which relates to membership requirements; and Government Code §825.403, relating to collection of member's contributions.

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 May 19, 2023.

TRD-202301839
Don Green
Chief Financial Officer
Teacher Retirement System of Texas
Effective date: June 8, 2023
Proposal publication date: March 10, 2023
For further information, please call: (512) 542-6506



SUBCHAPTER K. DEVELOPMENTAL LEAVE

34 TAC §25.152

STATUTORY AUTHORITY

The amended rule is adopted under the authority of Government Code §822.001, which provides standards for membership in the TRS retirement system; Government Code §823.201, which authorizes the board of trustees to adopt rules for the granting of

membership service credit; Government Code §823.402, which relates to the eligibility of a TRS member to purchase service credit for certain developmental leave at actuarial cost; and Government Code §825.102, which authorizes the board of trustees to adopt rules for the transaction of the business of the board.

CROSS-REFERENCE TO STATUTE

The amended rule affects the following statutes: Government Code §822.001, which relates to membership requirements; Government Code §823.403, relating to developmental leave; and Government Code §825.403, relating to collection of member's contributions.

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 May 19, 2023.

TRD-202301840

Don Green

Chief Financial Officer

Teacher Retirement System of Texas

Effective date: June 8, 2023

Proposal publication date: March 10, 2023

For further information, please call: (512) 542-6506



SUBCHAPTER M. OPTIONAL RETIREMENT PROGRAM

34 TAC §25.172

STATUTORY AUTHORITY

The amended rule is adopted under the authority of Government Code §822.002, which provides that an employee of the public school system who elects to participate in ORP is not permitted to be a member of the TRS retirement system; and Government Code §825.102, which authorizes the board of trustees to adopt rules for the transaction of the business of the board.

CROSS-REFERENCE TO STATUTE

The amended rule affects the following statutes: Government Code §822.002, relating to exceptions to TRS membership requirement; Government Code §830.101, relating to the eligibility to participate in ORP; and Government Code §830.106, relating to resumption of TRS membership after electing to participate in ORP.

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 May 19, 2023.

TRD-202301841

Don Green

Chief Financial Officer

Teacher Retirement System of Texas

Effective date: June 8, 2023

Proposal publication date: March 10, 2023

For further information, please call: (512) 542-6506



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 9. TEXAS COMMISSION ON JAIL STANDARDS

CHAPTER 281. FOOD SERVICE

37 TAC §281.5

The Commission on Jail Standards adopts 37 TAC §281.5 concerning Staff Supervision as proposed in the March 10, 2023, issue of the *Texas Register* (48 TexReg 1439) without changes. The rule will not be republished.

The adopted amendment will correct a reference to Texas Food Establishment Rules §228.33, which was repealed and moved during the 87th Legislative Session in 2021.

This change will help jailers to identify within the minimum jail standards the correct reference to the Food Establishment Rules. In a letter to the agency written October 26, 2022, Collin County Sheriff Jim Skinner brought to the agency's attention the need for this change.

No comments were received.

The amendment is adopted under the authority of Government Code, Chapter 511, which authorizes the Texas Commission on Jail Standards to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails. This proposed change does not affect other rules or statutes.

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 May 16, 2023.

TRD-202301807

Brandon Wood

Executive Director

Texas Commission on Jail Standards

Effective date: June 5, 2023

Proposal publication date: March 10, 2023

For further information, please call: (512) 463-5505



REVIEW OF AGENCY RULES

This section contains notices of state agency rule review as directed by the Texas Government Code, §2001.039.

Included here are proposed rule review notices, which invite public comment to specified rules under review; and adopted rule review notices, which summarize public comment received as part of the review. The complete text of an agency's rule being reviewed is available in the *Texas Administrative Code* on the Texas Secretary of State's website.

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the website and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Health and Human Services Commission

Title 1, Part 15

The Texas Health and Human Services Commission (HHSC) proposes to review and consider for re adoption, revision, or repeal the chapter listed below, in its entirety, contained in Title 1, Part 15, of the Texas Administrative Code:

Chapter 371, Medicaid and Other Health and Human Services Fraud and Abuse Program

Subchapter B - Office of Inspector General

Subchapter C - Utilization Review

Subchapter E - Provider Disclosure and Screening

Subchapter F - Investigations

Subchapter G - Administrative Actions and Sanctions

This review is conducted in accordance with the requirements of Texas Government Code §2001.039, which requires state agencies, every four years, to assess whether the initial reasons for adopting a rule continue to exist. After reviewing its rules, the agency will readopt, readopt with amendments, or repeal its rules.

Comments on the review of Chapter 371, Medicaid and Other Health and Human Services Fraud and Abuse Program, may be submitted to HHSC Rules Coordination Office, Mail Code 4102, P.O. Box 13247, Austin, Texas 78711-3247, or by email to IG_Rules_Comments_Inbox@hhs.texas.gov. When emailing comments, please indicate "Comments on Proposed Rule Review Title 1, Part 15, Chapter 371" in the subject line. The deadline for comments is on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register*.

The text of the rule sections being reviewed will not be published, but may be found in Title 1, Part 15, of the Texas Administrative Code or on the Secretary of State's website at [https://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac_view=4&ti=1&pt=15&ch=371](https://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=4&ti=1&pt=15&ch=371).

TRD-202301900

Jessica Miller

Rules Coordination Office Director

Texas Health and Human Services Commission

Filed: May 23, 2023



State Securities Board

Title 7, Part 7

The State Securities Board (Agency), beginning June 2023, will review and consider for re adoption, revision, or repeal Chapter 102, Complaint Process; Chapter 107, Terminology; Chapter 127, Miscellaneous; and Chapter 131, Guidelines for Confidentiality of Information, in accordance with Texas Government Code, §2001.039, which requires rule review every four years. The rules to be reviewed are located in Title 7, Part 7, of the Texas Administrative Code. The text of the rule sections will not be published. The text of these rules may be found in the Texas Administrative Code, Title 7, Part 7 or through the Board's website at www.ssb.texas.gov/texas-securities-act-board-rules.

The Agency has conducted a preliminary review of these chapters and determined the reasons for initially adopting the chapters continue to exist. The Agency's Board will consider, among other things, whether the initial factual, legal, and policy reasons for adoption of these rules continue to exist, whether these rules should be repealed, and whether any changes are needed. This notice to review has no effect on the chapters as they currently exist. Readopted chapters will be noted in a subsequent issue of the *Texas Register's* "Review of Agency Rules" section without publication of the text.

Any changes to the rules proposed by the Agency's Board after reviewing the rules and considering the comments received in response to this notice will appear in the "Proposed Rules" section of a subsequent issue of the *Texas Register*. Such changes will be open for public comment prior to the final adoption of any changes to the rule by the Agency in accordance with the requirements of the Administrative Procedure Act, Texas Government Code Annotated, Chapter 2001.

Comments or suggestions on the proposal must be in writing and will be accepted for 30 days following publication of this notice in the *Texas Register*. Written comments should be submitted to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 or faxed to (512) 305-8336. Comments may also be submitted electronically to proposal@ssb.texas.gov. In order to be considered by the Board at adoption, comments must be received no later than 30 days following publication. Comments received will be reviewed and discussed in a future Board meeting.

TRD-202301903

Travis J. Iles

Securities Commissioner

State Securities Board

Filed: May 24, 2023



State Board for Educator Certification

Title 19, Part 7

The State Board for Educator Certification (SBEC) proposes the review of Title 19, Texas Administrative Code (TAC), Chapter 244, Certificate of Completion of Training for Appraisers, 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 244 continue to exist.

The comment period on the review of 19 TAC Chapter 244 begins June 2, 2023, and ends July 3, 2023. A form for submitting public comments on the proposed rule review is available on the 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 244 at the July 21, 2023 meeting in accordance with the SBEC board operating policies and procedures.

TRD-202301849
Cristina De La Fuente-Valadez
Director, Rulemaking
State Board for Educator Certification
Filed: May 22, 2023



Texas Commission on Environmental Quality

Title 30, Part 1

The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 Texas Administrative Code Chapter 101, General Air Quality Rules.

This proposal is *limited* to the review in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for re adoption, re adoption with amendments, or repeal every four years. During this review, the commission will assess whether the reasons for initially adopting the rules in Chapter 101 continue to exist.

Comments regarding suggested changes to the rules in Chapter 101 may be submitted but will not be considered for rule amendments as part of this review. Any such comments may be considered in a future rulemaking action by the commission.

Submittal of Comments

The commission invites public comment on this preliminary review of the rules in Chapter 101. Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at <https://tceq.commentinput.com/>. File size restrictions may apply to comments submitted via the TCEQ Public Comment system. All comments should reference Non-Rule Project Number 2023-063-101-AI. Comments must be received by July 5, 2023. For further information, contact Jamie Zech, Air Quality Division, at (512) 239-3935.

TRD-202301911
Guy Henry
Acting Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: May 24, 2023



The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 TAC Chapter 113, Standards of

Performance for Hazardous Air Pollutants and for Designated Facilities and Pollutants.

This proposal is *limited* to the review in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for re adoption, re adoption with amendments, or repeal every four years. During this review, the commission will assess whether the reasons for initially adopting the rules in Chapter 113 continue to exist.

Comments regarding suggested changes to the rules in Chapter 113 may be submitted but will not be considered for rule amendments as part of this review. Any such comments may be considered in a future rulemaking action by the commission.

Submittal of Comments

The commission invites public comment on this preliminary review of the rules in Chapter 113. Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to fax4808@tceq.texas.gov. Electronic comments may be submitted at: <https://tceq.commentinput.com/>. File size restrictions may apply to comments being submitted via the TCEQ Public Comment system. All comments should reference Non-Rule Project Number 2023-065-113-AI. Comments must be received by July 5, 2023. For further information, please contact Michael Wilhoit, Air Permits Division, at (512) 239-1222.

TRD-202301912
Guy Henry
Acting Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: May 24, 2023



The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 TAC Chapter 291, Utility Regulations.

This proposal is *limited* to the review in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for re adoption, re adoption with amendments, or repeal every four years. During this review, the commission will assess whether the reasons for initially adopting the rules in Chapter 291 continue to exist.

Comments regarding suggested changes to the rules in Chapter 291 may be submitted but will not be considered for rule amendments as part of this review. Any such comments may be considered in a future rulemaking action by the commission.

Submittal of Comments

The commission invites public comment on this preliminary review of the rules in Chapter 291. Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <https://tceq.commentinput.com/>. File size restrictions may apply to comments being submitted via the TCEQ Public Comment system. All comments should reference Non-Rule Project Number 2023-061-291-OW. Comments must be received by July 5, 2023. For further information, please contact Avery Nguyen, Water Supply Division, at (512) 239-0324.

TRD-202301909

Guy Henry
Acting Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: May 24, 2023



The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 Texas Administrative Code (30 TAC) Chapter 304, Watermaster Operations.

This proposal is *limited* to the review in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for re-adoption, re-adoption with amendments, or repeal every four years. During this review, the commission will assess whether the reasons for initially adopting the rules in 30 TAC Chapter 304 continue to exist.

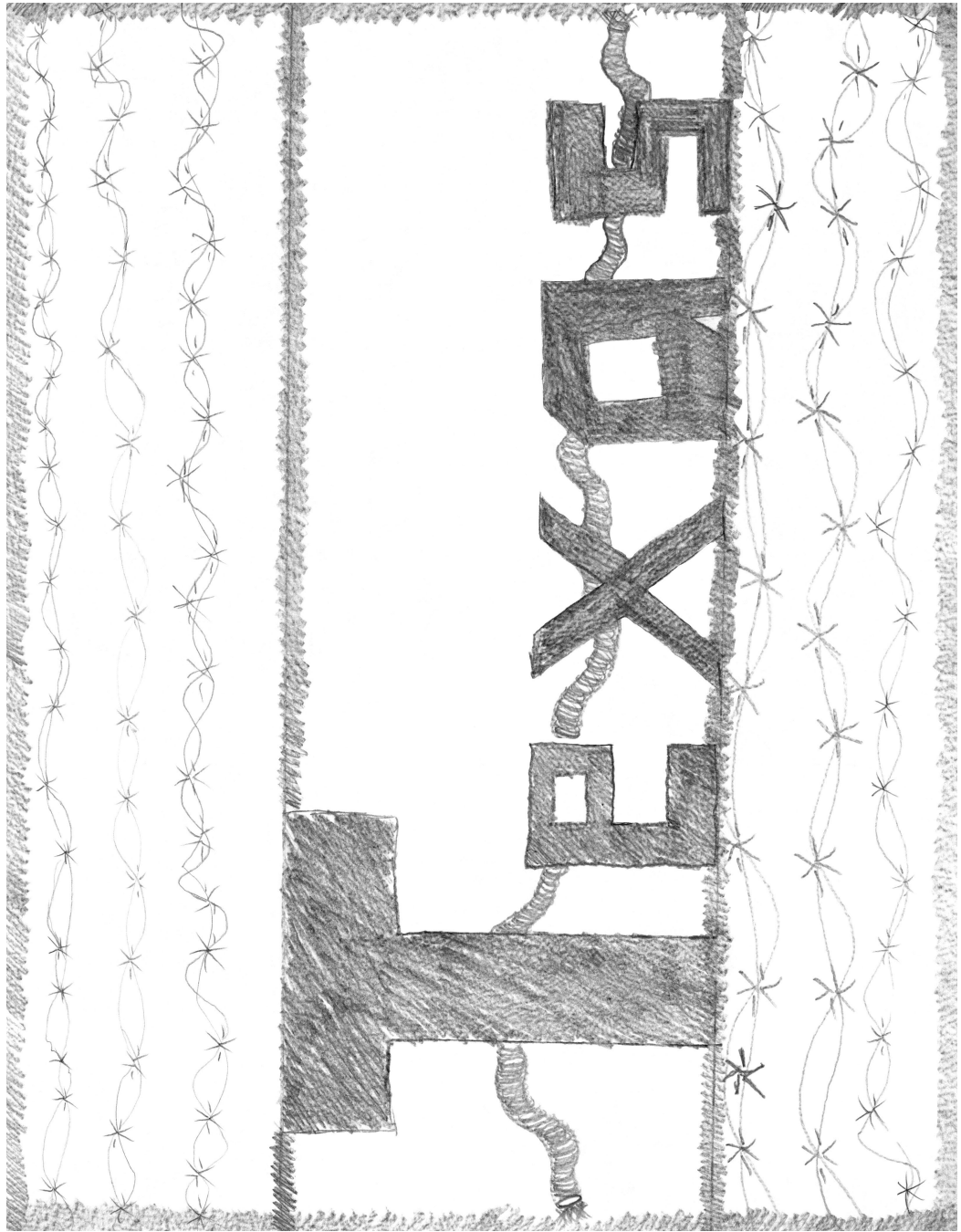
Comments regarding suggested changes to the rules in 30 TAC Chapter 304 may be submitted but will not be considered for rule amendments as part of this review. Any such comments may be considered in a future rulemaking action by the commission.

Submittal of Comments

The commission invites public comment on this preliminary review of the rules in 30 TAC Chapter 304. Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <https://tceq.commentinput.com/>. File size restrictions may apply to comments being submitted via the TCEQ Public Comment system. All comments should reference Non-Rule Project Number 2023-062-304-OW. Comments must be received by July 5, 2023. For further information, please contact Jade Rutledge, Water Availability Division, at (512) 239-4559.

