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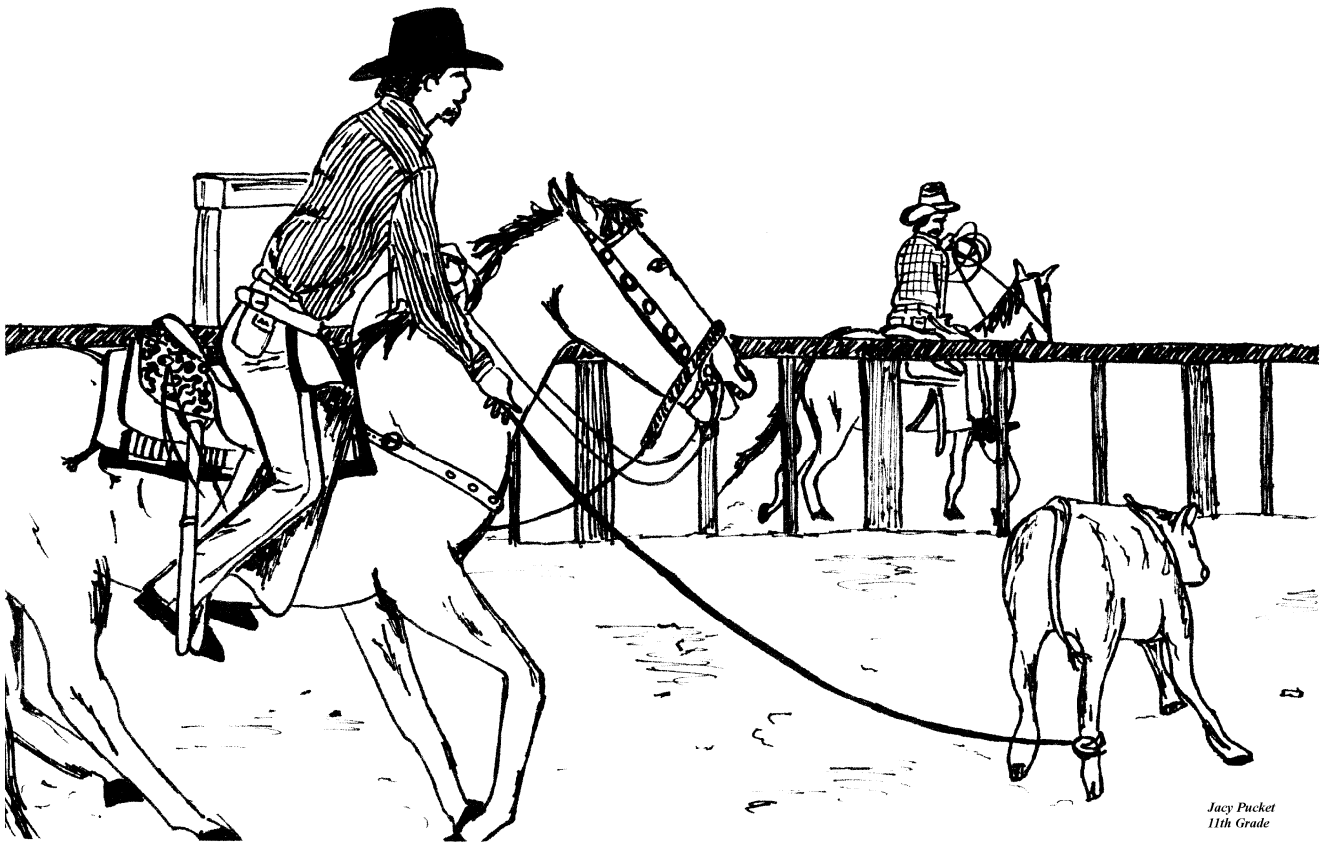
# TEXAS REGISTER

*Volume 42 Number 33*

*August 18, 2017*

*Pages 4031 - 4186*

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*Jacy Pucket  
11th Grade*

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

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# TEXAS REGISTER

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# Open Meetings

Statewide agencies and regional agencies that extend into four or more counties post meeting notices with the Secretary of State.

Meeting agendas are available on the *Texas Register's* Internet site:  
<http://www.sos.state.tx.us/open/index.shtml>

Members of the public also may view these notices during regular office hours from a computer terminal in the lobby of the James Earl Rudder Building, 1019 Brazos (corner of 11th Street and Brazos) Austin, Texas. To request a copy by telephone, please call 512-463-5561. Or request a copy by email: [register@sos.state.tx.us](mailto:register@sos.state.tx.us)

For items ***not*** available here, contact the agency directly. Items not found here:

- minutes of meetings
- agendas for local government bodies and regional agencies that extend into fewer than four counties
- legislative meetings not subject to the open meetings law

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.

<http://texasattorneygeneral.gov/og/open-government>

The Attorney General's Open Government Hotline is 512-478-OPEN (478-6736) or toll-free at (877) OPEN TEX (673-6839).

Additional information about state government may be found here:  
<http://www.texas.gov>

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**Meeting Accessibility.** Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

# THE ATTORNEY GENERAL

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The *Texas Register* publishes summaries of the following:  
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An index to the full text of these documents is available from  
the Attorney General's Internet site <http://www.oag.state.tx.us>.

Telephone: 512-936-1730. 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: <http://www.oag.state.tx.us/opinopen/opinhome.shtml>.)

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## Opinions

### Opinion No. KP-0157

The Honorable James M. Tirey

Hale County Attorney

500 Broadway, Suite 340

Plainview, Texas 79072

Whether relatives of a public official may perform uncompensated work for the official's office without violating nepotism laws if the relatives receive reimbursement of actual expenses or a per diem expense payment (RQ-0147-KP)

### S U M M A R Y

Section 573.041 of the Government Code prohibits a public official from appointing certain relatives to positions compensated with public funds. The reimbursement of expenses, however, is not compensation. Thus, a public official may appoint a close relative to a volunteer position that provides reimbursement for incurred expenses but no compensation.

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

TRD-201702937

Amanda Crawford

General Counsel

Office of the Attorney General

Filed: August 4, 2017



## Opinions

### Opinion No. KP-0158

The Honorable Mark A. Gonzalez

Nueces County District Attorney

Nueces County Courthouse

901 Leopard, Room 206

Corpus Christi, Texas 78401-3681

Re: Whether the State may obtain a waiver of a defendant's right to seek expunction of the record of arrest for the offense for which it places the defendant in pretrial diversion (RQ-0148-KP)

### S U M M A R Y

Article 1.14 of the Code of Criminal Procedure allows a person to waive the right to seek expunction of arrest records and files as a condition in a pretrial diversion agreement, provided the waiver is voluntarily, knowingly, and intelligently made.

### Opinion No. KP-0159

Mr. Brandon S. Wood

Executive Director

Texas Commission on Jail Standards

Post Office Box 12985

Austin, Texas 78711

Re: Whether certain expenditures of commissary proceeds violate section 351.0415 of the Local Government Code (RQ-0149-KP)

### S U M M A R Y

Local Government Code section 351.0415 limits an expenditure of commissary proceeds to items or services that benefit inmates. Because of the sheriff's exclusive authority over commissary proceeds under section 351.0415, the propriety of an expenditure from those funds is a question for the sheriff to determine in the first instance subject to administrative review by the Commission on Jail Standards or judicial review for abuse of discretion.

### Opinion No. KP-0160

The Honorable David P. Weeks

Walker County Criminal District Attorney

1036 11th Street

Huntsville, Texas 77340

Re: Whether a commissioners court may enter an order authorizing the treasurer to pay certain types of claims and bills prior to presenting the actual claims or bills to the commissioners court (RQ-0150-KP)

### S U M M A R Y

Under sections 113.041, 115.021, and 115.022 of the Local Government Code, the commissioners court must approve claims, and the treasurer and auditor do not have the authority to pay claims without the commissioners court's approval. A commissioners court cannot delegate to the county treasurer the commissioners court's duty and authority to approve payment of county claims. Provided it complies with any statute applicable to the particular subject matter, a commissioners court may review and direct payment of payroll and claims at a meeting

called for a day other than the commissioners court's regular meeting day.

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

TRD-201703022

Amanda Crawford  
General Counsel  
Office of the Attorney General  
Filed: August 9, 2017





# EMERGENCY RULES

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

## TITLE 19. EDUCATION

### PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

#### CHAPTER 25. OPTIONAL RETIREMENT PROGRAM

##### SUBCHAPTER A. OPTIONAL RETIREMENT PROGRAM

###### 19 TAC §25.4

The Texas Higher Education Coordinating Board (Coordinating Board) adopts on an emergency basis, amendments to §25.4 concerning the Optional Retirement Program. The amendments incorporate into existing rules changes and provisions enacted by SB 1954, 85th Texas Legislature, R.S.

The amendments are being adopted on an emergency basis pursuant to Texas Government Code, §2001.034, which allows a state agency to adopt an emergency rule if a requirement of state or federal law requires adoption of the rule on less than 30 days' notice. The Coordinating Board made the finding that these amendments should be adopted on an emergency basis, pursuant to Texas Government Code, §2001.034, because the new statutory provisions, which will go into effect on September 1, 2017, affect eligibility for benefits.

The amendments to §25.4 strike current provisions regarding the extension of an ORP-eligible employee's 90-day ORP Election Period when an institution fails to notify the employee of his or her eligibility to elect ORP on a timely basis. The amendments incorporate provisions regarding the extension enacted by SB 1954, 85th Texas Legislature, R.S.

The amended section is adopted under Texas Education Code, §61.027, which provides the Coordinating Board with general rulemaking authority; Texas Government Code, §830.002(c), which provides the Coordinating Board with authority to develop policies, practices, and procedures to provide greater uniformity in the administration of ORP; and Texas Government Code, §830.101(b), which provides the Coordinating Board with specific rulemaking authority to establish eligibility for participation in ORP.

###### §25.4. Eligibility to Elect ORP.

- (a) - (n) (No change.)
- (o) Administrative Errors.
- (1) - (3) (No change.)

(4) Failure to Notify Error. If an ORP employer fails to notify an ORP-eligible employee of his or her eligible status on or before the employee's initial ORP eligibility date, the ORP employer shall notify the eligible employee as soon as the oversight is discovered.

(A) An employee who becomes eligible to participate in ORP and is notified by the ORP employer of the opportunity to participate in the program after the first day and before the 91st day after the date the employee becomes eligible must elect to participate in the program before the later of:

(i) the 91st day after the date the employee becomes eligible; or

(ii) the 31st day after the date the employee receives notice of the opportunity to participate in the program.

(B) An employee who becomes eligible to participate in ORP and is notified by the ORP employer of the opportunity to participate in the program on or after the 91st day after the date the employee becomes eligible must be notified by the employer before the 151st day after the date the employee becomes eligible. The employee must elect to participate in the program before the later of:

(i) the 151st day after the date the employee becomes eligible; or

(ii) the 31st day after the date the employee receives notice of the opportunity to participate in the program.

(C) The [The 90-day ORP election period for the eligible employee shall begin on the date that the employee is notified, and the] participation start date shall be determined in accordance with subsection (g) of this section.

(p) (No change.)

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

Filed with the Office of the Secretary of State on August 1, 2017.

TRD-201702886

Bill Franz

General Counsel

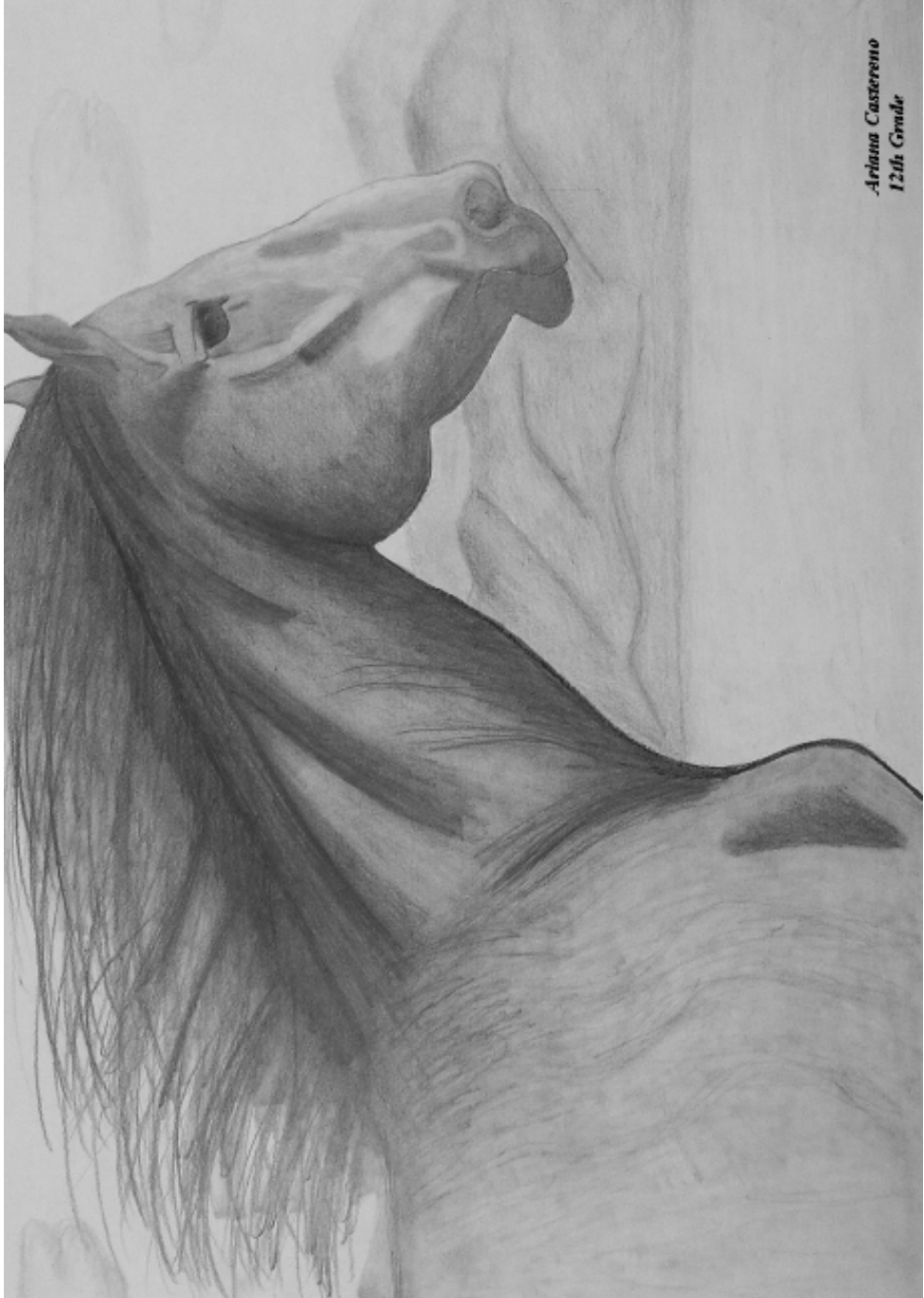
Texas Higher Education Coordinating Board

Effective date: August 1, 2017

Expiration date: November 28, 2017

For further information, please call: (512) 427-6104





Ariana Cascereno  
12th Grade

# PROPOSED RULES

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

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

## TITLE 1. ADMINISTRATION

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

#### CHAPTER 353. MEDICAID MANAGED CARE SUBCHAPTER O. DELIVERY SYSTEM AND PROVIDER PAYMENT INITIATIVES

##### 1 TAC §353.1301

The Texas Health and Human Services Commission (HHSC) proposes amendments to §353.1301, concerning General Provisions.

##### BACKGROUND AND PURPOSE

In March of 2017, HHSC adopted a series of rules governing delivery system and provider payment initiatives through Medicaid managed care organizations (MCOs) (42 TexReg 1737). These initiatives are, generally, funded through intergovernmental transfers (IGT) from local governmental entities. Given that these programs are not funded with state general revenue, HHSC must ensure, to the greatest extent possible, that no state dollars are at risk through the operation of these programs. A disallowance by the Centers for Medicare & Medicaid Services (CMS) is one potential risk to general revenue, unless HHSC can ensure that funds from another source are available.

Section 353.1301(j) describes the procedure HHSC would use in the case of a disallowance. The rule delineates between a disallowance for impermissible provider-related donations and all other disallowances. At present, if there is a disallowance for impermissible provider-related donations, the rule requires HHSC to recoup the disallowed amount from transferring governmental entities that caused the disallowance. If there is a disallowance for reasons other than an impermissible provider-related donation, HHSC reserves the right to recoup the disallowed amount from MCOs, providers, or governmental entities.

In an effort to provide HHSC more flexibility when determining the appropriate entity from which to recoup, HHSC proposes to amend §353.1301 to remove the requirement that it recoup only from governmental entities in the case of a disallowance for impermissible provider-related donations. Instead, HHSC will reserve the right to recoup from MCOs, providers, or governmental entities in any disallowance. In order to ensure that there is no risk to general revenue, to the greatest extent possible, HHSC will require that if a recoupment for a disallowance results in a subsequent disallowance, the entity that HHSC initially recouped against will face a recoupment for the subsequent disallowance.

In addition, HHSC will clarify the heading for §353.1301(k) by changing the name from "Recoupment" to "Overpayment."

##### SECTION-BY-SECTION SUMMARY

Proposed amendments to §353.1301(b) add the acronym "SDA" to the definition of "service delivery area."

Proposed amendments to §353.1301(j) change the requirements for recoupments in the case of a disallowance for impermissible provider-related donations. Further, the amendments require the same entities that pay for any initial disallowance to pay for subsequent recoupments resulting from that initial disallowance.

Proposed amendment to §353.1301(k) changes the heading for the subsection from "Recoupment" to "Overpayment."

##### FISCAL NOTE

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that for each year of the first five years that the amendment will be in effect, there are no anticipated implications to costs or revenues of state or local governments as a result of enforcing and administering the rule as proposed.

##### SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Rymal has also determined that there is no anticipated adverse economic impact on small businesses or micro-businesses required to comply with the changes to the section proposed. Participants referred to in this rule are hospitals and nursing facilities. No Texas hospital meets the definition of a small business or micro-business. Nursing facility participation in the programs described in this subchapter is voluntary.

##### ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the amendment as proposed.

There is no anticipated negative impact on local employment.

##### PUBLIC BENEFIT

Pam McDonald, Director of Rate Analysis, has determined that for each year of the first five years the amendment is in effect, the public will benefit from adoption of the amendment. The public benefit anticipated as a result of enforcing or administering the amendment is that HHSC will have greater flexibility in determining the appropriate entity from which to recoup funds in the event of a disallowance. Further, the public will benefit from the greater certainty surrounding general revenue.

##### TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Charles Greenberg, Director of Policy for Legal Services, 4900 N. Lamar Blvd., Mail Code 1100, Austin, Texas 78751; by fax to (512) 424-6586; or by e-mail to charles.greenberg@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register*. The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 1R061" in the subject line.

STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with board rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Texas Human Resources Code, Chapter 32; and with Texas Government Code §533.002, which authorizes HHSC to implement the Medicaid managed care program.

§353.1301. General Provisions.

(a) Purpose. The purpose of this subchapter is to describe the circumstances and programs under which the Texas Health and Human Services Commission may direct expenditures for delivery system and provider payment initiatives through its contracts with Medicaid managed care organizations. Federal authority for such directed expenditures is codified at 42 C.F.R. §438.6(c).

(b) Definitions. The following definitions apply when the terms are used in this subchapter. Terms that are used in only one program described in this subchapter may be defined in the section of this subchapter describing that program.

(1) - (10) (No change.)

(11) Service delivery area (SDA)--The counties included in any HHSC-defined geographic area as applicable to each MCO.

(12) Sponsoring governmental entity--A state or non-state governmental entity that agrees to transfer to HHSC some or all of the non-federal share of program expenditures under this subchapter.

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

(j) Disallowance of federal funds.

~~{(1) If an arrangement associated with the funding of payments under this subchapter is determined by CMS to constitute an impermissible provider donation, resulting in a disallowance of federal matching funds, the governmental entities responsible for the non-federal share of such payments must transfer funds to HHSC in the amount of the disallowed federal funds. HHSC notifies the governmental entities of the amount and timing of the required transfers.}~~

{(2)} If payments under this subchapter are disallowed by CMS ~~[on grounds other than those described in paragraph (1) of this subsection; to the extent allowed by federal and state law and contract],~~ HHSC may recoup the amount of the disallowance from MCOs,

providers, or governmental entities that participated in the program associated with the disallowance. If the recoupment from an MCO, provider, or governmental entity for such a disallowance results in a subsequent disallowance, HHSC will recoup the amount of that subsequent disallowance from the same entity.

(k) ~~Overpayment. [Recoupment.]~~

(1) If payments under this subchapter result in an overpayment to an MCO, HHSC may recoup the amount of the overpayment from the MCO, pursuant to the terms of the contract between them.

(2) If payments under this subchapter result in an overpayment to a provider, the MCO may recoup an amount equivalent to the overpayment.

(3) Payments made under this subchapter may be subject to any adjustments for payments made in error or due to fraud, including without limitation adjustments made under the Texas Administrative Code, the Code of Federal Regulations, and state and federal statutes. The MCOs may recoup an amount equal to any such adjustments from the providers in question. Nothing in this section may be construed to limit the independent authority of another federal or state agency or organization to recover from the provider for a payment made due to fraud.

(l) State's cost of administering programs. To the extent authorized under state and federal law, HHSC will collect the state's cost of administering a program authorized under this subchapter from participants in the program generating the costs.

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 August 7, 2017.

TRD-201702954

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: September 17, 2017

For further information, please call: (512) 730-7450



CHAPTER 355. REIMBURSEMENT RATES  
SUBCHAPTER C. REIMBURSEMENT  
METHODOLOGY FOR NURSING FACILITIES

1 TAC §355.315

The Texas Health and Human Services Commission (HHSC) proposes new §355.315, concerning Reimbursement Methodology for Preadmission Screening and Resident Review (PASRR) Specialized Services.

Background and Justification

Effective December 1, 2017, HHSC plans to add to the array of PASRR Specialized Services available to Medicaid clients who reside in nursing facilities and eligible for federal matching funds. Federal law requires a state to provide specialized services to a nursing facility resident with mental illness or an intellectual disability who requires a nursing facility level of care. See 42 U.S.C. §1396r(e)(7); 42 C.F.R. §483.116(b)(2), §483.120(b). "Specialized services" are, in short, therapies and activities provided while an individual resides in a nursing facility that go beyond the services normally provided in a nursing facility and that are

directed toward improving the individual's level of independent functioning. See 42 C.F.R. §§483.120(a), (c), 483.440(a)(1). This rule project proposes the reimbursement methodology for those services.

HHSC will develop the payment rates for PASRR Specialized Services based upon rates HHSC has determined for other programs that provide similar services. If payment rates are not available from other programs that provide similar services, HHSC will determine payment rates using a pro forma approach.

#### Section-by-Section Summary

Proposed §355.315(a) specifies that PASRR payment rates for Specialized Services are determined either based on rates for other programs that provide similar services or using a pro forma approach.

Proposed §355.315(b) specifies that §355.101 and §355.105(g), which describe the general cost determination processes, also apply to the rate methodology for PASRR Specialized Services.

#### Fiscal Note

Greta Rymal, HHSC Deputy Executive Commissioner for Financial Services, has determined that, for each year of the first five years the proposed new rule will be in effect, there will be a fiscal impact to the state government of \$7,371,126 General Revenue (GR) (\$19,180,604 All Funds (AF)) for state fiscal year (SFY) 2018, \$9,689,607 GR (\$25,574,139 AF) for SFY 2019, \$9,700,692 GR (\$25,574,139 AF) for SFY 2020, \$9,700,692 GR (\$25,574,139 AF) for SFY 2021, and \$9,700,692 GR (\$25,574,139 AF) for SFY 2022. There are no fiscal implications for local governments as a result of enforcing or administering the new section.

#### Public Benefit

Pam McDonald, Director of Rate Analysis, has determined that, for each year of the first five years the rule will be in effect, the public benefits expected as a result of adopting the proposed rule will be to allow HHSC to develop and adopt rates to pay for needed services for clients residing in nursing facilities.

Ms. McDonald has also determined that there are no probable economic costs to persons required to comply with the proposed rule.

HHSC has determined that the proposed rule will not affect a local economy. There is no anticipated negative impact on local employment.

#### Small Business and Micro-Business Impact Analysis

HHSC has determined that there will be no economic effect on small businesses and micro-businesses to comply with the proposed rule. The proposed rule does not require any changes in practice or any additional cost to a contracted provider.

#### Takings Impact Assessment

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

#### Public Comment

Questions about the content of this proposal may be directed to Victor Perez in the HHSC Rate Analysis Department by telephone at (512) 462-6223. Written comments on this proposal

may be submitted to Mr. Perez by mail to the HHSC Rate Analysis Department, Mail Code H-400, P.O. Box 85200, Austin, Texas 78705-5200; by fax to (512) 730-7475; or by e-mail to RAD.LTSS@hhsc.state.tx.us within 30 days after publication of this proposal in the *Texas Register*.

#### Statutory Authority

The new rule is proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021(a) and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b-1), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance (Medicaid) payments under Texas Human Resources Code Chapter 32.

The proposed new rule implements Texas Government Code Chapter 531 and Texas Human Resources Code Chapter 32. No other statutes, articles, or codes are affected by this proposal.

#### §355.315. Reimbursement Methodology for Preadmission Screening and Resident Review (PASRR) Specialized Services.

(a) Payment rate determination. HHSC develops payment rates for Employment Assistance services, Supported Employment services, Independent Living Skills Training services, Behavioral Support services, Habilitation Coordination services, and Day Habilitation services based on rates HHSC has determined for other programs that provide similar services. If payment rates for other programs that provide similar services are not available, HHSC determines payment rates using a pro forma approach in accordance with §355.105(h) of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures).

(b) Related information. Section 355.101 of this title (relating to Introduction) and §355.105(g) of this title also apply.

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 August 7, 2017.

TRD-201702953

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: September 17, 2017

For further information, please call: (512) 462-6223



## TITLE 13. CULTURAL RESOURCES

### PART 2. TEXAS HISTORICAL COMMISSION

#### CHAPTER 11. ADMINISTRATION DEPARTMENT

#### SUBCHAPTER A. ADMINISTRATION

#### 13 TAC §11.2, §11.5

The Texas Historical Commission (hereafter referred to as the "Commission") proposes amendments to §11.2 and §11.5 of Title 13, Part 2, Chapter 11 of the Texas Administrative Code concerning the administration department. These amendments are needed as part of the Commission's overall effort to clarify language in order to implement necessary updates, additions and changes to more precisely reflect the procedures of the administrative department.

Mark Wolfe, Executive Director, has determined that for the first five-year period the rule changes are in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the rules.

Mr. Wolfe has also determined that for each year of the first five year period these rule changes are in effect the public benefit anticipated as a result of the implementation of these rules will be improvements in the administration of the Commission. There will be minimal effects on small businesses or micro-businesses.

Comments on the proposal may be submitted to Mark Wolfe, Executive Director, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711. Comments will be accepted for 30 days after publication in the *Texas Register*.

The amendments are proposed under §442.005(q), of the Texas Government Code which provides the Commission with the authority to promulgate rules and conditions to reasonably effect the purposes of those chapters.

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

#### §11.2. Election of Officers.

(a) At the last quarterly meeting of even-numbered years, the chair shall appoint three people to serve on a nominating committee, and shall also appoint a chair of that committee. [~~The nominating committee will choose its own chair.~~] The positions available for nomination shall be the vice chair and secretary.

(b) The nominating committee will nominate only one person for each elective office. The committee shall contact each person it wishes to nominate in order to obtain the person's acceptance of nomination. A commission member may hold only one office at a time.

(c) The nominating committee will present its report of nominees at the first commission meeting of odd-numbered years. The chair shall call for further nomination from the floor. After all nominations are made, the chair will close the nominations and ask for a vote by voice or show of hands. If there is a simple majority for one person for each elective office, those people are elected. If there is not a majority for any one person for each office, the commission shall hold an election runoff for each office between the two people receiving the highest number of votes for that office. The chair will only vote to make or break ties.

#### §11.5. Executive Committee.

This committee consists of the chair, vice-chair, secretary, and immediate past chair of the Texas Historical Commission, as well as other members of the commission appointed by the chair. The committee may act on behalf of the Full Commission with its advance approval, or such action may be placed on the agenda of the next meeting of the Commission for ratification.

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 August 1, 2017.

TRD-201702879

Mark Wolfe

Executive Director

Texas Historical Commission

Earliest possible date of adoption: September 17, 2017

For further information, please call: (512) 463-6100



## CHAPTER 12. TEXAS HISTORIC COURTHOUSE PRESERVATION PROGRAM

### 13 TAC §12.5, §12.9

The Texas Historical Commission (hereinafter referred to as the "Commission") proposes amendments to Title 13, Part 2, Chapter 12, §12.5 and §12.9 of the Texas Administrative Code related to the Texas Historic Courthouse Preservation Program.

The adoption of these amendments by the commission is needed to provide additional definitions and to clarify the text in §12.5 and §12.9.

In this issue of the *Texas Register*, the Commission concurrently proposes amendments to the rules in Chapter 12 pursuant to Texas Government Code §2001.039.

Mark Wolfe, Executive Director, has determined that for the first five-year period the amended rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering these rules.

Mr. Wolfe has also determined that for each year of the first five-year period the amendment of the rules are in effect the public benefit anticipated as a result of administering the rules will be the preservation of additional historic county courthouses. There are no probable economic costs to persons required to comply with the amendments.

Mr. Wolfe has also determined that there will be no impact on small or micro-businesses as a result of implementing these rules.

Comments on the proposal may be submitted to Mark Wolfe, Executive Director, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711. Comments will be accepted for 30 days after publication in the *Texas Register*.

These amendments are proposed under the authority of Texas Government Code §442.005(q), which provides the Texas Historical Commission with the authority to promulgate rules to reasonably affect the purposes of those chapters, and under Texas Government Code §442.0081(h), which provides the Texas Historical Commission with the authority to adopt rules to implement the historic courthouse preservation and maintenance programs.

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

#### §12.5. Definitions.

When used in this chapter, the following words or terms have the following meanings unless the context indicates otherwise.

(1) Texas Historic Courthouse Preservation Program. Means the grant or loan program created by Texas Government Code §§442.0081 - 442.0083.

(2) The Courthouse Fund Account. Means a separate account in the general revenue fund. The account consists of transfers made to the account, payment on loans made under the historic

courthouse preservation program, grants and donations received for the purposes of the historic courthouse preservation program, and income earned on investments of money in the account.

(3) Texas Courthouse Preservation Program Advisory Committee. Means a committee that serves the commission in matters concerning the courthouse program.

(4) Courthouse. Means the principal building(s) which houses county government offices and courts and its (their) surrounding site(s) (typically the courthouse square).

(5) [(4)] Historic courthouse. Means a county courthouse or building that previously served as a county courthouse that is at least 50 years old prior to the date of application, with the initial date of service defined as the date of the first official commissioners court meeting in the building;

(6) [(5)] Historic courthouse project. Means an undertaking to preserve or restore a historic courthouse.

(7) [(6)] Historic courthouse structure. Means a courthouse structure that is [one or more of the following: ]

[(A)] a structure that currently or previously served as the official county courthouse of the county in which it is located; and that is:

(A) at least 50 years old prior to the date of application, with the initial date of service defined as the date of the first official commissioners court meeting in the building;

(B) listed on the National Register of Historic Places;

(C) designated a Recorded Texas Historic Landmark;

(D) designated a State Antiquities Landmark;

(E) determined by the commission to qualify as an eligible property under the designations noted above;

(F) certified by the commission to other state agencies as worthy of preservation; or

(G) designated by an ordinance of a municipality with a population of more than 1.5 million as historic.

(8) [(7)] Master preservation plan or master plan. Means a comprehensive planning document that includes the historical background of a courthouse, as well as a detailed analysis of its architectural integrity, current condition, and future needs for preservation. The commission shall promulgate specific guidelines for developing the document.

(9) Conservation Easement. Means a voluntary legal agreement whereby the property owner grants the Commission an interest in the property for the purpose of preservation of historic, architectural, scenic and open space values, also may be called a preservation easement.

(10) Construction Documents (also known as contract documents). Means the written and graphic instructions used for construction of a project which are prepared by an architect and their engineering consultants. May also be called architectural plans and specifications.

(11) [(8)] Restoration. Means the act or process of accurately depicting the form, features, and character of a property as it appeared at a particular period of time by means of the removal of features from other periods in its history and reconstruction of missing features from the restored period. (As defined by the Secretary of the Interior's Standards for the Treatment of Historic Properties (1995 edition, or as revised)).

(12) [(9)] Reconstruction. Means the act or process of depicting, by means of new construction, the form, features, and detailing of a non-surviving site, landscape, building, structure, or object for the purpose of replicating its appearance at a specific period of time and in its historic location. (As defined by the Secretary of the Interior's Standards for the Treatment of Historic Properties (1995 edition, or as revised)).

(13) [(10)] Preservation. Means the act or process of applying measures necessary to sustain the existing form, integrity, and materials of a historic property. (As defined by the Secretary of the Interior's Standards for the Treatment of Historic Properties (1995 edition, or as revised)).

(14) [(11)] Rehabilitation. Means the act or process of making possible a compatible use for a property through repair, alterations, and additions while preserving those portions or features which convey its historical, cultural, or architectural values. (As defined by the Secretary of the Interior's Standards for the Treatment of Historic Properties (1995 edition, or as revised)).

(15) [(12)] Match requirement. Means the percentage of the total project cost that must be provided by a county or municipality.

(16) [(13)] Current cash match. Means monies to be paid by a county or municipality as part of the preservation project described in a current request for grant or loan funding.

(17) [(14)] Current in-kind match. Materials and labor to be donated as part of the preservation project described in a current request for grant or loan funding.

(18) [(15)] Planning match. Means county or municipal monies spent on an approved master preservation plan or approved construction plans and specifications.

#### §12.9. Application Requirements and Considerations.

(a) A county or municipality that owns a historic courthouse may apply to the commission for a grant or loan for a historic courthouse project. The application must include:

(1) the address of the courthouse;

(2) a statement of the historic designations that the courthouse has or is likely to receive;

(3) a statement of the amount of money that the county or municipality commits to contribute to the project;

(4) a statement of previous county or municipal monies spent on planning which the county or municipality may be allowed as credit toward their match;

(5) a statement of whether the courthouse is currently functioning as a courthouse or other public facility;

(6) copies of any plans, including the required master preservation plan or current construction plans and specifications, that the county or municipality may have for the project unless the commission already has these plans on file;

(7) copies of existing deed covenants, restrictions or easements held by the commission or other preservation organizations;

(8) statements of support from local officials and community leaders; and

(9) the current cost estimate of the proposed project; and

(10) any other information that the commission may require.

(b) The Texas Historic Courthouse Preservation Program will be a competitive process, with applications evaluated and grants awarded based on the factors provided in this section, including the amount of program money for grants.

(1) Funding requests may be reduced by the commission to reflect ineligible project costs or smaller scopes or phases of work such as planning for the construction work, or for any other reason such as limited grant funding availability.

(2) The commission may adjust the amount of a previously awarded grant up and/or down based on the changing conditions of the property and the program.

(c) In considering whether to grant an application, the commission will assign weights to and consider each of the following factors:

- (1) the status of the building as a functioning courthouse;
- (2) the age of the courthouse;
- (3) the degree of endangerment;
- (4) the courthouse is subject to a current conservation easement or covenant held by the commission;
- (5) the proposal is in conformance with the approved master plan and addresses the work in proper sequence;
- (6) the county or municipality agrees to place/extend a preservation easement/covenant and/or deed restriction as part of the grant process;
- (7) the importance of the building within the context of an architectural style;
- (8) the proposal addresses and remedies former inappropriate changes;
- (9) the historic significance of the courthouse, as defined by 36 CFR §101(a)(2)(A) and (E), and NPS Bulletin 15, "How to Apply the National Register Criteria for Evaluation."
- (10) the degree of surviving integrity of original design and materials;
- (11) if a county or municipality submits completed and commission-approved construction plans and specifications for proposed work at the time of the application, provided the plans and specifications are current and comply with the previously approved master plan;
- (12) the use of the building as a courthouse after the project;
- (13) the county's or municipality's provision of a match greater than 15% of the grant request;
- (14) the proposal results in a fully restored county courthouse [~~court-house~~];
- (15) the status of the courthouse in terms of state and local historical designations that are in place;
- (16) the county or municipal government's provision of preservation incentives and support of the county historical commission and other county-wide preservation efforts;
- (17) the location of the county in a region with few awarded courthouse grant applications;

(18) the existence of a plan for physically protecting county records during the restoration and afterwards, as well as an assessment of current and future space needs and public accessibility for such records, if county-owned;

(19) the existence of a strong history of compliance with the state courthouse law (Texas Government Code, §§442.0081 - 442.0083 and the Antiquities Code of Texas, Texas Natural Resources Code Chapter 191);

(20) the effort to protect and enhance surrounding historic resources; and

(21) the evidence of community support and county or municipality commitment to protection.

(d) Other Considerations.

(1) The factors noted in subsection (c) of this section, and any additional ones determined necessary by the commission, will be published prior to each individual grant round as part of the formal procedures for the round.

(2) The commission may distribute a portion of the funds available for each grant period to be used for specific purposes and/or granted through different criteria than other funds. Such specific purposes may include, but are not limited to, the following:

(A) Emergency repairs necessary to prevent damage to or deterioration of the courthouse; or

(B) Compliance with the Americans with Disabilities Act or other state or federally mandated repairs or modifications.

(C) Grants to the owners of previously awarded projects that require additional funding to resolve unforeseen conditions that may prevent the owners from meeting the intended goals of the program.

(3) Any such distribution to a specific purpose or change in criteria must be decided by a vote of the commission and advertised to the potential grantees prior to the date for the submission of applications.

(e) As a condition for a county or municipality to receive money under the courthouse fund, the commission may require creation of a conservation easement on the property, and may require creation of other appropriate covenants in favor of the state. The highest preference will be given to counties agreeing to the above referenced easements or covenants at the time of application.

(f) The commission shall provide oversight of historic courthouse projects.

(1) The commission may make periodic inspections of the projects during construction and/or upon and following completion to ensure compliance with program rules and procedures.

(2) The commission may require periodic reports to ensure compliance with program rules and procedures and as a prerequisite to disbursement of grant or loan funds.

(3) The commission may adopt additional procedures to ensure program compliance.

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 August 1, 2017.  
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Mark Wolfe  
Executive Director  
Texas Historical Commission  
Earliest possible date of adoption: September 17, 2017  
For further information, please call: (512) 463-6100



## CHAPTER 13. TEXAS HISTORIC PRESERVATION TAX CREDIT PROGRAM

### 13 TAC §13.1, §13.2

The Texas Historical Commission (hereafter referred to as the Commission) proposes amendments to §13.1 and §13.2 (relating to the State Franchise Tax Credits) of Title 13, Part 2, Chapter 13 of the Texas Administrative Code. These changes are needed to address the eligibility of credits earned against the state insurance premium tax and the addition of public institutions of higher education as eligible recipients under certain circumstances.

The first amendment expands the rehabilitation franchise tax credit to include insurance premium tax. This provision implements Senate Bill 550 introduced by Senator Campbell in the 85th Legislative Session and passed into law. The amendment reflects changes to Texas Tax Code, §171.908 with the addition of subsection (e) to allow the credit to be claimed against the state premium tax by an entity that is subject to that tax under Chapters 221, 222, 223, or 224 of the Texas Insurance Code.

The second amendment includes a provision that specifies that an institution of higher education or university system as per §171.901(4) of the Texas Tax Code are not subject to the depreciation and tax-exempt use provisions as defined by §47(c)(2) of the Internal Revenue Code. This provision implements House Bill 1003 introduced by Representative Capriglione in the 85th Legislative session and passed into law. The change applies to eligible costs and expenses incurred on or after the effective date of the act, June 14, 2017 until the amendment expires on January 1, 2022.

A third amendment addresses applications received retroactively for projects placed in service before the effective date of the program.

Mark Wolfe, Executive Director, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the rules.

Mr. Wolfe has also determined that for each year of the first five year period the rules are in effect the public benefit anticipated as a result of the implementation of these rules will be the certified rehabilitation of certain designated historic buildings on public university campuses. There will be minimal effects on small businesses or micro-businesses, and there are minimal anticipated economic costs to persons who are required to comply with the amendments to these rules as proposed.

Comments on the proposal may be submitted to Mark Wolfe, Executive Director, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711. Comments will be accepted for 30 days after publication in the *Texas Register*.

The amendment of these rules is proposed under §442.005(q) the Texas Government Code, which provides the Commission with the authority to promulgate rules for the effective admin-

istration of the Commission's programs, and Texas Tax Code §171.909, which authorizes the Commission and the Comptroller to adopt rules necessary to implement the Tax Credit for Certified Rehabilitation of Certified Historic Structures Program.

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

#### §13.1. Definitions.

The following words and terms when used in these rules shall have the following meanings unless the context clearly indicates otherwise:

(1) Applicant--The entity that has submitted an application for a building or structure it owns or for which it has a contract to purchase.

(2) Application--A fully completed Texas Historic Preservation Tax Credit Certification Application form submitted to the Commission, which includes three parts:

(A) Part A - Evaluation of Significance, to be used by the Commission to make a determination whether the building is a certified historic structure;

(B) Part B - Description of Rehabilitation, to be used by the Commission to review proposed projects for compliance with the Standards for Rehabilitation; and

(C) Part C - Request for Certification of Completed Work, to be used by the Commission to review completed projects for compliance with the work approved under Part B.

(3) Application fee--The fee charged by the Commission and paid by the applicant for the review of Part B and Part C of the application as follows:

Figure: 13 TAC §13.1(3) (No change.)

(4) Audited cost report--Such documentation as defined by the Comptroller in 34 TAC Chapter 3, Tax Administration.

(5) Building--Any edifice enclosing a space within its walls, and usually covered by a roof, the purpose of which is principally to shelter any form of human activity, such as shelter or housing, or to provide working, office, parking, display, or sales space. The term includes among other examples, banks, office buildings, factories, warehouses, barns, railway or bus stations, and stores and may also be used to refer to a historically and functionally related unit, such as a courthouse and jail or a house and barn. Functional constructions made usually for purposes other than creating human shelter or activity such as bridges, windmills, and towers are not considered buildings under this definition and are not eligible to be certified historic structures.

(6) Certificate of eligibility--A document issued by the Commission to the Owner, following review and approval of a Part C application, that confirms the property to which the eligible costs and expenses relate is a certified historic structure and the rehabilitation qualifies as a certified rehabilitation; and specifies the date the certified historic structure was first placed in service after the rehabilitation.

(7) Certified historic structure--A building or buildings located on a property in Texas that is certified by the Commission as:

(A) listed individually in the National Register of Historic Places;

(B) designated as a Recorded Texas Historic Landmark under §442.006, Texas Government Code, or as a State Antiquities Landmark under Chapter 191, Texas Natural Resources Code; §21.6 and §26.3(63) - (64) of this title; or

(C) certified by the Commission as contributing to the historic significance of:

(i) a historic district listed in the National Register of Historic Places; or

(ii) a certified local district as per 36 CFR §67.9.

(8) Certified local district--A local historic district certified by the United States Department of the Interior in accordance with 36 C.F.R. §67.9.

(9) Certified rehabilitation--The rehabilitation of a certified historic structure that the Commission has certified as meeting the Standards for Rehabilitation. If the project is submitted for the federal rehabilitation tax credit it must be reviewed by the National Park Service prior to a determination that it meets the requirements for a certificated rehabilitation under this rule. In the absence of a determination for the federal rehabilitation tax credit, the Commission shall have the sole responsibility for certifying the project.

(10) Commission--The Texas Historical Commission. For the purpose of notifications or filing of any applications or other correspondence, delivery shall be made via postal mail to: Texas Historic Preservation Tax Credit Program, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711-2276; or by overnight delivery at: Texas Historic Preservation Tax Credit Program, Texas Historical Commission, 1700 North Congress Avenue, Suite B-65, Austin, Texas 78701.

(11) Comptroller--The Texas Comptroller of Public Accounts.

(12) Contributing--A building in a historic district considered to be historically, culturally, or architecturally significant according to the criteria established by state or federal government, including those formally promulgated by the National Park Service and the United States Department of the Interior at 36 C.F.R. Part 60 and applicable National Register bulletins.

(13) Credit--The tax credit for the certified rehabilitation of certified historic structures available pursuant to Chapter 171, Subchapter S of the Texas Tax Code.

(14) District--A geographically definable area, urban or rural, possessing a significant concentration, linkage, or continuity of sites, buildings, structures, or objects united by past events or aesthetically by plan or physical development. A district may also comprise individual elements separated geographically but linked by association or history.

(15) Eligible costs and expenses--The qualified rehabilitation expenditures as defined by §47(c)(2), Internal Revenue Code, including rehabilitation expenses as set out in 26 C.F.R. §1.48-12(c), incurred during the project. The depreciation and tax-exempt use provisions of §47(c)(2) do not apply to the costs and expenses incurred by an entity exempt from the tax imposed by Section 171.063 of the Tax Code or by authorized investment of public funds governed by Chapter 2256 by an institution of higher education or university system as defined by §61.003, Education Code if the other provisions of Section 47(c)(2) are met.

(16) Federal rehabilitation tax credit--A federal income tax credit for 20% of qualified rehabilitation expenditures with respect to a certified historic structure, as defined in §47, Internal Revenue Code; 26 C.F.R. §1.48-12; and 36 C.F.R. Part 67.

(17) National Park Service--The agency of the U.S. Department of the Interior that is responsible for certifying projects to receive the federal rehabilitation tax credit.

(18) Owner--A person, partnership, company, corporation, whether for profit or not, governmental body, an institution of higher

education or university system or other entity holding a legal or equitable interest in a Property or Structure, which can include a full or partial ownership interest. A long-term lessee of a property may be considered an owner if their current lease term is at minimum 27.5 years for residential rental property, or 39 years for nonresidential real property, as referenced by §47(c)(2), Internal Revenue Code.

(19) Phased development--A rehabilitation project which may reasonably be expected to be completed in two or more distinct states of development, as defined by United States Treasury Regulation 26 C.F.R. §1.48-12(b)(2)(v). Each phase of a phased development can independently support an Application for a credit as though it was a stand-alone rehabilitation. If any completed phase of the rehabilitation project does not meet the requirements of a certified rehabilitation, future applications by the same owner for the same certified historic structure will not be considered.

(20) Placed in service--A status obtained upon completion of the rehabilitation project when the building is ready to be reoccupied and any permits and licenses needed to occupy the building have been issued. Evidence of the date a property is placed in service includes a certificate of occupancy issued by the local building official and/or an architect's certificate of substantial completion.

(21) Property--A parcel of real property containing one or more buildings or structures that is the subject of an application for a credit.

(22) Rehabilitation--The process of returning a building or buildings to a state of utility, through repair or alteration, which makes possible an efficient use while retaining those portions and features of the building and its site and environment which are significant.

(23) Rehabilitation plan--Descriptions, drawings, construction plans, and specifications for the proposed rehabilitation of a certified historic structure in sufficient detail to enable the Commission to evaluate compliance with the Standards for Rehabilitation.

(24) Standards for Rehabilitation--The United States Secretary of the Interior's Standards for Rehabilitation as defined in 36 C.F.R. §67.7.

(25) Structure--A building; see also certified historic structure.

(26) Tax credit--A credit earned against either the state franchise tax or the insurance premium tax per Section 171 of the Texas Tax Code and any limitations provided therein.

### §13.2. *Qualifications Requirements.*

(a) Qualification for credit.

(1) An Owner is eligible for a credit for eligible costs and expenses incurred in the certified rehabilitation of a certified historic structure if:

(A) the rehabilitated certified historic structure is placed in service on or after September 1, 2013;

(B) the Owner has an ownership interest in the certified historic structure in the year during which the structure is placed in service after the rehabilitation; and

(C) the total amount of the eligible costs and expenses incurred exceeds \$5,000.