TRD-202301910
Guy Henry
Acting Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: May 24, 2023





*T*ABLES & *G*RAPHICS

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 §109.1001(e)(7)
 School FIRST - Rating Worksheet Dated June 2023 for Rating Years 2022-2023+
 Fiscal Year Ended June 30, _____, or August 31, _____

School FIRST Worksheet based on Fiscal Year End Data

Indicator Number	Critical Indicators	Pass	Fail
1	Was the complete annual financial report (AFR) and data submitted to the TEA within 30 days of the November 27 or January 28 deadline depending on the school district's fiscal year end date of June 30 or August 31, respectively?	Yes	No
2	Was there an unmodified opinion in the AFR on the financial statements as a whole? (The American Institute of Certified Public Accountants (AICPA) defines unmodified opinion. The external independent auditor determines if there was an unmodified opinion.)	Yes	No
3	Was the school district in compliance with the payment terms of all debt agreements at fiscal year end? (If the school district was in default in a prior fiscal year, an exemption applies in following years if the school district is current on its forbearance or payment plan with the lender and the payments are made on schedule for the fiscal year being rated. Also exempted are technical defaults that are not related to monetary defaults. A technical default is a failure to uphold the terms of a debt covenant, contract, or master promissory note even though payments to the lender, trust, or sinking fund are current. A debt agreement is a legal agreement between a debtor (= person, company, etc. that owes money) and their creditors, which includes a plan for paying back the debt.)	Yes	No
4	Did the school district make timely payments to the Teacher Retirement System (TRS), Texas Workforce Commission (TWC), Internal Revenue Service (IRS), and other government agencies? If the school district received a warrant hold and the warrant hold was not cleared within 30 days from the date the warrant hold was issued, the school district is considered to not have made timely payments and will fail this indicator. If the school district was issued a warrant hold, the maximum points and highest rating that the school district may receive is 95 points, A = Superior Achievement (even if the issue surrounding the initial warrant hold was resolved and cleared within 30 days).	Yes	No

Indicator Number	Solvency Indicators	Points
5	Was the total net position in the governmental activities column in the Statement of Net Position (net of accretion of interest for capital appreciation bonds, net pension liability, and other post-employment benefits) greater than zero? (If it is not, the maximum points and highest rating that the school district may receive is 79 points, C = Meets Standard Achievement, unless the school district has an increase of students in membership over 5 years of 7 percent or more or 1,000 or more students in membership. If the school district has an increase of students in membership over 5 years of 7 percent or more or 1,000 or more students in membership, the maximum points and highest rating that the school district may receive is 89 points, B = Above Standard Achievement.)	Ceiling Indicator
6	Was the average change in (assigned and unassigned) fund balance over 3 years less than a 25 percent decrease or did the current year assigned and unassigned fund balance exceed 75 days of operational expenditures? (If the school district fails indicator 6, the maximum points and highest rating that the school district may receive is 89 points, B = Above Standard Achievement.)	Ceiling Indicator
7	Was the number of days of cash on hand and current investments in the general fund for the school district sufficient to cover operating expenditures (excluding facilities acquisition and construction)? (See ranges below.)	10

8	Was the measure of current assets to current liabilities ratio for the school district sufficient to cover short-term debt? (See ranges below.)	10
9	Did the school district's general fund revenues equal or exceed expenditures (excluding facilities acquisition and construction)? If not, was the school district's number of days of cash on hand greater than or equal to 60 days?	10
10	Did the school district average less than a 10 percent variance (90%-110%) when comparing budgeted revenues to actual revenues for the last 3 fiscal years?	10
11	Was the ratio of long-term liabilities to total assets for the school district sufficient to support long-term solvency? (If the school district's increase of students in membership over 5 years was 7 percent or more or 1,000 or more students in membership, then the school district passes this indicator.) (See ranges below.)	10
12	What is the correlation between future debt requirements and the district's assessed property value? (See ranges below.)	10
13	Was the school district's administrative cost ratio equal to or less than the threshold ratio? (See ranges below.)	10
14	Did the school district not have a 15 percent decline in the students to staff ratio over 3 years (total enrollment to total staff)? (If the student enrollment did not decrease, the school district will automatically pass this indicator.)	10

Indicator Number	Financial Competence Indicators	Points
15	Was the school district's actual ADA within the allotted range of the district's biennial pupil projection(s) submitted to TEA? If the district did not submit pupil projections to TEA, did it certify TEA's projections? (see ranges below)	5
16	Did the comparison of Public Education Information Management System (PEIMS) data to like information in the school district's AFR result in a total variance of less than 3 percent of all expenditures by function? (If the school district fails indicator 16, the maximum points and highest rating that the school district may receive is 89 points, B = Above Standard Achievement.)	Ceiling Indicator
17	Did the external independent auditor report that the AFR was free of any instance(s) of material weaknesses in internal controls over financial reporting and compliance for local, state, or federal funds and free from substantial doubt about the school district's ability to continue as a going concern? (The AICPA defines material weakness.) (If the school district fails indicator 17, the maximum points and highest rating that the school district may receive is 79 points, C = Meets Standard Achievement.)	Ceiling Indicator
18	Did the external independent auditor indicate the AFR was free of any instance(s) of material noncompliance for grants, contracts, and laws related to local, state, or federal funds? (The AICPA defines material noncompliance.)	10
19	Did the school district post the required financial information on its website in accordance with Government Code, Local Government Code, Texas Education Code, Texas Administrative Code and other statutes, laws and rules that were in effect at the school district's fiscal year end?	5
20	Did the school districts administration and school board members discuss any changes and/or impact to local, state, and federal funding at a board meeting within 120 days before the district adopted its budget? (If the school district fails indicator 20, the maximum points and highest rating that the school district may receive is 89 points, B = Above Standard Achievement.)	Ceiling Indicator

Maximum Possible Points **100**

School FIRST Determination of Points

Indicator	10	8	6	4	2	0	
5	Yes	Ceiling Indicator - If the school district fails both parts of indicator 5, the maximum points and highest rating that the school district may receive is 79 points, C = Meets Standard Achievement. If the school district has an increase of students in membership over 5 years of 7 percent or more or 1,000 or more students in membership, the maximum points and highest rating that the school district may receive is 89 points, B = Above Standard Achievement.)					No
6	Yes	Ceiling Indicator - If the school district fails indicator 6 the maximum points and highest rating that the school district may receive is 89 points, B = Above Standard Achievement.					No
7	≥ 90	≥ 75	≥ 60	≥ 45	≥ 30	≥ 30	
8	≥ 3	≥ 2.5	≥ 2	≥ 1.5	≥ 1	≥ 1	
9	0%	10 points are awarded if the school district has at least 60 days cash on hand as determined in indicator #7.					0%
10	≥ 10%	10 points are awarded if the school districts budgeted to actual revenues are < 10% variance (90% to 110%).					≥ 10%
11	≥ 0.60	≥ 0.70	≥ 0.80	≥ 0.90	≥ 1.00	≥ 1.00	
12	≥ 4	≥ 7	≥ 10	≥ 11.5	≥ 13.5	≥ 13.5	

Indicator	ADA Size	Threshold Ratio (based on ADA size)					
		10	8	6	4	2	0
13	≥ 10,000	≤ 0.0855	≤ 0.1105	≤ 0.1355	≤ 0.1605	≤ 0.1855	≤ 0.1855
	5,000 to 9,999	≤ 0.1000	≤ 0.1250	≤ 0.1500	≤ 0.1750	≤ 0.2000	≤ 0.2000
	1,000 to 4,999	≤ 0.1151	≤ 0.1401	≤ 0.1651	≤ 0.1901	≤ 0.2151	≤ 0.2151
	500 to 999	≤ 0.1311	≤ 0.1561	≤ 0.1811	≤ 0.2061	≤ 0.2311	≤ 0.2311
	< 500	≤ 0.2404	≤ 0.2654	≤ 0.2904	≤ 0.3154	≤ 0.3404	≤ 0.3404
	Sparse	≤ 0.3364	≤ 0.3614	≤ 0.3864	≤ 0.4114	≤ 0.4364	≤ 0.4364

Indicator	10	8	6	4	2	0	
14	Yes						No

Indicator	ADA Size	Allotted Range (based on ADA size)					
		5	4	3	2	1	0
15	≥ 10,000	≤ 0.07	≤ 0.07	≤ 0.07	≤ 0.07	≤ 0.07	≤ 0.07
	5,000 to 9,999	≤ 0.10	≤ 0.10	≤ 0.10	≤ 0.10	≤ 0.10	≤ 0.10
	1,000 to 4,999	≤ 0.20	≤ 0.20	≤ 0.20	≤ 0.20	≤ 0.20	≤ 0.20
	500 to 999	≤ 0.25	≤ 0.25	≤ 0.25	≤ 0.25	≤ 0.25	≤ 0.25
	< 500	≤ 0.30	≤ 0.30	≤ 0.30	≤ 0.30	≤ 0.30	≤ 0.30
	Sparse	≤ 0.35	≤ 0.35	≤ 0.35	≤ 0.35	≤ 0.35	≤ 0.35

16	Yes	Ceiling Indicator - If the school district fails indicator 16, the maximum points and highest rating that the school district may receive is 89 points, B = Above Standard Achievement.					No
17	Yes	Ceiling Indicator - If the school district fails indicator 17, the maximum points and highest rating that the school district may receive is 79 points, C = Meets Standard Achievement.					No

Indicator	10	0
18	Yes	No

Indicator	5	0
19	Yes	No

20		Yes	Ceiling Indicator - If the school district falls indicator 20, the maximum points and highest rating that the school district may receive is 89 points, B = Above Standard Achievement.	No
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Ceiling Indicators		
Did the school district meet the criteria for any of the following ceiling indicators 4, 5, 6, 16, 17, or 20? If so, the school district's applicable maximum points and rating are disclosed below.		
Determination of rating based on meeting ceiling criteria.		
Indicator 4 (Timely Payments) - School district was issued a warrant hold.	95	A = Superior Achievement
Indicator 5 (Total Net Position) - Negative total net position and do not have 7% or more or 1,000 or more increase in growth in students in membership over 5 years.	79	C = Meets Standard Achievement
Indicator 6 (Average Change in Fund Balance) - Response to indicator is <i>No</i> .	89	B = Above Standard Achievement
Indicator 16 (PEIMS to AFR) - Response to indicator is <i>No</i> .	89	B = Above Standard Achievement
Indicator 17 (Material Weaknesses and/or Going Concern) - Response to indicator is <i>No</i> .	79	C = Meets Standard Achievement
Indicator 20 (Property Values and Tax Discussion) - Response to indicator is <i>No</i> .	89	B = Above Standard Achievement

If the school district's overall points earned is less than the maximum points allowed by the applicable ceiling indicator, the school district will receive a rating based on the lesser points earned. If the school district fails a critical indicator or the school district's total number of points is equal to or less than 69 points, the school district will receive an **F = Substandard Achievement** rating, regardless of any ceiling indicator criteria met.

Examples of the points and rating that a district may earn when the criteria of a ceiling indicator is met:

- Example 1:** Your district fails ceiling indicator 17 and your district's total points before failing ceiling indicator 17 is 98 points, the maximum points and rating that your district may receive is 79 points, C = Meets Standard Achievement, respectively.
- Example 2:** Your district fails ceiling indicator 6 and your district's total points before failing ceiling indicator 6 is 86 points, the maximum points and rating that your district may receive is 86 points, B = Above Standard Achievement, not 89 points, B = Above Standard Achievement.
- Example 3:** Your district fails critical indicator 4 and ceiling indicator 16 and your district's total points before failing indicators 4 and 16 is 67 points, the maximum points and rating that your district may receive is 67 points, F = Substandard Achievement.
- Example 4:** Your district fails part 1 of indicator 5, but passes indicator 5 based on part 2, the district's 7% or more or 1,000 or more increase in growth in students in membership over 5 years. Your district's total points before passing indicator 5 solely on part 2 of the indicator is 100 points, the maximum points and rating that your district may receive is 89 points, B = Above Standard Achievement.
- Example 5:** Your district received a warrant hold (Indicator 4) that was cleared within 30 days from the date that the warrant hold was issued and the district's total points is 90 points before any ceiling deduction. The maximum points and rating that your district may receive is 90 points, A = Superior Achievement because the total points is less than the ceiling of 95 points.

Determination of School District Rating		
Did the school district fail any of the critical indicators 1, 2, 3, or 4? If so, the school district's rating is F for Substandard Achievement regardless of points earned.		
Determine the rating by the applicable number of points.	Points	
A = Superior Achievement	90 through 100	
B = Above Standard Achievement	80 through 89	
C = Meets Standard Achievement	70 through 79	
F = Substandard Achievement (<i>The school district receives an F if it scores below the minimum passing score, if it failed any critical indicator 1, 2, 3, or 4, if the AFR or the data were not both complete, or if either the AFR or the data were not submitted on time for FIRST analysis.</i>)	0 through 69	
No Rating = A school district receiving territory that annexes with a school district ordered by the commissioner under TEC 13.054, or consolidation under Subchapter H, Chapter 49. No rating will be issued for the school district receiving territory until the third year after the		

Figure: 19 TAC §109.1001(e)(7)

School FIRST - Rating Worksheet Calculations Dated June 2023 for Rating Years 2022-2023+		
#	Indicator	Calculation Defined
1	Was the complete annual financial report (AFR) and data submitted to the TEA within 30 days of the November 27 or January 28 deadline depending on the school district's fiscal year end date of June 30 or August 31, respectively?	No Calculation Involved
2	Was there an unmodified opinion in the AFR on the financial statements as a whole? (The American Institute of Certified Public Accountants (AICPA) defines unmodified opinion. The external independent auditor determines if there was an unmodified opinion.)	No Calculation Involved
3	Was the school district in compliance with the payment terms of all debt agreements at fiscal year end? (If the school district was in default in a prior fiscal year, an exemption applies in following years if the school district is current on its forbearance or payment plan with the lender and the payments are made on schedule for the fiscal year being rated. Also exempted are technical defaults that are not related to monetary defaults. A technical default is a failure to uphold the terms of a debt covenant, contract, or master promissory note even though payments to the lender, trust, or sinking fund are current. A debt agreement is a legal agreement between a debtor (= person, company, etc. that owes money) and their creditors, which includes a plan for paying back the debt.)	No Calculation Involved
4	Did the school district make timely payments to the Teacher Retirement System (TRS), Texas Workforce Commission (TWC), Internal Revenue Service (IRS), and other government agencies? (Payments to the TRS and TWC are considered timely if a warrant hold that was issued in connection to the untimely payment was cleared within 30 days from the date the warrant hold was issued.) (Payments to the IRS are considered timely if a penalty or delinquent payment notice was cleared within 30 days from the date the notice was issued).	<p>If the school district received a warrant hold and the warrant hold was not cleared within 30 days from the date the warrant hold was issued, the school district is considered to not have made timely payments and will fail this indicator.</p> <p>If the school district was issued a warrant hold, the maximum points and highest rating that the school district may receive is 95 points, A = Superior Achievement (even if the issue surrounding the initial warrant hold was resolved and cleared within 30 days).</p> <p>The agency will use the AFR, warrant holds, information from the IRS, and other sources to make a determination of timely payments.</p>
5	Was the total net position in the governmental activities column in the Statement of Net Position (net of accretion of interest for capital appreciation bonds, net pension liability, and other post-employment benefits) greater than zero? (If it is not, the maximum points and highest rating that the school district may receive is 79 points, C = Meets Standard Achievement, unless the school district has an increase of students in membership over 5 years of 7 percent or more or 1,000 or more students in membership. If the school district has an increase of students in membership over 5 years of 7 percent or more or 1,000 or more students in membership, the maximum points and highest rating that the school district may receive is 89 points, B = Above Standard Achievement.)	<p>$(A - B) / B \geq C$ OR $(D + E + F + G) > 0$, where</p> <p>A = Number of students in membership in year 5 from base year; B = Number of students in membership in base year; C = Threshold for 5 year percent increase in students in membership, which = 7% or 1,000 or more students in membership; D = Total net position in the governmental activities column in Exhibit A-1 (Statement of Net Position) in the annual financial report; E = Accretion of interest for capital appreciation bonds; F = Net Pension Liability (NPL), as applicable G = Other Post Employment Benefits (OPEB)</p>

School FIRST - Rating Worksheet Calculations Dated June 2023 for Rating Years 2022-2023+

#	Indicator	Calculation Defined
6	Was the average change in (general fund - assigned and unassigned) fund balance over 3 years less than a 25% decrease or did the current year assigned and unassigned fund balance (fund 199) exceed 75 days of total expenditures (fund 199)?	$\frac{((A-B)/B)+((C-A)/A)+((D-C)/C)}{3} < 25\%$ <p align="center">or</p> $D > [(E-F)/365]*75, \text{ where}$ <p>A = Assigned and Unassigned Fund Balance (fund 199) for Year 2 (two years prior to current year under review) B = Assigned and Unassigned Fund Balance (fund 199) for Year 1 (three years prior to current year under review) C = Assigned and Unassigned Fund Balance (fund 199) for Year 3 (one year prior to current year under review) D = Assigned and Unassigned Fund Balance (fund 199) for Year 4 (current year under review) E = Total Expenditures (fund 199) F = Capital Outlay (Function 81)</p> <p>The average of the change in fund balance (general fund assigned and unassigned) over 3 years must be less than 25%</p> <p>If the average change in fund balance (general fund assigned and unassigned) is not less than 25%, then use: $D > [(E-F)/365]*75$</p>
7	Was the number of days of cash on hand and current investments in the general fund for the school district sufficient to cover expenditures (excluding facilities acquisition and construction - function 81, fund 199)?	$[(A+B) / (C - D)] * 365, \text{ where}$ <p>A = Cash & Equivalents; (fund 199) B = Current Investments; (fund 199) C = Total Expenditures; (fund 199) D = Facilities Acquisition and Construction (fund 199, function 81)</p>
8	Was the measure of current assets to current liabilities ratio for the school district sufficient to cover short-term debt?	$A / B, \text{ where}$ <p>A = Current Assets (governmental activities column from the Statement of Net Position) B = Current Liabilities (governmental activities column from the Statement of Net Position)</p>
9	Did the school district's general fund revenues equal or exceed expenditures (excluding facilities acquisition and construction)? If not, was the school district's number of days of cash on hand greater than or equal to 60 days?	$[A / (B - C) - 1] > 0, \text{ where}$ <p>A = Total Revenues (fund 199; code 5020 from the Statement of Revenues, Expenditures, and Changes in Fund Balance) B = Total Expenditures (fund 199; code 6030 from the Statement of Revenues, Expenditures, and Changes in Fund Balance) C = Facilities Acquisition and Construction (fund 199; function 81 - from the Statement of Revenues, Expenditures, and Changes in Fund Balance)</p>
10	Did the school district average less than a 10 percent variance (90%-110%) when comparing budgeted revenues to actual revenues for the last 3 fiscal years?	$\frac{((A-B)/B)+((C-D)/D)+((E-F)/F)}{3} = +/- 10\% \text{ variance, where}$ <p>A=Actual Revenues for year 1(two years prior to current year under review) B=Budgeted Revenues for year 1(two years prior to current year under review) C=Actual Revenues for year 2 (one year prior to current year under review) D=Budgeted Revenues for year 2 (one year prior to current year under review) E=Actual Revenues for year 3 (current year under review) F=Budgeted Revenues for year 3 (current year under review)</p> <p>Data source: TSDS PEIMS collections - General fund (199); object codes 57XX through 58XX, October Snapshot - Fall PEIMS (Budgeted Revenues); and Mid-year PEIMS (Actual Revenues) Note: October Snapshot is the last Friday in October whether this is a day of instruction or not.</p>
11	Was the ratio of long-term liabilities to total assets for the school district sufficient to support long-term solvency? (If the school district's increase of students in membership over 5 years was 7 percent or more or 1,000 or more students in membership, then the school district passes this indicator.)	$A/B, \text{ where}$ <p>A = Long Term Liabilities (governmental activities column from the Statement of Net Position) B = Total Assets (governmental activities column from the Statement of Net Position)</p>

School FIRST - Rating Worksheet Calculations Dated June 2023 for Rating Years 2022-2023+		
#	Indicator	Calculation Defined
12	What is the correlation between future debt requirements and the district's assessed property value?	$(A/B)*C*100/D$, where A = Total Local and Intermediate Sources (code 5700) from fund 599 B = Total Revenue (code 5020, fund 599) C = Long Term Liabilities (governmental activities column from the Statement of Net Position) D = Assessed Property Value (Interest & Sinking Value)
13	Was the school district's administrative cost ratio equal to or less than the threshold ratio?	$(A/B) < \text{threshold based on district ADA size}$, where A = Sum of amounts for function codes 21 and 41; B = Sum of amounts for function codes 11, 12, 13, and 31 *Includes object codes 61XX-64XX, except 6144, in fund codes 199, 266, 281, 282, and 283
14	Did the school district not have a 15 percent decline in the students to staff ratio over 3 years (total enrollment to total staff)? (If the student enrollment did not decrease, the school district will automatically pass this indicator.)	$(A/B) - 1 > -0.15$ or $C - D > 0$, where A = Student to Staff ratio in the year under review; B = Student to Staff ratio 3 years prior to the year under review; C = Enrollment in year under review; D = Enrollment 3 years prior to the year under review
15	Was the school district's actual ADA within the allotted range of the district's biennial pupil projection(s) submitted to TEA? If the district did not submit pupil projections to TEA, did it certify TEA's projections?	$(A-B)/B \leq \text{threshold based on district ADA size}$, where A = Actual Average Daily Attendance (ADA) B = Projected Average Daily Attendance (ADA)
16	Did the comparison of Public Education Information Management System (PEIMS) data to like information in the school district's AFR result in a total variance of less than 3 percent of all expenditures by function?	$(A/B) < C$, where A = Sum of the absolute values of all differences in expenditures (determined by function) between Exhibit C-2 (Statement of Revenues, Expenditures, and Changes in Fund Balance) and PEIMS, by function in Fund Code 199; B = Sum of expenditures in PEIMS by function in fund code 199; C = Threshold level variance, which = 3%
17	Did the external independent auditor report that the AFR was free of any instance(s) of material weaknesses in internal controls over financial reporting and compliance for local, state, or federal funds and free from substantial doubt about the school district's ability to continue as a going concern? (The AICPA defines material weakness.)	No Calculation Involved
18	Did the external independent auditor indicate the AFR was free of any instance(s) of material noncompliance for grants, contracts, and laws related to local, state, or federal funds ? (The AICPA defines material noncompliance.)	No Calculation Involved
19	Did the school district post the required financial information on its website in accordance with Government Code, Local Government Code, Texas Education Code, Texas Administrative Code and other statutes, laws and rules that were in effect at the school district's fiscal year end?	No Calculation Involved
20	Did the school district's administration and school board members discuss any changes and/or impact to local, state, and federal funding at a board meeting within 120 days before the district adopted its budget?	No Calculation Involved

Figure 19 TAC §109.1001(f)(7)
 Charter FIR- ST - Rating Worksheet Dated June 2023 for Rating Years 2022-2023+
 Fiscal Year Ended June 30, ____, or August 31, ____

Charter FIR- ST Worksheet based on Fiscal Year End Data

Indicator Number	Critical Indicators	Pass	Fail
1	Was the complete annual financial report (AFR) and charter school financial data submitted to TEA within 30 days of the November 27 or January 28 deadline depending on the charter school's fiscal year end date of June 30 or August 31, respectively?	Yes	No
2	Was there an unmodified opinion in the AFR on the financial statements as a whole? (The American Institute of Certified Public Accountants (AICPA) defines unmodified opinion. The external independent auditor determines if there was an unmodified opinion.)	Yes	No
3	Was the charter school in compliance with the payment terms of all debt agreements at fiscal year end? (If the charter school was in default in a prior fiscal year, an exemption applies in following years if the charter school is current on its forbearance or payment plan with the lender and the payments are made on schedule for the fiscal year being rated. Also exempted are technical defaults that are not related to monetary defaults. A technical default is a failure to uphold the terms of a debt covenant, contract, or master promissory note even though payments to the lender, trust, or sinking fund are current. A debt agreement is a legal agreement between a debtor (person, company, etc. that owes money) and their creditors, which includes a plan for paying back the debt.)	Yes	No
4	Did the charter school make timely payments to the Teacher Retirement System (TRS), Texas Workforce Commission (TWC), Internal Revenue Service (IRS), and other government agencies? If the charter school received a warrant hold and the warrant hold was not cleared within 30 days from the date the warrant hold was issued, the charter school is considered to not have made timely payments and will fail this indicator. If the charter school was issued a warrant hold, the maximum points and highest rating that the charter school may receive is 95 points, A = Superior Achievement (even if the issue surrounding the initial warrant hold was resolved and cleared within 30 days).	Yes	No
5	Was the total net asset balance in the Statement of Financial Position for the charter school greater than zero? (If the charter school's increase of students in membership over 5 years was 7 percent or more, then the charter school passes this indicator.) (New charter schools that have a negative net asset balance will pass this indicator if they have an average of 7 percent growth in students year over year until it completes its fifth year of operations. After the fifth year of operations, the calculation changes to the 7 percent increase in 5 years.) (If the charter school passes indicator 5 based only on the charter school's 7 percent or more increase in students in membership, the maximum points and highest rating that the charter school may receive is 79 points, C = Meets Standard Achievement.)	Yes	No
Indicator Number	Solvency Indicators	Points	Ceiling Indicator
6	Was the average change in total net assets over 3 years less than a 25 percent decrease or did the current year total net asset balance exceed 75 days of operational expenditures [(total expenditures less depreciation) /365]*75 days? (If the charter school fails indicator 6, the maximum points and highest rating that the charter school may receive is 89 points, B = Above Standard Achievement.)	10	Ceiling Indicator
7	Was the number of days of cash on hand and current investments for the charter school sufficient to cover operating expenses? The calculation will use expenses, excluding depreciation. (See ranges below.)	10	
8	Was the measure of current assets to current liabilities ratio for the charter school sufficient to cover short-term debt? (See ranges below.)	10	

9	Did the charter school's revenues equal or exceed expenses, excluding depreciation? If not, was the charter school's number of days of cash on hand greater than or equal to 40 days? The calculation will use expenses, excluding depreciation. For government charter schools, pension expense will be excluded.	5
10	Did the charter school average less than a 10 percent variance (9%-110%) when comparing budgeted revenues to actual revenues for the last 3 fiscal years?	10
11	Was the ratio of long-term liabilities to total assets for the charter school sufficient to support long-term solvency? (If the charter school's increase of students in membership over 5 years was 7 percent or more, then the charter school passes this indicator.) (New charter schools that have a negative net asset balance will pass this indicator if they have an average of 7 percent growth in students year over year until it completes its fifth year of operations. After the fifth year of operations, the calculation changes to the 7 percent increase in 5 years.) (See ranges below.)	10
12	Was the debt service coverage ratio sufficient to meet the required debt service?	10
13	Did the charter school have a debt-to-capitalization percentage that was reasonable for the charter school to continue operating?	5
14	Was the charter school's administrative cost ratio equal to or less than the threshold ratio? (See ranges below.)	10
15	Did the charter school not have a 15 percent decline in the students to staff ratio over 3 years (total enrollment to total staff)? (If the student enrollment did not decrease, the charter school will automatically pass this indicator.)	10

Indicator Number	Financial Competence Indicators	Points
16	Was the charter school's actual average daily attendance (ADA) within 10 percent of the charter school's annual estimated ADA?	5
17	Did the comparison of Public Education Information Management System (PEIMS) data to like information in the charter school's AFR result in a total variance of less than 3 percent of all expenses by function? (If the charter school fails indicator 17, the maximum points and highest rating that the charter school may receive is 89 points, B = Above Standard Achievement.)	Ceiling Indicator
18	Did the external independent auditor report that the AFR was free of any instance(s) of material weaknesses in internal controls over financial reporting and compliance for local, state, or federal funds and free from substantial doubt about the charter school's ability to continue as a going concern? (The AICPA defines material weakness.) (If the charter school fails indicator 18, the maximum points and highest rating that the charter school may receive is 79 points, C = Meets Standard Achievement.)	Ceiling Indicator
19	Did the external independent auditor indicate the AFR was free of any instance(s) of material noncompliance for grants, contracts, and laws related to local, state, or federal funds? (The AICPA defines material noncompliance.)	10
20	Did the charter school post the required financial information on its website in accordance with Government Code, Local Government Code, Texas Education Code, Texas Administrative Code and other statutes, laws and rules that were in effect at the charter school's fiscal year end?	5

Maximum Possible Points 100

Charter FIRST Determination of Points

Indicator	10	8	6	4	2	0	
6	Yes	Ceiling Indicator - If the charter school fails indicator 6, the maximum points and highest rating that the charter school may receive is 89 points, B = Above Standard Achievement.					No
7	≥ 60	≥ 50	≥ 40	≥ 30	≥ 20	≥ 20	
8	≥ 2	≥ 1.75	≥ 1.5	≥ 1.25	≥ 1	≥ 1	

Indicator	5	0
9	≥ 0%	≥ 0%

Indicator	10	8	6	4	2	0	
10	< 10%	10 points are awarded if the charter school's budgeted to actual revenues are < 10% variance (90% to 110%).					≥ 10%
11	≤ 0.60	≤ 0.70	≤ 0.80	≤ 0.90	≤ 1.00	≥ 1.00	
12	≥ 1.20	≥ 1.15	≥ 1.10	≥ 1.05	≥ 1.00	≥ 1.00	

Indicator	5	0
13	< 95%	≥ 95%

Indicator	ADA Size	Threshold Ratio (based on ADA size)				
		10	8	6	4	
14	≥ 1,000	≤ 0.1401	≤ 0.1651	≤ 0.1901	≤ 0.2151	≥ 0.2401
	500 to 1,000	≤ 0.1561	≤ 0.1811	≤ 0.2061	≤ 0.2311	≥ 0.2561
	< 500	≤ 0.2645	≤ 0.2895	≤ 0.3145	≤ 0.3395	≥ 0.3645

Indicator	10	0
15	Yes	No

Indicator	5	0
16	Yes	No

17	Yes	Ceiling Indicator - If the charter school fails indicator 17, the maximum points and highest rating that the charter school may receive is 89 points, B = Above Standard Achievement.					No
18	Yes	Ceiling Indicator - If the charter school fails indicator 18, the maximum points and highest rating that the charter school may receive is 79 points, C = Meets Standard Achievement.					No

Indicator	10	0
19	Yes	No

Indicator	5	0
20	Yes	No

Ceiling Indicators		
Did the charter school meet the criteria for any of the following ceiling indicators 4, 5, 6, 17, or 18? If so, the charter school's applicable maximum points and rating are disclosed below.		
Determination of rating based on meeting ceiling criteria.		
Indicator 4 (Timely Payments) - Charter school was issued a warrant hold.	95	A = Superior Achievement
Indicator 5 (Total Net Assets) - Negative total net assets and pass indicator based only on 7% or more increase in students in membership over 5 years.	79	C = Meets Standard Achievement
Indicator 6 (Average Change in Total Net Assets) - Response to indicator is No.	89	B = Above Standard Achievement
Indicator 17 (PEIMS to AFR) - Response to indicator is No.	89	B = Above Standard Achievement
Indicator 18 (Material Weaknesses and/or Going Concern) - Response to indicator is No.	79	C = Meets Standard Achievement

If the charter school's overall points earned is less than the maximum points allowed by the applicable ceiling indicator, the charter school will receive a rating based on the lesser points earned. If the charter school fails a critical indicator or the charter school's total number of points is equal to or less than 69 points, the charter school will receive an F = **Substandard Achievement** rating, regardless of any ceiling indicator criteria met.