(2) A property for which eligible costs and expenses are submitted for the credit must meet Internal Revenue Code §47(c)(2) which includes:

(A) non-residential real property; or

(B) residential rental property.

(b) Eligible costs and expenses. Eligible costs and expenses means those costs and expenses allowed pursuant to Internal Revenue Code §47(c)(2). Such eligible costs and expenses, include, but are not limited to:

- (1) expenditures associated with structural components as defined by United States Treasury Regulation §1.48-1(e)(2) including walls, partitions, floors, ceilings, windows and doors, stairs, elevators, escalators, sprinkling systems, fire escapes, components of central air conditioning, heating, plumbing, and electrical systems and other components related to the operation or maintenance of the building;
- (2) architectural services;
- (3) engineering services;
- (4) construction management and labor, materials, and reasonable overhead;
- (5) subcontracted services;
- (6) development fees;
- (7) construction period interest and taxes; and
- (8) other items referenced in Internal Revenue Code §47(c)(2).

(c) Ineligible costs and expenses. Eligible costs and expenses as defined in Internal Revenue Code §47(c)(2) do not include the following:

- (1) the cost of acquiring any interest in the property;
- (2) the personal labor by the applicant;
- (3) any cost associated with the enlargement of an existing building;
- (4) site work expenditures, including any landscaping, sidewalks, paving, decks, outdoor lighting remote from the building, fencing, retaining walls or similar expenditures; or
- (5) any cost associated with the rehabilitation of an out-building or ancillary structure unless it is certified by the Commission to contribute to the historical significance of the property.

(d) Eligibility date for costs and expenses.

(1) Applications for rehabilitated historic structures placed in service prior to the program's effective date, January 1, 2015, must be submitted for review by January 1, 2018.

~~{(1) If the rehabilitated certified historic structure is placed in service on or after September 1, 2013, but before January 1, 2015, the Application may include eligible costs and expenses for the project incurred up to 60 months prior to the date the property is placed in service.}~~

(2) If the rehabilitated certified historic structure is placed in service on or after January 1, 2015, Part A of the Texas Historic Preservation Tax Credit Certification Application must be submitted prior to the building being placed in service. Projects completed on or after January 1, 2015, but before January 1, 2016, are exempt from this requirement only if their costs and expenses were incurred by an entity exempt from the tax imposed by Section 171.063 of the Tax Code within a 60 month period prior to the building's placed in service date.

(3) While the credit may be claimed for eligible costs and expenses incurred prior to the filing of an application, potential applicants are urged to file Parts A and B of the application at the earliest possible date. This will allow the Commission to review the applica-

tion and provide guidance to the applicant that will increase the chances that the application will ultimately be approved and the credit received.

(4) For an institution of higher education or university system as defined by Section 61.003, Education Code, the authorized investment of public funds governed by Chapter 2256, Government Code, relates only to those eligible costs and expenses incurred on or after June 14, 2017 until January 1, 2022 in accordance with Section 171.901(4) of the Tax Code.

(e) Phased development. Part B applications for rehabilitation of the same certified historic structure may be submitted by the same owner only if they describe clearly defined phases of work that align with a cost report that separates the eligible costs and expenses by phase. Separate Part B and C applications shall be submitted for review by the Commission prior to issuance of a certificate of eligibility for each phase.

(f) Amount of credit. The total amount of credit available is twenty-five percent (25%) of the aggregate eligible costs and expenses incurred in the certified rehabilitation of the certified historic structure.

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 August 1, 2017.

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Mark Wolfe

Executive Director

Texas Historical Commission

Earliest possible date of adoption: September 17, 2017

For further information, please call: (512) 463-6100



## CHAPTER 15. ADMINISTRATION OF FEDERAL PROGRAMS

### 13 TAC §15.2, §15.6

The Texas Historical Commission (hereafter referred to as the Commission) proposes amendments to §15.2 and §15.6 (relating to Standards for Administration and Rules and Procedures for Certified Local Governments) of Title 13, Part 2, Chapter 15 of the Texas Administrative Code (relating to Administration of Federal Programs). These are minor changes to text for clarification purposes, including updating legal citations due to recodification of the National Historic Preservation Act and other federal preservation laws.

In this issue of the *Texas Register*, the Commission concurrently proposes amendments to the rules in Chapter 15 pursuant to Texas Government Code §2001.039.

Mark Wolfe, Executive Director, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the rules.

Mr. Wolfe has also determined that for each year of the first five year period the rules are in effect the public benefit anticipated as a result of the implementation of these rules will be primarily a better understanding of the grant application process. There will be minimal effects on small businesses or micro-businesses, and there are no anticipated economic costs to persons who are required to comply with the amendments to these rules as proposed.

Comments on the proposal may be submitted to Mark Wolfe, Executive Director, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711. Comments will be accepted for 30 days after publication in the *Texas Register*.

The amendments are proposed under §442.005(q) of the Texas Government Code, which authorizes the Commission to promulgate rules for the effective administration of Commission programs, and under §442.005(e), which authorizes the Commission to administer the federal National Historic Preservation Act of 1966 and prepare, maintain, and keep up to date a statewide comprehensive historic preservation plan. Further, as the designated State Historic Preservation Officer (SHPO) under Texas Government Code §442.004(k), the Executive Director of the Commission is authorized to implement the requirements for the certification of local governments under the National Historic Preservation Act.

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

#### §15.2. *Standards for Administration.*

(a) For the purpose of administering and complying with the National Historic Preservation Act of 1966, as amended (National Historic Preservation Act of 1966, Pub. L. No. 89-665, 80 Stat. 915 (current version at 54 U.S.C. §300101 (Supp. II 2014)); [(Public Law 96-515, 94 Statute 2987, 16 United States Code 470);] the Tax Reform Act of 1976 (Tax Reform Act of 1976, Pub. L. No. 94-455, 90 Stat. 1520 (current version at 26 U.S.C. § 1 (Supp. II 2014)); [(Public Law 94-455, 90 Statute 1525, 26 United States Code 4);] the Revenue Act of 1978 (Revenue Act of 1978, Pub. L. No. 95-600, 92 Stat. 2763 (current version at 26 U.S.C. §1 (Supp. II 2014)); [1878 (Public Law 95-6700);] the Economic Recovery Tax Act of 1981 (Economic Recovery Tax Act of 1981, Pub. L. No. 97-34, 95 Stat. 172 (current version at 26 U.S.C. §1 (Supp. II 2014)); [(Public Law 97-34, 95 Statute 178, 26 United States Code 4);] the Tax Equity and Fiscal Responsibility Act of 1982 (Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. No. 97-248, 96 Stat. 324 (current version at 26 U.S.C. §1 (Supp. II 2014)); [(Public Law 97-248, 96 Statute 324, 26 United States Code 4);] the Deficit Reduction Act of 1984 (Deficit Reduction Act of 1984, Pub. L. No. 98-369, 98 Stat. 494 (current version at 26 U.S.C. § 1 (Supp. II 2014)); [Tax Reform Act of 1984 (Public Law 98-369) and] the Tax Reform Act of 1986 (Tax Reform Act of 1986, Pub. L. No. 99-514, 100 Stat. 2085 (current version at 26 U.S.C. §1 (Supp. II 2014)); [(Public Law 99-514);] the Archeological Historical Preservation Act of 1974 (Archeological Historical Preservation Act of 1974, Pub. L. No. 93-291, 88 Stat. 174 (current version at 54 U.S.C. §§312501 - 312508 (Supp. II 2014)); [(Public Law 93-291, 88 Statute 174, 16 United States Code 469);] the Archeological Resources Protection Act of 1979 (Archeological Resources Protection Act of 1979, Pub. L. No. 96-95, 93 Stat. 721 (current version at 16 U.S.C.A §§470aa - 470mm (West 2017)); [(Public Law 96-95, Statute 721, 16 United States Code 470a);] Executive Order 11593; Executive Order 12072; federal programs, as well as other pertinent federal legislation and directives, the Texas Historical Commission adopts as its own the relevant federal rules and regulations, standards, guidelines: 36 Code of Federal Regulations 60: National Register of Historic Places [historic and cultural properties]; 36 Code of Federal Regulations 800: Protection of historic [and cultural] properties; 36 Code of Federal Regulations 61: Procedures for State, Tribal, and Local Government Historic Preservation Programs [Criteria for comprehensive statewide historic surveys and plans]; 36 Code of Federal Regulations 63: Determinations of eligibility for inclusion in the National Register of Historic Places; 36 Code of Federal Regulations Part 67: Historic Preservation Certifications under the Internal Revenue Code; [36 Code of Federal Regulations 66: Recovery of scientific, prehistoric, historic, and archeological data: methods, standards, and reporting

requirements;] 36 Code of Federal Regulations 68: Secretary of the Interior's Standards for the Treatment of Historic Properties [Historic Preservation Projects]; "Archeology and Historic Preservation: Secretary of the Interior's Standards and Guidelines" (48 Federal Register 44716, September 29, 1983): "Recommended Approach for Consultation on Recovery of Significant Information from Archeological Sites" (Advisory Council on Historic Preservation, 1999); ["Consulting about Archeology Under Section 106" (Advisory Council on Historic Preservation, 1990);] 36 Code of Federal Regulations Part 79: Curation of Federally Owned and Administered Archeological Collections; "The Secretary of the Interior's Standards and Guidelines for Federal Agency Historic Preservation Program Pursuant to the National Historic Preservation Act [The Section 110 Guidelines]" (64 Federal Register 20496, April 24, 1998 [Advisory Council on Historic Preservation, 1989]); and "Guidance on Section 106 [Preparing] Agreement Documents" (Advisory Council on Historic Preservation, updated 2015 [1989]).

(b) Standards and guidelines formulated and adopted by the Council of Texas Archeologists are adopted by reference for use by the state historic preservation officer insofar as those guidelines do not conflict with federal regulations which apply to the same subjects. The Council of Texas Archeologists guidelines address the following topics:

- (1) professional performance standards for fieldwork and analysis;
- (2) cultural resource management reports;
- (3) curation standards and procedures;
- (4) historic cemeteries and unmarked historic graves; and
- (5) survey standards and information regarding the availability of the Council of Texas Archeologists guidelines may be obtained from the Council of Texas Archeologists website: counciloftexasarcheologists.org.

#### §15.6. *Rules and Procedures for Certified Local Governments.*

(a) Purpose. The Certified Local Government program (hereinafter referred to as the Program) is part of the Historic Preservation Fund (HPF) grants-in-aid program authorized by the National Historic Preservation Act of 1966 (16 U.S.C. 470 et seq.) (also referred to as the Act), to provide a statutory framework for national historic preservation partnerships among federal, state, tribal, and local governments in the identification, evaluation, designation, and protection of historic and prehistoric properties. The Texas State Historic Preservation Office (Texas SHPO), within the Texas Historical Commission (THC), coordinates the state's preservation responsibilities as set out in the Act. Local participation in this Program is provided to local governments that are certified by the Secretary of the United States Department of the Interior and administered by the National Park Service (NPS) through the Program.

(1) Section 101(c)(1) of the Act directs the Texas State Historic Preservation Officer (SHPO) and the Secretary of the Department of the Interior through the NPS to participate in the partnership and Title 36, Code of the Federal Regulations, Part 61.6 lists requirements that the SHPO and local governments are to meet.

(2) These requirements are also found in the Historic Preservation Fund (HPF) grants manual, as published and amended by the NPS.

(b) City participation. City governments may participate in the Program through compliance with the Texas Local Government Code, Chapter 211, which empowers municipal governments to adopt zoning regulation for the purpose of promoting the public health, safety, morals, or general welfare and protecting and preserving places and ar-

eas of historical, cultural, or architectural importance and significance. Section 214.00111 of the Texas Local Government Code also provides additional authority specifically to participating local governments for the purpose of preserving substandard buildings that are historic properties.

(c) County participation. Counties may participate in the Program through compliance with the Texas Local Government Code, Chapter 318, which empowers the Commissioners Court of each county to appoint a County Historical Commission, for the purpose of initiating and conducting programs suggested by the Court and the THC for the preservation of the county's historic cultural resources that are consistent with the statewide preservation plan.

(d) Indian Tribe participation. Indian tribes that effectively meet the definition of a local government in Section 301(3) of the Act may participate in the Program in accordance with Section 101(d)(1)(A) of the Act to establish a program and promulgate regulations to assist Indian tribes in preserving their historic properties.

(e) Eligibility for certification of Local Governments. Any city, county, township, municipality, Indian tribe, or any other general-purpose political subdivision of Texas may apply to become a Certified Local Government (CLG) by submitting a Request for Certification to the Texas SHPO. To be considered eligible, the local government must meet the minimum Program requirements pursuant to Title 36, Code of the Federal Regulations, Part 61, and outlined in the HPF grants manual. The Texas SHPO may expand or prescribe additional state requirements and responsibilities. The following are the minimum federal requirements local governments must satisfy for certification:

- (1) Enforces appropriate State or local legislation for the designation and protection of historic properties;
- (2) Has established an adequate and qualified historic preservation review commission by State or local legislation;
- (3) Maintains a system for the survey and inventory of historic properties;
- (4) Provides for adequate public participation in the local historic preservation program, including the process of recommending properties for nomination to the National Register; and
- (5) Satisfactorily performs the responsibilities delegated to it under the Act.

(f) Certification process of Certified Local Governments. All eligible local governments must submit a completed Request for Certification and Certification Agreement, signed by the chief elected official of the applying local government, along with all necessary requested materials, to the THC. A Request for Certification may be submitted at any time throughout the year. Texas SHPO shall have a reasonable opportunity to review and respond to the request. If the local government meets the minimum requirements for participation in the Program, the Texas SHPO shall forward the Request for Certification and Certification Agreement to the NPS with a recommendation for certification. The NPS shall make the final certification decision. The local government shall become a CLG upon receipt of written notice from the NPS, completing the certification process.

(g) Annual requirements for Certified Local Governments for participation in Program. All annual requirements for participation and Program procedures are found in the Texas SHPO's Certified Local Government Preservation Handbook (Handbook), which shall be provided to each CLG upon its certification into the Program.

- (1) The Texas SHPO shall provide a 60-day period for all CLGs to comment on any proposed significant changes or amendments

to the Handbook, keep a record of its consultation process, and follow the procedures outlined in the HPF grant manual.

- (2) Written notification from the Texas SHPO to the CLGs is sufficient for minor changes, technical corrections and amendments to the Handbook.

(h) Monitoring and evaluating CLG performance. The Texas SHPO shall monitor the performance of each CLG on an on-going basis to assure that CLGs fulfill their responsibilities in accordance with the requirements found in the Handbook and the terms of the Certification Agreement. In addition the performance of the CLG shall be reviewed by the Texas SHPO on the basis of recognized standards for historic preservation activities. These standards shall include but not be limited to the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation; National Register criteria for evaluation in reviewing the local government's role in the National Register Program; state survey [grant] requirements in assessing the local government's execution of the survey requirement of the CLG regulations; and the Secretary of the Interior's Standards for the Treatment of Historic Properties in considering the local government's role in overseeing work to locally designated landmarks and districts. Evaluation of the performance of the CLG shall include the ability to maintain an adequate and qualified commission as called for in subsection (e)(2) of this section with all commission members having a demonstrated interest, competence, or knowledge in historic preservation.

- (1) The Texas SHPO shall conduct a full evaluation of each CLG no less than once every four years. Written procedures and standards for evaluating CLG performance in program operation and administration shall be included in the Certification Agreement and in the Handbook.

- (2) The Texas SHPO shall promptly notify the CLG in writing of the results of the evaluation and must maintain written records for all evaluations.

- (3) If the performance of a CLG is unsatisfactory, the Texas SHPO shall suggest ways the CLG can improve its performance and stipulate a time frame in which the improvements are to be made.

(i) Decertification. If the Texas SHPO determines that a CLG has not complied with the terms of the Certification Agreement, and/or has not improved sufficiently within a reasonable stipulated time frame as recommended during the monitoring process, the Texas SHPO must notify the CLG in writing of its intent to recommend decertification to the NPS. During the decertification process:

- (1) The Texas SHPO may begin procedures for the suspension and termination of financial assistance to that local governmental entity in accordance with the HPF grants manual.

- (2) Recertification shall not be permitted until all previously identified inadequacies have been addressed to the satisfaction of the Texas SHPO, and a demonstrated effort has been made by the local government to strengthen local preservation efforts above and beyond previous attempts.

(j) Funds for Certified Local Governments. The Act provides that at least 10 percent of the Texas SHPO's annual HPF allocation be made available in the form of sub grants to CLGs to provide financial assistance for local activities associated with the identification, evaluation, designation, and protection of historic and prehistoric properties. Although each CLG is eligible to receive funds from this allocation, there is no requirement that funds be awarded to all local governments that are eligible. All procedures, terms and conditions for application to receive a sub grant as part of the Program shall be found in the Handbook.

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

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TRD-201702882

Mark Wolfe

Executive Director

Texas Historical Commission

Earliest possible date of adoption: September 17, 2017

For further information, please call: (512) 463-6100



## CHAPTER 16. HISTORIC SITES

### 13 TAC §§16.2, 16.3, 16.11

The Texas Historical Commission (hereafter referred to as the "Commission") proposes amendments to §§16.2, 16.3, and 16.11 of Title 13, Part 2, Chapter 16 of the Texas Administrative Code concerning historic sites. These amendments are needed as part of the Commission's overall effort to clarify language in order to implement necessary updates, additions and changes to more precisely reflect the procedures of the historic sites division.

In this issue of the *Texas Register*, the Commission concurrently proposes amendments to the rules in Chapter 16 pursuant to Texas Government Code §2001.039.

Mark Wolfe, Executive Director, has determined that for the first five-year period the rule changes are in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the rules.

Mr. Wolfe has also determined that for each year of the first five year period these rule changes are in effect the public benefit anticipated as a result of the implementation of these rules will be improvements in the administration of the Commission. There will be minimal effects on small businesses or micro-businesses. There are no anticipated economic costs to persons who are required to comply with the amendments to these rules as proposed.

Comments on the proposal may be submitted to Joseph Bell, Deputy Executive Director of Historic Sites, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711. Comments will be accepted for 30 days after publication in the *Texas Register*.

The amendments to these rules are proposed under §442.005(q), of the Texas Government Code which provides the Commission with the authority to promulgate rules and conditions to reasonably effect the purposes of those chapters; §442.0056, relating to the acquisition of historic sites; §442.005(p), providing the Commission with the authority to accept gifts and donations; and §442.105, which allows the Commission to set fees for historic sites.

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

#### §16.2 *Historic Sites Admission and Use*

##### (a) Admission Fees.

(1) An admission fee may be levied at the Commission's historic sites. The fee will grant entry and provide certain privileges for a specific date or part thereof.

(2) Reduced fees may be established for visitors in the following categories:

(A) Children under 6 years old;

(B) Youth 6 through 18 years of age;

(C) School children visiting as part of a school activity (field trip); ~~and~~

(D) Groups of 10 or more who have made advance reservations;[-]

(E) Seniors 65 years or older;

(F) Family groups (adult and children combinations);

(G) Veterans of the US. Armed Forces;

(H) Active military member and family; and

(I) State Historic Sites Annual Pass.

(3) The Commission may enter into agreements with non-profit organizations, in particular friends groups associated with the Commission's historic sites, to admit members of the organization without payment of an admission fee.

(4) An admission fee will be set by the Executive Director and advertised for each historic site, except the National Museum of the Pacific War. The fee will be based on the location, size, facilities and development of each individual historic site.

(5) The fee for admission to the National Museum of the Pacific war will be established by agreement between the Commission and the Admiral Nimitz Foundation.

(6) The Executive Director may at his discretion waive any admission fees or conditions thereof established in this section at any historic site where circumstances adversely affect public enjoyment of the site. The Executive Director may designate other agency personnel to discount or waive admission fees.

(7) The Executive Director may discount or waive entrance or other use fees in order to enhance utilization, promote future visitation of historic sites or facilitate contribution of volunteer services. The Executive Director may designate other agency personnel to discount or waive admission fees.

(8) Upon finding a need for public safety or welfare or preservation of site resources the Executive Director or his/her designee may impose restrictions on public activity and conduct and may limit the use of any area or facility in any historic site or portion thereof. It is an offense for an unauthorized person to enter or remain in an area or participate in any activity so restricted by the Executive Director.

(9) Commission employees and emergency personnel are exempt from this chapter when this chapter conflicts with the discharge of their official duties to the extent of that conflict.

(10) The Executive Director may establish an annual admission fee for certain historic sites. The annual permit will admit its holder unlimited admission to a specific property during the calendar year beginning at the date of purchase.

(11) The historic sites may accept cash, credit cards, or checks for payment of fees depending on the capability of each site.

(12) The Executive Director will establish use fees for historic sites with overnight camping facilities, overnight room rental or additional recreational facilities, including but not limited to RV hook ups, boat launches, and equipment rental.

(13) Hours and days of operation of each historic site will be determined by the Executive Director or his/her designee and advertised in a prominent way for each historic site.

(b) Activity and Facility Use Fees.

(1) Use of the Commission's historic sites by groups for personal or organizational purposes, such as picnics, reunions, receptions, etc. is encouraged as a way to engage a wider audience for the historic sites and increase communities' enjoyment and understanding of the sites and their mission. A reasonable fee may be charged for such use to help offset the Commission's costs and to generate revenue to support a site's primary mission.

(2) Facility use may not conflict with the commission's primary mission to preserve and interpret a historic site including:

(A) The routine operation of a site for public enjoyment;

(B) The ability of visitors to have an enjoyable and educational experience;

(C) The safety of staff, visitors, and users; and

(D) The availability of site staff to coordinate and oversee these events.

(3) The Executive Director or his/her designee will establish guidelines governing circumstances when rentals are appropriate, the times and activities allowed, and special conditions related to preservation and use of a site. This chapter must be consistent with the mission stated in paragraph (2) of this subsection.

(4) The Executive Director may establish reasonable use fees for individual historic site activities or facilities. Fees may be established on an hourly, daily, overnight, weekly, monthly, seasonal or annual basis. The Executive Director or his/her designee may waive or reduce the fees where it is in the best interests of the historic site or program.

(c) Reservations.

(1) Reservations for historic site facilities may be accepted for sites with facilities available for public use. The Executive Director or his/her designee is authorized to prescribe such procedures and conditions for reservations, deposits and partial or full refunds as needed.

(2) A written facility use application must be signed and submitted by the requestor describing the purpose of the event or activity, the facilities requested, the number of people anticipated to participate, all activities that are part of the event, schedule of the activity, and duration of the event including time for set up and take-down.

(3) The Executive Director or his/her designee will establish site specific requirements and guidelines, in addition to the rules stated in this section for participants in facility use activities.

(d) Routine or Low Impact Events.

(1) Routine events including picnics, use of pavilions, shelters or designated areas for social gatherings involving fewer than 50 people and commercial still photography that involves only hand-held equipment, no props and no more than 5 people, including the photographer will be approved by the site manager where the following conditions are met:

(A) No significant staff time is needed to set up or take down the area;

(B) Applicant agrees to leave the premises in the condition it was found, free of trash and debris;

(C) No electrical or other utility hookups are required;

(D) The activity will not interfere with the normal operation of the site or access to the site by visitors during normal open hours; and

(E) No alcohol will be consumed.

(2) A fee will be charged based on a site's approved facility use fee program.

(3) General liability insurance coverage by the applicant with Commission named as an additional insured may be required if deemed necessary by the Site Manager.

(4) The site manager will approve or deny a use application for routine/low impact events.

(e) Major or High Impact Events.

(1) A Facility Use will be considered a major event if it includes any of the following:

(A) Commercial photography involving 6 or more people including the photographer, large props, or any stationary equipment, or motion picture filming for sale or profit;

(B) Events involving more than 50 people;

(C) Use of site staff to set up or take down furniture, tents, equipment, etc.;

(D) Historic Site owned tents, furniture, equipment, or utility connections;

(E) Serving alcohol; or

(F) Interfering with the normal operation of the site or disrupts visitor services.

(2) Sponsors/applicants for use of a Commission historic site for a major event must sign a written agreement with the Commission to be approved by the Executive Director or his/her designee. The sponsor must be provided a copy of the site's Facility Use Rules.

(3) The sponsor must provide general liability insurance coverage in an amount determined by the Executive Director or his/her designee naming the Commission as an additional insured. If alcohol will be served, the sponsor or caterer must provide liquor liability insurance with a minimum limit of \$1 million per occurrence. A certificate of insurance coverage must be included in the written agreement for facility use.

(4) Alcohol (wine and beer only) may only be served at a private event. The site manager will determine if and how many security personnel are required for any event at which alcohol is served. Security personnel will be hired and paid by the program/activity sponsor.

(5) Minors may attend events where alcohol is served, only if the minor's parent or guardian is present.

(6) A fee will be collected based on a site's approved facility use fee program. In addition, sponsors will pay the cost of all staff overtime required to properly set up, take down and supervise the event as determined by the Executive Director or his/her designee.

(f) Facility uses including the following activities are permitted at Commission historic sites only with the express permission of the Executive Director or his/her designee:

(1) Events that pose a risk of damage to the site or injury to persons attending the event.

(2) Fundraising events for other non-Commission affiliated non-profit organizations.

(3) Events involving firearms.

(g) The following activities are not permitted as part of a facility use activity at Commission Historic Sites:

(1) Events that are incompatible with or conflict with the public service, preservation and educational mission of the historic site;

(2) Events that may endanger natural or cultural resources of the site through physical impact, over use, or overcrowding;

(3) Events involving live ammunition or pyrotechnic displays;

(4) Political events or activities;

(5) Events involving unsupervised or inadequately supervised minor children;

(6) Events or activities that involve domestic animals without appropriate controls or supervision, or wild animals under any circumstances; or

(7) Commercial activities including selling, recruiting, soliciting or promoting products or services to visitors, in particular, activities that promote cigarette smoking, alcohol consumption, or behavior inappropriate at a State Historic Site.

#### *§16.3 Addition of Historic Sites to the Texas Historical Commission Historic Sites Program*

(a) Criteria. The addition of new Historic Sites will follow the "Historic Sites Division Property Collection Plan" as posted on the Texas Historical Commission's website at [thc.texas.gov](http://thc.texas.gov) detailing themes and subthemes in Texas history, site assessment, operational and managerial evaluations processes and the following criteria: [Consideration for accepting a historic property for development as a Commission historic site will be based on the following criteria:]

(1) The property must have recognized statewide or national significance based on the standards of the National Register of Historic Places.

(2) The property should be able to provide interpretation of a significant theme or event of Texas history that is not fully represented by the Commission's existing historic sites or other historic sites accessible to the public. The Commission will strive to maintain a geographic, cultural and thematic balance in its program.

(3) The property should have exceptional integrity of location (including surrounding environment), design, material, setting, feeling, and association.

(4) The property should have appropriate collections (objects, manuscript material, artifacts) associated with the historic site or necessary artifacts related to the site's history and period of significance should be identified and available.

(5) The property must be appropriate for use as an interpretive museum or historic site, have high potential to attract and accommodate diverse and new audiences, and be accessible to travelers as well as to the local community.

(6) The property must be available without restrictions that would limit the Commission's options for preservation and interpretation as a historic site (for example, a life estate retained by the grantor, restrictions against future sale or conveyance, or limits on alterations deemed appropriate by the Commission). The Commission encourages the use of easements or other restrictions to ensure the preservation of historic sites.

(7) Financial resources must be available or assured, including an endowment fund where appropriate, or sources of funding must be identified in a comprehensive funding plan to ensure the restoration, interpretation, development, long term operation and preservation of the site.

(8) The property must have the potential for strong supporting partnerships including community support.

(b) Evaluation Process. To evaluate the site against these criteria, the Commission will follow a two-step process as follows.

(1) A staff committee will be appointed to conduct a preliminary review of the property with reference to criteria noted in subsection (a) of this section. The committee will make a recommendation to the Commission whether to proceed with the second step evaluation.

(2) Staff will obtain and use the following information:

(A) A description of the property, including land, structures and other features.

(B) A preliminary inventory of collections and equipment.

(C) A statement of significance or reference to its designation on the National Register of Historic Places/National Historic Landmark and an evaluation of the site's integrity.

(D) A statement from the current owner indicating a willingness to transfer the real and relevant personal property and the terms and conditions for such a transfer.

(E) Needed and available funding for development costs and continuing operational costs.

(F) Letters of support from interested parties, including an indication of willingness to create an appropriate support group.

(G) A statement identifying how the property would support the educational mission of the Historic Sites Program to serve a broad and diverse audience.

(H) A preliminary estimate of the visitation and costs for development and operation of the site.

(3) Upon positive action by the Commission on the recommendation noted in paragraph (1) of this subsection, the staff will prepare or have prepared a management plan for the site including:

(A) Evaluation of the site, including buildings, support facilities, infrastructure (including roads, trails, utility service/water and sewer systems), landscape features, and collections.

(B) Merits of the proposed site compared to other sites in Texas that embody the same or similar historical or physical characteristics.

(C) Preservation and facility development needs.

(D) Costs and timeline for making the property available to the public.

(E) Any limitation on site development, such as environmental regulations and local restrictions (zoning, land use).

(F) Needed staffing and consultant services for development of the site.

(G) Needed staffing and services for operation of the site, including ongoing costs of preservation operation, and marketing.

(H) Business plan for the site identifying projected audience/annual visitation, sources of funds for all aspects of the program



including available community support, potential to generate revenue, and endowment.

(4) This plan will be reviewed by a panel of experts including an independent Texas historian, museum professional, and expert in heritage tourism and their recommendation will be taken into consideration by the Commission to determine whether the property should be accepted.

(5) The decision to accept a site is within the sole discretion of the Commission, including determining whether acceptance of a property that meets all technical criteria is in the best interest of the State.

(c) A property that is adjacent to an existing THC State Historic Site that will enhance the preservation, protection or interpretation of the existing site, may be acquired by purchase or donation by action of the Commission on recommendation of the Executive Director, without the evaluation process described in subsection (b) of this section.

(d) A right of way or easement required to allow for installation or connection of necessary utilities at a THC State Historic Site between regular meetings of the Commission, may be approved by the Executive Director with the approval of the Chairman. This action will be ratified at the next meeting of the Commission.

#### §16.11 Philanthropic Naming of State Historic Site Facilities

(a) Philanthropic naming refers to the naming of a property or some component of a property for an individual or civic or charitable group in exchange for financial or other consideration.

(b) The term "civic or charitable group" shall mean a nonprofit entity, family or group. For-profit entities shall not be considered civic or charitable groups for purposes of this section.

(c) Only non-historic features at State Historic Sites may be named pursuant to these rules, such as new visitor centers, meeting rooms, theaters, galleries, plazas, and other similar features designed for public use.

(d) Philanthropic naming rights may only be granted as part of a philanthropic naming rights plan developed in support of a particular project at a State Historic Site and approved by the Commission.

(e) Philanthropic naming rights plans shall establish an aggregate campaign goal, taking into consideration capital costs, annual operating and maintenance costs, desirability and marketability, and visibility and prominence of the features to be named.

(f) Subsequent to the approval of a philanthropic naming rights plan by the Commission, the Executive Director and the Deputy Executive Director for Historic Sites, working with the agency's Development Director, shall have the authority to independently review and approve naming proposals consistent with said plan. In reaching this decision, they shall consider whether the gift is from a potentially controversial source, how the donation is to be acknowledged on the site, and any other relevant factors. If, in the opinion of the staff the gift could be controversial, staff may refer the proposed gift to the Commission for final approval.

(g) All assets for which naming rights will be offered shall be valued as a function of the aggregate campaign goal within the philanthropic naming rights plan.

(h) All naming rights shall be approved for a specific term, which shall not be longer than the useful life of the property or facility, as determined by the Commission, unless otherwise established in the naming rights plan approved by the Commission.

(i) The Commission shall have the authority to rescind the naming of any property or component of any property if, in the Commission's opinion, the individual, civic or charitable group is found to have participated in any behavior which would have a negative impact on the site or agency or would discredit the work of the agency in any way.

(j) Guidelines in the recognition and acknowledgement of gifts and donations dedicated to State Historic Sites are detailed in the "Texas Historical Commission Donor Recognition Policy" as posted on the Texas Historical Commission's website at [thc.texas.gov](http://thc.texas.gov). Design guidelines for State Historic Sites donor recognition are detailed and incorporated into the "Texas Historical Commission Donor Recognition Policy" to include general guidelines, specific design guidelines, recognition of campaign/endowment donors at historic sites facilities and recognition of annual operating gifts at historic sites facilities.

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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Mark Wolfe

Executive Director

Texas Historical Commission

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For further information, please call: (512) 463-6100



## CHAPTER 17. STATE ARCHITECTURAL PROGRAMS

### 13 TAC §17.1

The Texas Historical Commission (hereafter referred to as the Commission) proposes amendments to §17.1 (relating to Texas Preservation Trust Fund) of Title 13, Part 2, Chapter 17 of the Texas Administrative Code (relating to State Architectural Programs). These changes are needed to clarify the two-step application process, update the name of the State Antiquities Landmark designation, and make minor changes to text for clarification purposes.

In this issue of the *Texas Register*, the Commission concurrently proposes amendments to the rules in Chapter 17 pursuant to Texas Government Code §2001.039.

Mark Wolfe, Executive Director, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the rules.

Mr. Wolfe has also determined that for each year of the first five year period the rules are in effect the public benefit anticipated as a result of the implementation of these rules will be primarily a better understanding of the grant application process. There will be minimal effects on small businesses or micro-businesses, and there are minimal anticipated economic costs to persons who are required to comply with the rules as proposed.

Comments on the proposal may be submitted to Mark Wolfe, Executive Director, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711. Comments will be accepted for 30 days after publication in the *Texas Register*.

The amendments are proposed under §442.005(q) and §442.015(f) of the Texas Government Code, which provides the Commission with the authority to promulgate rules and conditions to reasonably effect the purposes of this chapter and provides the Commission with the authority to administer the Texas Preservation Trust Fund Account.

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

§17.1. *Texas Preservation Trust Fund.*

(a) Definition. The Texas preservation trust fund (hereinafter referred to as trust fund or fund) is a fund in the state treasury, created by enactment of Senate Bill 294 by the 71st Texas Legislature (1989), which amended the Texas Government Code, Chapter 442, by adding §442.015. The trust fund shall consist of transfers made to the fund, including state and federal legislative appropriations, grants, donations, proceeds of sales, loan repayments, interest income earned by the fund, and any other monies received. Funds may be received from federal, state, or local government sources, organizations, charitable trusts and foundations, private individuals, business or corporate entities, estates, or any other source.

(b) Purpose. The purpose of the Texas preservation trust fund is to serve as a source of funding for the Texas Historical Commission (Commission) to provide financial assistance to qualified applicants for the acquisition, survey, restoration, preservation, or for planning and educational activities leading to the preservation, of historic properties and associated collections in the State of Texas.

(c) Types of assistance. Commission shall provide financial assistance in the form of grants or loans. Grant recipients shall be required to follow the terms and conditions of the Preservation Trust Fund Grants and other terms and conditions imposed by Commission at the time of the grant award. Loans shall have a term not to exceed five years at an interest rate at the prime interest rate at the time the loan is made.

(d) Allowable use of trust fund monies. In all cases when no specification is made or the specified amount is less than \$5,000 the proceeds and/or interest on such gifts or monies shall be unencumbered and shall accrue to the benefit of the entire fund. Money deposited to the fund for specific projects shall only be used for the projects specified, provided that the specific project has received approval of the Commission, there is or will be a dedicated account within the Trust Fund for that project, and all other requirements herein are met. Money deposited to specified projects in amounts of \$5,000 or greater shall retain all proceeds or interest earned for that specified project unless the donor stipulates that all proceeds or interest earned shall be unencumbered and accrue to the benefit of the entire fund.

(e) Organization. The Texas preservation trust fund shall be administered by the Commission through its Executive Committee. The trust fund advisory board and commission staff shall provide support and input as needed.

(f) All actions of the Executive Committee are subject to ratification by the full Texas Historical Commission with the exception of emergency grants. Duties of the Executive Committee are:

- (1) to approve all policies and guidelines for the administration of the fund or any of its associated boards and committees;
- (2) to approve the acceptance of grants or other donations of money, property, and/or services from any source. Money received shall be deposited to the credit of the Texas preservation trust fund; and
- (3) to provide final approval of all trust fund allocations based on advisory board and commission staff recommendations.

(g) Texas Preservation Trust Fund Advisory Board (hereinafter referred to as advisory board) as established per Texas Government Code §442.015, which created the Texas preservation trust fund. Members of the advisory board shall serve a two-year term expiring on February 1 of each odd-numbered year. Advisory board members may be reappointed. Advisory board members will continue to serve until a new appointment is made or until reappointed. A member of the advisory board is not entitled to compensation for his service, but is entitled to reimbursement for reasonable expenses incurred while attending advisory board meetings subject to any limit provided by the General Appropriations Act. The advisory board shall meet annually in the fall of each year or at other times as determined by the commission or Executive Director. Duties of the advisory board are:

(1) to make recommendations to the Commission through the Executive Committee on all trust fund project allocations with the exception of emergency grants, as per the trust fund statute;

(2) to consult with and advise the Executive Committee and Commission staff on matters relating to more efficient utilization or enhancement of the trust fund in order to further the cause of historic preservation throughout Texas; and

(3) to provide advice and guidance in their respective area of expertise.

(4) Code of conduct--The Commission Code of Conduct shall apply to members of the advisory board.

(5) Vacancies--Any vacancy on the advisory board may be filled at any time in the same manner as the incumbent member was appointed.

(h) Texas preservation trust fund staff. The executive director of the Texas Historical Commission shall organize and supervise the staff for the Texas preservation trust fund.

(i) Eligible property or projects. To be considered eligible for grant assistance, a property or project must:

(1) be included in the National Register of Historic Places; or

(2) be designated as a Recorded Texas Historic Landmark; or

(3) be designated as a State Archeological Landmark (also known as a State Antiquities landmark); or

(4) be determined by the commission to qualify as an eligible property under criteria for inclusion in the National Register of Historic Places or for designation as a Recorded Texas Historic Landmark or a State Archeological Landmark (also known as a State Antiquities landmark); or

(5) be determined by the commission to qualify as a heritage ~~[an]~~ education grant per subsection (n)(4) ~~[(m)(4)]~~ of this section; or

(6) be determined by the commission to qualify as an eligible curation management project per subsection (n)(5) ~~[(m)(5)]~~ of this section; or

(7) be determined by the commission to qualify as an emergency grant project per subsection (n)(6) ~~[(m)(6)]~~ of this section; or

(8) be determined by the commission to qualify as a planning grant project per subsection (n)(3) ~~[(m)(3)]~~ of this section.

(j) Eligible Applicants: Any public or private entity that is the owner, manager, lessee, maintainer, potential purchaser of an eligible

property, or any public or private entity whose purpose includes historic preservation is eligible for fund assistance. If applicant is not the owner of the eligible property, written approval must be submitted by the owner at time of application agreeing to follow all rules and conditions of the commission required for receipt of funds.

(k) Submission of initial grant [Grant] applications.

(1) Initial grant application [Application] schedules and deadlines will be set by the commission. Application forms are to be received by the commission at its offices by these deadlines.

(2) Applicants [To remain eligible for potential funding, applicants] must complete the initial grant application form and include all required documentation [attachments] as stated in the grant application instruction packet [booklet].

(3) Initial grant [Grant] applications that are incomplete and/or received after the application deadline are ineligible for review [funding].

~~[(4) Grant applications with budgets showing a high percentage of administrative costs will be considered to be less competitive than applications having little or no administrative costs.]~~

(l) Submission of project proposals.

(1) Once initial grant applications are selected to proceed to the project proposal stage, commission staff will confer with applicants to review the instruction manual for preparation of the project proposal.

(2) Project proposal schedule and deadlines will be set by the commission. Project proposals are to be received by the commission at its offices by these deadlines.

(3) To remain eligible for potential funding, project proposals must have a complete application form and include all required attachments as stated in the instructions manual.

(4) Project proposals that are incomplete and/or received after the proposal deadline are ineligible for funding.

(5) Project proposals with budgets showing a high percentage of administrative costs will be considered to be less competitive than applications having little or no administrative costs.

(6) In kind match request: although not normally allowed, in exceptional cases an applicant may make a written request for up to one-half of the total required match to be provided in-kind by donated materials and labor. The in-kind match form must be included with the project proposal for consideration by the commission.

(m) ~~[(t)]~~ Grant awards.

(1) Grants are awarded on a competitive basis to eligible properties or projects judged by the Commission to provide the best use of limited grant funds or on an emergency basis for properties or collections deemed highly significant and/or endangered by the Commission. The Executive Director, with the approval of the Executive Committee or Commission, will have the authority to award grants on an emergency basis in accordance with subsection ~~(n)(6)~~ ~~[(m)(6)]~~ of this section.

(2) Meeting the eligibility criteria and submissions of a grant application does not guarantee award of a grant in any amount.

(3) The commission may consider an appropriate distribution of funds across geographic area, discipline, or type of preservation grant when making awards.

(n) ~~[(m)]~~ Types of preservation grants. Preservation grants shall be awarded only for:

(1) architectural or archeological development ("preservation," "restoration," "rehabilitation," and "reconstruction," as defined by the Secretary of the Interior's Standards for The Treatment of Historic Properties, latest edition or Secretary of the Interior's Standards for Preservation Planning and Standards for Archeological Documentation, latest edition); the costs include professional fees to ~~[prepare an acceptable project proposal and]~~ supervise actual construction, the costs of construction, and related expenses approved by the commission; or

(2) architectural or archeological acquisition of absolute ownership of an eligible property (that is what is defined in subsection (i) of this section) and related costs and professional fees approved by the commission; or

(3) planning costs necessary for the preparation of a historic structure reports, historic or cultural resource reports, preservation plans, maintenance studies, resource surveys, local and regional preservation plans or surveys, and/or feasibility studies as approved by the commission; or

(4) heritage education costs necessary for training individuals and organizations about historic resources and historic preservation techniques; or

(5) curation management cost necessary for a professional inventory and/or rehabilitation of state associated held-in-trust archeological collections (such as processing, cataloging and collections housing improvements). Held-in-trust collections refer to those State associated collections under the authority of the Texas Historical Commission that are placed in a curatorial facility for the care and management; or

(6) emergency costs necessary for the acquisition, evaluation, planning or repair of eligible property or projects as defined in subsection (i) of this section, to reduce or eliminate an immediate threat, resulting from a natural or man-made disaster. In consideration of the emergency nature, the commission may develop and adopt policy and procedures to implement this type of preservation grant with requirements separate from those in this rule.

(o) ~~[(n)]~~ Eligible match for grant assistance. Applicants eligible to receive grant assistance shall provide a minimum of one dollar in cash match to each state dollar for approved project costs. The commission or the Executive Director upon designation by the Commission, by written policy, may approve in-kind match for projects involving highly significant and endangered properties. In exceptional circumstances and upon recommendation by the Executive Director of the Commission, the Commission may also waive the one to one cash match requirement completely, and/or approve any combination of matching cash or in-kind contribution percentages that the Commission deems appropriate.

(p) ~~[(o)]~~ Initial grant allocations. Grants shall be allocated by vote of the Commission at large upon the recommendation of the Executive Committee at any duly noticed meeting of the commission. Reallocation of returned funds may be made by the Executive Committee of the commission upon the recommendation of the Executive Director of the commission.

(q) ~~[(p)]~~ Starting project work. [Final grant approval].

(1) The funding agreement must be executed prior to starting any project work.

(2) The project start date is typically the date of the executed funding agreement.

(3) Commencement of project work. Project work as approved shall commence within 90 days of the assigned start date unless

otherwise approved in writing by the commission. Approved project work may not begin before the assigned project start date.

(4) If any expenses enumerated in the project proposal detailed budget do not qualify for grant funds, these expenses with be identified by the commission and should be either omitted from the scope of work or separated into a bid alternate for exclusion from the grant funded work.

(5) Any changes in the scope of work or significant changes (greater than 10 percent) in the detailed budget must receive the written approval of the commission prior to implementation.

~~{(1) Submission of project proposal, scope of work, or research design.}~~

~~{(A) For architectural projects to remain eligible for the grant allocation, an acceptable project proposal, consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties, latest edition, and consisting of plans/specifications, appraisal, unexecuted contract documents, and/or other material as required shall be submitted to the commission for review and approval. An acceptable project proposal must be submitted within three months of the allocation by the Commission unless otherwise approved in writing by the commission. }~~

~~{(B) For archeological projects to remain eligible for the grant allocation, modifications to the scope of work and research design as required by the commission shall be submitted to the commission for review and approval. }~~

~~{(C) For educational projects to remain eligible for the grant allocation, an acceptable project proposal must be submitted within three months of the allocation by the Commission unless otherwise approved in writing by the commission. }~~

~~{(D) For planning projects to remain eligible for the grant allocation, an acceptable project proposal must be submitted within three months of the allocation by the Commission unless otherwise approved in writing by the commission.}~~

~~{(2) Review and approval of project proposal, scope of work, or research design. Upon completion of the review, approved projects will be notified of the assigned project start date, as well as the project expenses eligible for grant funding (allowable expenses) and those expenses not eligible (unallowable expenses). }~~

~~{(3) Commencement of project work. Project work as approved shall commence within 90 days of the assigned start date unless otherwise approved in writing by the commission. Approved project work may not begin before the assigned project start date, except for planning work required by the project proposal. }~~

(6) ~~{(4) Forfeiture of grant allocation. Failure to comply with the deadline for submission of an acceptable project proposal, or to meet the deadline for starting the project work, or to perform any part of the project work as approved, or to receive permission from the commission before commencing additional work may result in forfeiture of the full grant amount.~~

~~(r) ~~{(q)}~~ Award of contract.~~

(1) Architectural development grant projects. Despite no specific procurement requirements, state, local, or other public entities are responsible for following appropriate procurement methods as required by the Texas Government Code or Local Government Code as applicable for the respective property owned. This may also apply to a non-profit organization that is funding construction on a publicly owned property [All project work as approved in the project proposal

shall be awarded subsequent to formal advertising for bids or other method approved in writing by the commission.].

(2) Architectural planning grant projects. The commission recommends that contract [Contract] for work described in the [approved] project proposal [shall] be awarded subsequent to interview with at least three professional firms[, or other method approved in writing by the commission].

~~(s) ~~{(r)}~~ Grant reimbursement procedures.~~

~~{(1) Reimbursement of allowable project expenses. The only expenditures made before a start date that are reimbursable are for planning work required by the project proposal after the initial grant allocation notification. }~~

(1) ~~{(2)}~~ All payment of grant funds shall be strictly on a reimbursement basis with the exception of emergency grants in accordance with subsection (n)(5) of this section for which the Executive Committee or Commission may determine other payment methods. Reimbursement may be made after the competitive award of contract and submission of proof of all incurred allowable expenses in increments of at least \$2,500 or at least 10% of the total project cost, whichever is lesser; or according to a schedule as determined by the Executive Director of the Commission; or at the completion of the project after an acceptable required completion report and/or planning documents have been received by the commission.

(2) ~~{(3)}~~ Deadline for submission of requests for reimbursement. Allowable project expenses equal to two times the grant amount shall be incurred by the deadlines announced by the commission. Proof of those incurred expenses and corresponding payments shall be submitted to the commission by the deadlines announced by the commission.

(3) [4] Forfeiture of grant. Failure to expend the full grant amount by the deadlines as announced by the commission or to submit to the commission all required material by the deadline as announced by the commission may result in forfeiture of the remaining grant amount unless otherwise approved in writing by the commission.