Examples of the points and rating that a charter school may earn when the criteria of a ceiling indicator is met:

- Example 1:** Your charter school fails ceiling indicator 18 and your charter school's total points before failing ceiling indicator 18 is 98 points, the maximum points and rating that your charter school may receive is 79 points, C = Meets Standard Achievement.
- Example 2:** Your charter school fails ceiling indicator 6 and your charter school's total points before failing ceiling indicator 6 is 86 points, the maximum points and rating that your charter school may receive is 86 points, B = Above Standard Achievement, **not** 89 points, B = Above Standard Achievement.
- Example 3:** Your charter school fails critical indicator 4 and ceiling indicator 17 and your charter school's total points before failing indicators 4 and 17 is 67 points, the maximum points and rating that your charter school may receive is 67 points, F = Substandard Achievement.
- Example 4:** Your charter school fails Part 1 of indicator 5, but passes critical indicator 5 based on Part 2, the charter school's 7% or more increase in growth in students in membership over 5 years. Your charter school's total points before passing indicator 5 solely on Part 2 of the indicator is 100 points, the maximum points and rating that your charter school may receive is 79 points, C = Meets Standard Achievement.
- Example 5:** Your charter school received a warrant hold (Indicator 4) that was cleared within 30 days from the date that the warrant hold was issued and the charter school's total points is 90 points before any ceiling deduction. The maximum points and rating that your charter school may receive is 90 points, A = Superior Achievement because the total points is less than the ceiling of 95 points.

Determination of Charter School Rating	
Did the charter school fail any of the critical indicators 1, 2, 3, 4, or 5 (parts 1 and 2)? If so, the charter school's rating is F for Substandard Achievement regardless of points earned.	
Determine the rating by the applicable number of points.	
A = Superior Achievement	90 through 100
B = Above Standard Achievement	80 through 89
C = Meets Standard Achievement	70 through 79
F = Substandard Achievement (The charter school receives an F if it scores below the minimum passing score, if it failed any critical indicator 1, 2, 3, 4, or 5, if the AFR or the data were not both complete, or if either the AFR or the data were not submitted on time for FIRST analysis.)	0 through 69

Figure: 19 TAC §109.1001(f)(7)

Charter FIRST - Rating Worksheet Calculations Dated June 2023 for Rating Years 2022-2023+		
#	Indicator	Calculation Defined
1	Was the complete annual financial report (AFR) and charter school financial data submitted to TEA within 30 days of the November 27 or January 28 deadline depending on the charter school's fiscal year end date of June 30 or August 31, respectively?	No calculation involved
2	Was there an unmodified opinion in the AFR on the financial statements as a whole? (The American Institute of Certified Public Accountants (AICPA) defines unmodified opinion. The external independent auditor determines if there was an unmodified opinion.)	No calculation involved
3	Was the charter school in compliance with the payment terms of all debt agreements at fiscal year end? (If the charter school was in default in a prior fiscal year, an exemption applies in following years if the charter school is current on its forbearance or payment plan with the lender and the payments are made on schedule for the fiscal year being rated. Also exempted are technical defaults that are not related to monetary defaults. A technical default is a failure to uphold the terms of a debt covenant, contract, or master promissory note even though payments to the lender, trust, or sinking fund are current. A debt agreement is a legal agreement between a debtor (person, company, etc. that owes money) and their creditors, which includes a plan for paying back the debt.)	No calculation involved
4	Did the charter school make timely payments to the Teacher Retirement System (TRS), Texas Workforce Commission (TWC), Internal Revenue Service (IRS), and other government agencies? (Payments to the IRS are considered timely if a penalty or delinquent payment notice was cleared within 30 days from the date the notice was issued).	<p>If the charter school received a warrant hold and the warrant hold was not cleared within 30 days from the date the warrant hold was issued, the charter school is considered to not have made timely payments and will fail this indicator.</p> <p>If the charter school was issued a warrant hold, the maximum points and highest rating that the charter school may receive is 95 points, A = Superior Achievement (even if the issue surrounding the initial warrant hold was resolved and cleared within 30 days).</p> <p>The agency will use the AFR, warrant holds, information from the IRS, and other sources to make a determination of timely payments.</p>
5	Was the total net asset balance in the Statement of Financial Position for the charter school greater than zero? (If the charter school's increase of students in membership over 5 years was 7 percent or more, then the charter school passes this indicator.) (New charter schools that have a negative net asset balance will pass this indicator if they have an average of 7 percent growth in students year over year until it completes its fifth year of operations. After the fifth year of operations, the calculation changes to the 7 percent increase in 5 years.)	<p>$(A + B) > C$ OR $\frac{(D - E)}{E} \times 100 \geq F$, where</p> <p>A = Total net asset balance in the Statement of Financial Position in the annual financial report B = Pension Expense, Other Post Employment Benefits (OPEB), and Net Pension Liability (NPL), as applicable C = Net assets threshold, which = 0 D = Number of students in membership in year 5 from base year E = Number of students in membership in base year F = Threshold for percent increase in students in membership, which = 7%</p>

Charter FIRST - Rating Worksheet Calculations Dated June 2023 for Rating Years 2022-2023+		
#	Indicator	Calculation Defined
6	Was the average change in total net assets in the Statement of Financial Position over 3 years less than a 25% decrease or did the current year total net asset balance in the Statement of Financial Position exceed 75 days of operational expenditures [(total expenditures less depreciation) /365]*75?	<p>The average of the change in the total net asset balance in the Statement of Financial Position over 3 years must be less than 25%.</p> $\frac{[(B-A)/A]+((C-B)/B)+((D-C)/C)}{3} < 25\%$ <p>or</p> $D > [(E-F)/365]*75, \text{ where}$ <p>A = Total Net Asset Balance for Year 1 (three years prior to current year under review) B = Total Net Asset Balance for Year 2 (two years prior to current year under review) C = Total Net Asset Balance for Year 3 (one year prior to current year under review) D = Total Net Asset Balance for Year 4 (current year under review) E = Total Expenditures (total from Statement of Activities) F = Depreciation (Note: The data for variable "F" comes from the Statement of Cash Flows)</p> <p>If the average change in total net assets is not less than 25%, then use: $D > [(E-F)/365]*75$</p>
7	Was the number of days of cash on hand and current investments for the charter school sufficient to cover operating expenses? The calculation will use expenses, excluding depreciation. For government charter schools, pension expense will be excluded.	$\frac{[(A + B) / (C - D - E)] * 365 = F, \text{ where}}$ <p>A = Cash & Equivalents (total from the Statement of Financial Position) B = Current Investments (total from the Statement of Financial Position) C = Total Expenditures (total from the Statement of Activities) D = Depreciation Expense (Note: The data for variable "D" comes from the Statement of Cash Flows) E = Pension Expense, OPEB, and NPL, as applicable (Notes to the Financial Statements) F = Days of Cash on Hand & Current Investments</p>
8	Was the measure of current assets to current liabilities ratio for the charter school sufficient to cover short-term debt?	$A / B = C, \text{ where}$ <p>A = Current Assets (total from the Statement of Financial Position) B = Current Liabilities (total from the Statement of Financial Position) C = Current Assets to Current Liabilities Ratio</p>
9	Did the charter school's revenues equal or exceed expenses, excluding depreciation? If not, was the charter school's number of days of cash on hand greater than or equal to 40 days? The calculation will use expenses, excluding depreciation. For government charter schools, pension expense will be excluded.	$[A / (B - C - D) - 1] > 0, \text{ where}$ <p>A = Total Revenue (total from the Statement of Activities) B = Total Expenses (total of all function codes from the Statement of Activities) C = Depreciation (Note: The data for variable "C" comes from the Statement of Cash Flows) D = Pension Expense, OPEB, and NPL, as applicable (Notes to the Financial Statements)</p>
10	Did the charter school average less than a 10 percent variance (90%-110%) when comparing budgeted revenues to actual revenues for the last 3 fiscal years?	$\frac{[(A-B)/B]+((C-D)/D)+((E-F)/F)}{3} = G \text{ +/- } 10\% \text{ variance, where}$ <p>A = Actual Revenues for Year 1 (two years prior to current year) B = Budgeted Revenues for Year 1 (two years prior to current year) C = Actual Revenues for Year 2 (one year prior to current year) D = Budgeted Revenues for Year 2 (one year prior to current year) E = Actual Revenues for Year 3 (current year under review) F = Budgeted Revenues for Year 3 (current year under review) G = Average Variance</p> <p>Data source: TSDS PEIMS collections - General fund (420 & 199); object code 58XX, October Snapshot - Fall PEIMS (Budgeted Revenues); and Mid-year PEIMS (Actual Revenues)</p> <p>Note: October Snapshot is the last Friday in October whether this is a day of instruction or not.</p>

Charter FIRST - Rating Worksheet Calculations Dated June 2023 for Rating Years 2022-2023+

#	Indicator	Calculation Defined
11	Was the ratio of long-term liabilities to total assets for the charter school sufficient to support long-term solvency? (If the charter school's increase of students in membership over 5 years was 7 percent or more, then the charter school passes this indicator.) (New charter schools that have a negative net asset balance will pass this indicator if they have an average of 7 percent growth in students year over year until it completes its fifth year of operations. After the fifth year of operations, the calculation changes to the 7 percent increase in 5 years.)	<p><u>$(A - B) / C = D$, where</u></p> <p>A = Long Term Liabilities; (total from the Statement of Financial Position) B = Pension Expense, OPEB, and NPL, as applicable (Notes to the Financial Statements) C = Total Assets (total from the Statement of Financial Position) D = Long-term Liabilities to Total Assets Ratio</p>
12	Was the debt service coverage ratio sufficient to meet the required debt service?	<p><u>$(A - B + C + D + E + F) / (D + E) = G$, where</u></p> <p>A = Total Revenues (total from the Statement of Activities) B = Total Expenses (total of all function codes from the Statement of Activities) C = Depreciation D = Interest E = Principal F = Pension Expense (Notes to the Financial Statements) G = Debt Service Coverage Ratio</p> <p>Note: The data for variables C, D, and E come from the Statement of Cash Flows</p>
13	Did the charter school have a debt-to-capitalization percentage that was reasonable for the charter school to continue operating?	<p><u>$A / (B + A) \times 100 = C$, where</u></p> <p>A = Long-term Liabilities (total from the Statement of Financial Position) B = Total Net Assets (total from the Statement of Financial Position) C = Debt to Capitalization Percentage</p>
14	Was the charter school's administrative cost ratio equal to or less than the threshold ratio?	<p><u>$A / B < \text{threshold based on CS size}$, where</u></p> <p>A = Sum of amounts for function codes 21 and 41 B = Sum of amounts for function codes 11, 12, 13, and 31</p> <p>*Includes object codes 61XX-64XX in fund codes 199, 420, 266, 281, 282, and 283</p>
15	Did the charter school not have a 15 percent decline in the students to staff ratio over 3 years (total enrollment to total staff)? (If the student enrollment did not decrease, the charter school will automatically pass this indicator.)	<p><u>$(A / B) - 1 > -0.15$ or $C - D > 0$, where</u></p> <p>A = Student to Staff ratio in the year under review B = Student to Staff ratio 3 years prior to the year under review C = Enrollment in the year under review D = Enrollment 3 years prior to the year under review</p>
16	Was the charter school's actual average daily attendance (ADA) within 10% of the charter school's annual estimated ADA?	<p><u>$(A - B) / B < 10\%$, where</u></p> <p>A = Actual Average Daily Attendance (ADA) B = Estimated Average Daily Attendance (ADA)</p>
17	Did the comparison of Public Education Information Management System (PEIMS) data to like information in the charter school's AFR result in a total variance of less than 3 percent of all expenses by function?	<p><u>$(A / B) < C$, where</u></p> <p>A = Sum of the absolute values of all differences in expenses (determined by function) between the Statement of Activities and PEIMS B = Sum of expenses for all expenses presented in the Statement of Activities C = Threshold for percentage of data variance, which = 3%</p>
18	Did the external independent auditor report that the AFR was free of any instance(s) of material weaknesses in internal controls over financial reporting and compliance for local, state, federal funds and free from substantial doubt about the charter school's ability to continue as a going concern? (The AICPA defines material weakness.)	No calculation involved

Charter FIRST - Rating Worksheet Calculations Dated June 2023 for Rating Years 2022-2023+		
#	Indicator	Calculation Defined
19	Did the external independent auditor indicate the AFR was free of any instance(s) of material noncompliance for grants, contracts, and laws related to local, state, or federal funds? (The AICPA defines material noncompliance.)	No calculation involved
20	Did the charter school post the required financial information on its website in accordance with Government Code, Local Government Code, Texas Education Code, Texas Administrative Code and other statutes, laws and rules that were in effect at the charter school's fiscal year end?	No calculation involved.

Figure: 28 TAC §1.209(2)

Telephone or Fax Number in Rule, Form, or Figure	New Telephone and Fax Number
512-305-7211 (telephone)	800-252-3439 (telephone)
512-305-7900 (telephone)	512-676-7900 (telephone)
512-305-7922 (fax)	512-490-1056 (fax)
512-305-7934 (telephone)	512-676-6551 (telephone)
512-322-2212 (telephone)	512-676-6763 (telephone)
512-322-2273 (fax)	512-490-1051 (fax)
512-322-3417 (fax)	512-490-1051 (fax)
512-322-3418 (fax)	512-490-1051 (fax)
512-322-3401 (telephone)	512-676-6889 (telephone)
512-322-3409 (telephone)	512-676-6889 (telephone)
512-322-3435 (telephone)	512-676-6750 (telephone)
512-322-3482 (telephone)	512-676-6475 (telephone)
512-322-3503 (telephone)	512-676-6500 (telephone)
512-322-3505 (telephone)	512-676-6375 (telephone)
512-344-3506 (telephone)	512-676-6889 (telephone)
512-322-3507 (telephone)	512-676-6375 (telephone)
512-322-3535 (telephone)	512-676-6395 (telephone)
512-322-3552 (fax)	512-490-1017 (fax)
512-322-3553 (fax)	512-490-1036 (fax)
512-322-3579 (telephone)	512-676-6392 (telephone)
512-322-4370 (telephone)	512-676-6385 (telephone)
512-322-5023 (telephone)	512-676-6375 (telephone)
512-322-5026 (fax)	512-490-1010 (fax)
512-463-6515 (telephone)	800-252-3439 (telephone)
512-463-6693 (fax)	512-490-1048 (fax)
512-475-1757 (telephone)	512-676-6551 (telephone)
512-475-1771 (fax)	512-490-1007 (fax)
512-475-1819 (fax)	512-490-1029 (fax)
512-475-1878 (telephone)	512-676-6690 (telephone)
512-475-3026 (telephone)	512-676-6690 (telephone)

Have a complaint or need help?

If you have a problem with a claim or your premium, call your insurance company or HMO first. If you can't work out the issue, the Texas Department of Insurance may be able to help.

Even if you file a complaint with the Texas Department of Insurance, you should also file a complaint or appeal through your insurance company or HMO. If you don't, you may lose your right to appeal.

[Insert insurance company or HMO name]

To get information or file a complaint with your insurance company or HMO:

Call: [insert title] at [insert phone number]

Toll-free: [insert phone number]

[optional] Online: [insert company URL]

Email: [insert email address]

Mail: [insert mailing address]

The Texas Department of Insurance

To get help with an insurance question or file a complaint with the state:

Call with a question: 1-800-252-3439

File a complaint: www.tdi.texas.gov

Email: ConsumerProtection@tdi.texas.gov

Mail: Consumer Protection, MC: CO-CP, Texas Department of Insurance, P.O.

Box 12030, Austin, TX 78711-2030

¿Tiene una queja o necesita ayuda?

Si tiene un problema con una reclamación o con su prima de seguro, llame primero a su compañía de seguros o HMO. Si no puede resolver el problema, es posible que el Departamento de Seguros de Texas (Texas Department of Insurance, por su nombre en inglés) pueda ayudar.

Aun si usted presenta una queja ante el Departamento de Seguros de Texas, también debe presentar una queja a través del proceso de quejas o de apelaciones de su compañía de seguros o HMO. Si no lo hace, podría perder su derecho para apelar.

[Insert insurance company or HMO name]

Para obtener información o para presentar una queja ante su compañía de seguros o HMO:

Llame a: [insert title] al [insert phone number]
Teléfono gratuito: [insert phone number]
[optional] En línea: [insert company URL]
Correo electrónico: [insert email address]
Dirección postal: [insert mailing address]

El Departamento de Seguros de Texas

Para obtener ayuda con una pregunta relacionada con los seguros o para presentar una queja ante el estado:

Llame con sus preguntas al: 1-800-252-3439

Presente una queja en: www.tdi.texas.gov

Correo electrónico: ConsumerProtection@tdi.texas.gov

Dirección postal: Consumer Protection, MC: CO-CP, Texas Department of Insurance, P.O. Box 12030, Austin, TX 78711-2030

Have a workers' compensation complaint or need help?

Contact your insurance company if you have a question or problem about your premium or a claim:

[Insert insurance company name]
Call: [insert title] at [insert phone number]
Toll-free: [insert phone number]
[optional] Online: [insert company URL]
Email: [insert email address]
Mail: [insert mailing address]

For problems with your policy

If your problem with the premium is not resolved, contact the National Council on Compensation Insurance, Dispute Resolution Services:

Mail: 901 Peninsula Corporate Circle, Boca Raton, FL 33487-1362
Fax: 561-893-5043
Email: disputeresolution@ncci.com
Phone: 1-800-622-4123

If you believe there has been a violation of law related to your workers' compensation policy, file a complaint with the Texas Department of Insurance:

Call: 1-800-252-3439
Online: www.tdi.texas.gov
Email: ConsumerProtection@tdi.texas.gov
Mail: Consumer Protection, MC: CO-CP, Texas Department of Insurance, P.O. Box 12030, Austin, TX 78711-2030

For employees with claim issues

If one of your employees has a problem with a claim, contact the Texas Department of Insurance, Division of Workers' Compensation, Compliance and Investigations:

Mail: Compliance and Investigations, MC: CI, Texas Department of Insurance, Division of Workers' Compensation, P.O. Box 12050, Austin, TX 78711-2050
Fax: 512-490-1030
Email: DWCCOMPLAINTS@tdi.texas.gov
Phone: 1-800-252-7031

¿Tiene una queja de compensación para trabajadores o necesita ayuda?

Comuníquese con su compañía de seguros si tiene una pregunta o problema relacionado con su prima de seguro o con una reclamación:

[Insert insurance company name]

Llame a: [insert title] al [insert phone number]

Teléfono gratuito: [insert phone number]

[optional] En línea: [insert company URL]

Correo electrónico: [insert email address]

Dirección postal: [insert mailing address]

Para problemas con su póliza

Si su problema con la prima de seguro no es resuelto, comuníquese con el Consejo Nacional de Seguros de Compensación (National Council on Compensation Insurance, por su nombre en inglés), Servicios para la Resolución de Disputas:

Correo postal: 901 Peninsula Corporate Circle, Boca Raton, FL 33487-1362

Fax: 561-893-5043

Correo electrónico: disputeresolution@ncci.com

Teléfono: 1-800-622-4123

Si usted piensa que ha habido una violación a la ley, la cual está relacionada con su póliza de compensación para trabajadores, presente una queja ante el Departamento de Seguros de Texas:

Llame al: 1-800-252-3439

En línea: www.tdi.texas.gov

Correo electrónico: ConsumerProtection@tdi.texas.gov

Correo postal: Consumer Protection, MC: CO-CP, Texas Department of Insurance, P.O. Box 12030, Austin, TX 78711-2030

Para empleados que tienen problemas con sus reclamaciones

Si uno de sus empleados tiene un problema con una reclamación, comuníquese con la Sección de Cumplimiento e Investigaciones (Compliance and Investigations, por su nombre en inglés) del Departamento de Seguros de Texas, División de Compensación para Trabajadores (Texas Department of Insurance, Division of Workers' Compensation, por su nombre en inglés).

Correo postal: Compliance and Investigations, MC: CI, Texas Department of Insurance, Division of Workers' Compensation, P.O. Box 12050, Austin, TX 78711-2050

Fax: 512-490-1030

Correo electrónico: DWCCOMPLAINTS@tdi.texas.gov

Teléfono: 1-800-252-7031

Where you can get information or make a complaint

If you have a question or a problem with a claim or your premium, contact your insurance company first. You can also get information or file a complaint with the Texas Department of Insurance.

[Insert insurance company name]

To get information or file a complaint with your insurance company:

Call: [insert title] at [insert phone number]

Toll-free: [insert phone number]

[optional] Online: [insert company URL]

Email: [insert email address]

Mail: [insert mailing address]

The Texas Department of Insurance

To get help with an insurance question, learn about your rights, or file a complaint with the state:

Call: 1-800-252-3439

Online: www.tdi.texas.gov

Email: ConsumerProtection@tdi.texas.gov

Mail: Consumer Protection, MC: CO-CP, Texas Department of Insurance, P.O. Box 12030, Austin, TX 78711-2030

To compare policies and prices

Visit **HelpInsure.com** to compare prices and coverages on home and auto insurance policies. The website is a service of the Texas Department of Insurance and the Office of Public Insurance Counsel.

Donde puede obtener información o presentar una queja

Si tiene una pregunta o un problema con una reclamación o con su prima de seguro, comuníquese primero con su compañía de seguros. Usted también puede obtener información o presentar una queja ante el Departamento de Seguros de Texas (Texas Department of Insurance, por su nombre en inglés).

[Insert Insurance Company Name]

Para obtener información o para presentar una queja ante su compañía de seguros:

Llame a: [insert title] al [insert phone number]

Teléfono gratuito: [insert phone number]

[optional] En línea: [insert company URL]

Correo electrónico: [insert email address]

Dirección postal: [insert mailing address]

El Departamento de Seguros de Texas

Para obtener ayuda con una pregunta relacionada con los seguros, para conocer sus derechos o para presentar una queja ante el estado:

Llame: 1-800-252-3439

En línea: www.tdi.texas.gov

Correo electrónico: ConsumerProtection@tdi.texas.gov

Dirección postal: Consumer Protection, MC: CO-CP, Texas Department of Insurance, P.O. Box 12030, Austin, TX 78711-2030

Para comparar pólizas y precios

Visite **HelpInsure.com** para comparar precios y coberturas en pólizas de seguro para el hogar y automóvil. El sitio web es un servicio del Departamento de Seguros de Texas y de la Oficina del Asesor Público de Seguros (Office of Public Insurance Counsel, por su nombre en inglés).



IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Office of the Attorney General

Texas Water Code and Texas Health and Safety Code Settlement Notice

The State of Texas gives notice of the following proposed resolution of an environmental enforcement action under the Texas Health and Safety Code and the Texas Water Code. Before the State may enter into a voluntary settlement agreement, pursuant to section 7.110 of the Texas Water Code, the State shall permit the public to comment in writing. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreement if the comments disclose facts or considerations indicating that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the law.

Case Title and Court: *State of Texas v. LyondellBasell Acetyls*; Cause No. D-1-GN-21-006888; in the 201st Judicial District Court, Travis County, Texas.

Background: Defendant, LyondellBasell Acetyls, owns and operates a chemical manufacturing facility located at 1350 Miller Cut Off Road in La Porte, Harris County, Texas (the "Plant"). The State filed a civil enforcement suit on behalf of the Texas Commission on Environmental Quality ("TCEQ"), under the Texas Clean Air Act, the Texas Water Code, and related regulations, against Defendant for an unauthorized emissions event at the Plant which released volatile organic compounds, volatile inorganic compounds, and carbon monoxide; and caused two fatalities with 30 more people injured.

Proposed Settlement: The parties propose an Agreed Final Judgment which provides for an award to the State of \$1,025,000 in civil penalties, \$75,000 in attorneys' fees, and post-judgment interest at 7.75% per annum.

For a complete description of the proposed settlement, the Agreed Final Judgment should be reviewed in its entirety. Requests for copies of the proposed judgment and settlement, and written comments on the same, should be directed to Wesley Williams, Assistant Attorney General, Office of the Attorney General of Texas, P.O. Box 12548, MC-066, Austin, Texas 78711-2548; (512) 463-2012; facsimile (512) 320-0911; email: Wesley.Williams@oag.texas.gov. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-202301896
Austin Kinghorn
General Counsel
Office of the Attorney General
Filed: May 23, 2023



Texas Water Code and Texas Health and Safety Code Settlement Notice

The State of Texas gives notice of the following proposed resolution of a potential environmental enforcement action under the Texas Health and Safety Code and the Texas Water Code. Before the State may enter into a voluntary settlement agreement, pursuant to section 7.110 of the Texas Water Code, the State shall permit the public to comment

in writing. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreement if the comments disclose facts or considerations indicating that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the law.

Settlement Agreement relating to the McBay Oil and Gas State Superfund Site Administrative Order (Tex. Comm'n on Env't Quality, In the Matter of the McBay Oil & Gas State Superfund Site; RN105172886, Docket No. 2021-0635-SPF (Aug. 11, 2021)) between Petroleum Well Services, Inc. and the Texas Commission on Environmental Quality.

Background: On August 11, 2021, the Texas Commission on Environmental Quality ("TCEQ") issued an administrative order ("Order") finding that certain parties including Petroleum Well Services, Inc. ("PWSI") were potentially responsible for the solid waste, hazardous substances, pollutants, and other contaminants at the McBay Oil and Gas State Superfund Site (the "Site"), a former oil refinery and oil reclamation plant located on a 20.32-acre tract on FM 1272, two miles west of the intersection with FM 2968 (North Olive Street), near Grapeland, Houston County, Texas. TCEQ's Order required PWSI, and other potentially responsible parties to reimburse all costs associated with TCEQ's cleanup of the Site, which remain to be collected.

Proposed Settlement: The parties propose a Settlement Agreement & Release which includes a contribution from PWSI in the amount of \$160,000.00 for the TCEQ's response costs. Of this sum, the amount of \$153,500.00 shall be designated as reimbursement for TCEQ's response costs at the Site and the amount of \$6,500.00 shall be designated as attorney's fees.

For a complete description of the proposed settlement, the Settlement Agreement & Release should be reviewed in its entirety. Requests for copies of the proposed settlement, and written comments on the same, should be directed to Tyler J. Ryska, Assistant Attorney General, Office of the Attorney General of Texas, P.O. Box 12548, MC-066, Austin, Texas 78711-2548; (512) 463-2012; facsimile (512) 320-0911; email: tyler.ryska@oag.texas.gov. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-202301915
Austin Kinghorn
General Counsel
Office of the Attorney General
Filed: May 24, 2023



Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 05/29/23 - 06/04/23 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 05/29/23 - 06/04/23 is 18% for Commercial over \$250,000.

¹ Credit for personal, family or household use.

² Credit for business, commercial, investment or other similar purpose.

TRD-202301902

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: May 23, 2023

Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **July 5, 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 **July 5, 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: Byron G Custom Homes LLC; DOCKET NUMBER: 2021-1499-WQ-E; IDENTIFIER: RN111347423; LOCATION: Springtown, Parker County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit (stormwater); PENALTY: \$875; ENFORCEMENT COORDINATOR: Ellen Ojeda, (512) 239-2581; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Equistar Chemicals, LP; DOCKET NUMBER: 2020-0911-AIR-E; IDENTIFIER: RN100221662; LOCATION: Corpus Christi, Nueces County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §§101.20(3), 111.111(a)(1)(B), 116.115(c), and 122.143(4), New Source Review Permit Numbers 4682B and PSDTX761M3, Special Conditions Number 2, Federal Operating Permit Number O1486, General Terms

and Conditions and Special Terms and Conditions Number 17, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions, and failing to prevent visible emissions from exceeding 20% averaged over a six-minute period; PENALTY: \$58,350; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 500 North Shoreline Boulevard, Suite 500, Corpus Christi, Texas 78401-0318, (361) 881-6900.

(3) COMPANY: FRED GARRISON OIL COMPANY; DOCKET NUMBER: 2022-1604-PST-E; IDENTIFIER: RN102507621; LOCATION: Graham, Young County; TYPE OF FACILITY: common carrier; RULES VIOLATED: 30 TAC §334.5(b)(1)(A) and TWC, §26.3467(d), by failing to make available a valid, current TCEQ delivery certificate before depositing a regulated substance into a regulated underground storage tank system; PENALTY: \$4,510; ENFORCEMENT COORDINATOR: Tiffany Chu, (817) 588-5891; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(4) COMPANY: Image Construction Incorporated; DOCKET NUMBER: 2023-0585-WQ-E; IDENTIFIER: RN108886862; LOCATION: Alvord, Wise County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a multi-sector general permit (stormwater); PENALTY: \$875; ENFORCEMENT COORDINATOR: Shane Glantz, (806) 468-0507; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: J Michael Design and Construction LLC; DOCKET NUMBER: 2023-0582-WQ-E; IDENTIFIER: RN111625018; LOCATION: Lindale, Smith County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit (stormwater); PENALTY: \$875; ENFORCEMENT COORDINATOR: Ellen Ojeda, (512) 239-2581; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(6) COMPANY: Magellan Terminals Holdings, L.P.; DOCKET NUMBER: 2021-0728-AIR-E; IDENTIFIER: RN102180486; LOCATION: Galena Park, Harris County; TYPE OF FACILITY: petroleum bulk station and storage terminal; RULES VIOLATED: 30 TAC §116.115(c) and §122.143(4), New Source Review Permit Number 4850, Special Conditions Number 41.C, Federal Operating Permit (FOP) Number O1128, General Terms and Conditions (GTC) and Special Terms and Conditions Numbers 1.A and 18, and Texas Health and Safety Code (THSC), §382.085(b), by failing to maintain the six-minute average temperature in or immediately downstream of the combustion chamber above the established minimum one-hour average temperature; and 30 TAC §122.143(4) and §122.145(2)(A), FOP Number O1128, GTC, and THSC, §382.085(b), by failing to report all instances of deviations; PENALTY: \$36,240; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(7) COMPANY: Nico Jaap DeBoer; DOCKET NUMBER: 2021-1354-MLM-E; IDENTIFIER: RN102184405; LOCATION: Winnsboro, Wood County; TYPE OF FACILITY: concentrated animal feeding operation; RULES VIOLATED: 30 TAC §297.11 and TWC, §11.081 and §11.121, by failing to obtain authorization prior to diverting, impounding, storing, taking, or using state water; 30 TAC §321.31(a) and §321.40(e), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System (TPDES) General Permit Number TXG920108, Part III, Pollution Prevention Plan Requirements, A. Technical Requirements Number 12(c)(6), by failing to prevent tailwater discharges to waters in the state; 30 TAC §321.38(e)(7)(C) and TPDES General Permit Number TXG920108, Part III. Pollution Prevention Plan Requirements, A. Technical Requirements Number 6(d), by failing to provide the appropriate volume capacity of the