~~(t) ~~{(s)}~~ Deed restrictions/designations/conservation easements. Acquisition and development projects shall be encumbered, prior to reimbursement of any project expenses, with a protective designation, deed restriction, conservation easement (as defined in Title 8, Natural Resources Code, Chapter 183), or other appropriate covenants in favor of the state in a format acceptable to the commission. The deed restriction shall run with the land, be enforceable by the State of Texas, and its duration will be based upon the cumulative amount of grant assistance. The terms of the deed restrictions/designations/conservation easements shall be set by the commission.~~

~~(u) ~~{(t)}~~ Repayment penalty for resale of property within one year of acquisition. If a property acquired with a preservation grant is sold within one year of the purchase date, the project owner may be required to repay the State of Texas the amount of the grant allocation.~~

~~(v) ~~{(u)}~~ Completion reports. Projects assisted with acquisition or development grants will be required to submit a project completion report with copies as determined by the commission, consisting of photo documentation and project summary prepared by the supervising project professional, to the commission no later than deadlines announced by the commission. The commission may require completion reports with appropriate documentation for planning, heritage education, curation, or emergency grants. Final reimbursement, in the amount of 10% of the grant allocation, may be retained until receipt of an acceptable completion report by the commission.~~

~~(w) [v] Professional standards.~~

(1) Project personnel for development, curation, and planning grants. Project proposal documents for development and planning grants shall be prepared by, and development work supervised by, appropriate personnel in compliance with the following criteria except as otherwise approved by the Executive Director:

(A) History. The minimum professional qualifications in history are a graduate degree in history or closely related field; or a bachelor's degree in history or closely related field plus one of the following:

(i) at least two years of full-time experience in research, writing, teaching, interpretation, or other demonstrable professional activity with an academic institution, historical organization or agency, museum, or other professional institution; or

(ii) substantial contribution through research and publication to the body of scholarly knowledge in the field of history.

(B) Archeology. The minimum professional qualifications in archeology are a graduate degree in archeology, anthropology, or closely related field plus:

(i) at least one year of full-time professional experience or equivalent specialized training in archeological research, administration, or management of archeological collections;

(ii) at least four months of supervised field and analytic experience in general North American archeology; and

(iii) demonstrated ability to carry research to completion.

(iv) In addition to these minimum qualifications, a professional in prehistoric archeology shall have at least one year of full-time professional experience at a supervisory level in the study of archeological resources of the prehistoric period. A professional in historic archeology shall have at least one year of full-time professional experience at a supervisory level in the study of archeological resources of the historic period.

(C) Architectural history. The minimum professional qualifications in architectural history are a graduate degree in architectural history, art history, historic preservation, or closely related field plus one of the following:

(i) at least two years of full-time experience in research, writing, or teaching in American architectural history or restoration architecture with an academic institution, historical organization or agency, museum, or other professional institution; or

(ii) substantial contribution through research and publication to the body of scholarly knowledge in the field of American architectural history.

(D) Architecture. The minimum professional qualifications in architecture are a professional degree in architecture plus at least two years of full-time professional experience in architecture; or a state license to practice architecture.

(2) Project personnel for acquisition grants. The single appraisal required for acquisition grants shall be prepared by a professional appraiser.

(3) Project personnel for education and emergency projects shall be approved by the Executive Director.

(x) [(w)] Performance standards. All development and planning projects must be in conformance with the Secretary of the Interior's Standards for the Treatment of Historic Properties, latest edition. All archeological projects must be in conformance with the Secretary

of the Interior's Standards for Preservation Planning and Standards for Archeological Documentation, latest edition.

(y) [(x)] Compliance with requirements for accessibility to facilities by persons with disabilities. All projects must be in compliance with or in receipt of appropriate variance from the regulations issued by the Texas Department of Licensing and Regulation, under Texas Government Code Chapter 469, Elimination of Architectural Barriers.

(z) [(y)] Compliance with Uniform Grant and Contract Management Act. All projects by political subdivisions of the state must be in compliance with the Uniform Grant and Contract Management Act, Texas Government Code Chapter 783.

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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Mark Wolfe

Executive Director

Texas Historical Commission

Earliest possible date of adoption: September 17, 2017

For further information, please call: (512) 463-6100



## CHAPTER 21. HISTORY PROGRAMS SUBCHAPTER B. OFFICIAL TEXAS HISTORICAL MARKER PROGRAM

### 13 TAC §21.7, §21.9

The Texas Historical Commission (Commission) proposes amendments to §21.7, concerning application requirements for Official Texas Historical Markers, and to §21.9, concerning the application evaluation procedures for Official Texas Historical Markers. These amendments clarify vague and inaccurate language in the Texas Administrative Code.

The proposed amendment to §21.7 removes inaccurate language regarding the Commission website address and the type of application file accepted and provides clarification on the year-long acceptance of Historic Texas Cemetery name and date plaque applications and the owner consent requirement for Recorded Texas Historic Landmarks as related to the Official Texas Historical Marker application requirements.

The proposed amendment to §21.9 revises the Commission website address and includes details that clarify Official Texas Historical Marker application evaluation procedures.

Mark Wolfe, Executive Director, has determined that for the first five-year period the amended rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering these rules.

Mr. Wolfe has also determined that for the first five-year period the amended rules are in effect, the public benefit will be the preservation of and education about state historic resources.

Mr. Wolfe has also determined that there will be no impact on small or micro-businesses as a result of implementing these rules and there are no anticipated economic costs to persons who are required to comply with the amendments to these rules as proposed.

Comments on the proposal may be submitted to Mark Wolfe, Executive Director, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711. Comments will be accepted for 30 days after publication in the *Texas Register*.

These amendments are proposed under the authority of Texas Government Code §442.005(b), which designates the Commission as the agency responsible for the administration of the Antiquities Code of Texas; Texas Government Code §442.005(q), which provides the Commission with the authority to promulgate rules to reasonably affect the purposes of the Commission; Texas Government Code §442.006(h), which requires the Commission to adopt rules for the historical marker program; Texas Government Code §442.0051, which allows the Commission, by rule, to establish reasonable fees for commission purposes; Texas Natural Resources Code §191.092, which requires the Commission to adopt rules to establish the criteria for designation for publicly-owned landmarks; and Texas Natural Resources Code § 191.096, which requires any site on private land which is designated a landmark to be marked as a landmark.

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

*§21.7. Application requirements.*

(a) Any individual, group or county historical commission may apply to the commission for an Official Texas Historical Marker. The application shall include:

- (1) a completed current Official Texas Historical Marker application form;
- (2) supporting documentation as provided in program guidelines, criteria and procedures adopted by the commission;
- (3) an application fee in the amount of \$100.

(b) Historic Texas Cemetery markers. A marker may be awarded to a cemetery only if the commission has designated the cemetery as an Historic Texas Cemetery. See §22.6 of this title for information concerning Historic Texas Cemetery designation. Historic Texas Cemetery name and date plaque applications are accepted year-round. The marker must be located either at or immediately adjacent to the designated cemetery.

(c) The following procedures shall be observed for the marker application process. Potential sponsors should check the commission web site at [www.thc.texas.gov](http://www.thc.texas.gov) [~~www.the.state.tx.us~~] for current information on the Official Texas Historical Marker Program.

(1) The sponsor must contact the county historical commission (CHC) to obtain a marker application form, to review basic program requirements and to discuss the county's review process and procedures, which differ from county to county. The commission does not mandate a specific review process at the county level, so the sponsor will need to work closely with the CHC to be sure all local concerns and procedures are addressed properly. The CHCs cannot send the application forward until they can certify that the history and the application have been adequately reviewed. Applications for Recorded Texas Historic Landmarks (RTHL) for sites located on private land must include written owner consent of the landowner.

(2) CHC reviews the marker application for accuracy and significance, and either approves the application or works with the sponsor to develop additional information as necessary.

(3) CHC-approved applications are forwarded [~~online as a Word document~~] to the History Programs Division of the commission.

Once the application is received by the commission, additional notifications and correspondence will be between the CHC contact and the commission staff contact only, unless otherwise noted.

(4) Commission staff makes a preliminary assessment to determine if the topic is eligible for review and if all required elements are included. The commission will notify the applicant through the CHC whether the application is accepted.

(5) Upon notification the application has been accepted for review, a \$100 application fee is due within ten days.

(6) Eligible applications receive further review, and additional information may be requested via email. Failure to provide all requested materials as instructed [~~within 45 days, unless a longer period is approved by the commission;~~] will result in cancellation of the application.

(7) Commission staff and commissioners review applications and determine:

- (A) eligibility for approval;
- (B) size and type of marker for each topic; and
- (C) priorities for work schedule on the approved applications.

(8) CHC and sponsor will be notified via email of approval and provided a payment form for the casting of the marker.

(9) The payment must be received in commission offices within 45 days or the application will be cancelled.

(10) Commission staff will write the marker inscription. One review copy will be provided via email to the CHC contact only for local distribution as needed. Inscription review is for accuracy of content only; the commission determines the content, wording, punctuation, phrasing, etc.

(A) Upon approval of the inscription, the CHC contact provides additional copies as necessary for committee, commission, or sponsor review and conveys a single response to the commission.

(B) Upon receipt of emailed approval by the CHC, the commission proceeds with the order.

(C) If changes recommended by the CHC are approved by the commission, staff will send a revised copy for content review. Because inscription reviews are for content only, only two reviews should be necessary to complete this step of the process. Additional requests for revisions are subject to approval by the commission, which will be the sole determiner of warranted requests for changes. Excessive requests for change, or delays in response, may, in the determination of the commission, result in cancellation of the order.

(D) Only the authorized CHC contact - chair or marker chair - can make the final approval of inscriptions at the county level. Final approval will be construed by the commission to mean concurrence by any interested parties, including the sponsor.

(11) After final approval, the order is sent to marker supplier for manufacturing. Subject to the terms of the commission vendor contract, only authorized commission staff may contact the manufacturer relative to any aspect of Official Texas Historical Markers, including those in process or previously approved.

(12) Commission staff reviews galley proofs of markers. With commission approval, manufacturing process proceeds. Manufacturer inspects, crates and ships completed markers and notifies commission, which in turn notifies CHC contact.

(13) With shipment notice, planning can begin on marker dedication ceremony, as needed, in conjunction with CHC, sponsors and other interested parties.

(14) Information on planning and conducting marker ceremonies is provided by the commission through its web site.

(15) Once the planning is complete, the CHC posts the information to the commission web site calendar.

(16) Commission staff enters marker information into the Texas Historic Sites Atlas at website [atlas.thc.texas.gov](http://atlas.thc.texas.gov) [~~atlas.the.state.tx.us~~], an online inventory of marker information and inscriptions.

(d) Application content.

(1) Each marker application must address the criteria specified in §21.9 of this chapter in sufficient detail to allow the commission to judge the merit of the application.

(2) Documentation. Each marker application must contain sufficient documentation to verify the assertions about the above criteria. If the claims in the application cannot be verified through documentation, the application will be rejected.

(e) Limitation of markers awarded.

(1) The commission will set a numerical limit on the number of markers that will be approved annually.

(2) No markers in excess of the limit may be approved except by vote of the commission to amend the limit.

§21.9. *Application evaluation procedures.*

(a) The commission adopts the following *criteria* governing evaluation for approval or rejection of applications for Official Texas Historical Markers, Recorded Texas Historic Landmarks (RTHLs), or Historic Texas Cemetery designations.

(1) Age: Structures eligible for the RTHL designation and marker must be at least 50 years old. Older structures may be awarded additional weight in evaluation and scoring.

(2) Historical significance/Architectural Significance: The RTHL designation is awarded to properties which demonstrate architectural and historical significance and architectural and historical integrity. Architectural significance alone is not enough to qualify a structure for the RTHL designation. It must have an equally significant historical association, and that association can come from an event that occurred at the site; through individuals who owned or lived on the property; or, in the case of bridges, industrial plants, schoolhouses and other non-residential properties, through documented significance to the larger community. Structures deemed architecturally significant are outstanding examples of architectural history through design, materials, structural type or construction methods. In all cases, eligible architectural properties must display integrity; that is, the structure should be in a good state of repair, maintain its appearance from its period of significance and be considered an exemplary model of preservation. Architectural significance is often best determined by the relevance of the property to broader contexts, including geography. Any changes over the years should be compatible with original design and reflect compliance with accepted preservation practices, e.g., the *Secretary of the Interior's Standards for Rehabilitation*.

(3) State of repair/Integrity: Structures not considered by the commission to be in a good state of repair are not eligible for RTHL designation. The commission reserves the sole right to make that determination relative to eligibility for RTHL markers. Subject marker topics placed at the appropriate site help maintain site integrity. Topics properly documented and understood by the public also help maintain

a high degree of integrity. [Subject marker topics placed at the appropriate site (site integrity) or topics that are documented and understood by the public maintain a high degree of integrity.]

(4) Diversity of topic for addressing gaps in historical marker program. This criterion addresses the extent to which topic relates to an aspect or area of Texas history that has not been well represented by the marker program.

(5) Value of topic as an untold or untold aspect of Texas history. This criterion addresses the extent to which topic addresses untold facets of Texas history and increases the diversity of history and cultures interpreted through the marker program.

(6) Endangerment level of property, site or topic. This criterion addresses the extent to which the property (RTHLs), site or story is in danger of being lost if its history and significance are not documented [~~addressed~~] through the marker program.

(7) Available documentation and resources. This criterion addresses the quality and balance of the research and documentation for the application.

(8) Diversity among this group of candidates. This criterion addresses the extent to which this topic represents an untold story of Texas history among the applications received during that year's marker cycle.

(9) Relevance to other commission programs. This criterion addresses the extent to which the topic coordinates with other significant programs and initiatives of the agency.

(10) Relevance to the commission's current thematic priorities. This criterion addresses the extent to which the topic coordinates with the thematic priorities set by the commission each year (varies by year).

(b) Applications and topics with *exceptional significance* directly address established statewide themes, promote untold stories of Texas history and have exceptional ability to educate the public on aspects of Texas history not fully addressed by the marker program. Applications and topics with *high significance* address statewide themes, promote untold stories of Texas history and have some ability to educate the public on aspects of Texas history not fully addressed by the marker program. Applications and topics that *meet requirements* have been found to fulfill the basic application requirements and guidelines, relate to statewide themes but do not necessarily directly address topics that have not been widely addressed by the marker program. Applications and topics deemed *not eligible* do not relate to statewide themes and/or do not meet the basic program application requirements and guidelines. All markers must relate to the statewide themes established by the commission. These themes are available on the commission's web site at [www.thc.texas.gov](http://www.thc.texas.gov). [~~www.the.state.tx.us~~] From time to time the commission may establish thematic priorities for the marker program. Additional points will be awarded to projects falling within these priorities.

(c) The scoring system for ranking applications is as follows:

- (1) Age - 5 pts. max;
- (2) Historical Significance/Architectural Significance - 10 pts. max;
- (3) State of Repair/Integrity - 10 pts. max;
- (4) Diversity of topic for addressing gaps in historical marker program - 10 pts. max;
- (5) Value of topic as an untold or untold aspect of Texas history - 15 pts. max;

- (6) Endangerment level of property, site or topic - 10 pts. max;
  - (7) Available documentation and resources - 10 pts. max;
  - (8) Diversity among this group of candidates - 10 pts. max;
  - (9) Relevance to other commission programs - 5 pts. max;
- and
- (10) Relevance to the commission's current thematic priorities - 15 pts. max.

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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Mark Wolfe

Executive Director

Texas Historical Commission

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For further information, please call: (512) 463-6100



## CHAPTER 22. CEMETERIES

### 13 TAC §§22.1 - 22.5

The Texas Historical Commission (Commission) proposes amendments to §§22.1 - 22.5, concerning cemeteries. These amendments clarify the Commission's role in evaluating unverified cemeteries.

The proposed amendment to §22.1 adds definitions for "burials" and "burial pits," "cemetery," "historic cemetery," "human remains," "interment," "nonperpetual care cemetery," "perpetual care" and "endowment care," "perpetual care cemetery" and "endowment care cemetery," "unidentified grave," "unverified cemetery," and "verified cemetery." It revises the definition of "cemetery" and eliminates the definitions of "state registrar" and "unmarked grave."

The proposed amendment to §22.2 includes "unverified" cemeteries as under the Commission's authority.

The proposed amendment to §22.3 includes "unverified" graves along with marked and unmarked graves among the items that will help the Commission determine whether to request the Attorney General of Texas to intervene on the Commission's behalf in legal action in regards to abating a cemetery as a nuisance.

The proposed amendment to §22.4 includes "unverified" cemeteries along with discussion of unknown and abandoned cemeteries. It provides procedure in discovery of unverified cemeteries and clarifies procedure for discovery of unknown or abandoned cemeteries.

Section 711.10 of the Health and Safety Code includes wording regarding the removal of remains from an abandoned or unknown cemetery. The proposed amendment to §22.5 includes new wording to reflect those changes to the Health and Safety Code, and also removes language that does not apply to abandoned, unknown, or unverified cemeteries.

In this issue of the *Texas Register*, the Commission concurrently proposes amendments to the rules in Chapter 22 pursuant to Texas Government Code §2001.039.

Mark Wolfe, Executive Director, has determined that for the first five-year period the amended rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering these rules.

Mr. Wolfe has also determined that for the first five-year period the amended rules are in effect, the public benefit will be the preservation of and education about state historic resources.

Mr. Wolfe has also determined that there will be minimal impact on small or micro-businesses as a result of implementing these rules and there are minimal anticipated economic costs to persons who are required to comply with the rules as proposed.

Comments on the proposal may be submitted to Mark Wolfe, Executive Director, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711. Comments will be accepted for 30 days after publication in the *Texas Register*.

The amendments are proposed under §442.005(q) of the Texas Government Code which provides the Texas Historical Commission with the authority to promulgate rules to reasonably effect the purposes of the commission, §442.017 of the Texas Government Code relating to the commission's authority to adopt rules related to abandoned cemeteries, and §711.012 of the Texas Health and Safety Code which provides the commission with the authority to adopt rules to enforce and administer §711.010 and §711.011 of the Texas Health and Safety Code.

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

#### §22.1 Definitions.

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

(1) "Abandoned cemetery" means a non-perpetual care cemetery containing one or more graves and possessing cemetery elements for which no cemetery organization exists and which is not otherwise maintained by any caretakers. It may or may not be recorded in deed records of the county in which it lies.

(2) "Antiquities Permit" means a permit issued by the Texas Historical Commission under the jurisdiction of the Antiquities Code of Texas, Natural Resources Code ch. 191.

(3) "Atlas" means the Texas Historic Sites Atlas which is a cultural resource database that is maintained by the Commission and contains historic properties.

(4) "Burials" and "Burial pits" mean marked and unmarked locales set aside for a human burial or burials purposes. Burials and burial pits may contain the remains of one or more individuals located in a common grave in a locale. The site area encompasses the human remains present and also may contain gravestones, markers, containers, coverings, garments, vessels, tools, and other grave objects which may be present. or could be evidenced by the presence of depressions, pit feature stains, or other archeological evidence.

(5) "Cemetery" means a place that is used or intended to be used for interment, and includes a graveyard, burial park, unknown cemetery, abandoned cemetery, mausoleum, or any other area containing one or more graves or unidentified graves.

(6) [(4)] "Commission" means the Texas Historical Commission.

(7) [(5)] "Declaration of Dedication" means a notarized statement submitted to the appropriate county clerk's office, in which the state verifies and acknowledges that the named cemetery contains human burials at least 50 years old.



(8) [(6)] "Department" means the Texas Department of State Health Services.

(9) [(7)] "Disinterment Permit" means a permit issued by the State Registrar that authorizes the exhumation of human remains from a grave location.

(10) [(8)] "Family cemetery" means a cemetery containing members of a single family or kinship group, usually located on land belonging to the family or occupied by the family when established.

(11) [(9)] "Funerary objects" means physical objects associated with a burial, such as a casket, whether whole or deteriorated into pieces, personal effects, ceremonial objects, and any other objects interred with human remains.

(12) [(10)] "Grave" means a space of ground that contains interred human remains or is in a burial park and this is used or intended to be used for interment of human remains in the ground.

(13) [(11)] "Identified grave" means a grave that is marked with name of the individual interred in the grave or for which there is other evidence of the name of the individual interred in the grave.

(14) [(12)] "Interment" means the permanent disposition of human remains by entombment, burial, or placement in a niche, but does not include the location of displaced or disarticulated human remains.

(15) "Historic cemetery" means a cemetery with at least one grave that is 50 years old or older.

(16) "Human remains" means the body of a decedent.

(17) [(13)] "Marked grave" means a grave that has some physical object or objects identifying it as a grave, including a headstone, wooden or metal marker, arrangement of field stones, plantings, or other such indicia, whether or not the individual in the grave is identified.

(18) "Nonperpetual care cemetery" means a cemetery that is not a perpetual care cemetery.

(19) "Perpetual care" or "endowment care" means the maintenance, repair, and care of all places in the cemetery.

(20) "Perpetual care cemetery" or "endowment care cemetery" means a cemetery for the benefit of which a perpetual care trust fund is established as provided by Chapter 712.

(21) [(14)] "Physical anthropologist" means an individual who has a graduate degree in anthropology or archaeology with a concentration of study in the assessment of human skeletal remains. This person must be qualified to obtain measurements of the skeleton and obtain a biological profile, including sex, age, ancestry, stature, and anomalous pathological and traumatic conditions.

(22) [(15)] "Professional archeologist" means an individual who has a degree in anthropology, archeology, or a closely related field if that degree also included formal training in archeological field methods, research, and site interpretation, and who conducts archeological investigations as a vocation.

(23) "Unidentified grave" means a grave that is not marked in a manner that provides the identity of the interment.

[(16)] "State Registrar" means the State Registrar for graves and cemeteries of the Texas Department of State Health Services.]

(24) [(17)] "Unknown cemetery" means an abandoned cemetery evidenced by the presence of marked or unmarked graves that does not appear on a map or in deed records.

(25) "Unverified cemetery" means a location having some evidence of human burial interments, but in which the presence of one or more unmarked graves has not been verified by a person described by §711.0105(a) of the Health and Safety Code of Texas or by the commission.

(26) "Verified cemetery" means the location of a human burial interment or interments as verified by the commission.

[(18)] "Unmarked grave" means a grave that is not identifiable as a grave from the surface of the ground, due to lack of physical markings, cemetery elements, or other indication of the presence of a grave.]

#### §22.2. Authority of Commission.

(a) The authority of the Commission and this chapter apply only to non-perpetual care cemeteries. Its authority includes previously unknown cemeteries, abandoned cemeteries, historic cemeteries, unverified cemeteries, and all other graves not located in a perpetual care cemetery.

(b) For information concerning perpetual care cemeteries, members of the public should contact the Texas Finance Commission or the Texas Funeral Services Commission.

(c) For information concerning city or county cemeteries, members of the public should contact the appropriate city or county government.

#### §22.3. Abatement of Cemetery as Nuisance.

(a) If the Commission receives notice of legal action under Health and Safety Code §711.007 to abate a cemetery as a nuisance, the Commission will commence an investigation to determine whether it should request the Attorney General of Texas to intervene on the Commission's behalf in the legal action.

(b) In its investigation, the Commission will attempt to determine:

(1) whether the cemetery contains marked, [or] unmarked, and/or unverified graves that are more than 50 years old;

(2) whether the cemetery has historical significance to the local area or the State;

(3) whether repair and restoration of the cemetery is physically possible;

(4) whether the cost of repair and restoration of the cemetery is unreasonable;

(5) whether there is a cemetery organization or other party financially responsible for the repair and restoration of the cemetery;

(6) whether the cemetery is used or maintained in violation of Health and Safety Code Chapter 711 or 712;

(7) whether the cemetery is neglected so that it is offensive to the inhabitants of the surrounding section; and

(8) the impact to affected parties of the removal of the graves to a perpetual care cemetery and abatement of the cemetery.

(c) The Commission may present the results of its investigation to the Court whether or not it intervenes in the lawsuit.

(d) All repairs and restoration in a non-perpetual care cemetery should comply with the Standards for Preservation of Historic Cemeteries, Texas Historical Commission.

(e) The extent allowed by the rules of the perpetual care cemetery to which the remains are moved, the original relationship of the

various elements of the cemetery, such as monuments and fencing, should be retained and reinstalled in the perpetual care cemetery.

§22.4. Unknown, ~~and~~ Abandoned, and Unverified Cemeteries.

(a) Discovery of Unknown or Abandoned Cemeteries. §711.010 of the Health and Safety Code requires that a person who discovers an unknown or abandoned cemetery shall file notice of the discovery of the cemetery with the county clerk of the county in which the cemetery is located and concurrently mail notice to the landowner on record in the county appraisal district not later than the 10th day after the date of the discovery. The notice must contain a legal description of the land on which the unknown or abandoned cemetery was found and describe the approximate location of the cemetery and the evidence of the cemetery that was discovered.

[(a)] [A person discovering a previously unknown or abandoned cemetery should file notice of the cemetery with the county clerk of the county in which the cemetery lies within ten days of the date of discovery.]

(1) The Commission may provide assistance to any party [a person] required to file this notice.

(2) The Notice of Existence of Cemetery form available on the Commission's website may be used to file this notice.

(3) The county clerk must provide a copy of the notice to the Commission within 15 days after the filing of the notice with the clerk, by mailing it to the following address: Cemetery Preservation Coordinator, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711-2276.

(b) If one or more graves are discovered during construction of improvements on a property, construction must stop and may only proceed in a manner that would not further disturb the grave or graves unless the graves are removed in accordance with §711.0105 of the Health and Safety Code [this chapter].

(c) Agricultural (including ranching), construction, utility lines, industrial, and mining operations may not be conducted in a manner that will disturb a grave or cemetery unless the graves and dedication of the cemetery are removed in accordance with §711.035 of the Health and Safety Code [this chapter].

(d) Discovery of Unverified Cemeteries. §711.0111 of the Health and Safety Code of Texas requires that any person that discovers an unverified cemetery shall file a notice and evidence of the discovery with the commission on a form provided by the commission. §711.0111 also requires that any person that discovers an unverified cemetery shall concurrently provide a copy of the notice of the filing with the landowner on record in the county appraisal district on whose land the unverified cemetery is located. The commission shall evaluate the notice and the evidence submitted with the notice, and consider the response of the landowner, if any is received not later than the 30th day after notice, and shall determine whether there is sufficient evidence to support the claim of the existence of a cemetery. If the commission determines that sufficient evidence supports the existence of a cemetery, the commission shall notify the landowner and may file notice of the existence of the cemetery under §711.011 of the Health and Safety Code. If a notice of existence has already been filed under §711.011 and the commission has determined that there is not sufficient evidence of a cemetery the commission shall notify the landowner of its determination, amend the notice to include the commission's determination, and file the amendment with the county clerk to correct the dedication.

(1) The Commission may provide assistance to a person required to file this notice.

(2) The Notice of Unverified Cemetery form, which is available on the Commission's website, shall be used to file this notice.

(3) The Texas Historical Commission, with consent of the landowner, may investigate a suspected but unverified cemetery or may delegate the investigation to a qualified person described by §711.0105(a).

(e) The commission shall use one or more of the following criteria when assessing the verification of the existence of a cemetery:

(1) the location contains interment(s) that is/are confirmed through assessments or investigations consented by the landowner and performed by a professional archeologist or other individuals as defined by §711.0105(a) of the Health and Safety Code of Texas;

(2) the location contains human burial caskets or other containers or vessels that contain human remains or are contextually known to have been used to inter human remains;

(3) the location contains articulated human remains that were deliberately interred; or

(4) the location contains a burial pit or burial pit features.

(f) The commission shall use one or more of the following criteria when assessing the verification of the existence of a cemetery:

(1) the location contains interments that are confirmed through assessments or investigations performed by a professional archeologist or other individuals as defined by §711.0105(a) of the Health and Safety Code of Texas

(2) the location contains human burial caskets or other containers or vessels that contain human remains or are contextually known to have been used to inter human remains;

(3) the location contains articulated human remains that were deliberately interred

(4) the location contains a burial pit or burial pit features

§22.5. Removal of Remains from an Abandoned or Unknown Cemetery.

(a) §711.010 of the Health and Safety Code requires that, on petition of the owner of the property, a district court of the county in which an unknown cemetery is discovered or an abandoned cemetery is located may order the removal of any dedication for cemetery purposes that affects the property if the court finds that the removal of the dedication is in the public interest. If a court orders the removal of a dedication of a cemetery and all human remains in that cemetery have not previously been removed, the court shall order the removal of the human remains from the cemetery to a perpetual care cemetery or a municipal or county cemetery.

[(a) Disinterment permits for the removal of unmarked graves must be obtained from the State Registrar.]

[(1) The State Registrar may issue disinterment permits for the removal of unmarked graves contained within unknown and abandoned cemeteries if it determines that all legal requirements for the removal of the human remains have been met.]

[(2) A person wanting to remove human remains from an unmarked grave shall apply to the State Registrar for a disinterment permit on a form provided by the State Registrar.]

[(3) The disinterment permit must be obtained from the State Registrar before the removal of any human remains.]

(b) Commission role in removal of remains.

(1) The Commission may consider alternatives to the removal of human remains such as preservation of the remains in place and recommend to the State Registrar that a disinterment permit not be issued.

(2) The Commission shall ensure that a reasonable effort has been made to identify the remains and that the next of kin ~~is~~ ~~and State Registrar are~~ notified if the name of the decedent is determined.

(c) Method of Removal of Remains.

(1) When human remains are to be removed under a disinterment permit from the State Registrar, the exhumation of graves must take place as required by this section.

(2) Removal of remains for Antiquities Code permitted projects.

(A) When removal of remains is requested during a project with an Antiquities Permit under Chapter 26 of this title (relating to Rules of Practice and Procedures) and under the jurisdiction of the Health and Safety Code ~~[Antiquities Code]~~ of Texas, graves must be removed under the procedures described in §711.0105 ~~[that chapter]~~.

(B) Remains must be exhumed by a professional archeologist, and, when appropriate, with the assistance of a physical anthropologist, who is capable of gathering basic demographic data from the human remains being exhumed. Additionally, casket morphology, casket hardware, and any funerary objects must be examined and identified in a report. This policy applies to both marked and unmarked graves unless otherwise specified by the Commission.

(C) Unless otherwise specified, all physical anthropological investigations of human remains that fall under the Commission's jurisdiction will use noninvasive techniques. If invasive techniques are proposed, the Commission must give approval.

(D) Funerary objects will be reburied with the human remains after they have been documented unless the Commission approves other disposition.

(E) Decisions regarding the appropriateness of the reburial of human remains will be made in consultation with the Commission, but the Commission has no formal role in decisions about the methods or ceremonies associated with reburials.

(F) A reasonable, good faith effort should be made to define the boundaries of the cemetery within all accessible portions of land on which a previously unknown or abandoned cemetery exists.

(i) If the cemetery is being investigated for compliance with state or federal environmental or cultural resource laws, the investigator need only document those portions of the cemetery within the project area.

(ii) If the cemetery is being investigated for compliance with state or federal environmental or cultural resource laws, complete definition of a cemetery's boundaries may be deferred until previously inaccessible portions of the cemetery are made accessible during construction.

(iii) Notice of the cemetery's location shall be sent to the THC and concurrently to the landowner on record in the county's appraisal district ~~[county clerk]~~ within 10 days following completion of discovery efforts.

(G) For cemeteries 50 years in age or older or whose age cannot be determined, a cemetery record for the Texas Historic Sites Atlas and request for a cemetery number or a Texas Archeological Research Laboratory trinomial shall be completed and submitted to the

Commission. The survey shall record all "cemetery elements" to be moved in drawings and photographic record. Both the drawings and photographic record should be in a form that is expected to last seventy-five years or longer.

(i) The site record or request for a cemetery number shall be submitted within ten days of completion of fieldwork at the cemetery.

(ii) Upon receipt of an official number for the cemetery, the recorder shall submit a formal notice of the number to the county clerk.

(iii) The formal notice to the county clerk shall take the form of a notice to be placed in the county deed record files that documents the assignment of a cemetery number to a cemetery in the county and instructs interested parties to contact the commission for further information.

(H) For unmarked graves found during projects under the jurisdiction of the National Historic Preservation Act, 16 U.S.C. §470, et seq., (hereafter NHPA) and/or Native American Graves Protection and Repatriation Act, 25 U.S.C. §3001, et seq., (hereafter NAG-PRA), the final disposition of remains will be determined in consultation with appropriate federally-recognized tribes and other appropriate consulting parties. Agencies may satisfy this requirement through their regular consultation process for compliance with these laws.

(3) Removal of remains outside Antiquities permitted projects.

(A) The exhumation of identified graves in a cemetery where a cemetery organization or other governing body exists or in a family cemetery may be performed by a cemetery keeper, licensed funeral director, medical examiner, coroner or professional archeologist.

(B) The exhumation of unmarked graves should be performed by a professional archeologist and, when appropriate, with the assistance of a physical anthropologist who is capable of gathering basic demographic data (i.e., sex, age, height, possible cause of death, etc.) from the human remains being exhumed.

(C) Notice of exhumation of graves shall be made in accordance with subsection (c)(2) of this section.

~~[(4) Emergency removals.]~~

~~[(A) The emergency removal provisions of §711.004(k) of the Health and Safety Code apply for all unknown and abandoned cemeteries covered under this chapter.]~~

~~[(B) Remains recovered during emergencies must be held at a secure location for the length of time necessary to complete consultations with appropriate parties regarding the final disposition of the remains.]~~

(d) If remains are to be reburied in the same cemetery as permitted by law, this section does not apply.

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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Mark Wolfe

Executive Director

Texas Historical Commission

Earliest possible date of adoption: September 17, 2017

For further information, please call: (512) 463-6100

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## CHAPTER 25. STATE ARCHEOLOGICAL PROGRAM

### 13 TAC §25.1, §25.9

The Texas Historical Commission (hereafter referred to as the commission) proposes amendments to §25.1, relating to Definitions and the addition of a new §25.9, relating to Discovery and Evaluation of Unverified Cemeteries) of Title 13, Part 2, Chapter 25 of the Texas Administrative Code, relating to the State Archeological Program.

In §25.1, definitions are amended to clarify the commission's role in evaluating cemeteries in accordance with amendments to the Texas Health and Safety Code, §§711.001, 711.004, 711.010, and 711.0111.

The addition of new §25.9 is to clarify procedures for reporting the discovery of unverified cemeteries and the commission's role in evaluating and verifying cemeteries in accordance with amendments to the Texas Health and Safety Code, §711.011 and §711.0111.

Mark Wolfe, Executive Director, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the rules.

Mr. Wolfe has also determined that for each year of the first five year period the rules are in effect the public benefit anticipated as a result of the implementation of these rules will be better preservation of unknown and abandoned cemeteries. There will be minimal effects on small businesses or micro-businesses, and there are minimal anticipated economic costs to persons who are required to comply with the rules as proposed.

Comments on the proposal may be submitted to Mark Wolfe, Executive Director, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711. Comments will be accepted for 30 days after publication in the *Texas Register*.

The amendments and new rule are proposed under §442.005(q) of the Texas Government Code which provides the Texas Historical Commission with the authority to promulgate rules to reasonably effect the purposes of the commission, §442.017 of the Texas Government Code relating to the commission's authority to adopt rules related to abandoned cemeteries, and §711.012 of the Texas Health and Safety Code which provides the commission with the authority to adopt rules to enforce and administer §711.010 and §711.011 of the Texas Health and Safety Code.

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

#### §25.1. Definitions.

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

(1) Abandoned cemetery--A non-perpetual care cemetery containing one or more graves and possessing cemetery elements for which no cemetery organization exists and which is not otherwise maintained by any caretakers. It may or may not be recorded in the deed records of the county in which it lies.

(2) [(4)] Antiquities--The tangible artifacts and objects of the past that relate to human life and culture.

(3) [(2)] Archeological investigation--Any research activity applied to archeological sites and the material remains in or removed

from such sites, including survey, excavation, documentation, conservation, mapping, and analysis.

(4) [(3)] Archeological preservation--The protection and conservation of the archeological and heritage of Texas.

(5) [(4)] Archeological site--Any land or marine-based place that contains material remains of past human life or activities in their original or historical context that are at least 50 years of age or a place that has been determined by the commission to be of transcendent historical or cultural significance.

(6) [(5)] Archeology division--A division of the commission that includes the office of the state archeologist.

(7) [(6)] Artifact--A tangible object that relates to human life and culture of the past. Examples include, but are not limited to items constructed, altered, created, or used by humans. Paleontological remains and geological specimens are not included unless occurring in or related to an archeological context.

(8) [(7)] Avocational archeologist--Any individual with demonstrated training, skill and/or experience in archeological investigation who is not a professional archeologist.

(9) Burials and burial pits--Marked and unmarked locales of a human burial or burials. Burials and burial pits may contain the remains of one or more individuals located in a common grave in a locale. The site area may contain gravestones, markers, containers, coverings, garments, vessels, tools, and other grave objects or could be evidenced by the presence of depressions, pit feature stains, or other archeological evidence.

(10) Cemetery--A place that is used or intended to be used for interment, and includes a graveyard, burial park, unknown cemetery, abandoned cemetery, mausoleum, or any other area containing one or more graves or unidentified graves.

(11) [(8)] Conservation easement--A nonpossessory interest in real property that imposes limitations or affirmative obligations on the person holding the possessory or fee interest, as defined and authorized in Texas Natural Resources Code Chapter 183.

(12) [(9)] Curatorial facility--A museum or repository that holds and maintains archeological collections.

(13) [(10)] Historic preservation--The protection and conservation of the archeological and historical heritage of Texas.

(14) [(11)] Historic resource--Any site, complex, building or structural remains of historical or archeological interest and its contents. Examples include, but are not limited to, prehistoric habitation sites, mounds, open campsites and rock shelters; mines, quarry areas and lithic procurement areas; game procurement and processing sites; petroglyph and pictograph sites; historic shipwrecks; remnants of historic buildings and structures; cemeteries; dumps and trash heaps; and military sites. Only resources at least 50 years old, or which have been determined by the state archeologist to be of transcendent historic importance, are considered historical resources within the meaning of this chapter.

(15) [(12)] History (historic, historical)--The recording and study of past cultures, events, or resources created in the past and includes prehistory, relating to events occurring prior to written history.

(16) Human remains--The body of a decedent.

(17) Interment--The intended permanent disposition of human remains by entombment, burial or placement in a niche.

(18) [(13)] Inventory of sites--Any form of tabulating, collecting, and holding archeological site records, and all activities which

maintain that inventory, including restricted data contained within the Texas Historic Sites Atlas electronic database.

(19) [(44)] Professional archeologist--An archeologist certified by the Register of Professional Archeologists (RPA) for the level of required investigation; anyone determined a professional archeologist by the state archeologist, according to the criteria of the RPA; or anyone meeting required qualifications and standards detailed in pertinent state rules (§26.4 of this title) or federal requirements specified in the Secretary of Interior's Professional Qualifications Standards (36 CFR Part 61, Appendix A) for archeological investigations.

(20) [(45)] Site records--All data and information relating to the character, condition, and location of any archeological site or other historic resource and all data and information pertinent to collections of material remains. Site records include, but are not limited to, artifact catalogues, photographs, digital imagery, maps, spatial imagery, notes, drawings, site data forms, TexSite electronic forms, documents, audio data, and electronic data.

(21) [(46)] State archeologist--The position authorized by Texas Government Code §442.007, responsible for the administration of the state archeological program.

(22) [(47)] Steward--A current member of the Texas Archeological Stewardship Network.

(23) [(48)] Texas Archeological Stewardship Network or TASN--A volunteer program administered by the commission. The TASN is composed of volunteer avocational archeologists selected for their demonstrated skills, experience and abilities to assist the commission with archeological investigations, research, preservation efforts, training, and public outreach endeavors.

(24) [(49)] TexSite form--The standardized electronic form for recording archeological site information as developed by the commission and Texas Archeological Research Laboratory of The University of Texas.

(25) Unknown cemetery--An abandoned cemetery evidenced by the presence of marked or unmarked graves that does not appear on a map or in deed records.

(26) Unverified cemetery--A location having some evidence of human burial interments, but in which the presence of one or more unmarked graves has not been verified by a person described by §711.0105(a) of the Health and Safety Code of Texas or by the commission.

(27) Unidentified grave--A grave that is not marked in a manner that provides the identity of the interment.

(28) Verified cemetery--The location of a human burial interment or interments as verified by the commission.

#### §25.9. Discovery and Evaluation of Unverified Cemeteries.

(a) Discovery of Unverified Cemeteries. Section 711.0111 of the Health and Safety Code of Texas requires that any person that discovers an unverified cemetery shall file a notice and evidence of the discovery with the commission on a form provided by the commission. Section 711.0111 also requires that any person that discovers an unverified cemetery shall concurrently provide a copy of the notice of the filing with the landowner on record in the county appraisal district on whose land the unverified cemetery is located. The commission shall evaluate the notice and the evidence submitted with the notice, and consider the response of the landowner, if any is received not later than the 30th day after notice, and shall determine whether there is sufficient evidence to support the claim of the existence of a cemetery. If the commission determines that sufficient evidence supports the existence

of a cemetery, the commission shall notify the landowner and may file notice of the existence of the cemetery under §711.011 of the Health and Safety Code. If a notice of existence has already been filed under §711.011 and the commission has determined that there is not sufficient evidence of a cemetery the commission shall notify the landowner of its determination, amend the notice to include the commission's determination, and file the amendment with the county clerk to correct the dedication.

(b) Criteria for Evaluating and Verifying Cemeteries. The commission shall use one or more of the following criteria when assessing the verification of the existence of a cemetery:

(1) the location contains interment(s) that is/are confirmed through assessments or investigations consented by the landowner and performed by a professional archeologist or other individuals as defined by §711.0105(a) of the Health and Safety Code of Texas;

(2) the location contains human burial caskets or other containers or vessels that contain human remains or are contextually known to have been used to inter human remains;

(3) the location contains articulated human remains that were deliberately interred; or

(4) the location contains a burial pit or burial pit features.

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 August 4, 2017.

TRD-201702939

Mark Wolfe

Executive Director

Texas Historical Commission

Earliest possible date of adoption: September 17, 2017

For further information, please call: (512) 463-8882



## CHAPTER 26. PRACTICE AND PROCEDURE

The Texas Historical Commission (hereafter referred to as the commission) proposes amendments to §26.1 (Object), §26.2 (Scope), §26.3 (Definitions), §26.5 (Antiquities Advisory Board), §26.7 (Location and Discovery of Cultural Resources and Landmarks), §26.10 (Criteria for Evaluating Archeological Sites), §26.14 (Issuance and Restrictions of Archeological Permits), §26.16 (Reports Relating to Archeological Permits), §26.17 (Principal Investigator's Responsibilities for Disposition of Archeological Artifacts and Data), §26.19 (Criteria for Evaluating Historic Buildings and Structures), §26.20 (Application for Historic Buildings and Structures Permits), and §26.23 (Reports Relating to Historic Buildings and Structures Permits) of Title 13, Part 2, Chapter 26 of the Texas Administrative Code (relating to Practice and Procedure) under the jurisdiction of the Antiquities Code of Texas (Title 9, Chapter 191, of the Texas Natural Resources Code). Sections 26.1 - 26.3, and 26.5 are under Subchapter A; §26.7 is under Subchapter B; §§26.10, 26.14, 26.16, and 26.17 are under Subchapter C; and §§26.19, 26.20, and 26.23 are under Subchapter D.

Section 26.1: Object is amended to add reference to the Health and Safety Code of Texas.

Sections 26.2: Scope, 26.20: Application for Historic Buildings and Structures Permits, and 26.23: Reports Relating to Historic

Buildings and Structures Permits are amended to update web-site addresses.

Section 26.3: Definitions are amended to clarify the commission's role in evaluating unverified cemeteries, curation of artifacts, and review of work to historic buildings and structures.

Section 26.5: Antiquities Advisory Board is amended to eliminate a reauthorization conflict with the Texas Government Code.

Section 26.7: Location and Discovery of Cultural Resources and Landmarks is amended to clarify notification requirements and review procedures for political subdivisions of the state, as well as the commission's role in evaluating unverified cemeteries.

Section 26.10: Criteria for Evaluating Archeological Sites is amended to also address verification of cemeteries.

Section 26.14: Issuance and Restrictions of Archeological Permits is amended to address the potential need to censure investigative firms working under Antiquities Permits.

Section 26.16: Reports Relating to Archeological Permits and §26.17: Principal Investigator's Responsibilities for Disposition of Archeological Artifacts and Data are amended to address the curation of artifacts.

Section 26.19: Criteria for Evaluating Historic Buildings and Structures is amended to clarify when certain requirements apply.

In this issue of the *Texas Register*, the Commission concurrently proposes amendments to the rules in Chapter 26 pursuant to Texas Government Code §2001.039.

Mark Wolfe, Executive Director, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering these rule amendments.

Mr. Wolfe has also determined that for each year of the first five year period the rules are in effect the public benefit anticipated as a result of the implementation of these rules will be better preservation of unknown and abandoned cemeteries, and to clarify the responsibilities that investigative firms have with regard to Antiquities permits. There will be minimal effects on small businesses or micro-businesses, and there are minimal anticipated economic costs to persons who are required to comply with the rules as proposed.

Comments on the proposal may be submitted to Mark Wolfe, Executive Director, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711. Comments will be accepted for 30 days after publication in the *Texas Register*.

## SUBCHAPTER A. GENERAL PROVISIONS

### 13 TAC §§26.1 - 26.3, 26.5

The amendment of these rules is proposed under §442.005(q) of the Texas Government Code which provides the Texas Historical Commission with the authority to promulgate rules to reasonably effect the purposes of the commission; §191.052 of the Natural Resources Code, which provides the commission with the authority to promulgate rules for the implementation and administration of the Antiquities Code of Texas; §442.017 of the Texas Government Code relating to the commission's authority to adopt rules related to abandoned cemeteries; and §711.012 of the Texas Health and Safety Code which provides the commission with the authority to adopt rules to enforce and administer §711.010 and §711.011 of the Texas Health and Safety Code.

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

#### §26.1. Object.

As authorized in Title 9, Chapter 191 (§191.052), of the Texas Natural Resources Code, otherwise known as the Antiquities Code of Texas, and Title 4, Subtitle D, Chapter 442 (§442.005(q) and §442.017) of the Texas Government Code, the Texas Historical Commission, hereafter referred to as the commission, is specifically empowered to adopt rules and conditions related to the administration and enforcement of the Antiquities Code of Texas and provisions within Chapter 442 of the Government Code and Chapter 711 of the Health and Safety Code.

#### §26.2. Scope.

For purposes of implementing the Antiquities Code of Texas, the commission is the statutorily created body responsible for protecting and preserving State Antiquities Landmarks (landmarks) under the Texas Natural Resources Code, Title 9, Chapter 191.

(1) Section 191.092 of the Texas Natural Resources Code declares that it is the public policy and in the public interest of the State of Texas to locate, protect, and preserve landmarks, including sites, objects, buildings, structures and historic shipwrecks, and locations of historical, archeological, educational, or scientific interest including, but not limited to, prehistoric American Indian or aboriginal campsites, dwellings, and habitation sites, aboriginal paintings, petroglyphs, and other marks or carvings on rock or elsewhere which pertain to early American Indian or other archeological sites of every character, treasure imbedded in the earth, sunken or abandoned ships and wrecks of the sea or any part of their contents, maps, records, documents, books, artifacts, and implements of culture in any way related to the inhabitants, prehistory, history, government, or culture in, on, or under any of the lands of the State of Texas, including the tidelands, submerged land, and the bed of the sea within the jurisdiction of the State of Texas.

(2) Section 191.093 of the Texas Natural Resources Code states that all landmarks are afforded some level of consideration prior to being affected by a proposed project.

(3) Section 191.0525 of the Texas Natural Resources Code requires that notice be provided to the commission before breaking ground at a project location on state or local public land. This step ensures that project effects on landmarks, whether or not they have currently been identified, are appropriately considered. Upon notification, the commission will determine if the project affects a landmark or whether the project area warrants a survey to identify potential landmarks. Section 26.7 of this title (relating to Location and Discovery of Cultural Resources and Landmarks) describes the notification requirements and review process.

(4) Section 191.091 and §191.092 of the Texas Natural Resources Code provide that archeological sites and historic buildings and structures on lands belonging to state agencies or political subdivisions of the State of Texas are landmarks or may be eligible to be designated as landmarks. Landmark designation may be initiated by the public agency, the commission, or a third party. Section 191.094 of the Texas Natural Resources Code allows for the designation of landmarks on private property. Section 26.8 and §26.9 of this title describe the designation procedures for landmarks.

(5) Section 191.054 and §191.055 of the Texas Natural Resources Code state that the commission oversees investigations or project work through a permitting process. The commission uses permits to establish the terms under which work may proceed. Subchapters C and D of this chapter describe the permitting process for archeological permits and historic buildings and structures permits, respectively.

(6) Documents referenced in this chapter, including landmark nomination and permit application forms, are available on the commission website at [www.thc.texas.gov](http://www.thc.texas.gov) [~~www.the.state.tx.us~~] or by contacting the commission.

### §26.3. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise. These definitions also clarify the interpretation of terms and phrases used in the Antiquities Code of Texas but not defined therein.

(1) Accession--The formal acceptance of a collection and its recording into the holdings of a curatorial facility and generally includes a transfer of title. For held-in-trust collections, stewardship but not title is transferred to the curatorial facility.

(2) Antiquities Advisory Board--A ten-member board that advises the commission in reviewing matters related to the Antiquities Code of Texas.

(3) Antiquities Permit or Permit--Authorization for work on a designated or potential State Antiquities Landmark, or survey investigations to determine if cultural resources are present. Permit types include Archeological Permits (§26.15 of this title) and Historic Buildings and Structures Permits (§26.22 of this title).

(4) Applicant--Relative to an Antiquities Permit, an applicant is the controlling agency, organization, or political subdivision having administrative control over a publicly owned landmark or the owner of a privately owned landmark. Applicant may also refer to an individual or private group that desires to nominate a building or site for landmark designation.

(5) Archeological site--Any land or marine-based place containing evidence of prehistoric or historic human activity, including but not limited to the following:

(A) Habitation sites. Habitation sites are areas or structures where people live or have lived on a permanent or temporary basis.

(B) Native American open campsites which were occupied on a temporary, seasonal, or intermittent basis.

(C) Rock shelters, in general, are a special kind of campsite. These sites are located in caves or under rock overhangs and have been occupied either: temporarily, seasonally, or intermittently.

(D) Non-Native American campsites are the cultural remains of activities by people who are not Native American.

(E) Residence sites are those where routine daily activities were carried out and which were intended for year-round use.

(F) Non-Native American sites may include, in addition to the main structure, outbuildings, water systems, trash dumps, garden areas, driveways, and other remains that were an integral part of the site when it was inhabited.

(G) Non-habitation sites. Non-habitation sites result from use during specialized activities and may include standing structures.

(i) Rock art and graffiti sites consist of symbols or representations that have been painted, ground, carved, sculpted, scratched, or pecked on or into the surface of rocks, wood, or metal, including but not limited to Native American pictographs and petroglyphs, historical graffiti and inscriptions.

(ii) Mines, quarry areas, and lithic procurement sites are those from which raw materials such as flint, clay, coal, minerals, or other materials were collected or mined for future use.

(iii) Game procurement and processing sites are areas where game was killed or butchered for food or hides.

(iv) Fortifications, battlefields, training grounds and skirmish sites including fortifications of the historic period and the central areas of encounters between opposing forces, whether a major battleground or areas of small skirmishes.

(v) Cache--A collection of artifacts that are deliberately hidden for future use. Caches are often discovered in burials or in caves and usually consist of ceremonial and ritual objects, functional objects or emergency food supplies.

(6) Archeological Survey Standards for Texas--Minimum survey standards developed by the commission in consultation with the Council of Texas Archaeologists.

(7) Artifacts--The tangible objects of the past that relate to human life and culture. Examples include, but are not limited to projectile points, tools, documents, art forms, and technologies.

(8) Board--The Antiquities Advisory Board.

(9) Building--A structure created to shelter any form of human activity, such as a courthouse, city hall, church, hotel, house, barn, or similar structure. Building may refer to a historically related complex such as a courthouse and jail or a house and barn.

(10) Burials and burial pits--Marked and unmarked locales of a [set aside for] human burial or burials [purposes]. Burials and burial pits may contain the remains of one or more individuals located in a common grave in a locale. The site area may contain [encompasses the human remains present and also] gravestones, markers, containers, coverings, garments, vessels, tools, and other grave objects or could be evidenced by the presence of depressions, pit feature stains, or other archeological evidence [which may be present].

(11) Cemetery--A place that is used or intended to be used for interment, and includes a graveyard, burial park, unknown cemetery, abandoned cemetery, mausoleum, or any other area containing one or more graves or unidentified graves. [Cemeteries are considered historic if interments within the cemetery occurred at least fifty (50) years ago. Individual burials within a cemetery are not considered historic unless the interments occurred at least fifty years ago.]

(A) Abandoned cemetery--A non-perpetual care cemetery containing one or more graves and possessing cemetery elements for which no cemetery organization exists and which is not otherwise maintained by any caretakers. It may or may not be recorded in the deed records of the county in which it lies.

(B) Unidentified grave--A grave that is not marked in a manner that provides the identity of the interment.

(C) Unknown cemetery--An abandoned cemetery evidenced by the presence of marked or unmarked graves that does not appear on a map or in deed records.

(12) Commission--The Texas Historical Commission and its staff.

(13) Committee, or Antiquities Committee, or Texas Antiquities Committee--As redefined by the 74th Texas Legislature within §191.003 of the Texas Natural Resources Code, committee means the commission and/or staff members of the commission.

(14) Conservation--Scientific laboratory processes for cleaning, stabilizing, restoring, preserving artifacts, and the preservation of buildings, sites, structures and objects.

(15) Council of Texas Archeologists--A non-profit voluntary organization that promotes the goals of professional archeology in the State of Texas.

(16) Council of Texas Archeologists Guidelines--Professional and ethical standards which provide a code of self-regulation for archeological professionals in Texas with regard to field methods, reporting, and curation.

(17) Cultural landscape--A geographic area, associated with a historic event, activity, or person or exhibiting other cultural or aesthetic values. Cultural landscapes include historic sites, historic designed landscapes, and historic vernacular landscapes, as further described in the National Park Service's Preservation Brief 36: Protecting Cultural Landscapes.

(18) Cultural resource--Any building, site, structure, object, artifact, historic shipwreck, landscape, location of historical, archeological, educational, or scientific interest, including, but not limited to, prehistoric and historic Native American or aboriginal campsites, dwellings, and habitation sites, archeological sites of every character, treasure embedded in the earth, sunken or abandoned ships and wrecks of the sea or any part of the contents thereof, maps, records, documents, books, artifacts, and implements of culture in any way related to the inhabitants' prehistory, history, government, or culture. Examples of cultural resources include Native American mounds and campgrounds, aboriginal lithic resource areas, early industrial and engineering sites, rock art, early cottage and craft industry sites, bison kill sites, cemeteries, battlegrounds, all manner of historic buildings and structures, local historical records, cultural landscapes, etc.

(19) Curatorial facility--A museum or repository.

(20) Default--Failure to fulfill all conditions of a permit or contract, issued or granted to permittee(s), sponsors, and principal investigator or investigative firm, before the permit has expired.

(21) Defaulted permit--A permit that has expired without all permit terms and conditions having been met before the permit expiration date.

(22) Designated historic district--An area of archeological, architectural, or historical significance that is listed in the National Register of Historic Places, either individually or as a historic district; designated as a landmark, or nominated for designation as a landmark; or identified by State agencies or political subdivisions of the State as a historically sensitive site, district, or area. This includes historical designation by local landmark commissions, boards, or other public authorities, or through local preservation ordinances.

(23) Destructive analysis--Destroying all or a portion of an object or sample to gain specialized information. For purposes of this chapter, it does not include analysis of objects or samples prior to their being accessioned by a curatorial facility.

(24) Discovery--The act of locating, recording, and reporting a cultural resource.

(25) Disposal--The discard of an object or sample after being recovered and prior to accession, or after deaccession.

(26) District--A significant concentration, linkage, or continuity of sites, buildings, structures, or objects unified historically or aesthetically by plan or physical development. See also "designated historic district."

(27) Eligible--Archeological sites or other historic properties that meet the criteria set forth in §§26.10 - 26.12 and 26.19 of this title, are eligible for official landmark designation.

(28) Exhumation--The excavation of human burials or cemeteries and its associated funerary objects by a professional archeologist, or principal investigator.

(29) Groundbreaking--Construction or earth moving activities that disturb lands[; buildings, or structures] owned or controlled by state agencies or political subdivisions of the state.

(30) Held-in-trust collection--Those state-associated collections under the authority of the commission that are placed in a curatorial facility for care and management; stewardship is transferred to that curatorial facility but not ownership.

(31) Historic buildings and structures permit--~~Historic~~ [Unless clearly specified otherwise, historic] buildings and structures permits are those issued for work [refers] to buildings, structures, cultural landscapes, and non-archeological sites, objects, and districts designated or nominated for designation as landmarks.

(32) Historic property--A district, site, building, structure or object significant in American history, architecture, engineering, archeology or culture.

(33) Historic time period--For the purposes of landmark designation, this time period is defined as extending from A.D. 1500 to 50 years before the present.

(34) Human remains--The body of a decedent.

(35) [(34)] Integrity--The authenticity of a property's historic identity, evidenced by the survival of physical characteristics that existed during the property's historic or prehistoric period, including the property's location, design, setting, materials, workmanship, feeling, and association.

(36) Interment--The intended permanent disposition of human remains by entombment, burial, or placement in a niche.

(37) [(35)] Investigation--Archeological or architectural activity including, but not limited to: reconnaissance or intensive survey, testing, exhumation, or data recovery; underwater archeological survey, test excavation, or data recovery excavations; monitoring; measured drawings; or photographic documentation.

(38) [(36)] Investigative firm--A company or scientific institution that has full-time experienced research personnel capable of handling investigations and employs a principal investigator, and/or project architect, or other project professional as applicable under "professional personnel" in paragraph (49) of this section. The company or institution holds equal responsibilities with the professional personnel to complete requirements under an Antiquities Permit.

(39) [(37)] Land-owning or controlling agency--Any state agency or political subdivision of the state that owns or controls the land(s) in question.

(40) [(38)] Landmark--A State Antiquities Landmark.

(41) [(39)] Mitigation--The amelioration of the potential total or partial loss of significant cultural resources. For example, mitigation for removal of a deteriorated historic building feature might include photographs and drawings of the feature, and installing a replacement that matches the original in form, material, color, etc. Mitigation for the loss of an archeological site might be accomplished through data recovery actions, to preserve or recover an appropriate amount of data by application of current professional techniques and procedures, as defined in the permit's scope of work.

(42) [(40)] Monuments--Includes markers and structures erected to commemorate or designate the importance of an event, person, or place, which may or may not be located at the sites they com-



memorate. Included in this category are certain markers erected by the commission and county historical commissions, and markers and statutory located on public grounds such as courthouse squares, parks, and the Capitol grounds.

(43) [(41)] National Register of Historic Places--A register of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, and culture maintained by the United States Secretary of the Interior. Information concerning the National Register of Historic Places is available through the commission or from the National Park Service at [www.nps.gov/nr](http://www.nps.gov/nr).

(44) [(42)] Object--The term "object" can refer to artifacts or is a type of structure that is [used to distinguish from buildings and structures those constructions that are] primarily artistic in nature or are relatively small in scale and simply constructed. Although it may be, by nature or design, movable, an object is associated with a specific setting or environment. Examples of objects include artifacts, monuments, markers, and sculpture.

(45) [(43)] Permit application offense--Failure to properly apply for a permit and/or receive authorization for an emergency permit by the commission, prior to the actual performance of an archeological investigation or other project work.

(46) [(44)] Permit censoring--A restriction in the ability of a principal investigator or other professional personnel and/or an investigative firm or other professional firm to be issued a permit under the auspices of the Antiquities Code of Texas.

(47) [(45)] Permittee--The landowner or controlling individual or, public agency and/or a project sponsor that is issued an Antiquities Permit for an archeological investigation or other project work.

(48) [(46)] Political subdivision--A unit of local government created and operating under the laws of this state, including a city, county, school district, or special district created under the Texas Constitution.

(49) [(47)] Prehistoric time period--For the purpose of landmark designation, a time period that encompasses a great length of time beginning when humans first entered the New World and ending with the arrival of the Spanish Europeans, which has been approximated for purposes of these guidelines at A.D. 1500.

(50) [(48)] Professional firm--A company or scientific institution that has professional personnel who meet the required qualifications for specific types of work. The company or institution holds equal responsibilities with the professional personnel to complete requirements under an Antiquities Permit.

(51) [(49)] Professional personnel--Trained specialists who meet the professional qualifications standards in §26.4 of this title (relating to Professional Qualifications and Requirements) and are required to perform archeological and architectural investigations and project work.

(52) [(50)] Project--Activity on a cultural resource including, but not limited to: investigation, survey, testing, excavation, restoration, demolition, scientific or educational study.

(53) [(51)] Project sponsor--A public agency, individual, institution, investigative firm or other professional firm, organization, corporation, contractor, and/or company paying costs of archeological investigation or other project work, or that sponsors, funds, or otherwise functions as a party under a permit.

(54) [(52)] Public agency--Any state agency or political subdivision of the state.

(55) [(53)] Public lands--Non-federal, public lands that are owned or controlled by the State of Texas or any of its political subdivisions, including the tidelands, submerged land, and the bed of the sea within the jurisdiction of the State of Texas.

(56) [(54)] Recorded archeological site--Sites that are recorded, listed, or registered with an institution, agency, or university, such as the Texas Archeological Research Laboratory of the University of Texas at Austin.

(57) [(55)] Register of professional archeologists--A voluntary national professional organization of archeologists which registers qualified archeologists.

(58) [(56)] Research design--A written theoretical approach and a plan for implementing fieldwork that also explains the goals and methods of the investigation. A research design is developed prior to the implementation of the field study and submitted with a completed Archeological Permit Application.

(59) [(57)] Ruins--A historic or prehistoric site, composed of both archeological and structural remains, in which the building or structure is in a state of collapse or deterioration to the point that the original roof and/or flooring and/or walls are either missing, partially missing, collapsed, partially collapsed, or seriously damaged through natural forces or structural collapse. Ruins are considered archeological sites, and historic buildings or structures recently damaged or destroyed are not classified as ruins.

(60) [(58)] Scope of work--A summary of the methodological techniques used to perform the archeological investigation or outline of other project work under permit.

(61) [(59)] Significance--Importance attributed to sites, buildings, structures and objects of historical, architectural, and archeological value which are landmarks and eligible for official designation and protection under the Antiquities Code of Texas. Historical significance is the importance of a property to the history, architecture, archeology, engineering or culture of a community, state or the nation, and is a trait attributable to properties listed or determined eligible for listing in the National Register of Historic Places or for state landmark designation.

(62) [(60)] Site--Any place or location containing physical evidence of human activity. Examples of sites include: the location of prehistoric or historic occupations or activities, a group or district of buildings or structures that share a common historical context or period of significance, and designed cultural landscapes such as parks and gardens.

(63) [(61)] Shipwrecks--The wrecks of naval vessels, Spanish treasure ships, coastal trading schooners, sailing ships, steamships, and river steamships, among other remains of any waterborne craft that sank, ran aground, was beached or docked.

(64) [(62)] State agency--A department, commission, board, office, or other agency that is a part of state government and that is created by the constitution or a statute of this state. The term includes an institution of higher education as defined by the Texas Education Code, §61.003.

(65) [(63)] State Antiquities Landmark--An archeological site, archeological collection, ruin, building, structure, cultural landscape, site, engineering feature, monument or other object, or district that is officially designated as a landmark or treated as a landmark under the interim protection described in §26.8(d) of this title (relating to Designation Procedures for Publicly Owned Landmarks).

(66) [(64)] State Archeological Landmark--A State Antiquities Landmark.

(67) [(65)] State associated collections--The collections owned by the State and under the authority of the commission. This includes the following:

(A) Permitted collections--Collections that are the result of work governed by the Antiquities Code of Texas on land or under waters belonging to the State of Texas or any political subdivision of the State requiring the issuance of a permit by the commission.

(B) Non-permitted collections--Collections that are the result of work governed by the Antiquities Code of Texas on land or under waters belonging to the State of Texas or any political subdivision of the State conducted by commission personnel without the issuance of a permit.

(C) Purchased collections--Collections that are the result of the acquisition of significant historical items by the commission through Texas Historical Artifacts Acquisition Program or use of other State funds.

(D) Donated collections--Collections that are the result of a gift, donation, or bequest to the commission.

(E) Court-action collections--Collections that are awarded to the commission by a court through confiscation of illegally-obtained archeological artifacts or any other material that may be awarded to the commission by a court of law.

(F) Legislative action collections--Collections that are transferred to the commission through legislative action.

(68) [(66)] Structure--A work made up of interdependent and interrelated parts in a definite pattern of organization. The term "structure" is used to distinguish from buildings those functional constructions made usually for purposes other than creating human shelter. Constructed by man, it is often an engineering project. Examples of structures include bridges, power plants, water towers, silos, windmills, grain elevators, etc. As used herein, "structure" is also understood to include all non-archeological cultural resources that are not buildings, including cultural landscapes and non-archeological sites, objects, and districts.

(69) [(67)] Treasures embedded in the earth--In this context, "treasures" refers to artifacts and objects from submerged archeological sites. This can reference artifacts that are either contained within a ship's hull or are isolated yet associated with submerged historic and/or prehistoric archeological sites. The term "treasures" is not meant to imply that objects of monetary value, such as gold and silver, are separately protected under Antiquities Code of Texas. Additionally, "embedded in the earth" refers to artifacts or objects buried or partially covered in underwater sediments.

(70) Unverified cemetery--A location having some evidence of human burial interments, but in which the presence of one or more unmarked graves has not been verified by a person described by §711.0105(a) of the Health and Safety Code of Texas or by the commission.

(71) Verified cemetery--The location of a human burial interment or interments as verified by the commission.

#### §26.5. *Antiquities Advisory Board.*

As permitted by Texas Government Code, §442.005(r), the commission hereby creates the Antiquities Advisory Board (hereafter referred to as the board). The board shall make recommendations to the commission on issues related to the Antiquities Code of Texas, Texas Natural Resources Code, Title 9, Chapter 191. The board is composed of the following ten membership positions: three members of the commission appointed by the chair, a representative of the Texas Archeological Society (TAS) who is nominated in consultation between TAS

and the commission, a representative of the Council of Texas Archeologists (CTA) who is nominated in consultation between CTA and the commission, a state agency archeologist who is nominated in consultation between state agencies that employ archeologists and the commission, two historians nominated by the commission from the discipline of Texas history, and two historic architects nominated by the commission, in consultation with the Texas Society of Architects, from the discipline of historic architecture. The chair of the board is appointed by the chair of the commission, from one of the three commission members that serve on the board. The vice chair will be elected each odd year by the board from within their membership. The archeologists, historians and historic architects serve two-year terms that expire on February 1, of either odd or even numbered years, as determined by the commission. All recommendations made by the board are brought to the commission by the board chair, or one of the other commission members who serve on the board. The board will accomplish its specific duties in the following manner.

(1) Consider and discuss all proposed landmark nominations and any non-adjudicative issues or disputes specifically related to Antiquities Code of Texas and associated permitting issues that are brought before them by the commission, members of the board, or the public.

(2) Function as preliminary reviewers for the commission unless otherwise directed by the commission, or refused by a complainant(s).

(3) Vote on final recommendations related to appropriate issues of concern and present those recommendations to the commission.

(4) Conflicts of interest.

(A) Any member of the board who has a conflict of interest related to an issue that comes before the board shall recuse himself/herself from voting and participating in the discussion on that issue. Prior to any deliberations concerning the issue with which a member of the board has a conflict of interest, the member with a conflict shall announce, for the record, that such a conflict exists and physically absent and recuse himself/herself from the decision-making process and not vote on that matter. Board minutes must indicate which member recused himself/herself and the reason(s) for the recusal.

(B) For the purpose of this chapter a conflict of interest would result if a vote by a member of the board is likely to result in a financial benefit or personal gain for any of the following individuals:

(i) the member of the board;

(ii) any person within the second degree of consanguinity or affinity to the person, which includes a spouse, sibling, parent, grandparent, child or grandchild, whether by blood or marriage;

(iii) a business partner of the member; or

(iv) any organization for profit in which the member, or any person of clauses (ii) and (iii) of this subparagraph, that is serving or is about to serve as an officer, director, trustee, partner, or employee. A financial benefit includes, but is not limited to, grant money, contract, subcontract, royalty, commission, contingency, brokerage fee, gratuity, favor, or any other things of real or potential pecuniary value.

~~[(5) Pursuant to Texas Government Code, §2110.008, the board must be reauthorized by the commission every four years during the commission's first regularly scheduled quarterly meeting of that year.]~~

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

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## SUBCHAPTER B. IDENTIFICATION AND DESIGNATION OF LANDMARKS

### 13 TAC §26.7

The amendment of these rules is proposed under §442.005(q) of the Texas Government Code which provides the Texas Historical Commission with the authority to promulgate rules to reasonably effect the purposes of the commission; §191.052 of the Natural Resources Code, which provides the commission with the authority to promulgate rules for the implementation and administration of the Antiquities Code of Texas; §442.017 of the Texas Government Code relating to the commission's authority to adopt rules related to abandoned cemeteries; and §711.012 of the Texas Health and Safety Code which provides the commission with the authority to adopt rules to enforce and administer §711.010 and §711.011 of the Texas Health and Safety Code.

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

*§26.7. Location and Discovery of Cultural Resources and Landmarks.*

(a) It is the public policy and in the interest of the State of Texas to locate archeological sites and other cultural resources, in, on, or under any land within the jurisdiction of the State of Texas per Texas Natural Resources Code, §191.002.

(b) The commission shall provide for the discovery and/or scientific investigation of publicly owned cultural resources in accordance with Texas Natural Resources Code, §191.051.

(c) The commission, state agencies, political subdivisions of the state, and law enforcement agencies shall work together to locate and protect cultural resources when deemed prudent, necessary, and/or in the best interest of the state per Texas Natural Resources Code, §191.174.

(d) To achieve these mandates, the commission shall review construction plans for projects on public lands prior to development to determine the project's potential impact to cultural resources, and invoke its power to issue Antiquities Permits and supervise Antiquities Permit investigations in accordance with Texas Natural Resources Code, §191.054. These mandates and the review of construction plans that may adversely affect archeological sites and historic buildings or structures are accomplished in the following manner.

(1) Project notification. As provided by Texas Natural Resources Code, §§191.0525, 191.054, 191.093, and 191.098, public agencies shall notify the commission before groundbreaking on public land or construction projects that could take, alter, damage, destroy, salvage, or excavate archeological sites, historic buildings or structures, designated historic districts, or other cultural resources or

landmarks on non-federal public land in Texas. The notification must contain a brief written scope of work and a copy of the appropriate topographical quadrangle map with clearly marked project boundaries and photographs of the buildings or structures involved in the project work.

#### (A) State agencies.

(i) State agencies, other than institutions of higher education, shall furnish the commission with documentation of each building possessed by the agency that is 45 years old or older, pursuant to Texas Natural Resources Code, Chapter 31 (General Land Office), §31.153. After an agency's initial report, it must annually furnish documentation on each building that was acquired after the date of the previous submission and is 45 years old or older on the date of the current submission, or is possessed by the agency and has become 45 years old since the date of the previous submission.

(ii) State agencies must send advance notification at least 30 days prior to any groundbreaking per §191.0525, or at least 60 days prior to altering, renovating, or demolishing a building that is 50 years old or older per §191.098 of the Texas Natural Resources Code.

(iii) Once the commission receives a complete notification, a response will be provided within 30 days of receipt of the review request, or within 15 days of receipt for project locations regarding oil, gas, or other mineral exploration, production, processing, marketing, refining, or transportation facility or pipeline projects. The commission shall review submitted documentation and notify the state agency if archeological sites or historic buildings involved in the work are landmarks or are eligible for landmark designation, and/or of the possible need for a survey to locate cultural resources situated in the proposed development tract. The commission may also issue advisory comments if a building is historically significant but not eligible for landmark designation. If the commission does not respond within the specified timeframe, the state agency may proceed without further notice to the commission. Expedited reviews may be accommodated on a case-by-case basis if warranted.

#### (B) Political subdivisions.

(i) Political subdivisions must send advance notification at least 30 days prior to any project that may affect potential or designated archeological sites if the project affects a cumulative area larger than five acres or disturbs a cumulative area of more than 5,000 cubic yards, whichever measure is triggered first, or if the project is inside a recorded archeological site or designated historic district[, as defined in §26.3(22) of this title (relating to Definitions)].

(ii) Once the commission receives a complete notification, a response will be provided within 30 days of receipt of the review request, or within 15 days of receipt for project locations regarding oil, gas, or other mineral exploration, production, processing, marketing, refining, or transportation facility or pipeline projects. The commission shall review submitted documentation and notify the public agency if archeological sites involved in the work are landmarks or are eligible for landmark designation, and/or of the possible need for a survey to locate cultural resources situated in the proposed development tract. If the commission does not respond within the specified timeframe, the public agency may proceed without further notice to the commission. Expedited reviews may be accommodated on a case-by-case basis if warranted.

(C) Categorical exclusions. Since many activities conducted on non-federal public land have little, if any, chance to damage cultural resources, the following activities do not require notification:

(i) water injection into existing oil and gas wells;

(ii) upgrading of electrical transmission lines when there will be no new disturbance of the existing easement;

(iii) seismic exploration activity when there is no ground penetration or disturbance;

(iv) building and repairing fences that do not require construction or modification of associated roads, fire breaks, or previously disturbed ground;

(v) road maintenance that does not involve widening or lengthening the road;

(vi) installation or replacement of meter taps;

(vii) controlled burning of fields;

(viii) animal grazing;

(ix) plowing, if the techniques are similar to those used previously;

(x) installation of monuments and sign posts unless within the boundaries of designated historic districts;

(xi) maintenance of existing trails;

(xii) land sales and trades of land held by the permanent school fund and permanent university fund;

(xiii) permanent school fund and permanent university fund leases, easements, and permits, including mineral leases and pooling agreements, in which the lessee, grantee, or permittee is specifically required to comply with the provisions of this chapter;

(xiv) oil, gas, or other mineral exploration, production, processing, marketing, refining, or transportation facility or pipeline project in an area where the project will cross state or local public roads, rivers, and streams, unless they contain a recorded archeological site or a designated state land tract in Texas' submerged lands; and

(xv) maintenance, operation, replacement, or minor modification of an existing oil, gas, or other mineral exploration, production, processing, marketing, refining, or transportation facility or pipeline.

(D) Emergency situations. Advance notification is not required for immediate remediation of a fire, spill, or other emergency associated with an existing facility located on state or local public lands if the emergency requires an immediate response. Notification of actions taken in response to an emergency must be submitted within 15 days of the action. If cultural resources were affected by the emergency or remediation measures, or may be affected by any long-term actions, the commission will respond in accordance with paragraph (2) of this subsection.

~~[(2) Project review. Once the commission receives a complete notification, a response will be provided within 30 days (unless otherwise provided for within §191.0525 of the Texas Natural Resources Code) of receipt of the review request. The commission shall review submitted documentation and notify the public agency if archeological sites, historic buildings, or structures involved in the work are landmarks or are eligible for landmark designation, and/or of the possible need for a survey to locate cultural resources situated in the proposed development tract. The commission may also issue advisory comments if a building or structure is historically significant but not eligible for landmark designation. If the commission does not respond within 30 days, the public agency may proceed without further notice to the commission. Expedited reviews may be accommodated on a case-by-case basis if warranted.]~~

~~(2) [(3) Project coordination. If a survey investigation or review of project work is required, professional personnel meeting the applicable requirements of §26.4 of this title (relating to Professional Qualifications and Requirements) will perform the investigations or work under an Antiquities Permit in accordance with §§26.13 - 26.18 and §§26.20 - 26.24 of this title.~~

~~(3) [(4) Construction discovery. Any person working on public lands who discovers an archeological site~~;~~ building, or structure] that may qualify for designation as a landmark according to the criteria listed in §§26.10 - 26.12 ~~[and §26.19]~~ of this title shall cease work and report such discovery to the state agency or political subdivision owning or controlling the property and to the commission. Upon notification, the commission staff will respond within two business days. The commission may initiate designation proceedings if it determines the site to be a significant cultural or historical property, and/or may issue a permit for mitigative archeological investigation or any other investigation. The cost of a proper investigation, excavation, or preservation of such a landmark or potential landmark will be borne by the owner or developer of the property rather than by the commission.~~

(4) Discovery of Unverified Cemeteries. Section 711.0111 of the Health and Safety Code of Texas requires that any person that discovers an unverified cemetery shall file a notice and evidence of the discovery with the commission on a form provided by the commission. Section 711.0111 also requires that any person that discovers an unverified cemetery shall concurrently provide a notice of the filing with the landowner on record in the county appraisal district on whose land the unverified cemetery is located. The commission shall evaluate the notice and evidence submitted with the notice, and consider the response of the landowner, if any is received not later than the 30<sup>th</sup> day after notice, and shall determine whether there is enough evidence to support the claim of the existence of a cemetery. If the commission determines that sufficient evidence supports a determination the commission shall notify the landowner and may file notice of the existence of the cemetery under §711.011 of the Health and Safety Code. If a notice of existence has already been filed under §711.011 and the commission has determined that there is not sufficient evidence of a cemetery the commission will file an amendment with the county clerk to remove the dedication.

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

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## SUBCHAPTER C. ARCHEOLOGY

### 13 TAC §§26.10, 26.14, 26.16, 26.17

The amendment of these rules is proposed under §442.005(q) of the Texas Government Code which provides the Texas Historical Commission with the authority to promulgate rules to reasonably effect the purposes of the commission; §191.052 of the Natural Resources Code, which provides the commission with the authority to promulgate rules for the implementation and ad-

ministration of the Antiquities Code of Texas; §442.017 of the Texas Government Code relating to the commission's authority to adopt rules related to abandoned cemeteries; and §711.012 of the Texas Health and Safety Code which provides the commission with the authority to adopt rules to enforce and administer §711.010 and §711.011 of the Texas Health and Safety Code.

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

§26.10. Criteria for Evaluating Archeological Sites and Verifying Cemeteries.

(a) The commission shall use one or more of the following criteria when assessing the appropriateness of official landmark designation, and/or the need for further investigations under the permit process:

(1) the site has the potential to contribute to a better understanding of the prehistory and/or history of Texas by the addition of new and important information;

(2) the site's archeological deposits and the artifacts within the site are preserved and intact, thereby supporting the research potential or preservation interests of the site;

(3) the site possesses unique or rare attributes concerning Texas prehistory and/or history;

(4) the study of the site offers the opportunity to test theories and methods of preservation, thereby contributing to new scientific knowledge; and

(5) there is a high likelihood that vandalism and relic collecting has occurred or could occur, and official landmark designation is needed to ensure maximum legal protection, or alternatively, further investigations are needed to mitigate the effects of vandalism and relic collecting when the site cannot be protected.

(b) The commission shall use one or more of the following criteria when assessing the verification of the existence of a cemetery:

(1) the location contains interments that are confirmed through assessments or investigations consented by the landowner and performed by a professional archeologist or other individuals as defined by §711.0105(a) of the Health and Safety Code of Texas;

(2) the location contains human burial caskets or other containers or vessels that contain human remains or are contextually known to have been used to inter human remains;

(3) the location contains articulated human remains that were deliberately interred; or

(4) the location contains a burial pit or burial pit features.

§26.14. Issuance and Restrictions of Archeological Permits.

(a) Issuance of permit. The commission shall review the permit application submitted pursuant to §26.13 of this title (relating to Application for Archeological Permits) and may issue the permit, issue the permit with special conditions, request additional information for review, request a revised scope of work or research design, or deny the permit application.

(1) Review by commission staff. Within 30 days of the receipt of a permit application, staff shall notify the applicant in writing that the permit application is complete and accepted for filing or that the permit application is incomplete and specify the additional information required for review. The commission will also issue or deny the permit within 30 days. Investigations may commence upon receipt of notification of the assignment of a permit number, and a hard copy of the permit will be mailed to all signatories to the permit application.

(2) Review by the Antiquities Advisory Board. The executive director may choose to submit the permit application to the Antiquities Advisory Board for its consideration. Permits that are denied by commission staff may be appealed by the applicant to the Antiquities Advisory Board. The board shall review such applications at its next scheduled meeting, provided it shall have a minimum of 15 days to prepare for such review. Recommendations of the board shall be taken to the next scheduled meeting of the commission by the chair of the board or by one of the other commissioners who serve on the board for action thereon.

(3) The deadlines in this section may be extended for good cause. In the event a deadline is extended, the commission shall provide notice of the extension and the good cause to the applicant in writing. The applicant may complain directly to the executive director if the staff exceeds the established period for processing permits and may request a timely resolution of any dispute arising from the delay.

(4) Failure to respond. If no response has been made by the commission within 30 days of receipt of any permit application, the permit shall be considered to be granted.

(b) Review by controlling entities. It is the responsibility of the permit applicant to obtain all necessary permissions and signatures prior to submitting an archeological permit application.

(c) Special requirements. When a permit is issued, it will contain all special requirements governing that particular investigation; it must be signed by the director of the Archeology Division of the commission, or his or her designated representative.

(d) Permit period. No permit will be issued for less than one year nor more than ten years, but a permit may be issued for any length of time as deemed necessary by the commission in consultation with the principal investigator.

(e) Transfer of permits. No permit issued by the commission will be assigned by the permittee in whole or in part to any other institution, museum, corporation, organization, or individual without acknowledgement of the original permittee and the consent of the commission. If the investigative firm cannot obtain acknowledgement of the transfer from the original permit holder, documentation of the firm's efforts must be submitted together with the transfer application form.

(f) State site survey forms. TexSite electronic forms for all sites recorded as a result of activities undertaken through an Antiquities Permit will be completed and submitted to the Texas Archeological Research Laboratory at the University of Texas in Austin, upon the completion of field work.

(g) Permit expiration date. The expiration date shall be specified in each permit and is the date by which all terms and conditions must be completed for that permit. It is the responsibility of the permittee, sponsor, investigative firm, and principal investigator to meet any and all permit submission terms and conditions prior to the expiration date listed on the permit.

(1) Expiration date notification. Principal investigators will be notified 60 days in advance of permit expiration date.

(2) Expiration date extension. A principal investigator must complete and submit a First Extension Application Form to the commission if he or she desires an extension of the final due date for the completion of an Antiquities Permit that was issued to him or her. The Archeology Division (AD) of the commission will review the submitted Permit Extension Form, determine whether an extension is warranted and extend the permit expiration date once for no less than one year and no more than ten years as deemed appropriate. In addition, and upon review and recommendations by the Antiquities

Advisory Board, the commission may by a majority vote of its members, approve or disapprove an additional extension of the expiration date of an Antiquities Permit beyond the single extension that the AD staff of the commission is authorized to issue under subsection (c) of this section and this paragraph, provided that the following conditions are met:

(A) the principal investigator (PI), and/or the investigative firm listed under an Antiquities Permit must complete and submit a Second Extension Application Form to the commission, and give an oral presentation before the Antiquities Advisory Board justifying why a second permit expiration-date extension is warranted; and

(B) the justification for the second extension must show that the extension is needed due to circumstances beyond the control of the PI. Examples include, but are not limited to: funding problems, death of the PI, and artifact curation problems.

(h) Expiration responsibilities. Investigative firms must ensure that a principal investigator is assigned to a permit at all times, regardless of whether the permit is active or has expired. Both the principal investigator and investigative firm should ensure that a new principal investigator is assigned to the permit if, for any reason, the original principal investigator must leave the project. The assignment of a new principal investigator must be approved by the commission.

(i) Permit amendments. Proposed changes in the terms and conditions of the permit must be approved by the commission.

(j) Permit cancellation. The commission may cancel an Antiquities Permit if one or more of the following events occur:

(1) death or withdrawal of the principal investigator without a new principal investigator being named and approved by the commission;

(2) cancellation of the project by the sponsor or permittee prior to the completion of the archeological field investigations;

(3) violation of §26.18 of this title (relating to Compliance with Rules for Archeological Permits); and/or

(4) destruction of the permit area or associated cultural resources due to natural causes, prior to the substantive completion of the field investigations being performed under the permit.

(k) Permit censuring. The commission may censure a principal investigator and/or investigative firm under the following conditions:

(1) if it is found that two or more permit application offenses have occurred in one calendar year. [Permit application offenses result when investigations are performed without first obtaining a permit from the commission.] Permit censuring will render a principal investigator and investigative firm ineligible for issuance of another permit for six months after a finding by the board that two or more permit application offenses have occurred in a one-year period[-]; or

(2) if an investigative firm does not assign a new principal investigator to a permitted investigation within one month of the departure from the firm by the principal investigator assigned to the permit. Permit censuring will render the investigative firm ineligible for issuance of another permit until a new principal investigator is assigned to the applicable permits.

*§26.16. Reports Relating to Archeological Permits.*

(a) With the exception of alternative mitigation and rock art preservation permits, a report and transmittal letter must be submitted to the commission describing the results of each permitted investigation. The report should meet the Council of Texas Archeologists (CTA)

Guidelines for Cultural Resources Management Full or Short Reports, and must be submitted to the commission meeting the following requirements.

(1) The report must contain:

(A) a title page that includes: the name of the investigation project, the name of the principal investigator and investigative firm, the county or counties in which the investigations were performed, the Antiquities Permit number, and the date of publication;

(B) an abstract containing project field dates, project acreage, descriptions of the findings, a list of the sites recorded (with trinomials) and a clarification concerning which artifacts were curated and where they are or will be curated;

(C) specific recommendations of which sites merit official designation as landmarks; which sites appear to be eligible for inclusion in the National Register of Historic Places; and which sites will be adversely affected by the proposed project;

(D) map(s) with accurate plottings of the project area and archeological sites.

(2) One printed copy of the draft permit report and associated project area shapefiles must be submitted to the commission for review prior to the production of the final report. The draft report does not have to be bound, but should contain all of the basic content elements required for the final report. The final report must also contain any revisions in the draft that are required in writing by the commission.

(3) Upon completion of a permitted project, and at no charge to the commission, the permittee, sponsor, or principal investigator shall furnish the commission and the Texas State Library and Archives Commission, State Publications Depository Program (hereinafter, TSLAC) with one printed copy each of the final report. The commission's copy shall be an unbound copy that contains at least one map with the plotted location of any and all sites recorded, and two copies of a tagged PDF format of the report on an archival quality CD or DVD. One of the tagged PDF CDs or DVDs must include the plotted location of any and all sites recorded and the other should not include the site location data. The TSLAC copy shall be bound and should not contain the plotted location of sites.

(4) A completed Abstracts in Texas Contract Archeology Summary Form must also be submitted with the final report. An electronic copy of the abstract and the completed abstract form must also be forwarded to the commission and, when appropriate, a Curation Form must also be submitted with the final report.

(5) Eleven or more printed copies of all reports without the site location information should be distributed by the permittee, sponsor, or principal investigator, at no cost to the commission, to university-based libraries and archeological research facilities around the state. Recommended libraries include: the Texas Archeological Research Laboratory at the University of Texas, the Center for Archeological Studies at Texas State University, the Center for Archeological Research at UTSA, the Stephen F. Austin State University library, the Texas Tech University library, the Texas A&M University library, the UT El Paso library, the Southern Methodist University library, Dolph Briscoe Center for American History, Sul Ross State University library, and the West Texas A&M University library.

(b) When Antiquities Permit investigations result in negative findings, the report and curation standards shall meet the CTA Guidelines for Cultural Resources Management Short Reports, and Curation Standards and Procedures, and production must follow the same standards as set forth in subsection (a)(3) and (5) of this section.

(c) For reports related to alternative mitigation and rock art preservation permits any requirements will be stated in the permit conditions.

*§26.17. Principal Investigator's Responsibilities for Disposition of Archeological Artifacts and Data.*

(a) Processing. Principal investigators who receive permits shall be responsible for cleaning, conserving, cataloguing, packaging in archival materials; arranging for the curation of all collections, specimens, samples, and records; and for the reporting of results of the investigation.

(b) Ownership. All specimens, artifacts, materials, samples, original field notes, maps, drawings, photographs, and standard state site survey forms resulting from the investigations remain the property of State of Texas. Certain exceptions left to the discretion of the commission are contained in Texas Natural Resources Code, §191.052(b). The commission will determine the final disposition of all artifacts, specimens, materials, and data recovered by investigations on landmarks or potential landmarks, which remain the property of the State. Antiquities from landmarks are of inestimable historical and scientific value and should be preserved and utilized in such a way as to benefit all the citizens of Texas. Such antiquities shall never be used for commercial exploitation.

(c) Housing, conserving, and exhibiting antiquities from landmarks.

(1) After investigation of a landmark has culminated in the reporting of results, the antiquities will be permanently preserved in research collections at the curatorial facility approved by the commission. Prior to the expiration of the permit, proof that archeological collections and related field notes are housed in a curatorial facility is required through the submission of a curation form. Failure to demonstrate proof before the permit expiration date may result in the principal investigator and co-principal investigator falling into default status.

(2) Institutions housing antiquities from landmarks will also be responsible for adequate security of the collections, continued conservation, periodic inventory, and for making the collections available to qualified institutions, individuals, or corporations for research purposes.

(3) Exhibits of materials recovered from landmarks will be designed in such a way as to provide the maximum amount of historical, scientific, archeological, and educational information to all the citizens of Texas. First preference will be given to traveling exhibits following guidelines provided by the commission and originating at an adequate facility nearest the point of recovery. Permanent exhibits of antiquities may be prepared by institutions maintaining such collections following guidelines provided by the commission. A variety of special, short-term exhibits may also be authorized by the commission.

(d) Pursuant to Texas Natural Resources Code, §§191.091 - 191.092, all antiquities found on land or under waters belonging to the State of Texas or any political subdivision of the State belong to the State of Texas. The commission is charged with the administration of the Antiquities Code of Texas and exercises the authority of the State in matters related to these held-in-trust collections.

(e) Decisions regarding the disposal or destructive analysis of held-in-trust collections are the legal responsibility of the commission. Acceptable circumstances for disposal or destructive analysis are provided by this chapter. Exceptions may be considered by the commission. Under no circumstances will held-in-trust collections be disposed of through sale.

(f) Disposal. The commission's rules for disposal apply to state-associated collections prior to accessioning from an archeolog-

ical project [objects and samples prior to accessioning that have been recovered from a site] on public land or under public water under an Antiquities Permit issued by the commission.

(1) Disposal of state-associated collections [recovered objects or samples] from a site on public land or from public water under an antiquities permit issued by the commission must be approved by the commission. Approval for anticipated disposal is by means of an approved research design at the time the Antiquities Permit is issued. The manner in which any state-associated collection [the object or sample] is to be disposed must be included in the research design. Additional disposal not included in the approved research design must be approved by the commission prior to any disposal action.

(2) The appropriate reasons for disposal of state-associated collections include, but are not limited to, the following:

(A) [Objects] are highly redundant and without additional merit.

(B) [Objects] lack historical, cultural, or scientific value.

(C) [Objects] have decayed or decomposed beyond reasonable use and repair or by their condition constitute a hazard to other objects in the collection.

(D) [Objects] may be subject to disposal as required by federal laws.

(3) State-associated collections [Items] disposed of after recovery must be documented in the notes and final report, with copies provided to the curatorial facility.

(4) The commission relinquishes title for the State to any state-associated collections [object or sample] approved for disposal. The state-associated collections [object or sample] must be disposed of in a suitable manner.

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

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## SUBCHAPTER D. HISTORIC BUILDINGS AND STRUCTURES

### 13 TAC §§26.19, 26.20, 26.23

The amendment of these rules is proposed under §442.005(q) of the Texas Government Code which provides the Texas Historical Commission with the authority to promulgate rules to reasonably effect the purposes of the commission; §191.052 of the Natural Resources Code, which provides the commission with the authority to promulgate rules for the implementation and administration of the Antiquities Code of Texas; §442.017 of the Texas Government Code relating to the commission's authority to adopt rules related to abandoned cemeteries; and §711.012 of the Texas Health and Safety Code which provides the commis-

sion with the authority to adopt rules to enforce and administer §711.010 and §711.011 of the Texas Health and Safety Code.

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

§26.19. *Criteria for Evaluating Historic Buildings and Structures.* Buildings, structures, cultural landscapes, and non-archeological sites, objects, and districts may be designated as landmarks, provided that the following conditions are met:

(1) the property meets [~~fits within~~] at least one of the following criteria:

(A) the property is associated with events that have made a significant contribution to the broad patterns of our history, including importance to a particular cultural or ethnic group;

(B) the property is associated with the lives of persons significant in our past;

(C) the property embodies the distinctive characteristics of a type, period, or method of construction, represents the work of a master, possesses high artistic values, or represents a significant and distinguishable entity whose components may lack individual distinction;

(D) the property has yielded, or may be likely to yield, information important in Texas culture or history;

(2) the property retains integrity at the time of the nomination, as determined by the executive director of the commission; and

(3) [~~for buildings and structures only;~~] the property must be listed in the National Register of Historic Places, either individually, or as a contributing property within a historic district. Contributing status may be determined by the Keeper of the National Register or the executive director of the commission.

§26.20. *Application for Historic Buildings and Structures Permits.*

(a) Permit application procedure.

(1) Applicant qualification. Only the controlling agency, organization, or political subdivision having administrative control over a publicly owned landmark or the owner of a privately owned landmark (applicant/permittee) may apply for and be issued a Historic Buildings and Structures Permit. It is the responsibility of the applicant to obtain all necessary permissions and signatures prior to submitting a permit application for work on historic buildings, structures, and their sites.

(2) Notification. The commission must be notified of any anticipated, planned, or proposed work to a landmark or the site associated with a landmark. Notification must also be given for work to buildings or structures that have been nominated for designation as landmarks. Such notice should be made early enough to allow adequate time to prepare the formal application as described in paragraph (4) of this subsection. The notification must include a brief written description of the project and at least one photograph of the building or structure or affected portion of that building or structure. If a permit is required for the proposed scope of work, the commission staff will provide the applicant with the permit application form and notify him or her of the necessary attachments or application reports within 30 days of receipt of notification. Historic Buildings and Structures Permits can only be required for work to a designated landmark, or a building or structure treated as a landmark under the interim protection described in §26.8 (d) of this title (relating to Designation Procedures for Publicly Owned Landmarks); such permits cannot be required for a property that is eligible but not currently nominated for designation.

(A) Normal maintenance and repair. Work that does not have the potential to cause removal, damage or alteration to the in-

tegrity, form, or appearance of the materials, features, or landform of the historic building or structure and its site, is considered to be normal maintenance and repair, and therefore exempt from the required notification process, per Texas Natural Resources Code, §191.054. Cleaning surfaces with non-corrosive mild solutions and low-pressure water, repainting window frames or doorways with similar paints, or minor repairs such as replacing putty on windows are examples of normal maintenance and repair. Other work, however, may not constitute normal maintenance and repair. For example, permanent masonry damage can result from use of inappropriate cleaning methods, such as sandblasting, high pressure water cleaning, or the use of unsuitable chemicals, or from use of damaging repointing techniques and materials. Replacing historic windows damages the historical integrity of a building, and painting previously unpainted surfaces constitutes alteration. Such work is not considered normal maintenance or repair.

(B) Interior spaces. Nonpublic interior spaces are spaces that are inaccessible to the public, and alterations to those spaces are exempt from the required notification process, per Texas Natural Resources Code, §191.054. The interior spaces to be considered public and therefore not exempt are those spaces that are or were accessible to the public (lobbies, corridors, rotundas, meeting halls, courtrooms, offices of public officials, public employees, and services, etc.), or those that are important to the public because of any significant historical, architectural, cultural, or ceremonial value.

(3) Advance review. For more complex projects, it is advisable that the commission staff be consulted early in the planning or design process in order to avoid delays in issuing the final permit.