Retention Control Structures (RCS) at the facility; 30 TAC §321.39(e) and TPDES General Permit Number TXG920108, Part III, Pollution Prevention Plan Requirements, A. Technical Requirements Number 9(b), by failing to properly store manure within the drainage area of an RCS or stored in a manner that prevents contaminated stormwater runoff from the storage area; and 30 TAC §335.5(a) and (b), by failing to deed record disposal of industrial solid waste or municipal hazardous waste; PENALTY: \$16,888; ENFORCEMENT COORDINATOR: Ellen Ojeda, (512) 239-2581; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(8) COMPANY: North San Saba Water Supply Corporation; DOCKET NUMBER: 2023-0268-PWS-E; IDENTIFIER: RN101225613; LOCATION: San Saba, San Saba County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(e)(4)(B) and Texas Health and Safety Code, §341.033(a), by failing to operate the facility under the direct supervision of a water works operator who holds an applicable, valid Class C or higher groundwater license issued by the executive director (ED); 30 TAC §290.46(f)(2) and (3)(B)(iii), by failing to maintain water works operation and maintenance records and make them readily available for review by the ED upon request; 30 TAC §290.46(m)(1)(A), by failing to inspect the facility's three ground storage tanks annually; 30 TAC §290.46(m)(1)(B), by failing to inspect the facility's three pressure tanks annually; and 30 TAC §290.46(s)(2)(C)(i), by failing to verify the accuracy of the manual disinfectant residual analyzer at least once every 90 days using chlorine solutions of known concentrations; PENALTY: \$5,325; ENFORCEMENT COORDINATOR: Miles Wehner, (512) 239-2813; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(9) COMPANY: Richardson, Fred; DOCKET NUMBER: 2023-0616-WOC-E; IDENTIFIER: RN111694691; LOCATION: Zavalla, Angelina County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: \$175; ENFORCEMENT COORDINATOR: Carlos Flores, (915) 834-4964; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(10) COMPANY: Tarleton State University; DOCKET NUMBER: 2021-1506-AGR-E; IDENTIFIER: RN105915730; LOCATION: Stephenville, Erath County; TYPE OF FACILITY: concentrated animal feeding operation; RULES VIOLATED: 30 TAC §305.125(1) and §321.46(d) and TCEQ Permit Number WQ0004920000, Part VIII.A, by failing to submit records to the Executive Director within five business days of request; and 30 TAC §§305.125(1) and (4), 321.31(a), 321.38(g)(1)(F), and 321.42(c), TWC, §26.121(a)(1), and TCEQ Permit Number WQ0004920000, Parts VII.A, 3(d)(2)(i), 5.(a) and (d), by failing to maintain adequate unused capacity in retention control structure Number 1 to account for rainfall and rainfall runoff from a designed rainfall event, resulting in a discharge of agricultural wastewater into or adjacent to any water in the state; PENALTY: \$6,313; ENFORCEMENT COORDINATOR: Harley Hobson, (512) 239-1337; REGIONAL OFFICE: 580-D West Lingleville Road, Stephenville, Texas 76401-2209, (254) 552-1900.

TRD-202301892

Gitanjali Yadav

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: May 23, 2023



Combined Notice of Receipt of Application and Intent to Obtain Water Quality Permit and Notice of Application

and Preliminary Decision for TPDES Permit for Municipal Wastewater and Notice of a Pretreatment Program Substantial Modification Renewal Permit Number WQ0010426001

Notice Issued May 18, 2023

APPLICATION AND PRELIMINARY DECISION. City of Bryan, P.O. Box 1000, Bryan, Texas 77805, has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0010426001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 8,000,000 gallons per day. The applicant has also requested a substantial modification to the approved pretreatment program. TCEQ received this application on November 21, 2022.

This combined notice is being issued to include the Notice of Pretreatment Program Substantial Modification. The NORI, issued on January 3, 2023, inadvertently omitted Pretreatment Program Substantial Modification.

The applicant has applied to the TCEQ for approval of a substantial modification to its approved pretreatment program under the TPDES program. The request for approval complies with both federal and state requirements. The substantial modification will be approved without change if no substantive comments are received within 30 days of notice publication.

Approval of the request for modification to the approved pretreatment program will allow the applicant to revise their technically based local limits, and ordinance which incorporates such revisions. The following treatment works facilities will be subject to the requirements of the pretreatment program: TPDES Permit Nos. WQ0010426001, WQ0010426002, WQ0010426004, and WQ0015930001. The facility is located at 300 Park Road, in the City of College Station, Brazos County, Texas 77802. The treated effluent is discharged to an unnamed tributary, thence to Burton Creek, thence to Carters Creek, thence to Navasota River Below Lake Limestone in Segment No. 1209 of the Brazos River Basin. The unclassified receiving water uses are minimal aquatic life use for the unnamed tributary, limited aquatic life use for Burton Creek, and intermediate aquatic life use for Carters Creek. The designated uses for Segment No. 1209 are primary contact recreation, public water supply, and high aquatic life use. This link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice. For the exact location, refer to the application.

<https://gisweb.tceq.texas.gov/LocationMapper/?marker=-96.320833,30.640833&level=18>

The TCEQ Executive Director has completed the technical review of the application, the pretreatment program substantial modification, and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements. The Executive Director has also made a preliminary decision that the requested substantial modification to the approved pretreatment program, if approved, meets all statutory and regulatory requirements. The permit application, Executive Director's preliminary decision, draft permit, and pretreatment program substantial modification are available for viewing and copying at Clara B. Mounce Public Library, 201 East 26th Street, Bryan, Texas.

Alternative language notice in Spanish is available at <https://www.tceq.texas.gov/permitting/wastewater/plain-language-summaries-and-public-notices>. El aviso de idioma alternativo

en español está disponible en <https://www.tceq.texas.gov/permitting/wastewater/plain-language-summaries-and-public-notice>.

PUBLIC COMMENT / PUBLIC MEETING. You may submit public comments or request a public meeting about this application or the application for substantial modification of the pretreatment program. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application or the application for the substantial modification of the pretreatment program. TCEQ holds a public meeting if the Executive Director determines that there is a significant degree of public interest in the application or application for substantial modification of the pretreatment program or if requested by a local legislator. A public meeting is not a contested case hearing.

OPPORTUNITY FOR A CONTESTED CASE HEARING. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material, or significant public comments. Unless the application is directly referred for a contested case hearing, the response to comments will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting a contested case hearing or reconsideration of the Executive Director's decision. There is no opportunity to request a contested case hearing on the application for substantial modification of the pretreatment program. A contested case hearing is a legal proceeding similar to a civil trial in a state district court. **TO REQUEST A CONTESTED CASE HEARING, YOU MUST INCLUDE THE FOLLOWING ITEMS IN YOUR REQUEST:** your name, address, phone number; applicant's name and proposed permit number; the location and distance of your property/activities relative to the proposed facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; a list of all disputed issues of fact that you submit during the comment period; and the statement "[I/we] request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify by name and physical address an individual member of the group who would be adversely affected by the proposed facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose.

Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

The Commission may only grant a request for a contested case hearing on issues the requestor submitted in their timely comments that were not subsequently withdrawn. If a hearing is granted, the subject of a hearing will be limited to disputed issues of fact or mixed questions of fact and law relating to relevant and material water quality concerns submitted during the comment period. TCEQ may act on an application to renew a permit for discharge of wastewater without providing an opportunity for a contested case hearing if certain criteria are met.

EXECUTIVE DIRECTOR ACTION. The Executive Director may issue final approval of the application unless a timely contested case hearing request or request for reconsideration is filed. If a timely hearing request or request for reconsideration is filed, the Executive Director will not issue final approval of the permit and will forward the application and request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

MAILING LIST. If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this specific application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. If you wish to be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

All written public comments and public meeting requests must be submitted to the Office of the Chief Clerk, MC 105, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at www.tceq.texas.gov/goto/comment within 30 days from the date of newspaper publication of this notice.

INFORMATION AVAILABLE ONLINE. For details about the status of the application, visit the Commissioners' Integrated Database at www.tceq.texas.gov/goto/cid. Search the database using the permit number for this application, which is provided at the top of this notice.

AGENCY CONTACTS AND INFORMATION. Public comments and requests must be submitted either electronically at www.tceq.texas.gov/goto/comment, or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC 105, P.O. Box 13087, Austin, Texas 78711-3087. Any personal information you submit to the TCEQ will become part of the agency's record; this includes email addresses. For more information about this permit application, the application for substantial modification of the pretreatment program, or the permitting process, please call the TCEQ Public Education Program, Toll Free, at (800) 687-4040 or visit their website at www.tceq.texas.gov/goto/pep. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from the City of Bryan at the address stated above, or by calling Mr. Jason Barfknecht, PhD., P.E., Public Works Director, City of Bryan, at (979) 209-5929.

TRD-202301907

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: May 24, 2023



Enforcement Orders

An agreed order was adopted regarding Rohm and Haas Texas Incorporated, Docket No. 2021-0729-AIR-E on May 23, 2023 assessing \$7,425 in administrative penalties. 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 SEEK CONCEPT, LLC dba Steves Food Mart, Docket No. 2021-1404-PST-E on May 23, 2023 assessing \$3,375 in administrative penalties with \$675 deferred. Information concerning any aspect of this order may be obtained by contacting Tiffany Chu, 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 Boling Municipal Water District, Docket No. 2021-1554-MWD-E on May 23, 2023 assessing \$800 in administrative penalties with \$160 deferred. Information concerning any aspect of this order may be obtained by contacting Cheryl Thomp-

son, 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 ELG Utility LLC, Docket No. 2021-1587-AIR-E on May 23, 2023 assessing \$4,226 in administrative penalties with \$845 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 AAREY COLLONEY, INC. dba Cheek Grocery Store, Docket No. 2022-0417-PST-E on May 23, 2023 assessing \$5,227 in administrative penalties with \$1,045 deferred. Information concerning any aspect of this order may be obtained by contacting Ken Moller, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Lonnie Brown dba 9880 VILLAGE CREEK RD, Docket No. 2022-0546-PWS-E on May 23, 2023 assessing \$4,542 in administrative penalties with \$908 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 BLACK, GIBSON AND WATERS, INC., Docket No. 2022-0583-PST-E on May 23, 2023 assessing \$4,687 in administrative penalties with \$937 deferred. Information concerning any aspect of this order may be obtained by contacting Horus Garcia, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Hale County, Docket No. 2022-0714-PST-E on May 23, 2023 assessing \$6,750 in administrative penalties with \$1,350 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 CAPSTONE PROPERTY MANAGEMENT, LLC, Docket No. 2022-0785-MWD-E on May 23, 2023 assessing \$6,250 in administrative penalties with \$1,250 deferred. 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 City of Austin, Docket No. 2022-0803-EAQ-E on May 23, 2023 assessing \$7,500 in administrative penalties with \$1,500 deferred. 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 Third Coast Services LLC, Docket No. 2022-1106-PWS-E on May 23, 2023 assessing \$979 in administrative penalties with \$195 deferred. Information concerning any aspect of this order may be obtained by contacting Amanda Conner, 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 ANDERSON WATER CO., INC., Docket No. 2022-1198-UTL-E on May 23, 2023 assessing \$510 in administrative penalties with \$102 deferred. Information concerning any aspect of this order may be obtained by contacting Epifanio Villarreal, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Redwater, Docket No. 2022-1213-UTL-E on May 23, 2023 assessing \$1,020 in administrative penalties with \$204 deferred. Information concerning any aspect of this order may be obtained by contacting Claudia Bartley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Charles R. Gilley dba Whispering Oaks Water Coop, Docket No. 2022-1317-UTL-E on May 23, 2023 assessing \$610 in administrative penalties with \$122 deferred. Information concerning any aspect of this order may be obtained by contacting Nick Lohret-Froio, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Texas Water Systems, Inc., Docket No. 2022-1325-UTL-E on May 23, 2023 assessing \$1,040 in administrative penalties with \$208 deferred. Information concerning any aspect of this order may be obtained by contacting Nick Lohret-Froio, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Texas Water Systems, Inc., Docket No. 2022-1326-UTL-E on May 23, 2023 assessing \$1,220 in administrative penalties with \$244 deferred. Information concerning any aspect of this order may be obtained by contacting Nick Lohret-Froio, 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 Knob Hill Water Supply Corporation, Docket No. 2022-1336-UTL-E on May 23, 2023 assessing \$665 in administrative penalties with \$133 deferred. Information concerning any aspect of this order may be obtained by contacting Samantha Duncan, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Texas Water Systems, Inc., Docket No. 2022-1343-UTL-E on May 23, 2023 assessing \$1,270 in administrative penalties with \$254 deferred. Information concerning any aspect of this order may be obtained by contacting Nick Lohret, 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 Virginia M. Cole dba Frost Mobile Home Park, Docket No. 2022-1385-UTL-E on May 23, 2023 assessing \$600 in administrative penalties with \$120 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 Nameless Hollow Council of Co-Owners, Docket No. 2022-1396-UTL-E on May 23, 2023 assessing \$700 in administrative penalties with \$140 deferred. Information concerning any aspect of this order may be obtained by contacting Miles Wehner, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Thomas K. Rawls dba Lakeside Water Supply 5 and Danasa Rawls dba Lakeside Water Supply 5, Docket No. 2022-1402-UTL-E on May 23, 2023 assessing \$500 in administrative penalties with \$100 deferred. Information concerning any aspect of this order may be obtained by contacting Miles Wehner, En-

forcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding ANDERSON WATER CO., INC., Docket No. 2022-1465-UTL-E on May 23, 2023 assessing \$520 in administrative penalties with \$104 deferred. Information concerning any aspect of this order may be obtained by contacting Carlos Flores, 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 Woodrow-Osceola Water Supply Corporation, Docket No. 2022-1495-UTL-E on May 23, 2023 assessing \$1,020 in administrative penalties with \$204 deferred. Information concerning any aspect of this order may be obtained by contacting Samantha Duncan, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Woodrow-Osceola Water Supply Corporation, Docket No. 2022-1496-UTL-E on May 23, 2023 assessing \$1,000 in administrative penalties with \$200 deferred. Information concerning any aspect of this order may be obtained by contacting Samantha Duncan, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding San Diego Municipal Utility District 1, Docket No. 2022-1506-UTL-E on May 23, 2023 assessing \$500 in administrative penalties with \$100 deferred. 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 Woodrow-Osceola Water Supply Corporation, Docket No. 2022-1513-UTL-E on May 23, 2023 assessing \$1,000 in administrative penalties with \$200 deferred. Information concerning any aspect of this order may be obtained by contacting Samantha Duncan, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202301906

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: May 24, 2023



Notice of Correction to Shutdown/Default Order Number 1

In the May 19, 2023, issue of the *Texas Register* (48 TexReg 2609), the Texas Commission on Environmental Quality (commission) published notice of a Shutdown/Default Order, specifically Item Number 1, for SABIR, INC. dba Stop N Drive 7; Docket Number 2021-0796-PST-E. The error is as submitted by the commission.

The reference to the Order Type should be corrected to read: "Default"

For questions concerning the error, please contact William Hogan at (512) 239-5918.

TRD-202301894

Gitanjali Yadav

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: May 23, 2023



Notice of District Petition

Notice issued May 24, 2023

TCEQ Internal Control No. D-02132023-057; Michael D. Smith, Evan L. Shaw, and Pensco Trust Company (Petitioners), filed a petition for creation of Wise County Municipal Utility District No. 5 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ.

The petition states that: (1) the Petitioners hold title to a majority in value of the land to be included in the proposed District; (2) there is one lienholder, AgTexas Farm Credit Services, on the property to be included in the proposed District; (3) the lienholder was notified via mail in accordance with 30 Texas Administrative Code §293.11(a)(9); (4) the proposed District will contain approximately 640.997 acres of land, more or less, located within Wise County, Texas; and (4) all of the land to be included within the proposed District is not within the corporate limits or extraterritorial jurisdiction of any city. The petition further states that the proposed District will construct, purchase, acquire, maintain, own and operate water, wastewater, drainage, road and park and recreational facilities within the proposed District. It further states that the planned residential and commercial development of the area and the present and future inhabitants of the area will be benefited by the above-referenced work, which will promote the purity and sanitary condition of the State's waters and the public health and welfare of the community. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioners, from the information available at this time, that the cost of said project will be approximately \$77,245,000 (\$52,855,000 for water, wastewater, and drainage facilities and \$24,390,000 for road facilities).