(4) Formal application. All applications should be submitted on the Historic Buildings and Structures Permit application form approved by the commission at least 60 days prior to the commencement of work or issuance of bid documents, whichever comes first. The application form may be submitted in hard copy with original signatures, or electronically with scanned signatures, to the mailing or email address indicated on the form. The project professional personnel must be a project architect who has the required experience on historic buildings and structures in the type of project work proposed, or other professional as provided for in §26.4(3) of this title (relating to Professional Qualifications and Requirements). At the request of commission staff, the professional personnel must submit a resume demonstrating the required education and experience.

(5) Emergency application. If emergency preservation or hazard abatement work must be performed quickly in a crisis situation or due to extenuating circumstances, the minimum 60 day submission requirement may be waived with approval from the commission staff. Staff shall determine appropriate procedures for issuance of emergency permits based on the specific circumstances and urgency of the work.

(6) Attachments. All permit applications must be accompanied by plans, specifications, or other documents prepared for the project that adequately describe the full scope of work. Large-format drawings or lengthy attachments must be submitted in hard copy. In addition, 4 by 6 inch color photographs of the overall building or structure and all areas of proposed work are required. Photographs may be taken with a 35 mm or digital camera. Digital photographs should have a resolution of at least 300 pixels per inch and may be printed on an inkjet or laser printer on high-quality paper.

(7) Application reports. See §26.23(a) of this title (relating to Reports Relating to Historic Buildings and Structures Permits) for a discussion of each type of report. In the case of more complex projects, one or more of the following reports may be required with the permit application:

(A) historic structure report;



- (B) historical documentation;
- (C) architectural documentation; and/or
- (D) archeological documentation.

(8) Project reports. Depending upon the scope of work, one or more of the following reports may be required as a condition of a permit to be prepared during the course of a project and to be submitted upon completion of that project prior to expiration of the permit. All Historic Buildings and Structures Permits require a completion report. For projects that receive a grant under the Texas Historic Courthouse Preservation Program, described in Chapter 12 of this title, the completion report for the grant may suffice in lieu of a separate permit completion report, when specified by the commission. Any other required reports will be specified when the permit is issued. See §26.23(b) of this title for a discussion of each type of report:

- (A) architectural documentation;
- (B) archeological documentation;
- (C) storage report; and/or
- (D) completion report.

(9) Issuance of contract documents. Contract documents should not be issued for bidding purposes before a permit has been issued by the commission under §26.21 of this title (relating to Issuance and Restriction of Historic Buildings and Structures Permits). Since changes may be required for issuance of a permit, the commission will not be responsible for delay caused by amending contract documents after issuance, price increases caused by reissuance of contract documents, or any other such consequences.

(b) Standards for the treatment of historic properties. The Secretary of the Interior's Standards for the Treatment of Historic Properties (1995 and subsequent revisions; codified at 36 Code of Federal Regulations Part 68 [36 Code of Federal Regulations Part 67]) are hereby adopted by reference by the commission and shall be considered to be a part of this chapter. Copies of these standards are available on the National Park Service website at [www.nps.gov/tps/standards.htm](http://www.nps.gov/tps/standards.htm) [[www.nps.gov/tps/standards.htm](http://www.nps.gov/tps/standards.htm)].

*§26.23. Reports Relating to Historic Buildings and Structures Permits.*

(a) Application reports. It is important in the case of complex projects to ensure the historical accuracy and/or appropriateness of the project by gathering and assessing important information relating to the property through investigation, research, and documentation. Based on the scope of a project, one or more of the following application reports may be required to be submitted as a part of the permit application. A permit may not be issued before all required application reports have been received. All application reports must be prepared under the supervision of professionally qualified individuals as specified in §26.4 of this title (relating to Professional Qualifications and Requirements).

(1) Historic structure report.

(A) Purpose. This report should be utilized to evaluate the existing conditions of the building or structure, to understand the changes to a property over time, to establish preservation objectives for the property, to schedule the accomplishment of these preservation objectives, and to better support the proposed work.

(B) When required. When a proposed rehabilitation, restoration, or reconstruction project involves fabricating significant missing architectural or landscape features, recapturing the appearance of a property at one particular period of its history, removing later additions, or significant changes to the building for rehabilitation, a historic

structure report must be completed prior to application for a Historic Buildings and Structures Permit.

(C) Minimum report requirements. Documentation must follow the guidance of the National Park Service's Preservation Brief 43: The Preparation and Use of Historic Structure Reports (available on the National Park Service website at <https://www.nps.gov/tps/how-to-preserve/briefs/43-historic-structure-reports.htm> [[www.nps.gov/history/hps/tps/briefs/brief43.htm](http://www.nps.gov/history/hps/tps/briefs/brief43.htm)]) and should include the following:

- (i) historical background and context, including:
  - (I) name of the original architect and date of construction;
  - (II) information on important historical events or persons associated with the property;
  - (III) copies of extant historic plans and photographs of the property; and
  - (IV) oral history documentation, when possible;
- (ii) chronology of development and use;
- (iii) physical description;
- (iv) evaluation of significance;
- (v) condition assessment, including:
  - (I) photographic documentation of the existing conditions (Photographs must be at least 4 by 6 inches and may be taken with a 35 mm or digital camera. Digital photographs should have a resolution of at least 300 pixels per inch and may be printed on an inkjet or laser printer on high-quality paper.); and
  - (II) architectural drawings of the existing conditions;
- (vi) historic preservation objectives;
- (vii) requirements for work; and
- (viii) work recommendations and alternatives, including intended modifications to the building or structure.

(2) Historical documentation.

(A) Purpose. Historical research and documentation assist in understanding the changes to a historic property over time and can better support proposed project work.

(B) When required. Historical documentation may be required at the request of the commission's staff, executive director, or the Antiquities Advisory Board to support work proposed under a permit.

(C) Minimum report requirements. Historical documentation must include the following:

- (i) name of original architect and date of construction;
- (ii) history of the use of and known modifications to the structure;
- (iii) brief history including information on important historical events or persons associated with the structure;
- (iv) copies of extant historic plans and photographs of the building or structure and site, or documentation of the specific historic features, areas or materials to be affected by proposed restoration or reconstruction work; and

(v) oral history documentation to support proposed restoration or reconstruction work, or to document historic structures and buildings proposed for relocation or demolition.

(3) Architectural documentation.

(A) Purpose. Documentation of cultural resources that will be lost or damaged due to rehabilitation, relocation, or demolition will ensure that a record of the cultural resource continues to exist after the loss or damage.

(B) When required. Architectural documentation must precede any work that will damage, alter, obscure, or remove significant architectural configurations, elements, details, or materials. Documentation that meets the required standards must be submitted for rehabilitation and restoration projects that will significantly alter a building, structure, or other cultural resource, and for all relocation and demolition permits.

(C) Minimum report requirements. Architectural documentation must meet the Secretary of the Interior's Standards and Guidelines for Architectural and Engineering Documentation (available on the National Park Service website at <https://www.nps.gov/HDP/> [[www.nps.gov/history/hdp](http://www.nps.gov/history/hdp)]), also referred to as Historic American Buildings Survey (HABS), Historic American Engineering Record (HAER), and Historic American Landscapes Survey (HALS) standards and guidelines. The commission will assign the level of documentation required (levels I-IV) based on the project work proposed and the significance of the cultural resource.

(4) Archeological documentation.

(A) Purpose. Many standing structures have an archeological component, and archeological remains exist in urban areas as well as rural areas. The information available from archeological investigations in and around a building or structure is important in conjunction with architectural and historical documentation for the synthesis and study of all related material.

(B) When required. When development or historic preservation treatment of a historic property makes disturbance of the earth unavoidable, the specific areas affected may need to be tested archeologically to determine if the undertaking will disturb or destroy archeological remains, including subsurface features of an aboveground structure. If the exploratory tests indicate the area has archeological value and if the development plans cannot be altered, the archeological data and artifacts directly affected by the project are to be recovered.

(b) Project reports. When the situation indicates it is advisable, one or more of the following project reports may be required to be compiled during the course of a project and submitted along with the completion report. All project reports must be compiled under the supervision of professionally qualified individuals as specified in §26.4 of this title.

(1) Architectural documentation. When investigation and documentation is not possible prior to commencement of work because of physical obstruction, or when previously obscured conditions are subsequently discovered, architectural documentation may be required during the course of a project (see subsection (a)(3) of this section).

(2) Archeological documentation. When investigation and documentation are not possible prior to commencement of work because of physical obstruction, or when previously obscured evidence is subsequently discovered, archeological documentation may be required during the course of a project. Archeological documentation may be required for relocation or demolition permits (see subsection (a)(4) of this section).

(3) Storage report.

(A) Purpose. Historic features or materials original to the building or structure or otherwise significant to the building or structure's evolution are important to the understanding of Texas culture and history.

(B) When required. When historic features or materials original or otherwise significant to the building or structure's history are removed during the course of a project, selected samples must be stored at the site or at a site approved by the commission, and a storage report must be filed.

(C) Minimum report requirements. Documentation must include the following:

(i) photo documentation of the structural or architectural elements to be removed in their original position and in storage (Photographs must be at least 4 by 6 inches and may be taken with a 35 mm or digital camera. Digital photographs should have a resolution of at least 300 pixels per inch and may be printed on an inkjet or laser printer on high-quality paper.);

(ii) written documentation of the existing condition of the elements prior to removal; and

(iii) written documentation of the storage (preservation) efforts, including the method and location of storage and any conservation efforts made.

(4) Completion report.

(A) Purpose. When work is done to a historic building or structure, it is important to record the changes that take place so that the building or structure's historic evolution might be completely documented for future study.

(B) When required. All Historic Buildings and Structures Permits require completion reports.

(C) Minimum report requirements. Written documentation must include the following:

(i) title page, including:

(I) project name;

(II) city, county;

(III) permit number;

(IV) date of report;

(ii) text, including:

(I) property name and location;

(II) primary personnel (names, titles, addresses, and telephone numbers), including:

(-a-) owner;

(-b-) lessee;

(-c-) architect;

(-d-) engineer;

(-e-) contractor;

(-f-) consultant(s);

(-g-) others;

(III) scope of work (major categories with corresponding costs);

(IV) project dates (beginning and ending);

(V) project narrative, including:

(-a-) description of work and description of anticipated future work (if any);

- (-b-) description of special products, materials, and/or building techniques;
- (-c-) description of intended use of the property; and
- (VI) index of photographs.

(D) Photographic record. Photographic documentation is a significant part of the record of the project work. Representative views, before, during, and after project work, should be of the same area, to clearly illustrate the work as it progresses. Photographs must be at least 4 by 6 inches and may be taken with a 35 mm or digital camera. Digital photographs should have a resolution of at least 300 pixels per inch and may be printed on an inkjet or laser printer on high-quality paper. Photographs must include:

- (i) before construction conditions;
- (ii) during construction; and
- (iii) after construction is complete.

(E) Report submittal. Submit the required completion report with original photographic documentation; photocopies are not acceptable. All completion reports must be printed on high-quality paper, submitted unbound, and accompanied by the report as a pdf (portable document format) file [on compact disc]. Submit the printed report and pdf [disc] to the commission.

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

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 TRD-201702958  
 Mark Wolfe  
 Executive Director  
 Texas Historical Commission  
 Earliest possible date of adoption: September 17, 2017  
 For further information, please call: (512) 463-8882



## TITLE 16. ECONOMIC REGULATION

### PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

#### CHAPTER 73. ELECTRICIANS

##### 16 TAC §73.26

The Texas Department of Licensing and Regulation (Department) proposes amendments to an existing rule at 16 Texas Administrative Code (TAC), Chapter 73, §73.26, regarding the Electricians program.

The proposed amendments to §73.26 simplify the language of the existing rule and add one substantive provision. Section 73.26(b) currently requires electrical licensees to "provide verifiable documentation of the on-the-job training hours of an applicant they have supervised upon the request of the department." However, the rule does not provide a date by which the licensee must provide the necessary verification. The proposed amendment to subsection (b) creates a deadline of 30 days for a licensee to verify an applicant's on-the-job experience. The proposed amendments are necessary to make §73.26 more reader-

friendly and to provide clearer guidance to applicants and licensees regarding verification of on-the-job experience.

Brian E. Francis, Executive Director, has determined that for the first five-year period the proposed amendments are in effect, there will be no direct cost to state or local government as a result of enforcing or administering the proposed amendment. There is no estimated loss in revenue to the state as a result of enforcing or administering the proposed amendment.

Mr. Francis also has determined that for each year of the first five-year period the proposed amendment is in effect, the public will benefit by having clearer rules and a more predictable time line for verification of applicants' on-the-job training.

Mr. Francis has determined that for each year of the first five-year period the proposed amendments are in effect, there will be no effect on small or micro-businesses as a result of the proposed amendments. There are no anticipated economic costs to persons who are required to comply with the proposed amendments.

Since the agency has determined that the proposed amendments will have no adverse economic effect on small or micro-businesses, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, pursuant to Texas Government Code §2006.002, is not required.

Comments on the proposal may be submitted by mail to Pauline Easley, Legal Assistant, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711; or by facsimile to (512) 475-3032, or electronically to [erule.comments@tdlr.texas.gov](mailto:erule.comments@tdlr.texas.gov). The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code, Chapters 51 and 1305, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51 and 1305. No other statutes, articles, or codes are affected by the proposal.

*§73.26. Documentation of Required On-The-Job Training.*

(a) An applicant for a license which requires on-the-job training under Occupations Code Chapter 1305 may verify that he or she has completed on-the-job training by submitting the department's experience verification form with the license application. [Individual applicants for licensure as an electrician, sign electrician, or residential appliance installer may meet requirements for on-the-job training by providing verified proof, in a form acceptable to the department, showing that the applicant has been supervised for the requisite period by one or more persons licensed by any jurisdiction as a master electrician or master sign electrician as appropriate for the license.]

(b) When an applicant or the department requests verification of on-the-job training of an applicant from a licensee who is authorized by Occupations Code Chapter 1305 to verify on-the-job training, the licensee must provide the verification within 30 calendar days of the request. The licensee must verify only on-the-job training within the licensee's knowledge. The licensee must verify the dates of on-the-job training, describe the work performed by the applicant, specify the name of the business under which the applicant's work was performed, and provide any other information required on the department's form. [A master electrician or master sign electrician shall provide verifiable documentation of the on-the-job training hours of an applicant they

have supervised up on the request of the department. This proof must be submitted in a form acceptable to the department.]

(c) An applicant for a journeyman lineman license must verify that he or she has completed the apprenticeship required by Occupations Code Chapter 1305 by submitting verification in a form acceptable to the department. [A journeyman lineman applicant may meet the requirements for training in an apprenticeship program or experience requirements for a journeyman lineman by providing verified proof, in a form acceptable to the department.]

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 August 3, 2017.

TRD-201702910

Carla James

Deputy Executive Director

Texas Department of Licensing and Regulation

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For further information, please call: (512) 463-8179



## TITLE 19. EDUCATION

### PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

#### CHAPTER 22. STUDENT FINANCIAL AID PROGRAMS

##### SUBCHAPTER I. TEXAS ARMED SERVICES SCHOLARSHIP PROGRAM

###### 19 TAC §§22.166, 22.167, 22.169, 22.170

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §§22.166; 22.167; 22.169; and 22.170, concerning the Texas Armed Services Scholarship Program (*Senate Bill 49 and House Bill 1117, 85th Texas Legislature, Regular Session*). The amendments to §22.166(a) and new subsection (e) allow for the appointment of alternate nominees and, if an appointee fails to qualify for an initial award, requires the Coordinating Board to notify the alternate nominee. Amendments to §§22.167, 22.169, and 22.170 extend eligibility to students who are enrolled in other undergraduate officer commissioning programs, in addition to those enrolled in ROTC. Updates reflecting this change have been made throughout these rules. Two references to outdated administrative code section numbers have been updated accordingly.

Dr. Charles W. Puls, Deputy Assistant Commissioner for Student Financial Aid Programs, has determined that for the first five years the amendments are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Dr. Puls has also determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of administering the sections will be a clearer understanding of the requirements of the program. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Charles W. Puls, Ed.D., Deputy Assistant Commissioner, Student Financial Aid Programs, P.O. Box 12788, Austin, Texas 78711, (512) 427-6365, [charles.puls@theccb.state.tx.us](mailto:charles.puls@theccb.state.tx.us). Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under the Texas Education Code, §61.9774 which authorizes the Coordinating Board to adopt rules for the administration of the Provisions for the Texas Armed Services Scholarship Program.

The amendment affects Texas Education Code, §§61.9772 - 61.9774.

###### §22.166. *Requirements for Appointment by Elected Officials.*

(a) Each year the governor and the lieutenant governor may each appoint two students and two alternates, and each state senator and each state representative may appoint one student and one alternate to receive an initial conditional Texas Armed Services Scholarship.

(b) Appointments must be reported to the Board by the deadline established by the Commissioner.

(c) A selected student must meet two of the following four academic criteria at the time of application:

(1) Is on track to graduate high school or graduated with the Distinguished Achievement Program (DAP) or the International Baccalaureate Program (IB);

(2) Has a current high school GPA of 3.0 or higher or graduated with a high school GPA of 3.0 or higher;

(3) Achieved a college readiness score on the SAT or ACT;

(4) Is currently ranked in the top one-third of the prospective high school graduating class or graduated in the top one-third of the high school graduating class.

(d) A non-freshman student applying for an initial award must meet the requirements set forth in §22.169 [§21.2246](1) and (3) of this title (relating to Eligibility for Continued Awards).

(e) If a student appointed to receive a scholarship fails to initially meet eligibility or fails to meet the requirements to initially receive the scholarship, the Board must notify the alternate on file of his or her nomination.

###### §22.167. *Initial Award Eligibility and Agreement Requirements.*

To receive an initial conditional scholarship award through the Texas Armed Services Scholarship Program, a selected student must:

(1) Be enrolled in a Texas public or private institution of higher education, as certified by the institution;

(2) Enroll in and be a member in good standing of a Reserve Officers' Training Corps (ROTC) program or another undergraduate officer commissioning program while enrolled in the institution, as certified by the institution; and

(3) Enter into a written agreement with the Board agreeing to:

(A) Complete four years of ROTC training, or the equivalent of four years of ROTC training if the institution awards ROTC credit for prior service in any branch of the U.S. Armed Services or the Texas Army National Guard, Texas Air National Guard, Texas State Guard, United States Coast Guard, or United States Merchant Marine, or another undergraduate officer commissioning program;

(B) - (D) (No change.)

(E) Repay the scholarship according to the terms of the promissory note if the student fails to meet the requirements described in §22.170 [§21.2247] of this title (relating to Conversion of the Scholarship to a Loan).

§22.169. *Eligibility for Continued Awards.*

To continue to receive an annual conditional Texas Armed Services Program Scholarship, the student must:

- (1) Maintain satisfactory academic progress as determined by the institution of higher education in which the student is enrolled;
- (2) Continue to be a member of a Reserve Officers' Training Corps (ROTC) program or another undergraduate officer commissioning program; and
- (3) Not have earned a baccalaureate degree or a cumulative total of 150 credit hours, including transferred hours, as verified by the recipients' institution of higher education.

§22.170. *Conversion of the Scholarship to a Loan.*

(a) A scholarship will become a loan if the recipient:

- (1) Fails to maintain satisfactory academic progress as required by the institution's ROTC or another undergraduate officer commissioning program for continued participation in that program;
- (2) - (3) (No change.)

(b) If a scholarship recipient requires a temporary leave of absence from the institution and/or the ROTC or another undergraduate officer commissioning program for personal reasons or to provide service for the Texas Army National Guard, Texas Air National Guard, Texas State Guard, United States Coast Guard, or United States Merchant Marine for fewer than twelve months, the Board may agree to not convert the scholarship to a loan during that time.

(c) If a recipient is required to provide more than twelve months of service in the Texas Army National Guard, Texas Air National Guard, Texas State Guard, United States Coast Guard, or United States Merchant Marine as a result of a national emergency, the Board shall grant that recipient additional time to meet the graduation and service requirements specified in the Texas Armed Services Scholarship agreement.

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 August 2, 2017.

TRD-201702908

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6104



CHAPTER 23. EDUCATION LOAN  
REPAYMENT PROGRAMS  
SUBCHAPTER G. NURSING FACULTY LOAN  
REPAYMENT ASSISTANCE PROGRAM  
19 TAC §23.186, §23.193

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §23.186 and §23.193, con-

cerning the Nursing Faculty Loan Repayment Assistance Program. The amendment to §23.186(a) updates the Texas Education Code subchapter which was redesignated from Chapter 61, Subchapter II, to Subchapter JJ in 2015 (Senate Bill 1296, 84th Texas Legislature). The amendment to §23.193(3) adds language to indicate that legislative appropriations may be used to provide loan repayments in accordance with the General Appropriations Act, SB 1, Article III, Section 42, 85th Texas Legislature, Regular Session. Currently, program funding is limited to gifts, grants, and donations and/or funds that have been reallocated from the Physician Education Loan Repayment Program account.

Dr. Charles W. Puls, Deputy Assistant Commissioner for Student Financial Aid Programs, has determined that for the first five years the sections are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Dr. Puls has also determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of administering the section will be a clearer understanding of the requirements of the program. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Charles W. Puls, Ed.D., Deputy Assistant Commissioner, Student Financial Aid Programs, P.O. Box 12788, Austin, Texas 78711, (512) 427-6365, charles.puls@theccb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under the Texas Education Code, §61.9828 which authorizes the Coordinating Board to adopt rules for the administration of Texas Education Code.

The amendments reflect Article III of the General Appropriations Act for FY 2018-2019, Strategy F.1.10, and Texas Education Code §§61.9821, 61.9823, and 61.9827.

§23.186. *Authority and Purpose.*

(a) Authority for this subchapter is provided in the Texas Education Code, Chapter 61, Subchapter JJ [H], Nursing Faculty Loan Repayment Assistance Program. These rules establish procedures to administer the subchapter as prescribed in the Texas Education Code, §61.9821 - 61.9828.

(b) (No change.)

§23.193. *Limitations.*

The following limitations apply to the Nursing Faculty Loan Repayment Assistance Program.

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

(3) Funds will be available for loan repayment assistance under this subchapter only if there are legislative appropriations, gifts, grants, and donations made for this purpose, and/or funds have been reallocated for this purpose from the Physician Education Loan Repayment Program Account at the end of a fiscal year.

(4) (No change.)

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

Filed with the Office of the Secretary of State on August 2, 2017.



CHAPTER 25. OPTIONAL RETIREMENT PROGRAM  
SUBCHAPTER A. OPTIONAL RETIREMENT PROGRAM  
19 TAC §25.4

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §25.4, concerning the Optional Retirement Program. The amendments to §25.4 strike current provisions regarding the extension of an ORP-eligible employee's 90-day ORP Election Period when an institution fails to notify the employee of his or her eligibility to elect ORP on a timely basis. The amendments incorporate provisions regarding the extension enacted by SB 1954, 85th Texas Legislature, R.S.

These amendments were adopted on an emergency basis and are now being filed as proposed amendments to allow for a 30-day comment period.

Ms. Tonia Scaperlanda, Director of Human Resources, has determined that for the first five years the amendments are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Ms. Scaperlanda has also determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of administering the section will be improved administration of this retirement program for public higher education employees. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposed amendments may be submitted by mail to Tonia Scaperlanda, Director of Human Resources, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or via email at [texorp@theccb.state.tx.us](mailto:texorp@theccb.state.tx.us). Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amended section is proposed under Texas Education Code, §61.027, which provides the Coordinating Board with general rule-making authority and Texas Government Code, §830.002(c), which provides the Coordinating Board with authority to develop policies, practices, and procedures to provide greater uniformity in the administration of ORP.

The proposed amendments affect the implementation of Texas Government Code, Chapter 830, §830.102(c-1) and §830.102(c-2).

- §25.4. *Eligibility to Elect ORP.*
- (a) - (n) (No change.)
  - (o) Administrative Errors.
    - (1) - (3) (No change.)

(4) Failure to Notify Error. If an ORP employer fails to notify an ORP-eligible employee of his or her eligible status on or before the employee's initial ORP eligibility date, the ORP employer shall notify the eligible employee as soon as the oversight is discovered.

(A) An employee who becomes eligible to participate in ORP and is notified by the ORP employer of the opportunity to participate in the program after the first day and before the 91st day after the date the employee becomes eligible must elect to participate in the program before the later of:

- (i) the 91st day after the date the employee becomes eligible; or
- (ii) the 31st day after the date the employee receives notice of the opportunity to participate in the program.

(B) An employee who becomes eligible to participate in ORP and is notified by the ORP employer of the opportunity to participate in the program on or after the 91st day after the date the employee becomes eligible must be notified by the employer before the 151st day after the date the employee becomes eligible. The employee must elect to participate in the program before the later of:

- (i) the 151st day after the date the employee becomes eligible; or
- (ii) the 31st day after the date the employee receives notice of the opportunity to participate in the program. [The 90-day ORP election period for the eligible employee shall begin on the date that the employee is notified, and the]

(C) The participation start date shall be determined in accordance with subsection (g) of this section.

(p) (No change.)

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

Filed with the Office of the Secretary of State on August 1, 2017.  
TRD-201702887  
Bill Franz  
General Counsel  
Texas Higher Education Coordinating Board  
Earliest possible date of adoption: September 17, 2017  
For further information, please call: (512) 427-6104



PART 2. TEXAS EDUCATION AGENCY  
CHAPTER 74. CURRICULUM REQUIREMENTS  
SUBCHAPTER BB. COMMISSIONER'S RULES CONCERNING HIGH SCHOOL GRADUATION

19 TAC §74.1025

The Texas Education Agency proposes an amendment to §74.1025, concerning individual graduation committee review. The proposed amendment would reflect requirements implemented by Senate Bill (SB) 463, 85th Texas Legislature, Regular Session, 2017.

Texas Education Code (TEC), §39.025(a), prohibits a student from receiving a high school diploma until the student has performed satisfactorily on state end-of-course (EOC) assessments. Students must perform satisfactorily on the following five EOC assessments: Algebra I, Biology, English I, English II, and U.S. History.

TEC, §28.0258, requires each school district and open-enrollment charter school to establish an individual graduation committee for each 11th or 12th grade student who fails to perform satisfactorily on not more than two EOC assessments. The committee must be established at the end of or after the student's 11th grade year to determine whether a student may qualify to graduate. A student may not graduate under this provision before the student's 12th grade year. Statute requires the commissioner to adopt rules to establish alternative individual graduation committee members and a timeline for decisions by individual graduation committees. TEC, §28.0259, requires each school district and open-enrollment charter school to report through PEIMS the number of students for which an individual graduation committee was convened and the number of students who are awarded a diploma by means of an individual graduation committee determination each year. SB 463 extends the expiration date of TEC, §28.0258 and §28.0259, to September 1, 2019.

The following changes to §74.1025 would implement SB 463.

The proposed amendment to §74.1025(k), relettered as subsection (l), would extend the applicability of these rules to students classified as 11th or 12th grade students in the 2017-2018 and 2018-2019 school years.

The proposed amendment to §74.1025(l), relettered as subsection (m), would change the date on which the section expires to September 1, 2019, and would make a corresponding change to the date by which a student may qualify to graduate on the basis of an individual graduation committee decision.

In addition, proposed new subsection (h) would be added to provide for the designation of an alternate committee member in the event that the department chair or lead teacher is unavailable to serve on an individual graduation committee. This proposed addition is in response to questions from school districts and would provide additional clarification regarding implementation. Subsequent subsections would be relettered accordingly.

A technical edit to update the reference to PEIMS would be made.

The proposed amendment would have no new procedural or reporting implications. The proposed amendment would have no new locally maintained paperwork requirements.

**FISCAL NOTE.** Penny Schwinn, deputy commissioner for academics, has determined that for the first five-year period the amendment is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the amendment. There is no effect on local economy for the first five years that the proposed amendment is in effect; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

**PUBLIC BENEFIT/COST NOTE.** Ms. Schwinn has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment will be providing students with additional flexibility in completing assessment requirements for graduation. There

is no anticipated economic cost to persons who are required to comply with the proposed amendment.

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES AND MICROBUSINESSES.** There is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

**REQUEST FOR PUBLIC COMMENT.** The public comment period on the proposal begins August 18, 2017, and ends September 18, 2017. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. Comments may also be submitted electronically to [rules@tea.texas.gov](mailto:rules@tea.texas.gov). A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on August 18, 2017.

**STATUTORY AUTHORITY.** The amendment is proposed under the Texas Education Code (TEC), §28.0258(c), which requires the commissioner of education to establish by rule a procedure for the appointment of alternative individual graduation committee members in the event that a required member is unable to serve. The rule is required to include the appointment of an advocate for the student if the student's parent or person standing in parental relation to the student is unable to serve; TEC, §28.0258(i), which requires the commissioner to establish by rule a timeline for an individual graduation committee to make a determination regarding whether a student is qualified to graduate; TEC, §28.0259, which requires the commissioner to adopt rules regarding the requirement that school districts report through the Public Education Information Management System (PEIMS) information regarding the number of students for whom an individual graduation committee was established and the number of students who were awarded a diploma based on the decision of an individual graduation committee; and Senate Bill 463, 85th Texas Legislature, Regular Session, 2017, which amends TEC, §28.0258(l) and §28.0259(e), to change the expiration date of the legislation to September 1, 2019.

**CROSS REFERENCE TO STATUTE.** The amendment implements the Texas Education Code, §28.0258 and §28.0259, as amended by Senate Bill 463, 85th Texas Legislature, Regular Session, 2017.

*§74.1025. Individual Graduation Committee Review.*

(a) Effective beginning with the 2014-2015 school year, in accordance with the Texas Education Code (TEC), §28.0258, §101.3022 of this title (relating to Assessment Requirements for Graduation), and the course requirements in Chapter 74, Subchapter B, of this title (relating to Graduation Requirements), a school district or an open-enrollment charter school may award a high school diploma to a student who has taken but failed to achieve the end-of-course (EOC) assessment graduation requirements for no more than two courses if the student has qualified to graduate by means of an individual graduation committee.

(b) A school district or an open-enrollment charter school shall establish an individual graduation committee at the end of or after a student's 11th grade year to determine whether the student may qualify to graduate. A student may not qualify to graduate as a result of an individual graduation committee decision before the student's 12th grade year.

(c) A school district or an open-enrollment charter school may not establish an initial individual graduation committee for eligible students after June 10 or before the start of the next school year. Once the individual graduation committee has been established, it is the original individual graduation committee for that student.

(d) In order for a student to be included as a graduate in the school district's or charter school's graduation data in the school year in which the student meets the requirements provided by law to graduate under individual graduation committee provisions, an individual graduation committee must make a decision to award a diploma no later than August 31 immediately following that school year. A student who graduates as a result of an individual graduation committee decision after August 31 shall be reported in the subsequent year's graduation data.

(e) If a student leaves a school district after an original individual graduation committee has been established and before that original individual graduation committee awards a high school diploma to the student, any other district that later enrolls the student shall request information from the student's original individual graduation committee of record and shall implement the original individual graduation committee recommendations to the extent possible.

(f) The individual graduation committee shall consist of the following:

- (1) the principal or principal's designee;
- (2) for each EOC assessment instrument on which the student failed to perform satisfactorily, the teacher of the course;
- (3) the department chair or lead teacher supervising the teacher described by paragraph (2) of this subsection; and
- (4) as applicable:

(A) the student's parent or person standing in parental relation to the student;

(B) a designated advocate if the person described by subparagraph (A) of this paragraph is unable to serve; or

(C) the student, at the student's option, if the student is at least 18 years of age or is an emancipated minor.

(g) In the event that the teacher identified in subsection (f)(2) of this section is unavailable, the principal shall designate a teacher certified in the subject of the EOC assessment on which the student failed to perform satisfactorily and who is most familiar with the student's performance in that subject area as an alternate member of the committee.

(h) In the event that the individual identified in subsection (f)(3) of this section is unavailable, the principal shall designate an experienced teacher certified in the subject of the EOC assessment on which the student failed to perform satisfactorily and who is familiar with the content of and instructional practices for the applicable course.

(i) ~~(h)~~ In the event that the student's parent or person standing in parental relation to the student is unavailable to participate in the individual graduation committee, the principal shall designate an advocate with knowledge of the student to serve as an alternate member of the committee.

(j) ~~(i)~~ Each school district and open-enrollment charter school shall report through the Texas Student Data System Public Education Information Management System (TSDS PEIMS) ~~(PEIMS)~~ the following:

(1) the number of students each school year for which an individual graduation committee is established; and

(2) the number of students each school year who are awarded a diploma based on the decision of an individual graduation committee.

(k) ~~(j)~~ A district shall maintain documentation to support the decision of the individual graduation committee to award or not award a student a high school diploma.

(l) ~~(k)~~ This section only applies to a student classified by the school district or open-enrollment charter school as an 11th or 12th grade student in the 2014-2015, 2015-2016, ~~2016-2017~~, 2017-2018, or 2018-2019 school year.

(m) ~~(l)~~ Provisions of this section expire September 1, 2019 ~~[2017]~~. A student may graduate by means of an individual graduation committee if the student has qualified for an individual graduation committee under the TEC, §28.0258, and the individual graduation committee convened prior to September 1, 2019 ~~[2017]~~.

(n) ~~(m)~~ A student receiving special education services is not subject to the individual graduation committee requirements in the TEC, §28.0258, or the provisions of this section. As provided in §89.1070 of this title (relating to Graduation Requirements) and §101.3023 of this title (relating to Participation and Graduation Assessment Requirements for Students Receiving Special Education Services), a student's admission, review, and dismissal (ARD) committee determines whether a student is required to achieve satisfactory performance on an EOC assessment to graduate.

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 August 7, 2017.

TRD-201702975

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: September 17, 2017

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



## CHAPTER 101. ASSESSMENT

The Texas Education Agency proposes amendments to §101.3024 and §101.4003, concerning student assessment. The proposed amendments would implement the requirements of Senate Bill (SB) 463 and SB 1005, 85th Texas Legislature, Regular Session, 2017, by providing former students whose assessment graduation requirement is the Texas Assessment of Knowledge and Skills (TAKS) additional paths toward meeting graduation requirements and earning a high school diploma.

Section 101.3024, Assessment Requirements for Students First Enrolled in Grade 9 Prior to 2011-2012 School Year or First Enrolled in Grade 10 or Above in 2011-2012 School Year, indicates the assessment requirements for different cohorts of former students. The rule states that TAKS replaces the former students' original assessment graduation requirements. This includes former students whose assessment graduation requirements were the Texas Educational Assessment of Minimal Skills (TEAMS) or the Texas Assessment of Academic Skills (TAAS).

SB 463 added Texas Education Code (TEC), §28.02541, to establish provisions that may allow certain former students who have completed the curriculum requirements for graduation but



have not performed satisfactorily on TAKS to qualify for a high school diploma.

To implement SB 463, the proposed amendment to §101.3024 would add language to allow former students, who are currently required to pass all or certain parts of the TAKS exit-level tests for graduation, to earn a high school diploma through alternative options. Specifically, proposed new subsection (g) would establish a type of review committee similar to the individual graduation committee allowed for the State of Texas Assessments of Academic Readiness (STAAR®). The provision for the individual graduation committee would expire on September 1, 2019, in accordance with SB 463. In addition, subsection (g), relettered as subsection (h), would include additional alternate assessments to fulfill graduation testing requirements, including Texas Success Initiative (TSI) assessments and STAAR® end-of-course assessments.

Section 101.4003, Texas Assessment of Knowledge and Skills Exit-Level Alternative Assessments, specifies the assessments and corresponding passing scores allowed as alternate assessments for certain former students whose assessment graduation requirement was TAKS. The alternate assessments currently in rule include SAT and ACT mathematics and English language arts tests.

SB 1005 amended TEC, §39.025, to increase the alternate assessments that may be used to fulfill TAKS graduation requirements. The bill requires the commissioner to establish satisfactory performance levels for these new TAKS alternate assessments. The satisfactory performance levels, or passing scores, on the alternate assessments must be equivalent in rigor to the performance levels the students were previously required to meet.

To implement SB 1005, the proposed amendment to §101.4003 would move the current information regarding SAT and ACT from subsection (b) into a new chart, Figure: 19 TAC §101.4003(a), in subsection (a). This new chart would include the previously approved TAKS alternate assessments and corresponding passing scores (SAT administered January 2016 and before and ACT administered June 2015 and before) and passing scores for revised versions of SAT and ACT mathematics and English language arts tests as well as ACT science tests. Additional alternate assessments that can be used for TAKS, as well as their corresponding passing scores, would also be listed in the chart, including TSI assessments for mathematics and English language arts and STAAR® Algebra I, English II, Biology, and U.S. History end-of-course assessments.

The proposed amendment to subsection (d), relettered as subsection (c), would update the eligibility language to include all former students who are required to pass all or certain parts of the TAKS exit-level tests to earn a high school diploma.

The proposed amendments have no procedural and reporting implications beyond those that apply to all Texas students with respect to implementation of the state assessment program.

The proposed amendments necessitate that school districts track individual graduation committee requirements and verify additional results of alternate assessments used by former students for graduation purposes.

FISCAL NOTE. Penny Schwinn, deputy commissioner for academics, has determined that for the first five-year period the amendments are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administer-

ing the amendments. There is no effect on 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.

PUBLIC BENEFIT/COST NOTE. Ms. Schwinn has determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the amendments will be allowing former students, whose assessment graduation requirement is TAKS, additional paths toward meeting graduation requirements and earning a high school diploma. There may be fiscal implications for persons who choose to take SAT, ACT, or TSI assessments instead of TAKS exit-level assessments, as SAT, ACT, and TSI assessments have administration fees. The TSI costs approximately \$29, the SAT with essay costs \$60, and the ACT with writing costs \$58.50. It is not possible to determine how many individuals will choose these options since this is the first opportunity TAKS students have to take these alternate assessments.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES AND MICROBUSINESSES. There is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

REQUEST FOR PUBLIC COMMENT. The public comment period on the proposal begins August 18, 2017, and ends September 18, 2017. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. Comments may also be submitted electronically to [rules@tea.texas.gov](mailto:rules@tea.texas.gov). A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on August 18, 2017.

## SUBCHAPTER CC. COMMISSIONER'S RULES CONCERNING IMPLEMENTATION OF THE ACADEMIC CONTENT AREAS TESTING PROGRAM

### DIVISION 2. PARTICIPATION AND ASSESSMENT REQUIREMENT FOR GRADUATION

#### 19 TAC §101.3024

STATUTORY AUTHORITY. The amendment is proposed under the Texas Education Code (TEC), §28.02541, as added by Senate Bill (SB) 463, 85th Texas Legislature, Regular Session, 2017, which requires the commissioner by rule to establish a procedure to determine whether certain former students, who have met curriculum requirements for graduation but have not performed satisfactorily on an assessment instrument, may qualify to graduate and receive a high school diploma; and TEC, §39.025, as amended by SB 463 and SB 1005, 85th Texas Legislature, Regular Session, 2017, which establishes the secondary-level performance required to receive a Texas high school diploma, establishes alternate assessment options for students who entered Grade 9 prior to the 2011-2012 school year or Grade 10 or above in the 2011-2012 school year, and requires the commissioner

to establish satisfactory performance levels on the alternate assessments.

CROSS REFERENCE TO STATUTE. The amendment implements the Texas Education Code, §28.02541 and §39.025.

§101.3024. *Assessment Requirements for Students First Enrolled in Grade 9 Prior to 2011-2012 School Year or First Enrolled in Grade 10 or Above in 2011-2012 School Year.*

(a) Students who were first enrolled in Grade 9 prior to the 2011-2012 school year or enrolled in Grade 10 or above in the 2011-2012 school year must fulfill testing requirements for graduation with the assessments required by the Texas Education Code (TEC), §39.023(c), as that section existed before amendment by Senate Bill (SB) 1031, 80th Texas Legislature, 2007. For purposes of this section, coursework necessary to graduate means all the coursework required under the student's graduation plan.

(b) For a student who is receiving special education services under the TEC, Chapter 29, Subchapter A, who is enrolled above Grade 9 in the 2011-2012 school year and for whom an IEP specifies that the student shall take a modified version of an assessment, the modified assessments as required by the TEC, §39.023, as that section existed before amendment by SB 1031, 80th Texas Legislature, 2007, will continue to be the student's assessment requirement.

(c) With the exception of students who meet the criteria described in subsection (d) of this section, students who were enrolled as follows shall fulfill testing requirements for graduation with the assessments as required by the TEC, §39.023(c), as that section existed before amendment by SB 1031, 80th Texas Legislature, 2007, with the applicable performance standards established by the commissioner of education and published on the Texas Education Agency (TEA) website:

(1) in Grade 9 or higher on January 1, 2001, regardless of when they are scheduled to graduate; or

(2) in Grade 8 or lower on January 1, 2001, if they were on an accelerated track and fulfilled all coursework necessary to graduate by September 1, 2004.

(d) A student who entered Grade 11 in the 1989-1990 school year or an earlier school year shall fulfill testing requirements for graduation with assessments as required by the TEC, §39.023(c), as that section existed before amendment by SB 1031, 80th Texas Legislature, 2007, under an applicable performance standard established by the commissioner of education that corresponds to the performance standard in effect for the exit-level [exit level] Texas Educational Assessment of Minimum Skills (TEAMS) when the student was first eligible to take the exit-level [exit level] TEAMS. Performance standards that apply to TEAMS students will be published on the TEA website.

(e) A student fulfilling testing requirements under subsection (c) of this section will be required to take only those sections of the exit-level [exit level] Texas Assessment of Knowledge and Skills (TAKS) that correspond to the subject areas formerly assessed by the exit-level [exit level] Texas Assessment of Academic Skills (TAAS) (reading, writing, and mathematics) for which the student has not yet met the passing standard.

(1) If a student has not yet met the passing standard on TAAS reading, the student will be administered only the reading multiple-choice items from the TAKS English language arts (ELA) test.

(2) If a student has not yet met the passing standard on TAAS writing, the student will be administered only the writing prompt and the revising and editing multiple-choice items from the TAKS ELA test.

(f) A student fulfilling testing requirements under subsection (d) of this section will be required to take only those sections of the exit-level [exit level] TAKS that correspond to the subject areas formerly assessed by the exit-level [exit level] TEAMS (reading and mathematics) for which the student has not yet met the passing standard. If a student has not yet met the passing standard on TAAS reading, the student will be administered only the reading multiple-choice items from the TAKS ELA test.

(g) Effective beginning with the 2017-2018 school year, a student who has taken but failed to meet assessment graduation requirements under this section may receive a Texas high school diploma if the student has qualified to graduate by means of an individual graduation committee convened in accordance with the TEC, §28.02541.

(1) A student may not graduate under an individual graduation committee if the student did not take each assessment instrument or the part of the assessment instrument for which the student has not performed satisfactorily at least three times.

(2) This subsection expires September 1, 2019.

(h) [(g)] Notwithstanding any of the requirements in subsections (a)-(g) [(a)-(f)] of this section, students who pass all of the required exit-level [exit level] TAKS tests or meet the alternate assessment requirements of Chapter 101, Subchapter DD, of this title (relating to Commissioner's Rules Concerning Substitute Assessments for Graduation) have fulfilled their testing requirements for graduation.

(i) [(h)] Beginning with the 2011-2012 school year, students first enrolled in Grade 9 or lower must fulfill testing requirements for graduation with the end-of-course assessment instruments, as specified in the TEC, §39.023(c), as amended by SB 1031, 80th Texas Legislature, 2007.

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 August 7, 2017.

TRD-201702976

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: September 17, 2017

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



## SUBCHAPTER DD. COMMISSIONER'S RULES CONCERNING SUBSTITUTE ASSESSMENTS FOR GRADUATION

### 19 TAC §101.4003

STATUTORY AUTHORITY. The amendment is proposed under the Texas Education Code (TEC), §39.025, as amended by Senate Bill (SB) 463 and SB 1005, 85th Texas Legislature, Regular Session, 2017, which establishes the secondary-level performance required to receive a Texas high school diploma, establishes alternate assessment options for students who entered Grade 9 prior to the 2011-2012 school year or Grade 10 or above in the 2011-2012 school year, and requires the commissioner to establish satisfactory performance levels on the alternate assessments.

CROSS REFERENCE TO STATUTE. The amendment implements the Texas Education Code, §39.025.

§101.4003. *Texas Assessment of Knowledge and Skills Exit-Level Alternate [Alternative] Assessments.*

(a) In accordance with the Texas Education Code (TEC), Chapter 39, Subchapter B, the commissioner of education adopts certain assessments as provided in the figure in this subsection as alternate assessments that a person may use in place of corresponding [the SAT® verbal/critical reading and mathematics tests and the ACT® English and mathematics tests as alternative exit-level assessments that eligible students with qualifying scores may substitute respectively for the] Texas Assessment of Knowledge and Skills (TAKS) exit-level assessments [in English language arts and mathematics] beginning in the fall [spring] of 2017 [2006].  
Figure: 19 TAC §101.4003(a)

{(b) The commissioner establishes the level of performance considered to be satisfactory on the approved alternative exit-level assessments as follows.}

{(1) The required passing standard to qualify to substitute the SAT® verbal/critical reading test for the TAKS exit-level English language arts assessment is at least 472.}

{(2) The required passing standard to qualify to substitute the SAT® mathematics test for the TAKS exit-level mathematics assessment is at least 461.}

{(3) The required passing standard to qualify to substitute the ACT® English test for the TAKS exit-level English language arts assessment is at least 17.7.}

{(4) The required passing standard to qualify to substitute the ACT® mathematics test for the TAKS exit-level mathematics assessment is at least 19.5.}

(b) [(e)] An eligible person [student] who has met the passing standard on a state-approved alternate [alternative] exit-level assessment as set by the commissioner and provided in the figure in subsection (a) [(b)] of this section in a particular subject area has satisfied the exit-level testing requirement in that subject area.

(c) [(d)] A person [student] is eligible to substitute an alternate [alternative] exit-level assessment for a TAKS exit-level assessment for purposes of this subchapter if the person was first enrolled in Grade 9 prior to the 2011-2012 school year or first enrolled in Grade 10 or above in the 2011-2012 school year. [student after January 1 of the year in which the student would otherwise be eligible to graduate:]

{(1) enrolls in a public school in Texas for the first time; or}

{(2) enrolls in a public school in Texas after an absence of at least four years from any public school in this state. A student meets this requirement if he or she has not been enrolled for one or more days in a public school in Texas in the four years preceding the day on which the student enrolls in a Texas public school after January 1 of the year in which the student would otherwise be eligible to graduate.}

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 August 7, 2017.  
TRD-201702977

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: September 17, 2017

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

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**TITLE 25. HEALTH SERVICES**

**PART 7. TEXAS MEDICAL DISCLOSURE PANEL**

**CHAPTER 601. INFORMED CONSENT**

**25 TAC §601.2, §601.9**

The Texas Medical Disclosure Panel (panel) proposes amendments to §601.2 and §601.9, concerning informed consent.

**BACKGROUND AND PURPOSE**

These amendments are proposed in accordance with the Texas Civil Practice and Remedies Code, §74.102, which requires the panel to determine which risks and hazards related to medical care and surgical procedures must be disclosed by health care providers or physicians to their patients or persons authorized to consent for their patients and to establish the general form and substance of such disclosure.

Section 601.2 contains the List A procedures requiring full disclosure of specific risks and hazards to patients before being undertaken; and §601.9 contains the disclosure and consent form for anesthesia and/or perioperative pain management (analgesia).

**SECTION-BY-SECTION SUMMARY**

Proposed amendments to §601.2(a) adds anesthesia risks and hazards for "deep sedation" in paragraph (5) and "moderate sedation" in paragraph (6). The proposed amendments also add the anesthesia risks and hazards for "prenatal/early childhood anesthesia" in paragraph (7) related to the prolonged or repeated exposure to general anesthesia/moderate sedation/deep sedation during pregnancy and in early childhood.

The proposed amendments to §601.9 revise the English and Spanish versions of the Disclosure and Consent Form for Anesthesia and/or Perioperative Pain Management (Analgesia) to add the words "or anxiety" to paragraph 3 of the form, and adds risks and hazards for "deep sedation" and "moderate sedation." Also, "prenatal/early childhood anesthesia" was added concerning the risks and hazards related to the prolonged or repeated exposure to general anesthesia/moderate sedation/deep sedation during pregnancy and in early childhood.

**FISCAL NOTE**

Jon Huss, Associate Commissioner, Division for Regulatory Services, has determined that for each year of the first five years that the sections will be in effect, there will be no fiscal impact to state or local governments as a result of administering the sections as proposed.

**SMALL AND MICRO-BUSINESS IMPACT ANALYSIS**

Mr. Huss also has determined that there are no anticipated economic costs to small businesses or micro-businesses that are required to comply with the amendments as proposed because regulated facilities already have an obligation to disclose risks

and hazards related to medical care and surgical procedures. The amendments will not add additional costs.

#### ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There will be no economic costs to persons required to comply with the sections as proposed, and there will be no impact on local employment.

#### PUBLIC BENEFIT

In addition, Mr. Huss also has determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing or administering these amended disclosure rules will be that patients are better informed about the risks and hazards related to dental surgical procedures they are considering in connection with deciding whether to consent to them.

#### REGULATORY ANALYSIS

The panel has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environment exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

Comments on the proposal may be submitted to Pamela Adams, Program Specialist, Facility Licensing Group, Regulatory Licensing Unit, Division of Regulatory Services, Department of State Health Services, Mail Code 2835, P.O. Box 149347, Austin, Texas 78714-9347, (512) 834-6600, extension 2607, by fax to (512) 834-4514, or by email to [pamela.adams@dshs.texas.gov](mailto:pamela.adams@dshs.texas.gov). Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

#### STATUTORY AUTHORITY

The amendments are authorized under the Texas Civil Practice and Remedies Code, §74.102, which provides the Texas Medical Disclosure Panel with the authority to prepare lists of medical treatments and surgical procedures that do and do not require disclosure by physicians and health care providers of the possible risks and hazards, and to prepare the form(s) for the treatments and procedures which do require disclosure.

The amendments affect Texas Civil Practice and Remedies Code, Chapter 74.

*§601.2. Procedures Requiring Full Disclosure of Specific Risks and Hazards--List A.*

(a) Anesthesia.

(1) - (4) (No change.)

(5) Deep sedation.

(A) Memory dysfunction/memory loss.

(B) Medical necessity to convert to general anesthesia.

(C) Permanent organ damage.

(D) Brain damage.

(6) Moderate sedation.

(A) Memory dysfunction/memory loss.

(B) Medical necessity to convert to general anesthesia.

(C) Permanent organ damage.

(D) Brain damage.

(7) 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.

~~{(5) Monitored Anesthesia Care (MAC) (conscious sedation).}~~

~~{(A) Permanent organ damage.}~~

~~{(B) Memory dysfunction/memory loss.}~~

~~{(C) Medical necessity to convert to general anesthesia.}~~

~~{(D) Brain damage.}~~

(b) - (v) (No change.)

*§601.9. Disclosure and Consent Form for Anesthesia and/or Perioperative Pain Management (Analgesia).*

The Texas Medical Disclosure Panel adopts the following form which shall be used to provide informed consent to a patient or person authorized to consent for the patient of the possible risks and hazards involved in anesthesia and/or perioperative pain management (analgesia). Providers shall have the form available in both English and Spanish language versions. Both versions are available from the Department of State Health Services.

(1) English form.

Figure: 25 TAC §601.9(1)

[Figure: 25 TAC §601.9(1)]

(2) Spanish form.

Figure: 25 TAC §601.9(2)

[Figure: 25 TAC §601.9(2)]

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 August 7, 2017.

TRD-201702971

Noah Appel, M.D.

Chairman

Texas Medical Disclosure Panel

Earliest possible date of adoption: September 17, 2017

For further information, please call: (512) 776-6972



## TITLE 34. PUBLIC FINANCE

# PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

## CHAPTER 23. ADMINISTRATIVE PROCEDURES

### 34 TAC §23.9

The Teacher Retirement System of Texas (TRS) proposes new rule 34 TAC §23.9, concerning communicating information electronically. The new rule is proposed to implement §825.519, Government Code, as amended by Senate Bill 1663, 85th Legislature (Regular Session), 2017. Senate Bill 1663 and proposed new §23.9 allow TRS to use email or a website to provide certain information required to be sent to a TRS member or retiree under §802.106, Government Code, or that TRS determines would be beneficial for the individual to receive.

TRS is currently required to provide participants with certain information, including a summary of benefits available from TRS, eligibility for the benefits, how to claim or choose the benefits, and a summary of any significant changes made to the plan's terms. TRS is also required to annually provide each active member with a statement of the amounts of the member's accumulated contributions and total accumulated service credit on which benefits are based and an annual statement to each annuitant of the amount of payments made to the annuitant by TRS in the preceding 12 months. TRS complies with the requirements by mailing a copy of the Benefits Handbook to new members and making subsequent versions of the handbook and other benefit related information such as brochures and newsletter available on the TRS website and by mailing a copy of the TRS Newsletter that contains notice of significant changes to the plans terms to all members and retirees.

Senate Bill 1663 clarified that TRS may provide information related to the plans terms to an e-mail address provided to TRS by the participant's employer. The new legislation also provides TRS with the authority to send confidential participant information to an email address provided by the participant.

The proposed new rule clarifies that TRS may distribute non-confidential information required by law to be provided to participants of the plan and any other non-confidential information determined by TRS to be beneficial for distribution by sending the information to a work email address for the member or retiree provided by the employer. Under the terms of the proposed rule, confidential information related to a specific member or retiree may be provided electronically to an email provided by the member, retiree, or authorized requestor or to the member's or retiree's TRS web self-service account provided the information is encrypted or TRS has otherwise taken reasonable steps to protect the confidential information from unauthorized disclosure.

Don Green, Chief Financial Officer, has determined that for the first five-year period the proposed rule will be in effect, there will be no foreseeable fiscal implications to state or local governments as a result of administering the proposed rule. TRS anticipates realizing savings over time by electronically communicating with its members and retirees rather than sending them paper materials through regular mail, but those savings cannot now be reliably estimated.

Mr. Green also has determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated as a result of enforcing the proposed rule will be to enable

TRS to more efficiently provide important benefit information to its members and retirees.

Mr. Green also has determined that there is no economic cost to entities or persons required to comply with the proposed rule. Mr. Green has determined that there will be no effect on a local economy because of the proposal, and therefore no local employment impact statement is required under §2001.022, Government Code. Mr. Green has also determined that there will be no direct adverse economic effect on small businesses or micro-businesses within TRS' regulatory authority as a result of the proposed rule; therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under §2006.002, Government Code.

Comments may be submitted in writing to Brian Guthrie, Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice in the *Texas Register*.

Statutory Authority: The new rule is proposed under the authority of §825.102, Government Code, which authorizes the board to adopt rules for the administration of the funds of the system and the transaction of business of the board.

Cross-Reference to Statute: The new rule affects §825.519, Government Code, as amended by Senate Bill 1663, 85th Legislature (Regular Session), 2017, concerning electronic information.

#### §23.9. Communicating Information Electronically.

The Teacher Retirement System of Texas (TRS) may provide a summary of the benefits administered by TRS, the procedures for claiming the benefits, notice of and information related to changes in the benefits or programs administered by TRS, and any other non-confidential information required by §802.106, Government Code, or determined by TRS to be beneficial for distribution by sending the information to a work email address provided by the member's or retiree's employer or by directing the member or retiree through a work email provided by that individual's employer to an internet website to access non-confidential information. Confidential information related to a specific member or retiree may be provided by TRS electronically to the email address provided by the member, retiree, or authorized requestor or to the member's or retiree's TRS web self-service account, provided the confidential information is encrypted or TRS has otherwise taken reasonable steps to protect the confidential information from unauthorized disclosure.

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 August 4, 2017.

TRD-201702948

Don Green

Chief Financial Officer

Teacher Retirement System of Texas

Earliest possible date of adoption: September 17, 2017

For further information, please call: (512) 542-6506



## CHAPTER 25. MEMBERSHIP CREDIT

The Teacher Retirement System of Texas (TRS) proposes amended and new rules in Chapter 25 of TRS' rules. Chapter 25 concerns membership credit. TRS proposes amendments

to §25.10, concerning student employment and §25.28, concerning payroll report dates. TRS proposes new rules §25.173, concerning correction of ineligible participation in TRS and §25.191, concerning time period at retirement to complete purchase of service credit.

The proposed amendments to §25.10 incorporate the legislative change in Senate Bill 1663, 85th Legislature (Regular Session), 2017 that makes student employment not eligible for membership in TRS. The proposed amendments to §25.28 address the changes Senate Bill 1663 made to §825.408, Government Code that require employers to make monthly reports to TRS, submit member and employer contributions by a stated timeline, and pay late fees if the reports are not timely filed. Proposed new §25.173 addresses how TRS will administer the correction procedures provided in Senate Bill 1954, 85th Legislature (Regular Session), 2017 for persons eligible to participate in the Optional Retirement Program (ORP) established as an alternative to TRS for certain employees of institutions of higher education. Proposed new §25.191 incorporates the time periods adopted in Senate Bill 1664, 85th Legislature (Regular Session), 2017 to complete the purchase of service credit at retirement. The enacted legislation mentioned above takes effect on September 1, 2017.

The proposed amendments to §25.10 address the circumstance that, currently, student employment, i.e., employment by a Texas public college or university that is conditioned upon enrollment as a student, is not eligible for membership in TRS, unless the person has other eligible employment during the same payroll period. In that instance, the compensation for the student employment is creditable compensation for TRS purposes. Senate Bill 1663 provides that a person who is a student employee is not permitted to be a member of TRS based on that student employment and that compensation paid for student employment is not subject to member contributions and reporting to TRS and may not be used in benefit computations. This means that, even if the person has other membership eligible employment, the compensation cannot be reported to TRS and will not be used in benefit calculations. The proposed amendments to §25.10 align the TRS rule with the revised statute.

The proposed amendments to §25.28 address the changes made by Senate Bill 1663 that establish different due dates for an employer to file the monthly payroll report and the monthly certified statement for the employment of retirees and TRS' authority to charge a late fee when employers fail to complete the required reports by the established due dates. Currently, all monthly reports are due before the seventh day of the following month. Senate Bill 1663 establishes a later due date for the monthly certified statement for the employment of retirees. The monthly certified statement for the employment of retirees is due before the eleventh day of the following month, except that the certified statement for August will continue to be due before the seventh of September to facilitate the year-end closing of employer reports. The proposed changes to this rule conform the rule to the new statutory due dates for submitting completed reports. In addition, Senate Bill 1663 requires that employers that fail to timely submit reports must pay a late fee for each day that the reports are not filed. The late fee is in addition to penalty interest TRS is currently authorized to charge for depositing member and employer contributions after the required due date. The proposed amended rule implements the late fee requirement effective with the January 2018 reports, which are due in February 2018 and provides a late fee structure based on the number of eligible employees reported by an employer

and the number of days the employer's report is late, with a higher fee being charged for the first day it is late. The proposed amendments to §25.28 also provide that the number of eligible employees used to determine the late fee amount is determined based on the number of eligible employees reported by that employer in May of the preceding year. New employers will be assigned to the smallest employer group until the following year when the number of eligible employees reported in May will be used to establish the appropriate employer group.

Proposed new §25.173, which will be located in Chapter 25, Subchapter M, concerning ORP, implements the requirements of Senate Bill 1954 that establish how to correct the error of reporting a person to TRS who is not eligible for participation in TRS. The error addressed in the legislation is one that is based on a prior election to participate in ORP in lieu of participation in TRS by a person who then vested in participation in ORP by participating for at least one year in that program. The proposed new rule confirms the statutory requirement that the person must be restored to ORP immediately and describes how member and employer contributions held by TRS are directed. Requirements in the new rule include the requirement that the employer and ORP trustee complete required certifications that confirm the amount of compensation paid to the person and contributions that should have been made to ORP and allow TRS to make a direct trustee-to-trustee transfer of member contributions that should have been made to the ORP plan account plus earnings of 4 percent. After certification and approval by TRS, the employer is authorized by the rule to take a credit against future contributions owed to TRS for amounts the employer contributed to TRS in lieu of state contributions based on the person's employment, but earnings on the employer contributions may not be taken as a credit by the employer. The rule also addresses how member contributions that are in excess of the amount of ORP participant contributions will be paid directly to the member along with any amounts paid to TRS to purchase service credit when the person was not eligible for membership in TRS. No earnings are authorized on excess contributions and amounts paid to purchase service credit.

Proposed new §25.191 implements TRS' authority, as confirmed by Senate Bill 1664, to allow additional time at retirement for a member to complete the purchase of service credit. The legislation provides a member with two months to complete the purchase of service credit other than the purchase of service credit for accumulated state sick or personal leave. Members purchasing service credit for accumulated state sick or personal leave credit were given 90 days to complete the purchase because this type of service credit may only be purchased at retirement. An additional 30 day extension is also authorized by the legislation for those members purchasing service credit for accumulated state sick or personal leave by rollover. The proposed new rule clarifies that if the service credit being purchased is required in order to establish eligibility for retirement, the purchase must be completed by the effective date of retirement. It also confirms that the purchase must be completed before the first annuity payment is made and if the purchase cannot be completed within the timeframe provided, the member may either decline to purchase the service credit and keep the original effective date of retirement or establish a new effective date of retirement that will allow sufficient time for the retiree to complete the purchase of the service credit.

Don Green, Chief Financial Officer, has determined that for the first five-year period the proposed rules will be in effect, there will be no foreseeable fiscal implications to state or local govern-

ments as a result of administering the proposed rules. Any fiscal impact is a result of the enacted legislation.

Mr. Green also has determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to implement recently enacted legislation and to enhance efficiency and flexibility in administering membership-credit provisions in Chapter 25 of TRS' rules.

Mr. Green also has determined that there is no economic cost to entities or persons required to comply with the proposed rules. Any economic cost to such entities or persons is a result of the enacted legislation. Mr. Green has determined that there will be no effect on a local economy because of the proposals, and therefore no local employment impact statement is required under §2001.022, Government Code. Mr. Green has also determined that there will be no direct adverse economic effect on small businesses or micro-businesses within TRS' regulatory authority as a result of the proposed rules; therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under §2006.002, Government Code.

Comments may be submitted in writing to Brian Guthrie, Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice in the *Texas Register*.

## SUBCHAPTER A. SERVICE ELIGIBLE FOR MEMBERSHIP

### 34 TAC §25.10

Statutory Authority:

The amendments to §25.10 are proposed under the authority of §825.102, Government Code, which authorizes the TRS Board of Trustees to adopt rules for eligibility for membership, the administration of the funds of the system, and the transaction of business of the board.

Cross-Reference to Statute:

The proposed amendments to §25.10 affect §822.002, Government Code, as amended by Senate Bill 1663, 85th Legislature (Regular Session), 2017, concerning exceptions to membership requirement.

§25.10. *Student Employment.*

(a) Effective with the beginning of the 2017-18 school year, a [A] person employed in a Texas public college or university is not eligible for membership, service credit, or compensation credit based on employment that is conditioned upon enrollment as a student and compensation paid to the person for work performed as a student employee is not compensation subject to report and deduction for member contributions. For school years prior to the 2017-18 school year, a person employed in a Texas public college or university is not eligible for membership if that employment is conditioned upon enrollment as a student and the person has no other eligible employment during the same payroll period. No person may establish or reinstate credit for previously reported student employment.

(b) A person who accepts employment conditioned upon enrollment as a student does not lose any rights from service established as a member when student enrollment was or is not an issue.

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 August 4, 2017.

TRD-201702942

Don Green

Chief Financial Officer

Teacher Retirement System of Texas

Earliest possible date of adoption: September 17, 2017

For further information, please call: (512) 542-6506

## SUBCHAPTER B. COMPENSATION

### 34 TAC §25.28

Statutory Authority: §825.102, Government Code

The amendments to §25.28 are proposed under the authority of §825.102, Government Code, which authorizes the TRS Board of Trustees to adopt rules for eligibility for membership, the administration of the funds of the system, and the transaction of business of the board.

Cross Reference: §825.408, Government Code

The proposed amendments to §25.28 affect §825.408, Government Code, as amended by Senate Bill 1663, 85th Legislature (Regular Session), 2017, concerning interest on contributions and fees and deposits in trust.

§25.28. *Payroll Report Dates.*

(a) Except as provided under §31.2 of Chapter 31, Subchapter A, Part 3 of this Title, payroll reports and all member and employer deposits for a report month are due before the seventh day after the last day of the month. If the sixth day of the month falls on a weekend or federal holiday, the payroll reports and all member and employer deposits are due on the last business day before the sixth day of the month. The executive director shall establish [dates on which payroll reports are due and] the form and method to be used in reporting information regarding compensation and employment and such member and employer deposits as are due to the Teacher Retirement System of Texas (TRS). School officials shall be notified of such regulations. Each employer that fails to remit all required member and employer contributions to TRS before the seventh day after the last day of the month shall pay to TRS penalty interest on the unpaid amounts in the amount provided in Section 825.408, Government Code. Effective with the employer reports due for the report month of January 2018, each employer that fails to attain a completed status on all required reports or fails to submit all documentation required by TRS before the seventh day after the last day of the month shall pay, in addition to any deposits and penalty interest owed, the late fee established in subsection (j) of this section for each business day that the report fails to attain a completed status.

(b) Each employer must report each month in a form prescribed by TRS information on the total amount of salary paid to employees eligible to participate in TRS from federal funds and/or private grants. Reporting districts must transmit to TRS the current state contribution rate of the monies paid as salary for those employees covered by TRS in addition to the amount transmitted for member contributions. If the maximum percentage legally provided for retirement purposes from the funds is less than the current state contribution rate, the employer shall transmit the amount provided and indicate by letter the name of the grant and the rate.

(c) Effective September 1, 2015, each employer must report each calendar month in a form prescribed by TRS, information regarding the persons it employs, the positions held, the time worked and the compensation paid, including the number of days and/or hours worked

and the amount and type of salary paid to employees during that calendar month, including salary paid from federal funds and/or private grants. Employers must transmit to TRS the current state contribution rate of the monies paid as salary from federal funds and/or private grants for those employees covered by TRS in addition to the amount transmitted for member contributions and contributions required by §§825.405, 825.4034 and 825.4071, Government Code. If the maximum percentage legally provided for retirement purposes from the federal funds and/or private grants is less than the current state contribution rate, the employer shall transmit the amount provided and indicate by letter the name of the grant and the rate.

(d) Employees who have a qualified contract or an oral or written work agreement shall have information about the contract reported by each school district in a form prescribed by TRS.

(1) A qualified contract is an employment agreement which meets the following criteria.

(A) Service under the agreement must begin on or after July 1, but not later than August 31, of the same calendar year.

(B) Service contemplated by the agreement must be for a definite period extending past August 31 of the same calendar year in which service under the agreement began, as evidenced by an enforceable legal obligation on the part of the employer to employ and to compensate the employee for such period.

(C) Employees who can be terminated by the employer without the employer being obligated to pay a fixed amount stated in a contract are not included in the report.

(2) Reports on contracts and oral or written work agreements with a beginning date in July should be submitted to TRS in the July report. Reports on contracts and oral or written work agreements with a beginning date in August should be filed with the August or September report.

(e) Any employer may ask the retirement system for a written statement on whether a particular form of compensation is salary and wages subject to member deposits under the law and rules governing the system. A request for such a statement should be submitted in writing to the retirement system together with any contracts, board minutes, briefs, memoranda, or other material relevant to the request.

(f) An employer paying amounts to a member pursuant to a settlement agreement must obtain a written determination from TRS that the amounts are creditable compensation before reporting such amounts to TRS as compensation. In the absence of the written determination from TRS, amounts paid pursuant to a settlement agreement are not creditable compensation for TRS purposes and will not be included in determining the amount of benefits payable by TRS. The requirement in this subsection to obtain a written determination from TRS before reporting amounts to TRS that are paid pursuant to a settlement agreement does not apply to normal amounts of compensation paid to the employee while the employee is on paid leave of any type, including paid administrative or emergency leave, pursuant to a settlement agreement.

(g) If due to a technological error, an employer does not report all service rendered and/or salary paid as required in subsection (a) [(b)] of this section and the error regards service rendered and/or salary paid in the immediately preceding school year, the error may be corrected if the following requirements are met:

(1) the person for whom contributions were due is currently employed by the employer and compensation for the current year remains due to the employee;

(2) the employer requests a waiver of the reporting requirements under §825.408(a), Government Code and the request is granted by TRS;

(3) the employer submits member contributions on the unreported amounts pursuant to §825.409, Government Code, from any remaining compensation due and any employer contributions due on the compensation are paid by the employer;

(4) the employer pays the interest required by §825.408, Government Code and corrects the records for the report months in which the compensation was paid as directed by TRS; and

(5) the error is corrected by the end of the school year following the school year in which the service was rendered and/or the compensation was paid. Upon receipt of the member and employer contributions and the corrected report(s), the service credit and/or compensation credit will be credited to the member. In no event may service or compensation credit be granted under this subsection for service rendered or compensation received in a school year prior to the immediately preceding school year.

(h) An employer must report each calendar month only compensation paid in that calendar month in accordance with normal pay periods for all employees. In no event may an employer include salary paid in a prior month or may an employer delay payment of salary that should have been paid in a prior month for the purpose of increasing the employee's annual compensation for benefit calculation purposes. If compensation should have been paid in a prior month but due to a technological or accounting error, the compensation was not reported in the report month that it was paid and the error occurred in the current school year, or if the employer is required by law to correct an error in payment that occurred during the current school year, the monthly report shall be adjusted in the manner prescribed by TRS.

(i) An employer may not pay an employee less than the amount owed in a calendar month for the purpose of extending the employee on payroll in order to receive a year of service credit or to establish eligibility for participation in health care benefits as provided in Chapter 1579, Insurance Code, Title 8, Subtitle H.

(j) Effective with the employer reports due for the report month of January 2018, employers that fail to remit all required reports and documentation or fail to attain a completed status for the report(s) as required in this section shall pay to TRS, in addition to the required deposits and any applicable penalty interest on unpaid amounts, the late fee established in this subsection for each business day that the report fails to attain a completed status. The late fees required to be paid are as follows:

(1) For employers with fewer than 100 employees eligible for membership in TRS, the late fee for the first business day after the due date that the report fails to attain a completed status is \$100. For each subsequent business day that the report fails to attain a completed status, the employer shall pay an additional \$10.

(2) For employers with at least 100 employees eligible for membership in TRS but fewer than 500 eligible employees, the late fee for the first business day after the due date that the report fails to attain a completed status is \$250. For each subsequent business day that the report fails to attain a completed status, the employer shall pay an additional \$25.

(3) For employers with at least 500 employees eligible for membership in TRS but no more than 1,000 eligible employees, the late fee for the first business day after the due date that the report fails to attain a completed status is \$500. For each subsequent business day that the report fails to attain a completed status, the employer shall pay an additional \$50.



(4) For employers with more than 1,000 employees eligible for membership in TRS, the late fee for the first business day after the due date that the report fails to attain a completed status is \$1,000. For each subsequent business day that the report fails to attain a completed status, the employer shall pay an additional \$100.

(k) In determining the number of employees eligible for membership in TRS for purposes of assessing the late fees in subsection (j) of this section, TRS shall base the amount of the late fee on the number of eligible employees reflected on the employer's report for May of the preceding school year. New employers will pay late fees for the first school year as provided in subsection (j)(1) of this section.

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

Filed with the Office of the Secretary of State on August 4, 2017.

TRD-201702943

Don Green

Chief Financial Officer

Teacher Retirement System of Texas

Earliest possible date of adoption: September 17, 2017

For further information, please call: (512) 542-6506



## SUBCHAPTER M. OPTIONAL RETIREMENT PROGRAM

### 34 TAC §25.173

Statutory Authority: §825.102, Government Code

New §25.173 is proposed under the authority of §825.102, Government Code, which authorizes the TRS Board of Trustees to adopt rules for eligibility for membership, the administration of the funds of the system, and the transaction of business of the board.

Cross Reference: Chapter 830, Government Code

Proposed new §25.173 affects Chapter 830, Government Code, as amended by Senate Bill 1954, 85th Legislature (Regular Session), 2017, concerning the Optional Retirement Program.

*§25.173. Correction of Ineligible Participation in TRS.*

(a) Except as provided in subsection (e) of this section, a person who elected to participate in ORP and participated in ORP for at least one year and who was reported to TRS in error as described in §830.108, Government Code, must be restored to participation in ORP and may not receive a distribution of benefits from TRS based on the ineligible participation.

(b) Each employer that reported the person in error to TRS must, within 30 calendar days of receiving the request from TRS, certify on a form prescribed by TRS that the person was reported in error to TRS; the amount of the person's compensation that was creditable for ORP purposes and the amount of participant contributions that should have been contributed to ORP for each school year that the person was employed by that employer and reported in error to TRS; and the amount, if any, of employer contributions made to TRS under §§825.4041, 825.406, 825.407, or 825.4071, Government Code, based on the employment of the person reported to TRS in error.

(c) The person reported to TRS in error must provide information required by TRS to make a direct trustee-to-trustee transfer to the trustee of the person's ORP plan account of authorized amounts and

complete any forms prescribed and required by TRS to make the direct trustee-to-trustee transfer of funds, including the agreement of the trustee of the person's ORP plan account to accept the transfer in accordance with §830.108(d)(2)(B), Government Code. The trustee must also agree to separately account for any after-tax funds that are part of the direct trustee-to-trustee transfer. Authorized amounts include the amount of participant contributions that should have been made to ORP plus an amount representing earnings authorized by §830.108. If the amount of ineligible member contributions received by TRS is less than the amount of participant contributions that should have been made to ORP, then TRS may only make a direct trustee-to-trustee transfer of an amount equal to the amount of ineligible TRS member contributions plus authorized earnings. TRS may not pay or transfer any amount of required ORP participant contributions that exceed the amount of ineligible member contributions received by TRS.

(d) Each employer that reported the person in error to TRS and that made employer contributions in error to TRS under §§825.4041, 825.406, 825.407, or 825.4071, Government Code, must provide the certification required in subsection (b) and receive the approval of TRS before taking a credit for the employer contributions through the TRS employer reporting system. Earnings on the employer contributions paid in error to TRS are not authorized for payment by TRS and may not be taken as a credit through the employer reporting system.

(e) If within 180 days of notice by TRS of the reporting error, the person does not have or cannot establish an ORP account; cannot obtain the required certification from the employer(s) that reported the person in error to TRS; cannot obtain the approval of the trustee of the person's ORP plan account to receive the direct trustee-to-trustee transfer of funds from TRS; or does not provide the forms required for TRS to make the direct trustee-to-trustee transfer of funds to the person's ORP plan account, TRS is authorized to pay directly to the person reported in error to TRS the ineligible TRS member contributions equal to the amount of ORP member contributions received by TRS that should have been contributed to ORP plus the amount representing earnings on amounts authorized by §830.108.

(f) TRS must make a direct payment to the person of the amount of ineligible TRS member contributions deposited in error with TRS that exceed the amount of ORP participant contributions that should have been paid to the person's ORP account and any amounts paid by the person to purchase TRS service credit while ineligible to participate in TRS. The amount of direct payment to the person reported in error to TRS under this subsection does not include earnings that are authorized on amounts transferred to the person's ORP account by §830.108 or paid directly to the person pursuant to subsection (e).

(g) An employer of a person who elected ORP but was reported in error to TRS may not take a credit through the TRS employer reporting system of any member or employer contributions authorized in §830.108(c)(2) without the knowledge and express approval of TRS.

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 August 4, 2017.

TRD-201702947

Don Green

Chief Financial Officer

Teacher Retirement System of Texas

Earliest possible date of adoption: September 17, 2017

For further information, please call: (512) 542-6506

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## SUBCHAPTER N. INSTALLMENT PAYMENTS

### 34 TAC §25.191

Statutory Authority: §823.403, Government Code, §825.102, Government Code, §825.410, Government Code

New §25.191 is proposed under the authority of: §823.403, Government Code, which authorizes the TRS Board of Trustees to adopt rules for the certification of a member's creditable accumulated state personal or sick leave; §825.102, Government Code, which authorizes the board to adopt rules for the administration of the funds of the system and the transaction of business of the board; and §825.410, Government Code, which authorizes the board to adopt rules to implement that statute concerning payroll deductions or installment payments for special service credit.

Cross Reference: §823.004, Government Code; §823.403, Government Code; §824.002, Government Code; §824.005, Government Code; §825.307, Government Code; and §825.509, Government Code

Proposed new §25.191 affects the following statutes, as amended by Senate Bill 1664, 85th Legislature (Regular Session), 2017: §823.004, Government Code, concerning computation of and payment for credit; §823.403, Government Code, concerning credit for accumulated personal or sick leave; §824.002, Government Code, concerning effective date of retirement; §824.005, Government Code, concerning revocation of retirement; §825.307, Government Code, concerning member savings account; and §825.509, Government Code, concerning direct rollovers.

§25.191. Time Period at Retirement to Complete Purchase of Service Credit.

(a) Payment for service credit other than service credit for accumulated state personal or sick leave must be received not later than two calendar months after the later of the member's effective retirement date or the last day of the month in which the member submits a retirement application and before the later of the due date for the member's first monthly annuity payment or the date on which the Teacher Retirement System of Texas (TRS) issues the first monthly annuity payment to the member. If the service credit other than service credit for accumulated state personal or sick leave must be purchased in order to establish eligibility to retire, the purchase must be completed by the effective date of retirement. If the purchase of the service credit other than service credit for accumulated state personal or sick leave cannot be completed within the time period provided in this section, the member may decline to purchase the service credit and maintain the member's effective retirement date or may revoke the member's effective retirement date and select a later effective retirement date that provides sufficient time to complete the purchase of the service credit.

(b) Payment for accumulated state personal or sick leave service credit must be received by TRS not later than the 90th day after the date TRS issues a cost statement for the purchase of the service credit. If the purchase is being made by a rollover distribution from another eligible retirement plan or a direct trustee-to-trustee transfer of funds from an eligible plan as described in §823.403(d), Government Code, TRS may grant the member a one-time 30 day extension to complete the purchase. If the member cannot complete the purchase within the time period provided, the member may decline to purchase the accumulated state personal or sick leave service credit and maintain the member's effective retirement date or may revoke the member's effective retirement date and select a later effective retirement date that provides sufficient time to complete the purchase. Accumulated state

personal or sick leave credit may not be purchased in order to establish eligibility for retirement benefits.

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 August 4, 2017.

TRD-201702946

Don Green

Chief Financial Officer

Teacher Retirement System of Texas

Earliest possible date of adoption: September 17, 2017

For further information, please call: (512) 542-6506

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## CHAPTER 31. EMPLOYMENT AFTER RETIREMENT

The Teacher Retirement System of Texas (TRS) proposes amendments to §§31.2, 31.11 - 31.15, 31.31 - 31.34, and 31.41, concerning employment after retirement. TRS proposes amendments to these sections to implement Senate Bill (SB) 1663, 85th Legislature (Regular Session), 2017. The changes address the timeline for employers to file the monthly certified statement for the employment of retirees. The changes also address the types of employment relationships between TRS-covered employers and retirees that are considered employment that is subject to limits and interrupts the required 12 full, consecutive calendar month break in service before retirees can undertake full-time employment. The changes apply to the rules for both service and disability retirees. In addition to proposing amendments because of changes required by SB 1663, staff is also proposing amendments to clarify how TRS applies the limit on the number of days that a service or disability retiree may work when combining work as a substitute and any other work for a TRS-covered employer in the same calendar month. Proposed changes to §31.33(d) are corrective changes that are recommended to improve consistency in the rules for disability and service retirees regarding how TRS administers the limits on employment after retirement when a disability retiree combines work as a substitute and any other work for a TRS-covered employer in the same calendar month.

Chapter 31 addresses the opportunities and limitations on employment with a TRS-covered employer after retirement and the limitations on the amount of compensation a disability retiree may receive from any source after retirement without forfeiting the disability retirement benefit. Subchapter A provides for general provisions. Section 31.2 requires that a reporting entity furnish TRS with a monthly certified statement of all employment of TRS service or disability retirees. The statement shall contain information required by TRS to administer applicable limitations and necessary for the executive director or his designee to classify employment. The proposed amendments to §31.2 clarify when all monthly certified statements and required employer surcharges must be remitted to TRS and provide for penalty interest on unpaid amounts and daily late fees. SB 1663 extended the time for filing this report from before the seventh day of the following calendar month to before the eleventh day of the following calendar month. This deadline is for all calendar months except August. The deadline for filing the monthly certified statement of the employment of retirees for August was maintained by the bill at the current due date: before the seventh day of the following

month. The earlier due date for the August report is required in order for TRS to accomplish year end closing in a timely manner. In addition, the proposed amendments confirm TRS' long standing application of the deadline by specifically stating that if the deadline falls on a weekend or federal holiday, the reports and surcharges are due on the last business day before the deadline.

Changes proposed to this rule by staff also address additional employment relationships with retirees that are considered employment for purposes of the limits on employment after retirement and must be included in the monthly report for the first 12 full, consecutive calendar months following the effective date of retirement for each retiree. The additional employment relationships include performing duties or providing services that an employee of the educational institution would otherwise perform or provide; and

- waiving, deferring, or forgoing compensation for the duties or services;
- performing the duties or providing the services as an independent contractor; or
- serving as a volunteer without compensation and performing the same duties or providing the same services that the retiree performed or provided immediately before retiring and the retiree has an agreement to perform those duties or provide those services after the first 12 full, consecutive calendar months after the retiree's effective date of retirement.

The proposed amendments also address the "types" of employment of a retiree that are required to be reported by the employers. In subsection (b), staff recommends deleting the reference to the employment of retirees who retired before January 1, 2011 as the new reporting system will be able to track the effective date of retirement for each retiree and adding the category of combining substitute and other work as that type of employment will be required to be reported in the new reporting system.

In addition to these proposed amendments, staff also recommends adding language to this rule that indicates how TRS will administer the requirement that TRS-covered employers pay a late fee when failing to meet the statutory deadline for filing monthly reports. Staff is recommending using the reference to "failing to attain a completed status" with regard to the filing of a monthly certified statement, rather than "failing to file" a statement, to comport with the terminology used in the reporting system indicating a successful and completed filing of the required information. The late fee structure is addressed in new subsection (d) and is consistent with the late fee structure proposed for adoption in §25.28. Staff recommends delaying the implementation of the late fees until the report for January 2018, which is due in February 2018, to allow sufficient time for addressing any problems that may occur with the implementation of the new reporting system. The proposed amendments also provide that the number of eligible employees used to determine the late fee amount is determined based on the number of eligible employees reported by that employer in May of the preceding year. New employers will be assigned to the smallest employer group until the following year when the number of eligible employees reported in May will be used to establish the appropriate employer group.

Subchapter B concerns employment after service retirement. Section 31.11 addresses employment that results in the forfeiture of a service retirement annuity. The proposed changes to §31.11 address changes in the law made by SB 1663 that establish additional employment relationships with retirees that

are considered employment subject to the limits on employment after retirement and must be included in the monthly report for the first 12 full, consecutive calendar months following the effective date of retirement for each retiree. The additional employment relationships include performing duties or providing services that an employee of the educational institution would otherwise perform or provide; and

- waiving, deferring, or forgoing compensation for the duties or services;
- performing the duties or providing the services as an independent contractor; or
- serving as a volunteer without compensation and performing the same duties or providing the same services that the retiree performed or provided immediately before retiring and the retiree has an agreement to perform those duties or provide those services after the first 12 full, consecutive calendar months after the retiree's effective date of retirement.

Section 31.12 addresses exceptions to forfeiture of a service retirement annuity. The proposed changes to §31.12 incorporate changes in the law made by SB 1663 that establish additional employment relationships with retirees that are considered employment subject to the limits on employment after retirement and must be included in the monthly report for the first 12 full, consecutive calendar months following the effective date of retirement for each retiree. The additional employment relationships include performing duties or providing services that an employee of the educational institution would otherwise perform or provide; and

- waiving, deferring, or forgoing compensation for the duties or services;
- performing the duties or providing the services as an independent contractor; or
- serving as a volunteer without compensation and performing the same duties or providing the same services that the retiree performed or provided immediately before retiring and the retiree has an agreement to perform those duties or provide those services after the first 12 full, consecutive calendar months after the retiree's effective date of retirement.

Section 31.13 provides the requirements for working under the substitute service exception and clarifies that working as a substitute during the required one full calendar month break in service revokes retirement. The rule also clarifies that a retiree may combine work under the one-half time exception and under the substitute service exception in the same calendar month provided the retiree does not work more than half of the work days in that calendar month. The proposed changes to §31.13 incorporate changes in the law made by SB 1663 that establish additional employment relationships with retirees that are considered employment subject to the limits on employment after retirement during the first 12 full, consecutive calendar months following retirement. The proposed changes provide that when such other employment is combined with substitute employment in the same calendar month, such other employment must be included in calculating the number of days that a retiree is allowed to work in the same calendar month. The additional employment relationships include performing duties or providing services that an employee of the educational institution would otherwise perform or provide; and

- waiving, deferring, or forgoing compensation for the duties or services;

- performing the duties or providing the services as an independent contractor; or
- serving as a volunteer without compensation and performing the same duties or providing the same services that the retiree performed or provided immediately before retiring and the retiree has an agreement to perform those duties or provide those services after the first 12 full, consecutive calendar months after the retiree's effective date of retirement.

Additional changes proposed by staff clarify that when calculating the number of days a retiree may combine substitute and other work in the same calendar month, the total allowed is one-half the number of workdays. The proposed changes clarify that a work day is each Monday through Friday in the calendar month and that working any part of a calendar day, including a Saturday or Sunday, is counted as a day worked.

Section 31.14 provides clarification on how much a retiree may work under the one-half time exception without forfeiting the annuity for that month. The current rule provides that a retiree may work as much as the equivalent of four clock hours for every work day in the month. The proposed changes to §31.14 incorporate changes in the law made by SB 1663 that establish additional employment relationships with retirees that are considered employment subject to the limits on employment after retirement and must be included in the monthly report for the first 12 full, consecutive calendar months following the effective date of retirement for each retiree. The additional employment relationships include performing duties or providing services that an employee of the educational institution would otherwise perform or provide; and

- waiving, deferring, or forgoing compensation for the duties or services;
- performing the duties or providing the services as an independent contractor; or
- serving as a volunteer without compensation and performing the same duties or providing the same services that the retiree performed or provided immediately before retiring and the retiree has an agreement to perform those duties or provide those services after the first 12 full, consecutive calendar months after the retiree's effective date of retirement.

Additional changes proposed by staff clarify that when calculating the number of days a retiree may combine substitute and other work in the same calendar month, the total allowed is one-half the number of workdays. The proposed changes clarify that a work day is each Monday through Friday in the calendar month and that working any part of a calendar day, including a Saturday or Sunday, is counted as a day worked.

Section 31.15 establishes the requirements for observing a break in service of 12 full, consecutive calendar months before returning to full-time employment for retirees who retired January 1, 2011 or thereafter. This rule provides that working as a substitute or under the one-half time exception is considered employment that interrupts the 12-month break in service and that paid leave is also considered employment that must be counted. The proposed changes to §31.15 incorporate changes in the law made by SB 1663 that establish additional employment relationships with retirees that are considered employment subject to the limits on employment after retirement and must be included in the monthly report for the first 12 full, consecutive calendar months following the effective date of retirement for each retiree. The additional employment relationships include

performing duties or providing services that an employee of the educational institution would otherwise perform or provide; and

- waiving, deferring, or forgoing compensation for the duties or services;
- performing the duties or providing the services as an independent contractor; or
- serving as a volunteer without compensation and performing the same duties or providing the same services that the retiree performed or provided immediately before retiring and the retiree has an agreement to perform those duties or provide those services after the first 12 full, consecutive calendar months after the retiree's effective date of retirement.

The changes proposed by staff clarify that working in one of these types of relationships is considered employment that interrupts the required 12 full, consecutive calendar month break in service that is required before a retiree may work full-time without the loss of annuities.

Subchapter C concerns employment after disability retirement. Section 31.31 addresses employment that results in the forfeiture of a disability retirement annuity. The proposed changes to §31.31 incorporate changes in the law made by SB 1663 that establish additional employment relationships with retirees that are considered employment subject to the limits on employment after retirement for disability retirees. These types of employment relationships must be included in the monthly report for the first 12 full, consecutive calendar months following the effective date of retirement for each disability retiree. The additional employment relationships include performing duties or providing services that an employee of the educational institution would otherwise perform or provide; and

- waiving, deferring, or forgoing compensation for the duties or services;
- performing the duties or providing the services as an independent contractor; or
- serving as a volunteer without compensation and performing the same duties or providing the same services that the retiree performed or provided immediately before retiring and the retiree has an agreement to perform those duties or provide those services after the first 12 full, consecutive calendar months after the retiree's effective date of retirement.

Section 31.32 addresses half-time employment up to 90 days. The proposed changes to §31.32 incorporate changes made in the law by SB 1663 that establish additional employment relationships with retirees that are considered employment subject to the limits on employment after retirement for disability retirees. These types of employment relationships must be included in the monthly report for the first 12 full, consecutive calendar months following the effective date of retirement for each disability retiree. The additional employment relationships include performing duties or providing services that an employee of the educational institution would otherwise perform or provide; and

- waiving, deferring, or forgoing compensation for the duties or services;
- performing the duties or providing the services as an independent contractor; or
- serving as a volunteer without compensation and performing the same duties or providing the same services that the retiree performed or provided immediately before retiring and the retiree

has an agreement to perform those duties or provide those services after the first 12 full, consecutive calendar months after the retiree's effective date of retirement.

Additional changes proposed by staff clarify that when calculating the number of days a disability retiree may combine substitute and other work in the same calendar month, the total allowed is one-half the number of workdays. The proposed changes clarify that a work day is each Monday through Friday in the calendar month and that working any part of a calendar day, including a Saturday or Sunday, is counted as a day worked.

Section 31.33 addresses substitute service up to 90 days. The proposed changes to §31.33 incorporate changes made in the law by SB 1663 that establish additional employment relationships with retirees that are considered employment subject to the limits on employment after retirement for disability retirees. These types of employment relationships must be included in the monthly report for the first 12 full, consecutive calendar months following the effective date of retirement for each disability retiree. The additional employment relationships include performing duties or providing services that an employee of the educational institution would otherwise perform or provide; and

- waiving, deferring, or forgoing compensation for the duties or services;
- performing the duties or providing the services as an independent contractor; or
- serving as a volunteer without compensation and performing the same duties or providing the same services that the retiree performed or provided immediately before retiring and the retiree has an agreement to perform those duties or provide those services after the first 12 full, consecutive calendar months after the retiree's effective date of retirement.

Additional changes recommended by staff incorporate language in other rules regarding how the limits on employment after retirement apply to a disability retiree when combining substitute employment with other work. These changes are consistent with current application of the limits by TRS, but have not been specifically addressed in this rule. The proposed changes add the additional language recommended by staff in other employment after retirement rules regarding how to calculate the number of days a disability retiree may work in a calendar month when combining substitute and other work in the same calendar month: the total allowed is one-half the number of workdays. The proposed changes also clarify that a work day is each Monday through Friday in the calendar month and that working any part of a calendar day, including a Saturday or Sunday, is counted as a day worked.

Section 31.34 addresses employment up to three months on a one-time only trial basis. The proposed changes to §31.34 incorporate changes in the law made by SB 1663 that establish additional employment relationships with retirees that are considered employment subject to the limits on employment after retirement for disability retirees and must be included in the monthly report for the first 12 full, consecutive calendar months following the effective date of retirement for each disability retiree. These types of employment relationships are considered employment during the three month trial work period that disability retirees may elect on a one-time basis, if the three month trial work period occurs within the first 12 full, consecutive calendar months following the effective date of the disability retirement. The additional employment relationships include performing duties or

providing services that an employee of the educational institution would otherwise perform or provide; and

- waiving, deferring, or forgoing compensation for the duties or services;
- performing the duties or providing the services as an independent contractor; or
- serving as a volunteer without compensation and performing the same duties or providing the same services that the retiree performed or provided immediately before retiring and the retiree has an agreement to perform those duties or provide those services after the first 12 full, consecutive calendar months after the retiree's effective date of retirement.

Section 31.41 addresses return to work employer pension surcharges. The proposed changes to §31.41 incorporate changes made in the law by SB 1663 that establish additional employment relationships with retirees that are considered employment subject to the limits on employment after retirement and must be included in the monthly report for the first 12 full, consecutive calendar months following the effective date of retirement for each retiree. The proposed changes clarify that if work in these types of relationships causes a retiree to exceed the limits on employment after retirement during the first 12 full, consecutive months following the retiree's effective date of retirement, surcharges are owed by the employer. The additional employment relationships include performing duties or providing services that an employee of the educational institution would otherwise perform or provide; and

- waiving, deferring, or forgoing compensation for the duties or services;
- performing the duties or providing the services as an independent contractor; or
- serving as a volunteer without compensation and performing the same duties or providing the same services that the retiree performed or provided immediately before retiring and the retiree has an agreement to perform those duties or provide those services after the first 12 full, consecutive calendar months after the retiree's effective date of retirement.

Don Green, Chief Financial Officer, estimates that, for each year of the first five years that the proposed amendments will be in effect, there will be no foreseeable fiscal implications to state or local governments as a result of administering the proposed amended rules. Any fiscal impact is a result of the enacted legislation and cannot be ascertained at this time on an individual employer or aggregate basis.

For each year of the first five years that the proposed amended rules will be in effect, Mr. Green have determined that the public benefit will be to clarify rules concerning employment after retirement for service and disability retirees, their employers, and TRS.

Mr. Green have determined that there is no economic cost to entities or persons required to comply with the proposed rules. Mr. Green have determined that there will be no ascertainable effect on a local economy because of the proposals, and therefore no local employment impact statement is required under §2001.022 of the Government Code. Mr. Green have also determined that there will be no direct adverse economic effect on small businesses or micro-businesses within TRS' regulatory authority as a result of the proposed amended rules; therefore, neither an

economic impact statement nor a regulatory flexibility analysis is required under §2006.002 of the Government Code.

Comments may be submitted in writing to Brian Guthrie, Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice in the *Texas Register*.

## SUBCHAPTER A. GENERAL PROVISIONS

### 34 TAC §31.2

**Statutory Authority:** The amendments are proposed under §824.601(f) of the Government Code, which authorizes TRS to adopt rules necessary for administering Chapter 824, Subchapter G, of the Government Code concerning loss of benefits on resumption of service, and §825.102 of the Government Code, which authorizes the board to adopt rules for eligibility for membership, the administration of the funds of the system, and the transaction of business of the board.

**Cross-Reference to Statute:** The proposed amendments affect Chapter 824, Subchapter G, of the Government Code, concerning loss of benefits on resumption of service.