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning

the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.texas.gov.

TRD-202301905

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: May 24, 2023



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

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Order (DO). The commission staff proposes a DO when the staff has sent the Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **July 5, 2023**. The commission will consider any written comments received, and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of the proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on July 5, 2023**. The commission's attorney is available to discuss the DO and/or the comment procedure at the listed phone number; however, TWC, §7.075, provides that comments on the DO shall be submitted to the commission in **writing**.

(1) COMPANY: Jeffrey H. Brennan dba P & B Water; DOCKET NUMBER: 2021-0629-PWS-E; TCEQ ID NUMBER: RN102953718; LOCATION: 14271 Natalie Street, Houston, Harris County; TYPE OF FACILITY: public water system; RULES VIOLATED: TWC, §5.702 and 30 TAC §291.76, by failing to pay regulatory assessment fees for the TCEQ Public Utility Account regarding Certificate of Convenience and Necessity Number 12021 for calendar years 2018 through 2020; TWC, §5.702 and 30 TAC §290.51(a)(6), by failing to pay annual Public Health Service fees and any associated late fees for TCEQ Financial Administration Account Number 91010681 for Fiscal Year 2021; 30 TAC §§290.106(e), 290.107(e), and 290.115(e), by failing to provide the results of nitrate, volatile organic chemical contaminants, and Stage 2 Disinfection Byproducts sampling to the

executive director (ED) for the January 1, 2020, through December 31, 2020 monitoring period; 30 TAC §290.271(b) and §290.274(a) and (c) and TCEQ Agreed Order Docket Number 2018-1217-PWS-E, Ordering Provision Numbers 2.a.ii. and 2.b.ii., by failing to mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill-paying customer by July 1st of each year, and failing to submit to the TCEQ by July 1st of each year a copy of the annual CCR and certification that the CCR has been distributed to the customers of the Facility and that the information in the CCR is correct and consistent with compliance monitoring data for calendar year 2019; and 30 TAC §290.108(e), by failing to provide the results of radionuclides sampling to the ED for the January 1, 2013 through December 31, 2018 monitoring period; PENALTY: \$2,625; STAFF ATTORNEY: Clayton Smith, Litigation, MC 175, (512) 239-6224; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-202301895

Gitanjali Yadav

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: May 23, 2023



Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions of Lonnie Wooten SOAH Docket No. 582-23-19353 TCEQ Docket No. 2021-0786-MLM-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing via Zoom videoconference at:

10:00 a.m. - June 22, 2023

To join the Zoom meeting via computer or smart device:

<https://soah-texas.zoomgov.com>

Meeting ID: 161 984 0712

Password: TCEQDC1

or

To join the Zoom meeting via telephone dial:

+1 (669) 254-5252

Meeting ID: 161 984 0712

Password: 5247869

The purpose of the hearing will be to consider the Executive Director's First Amended Report and Petition mailed October 31, 2022 concerning assessing administrative penalties against and requiring certain actions of Lonnie Wooten, for violations in Tom Green County, Texas, of: Tex. Health & Safety Code § 382.085(b) and 30 Texas Administrative Code §111.201 and §330.15(a) and (c).

The hearing will allow Lonnie Wooten, 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 Lonnie Wooten, 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 Lonnie Wooten 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 First Amended Report and Petition, attached hereto and incorporated herein for all purposes.** Lonnie Wooten, 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 chs. 361 and 382, and 30 Texas Administrative Code chs. 70, 111, and 330; Tex. Water Code § 7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Texas Administrative Code §70.108 and §70.109 and ch. 80, and 1 Texas Administrative Code ch. 155.

Further information regarding this hearing may be obtained by contacting Cynthia Sirois, 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.

Issued: May 22, 2023

TRD-202301904

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: May 24, 2023

◆ ◆ ◆

General Land Office

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 *Federal Register* pp. 1439 - 1440). Under federal law, federal agency activities and actions affect-

ing 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 May 15, 2023 to May 19, 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, May 26, 2023. The public comment period for this project will close at 5:00 p.m. on Sunday, June 25, 2023.

FEDERAL AGENCY ACTIVITIES:

Applicant: Federal Aviation Administration (FAA)

Location: The project site is located in Offatts Bayou, at Scholes International Airport, 2115 Terminal Drive (Runway 14), in Galveston, Galveston County, Texas.

Latitude and Longitude: 29.273775, -94.869706

Project Description: The applicant proposes to install 106 pre-cast concrete pilings by pile driving into Offatts Bayou and adjacent wetlands to replace approximately 1,379 linear feet of the existing Medium-Intensity Approach Lighting System (MALS) pier at Scholes International Airport with a new pier consisting of a 9-foot-wide concrete deck and a 71-foot-long by 8-foot-wide T-head at the shoreline. Approximately 200 linear feet of the existing pier at the terminal end will be retained and not replaced. The overall structure will encompass 14,779-square-foot and extend 1,579 feet into Offatts Bayou, with the deck of the pier positioned approximately 14 feet above mean high water.

The purpose of this project is to improve airport operations at Scholes International Airport by meeting current design standards and operational needs.

A temporary flotation channel would also be dredged to allow barge access for the project construction. This temporary access work is being evaluated separately under Nationwide Permit (NWP) 33.

The applicant has not proposed to mitigate for the proposed impacts because there will be no impacts to special aquatic sites within the project area.

The applicant stated that they have avoided and minimized the environmental impacts by limiting the project footprint to the minimum needed to meet the need of replacing the MALS pier. The applicant also stated that they will use best management practices (BMPs) to minimize impact to the shoreline and waterway during construction activities.

The project site conditions are currently a portion of Offatts Bayou, which directly connects to Galveston Bay. There are numerous structures such as piers, boat lifts, aids to navigation, boat ramps, etc., and there are no special aquatic sites located within the vicinity of the action area.

Type of Application: U.S. Army Corps of Engineers permit application # SWG-2022-00766. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899.

CMP Project No: 23-1266-F2

FEDERAL AGENCY ACTIONS:

Applicant: HMS 850 Holdings, LLC

Location: The project site is located in Burnet Bay, at 850 Independence Parkway North, in Baytown, Harris County, Texas.

Latitude and Longitude: 29.766245, -95.06856

Project Description: The applicant proposes to modify Department of the Army (DA) Permit SWG-1999-02541 to add a 15.71-acre extension of the previously authorized 31.8-acre dredge footprint for the barge floating area, resulting in a total barge floating area footprint of approximately 47.51 acres. The applicant is also requesting a 10-year maintenance dredging authorization to mechanically and/or hydraulically remove approximately 105,300 cubic yards of dredge material from the extended dredge footprint to a depth of -12 feet Mean Lower Low Water (MLLW), including the associated return effluent from previously authorized dredge material placement areas (DMPAs). In addition, the applicant is requesting authorization to place the dredged material, and subsequent maintenance material, into the Burnet Bay Beneficial Use site (DA Permit SWG-2008-00127). The material would be tested according to Table 1 of the Sediment Sampling and Report Requirements for Beneficial Use Sites that was approved by the Environmental Protection Agency, Texas Commission on Environmental Quality, Corps, and the Port of Houston Authority in August 2020.

The applicant stated that the purpose of the proposed project is to expand the barge floating area to accommodate additional barges.

The applicant has stated that they have avoided and minimized the environmental impacts by limiting the expanded barge floating area to the minimum size needed to meet the purpose of accommodating additional barges. The applicant has not proposed to mitigate for the proposed impacts because there will be no impacts to special aquatic sites.

Type of Application: U.S. Army Corps of Engineers permit application # SWG-1999-02541. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act. Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality as part of its certification under §401 of the Clean Water Act.

CMP Project No: 23-1265-F1

Applicant: Port of Houston Authority

Location: The project site is located in Bayport Ship Channel, at 12619 Port Road, in Seabrook, Harris County, Texas.

Latitude and Longitude: 29.609198, -95.013723

Project Description: The applicant proposes to modify Department of the Army (DA) Permit SWG-1998-01818 (formerly 21520) to extend the authorized length of Wharf 1 at the Bayport Container Terminal (BPT) by 676 feet at the northeast end to be 1,676 linear feet. With the proposed Wharf 1 extension, there will be discharge of approximately 23,100 cubic yards of fill below mean high water (MHW) into 3.56 acres of the channel behind the existing bulkhead and to install a bulkhead extension. Project components also include the mechanical and/or hydraulic dredging approximately 177,000 cubic yards of material from 3.6 acres of the channel to a depth of -48.5 feet mean lower low water (MLLW), with a 2-foot allowable overdredge, as well as the use of bed-leveling, as needed, to maintain dredge depth across the entire length of the terminal wharfs. There would be surveys conducted before and after bed leveling activities to monitor that the silt does not enter the federal channel. Lastly, a pile-supported fire boat dock would be constructed at the northwest end of the terminal and consist of an approximately 6-foot-wide by 74.5-foot-long gangway and a 12-foot-wide by 72-foot-long floating pontoon for mooring.

The applicant stated that the purpose of the project is to maximize terminal and wharf efficiency and optimize productivity at the Bayport Container Terminal by providing a fast turnaround for container and cargo vessels to meet current cargo and supply chain demands.

The applicant has stated that they have avoided and minimized the environmental impacts by limiting the project footprint to the minimum needed to meet the purpose of maximizing terminal and wharf efficiency and optimizing productivity at the Bayport Container Terminal. The applicant has not proposed to mitigate for the proposed impacts because there will be no impacts to special aquatic sites.

Type of Application: U.S. Army Corps of Engineers permit application # SWG- 1998-01818. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act. Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality as part of its certification under §401 of the Clean Water Act.

CMP Project No: 23-1270-F1

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection, may be obtained from the Texas General Land Office Public Information Officer at 1700 N. Congress Avenue, Austin, Texas 78701, or via email at pialegal@glo.texas.gov. 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-202301893

Mark Havens

Chief Clerk, Deputy Land Commissioner

General Land Office

Filed: May 23, 2023

Health and Human Services Commission

Correction of Error

The Texas Health and Human Services Commission (HHSC) adopted amendments to 26 TAC §745.475 and §745.477 in the March 17, 2023, issue of the *Texas Register* (48 TexReg 1565). Due to an error by the Texas Register, the incorrect effective date was published for the adoption. The correct effective date for the adoption is March 27, 2023.

TRD-202301832

Department of State Health Services

May 2023, Retail Food Safety Operations, Food Establishments Group, Administrative Penalty Guidance

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure is not included in the print version of the Texas Register. The figure is available in the on-line version of the June 2, 2023, issue of the Texas Register.)

According to Texas Health and Safety Code, §437.018, the Texas Department of State Health Services (department) may impose an administrative penalty against a person who holds a permit or is regulated under the Retail Food Establishment rules, Title 25, Texas Administrative Code, Chapter 228, or other rules or orders adopted under Texas Health and Safety Code, Chapter 437, concerning the Regulation of Food Service Establishments, Retail Food Stores, Mobile Food Units, and Roadside Food Vendors.

Descriptions are provided for administrative penalties that may be assessed pursuant to applicable law and rules, including Texas Health and Safety Code, §437.018 and Title 25, Texas Administrative Code, Chapter 229, §229.261(c) concerning Assessment of Administrative Penalties.

The department shall assess administrative penalties based upon one or more of the following criteria: (1) history of previous violations; (2) seriousness of the violation; (3) hazard to the health and safety of the public; (4) demonstrated good faith efforts to correct; (5) economic harm to property or the environment; (6) amounts necessary to deter future violations; (7) enforcement costs relating to the violation; and (8) any other matter justice may require.

The citations and examples provided are not exhaustive and are intended only to provide compliance guidance to licensees, and in no way restricts, limits, or may be considered a condition precedent to any proposed action the department may take for violations of the applicable law and rules. There is no significance to the order of the examples.

Penalty Adjustments

§229.261(h) Adjustments to penalties. The department may adjust the penalties listed in subsections (e), (f), or (g) of this section for any one of the following factors:

(1) Previous violations. The department may consider previous violations. The penalty may be reduced or increased for past performance. Past performance involves the consideration of the following factors:

- (A) whether the previous violation was identical or similar to the current violation;
- (B) how recent was the previous violation;
- (C) the number of previous violations; and
- (D) the violator's response to previous violations in regard to correction of the problem.

(2) Demonstrated good faith. The department may consider good faith efforts of the violator to correct the violations and demonstrate compliance with the department's rules and regulations as a basis to reduce the proposed penalty. The penalty may be reduced if good faith efforts to correct a violation have been or are being made. Good faith effort is determined by the department on a case-by-case basis. All good faith efforts to comply with the department's rules and regulations must be fully documented by the violator to merit consideration from the department as to whether to reduce the proposed penalty.

(3) Hazard to the health and safety of the public. The department may consider the hazard to the health and safety of the public. The penalty may be increased when a direct hazard to the health and safety of the public is involved. The department shall take into account, but need not be limited to, the following factors:

- (A) whether any deaths, diseases, or injuries have occurred from the violation;
- (B) whether any existing conditions contribute to a situation that could expose humans to a health hazard;
- (C) the impact that the hazard has on various segments of the population such as children, surgical patients, and the elderly; and
- (D) whether the consequences would be of an immediate or long-range hazard.

Violation Severity Levels

§229.261(f) Levels of penalties for retail food establishments. The department will impose different levels of penalties per day, per violation, for the following severity level violations:

(1) Severity Level I cover violations that are most significant and may have a significant negative impact on the public health and safety. Level of Penalty - Up to \$10,000 (Penalties at this severity level may also result in an Emergency Closure under Texas Health and Safety Code, §437.0145).

(2) Severity Level II covers violations that are very significant and may have a negative impact on the public health and safety. Level of Penalty - Up to \$7500.

(3) Severity Level III covers violations that are significant and, if not corrected, could threaten the public health and safety. Level of Penalty - Up to \$5000. This matrix is effective immediately upon publication in the *Texas Register* and can be revised from time to time.

(4) Severity Level IV covers violations that are of more than minor significance, but if left uncorrected, could lead to more serious circumstances. Level of Penalty - Up to \$2500.

(5) Severity Level V covers violations that are of minor health or safety significance. Level of Penalty - Up to \$1,250.

Repeat Violations

In the matrix, administrative penalties are shown to increase for repeat violations that have been previously issued a Notice of Violation (NOV). While reviewing cases for administrative penalties, Retail Food Safety Operations will not recognize a violation recorded over three years after the last occurrence as a repeat violation. If an establishment is issued a NOV for a violation that was also included in a previous NOV issued over three years prior, the violation will normally be processed as a "first violation" and will be issued an administrative penalty accordingly. In determining the penalty, however, the department will take into account any aggravating or mitigating factors and may reduce or increase the penalty as justice may require.

This matrix is effective immediately upon publication in the *Texas Register* and can be revised from time to time.

TRD-202301908
Cynthia Hernandez
General Counsel
Department of State Health Services
Filed: May 24, 2023

Texas Higher Education Coordinating Board

Notice of Opportunity to Comment on Proposed Field of Study Curriculum for Education

The Texas Higher Education Coordinating Board (THECB or Coordinating Board) staff is providing an opportunity for written public comment on a revision of the Field of Study Curriculum (FOSC) for Education.

Texas Education Code (TEC) Chapter 61, Subchapter S, establishes policies to facilitate statewide transfer, including the FOSC. Institutions must accept partially or fully completed Field of Study Curricula for academic credit toward the degree program in which the transfer student enrolls (TEC §61.823). The Coordinating Board has promulgated rules related to transfer policy in 19 Texas Administrative Code (TAC) Chapter 1, Subchapter V, and Chapter 4, Subchapter B. Posting requirements may be found in 19 TAC §4.33(f) and §1.239(b).