#### §31.2. *Monthly Certified Statement.*

(a) For purposes of administering Government Code, §824.601, a reporting entity shall furnish the Teacher Retirement System of Texas (TRS) a monthly certified statement of all employment of TRS service or disability retirees. Except for the monthly certified statement for August of each year, the monthly certified statement and all required employer surcharges must be remitted to TRS before the eleventh day after the last day of the month. The monthly certified statement for August must be remitted before the seventh day of September. If the tenth day of the month, or the sixth day of month for the August monthly certified statement, falls on a weekend or federal holiday, the monthly certified statement and all required employer surcharges are due on the last business day before the due date. Each employer that fails to remit all required employer surcharges to TRS before the eleventh day after the last day of the month or before the seventh day of September for the monthly certified statement for August, shall pay to TRS penalty interest on the unpaid amounts in the amount provided in §825.408, Government Code. Effective with the monthly certified statement due for the report month of January 2018, each employer that fails to attain a completed status on all monthly certified statements required by TRS before the eleventh day after the last day of the month or before the seventh day of September for the monthly certified statement for August shall pay, in addition to any deposits and penalty interest owed, the late fee established in subsection (d) of this section for each business day that the monthly certified statement fails to attain a completed status. In addition to the monthly certified statement of the employment of all TRS service or disability retirees, reporting entities must include the following:

(1) effective [Effective] June 20, 2003, [the certified statement must include] information regarding employees of third party entities if the employees are service or disability retirees who were first employed by the third party entity on or after May 24, 2003 and are performing duties or providing services on behalf of or for the benefit of the reporting entity that employees of the reporting entity would otherwise perform or provide; and[-]

(2) effective the beginning of the 2017-18 school year, information regarding retirees who retired within 12 full, consecutive calendar months of the month of the monthly certified statement and are performing duties or providing services for or on behalf of the reporting entity that employees of the reporting entity would otherwise perform or provide, and are:

(A) waiving, deferring, or forgoing compensation for the services or duties;

(B) performing the duties or providing the services as an independent contractor; or

(C) serving as a volunteer without compensation and performing the same duties or providing the same services for a reporting entity that the retiree performed or provided immediately before retiring and the retiree has an agreement to perform those duties or provide those services after the first 12 full, consecutive calendar months after the retiree's effective date of retirement.

(b) The monthly certified statement shall contain information required by TRS to administer applicable limitations and necessary for the executive director or his designee to classify employment as one of the following:

- (1) substitute service;
- (2) employment that is not more than one-half time;
- (3) full-time employment; or
- (4) trial employment of disability retiree for three months.[-; or]

[(5) employment of a service retiree who retired before January 1, 2011.]

(c) [(b)] For purposes of administering Government Code, §825.4092 and Insurance Code, §1575.204, a reporting entity shall furnish TRS a monthly certified statement reflecting the [number of] TRS service and/or disability retirees working [in positions eligible for TRS membership], the [total] amount of salary paid to each retiree [retirees who are not exempt from the payments due under §31.41 of this title (relating to Return To Work employer Pension Surcharge)] the total amount paid on all retirees under §31.41 of this title, the total amount due under §41.4 of this title (relating to Employer Health Benefit Surcharge), and any other information requested by TRS for the administration of these sections. The monthly certified statement must include information regarding employees of third party entities if the employees are service or disability retirees who were first employed by the third party entity on or after May 24, 2003, [are working in positions eligible for TRS membership,] and are performing duties or providing service on behalf of or for the benefit of the reporting entity. Effective with the beginning of the 2017-18 school year, the monthly certified statement must include all retirees who are required to be reported to TRS in subsection (a)(2) of this section.

(d) Employers that fail to attain a completed status for the monthly certified statement(s) as required in this section before the eleventh day after the last day of the month or before the seventh day of September for the certified monthly statement for August shall pay to TRS, in addition to the required employer surcharges and any applicable penalty interest on the unpaid amounts, the late fee established in this subsection for each business day that the monthly certified statement fails to attain a completed status. The late fees required to be paid are as follows:

(1) For employers with fewer than 100 employees, the late fee for the first business day the monthly certified statement fails to attain a completed status is \$100. For each subsequent business day that the monthly certified statement fails to attain a completed status, the employer shall pay an additional \$10.

(2) For employers with at least 100 employees but no more than 500 employees, the late fee for the first business day the monthly certified statement fails to attain a completed status is \$250. For each

subsequent business day that the monthly certified statement fails to attain a completed status, the employer shall pay an additional \$25.

(3) For employers with more than 500 employees but no more than 1,000 employees, the late fee for the first business day the report or documentation fails to attain a completed status is \$500. For each subsequent business day that the report or documentation fails to attain a completed status, the employer shall pay an additional \$50.

(4) For employers with more than 1,000 employees, the late fee for the first business day the monthly certified statement fails to attain a completed status is \$1,000. For each subsequent business day that the monthly certified statement fails to attain a completed status, the employer shall pay an additional \$100.

(e) In determining the number of employees for purposes of assessing the late fee in subsection (d) of this section, TRS shall base the fee on the number of employees reflected on the employer's monthly certified statement for May of the preceding school year. New employers will pay late fees for the first school year as provided in subsection (d)(1) of this section.

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

Filed with the Office of the Secretary of State on August 7, 2017.

TRD-201702959

Don Green

Chief Financial Officer

Teacher Retirement System of Texas

Earliest possible date of adoption: September 17, 2017

For further information, please call: (512) 542-6506



## SUBCHAPTER B. EMPLOYMENT AFTER SERVICE RETIREMENT

### 34 TAC §§31.11 - 31.15

Statutory Authority: The amendments are proposed under §824.601(f) of the Government Code, which authorizes TRS to adopt rules necessary for administering Chapter 824, Subchapter G, of the Government Code concerning loss of benefits on resumption of service, and §825.102 of the Government Code, which authorizes the board to adopt rules for eligibility for membership, the administration of the funds of the system, and the transaction of business of the board.

Cross-Reference to Statute: The proposed amendments affect Chapter 824, Subchapter G, of the Government Code, concerning loss of benefits on resumption of service.

§31.11. *Employment Resulting in Forfeiture of Service Retirement Annuity.*

(a) A person who retired prior to January 1, 2011, and who is receiving a service retirement annuity may be employed in any capacity in Texas public education without forfeiture of benefits for the months of employment.

(b) A person who retired after January 1, 2011, and who is receiving a service retirement annuity, is not entitled to an annuity payment for any month in which the retiree is employed by a Texas public educational institution, unless the employment meets the requirements for an exception to forfeiture of payments under this chapter. Employment by a Texas public educational institution for purposes of this chapter includes:

(1) effective [Effective] June 20, 2003 [and for purposes of this chapter], employment by a third party entity [is considered employment by a Texas public educational institution] unless the retiree does not perform duties or provide services on behalf of or for the benefit of the institution or the retiree was first employed by the third party entity before May 24, 2003; and[-]

(2) effective the beginning of the 2017-18 school year, performing duties or providing services for or on behalf of the institution in the first 12 full, consecutive calendar months after the retiree's effective date of retirement that an employee of the institution would otherwise perform or provide, and:

(A) waiving, deferring, or forgoing compensation for the services or duties;

(B) performing the duties or providing the services as an independent contractor; or

(C) serving as a volunteer without compensation and performing the same duties or providing the same services for the institution that the retiree performed or provided immediately before retiring and the retiree has an agreement to perform those duties or provide those services after the first 12 full, consecutive calendar months after the retiree's effective date of retirement.

(c) A person who is receiving a service retirement annuity may be employed in private schools, public schools in other states, in private business, or in other entities that are not TRS-covered employers without forfeiting their annuities.

(d) This chapter applies only to persons retired under TRS. It does not apply to persons retired under other retirement or pension systems.

§31.12. *Exceptions to Forfeiture of Service Retirement Annuity.*

(a) A person who is receiving a service retirement annuity who retired after January 1, 2011, forfeits the annuity for any month in which the retiree is employed by a public educational institution covered by TRS, except in the cases set forth in §31.13 of this chapter (relating to Substitute Service), §31.14 of this chapter (relating to One-half Time Employment), and §31.15 of this chapter (relating to Full-time Employment after 12-Consecutive-Month Break in Service).

(b) Employment by a Texas public educational institution includes:

(1) effective [Effective] June 20, 2003, employment by a third party entity [is considered employment by a Texas public educational institution] unless the retiree does not perform duties or provide services on behalf of or for the benefit of the institution or the retiree was first employed by the third party entity before May 24, 2003; and[-]

(2) effective the beginning of the 2017-18 school year, performing duties or providing services for or on behalf of the institution in the first 12 full, consecutive calendar months after the retiree's effective date of retirement that an employee of the institution would otherwise perform or provide, and:

(A) waiving, deferring, or foregoing compensation for the services or duties;

(B) performing the duties or providing the services as an independent contractor; or

(C) serving as a volunteer without compensation and performing the same duties or providing the same services for the institution that the retiree performed or provided immediately before retiring and the retiree has an agreement to perform those duties or provide those services after the first 12 full, consecutive calendar months after the retiree's effective date of retirement.

§31.13. *Substitute Service.*

(a) Any person receiving a service retirement annuity who retired after January 1, 2011, may work in a month as a substitute in a public educational institution without forfeiting the annuity payment for that month.

(b) For purposes of this section, employment [Employment by a third party entity is considered employment] by a Texas public educational institution that may not be combined with the substitute service exception without forfeiting the annuity payment except as provided in this chapter includes:

(1) employment by a third party entity, unless the retiree does not perform duties or provide services on behalf of or for the benefit of the institution or the retiree was first employed by the third party entity before May 24, 2003; and[; and may not be combined with the substitute service exception without forfeiting the annuity payment except as provided in this chapter.]

(2) effective the beginning of the 2017-18 school year, performing duties or providing services for or on behalf of the institution in the first 12 full, consecutive calendar months after the retiree's effective date of retirement that an employee of the institution would otherwise perform or provide, and:

(A) waiving, deferring, or foregoing compensation for the services or duties;

(B) performing the duties or providing the services as an independent contractor; or

(C) performing the duties or providing the services as an independent contractor; or  
serving as a volunteer without compensation and performing the same duties or providing the same services for the institution that the retiree performed or provided immediately before retiring and the retiree has an agreement to perform those duties or provide those services after the first 12 full, consecutive calendar months after the retiree's effective date of retirement.

(c) A person working under the exception described in this section is not separated from service with all Texas public educational institutions for the purpose of the required 12 full consecutive month break described in §31.15 of this title (relating to Full-time Employment after 12-Consecutive-Month Break in Service).

(d) The exception described in this section and the exception for one-half time employment described in §31.14 of this title (relating to One-half Time Employment) may be used during the same school year. If the substitute service and the other employment occur in the same calendar month, the total amount of time that the retiree works in both positions may not exceed the amount of time available that month for work on a one-half time basis. Beginning September 1, 2011 and thereafter, the exception for substitute service under this section and the exception for one-half time employment under §31.14 of this title may be used during the same calendar month without forfeiting the annuity only if the total number of days that the retiree works in those positions in that month does not exceed one-half the number of days available for that month for work. The number of days available to work in a calendar month is equal to one-half the number of work days in that calendar month. A work day is each Monday through Friday. However, working any part of a calendar day, including a Saturday or Sunday, is counted as a day worked. If the calendar month has an odd number of work days available for work, the retiree is limited to working only the number of whole days available and may not work any amount of additional time in the one-half day remaining when dividing the total number of work days in the month by 2 without forfeiting the annuity for that month.

(e) The exception described in this section does not apply for the first month after the person's effective date of retirement (or the

first two months if the person's retirement date has been set on May 31 under §29.14 of this title (relating to Eligibility for Retirement at the End of May)).

(f) A retiree who reports for duty as a daily substitute during any day and works any portion of that day shall be considered to have worked one day.

§31.14. *One-half Time Employment.*

(a) A person who is receiving a service retirement annuity who retired after January 1, 2011 may be employed on as much as a one-half time basis without forfeiting annuity payments for the months of employment. In this section, one-half time basis means the equivalent of four clock hours for each work day in that calendar month. The total number of hours allowed for that month may be worked in any arrangement or schedule.

(b) Employment by a Texas public educational institution for purposes of this section includes:

(1) employment by a third party entity, [is considered employment by a Texas public educational institution] unless the retiree does not perform duties or provide services on behalf of or for the benefit of the institution or the retiree was first employed by the third party entity before May 24, 2003; and[-]

(2) effective the beginning of the 2017-18 school year, performing duties or providing services for or on behalf of the institution in the first 12 full, consecutive calendar months after the retiree's effective date of retirement that an employee of the institution would otherwise perform or provide, and:

(A) waiving, deferring, or foregoing compensation for the services or duties;

(B) performing the duties or providing the services as an independent contractor; or

(C) serving as a volunteer without compensation and performing the same duties or providing the same services for the institution that the retiree performed or provided immediately before retirement and the retiree has an agreement to perform those duties or provide those services after the first 12 full, consecutive calendar months after the retiree's effective date of retirement.

(c) Paid time-off, including sick leave, vacation leave, administrative leave, and compensatory time for overtime worked, is employment for purposes of this section and must be included in determining the total amount of time worked in a calendar month and reported to TRS as employment for the calendar month in which it is taken.

(d) For the purpose of this section, actual course or lab instruction with an institution of higher education (including community and junior colleges) in classes taken by students for college credit or classes that are taken to prepare students for college level work, and that are expressed in terms of number of courses; course or semester hours/credits; instructional units; or other units of time representing class or instructional time shall be counted as a minimum of two clock hours for each clock hour of instruction or time in the classroom or lab in order to reflect instructional time as well as preparation, grading, and other time typically associated with one hour of instruction. If the employer has established a greater amount of preparation time for each hour in the classroom or lab, the employer's established standard will be used to determine the number of courses or labs a retiree may teach under the exception to loss of annuity provided by this section. The equivalent clock hours computed under this subsection may not be greater than the number of work hours authorized in subsection (a) of this section. Employment as an instructor of an on-line class taken by students for college credit that is measured or expressed in terms of the number of



courses; semester or course hours/credits; instructional units; or other units of time representing class or instructional time must be counted as a minimum of two clock hours for each course or semester hour. Employment as an instructor of continuing education, adult education, and/or classes offered to employers or businesses for employee training, that is not measured or expressed in terms of the number of courses; semester or course hours/credits; or instructional units or other units of time rather than clock hours and for which the students/participants do not receive college credit, must be counted based on the number of clock hours worked.

(e) This exception and the exception for substitute service may be used during the same calendar month without forfeiting the annuity only if the total amount of time that the retiree works in those positions in that month does not exceed the amount of time per month for work on a one-half time basis. Beginning September 1, 2011 and thereafter, the exception for one-half time employment under this section and the exception for substitute service under §31.13 of this title (relating to Substitute Service) may be used during the same calendar month without forfeiting the annuity only if the total number of days that the retiree works in those positions in that month does not exceed one-half the number of days available for that month for work. The number of days available to work in a calendar month is equal to one-half the number of work days in that calendar month. A work day is each Monday through Friday. However, working any part of a calendar day, including a Saturday or Sunday, is counted as a day worked. If the calendar month has an odd number of work days available for work, the retiree is limited to working only the number of whole days available and may not work any amount of additional time in the one-half day remaining when dividing the total number of work days in the month by 2 without forfeiting the annuity for that month.

(f) A person working under the exception described in this section is not separated from service with all Texas public educational institutions for the purpose of the required 12 full consecutive month break described in §31.15 of this title (relating to Full-time Employment after 12 Consecutive Month Break in Service).

(g) The exception described in this section does not apply for the first month after the person's effective date of retirement (or the first two months if the person's retirement date has been set on May 31 under §29.14 of this title (relating to Eligibility for Retirement at the End of May)).

*§31.15. Full-time Employment after 12 Consecutive Month Break in Service.*

(a) If a person who retired after January 1, 2011, and who is receiving a service retirement annuity complies with subsection (b) of this section, the person may, without forfeiting payment of the annuity for the months of employment, be employed in any capacity in Texas public education, including as much as full-time.

(b) To be eligible to be employed without forfeiting payment of the annuity under subsection (a) of this section, the service retiree must have been separated from service with all Texas public educational institutions for at least 12 full, consecutive calendar months after the effective date of retirement. The 12-month separation period required under §824.602(a)(3), Government Code for the full-time exception may be any 12 consecutive calendar months following the month of retirement. During the separation period, the retiree may not be employed in any position or capacity by a public educational institution covered by TRS.

(1) Employment as a substitute or on a half-time basis under the exceptions provided for in this chapter is considered employment for the purpose of this subsection.

(2) Paid time off, including sick leave, vacation leave, administrative leave, and compensatory time for overtime worked, is considered employment for purposes of this subsection.

(3) Employment by a third party entity is considered employment by a Texas public educational institution for purposes of this subsection unless the retiree does not perform duties or provide services on behalf of or for the benefit of the institution or the retiree was first employed by the third party entity before May 24, 2003.

(4) Effective the beginning of the 2017-18 school year, employment by a Texas public educational institution includes performing duties or providing services for or on behalf of the institution in the first 12 full, consecutive calendar months after the retiree's effective date of retirement that an employee of the institution would otherwise perform or provide, and:

(A) waiving, deferring, or foregoing compensation for those duties or services;

(B) performing the duties or providing the services as an independent contractor; or

(C) serving as a volunteer without compensation and performing the same duties or providing the same services for the institution that the retiree performed or provided immediately before retirement and the retiree has an agreement to perform those duties or provide those services after the first 12 full, consecutive calendar months after the retiree's effective date of retirement.

(c) If a person who retired after January 1, 2011, and who is receiving a service retirement annuity does not meet the separation from service period required in subsection (b) of this section, the person will forfeit payment of the annuity for any month of full-time employment in Texas public education. In this section full-time employment means any employment that does not meet the substitute service exception as described in §31.13 of this title (relating to Substitute Service) or the one-half time exception in §31.14 of this title (relating to One-half Time Employment).

(1) Paid time off, including sick leave, vacation leave, administrative leave, and compensatory time for overtime worked, is considered employment for purposes of this section and must be reported to TRS as employment for the calendar month in which it is taken.

(2) Employment by a third party entity is considered employment by a Texas public educational institution for purposes of this section and must be reported to TRS as employment for the calendar month in which it occurs unless the retiree does not perform duties or provide services on behalf of or for the benefit of the institution or the retiree was first employed by the third party entity before May 24, 2003.

(3) Effective the beginning of the 2017-18 school year, employment by a Texas public educational institution includes performing duties or providing services for or on behalf of the institution in the first 12 full, consecutive calendar months after the retiree's effective date of retirement that an employee of the institution would otherwise perform or provide, and:

(A) waiving, deferring, or foregoing compensation for the duties or services;

(B) performing the duties or providing the services as an independent contractor; or

(C) serving as a volunteer without compensation and performing the same duties or providing the same services for the institution that the retiree performed or provided immediately before retirement and the retiree has an agreement to perform those duties or pro-

vide those services after the first 12 full, consecutive calendar months after the retiree's effective date of retirement.

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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Teacher Retirement System of Texas

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For further information, please call: (512) 542-6506



## SUBCHAPTER C. EMPLOYMENT AFTER DISABILITY RETIREMENT

### 34 TAC §§31.31 - 31.34, 31.41

Statutory Authority: The amendments are proposed under §824.601(f) of the Government Code, which authorizes TRS to adopt rules necessary for administering Chapter 824, Subchapter G, of the Government Code concerning loss of benefits on resumption of service, and §825.102 of the Government Code, which authorizes the board to adopt rules for eligibility for membership, the administration of the funds of the system, and the transaction of business of the board.

Cross-Reference to Statute: The proposed amendments affect Chapter 824, Subchapter G, of the Government Code, concerning loss of benefits on resumption of service.

*§31.31. Employment Resulting in Forfeiture of Disability Retirement Annuity.*

(a) A person receiving a disability retirement annuity forfeits the annuity payment in any month in which the retiree is employed by a public educational institution covered by TRS, unless the employment falls within one of the exceptions set forth in this subchapter.

(b) For purposes of this subchapter, employment by a Texas public educational institution includes:

(1) employment [Employment] by a third party entity [is considered employment by a Texas public educational institution] unless the retiree does not perform duties or provide services on behalf of or for the benefit of the institution or the retiree was first employed by the third party entity before May 24, 2003; and[-]

(2) effective the beginning of the 2017-18 school year, performing duties or providing services for or on behalf of the institution in the first 12 full, consecutive calendar months after the retiree's effective date of retirement that an employee of the institution would otherwise perform or provide, and:

(A) waiving, deferring, or forgoing compensation for the duties or services;

(B) performing the duties or providing the services as an independent contractor; or

(C) serving as a volunteer without compensation and performing the same duties or providing the same services for the institution entity that the retiree performed or provided immediately before retiring and the retiree has an agreement to perform those duties or provide those services after the first 12 full, consecutive calendar months after the retiree's effective date of retirement.

(c) [(b)] A person receiving a disability retirement annuity may not exercise the exception applicable to service retirees in §31.15 of this chapter (relating to Full-time Employment after 12-Consecutive-Month Break in Service).

*§31.32. Half-time Employment Up to 90 Days.*

(a) Any person receiving a disability retirement annuity may, without affecting payment of the annuity, be employed for a period not to exceed 90 days during any school year by a public educational institution covered by TRS on as much as a one-half time basis. In this section, one-half time basis means the equivalent of four clock hours for each work day in that calendar month. The total number of hours allowed for that month may be worked in any arrangement or schedule; working any part of a day counts as one day towards the 90 day annual limit established in this section. This exception does not apply for the first month after the retiree's effective date of retirement (or the first two months if the person's retirement date has been set on May 31 under §29.14 of this title (relating to Eligibility for Retirement at the End of May)).

(b) For the purposes of this section, employment by a Texas public educational institution includes:

(1) employment [Employment] by a third party entity [is considered employment by a Texas public educational institution] unless the retiree does not perform duties or provide services on behalf of or for the benefit of the institution or the retiree was first employed by the third party entity before May 24, 2003, and[-]

(2) effective the beginning of the 2017-18 school year, performing duties or providing services in the first 12 consecutive calendar months after the retiree's effective date of retirement that an employee of the institution would otherwise perform or provide and

(A) waiving, deferring, or forgoing compensation;

(B) performing the duties or providing the services as an independent contractor; or

(C) serving as a volunteer without compensation and performing the same duties or providing the same services for a reporting entity that the retiree performed or provided immediately before retirement and the retiree has an agreement to perform after 12 consecutive calendar months after the retiree's effective date of retirement.

(c) Total substitute service under §31.33 of this title (relating to Substitute Service Up to 90 Days) and half-time employment may not exceed 90 days during any school year. Substitute service under §31.33 of this title (relating to Substitute Service Up to 90 Days) and half-time employment may be combined in the same calendar month only if the total number of days that the disability retiree works in those positions in that month does not exceed one-half the number of days available that month for work. The number of days available to work in a calendar month is equal to one-half the number of work days in that calendar month. A work day is each Monday through Friday. Working any part of a day, including working on a Saturday or Sunday, [as a substitute or half-time] counts as working one day. If the calendar month has an odd number of work days available for work, the retiree is limited to working only the number of whole days available and may not work any amount of additional time in the one-half day remaining when dividing the total number of work days in the month by 2 without forfeiting the annuity for that month.

(d) Paid time off, including sick leave, vacation leave, administrative leave, and compensatory time for overtime worked, is employment for purposes of this section and must be included in determining the total amount of time worked in a calendar month and reported to TRS as employment for the calendar month in which it is taken.

(e) For the purpose of this section, actual course instruction in state-supported colleges (including junior colleges), and universities of classes taken by students for college credit or classes that are taken to prepare students for college level work, and that are measured in course or semester hours shall be counted as a minimum of two clock hours per one course or semester hour in order to reflect instructional time as well as preparation and other time typically associated with one course hour of instruction. If the employer has established a greater amount of preparation time for each course or semester hour, the employer's established standard will be used to determine the number of course or semester hours a retiree may teach under the exception to loss of annuity provided by this section. The equivalent clock hours computed under this subsection may not be greater than the number of work hours authorized in subsection (a) of this section. Employment as an instructor of an on-line class taken by students for college credit that is measured or expressed in terms of the number of courses; semester or course hours/credits; instructional units; or other units of time representing class or instructional time must be counted as a minimum of two clock hours for each course or semester hour. Employment as an instructor of continuing education, adult education, and/or classes offered to employers or businesses for employee training, that is not measured or expressed in terms of the number of courses; semester or course hours/credits; or instructional units or other units of time rather than clock hours and for which the students/participants do not receive college credit must be counted based on the number of clock hours worked.

§31.33. *Substitute Service Up to 90 Days.*

(a) A person receiving a disability retirement annuity may work as a substitute in a month without forfeiting the annuity for that month subject to the same conditions as apply to service retirees except that the total substitute service or combination of substitute service and one-half time employment in the school year as described in subsection (d) may not exceed 90 days. This exception does not apply for the first month after the retiree's effective date of retirement (or the first two months if the person's retirement date has been set on May 31 under §29.14 of this title (relating to Eligibility for Retirement at the End of May)).

(b) For purposes of this section, employment by a Texas public educational institution includes:

(1) employment [Employment] by a third party entity [is considered employment by a Texas public educational institution] unless the retiree does not perform duties or provide services on behalf of or for the benefit of the institution or the retiree was first employed by the third party entity before May 24, 2003, and[-]

(2) effective the beginning of the 2017-18 school year, performing duties or providing services in the first 12 consecutive calendar months after the retiree's effective date of retirement that an employee of the institution would otherwise perform or provide and

(A) waiving, deferring, or foregoing compensation;

(B) performing the duties or providing the services as an independent contractor; or

(C) serving as a volunteer without compensation and performing the same duties or providing the same services for a reporting entity that the retiree performed or provided immediately before retirement and the retiree has an agreement to perform after 12 consecutive calendar months after the retiree's effective date of retirement.

(c) [(b)] Any disability retiree who reports for duty as a substitute during any day and works any portion of that day shall be considered to have worked one day.

(d) The exception described in this section and the exception for one-half time employment described in §31.32 of this title (relating to Half-time Employment Up to 90 Days) may be used during the same school year. If the substitute service and the other employment occur in the same calendar month, the total amount of time that the retiree works in both positions may not exceed the amount of time available that month for work on a one-half time basis and may not exceed the limit of 90 days for the school year. Beginning September 1, 2011 and thereafter, the exception for substitute service under this section and the exception for one-half time employment under §31.32 of this title may be used during the same calendar month without forfeiting the annuity only if the total number of days that the retiree works in those positions in that month does not exceed one-half the number of days available for that month for work and the total number of days worked does not exceed the limit of 90 days for the school year. The number of days available to work in a calendar month is equal to one-half the number of work days in that calendar month. A work day is each Monday through Friday. However, working any part of a calendar day, including a Saturday or Sunday, is counted as a day worked. If the calendar month has an odd number of work days available for work, the retiree is limited to working only one-half the number of whole days available and may not work any amount of additional time in the one-half day remaining when dividing the total number of work days in the month by 2 without forfeiting the annuity for that month.

§31.34. *Employment Up to Three Months on a One-Time Only Trial Basis.*

(a) Any person receiving a disability retirement annuity may, without forfeiting payment of the annuity, be employed on a one-time only trial basis on as much as full time for a period of no more than three consecutive months if the work meets the requirements in subsection (c) of this section and the person complies with the requirements of subsection (d) of this section.

(b) For purposes of this section, employment by a Texas public educational institution includes:

(1) employment [Employment] by a third party entity [is considered employment by a Texas public educational institution] unless the retiree does not perform duties or provide services on behalf of or for the benefit of the institution or the retiree was first employed by the third party entity before May 24, 2003; and[-]

(2) effective the beginning of the 2017-18 school year, performing duties or providing services for or on behalf of the institution in the first 12 full, consecutive calendar months after the retiree's effective date of retirement that an employee of the institution would otherwise perform or provide, and:

(A) waiving, deferring, or foregoing compensation for the duties or services;

(B) performing the duties or providing the services as an independent contractor; or

(C) serving as a volunteer without compensation and performing the same duties or providing the same services for the institution that the retiree performed or provided immediately before retirement and the retiree has an agreement to perform those duties or provide those services after the first 12 full, consecutive calendar months after the retiree's effective date of retirement.

(c) [(b)] The work must occur:

(1) in a period, designated by the employee, of no more than three consecutive months; and

(2) in a school year that begins after the retiree's effective date of retirement or no earlier than October 1 if the effective date of retirement is August 31.

(d) [(e)] TRS must receive written notice of the retiree's election to take advantage of the exception described by this section. The notice must be made on a form prescribed by TRS and filed with TRS prior to the end of the three month trial period.

(e) [(f)] Working any portion of a month counts as working a full month for purposes of this section.

(f) [(g)] The three month exception permitted under this section is in addition to the 90 days of work allowed in §31.33 of this chapter (relating to Substitute Service up to 90 Days) or §31.32 of this chapter (relating to Half-time Employment Up to 90 Days) for a disability retiree.

(g) [(h)] The trial work period may occur in one school year or may occur in more than one school year provided the total amount of time in the trial period does not exceed three months and the months are consecutive.

(h) [(i)] A disability retiree may elect to work on a one-time only trial basis for as much as full time for a period of no more than three consecutive months for each period of disability retirement subject to the requirements of this section.

#### §31.41. Return to Work Employer Pension Surcharge.

(a) For school years prior to the 2013-2014 school year, for each report month a retiree who retired September 1, 2005 or after is working for a TRS-covered employer (employer) or third party entity in a position eligible for membership in TRS, the employer that reports the retiree on the Employment of Retired Members Reports shall pay the Teacher Retirement System of Texas (TRS) the surcharge described in this section.

(b) Beginning September 1, 2013, for each report month a retiree is working for an employer or third party entity for more than the equivalent of four clock hours for each work day in that calendar month, the employer that reports the retiree on the Employment of Retired Members Report shall pay to TRS a surcharge based on the retiree's salary paid that report month. For purposes of this section, the employer is the reporting entity that reports the employment of the retiree and the criteria used to determine if the retiree is working more than the equivalent of four clock hours for each work day in that calendar month are the same as the criteria for determining one-half time employment under §31.14 of this title (relating to One-half Time Employment). A retiree reported as a substitute must meet the requirements of §31.1(b) of this title (relating to Definitions) for the surcharge not to apply.

(c) The surcharge amount that must be paid by the employer for each retiree working more than the equivalent of four clock hours for each work day in that calendar month is an amount that is derived by applying a percentage to the retiree's salary. The percentage applied to the retiree's salary is an amount set by the Board of Trustees and is based on member contribution rate and the state pension contribution rate.

(d) The surcharge is due from each employer that reports a retiree as working as described in this section on or after September 1, 2005, beginning with the report month for September 2005.

(e) The surcharge is not owed by the employer for any retiree who retired from the retirement system before September 1, 2005.

(f) The surcharge is not owed by the employer for a retiree that is reported as working under the exception for Substitute Service

as provided in §31.13 of this title (relating to Substitute Service) unless that retiree combines Substitute Service under §31.13 of this title with other employment with the same or another employer or third party entity in the same calendar month. For each calendar month that the retiree combines substitute service and other employment as described so that the work exceeds one-half time as described in §31.14(e) of this title, the surcharge is owed on all compensation paid to the retiree, including compensation paid for substitute service. If the employment is with more than one employer, the surcharge is owed by each employer on the compensation paid by that employer.

(g) The surcharge is also owed by the employer on any retiree who is working for a third party entity and performing duties or providing services on behalf of the employer for more than the equivalent of four clock hours for each work day in that calendar month and who is considered an employee of that employer under §824.601(d) of the Government Code. Effective the beginning of the 2017-18 school year, the surcharge is also due on a retiree working as an independent contractor for a Texas public educational institution in the first 12 full, consecutive calendar months after the retiree's effective date of retirement and performing duties or providing services for or on behalf of the institution that an employee of the institution would otherwise perform or provide.

(h) Except as provided in subsection (f) of this section relating to combining substitute service with other employment, if a retiree is employed concurrently in more than one position, the surcharge is owed if the combined employment is for more than the equivalent of four clock hours for each work day in that calendar month. If the employment is with more than one employer, the surcharge is owed by each employer.

(i) For school years prior to the 2013-2014 school year, if a retiree is employed concurrently in more than one position that is not eligible for membership, the surcharge is owed if the combined employment is eligible for membership under §25.6 of this title (relating to Part-time or Temporary Employment). If the employment is with more than one employer, the surcharge is owed by each employer.

(j) For school years prior to the 2013-2014 school year, if a retiree is employed concurrently in more than one position and one of the positions is eligible for TRS membership and one is not, the surcharge is owed on the combined employment. If the employment is with more than one employer, the surcharge is owed by each employer.

(k) For school years prior to the 2013-2014 school year, if a retiree is employed in a position eligible for TRS membership, the surcharge is owed by each employer on all subsequent employment with a TRS-covered employer for the same school year.

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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Don Green

Chief Financial Officer

Teacher Retirement System of Texas

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For further information, please call: (512) 542-6506



## CHAPTER 41. HEALTH CARE AND INSURANCE PROGRAMS

The Teacher Retirement System of Texas (TRS or system) proposes amendments to §§41.2, 41.6, and 41.10 of Chapter 41, Subchapter A, in Title 34, Part 3, of the Texas Administrative Code (the "TRS-Care rules").

Additionally, TRS proposes amendments to §41.33 of Chapter 41, Subchapter C, in Title 34, Part 3, of the Texas Administrative Code (the "TRS-ActiveCare rule").

And finally, TRS proposes the repeal of §41.91 of Chapter 41, Subchapter D, in Title 34, Part 3, of the Texas Administrative Code.

In large part, the proposed amendments to the TRS-Care rules and the TRS-ActiveCare rule and the proposed repeal of §41.91 arise from TRS' efforts to implement legislation passed during the Regular Session of the 85th Legislature (2017).

Chapter 41 addresses the two health benefit programs (TRS-Care and TRS-ActiveCare) administered by TRS, as trustee, and the responsibilities of school districts that do not participate in the active employee health benefit plan (TRS-ActiveCare) to determine the comparability of the health coverage offered to their respective employees.

Section 41.2 in subchapter A concerns additional enrollment opportunities. As noted above, the proposed amendments to §41.2 address recent legislation and upcoming changes to the TRS-Care plans that will take effect on January 1, 2018. Proposed new subsection (a)(9) of §41.2 provides that the entire existing subsection (a) of §41.2 will expire December 31, 2017. Existing §41.2(a) addresses the current Age 65 Additional Enrollment Opportunity established under subsections (b), (c), (d), and (e) of §1575.161, Insurance Code. Pursuant to House Bill 3976, 85th Legislature (Regular Session), 2017, those subsections of §1575.161, Insurance Code, will be repealed effective January 1, 2018. Proposed new subsection (b) of §41.2 implements the new statutory enrollment opportunity enacted under House Bill 3976 that is provided to retirees who turn 65 years of age. Under proposed new §41.2(b), the additional enrollment opportunity is extended to surviving spouses who turn age 65. Proposed new §41.2(b), which becomes effective January 1, 2018, provides that the additional enrollment period for retirees and surviving spouses will begin on the date the retiree or surviving spouse reaches 65 years of age and ends 31 calendar days from the end of the month in which the retiree or surviving spouse reaches 65 years of age.

Most of the proposed changes in relettered subsection (c) to §41.2 are non-substantive in nature, offered for the sake of clarification. The language proposed for deletion in §41.2(c)(1) is no longer needed because the Age 65 Additional Enrollment Opportunity expires on December 31, 2017. Likewise, the proposed changes in relettered subsections (d) and (e) to §41.2 are non-substantive clarifications of existing provisions.

The proposed amendment to §41.6 in subchapter A addresses the amount each public school must contribute to the TRS-Care fund under §1575.204(a), Insurance Code, which expresses the amount as a percentage of salary of each active employee employed by the public school. To avoid having to amend §41.6 every time legislation changes the statutory percentage, the proposed rule amendment automatically reflects the then-applicable required amount under Section 1575.204(a), Insurance Code.

Section 41.10 in subchapter A concerns the eligibility to enroll in the TRS-Care. The language proposed for deletion in

§41.10(a)(2) is inconsistent with subdivisions (a)(2) and (a)(3) of §1575.004, Insurance Code.

Section 41.33 in subchapter C concerns definitions applicable to TRS-ActiveCare. Under the federal Patient Protection and Affordable Care Act (the "ACA"), employers must offer affordable coverage to individuals who work an average of more than 30 hours per week; employers who fail to do so risk the imposition of penalties. Under §1579.003, Insurance Code, TRS pension retirees who have returned to teaching ("RTT Retirees") cannot be considered full-time employees under TRS-ActiveCare. However, under state law, TRS is given the discretion to define individuals who qualify as part-time employees and are therefore eligible for enrollment in TRS-ActiveCare. Paragraph (6)(C) of §41.33 defines a "part-time employee" for TRS purposes. Unfortunately, in light of the above-noted ACA mandate and potential penalties, the current definition in paragraph (6)(C) is too narrow because it excludes a number of RTT Retirees from eligibility in TRS-ActiveCare. These exclusions place entities participating in TRS-ActiveCare in the precarious position of being unable to offer TRS-ActiveCare coverage to RTT Retirees who work more than 30 hours per week, thus subjecting these entities to possible penalties under the ACA. The proposed changes to §41.33 broaden the definition of part-time employees to: (i) include individuals who are not eligible for membership in the TRS Pension because of service or disability retirement; and (ii) no longer exclude individuals who waive or waived coverage under TRS-Care. These changes address the concerns expressed above concerning potential employer penalties under the ACA.

Section 41.91 in subchapter D concerns the certification of insurance coverage offered by school districts that are not participating entities in TRS-ActiveCare. Pursuant to Senate Bill 1664, 85th Legislature (Regular Session), 2017, which amended §22.004, Education Code, TRS no longer needs a rule for determining whether a school district's group health coverage is comparable to the basic health coverage provided by the Employees Retirement System of Texas under Chapter 1551, Insurance Code. Also, districts that do not participate in TRS-ActiveCare are no longer required to report to TRS the details of their efforts to offer comparable coverage to their employees. Accordingly, TRS proposes repealing §41.91 and subchapter D, which only contained §41.9, because the rule is no longer mandated or needed under applicable law.

Don Green, TRS Deputy Director, estimates that, for each year of the first five years that the proposed amendments to §§41.2, 41.6, 41.10, and 41.33, along with the repeal of §41.91, will be in effect, there will be no foreseeable fiscal implications to state or local governments as a result of administering the proposed rules.

Mr. Green also has determined that, for each year of the first five years that the proposed amended rules will be in effect, the public benefit will be to clarify and update provisions concerning the administration of TRS-Care and TRS-ActiveCare in response to recent legislation.

Mr. Green also has determined that there is no economic cost to entities or persons required to comply with the proposed rules. Mr. Green has determined that there will be no effect on a local economy because of the proposals, and therefore no local employment impact statement is required under §2001.022, Government Code. Mr. Green has also determined that there will be no direct adverse economic effect on small businesses or micro-businesses within TRS' regulatory authority as a result of the proposed amended rules; therefore, neither an economic impact

statement nor a regulatory flexibility analysis is required under §2006.002, Government Code.

Comments may be submitted in writing to Brian Guthrie, Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice in the *Texas Register*.

## SUBCHAPTER A. RETIREE HEALTH CARE BENEFITS (TRS-CARE)

### 34 TAC §§41.2, 41.6, 41.10

The amendments are proposed under the authority of §1575.052, Insurance Code, which authorizes the TRS Board of Trustees to adopt rules it considers reasonably necessary to implement and administer the TRS-Care program.

The proposed amendments affect Chapter 1575, Insurance Code, which provides for the establishment and administration of TRS-Care.

#### §41.2. *Additional Enrollment Opportunities.*

(a) Age 65 Additional Enrollment Opportunity. "Eligible participants," as defined in paragraph (1) of this subsection, have an additional enrollment opportunity in TRS-Care as described in this subsection when they become 65 years old (the "Age 65 Additional Enrollment Opportunity").

(1) For purposes of this subsection, the term "eligible participants" means:

(A) all TRS retirees who are enrolled in TRS-Care;

(B) dependents, as defined in Insurance Code, §1575.003, who are enrolled in TRS-Care and who are eligible to enroll in TRS-Care in their own right as a TRS service or disability retiree; and

(C) surviving spouses, as defined in Insurance Code, §1575.003 who are enrolled in TRS-Care.

(2) Those eligible participants who are enrolled in TRS-Care on August 31, 2004, and who become 65 years old after that date have the Age 65 Additional Enrollment Opportunity on the date that they become 65 years old.

(3) Those eligible participants who enroll in TRS-Care after August 31, 2004, and who become 65 years old after the date of their enrollment have the Age 65 Additional Enrollment Opportunity on the date that they become 65 years old.

(4) The Age 65 Additional Enrollment Opportunity for those eligible participants who enroll in TRS-Care after August 31, 2004, and who are 65 years old or older when they enroll in TRS-Care runs concurrently with the initial enrollment period as set out in §41.1 of this title (relating to Initial Enrollment Periods for the Health Benefits Program Under the Texas Public School Retired Employees Group Benefits Act (TRS-Care)).

(5) An eligible participant who is not enrolled in Medicare Part A at the time of his or her Age 65 Additional Enrollment Opportunity can enroll:

(A) in any plan, for which he or she is eligible under law, located in the next-higher TRS-Care coverage tier (level of coverage), as determined by TRS-Care; and

(B) add dependent coverage in any plan, for which the dependent is eligible under law, located in that same coverage tier (level of coverage).

(6) An eligible participant who is enrolled in Medicare Part A at the time of his or her Age 65 Additional Enrollment Opportunity can enroll:

(A) in any plan, for which he or she is eligible under law, located in any TRS-Care coverage tier (level of coverage); and

(B) add dependent coverage in any plan, for which the dependent is eligible under law, located in that same coverage tier (level of coverage).

(7) An eligible participant, at the time of his or her Age 65 Additional Enrollment Opportunity, can:

(A) choose to remain in the same TRS-Care coverage tier (level of coverage);

(B) enroll in any plan, for which he or she is eligible under law, located in that same TRS-Care coverage tier (level of coverage); and

(C) add dependent coverage in any plan, for which the dependent is eligible under law, in that same coverage tier (level of coverage).

(8) The period to exercise the Age 65 Additional Enrollment Opportunity for eligible participants described in paragraph (2) or (3) of this subsection expires at the end of the later of:

(A) the 31st day following the last day of the month in which the eligible participant becomes 65 years old; or

(B) the 31st day after the date printed on the notice of the additional enrollment opportunity sent to the eligible participant at the eligible participant's last-known address, as shown in the TRS-Care records.

(9) This subsection expires December 31, 2017.

(b) Age 65 Enrollment Opportunity.

(1) Upon reaching 65 years of age, a retiree or surviving spouse is eligible to be enrolled in TRS-Care under terms, conditions and limitations established by the trustee unless expelled from the program under provisions of Chapter 1575, Insurance Code (the "Age 65 Enrollment Opportunity"). The retiree or surviving spouse may select any coverage provided under TRS-Care for which the individual or a dependent is otherwise eligible.

(2) The enrollment period for an individual who becomes eligible for coverage under paragraph (1) of this subsection shall begin on the date the individual reaches 65 years of age and ends 31 calendar days from the end of the month in which the individual reaches 65 years of age. To make an effective election, a completed TRS-Care application must be received by TRS no later than the end of this enrollment period.

(3) This subsection becomes effective January 1, 2018.

(c) [(b)] Special Enrollment Opportunity under the Health Insurance Portability and Accountability Act (HIPAA).

(1) An individual who becomes eligible for coverage under the special enrollment provisions of HIPAA [the Health Insurance portability and Accountability Act of 1996 (Pub. L. No. 104-191, 110 Stat. 1936 (1996)); including a dependent whose coverage under TRS-Care was waived due to the existence of other coverage for the dependent during the Age 65 Additional Enrollment Opportunity described in subsection (a) of this section.] may elect to enroll in TRS-Care.

(2) The enrollment period for an individual who becomes eligible for coverage due to a special enrollment event under paragraph (1) of this subsection shall be the 31 calendar days immediately after

the date of the special enrollment event. To make an effective election, a completed TRS-Care application must be received by TRS within this 31-day period.

(d) [(e)] Enrollment Opportunity Established by TRS. An [ If an] eligible individual [TRS retiree or his eligible dependent does not have either an Age 65 Additional Enrollment Opportunity or a special enrollment event, then he] may enroll in TRS-Care [only] during an [a subsequent] enrollment period established by TRS.

(e) [(d)] This section does not affect the right of a TRS service retiree or surviving spouse enrolled in a TRS-Care plan [coverage tier (level of coverage)] to drop coverage[; select a lower coverage tier (level of coverage);] or drop dependents at any time.

*§41.6. Required Contributions from Public Schools.*

(a) On a monthly basis, each public school shall contribute the then-applicable required amount under §1575.204(a), Insurance Code, [0.55%] of the salary of each active employee to TRS for deposit in the Retired School Employees Group Insurance Fund. The public school shall make the contribution at the same time and in the same manner in which the public school delivers retirement contributions. Any waiver granted to a public school under Government Code §825.408(a) does not apply to the contribution under this section.

(b) For purposes of this section, "active employee" means a contributing member of TRS who is employed by a public school and is not entitled to coverage under a plan provided under Chapter 1551 or Chapter 1601, Insurance Code.

(c) For purposes of this section, "public school" means a school district; another educational district whose employees are TRS members; a regional education service center established under Chapter 8, Education Code; or an open-enrollment charter school established under Subchapter D, Chapter 12, Education Code.

(d) TRS may take corrective action against a public school that fails to make the required contribution in accordance with the requirements of this section, including but not limited to placement of a warrant hold with the Comptroller of Public Accounts.

*§41.10. Eligibility to Enroll in the Health Benefits Program Under the Texas Public School Retired Employees Group Benefits Act (TRS-Care).*

(a) If they meet the applicable requirements set out in this section, the following persons are eligible to enroll in the health benefits program under the Texas Public School Retired Employees Group Benefits Act (TRS-Care):

(1) service retirees of the Teacher Retirement System of Texas (TRS) who are not eligible to enroll as an employee or retiree in a plan provided under the Texas Employees Group Benefits Act (Insurance Code, Chapter 1551), or under the State University Employees Uniform Insurance Benefits Act (Insurance Code, Chapter 1601);

(2) disability retirees of TRS [who are not eligible to enroll as an employee or retiree in a plan provided under the Texas Employees Group Benefits Act (Insurance Code, Chapter 1551) or under the State University Employees Uniform Insurance Benefits Act (Insurance Code, Chapter 1601)];

(3) surviving spouses of deceased service or disability retirees of TRS or of certain deceased active TRS members; and

(4) surviving dependent children of deceased service or disability retirees of TRS or of certain deceased active TRS members.

(b) To be eligible to enroll in TRS-Care under this section, a service retiree of TRS who retires before September 1, 2004 must have

10 years of service credit for actual service in the public schools of Texas, which can include only the following types of service credit:

(1) service credit for actual service in Texas public schools;

(2) service credit transferred to TRS from the Employees Retirement System of Texas (ERS);

(3) withdrawn service credit that the member has purchased and that has been credited to the member's account;

(4) service credit for unreported service that the member has purchased and that has been credited to the member's account;

(5) service credit for substitute service that the member has purchased and that has been credited to the member's account; and

(6) up to five years of out-of-state service credit that the member has purchased and that has been credited to the member's account.

(c) To be eligible to enroll in TRS-Care under this section, a service retiree of TRS who retires after September 1, 2005 must meet the following requirements:

(1) at the time of retirement, a member has at least 10 years of service credit in the system, which can include only the following types of service credit:

(A) service credit for actual service in Texas public schools;

(B) service credit transferred to TRS from ERS;

(C) withdrawn service credit that the member has purchased and that has been credited to the member's account;

(D) service credit for unreported service that the member has purchased and that has been credited to the member's account;

(E) service credit for substitute service that the member has purchased and that has been credited to the member's account;

(F) up to five years of military service credit that the member has purchased and that has been credited to the member's account, or up to five years of re-employed veteran's (USERRA) service credit, whether purchased or not, evidence of which is provided by the service retiree to the satisfaction of TRS; and

(2) at the time of retirement, a member either:

(A) meets the Rule of 80, which is determined by having the sum of the individual's age and the amount of service credit in the system noted in subparagraph(C) of this paragraph, equal or exceed 80, regardless of whether the member had a reduction in the retirement annuity for early age retirement; or

(B) has 30 or more years of service credit in the system noted in subparagraph (C) of this paragraph.