The Education Discipline-Specific Subcommittee met on February 21-22, and again on March 23, 2023, to consider and make recommendations to the Texas Transfer Advisory Committee regarding the FOSC for this discipline in the three certification areas of Early Childhood-3rd Grade (EC-3); Early Childhood-6th Grade (EC-6), and 4th Grade-8th Grade (4-8). On April 17, 2023, the Texas Transfer Advisory Committee adopted the subcommittee recommendations for the designated Texas Core Curriculum courses and the Discipline Foundation Courses and recommended their submission to the Commissioner of Higher Education for final approval.

The recommended courses are as follows:

Designated Core Courses in the Field of Study: EC-3: None; EC-6: MATH 1314: College Algebra; 4-8: MATH 1314: College Algebra

Discipline Foundation Courses: EC-3 (6 semester credit hours): EDUC 1301: Introduction to the Teaching Profession; EDUC 2301: Introduction to Special Populations; EC-6 (12 semester credit hours): EDUC 1301: Introduction to the Teaching Profession; EDUC 230: Introduction to Special Populations; MATH 1350: Mathematics for Teachers I, MATH 1351: Mathematics for Teachers II; 4-8 (12 semester credit hours): EDUC 1301: Introduction to the Teaching Profession; EDUC 230: Introduction to Special Populations; MATH 1350: Mathematics for Teachers I, MATH 1351: Mathematics for Teachers II.

In addition to these courses, each general academic institution will have the opportunity to submit to the Coordinating Board six (6) semester credit hours of Directed Electives selected by the institution from the Academic Course Guide Manual. The complete FOSC will consist of the Designated Core Courses and Discipline Foundation Courses listed above, as well as Directed Electives selected by the relevant general academic institutions in compliance with the transfer rules in TAC Chapter 4, Subchapter B, including §§4.23(4), 4.32(b)(3), and 4.33.

General academic institutions will be required to transfer these courses and apply them for academic credit towards degree programs with majors in the following CIP Code:

Institutions should apply the Texas Direct degree to whichever CIP code aligns directly with the major or track associate with each of the following certification areas such as:

Early Childhood - 6th Grade: 13.1202

4th - 8th Grade: 13.1203

Early Childhood - 3rd Grade: 13.1210

Institutions may also apply the Texas Direct degree to a program with a CIP code such as 13.0101 (Education, General) if that is the CIP code used for the certification areas above.

Written comments about the proposed changes must be sent to Elizabeth Mayer, Assistant Commissioner for Academic and Health Affairs, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711, or via email to Elizabeth.Mayer@highered.texas.gov. Comments must be received by 5:00 p.m., July 1, 2023, to be considered.

TRD-202301913

Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

Filed: May 24, 2023



Notice of Opportunity to Comment on Proposed Field of Study Curriculum for History

The Texas Higher Education Coordinating Board (THECB or Coordinating Board) staff is providing an opportunity for written public comment on a revision of the Field of Study Curriculum (FOSC) for History.

Texas Education Code (TEC) Chapter 61, Subchapter S, establishes policies to facilitate statewide transfer, including the FOSC. Institutions must accept partially or fully completed Field of Study Curricula for academic credit toward the degree program in which the transfer

student enrolls (TEC §61.823). The Coordinating Board has promulgated rules related to transfer policy in 19 Texas Administrative Code (TAC) Chapter 1, Subchapter V, and Chapter 4, Subchapter B. Posting requirements may be found in 19 TAC §4.33(f) and §1.239(b).

The History Discipline-Specific Subcommittee met on March 29-30, 2023, to consider and make recommendations to the Texas Transfer Advisory Committee regarding the FOSC for this discipline. On April 17, 2023, the Texas Transfer Advisory Committee adopted the subcommittee recommendations for the designated Texas Core Curriculum courses and the Discipline Foundation Courses and recommended their submission to the Commissioner of Higher Education for final approval.

The recommended courses are as follows:

Designated Core Courses in the Field of Study: HIST 1301: United States History I;

HIST 1302: United States History II.

Discipline Foundation Courses (9 semester credit hours): HIST 2321: World Civilizations I; HIST 2322: World Civilizations II; HIST 2301: Texas History.

In addition to these courses, each general academic institution will have the opportunity to submit to the Coordinating Board six (6) semester credit hours of Directed Electives selected by the institution from the Academic Course Guide Manual. The complete FOSC will consist of the Designated Core Courses and Discipline Foundation Courses listed above, as well as Directed Electives selected by the relevant general academic institutions in compliance with the transfer rules in TAC Chapter 4, Subchapter B, including §§4.23(4), 4.32(b)(3), and 4.33.

General academic institutions will be required to transfer these courses and apply them for academic credit towards Bachelor of Science (BS) degree programs with majors in the following CIP Code:

54.0101: History, General

Written comments about the proposed changes must be sent to Elizabeth Mayer, Assistant Commissioner for Academic and Health Affairs, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711, or via email to Elizabeth.Mayer@highered.texas.gov. Comments must be received by 5:00 p.m., July 1, 2023, to be considered.

TRD-202301914

Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

Filed: May 24, 2023



Texas Lottery Commission

Scratch Ticket Game Number 2524 "MONEY MULTIPLIER"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2524 is "MONEY MULTIPLIER". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2524 shall be \$5.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2524.

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, 50, 5X SYMBOL, 10X SYMBOL,

\$5.00, \$10.00, \$20.00, \$25.00, \$50.00, \$100, \$500, \$1,000, \$5,000 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. 2524 - 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
50	FFTY
5X SYMBOL	WINX5
10X SYMBOL	WINX10
\$5.00	FIV\$
\$10.00	TEN\$
\$20.00	TWY\$
\$25.00	TWFV\$
\$50.00	FFTY\$
\$100	ONHN
\$500	FVHN
\$1,000	ONTH
\$5,000	FVTH
\$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 (2524), 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: 2524-0000001-001.

H. Pack - A Pack of the "MONEY MULTIPLIER" 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 "MONEY MULTIPLIER" Scratch Ticket Game No. 2524.

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 "MONEY MULTIPLIER" 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. A Ticket can win up to twenty (20) times in accordance with the approved prize structure.

B. Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

C. The top Prize Symbol will appear on every Ticket, unless restricted by other parameters, play action or prize structure.

D. Each Ticket will have five (5) different WINNING NUMBERS Play Symbols.

E. Non-winning YOUR NUMBERS Play Symbols will all be different.

F. Non-winning Prize Symbols will never appear more than three (3) times.

G. The "5X" (WINX5) and "10X" (WINX10) Play Symbols will never appear in the WINNING NUMBERS Play Symbol spots.

H. The "5X" (WINX5) and "10X" (WINX10) Play Symbols will only appear on winning Tickets as dictated by the prize structure.

I. Non-winning Prize Symbols will never be the same as the winning Prize Symbol(s).

J. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 20 and \$20).

2.3 Procedure for Claiming Prizes.

A. To claim a "MONEY MULTIPLIER" 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. To claim a "MONEY MULTIPLIER" Scratch Ticket Game prize of \$1,000, \$5,000 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 "MONEY MULTIPLIER" 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 "MONEY MULTIPLIER" 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 "MONEY MULTIPLIER" 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. 2524. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2524 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$5.00	768,000	9.38
\$10.00	528,000	13.64
\$20.00	96,000	75.00
\$25.00	144,000	50.00
\$50.00	96,000	75.00
\$100	24,600	292.68
\$500	2,580	2,790.70
\$1,000	340	21,176.47
\$5,000	75	96,000.00
\$100,000	6	1,200,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.34. 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. 2524 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. 2524, 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-202301890
 Bob Biard
 General Counsel
 Texas Lottery Commission
 Filed: May 22, 2023

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Texas Medical Disclosure Panel

Correction of Error

The Texas Medical Disclosure Panel (TMDP) adopted an amendment to 25 TAC §601.9 in the May 19, 2023, issue of the *Texas Register* (48 TexReg 2580).

Due to an error by TMDP, the incorrect form for 25 TAC §601.9(1) was published as part of the amendment. The revised form for §601.9(1) is being republished as follows.

Figure: 25 TAC §601.9(1)

DISCLOSURE AND CONSENT - ANESTHESIA and/or PERIOPERATIVE PAIN MANAGEMENT (ANALGESIA)

TO THE PATIENT: *You have the right, as a patient, to be informed about 1) the recommended anesthesia/analgesia to be used and 2) the risks related to anesthesia/analgesia. This disclosure is designed to provide you this information, so that you can decide whether to consent to receive anesthesia/analgesia in the perioperative period (meaning shortly before, during and shortly after a procedure). Please ask your physician/health care provider any remaining questions you might have before signing this form.*

Administration of Anesthesia/Analgesia

The plan is for the anesthesia/analgesia to be administered by (note that the provider listed may change depending on the length of the procedure or other circumstances):

Check the planned approach and have the patient/legally authorized representative initial:

(Check one)

- _____ Physician Anesthesiologist Dr. _____ [Name]
- _____ Dentist Anesthesiologist Dr. _____ [Name]
- _____ Non-Anesthesiologist Physician or Dentist Dr. _____ [Name]

(Check all that apply if the administration of anesthesia/analgesia is being delegated/supervised by the above provider)

- _____ Certified Anesthesiologist Assistant _____ [Name]
- _____ Certified Registered Nurse Anesthetist _____ [Name]
- _____ Physician in Training _____ [Name]

The above provider(s) can explain the different roles of the providers and their levels of involvement in administering the anesthesia/analgesia.

Types of Anesthesia/Analgesia Planned and Related Topics

I understand that anesthesia/analgesia involves additional risks and hazards. The chances of these occurring may be different for each patient based on the procedure(s) and the patient's current health. I realize the type of anesthesia/analgesia may have to be changed possibly without explanation to me.

I understand that serious, but rare, complications can occur with all anesthetic/analgesic methods. Some of these risks are breathing and heart problems, drug reactions, nerve damage, cardiac arrest (heart stops beating), brain damage, paralysis (inability to move), or death.

I also understand that other risks or complications may occur depending on the type of anesthesia/analgesia. The type of anesthesia/analgesia planned for me and the related risks for that type of anesthesia/analgesia include but are not limited to:

Check planned anesthesia/analgesia method(s) and have the patient/legally authorized representative initial.

_____ GENERAL ANESTHESIA – injury to vocal cords, teeth, lips, eyes; awareness during the procedure; memory dysfunction/memory loss; permanent organ damage; brain damage.

_____ REGIONAL BLOCK ANESTHESIA/ANALGESIA - nerve damage; persistent pain; bleeding/hematoma; infection; medical necessity to convert to general anesthesia; brain damage.

Location: _____.

_____ SPINAL ANESTHESIA/ANALGESIA - nerve damage; persistent back pain; headache; infection; bleeding/epidural hematoma; chronic pain; medical necessity to convert to general anesthesia; brain damage.

_____ EPIDURAL ANESTHESIA/ANALGESIA - nerve damage; persistent back pain; headache; infection; bleeding/epidural hematoma; chronic pain; medical necessity to convert to general anesthesia; brain damage.

_____ DEEP SEDATION – memory dysfunction/memory loss; medical necessity to convert to general anesthesia; permanent organ damage; brain damage.

_____ MODERATE SEDATION – memory dysfunction/memory loss; medical necessity to convert to general anesthesia; permanent organ damage; brain damage.

Additional comments/risks:

Check if applicable and have the patient/legally authorized representative initial.

_____ PRENATAL/EARLY CHILDHOOD ANESTHESIA - potential long-term negative effects on memory, behavior, and learning with prolonged or repeated exposure to general anesthesia/moderate sedation/deep sedation during pregnancy and in early childhood.

Granting of Consent for Anesthesia/Analgesia

In signing below, I consent to the anesthesia/analgesia described above. I acknowledge the following:

- I have been given an opportunity to ask questions I may have about:
 1. Alternative forms of anesthesia/analgesia,
 2. Steps that will occur during administration of anesthesia/analgesia, and
 3. Risks and hazards involved in the anesthesia/analgesia.
- I believe I have enough information to give this informed consent.

- I certify this form has been fully explained to me and the blank spaces have been filled in.
- I have read the form or had it read to me.
- I understand the information on this form.

If any of those statements are not true for you, please talk to your physician/health care provider before continuing.

PATIENT/OTHER LEGALLY AUTHORIZED REPRESENTATIVE (signature required)

Print Name

Signature

If Legally Authorized Representative, list relationship to Patient: _____

DATE: _____ **TIME:** _____ **A.M. /P.M.**

WITNESS:

Print Name

Signature

Address (Street or P.O. Box)

City, State, Zip

TRD-202301891
 Dr. Noah Appel
 Panel Chairman
 Texas Medical Disclosure Panel
 Filed: May 23, 2023



Texas Parks and Wildlife Department

Notice of a Public Comment Hearing on an Application for a Sand and Gravel Permit

Bill Lane (Flat Rock Creek Ranch LLC) has applied to the Texas Parks and Wildlife Department (TPWD) for a General Permit pursuant to Texas Parks and Wildlife Code, Chapter 86, to disturb up to 65 cubic yards of sedimentary material within Flat Rock Creek in Kerr County. The purpose of the disturbance is to construct a dam and low water crossing. The location is approximately 1,400 feet upstream of the confluence of Flat Rock Creek with the North Fork Guadalupe River

and 3.24 miles upstream of the FM 1340 crossing of the North Fork Guadalupe River near MO Ranch. This notice is being published and mailed pursuant to 31 TAC §69.105(d).

TPWD will hold a public comment hearing regarding the application at 11:00 a.m. on Friday, June 23, 2023, at TPWD headquarters, located at 4200 Smith School Road, Austin, Texas 78744. A remote participation option will be available upon request. Potential attendees should contact Tom Heger at (512) 389-4583 or at tom.heger@tpwd.texas.gov for information on how to participate in the hearing remotely. The hearing is not a contested case hearing under the Texas Administrative Procedure Act. Oral and written public comment will be accepted during the hearing.

Written comments may be submitted directly to TPWD and must be received no later than 30 days after the date of publication of this notice in the *Texas Register*. A written request for a contested case hearing from an applicant or a person with a justiciable interest may also be submitted and must be received by TPWD prior to the close of the

public comment period. Timely hearing requests shall be referred to the State Office of Administrative Hearings. Submit written comments, questions, requests to review the application, or requests for a contested case hearing to: Tom Heger, TPWD, by mail: 4200 Smith School Road, Austin, Texas 78744; or e-mail tom.heger@tpwd.texas.gov.

TRD-202301845
James Murphy
General Counsel
Texas Parks and Wildlife Department
Filed: May 22, 2023



South East Texas Regional Planning Commission

Mass Notification System Vendor Invitation for Bid

SETRPC INVITATION FOR BID

The South East Texas Regional Planning Commission (SETRPC) is soliciting qualified vendors to provide mass notification services to meet

the regional emergency alerting network needs for jurisdictions within the Hardin, Jasper, Jefferson, and Orange County region.

For a complete Invitation for Bid package, visit the SETRPC website, www.setrpc.org. For any questions, please contact Stephen Curran via email at scurran@setrpc.org by May 26, 2023, by 2:00 p.m. CST. Submit bids to Stephen Curran, SETRPC, 2210 Eastex Freeway, Beaumont, Texas 77703. Final bids will be due by Monday, June 12, 2023, by 12:00 p.m. CST. Bids will not be accepted after the deadline.

Proposals will be reviewed by an evaluation committee with selection based on Review Criteria included in the Invitation for Bid package.

TRD-202301826
Stephen Curran
Criminal Justice & Homeland Security Director
South East Texas Regional Planning Commission
Filed: May 18, 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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