(C) for purposes of this paragraph (2) of this subsection, service credit in the system includes the following:

(i) the types of service credit in the system listed in paragraph (1) of this subsection;

(ii) out-of-state service credit under §25.81 of this title (relating to Out-of-State Service Eligible for Credit);

(iii) credit for developmental leave under §25.151 of this title (relating to Developmental Leave, Eligibility, Cost);

(iv) work experience service credit under §25.161 of this title (relating to Work Experience Service Credit);

(v) state personal or sick leave credit under §25.162 of this title (relating to State Personal or Sick Leave Credit);

(vi) credit under the service credit purchase option under §25.163 of this title (relating to Service Credit Purchase);

(vii) credit for service during a school year with a membership waiting period under §25.164 of this title (relating to Credit for Service During School Year With Membership Waiting Period); and

(viii) any other type of service credit purchased for equivalent or special service credit allowed by law or by rule adopted by TRS.

(d) To be eligible to enroll in TRS-Care under this section, a service retiree of TRS who retires after September 1, 2004, but on or before August 31, 2005, must meet, on September 1, 2005, either of the following requirements:

(1) the 10-year service credit requirement of subsection (b) of this section; or

(2) the 10-year service credit requirement of subsection (c)(1) of this section and one of the requirements of subsection (c)(2) of this section.

(e) Any service retiree of TRS who is enrolled in TRS-Care on August 31, 2005, maintains eligibility for TRS-Care on or after September 1, 2005, unless and until an applicable rule or law prohibits continued enrollment in TRS-Care.

(f) For purposes of this section, "public school" is an educational institution or organization in this state that is entitled by law to be supported in whole or in part by state, county, school district, or other municipal corporation funds.

(g) A disability retiree with less than 10 years of service credit will not be eligible for coverage under TRS-Care when disability retirement benefits terminate.

(h) A surviving spouse of a deceased TRS service or disability retiree is eligible to enroll in TRS-Care if the deceased TRS service or disability retiree was enrolled, eligible to enroll, or would have been eligible to enroll in TRS-Care at the time of the retiree's death.

(i) A surviving spouse of a deceased active TRS member is eligible to enroll in TRS-Care if the deceased active member:

(1) died on or after September 1, 1986;

(2) had 10 or more years of actual service credit in TRS; and

(3) made contributions to TRS-Care at the member's last place of employment in public education in Texas.

(j) A surviving dependent child of a deceased TRS retiree or deceased active TRS member is eligible to enroll in TRS-Care if the deceased retiree met the conditions of subsection (h) of this section or the deceased active member met the conditions of subsection (i) of this section. A surviving dependent child must also meet the following conditions:

(1) the child must be a natural or adopted child of or a child who was lawfully placed for legal adoption with the deceased retiree or member or must be a foster child, stepchild, or other child who lived in a parent-child relationship with the retiree or member; and

(2) the child must be under age 26, or if 26 years of age or older, must be unmarried and have a mental disability or is physically incapacitated to such an extent as to have been dependent upon the deceased retiree or active member for support at the time of the retiree's

or active member's death, as determined by TRS as trustee and as described by Insurance Code, §1575.003.

(k) Combined service credit under the Proportionate Retirement Program may not be used to establish eligibility for TRS-Care.

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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Don Green

Chief Financial Officer

Teacher Retirement System of Texas

Earliest possible date of adoption: September 17, 2017

For further information, please call: (512) 542-6524



## SUBCHAPTER C. TEXAS SCHOOL EMPLOYEES GROUP HEALTH (TRS-ACTIVECARE)

### 34 TAC §41.33

The amendments are proposed under the authority of §1579.052, Insurance Code, which authorizes the TRS Board of Trustees to adopt rules it considers necessary to implement and administer the TRS-ActiveCare program.

The proposed amendments affect Chapter 1579, Insurance Code, which provides for the establishment and administration of TRS-ActiveCare.

*§41.33. Definitions Applicable to the Texas School Employees Uniform Group Health Coverage Program.*

The following words and terms when used in this subchapter or in connection with the administration of Chapter 1579, Insurance Code, shall have the following meanings unless the context clearly indicates otherwise.

(1) **Dependent**--Only those individuals described by §1579.004, Insurance Code, and an individual under 26 years of age ("child") who is described by any one of the following subparagraphs (A), (B), or (C) at all times during which the child is receiving coverage under TRS-ActiveCare.

(A) A child under the legal guardianship of a full-time or part-time employee;

(B) A full-time or part-time employee's grandchild whose primary residence is the household of that full-time or part-time employee if the grandchild is a dependent of the full-time or part-time employee for federal income tax purposes for the reporting year in which coverage of the grandchild is in effect; or

(C) A child in a regular parent-child relationship with a full-time or part-time employee, meaning that the child's primary residence is the household of that full-time or part-time employee, the full-time or part-time employee provides at least 50% of the child's support, neither of the child's natural parents reside in that household, and the full-time or part-time employee has the legal right to make decisions regarding the child's medical care.

(D) For clarification and without intending to identify all persons who are not a Dependent for purposes of coverage, even though the individual may be in a dependent relationship with a full-



time or part-time employee, the following are not included in the definition of Dependent in this section:

(i) Other than the spouse of a full-time or part-time employee, a Dependent does not include an individual who is a "participating member" as defined in paragraph (5) of this section.

(ii) A Dependent does not include a parent or grandparent of a full-time or part-time employee.

(iii) A Dependent does not include a brother or a sister of a full-time or part-time employee unless the brother or sister is an unmarried individual under 26 years of age who is either:

(I) under the legal guardianship of a full-time or part-time employee; or

(II) in a regular parent-child relationship with a full-time or part-time employee, meaning that the brother or sister's primary residence is the household of that full-time or part-time employee, the full-time or part-time employee provides at least 50% of the brother or sister's support, neither of the brother or sister's natural parents reside in that household, and the full-time or part-time employee has the legal right to make decisions regarding the brother or sister's medical care.

(2) Full-time employee--A participating member who:

(A) is currently employed by a participating entity;

(B) is employed in a position that is eligible for membership in the Teacher Retirement System of Texas; and

(C) is not receiving coverage as an employee or retiree from a uniform group insurance or health benefits program under the Texas Employees Group Benefits Act (Chapter 1551, Insurance Code) or the State University Employees Uniform Insurance Benefits Act (Chapter 1601, Insurance Code) or the Texas Public School Retired Employees Group Benefits Act (Chapter 1575, Insurance Code, also known as TRS-Care).

(3) HMO--A health maintenance organization holding a valid certificate of authority issued by the Texas Department of Insurance and approved by TRS to provide health care benefits to eligible full-time and part-time employees and their eligible dependents.

(4) Participating entity--An entity participating in TRS-ActiveCare including a school district; another educational district whose employees are members of the retirement system; a regional education service center; and a charter school that meets the requirements of Chapter 1579, Insurance Code. An entity is considered to be participating in TRS-ActiveCare on and after the first date coverage becomes effective for its employees.

(5) Participating member--A person defined by §822.001 and §822.002, Government Code, whose membership in the retirement system has not been terminated as described by §§822.003 - 822.006, Government Code, and who is required to contribute to the Teacher Retirement System of Texas pension trust fund in accordance with §825.403, Government Code.

(6) Part-time employee--An individual who:

(A) is currently employed by a participating entity for 10 hours or more each week;

(B) is employed in a position that is not eligible for membership in the Teacher Retirement System of Texas or is not eligible for membership in the Teacher Retirement System of Texas because of a service or disability retirement; and

~~[(C) is not a retiree who waived coverage under the health benefits program under the Texas Public School Retired Employees Group Benefits Act, Chapter 1575, Insurance Code, also known as TRS-Care; and]~~

(C) ~~[(D)]~~ is not receiving coverage as an employee or retiree from a uniform group insurance or health benefits program under the Texas Employees Group Benefits Act (Chapter 1551, Insurance Code) or the State University Employees Uniform Insurance Benefits Act (Chapter 1601, Insurance Code) or the Texas Public School Retired Employees Group Benefits Act (Chapter 1575, Insurance Code, also known as TRS-Care).

(7) Plan year--A plan year begins on the first day of September and ends on the last day of the following August.

(8) TRS-ActiveCare--The health benefits program under the Texas School Employees Uniform Group Health Coverage Act, Chapter 1579, Insurance Code.

(9) Trustee or TRS--The Teacher Retirement System of Texas acting in its capacity as trustee under Chapter 1579, Insurance Code.

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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Don Green

Chief Financial Officer

Teacher Retirement System of Texas

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For further information, please call: (512) 542-6524



## SUBCHAPTER D. COMPARABILITY OF GROUP HEALTH COVERAGES

### 34 TAC §41.91

The repeal is proposed under Senate Bill 1664, 85th Legislature (Regular Session), 2017, which in amending §22.004, Education Code, eliminated the requirement for the rule.

The proposed repeal affects §22.004, Education Code, which addresses group health benefits for public school employees.

§41.91. *Certification of Insurance Coverage.*

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 August 4, 2017.

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Don Green

Chief Financial Officer

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## CHAPTER 43. CONTESTED CASES

### 34 TAC §43.4

The Teacher Retirement System of Texas (TRS) proposes amendments to 34 TAC §43.4, concerning decisions subject to review by an adjudicative hearing. The proposed rule amendments implement the authority provided in §824.1012, Government Code, as amended by Senate Bill 1663, 85th Legislature (Regular Session), 2017 for the TRS Board of Trustees (board) to waive the requirement of an appeal to the board from a decision by the executive director or a designee on certain matters. The matters regard the sufficiency of a court order to authorize a change of retirement plan or beneficiary of a joint and survivor annuity when the beneficiary is the spouse or former spouse.

The pension plan terms allow a retiree to change the selection of an Option 1, 2, or 5 retirement plan (joint and survivor annuity plans) selected at retirement to a standard annuity. If the beneficiary is the spouse or former spouse, the beneficiary must consent or a court with authority over the marriage of the member and the beneficiary must authorize the change. The plan terms also allow a retiree to change the beneficiary of an Option 1, 2, or 5 retirement plan under certain circumstances. Again, if the beneficiary is the spouse or former spouse, the beneficiary must consent or a court with authority over the marriage of the member and the beneficiary must authorize the change.

Currently, an attorney assigned to the Legal-Benefits area in the Legal and Compliance Division reviews the order and makes a recommendation regarding the sufficiency of the order. In the event of a challenge to the determination, current rules regarding administrative appeals apply. The proposed changes to §43.4 would utilize the expertise of qualified staff attorneys advising TRS executives to administratively determine a question of law - whether a court order is legally sufficient to authorize the retiree to change the plan or the beneficiary when the retirement plan selected is an Option 1, 2, or 5. The current rule implements the authority of the board to waive an appeal to the board regarding a determination by TRS that a domestic relations order is a qualified order. Under the proposed changes, the executive director or a designee would make the final decision regarding the sufficiency of the order related to a plan or beneficiary change. A party aggrieved by the executive director's or designee's decision must timely file a motion for reconsideration with the executive director to further contest the determination, which the party would do by filing suit for judicial review.

Don Green, Chief Financial Officer, has determined that for the first five-year period the rule will be in effect, there will be no foreseeable fiscal implications to state or local governments as a result of administering the proposed rule.

Mr. Green also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to implement recently enacted legislation and, as authorized by that legislation, to utilize the expertise of qualified legal staff in consultation with TRS executives to administratively determine the legal sufficiency of certain court orders.

Mr. Green also has determined that there is no ascertainable economic cost to entities or persons required to comply with the proposed rule. Mr. Green has determined that there will be no effect on a local economy because of the proposal, and therefore no local employment impact statement is required under §2001.022, Government Code. Mr. Green has also determined that there will be no direct adverse economic effect on small businesses or micro-businesses within TRS' regulatory authority as a result of the proposal; therefore, neither an economic impact

statement nor a regulatory flexibility analysis is required under §2006.002, Government Code.

Comments may be submitted in writing to Brian Guthrie, Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice in the *Texas Register*.

**Statutory Authority:** The amendments are proposed under the authority of the following statutes: §824.1012 and §824.1013, Government Code, both as amended by Senate Bill 1663, 85th Legislature (Regular Session), 2017, which authorize the TRS Board of Trustees by rule to waive the requirement that an appeal under those statutes be to the board; §825.102, Government Code, which authorizes the board to adopt rules for eligibility for membership, the administration of the funds of the system, and the transaction of business of the board; and §825.115(b), Government Code, which authorizes the board to adopt rules delegating its authority to make a final decision in a contested case to the executive director, who may delegate the authority to another employee of the retirement system.

**Cross-Reference to Statute:** The proposed amendments affect the following statutes: §824.1012 and §824.1013, Government Code, both as amended by Senate Bill 1663, 85th Legislature (Regular Session), 2017 and that respectively concern a post-retirement change in retirement payment plan for certain retirement benefit options and a change of beneficiary after retirement.

*§43.4. Decisions Subject to Review by an Adjudicative Hearing.*

(a) Except as provided in subsection (b) of this section, a [A] person adversely affected by a final administrative decision of the Teacher Retirement System of Texas (TRS) [TRS] relating to the pension plan on a matter over which TRS has jurisdiction and authority to grant relief and the relief sought does not conflict with the terms of the pension plan may appeal the decision and request an adjudicative hearing with regard to the following:

- (1) any matter related to a member's service or disability retirement, death or survivor benefits, or request for refund of accumulated contributions;
- (2) the eligibility of a person for membership in TRS;
- (3) the amount of annual compensation credited by TRS;
- (4) the amount of deposits or fees required of a member;
- (5) any matter involving the granting, purchase, transfer, or establishment of service credit;
- (6) any application for correction of error in the file of a member, beneficiary, or alternate payee, other than a determination of whether an order is a qualified domestic relations order;
- (7) the cancellation or suspension of retirement, survivor, or death benefits; or
- (8) any other matter affecting eligibility for retirement and related disability and death benefits or the amount of such benefits payable under the laws governing TRS.

(b) A determination by the executive director or the executive director's designee regarding whether a court with jurisdiction over the marriage of a retiree and the beneficiary of an optional annuity selected by the retiree under §824.204(c)(1), (c)(2), or (c)(5) or an optional disability annuity selected by the retiree under §824.308(c)(1), (c)(2), or (c)(5) has approved or ordered a change in retirement plan under §824.1012, Government Code, or a change in beneficiary under §824.1013, Government Code, is a final decision by TRS. No appeal to

the board of trustees of TRS is authorized. A party adversely affected by a determination of the executive director or the designee must file a motion for reconsideration with the executive director no later than 25 days after the date such a determination is rendered if the party wishes to contest the determination.

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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Don Green

Chief Financial Officer

Teacher Retirement System of Texas

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For further information, please call: (512) 542-6506



## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### PART 13. TEXAS COMMISSION ON FIRE PROTECTION

#### CHAPTER 423. FIRE SUPPRESSION

The Texas Commission on Fire Protection (the commission) proposes amendments to Chapter 423, Fire Suppression, concerning, Subchapter A, Minimum Standards For Structure Fire Protection Personnel Certification, §423.1, Minimum Standards for Structure Fire Protection Personnel, §423.3, Minimum Standards for Basic Structure Fire Protection Personnel Certification, §423.5, Minimum Standards for Intermediate Structure Fire Protection Personnel Certification, §423.7, Minimum Standards for Advanced Structure Fire Protection Personnel Certification, §423.9, Minimum Standards for Master Structure Fire Protection Personnel Certification, §423.11, Higher Levels of Certification, and §423.13, International Fire Service Accreditation Congress (IFSAC) Seal; Subchapter B, Minimum Standards for Aircraft Rescue Fire Fighting Personnel, concerning §423.201, Minimum Standards for Aircraft Rescue Fire Fighting Personnel, §423.203, Minimum Standards for Basic Aircraft Rescue Fire Fighting Personnel Certification, §423.205, Minimum Standards for Intermediate Aircraft Rescue Fire Fighting Personnel Certification, §423.207, Minimum Standards for Advanced Aircraft Rescue Fire Fighting Personnel Certification, §423.209, Minimum Standards for Master Aircraft Rescue Fire Fighting Personnel Certification, and §423.211, International Fire Service Accreditation Congress (IFAC) Seal; and Subchapter C, Minimum Standards For Marine Fire Protection Personnel, §423.301, Minimum Standards for Marine Fire Protection Personnel, §423.303, Minimum Standards for Basic Marine Fire Protection Personnel Certification, §423.305, Minimum Standards for Intermediate Marine Fire Protection Personnel Certification, §423.307, Minimum Standards for Advanced Marine Fire Protection Personnel Certification, and §423.309, Minimum Standards for Master Marine Fire Protection Personnel Certification.

The purpose of the proposed amendments is to update and clarify language for consistency.

Tim Rutland, Executive Director, 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.

Mr. Rutland has also determined that for each year of the first five years the proposed amendments are in effect, the public benefit from the passage is that the commission will provide clear and consistent rules regarding the minimum qualifications for structure, aircraft and marine certifications. There will be no effect on micro or small businesses or persons required to comply with the amendments as proposed.

Comments regarding the proposed amendments may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to Tim Rutland, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768 or e-mailed to [info@tcfp.texas.gov](mailto:info@tcfp.texas.gov). Comments will be reviewed and discussed at a future commission meeting.

#### SUBCHAPTER A. MINIMUM STANDARDS FOR STRUCTURE FIRE PROTECTION PERSONNEL CERTIFICATION

##### 37 TAC §§423.1, 423.3, 423.5, 423.7, 423.9, 423.11, 423.13

The amendments are proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties and §419.032 which allows the commission to appoint fire protection personnel.

The proposed amendments implements Texas Government Code, Chapter 419, §419.008 and §419.032.

##### *§423.1. Minimum Standards for Structure Fire Protection Personnel.*

(a) Fire protection personnel [of any local government entity,] who are appointed [receive probationary or temporary appointment] to structure fire protection duties[.] must be certified by the commission [Commission] within one year from the date of their appointment [in a structural fire protection personnel position].

[(b) Prior to being appointed to fire suppression duties or certified as fire protection personnel, the Commission must review and approve the applicants fingerprint based criminal history record information obtained from the Department of Public Safety and the Federal Bureau of Investigation. The individual or fire department must follow the procedure established by the Department of Public Safety to initiate and complete the electronic fingerprint process. The results will be available to the Commission through the Department of Public Safety's data base. The Commission will follow the criteria established in Title 37 Chapter 403 of the Texas Administrative Code (TAC) for denying a person certification based on the results of the fingerprint based criminal history record check.]

(b) [(e)] Prior to being appointed to structure fire protection [fire suppression] duties, personnel must:

(1) complete a commission approved [Commission-approved] basic structure fire protection [suppression] program; and [successfully complete a Commission recognized emergency medical course. The individual must]

(2) successfully pass the commission examination [Commission examination pertaining to that curriculum] as required by §423.3 of this title (relating to Minimum Standards for Basic Structure Fire Protection Personnel Certification); and[-]

(3) successfully complete a commission recognized emergency medical training program. The commission [~~Commission~~] recognizes the following emergency medical training:

(A) [(4)] Department of State Health Services Emergency Medical Service Personnel certification training;

(B) [(2)] an American Red Cross Emergency Response course, including the optional lessons and enrichment sections;

(C) [(3)] an American Safety and Health Institute First Responder course;

(D) [(4)] National Registry of Emergency Medical Technicians certification; or

(E) [(5)] medical training deemed equivalent by the commission [~~Commission~~].

(c) [(4)] Personnel holding any level of structure fire protection personnel certification must comply with the continuing education requirements specified in Chapter 441 [§441.7] of this title (relating to Continuing Education [for Structure Fire Protection Personnel]).

§423.3. *Minimum Standards for Basic Structure Fire Protection Personnel Certification.*

[(a)] In order to be [~~become~~] certified as Basic Structure Fire Protection Personnel, [~~basic structure fire protection personnel~~], an individual must:

(1) possess valid documentation from the International Fire Service Accreditation Congress or the National Board on Fire Service Professional Qualifications issued by the Texas A&M Engineering Extension Service using the 2008 or later edition of the NFPA standard applicable to this discipline and meeting the requirements [as] specified in §439.1[(a)(2)] of this title (relating to Requirements--General) as:

(A) Fire Fighter I, Fire Fighter II, Hazardous Materials Awareness Level Personnel; and

(B) Hazardous Materials Operations Level Responders including the Mission-Specific Competencies for Personal Protective Equipment and Product Control under the current edition; or

(C) NFPA 472 Hazardous Materials Operations prior to the 2008 edition; and

(D) [~~must~~] meet the medical requirements outlined in §423.1[(e)] of this title (relating to Minimum Standards for Structure Fire Protection Personnel); or

(2) complete a commission approved basic structure fire protection [~~suppression~~] program, meet the medical requirements outlined in §423.1[(e)] of this title (relating to Minimum Standards for Structure Fire Protection Personnel), and successfully pass the commission examination(s) as specified in Chapter 439 of this title (relating to Examinations for Certification). An approved basic structure fire suppression program shall consist of one or any combination of the following:

(A) completion of a commission approved Basic Fire Suppression Curriculum, as specified in [~~Chapter 4 of~~] the commission's Certification Curriculum Manual; or

(B) completion of an out-of-state, and/or military training program deemed equivalent to the commission approved Basic Fire Suppression Curriculum; or

(C) documentation of the receipt of a Fire Fighter II certificate, an advanced certificate, or confirmation of training [~~records~~] from the State Firemen's and Fire Marshals' Association of Texas[;]

that is deemed equivalent to a commission approved Basic Fire Suppression Curriculum.

[(b)] A basic fire suppression program may be submitted to the commission for approval by another jurisdiction as required in Texas Government Code, Chapter 419, §419.032(d), Appointment of Fire Protection Personnel. These programs include out-of-state and military programs; and shall be deemed equivalent by the commission if the subjects taught, subject content, and total hours of training meet or exceed those contained in Chapter 4 of the commission's Certification Curriculum Manual.]

§423.5. *Minimum Standards for Intermediate Structure Fire Protection Personnel Certification.*

(a) Applicants for Intermediate Structure Fire Protection Personnel certification [~~Certification~~] must complete the following requirements:

(1) hold, as a prerequisite, a Basic Structure Fire Protection Personnel certification [~~Certification~~] as defined in §423.3 of this title (relating to Minimum Standards for Basic Structure Fire Protection Personnel Certification); and

(2) acquire a minimum of four years of fire protection experience and complete the training listed in one of the following options:

(A) Option 1--Successfully complete six semester hours of fire science or fire technology from an approved Fire Protection Degree Program and submit documentation as required by the commission [~~Commission~~] that the courses comply with subsections (b) and (c) of this section; or

(B) Option 2--Completion of coursework from either the A-List or the B-List courses. Acceptable combinations of courses are as follows: two A-List courses; or eight B-List courses; or one A-List course and four B-List courses. (See the exception outlined in subsection (c) of this section); or

(C) Option 3--Completion of coursework from either the A-List or the B-List courses in combination with college courses in fire science or fire protection. Acceptable combinations of courses are three semester hours meeting the requirements of Option 1, with either one A-List course or four B-List courses (See the exception outlined in subsection (c) of this section).

(b) Non-traditional credit awarded at the college level, such as credit for experience or credit by examination obtained from attending any school in the commission's [~~Commission's~~] Certification Curriculum Manual or for experience in fire service, may not be counted toward this level of certification.

(c) The training required in this section must be in addition to any training used to qualify for any lower level of Structure Fire Protection Personnel certification [~~Certification~~]. Repeating a course or a course of similar content cannot be used towards this level of certification.

§423.7. *Minimum Standards for Advanced Structure Fire Protection Personnel Certification.*

(a) Applicants for Advanced Structure Fire Protection Personnel certification must complete the following requirements:

(1) hold as a prerequisite an Intermediate Structure Fire Protection Personnel certification [~~Certification~~] as defined in §423.5 of this title (relating to Minimum Standards for Intermediate Structure Fire Protection Personnel Certification); and

(2) acquire a minimum of eight years of fire protection experience and complete the training listed in one of the following options:

(A) Option 1--Successfully complete six semester hours of fire science or fire technology from an approved Fire Protection Degree Program and submit documentation as required by the commission that the courses comply with subsections (b) and (c) of this section; or

(B) Option 2--Completion of coursework from either the A-List or the B-List courses. Acceptable combinations of courses are as follows: two A-List courses; or eight B-List courses; or one A-List course and four B-List courses. (See the exception outlined in subsection (c) of this section); or

(C) Option 3--Completion of coursework from either the A-List or the B-List courses in combination with college courses in fire science or fire protection. Acceptable combinations of courses are three semester hours meeting the requirements of Option 1 with either one A-List course or four B-List courses (See the exception outlined in subsection (c) of this section).

(b) Non-traditional credit awarded at the college level, such as credit for experience or credit by examination obtained from attending any school in the commission's Certification Curriculum Manual or for experience in the fire service, may not be counted toward this level of certification.

(c) The training required in this section must be in addition to any training used to qualify for any lower level of Structure Fire Protection Personnel certification [Certification]. Repeating a course or a course of similar content cannot be used towards this level of certification.

*§423.9. Minimum Standards for Master Structure Fire Protection Personnel Certification.*

(a) Applicants for Master Structure Fire Protection Personnel certification [Certification] must complete the following requirements:

(1) hold as a prerequisite an Advanced Structure Fire Protection Personnel certification [Certification] as defined in §423.7 of this title (relating to Minimum Standards for Advanced Structure Fire Protection Personnel Certification); and

(2) acquire a minimum of twelve years of fire protection experience, and 60 college semester hours or an associate degree, which includes at least 18 college semester hours in fire science subjects.

(b) College level courses from both the upper and lower division may be used to satisfy the education requirement for Master Structure Fire Protection Personnel Certification.

*§423.11. Higher Levels of Certification.*

(a) An individual may receive higher levels of certification in structure [structural] fire protection while being assigned to another discipline, provided [that] all requirements for the higher level or levels of certification are met.

(b) Repetitive training cannot be used toward higher levels of certification.

*§423.13. International Fire Service Accreditation Congress (IFSAC) Seal.*

(a) Individuals completing a commission approved basic structure fire protection [fire suppression] program, meeting any other NFPA requirement, and passing the applicable commission examination(s) [based on the basic fire suppression curriculum,] may be granted IFSAC seal(s) for Hazardous Materials Awareness Level Personnel, Hazardous Materials Operations Level Responders (including the Mission-Specific Competencies for Personal Protective Equipment and Product Control), Fire Fighter I, and/or Fire Fighter II

by making application to the commission for the IFSAC seal(s) and paying applicable fees, provided they meet the following provisions:

(1) To receive the IFSAC Hazardous Materials Awareness Level Personnel seal, the individual must:

(A) complete the Hazardous Materials Awareness section of a commission approved course; and

(B) pass the Hazardous Materials Awareness section of a commission examination.

(2) To receive the IFSAC Hazardous Materials Operations Level Responders seal (including the Mission-Specific Competencies for Personal Protective Equipment and Product Control) the individual must:

(A) complete the Hazardous Materials Operation section of a commission approved course; and

(B) document possession of an IFSAC Hazardous Materials Awareness Level Personnel seal; and

(C) pass the Hazardous Materials Operations section of a commission examination.

(3) To receive the IFSAC Fire Fighter I seal, the individual must:

(A) complete a commission approved Fire Fighter I course; and

(B) provide medical documentation as outlined in subsection (c) of this section; and

(C) document possession of an IFSAC Hazardous Materials Awareness Level Personnel seal; and

(D) document possession of an IFSAC Hazardous Materials Operations Level Responders seal; and

(E) pass the Fire Fighter I section of a commission examination.

(4) To receive the IFSAC Fire Fighter II seal, the individual must:

(A) complete a commission approved Fire Fighter II course; and

(B) document possession of an IFSAC Fire Fighter I seal; and

(C) pass the Fire Fighter II section of a commission examination.

(b) In order to qualify for a Fire Fighter I seal, [meet the medical requirements of NFPA 1001] the individual must document successful completion of an emergency medical training course or program that includes those subject areas required by NFPA 1001. [The commission recognizes the following emergency medical training:]

[(1) The Texas Department of State Health Services Emergency Medical Service Personnel certification training;]

[(2) American Red Cross Response course (including optional lessons and enrichment sections);]

[(3) American Safety and Health Institute First Responder course;]

[(4) National Registry of Emergency Medical Technicians certification; or]

[(5) medical training deemed equivalent by the commission.]

(c) In order to qualify for an IFSAC seal, an individual must submit the application for the seal prior to the expiration of the examination.

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

Filed with the Office of the Secretary of State on August 7, 2017.

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Tim Rutland

Executive Director

Texas Commission on Fire Protection

Earliest possible date of adoption: September 17, 2017

For further information, please call: (512) 936-3812



## SUBCHAPTER B. MINIMUM STANDARDS FOR AIRCRAFT RESCUE FIRE FIGHTING PERSONNEL

### 37 TAC §§423.201, 423.203, 423.205, 423.207, 423.209, 423.211

The amendments are proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties and §419.032 which allows the commission to appoint fire protection personnel.

The proposed amendments implements Texas Government Code, Chapter 419, §419.008 and §419.032.

*§423.201. Minimum Standards for Aircraft Rescue Fire Fighting Personnel.*

(a) Aircraft rescue fire fighting personnel are employees of a local governmental entity who are appointed to aircraft rescue fire fighting [firefighting] duties. These duties may include fighting aircraft fires at airports, standing by for potential crash landings, and performing aircraft rescue and fire fighting duties.

(b) Personnel appointed to aircraft rescue fire fighting duties [as Aircraft Rescue Fire Fighting Personnel] must be certified [to at least the basic level] by the commission [Commission] within one year from the date of their appointment [employment in an Aircraft Rescue Fire Fighting Personnel position].

(c) Prior to being appointed to aircraft rescue fire fighting [suppression] duties, all personnel must:

(1) successfully complete a commission approved [~~Commission-approved~~] basic structure fire protection program [~~suppression course~~] and pass the commission's [~~Commission's~~] examination [~~pertaining to that curriculum~~]; and

(2) successfully complete a commission approved [~~Commission-approved~~] basic aircraft rescue fire fighting program [~~protection course~~] and pass the commission's [~~Commission's~~] examination [~~pertaining to that curriculum~~].

(d) "Stand by" means the act of responding to a designated position in the movement area on the airfield at which initial response fire and rescue units will await the arrival of an aircraft experiencing an announced emergency.

(e) "Movement area" is comprised of all runways, taxiways, and other areas of the airport which are used for taxiing or hover taxiing,

take-off, and landing of aircraft, exclusive of loading ramps and aircraft parking areas.

(f) Personnel holding any level of aircraft rescue fire fighting personnel certification shall be required to comply with the continuing education specified in Chapter 441 [§441.9] of this title (relating to Continuing Education [for Aircraft Rescue Fire Fighting Personnel]).

(g) Aircraft rescue fire fighting personnel that perform structure fire protection [~~fighting~~] duties must be certified, as a minimum, as basic structure [~~structural~~] fire protection personnel.

*§423.203. Minimum Standards for Basic Aircraft Rescue Fire Fighting Personnel Certification.*

In order to be certified as [obtain a] Basic Aircraft Rescue Fire Fighting Personnel, an [Certification the] individual must:

(1) hold a Basic Structure Fire Protection Personnel certification [Certification]; and

(2) possess valid documentation as an Airport Fire Fighter from either:

(A) the International Fire Service Accreditation Congress; or

(B) the National Board on Fire Service Professional Qualifications issued by the Texas A&M Engineering Extension Service using the 2010 or later edition of the NFPA standard applicable to this discipline and meeting the requirements [as] specified in §439.1[(a)(2)] of this title (relating to Requirements--General); or

(3) complete a commission approved aircraft rescue fire fighting [suppression training] program and successfully pass the commission examination as specified in Chapter 439 of this title (relating to Examinations for Certification). An approved aircraft rescue fire fighting [suppression training] program shall consist of one of the following:

(A) a commission approved Basic Aircraft Rescue Fire Suppression Curriculum as specified in [Chapter 2 of] the commission's Certification Curriculum Manual; or

(B) an out-of-state, and/or military training program that has been submitted to the commission for evaluation and found to be equivalent to or exceeds the commission approved Basic Aircraft Rescue Fire Suppression Curriculum.

*§423.205. Minimum Standards for Intermediate Aircraft Rescue Fire Fighting Personnel Certification.*

(a) Applicants for Intermediate Aircraft Rescue Fire Fighting Personnel certification [Certification] must complete the following requirements:

(1) hold as a prerequisite a Basic Aircraft Rescue Fire Fighting Personnel certification [Certification] as defined in §423.203 of this title (relating to Minimum Standards for Basic Aircraft Rescue Fire Fighting Personnel Certification); and

(2) acquire a minimum of four years of fire protection experience and complete the training listed in one of the following options:

(A) Option 1--Successfully complete six semester hours of fire science or fire technology from an approved Fire Protection Degree Program and submit documentation as required by the commission that the courses comply with subsections (b) and (c) of this section; or

(B) Option 2--Completion of coursework from either the A-List or the B-List courses. Acceptable combinations of courses are as follows: two A-List courses; or eight B-List courses; or one

A-List course and four B-List courses. (See the exception outlined in subsection (c) of this section); or

(C) Option 3--Completion of coursework from either the A-List or the B-List courses in combination with college courses in fire science or fire protection. Acceptable combinations of courses are three semester hours meeting the requirements of Option 1 with either one A-List course or four B-List courses (See the exception outlined in subsection (c) of this section).

(b) Non-traditional credit awarded at the college level, such as credit for experience or credit by examination obtained from attending any school in the commission's Certification Curriculum Manual or for experience in the fire service, may not be counted toward this level of certification.

(c) The training required in this section must be in addition to any training used to qualify for any lower level of Aircraft Rescue Fire Fighting certification [Certification]. Repeating a course or a course of similar content cannot be used towards this level of certification.

*§423.207. Minimum Standards for Advanced Aircraft Rescue Fire Fighting Personnel Certification.*

(a) Applicants for Advanced Aircraft Rescue Fire Fighting Personnel certification must complete the following requirements:

(1) hold as a prerequisite an Intermediate Aircraft Rescue Fire Fighting Personnel certification [Certification] as defined in §423.205 of this title (relating to Minimum Standards for Intermediate Aircraft Rescue Fire Fighting Personnel Certification); and

(2) acquire a minimum of eight years of fire protection experience and complete the training listed in one of the following options:

(A) Option 1--Successfully complete six semester hours of fire science or fire technology from an approved Fire Protection Degree Program and submit documentation as required by the commission that the courses comply with subsections (b) and (c) of this section; or

(B) Option 2--Completion of coursework from either the A-List or the B-List courses. Acceptable combinations of courses are as follows: two A-List courses; or eight B-List courses; or one A-List course and four B-List courses. (See the exception outlined in subsection (c) of this section); or

(C) Option 3--Completion of coursework from either the A-List or the B-List courses in combination with college courses in fire science or fire protection. Acceptable combinations of courses are three semester hours meeting the requirements of Option 1 with either one A-List course or four B-List courses (See the exception outlined in subsection (c) of this section).

(b) Non-traditional credit awarded at the college level, such as credit for experience or credit by examination obtained from attending any school in the commission's Certification Curriculum Manual or for experience in the fire service, may not be counted toward this level of certification.

(c) The training required in this section must be in addition to any training used to qualify for any lower level of Aircraft Rescue Fire Fighting Personnel certification [Certification]. Repeating a course or a course of similar content cannot be used towards this level of certification.

*§423.209. Minimum Standards for Master Aircraft Rescue Fire Fighting Personnel Certification.*

(a) Applicants for Master Aircraft Rescue Fire Fighting Personnel certification [Certification] must complete the following requirements:

(1) hold, as a prerequisite, an Advanced Aircraft Rescue Fire Fighting Personnel certification [Certification] as defined in §423.207 of this title (relating to Minimum Standards for Advanced Aircraft Rescue Fire Fighting Personnel Certification); and

(2) acquire a minimum of twelve years of fire protection experience, and 60 college semester hours or an associate's degree, which includes at least 18 college semester hours in fire science subjects.

(b) College level courses from both the upper and lower division may be used to satisfy the education requirement for Master Aircraft Rescue Fire Fighting Personnel Certification.

*§423.211. International Fire Service Accreditation Congress (IF-SAC) Seal.*

Individuals completing a commission approved basic aircraft rescue fire fighting [suppression] program, documenting an IFSAC seal for Fire Fighter II, and passing the applicable commission [state] examination may be granted an IFSAC seal as an Airport Fire Fighter by making application to the commission for the IFSAC seal and paying applicable fees. In order to qualify for an IFSAC seal, an individual must submit the application for the seal prior to the expiration of the examination.

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

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Tim Rutland

Executive Director

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For further information, please call: (512) 936-3812



## SUBCHAPTER C. MINIMUM STANDARDS FOR MARINE FIRE PROTECTION PERSONNEL

### 37 TAC §§423.301, 423.303, 423.305, 423.307, 423.309

The amendments are proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties and §419.032 which allows the commission to appoint fire protection personnel.

The proposed amendments implements Texas Government Code, Chapter 419, §419.008 and §419.032.

*§423.301. Minimum Standards for Marine Fire Protection Personnel.*

(a) Marine fire protection personnel are employees of a local governmental entity who work aboard a fire boat with a minimum pumping capacity of 2,000 gallons per minute, and fight fires that occur on or adjacent to a waterway, waterfront, channel, or turning basin.

(b) Fire protection personnel [of any local government entity, who are] appointed to marine fire protection duties[-] must be certified by the commission [Commission] within one year from the date of their appointment [in a marine fire protection personnel position].

(c) Prior to being appointed to marine fire protection ~~[suppression]~~ duties, all personnel must:

(1) successfully complete a commission approved ~~[Commission-approved]~~ basic structure fire protection program ~~[suppression course]~~ and pass the commission's ~~[Commission's]~~ examination ~~[pertaining to that curriculum]~~; and

(2) successfully complete a commission approved ~~[Commission-approved]~~ basic marine fire protection program ~~[suppression course]~~ and pass the commission's ~~[Commission's]~~ examination ~~[pertaining to that curriculum]~~.

(d) Personnel holding any level of Marine Fire Protection Personnel certification shall be required to comply with the continuing education specified in Chapter 441 ~~[ §441.11]~~ of this title (relating to Continuing Education ~~[for Marine Fire Protection Personnel]~~).

*§423.303. Minimum Standards for Basic Marine Fire Protection Personnel Certification.*

In order to be certified as Basic ~~[obtain as basic]~~ Marine Fire Protection Personnel an ~~[Certification the]~~ individual must:

(1) hold a Basic Structure Fire Protection Personnel certification; and ~~[ Certification];~~

(2) complete a commission approved marine fire protection program and successfully pass the commission examination as specified in Chapter 439 of this title (relating to Examinations for Certification). An approved marine fire protection program shall consist ~~[complete a training program specific to marine fire protection consisting]~~ of one of the following:

(A) ~~[complete]~~ the commission approved ~~[Commission-approved]~~ Basic Marine Fire Protection Curriculum as specified in Chapter 3~~;~~ of the commission's ~~[Commission's]~~ Certification Curriculum Manual; ~~or[-]~~

(B) An out-of-state, and/or military training program that has been submitted to the commission ~~[Commission]~~ for evaluation and found to be equivalent to or exceed the commission approved ~~[Commission-approved]~~ Basic Marine Fire Protection Curriculum.

~~[(3) successfully pass the Commission examination as specified in Chapter 439 of this title (relating to Examinations for Certification) prior to assignment.]~~

*§423.305. Minimum Standards for Intermediate Marine Fire Protection Personnel Certification.*

(a) Applicants for Intermediate Marine Fire Protection Personnel certification ~~[Certification]~~ must complete the following requirements:

(1) hold, as a prerequisite, a Basic Marine Fire Protection Personnel certification ~~[Certification]~~ as defined in §423.303 of this title (relating to Minimum Standards for Basic Marine Fire Protection Personnel Certification); and

(2) acquire a minimum of four years of fire protection experience and complete the training listed in one of the following options:

(A) Option 1--Successfully complete six semester hours of fire science or fire technology from an approved Fire Protection Degree Program and submit documentation as required by the commission ~~[Commission]~~ that the courses comply with subsections (b) and (c) of this section; or

(B) Option 2--Completion of coursework from either the A-List or the B-List courses. Acceptable combinations of courses are as follows: two A-List courses; or eight B-List courses; or one

A-List course and four B-List courses. (See the exception outlined in subsection (c) of this section); or

(C) Option 3--Completion of coursework from either the A-List or the B-List courses in combination with college courses in fire science or fire protection. Acceptable combinations of courses are three semester hours meeting the requirements of Option 1 with either one A-List course or four B-List courses. (See the exception outlined in subsection (c) of this section).

(b) Non-traditional credit awarded at the college level, such as credit for experience or credit by examination obtained from attending any school in the commission's ~~[Commission's]~~ Certification Curriculum Manual or for experience in fire service, may not be counted towards this level of certification.

(c) The training required in this section must be in addition to any training used to qualify for any lower level of Marine Fire Protection Personnel certification ~~[Certification]~~. Repeating a course, or a course of similar content, cannot be used towards this level of certification.

*§423.307. Minimum Standards for Advanced Marine Fire Protection Personnel Certification.*

(a) Applicants for Advanced Marine Fire Protection Personnel certification must complete the following requirements:

(1) hold as a prerequisite an Intermediate Marine Fire Protection Personnel certification ~~[Certification]~~ as defined in §423.305 of this title (relating to Minimum Standards for Intermediate Marine Fire Protection Personnel Certification); and

(2) acquire a minimum of eight years of fire protection experience and complete the training listed in one of the following options:

(A) Option 1--Successfully complete six semester hours of fire science or fire technology from an approved Fire Protection Degree Program and submit documentation as required by the commission that the courses comply with subsections (b) and (c) of this section; or

(B) Option 2--Completion of coursework from either the A-List or the B-List courses. Acceptable combinations of courses are as follows: two A-List courses; or eight B-List courses; or one A-List course and four B-List courses. (See the exception outlined in subsection (c) of this section); or

(C) Option 3--Completion of coursework from either the A-List or the B-List courses in combination with college courses in fire science or fire protection. Acceptable combinations of courses are three semester hours meeting the requirements of Option 1 with either one A-List course or four B-List courses (See the exception outlined in subsection (c) of this section).

(b) Non-traditional credit awarded at the college level, such as credit for experience or credit by examination obtained from attending any school in the commission's Certification Curriculum Manual or for experience in the fire service, may not be counted towards this level of certification.

(c) The training required in this section must be in addition to any training used to qualify for any lower level of Marine Fire Protection Personnel certification ~~[Certification]~~. Repeating a course or a course of similar content cannot be used towards this level of certification.

*§423.309. Minimum Standards for Master Marine Fire Protection Personnel Certification.*



(a) Applicants for Master Marine Fire Protection Personnel certification [~~Certification~~] must complete the following requirements:

(1) hold, as a prerequisite, an Advanced Marine Fire Protection Personnel certification [~~Certification~~] as defined in §423.307 of this title (relating to Minimum Standards for Advanced Marine Fire Protection Personnel Certification); and

(2) acquire a minimum of twelve years of fire protection experience, 60 college semester hours or an associate's degree, which includes at least 18 college semester hours in fire science subjects.

(b) College level courses from both the upper and lower division may be used to satisfy the education requirement for Master Marine Fire Protection Personnel Certification.

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 August 7, 2017.

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Tim Rutland

Executive Director

Texas Commission on Fire Protection

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For further information, please call: (512) 936-3812



## CHAPTER 433. DRIVER/OPERATOR

The Texas Commission on Fire Protection (the commission) proposes amendments to Chapter 433, Driver/Operator, Subchapter A, Minimum Standards For Driver/Operator-Pumper, §433.3, concerning Minimum Standards for Driver/Operator-Pumper Certification; and Subchapter B, Minimum Standards for Driver/Operator-Aerial Apparatus, §433.201, concerning Driver/Operator-Aerial Apparatus Certification, and §433.203, concerning Minimum Standards for Driver/Operator-Aerial Apparatus Certification.

The purpose of the proposed amendments is to extend the end date for the initial certification period to one full year from the effective date of the new rule.

Tim Rutland, Executive Director, 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.

Mr. Rutland has also determined that for each year of the first five years the proposed amendments are in effect, the public benefit from the passage is that individuals seeking to obtain this certification will have one full year from the effective date of the new rule to do so.

There will be no effect on micro or small businesses or persons required to comply with the amendments as proposed.

Comments regarding the proposed amendments may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to Tim Rutland, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768 or e-mailed to [info@tcfp.texas.gov](mailto:info@tcfp.texas.gov). Comments will be reviewed and discussed at a future commission meeting.

### SUBCHAPTER A. MINIMUM STANDARDS FOR DRIVER/OPERATOR-PUMPER

### 37 TAC §433.3

The amendments are proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties and §419.032, which allows the commission to appoint fire protection personnel.

The proposed amendments implement Texas Government Code, Chapter 419, §419.008 and §419.032.

§433.3. *Minimum Standards for Driver/Operator-Pumper Certification.*

(a) In order to obtain Driver/Operator-Pumper certification, the individual must:

(1) hold certification as Structural Fire Protection Personnel, Aircraft Rescue Fire Fighting Personnel, or Marine Fire Protection Personnel; and

(2) possess valid documentation as a Driver/Operator-Pumper from either:

(A) the International Fire Service Accreditation Congress; or

(B) the National Board on Fire Service Professional Qualifications issued by the Texas A&M Engineering Extension Service using the 2009 or later edition of the NFPA standard applicable to this discipline and meeting the requirements as specified in §439.1 [~~§439.1(a)(2)~~] of this title (relating to Requirements-General); or

(3) complete a commission approved Driver/Operator-Pumper Curriculum and successfully pass the commission examination as specified in Chapter 439 of this title (relating to Examinations for Certification). An approved driver/operator-pumper program must consist of one of the following:

(A) complete a commission approved Driver/Operator-Pumper Curriculum as specified in Chapter 7 of the commission's Certification Curriculum Manual;

(B) complete an out-of-state training program that has been submitted to the commission for evaluation and found to be equivalent to or exceeds the commission approved Driver/Operator-Pumper Curriculum; or

(C) complete a military training program that has been submitted to the commission for evaluation and found to be equivalent to or exceeds the commission approved Driver/Operator-Pumper Curriculum.

(b) Out-of-state or military training programs, which are submitted to the commission for the purpose of determining equivalency, will be considered equivalent if all competencies set forth in Chapter 7 (pertaining to Driver/Operator-Pumper) of the commission's Certification Curriculum Manual are 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 August 7, 2017.

TRD-201702968

Tim Rutland

Executive Director

Texas Commission on Fire Protection

Earliest possible date of adoption: September 17, 2017

For further information, please call: (512) 936-3812

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**SUBCHAPTER B. MINIMUM STANDARDS  
FOR DRIVER/OPERATOR-AERIAL  
APPARATUS**

**37 TAC §433.201, §433.203**

The amendments are proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties, and §419.032, which allows the commission to appoint fire protection personnel.

The proposed amendments implements Texas Government Code, Chapter 419, §419.008 and §419.032.

*§433.201. Driver/Operator-Aerial Apparatus Certification.*

(a) A Driver/Operator-Aerial Apparatus is defined as an individual who operates an aerial apparatus safely and in accordance with all state and local laws; safely and correctly maneuvers, positions, stabilizes, and operates an aerial apparatus and device; and effectively deploys and operates an elevated master stream from a water source. Other responsibilities include routine apparatus testing, maintenance, inspections, and servicing functions.

(b) Individuals holding Driver/Operator-Pumper certification are eligible to take the commission examination for Driver Operator-Aerial Apparatus upon documentation to the commission that the individual has completed Driver Operator-Aerial Apparatus training that meets the minimum requirements of NFPA 1002 [the National Fire Protection Association Standard 1002] or provide documentation of proficiency in the operation of an aerial apparatus from a department with an in service aerial apparatus. This section will expire on May 18, 2018 [February 28, 2018].

*§433.203. Minimum Standards for Driver/Operator-Aerial Apparatus Certification.*

(a) In order to obtain Driver/Operator-Aerial Apparatus certification, the individual must:

- (1) hold certification as Structural Fire Protection Personnel, Aircraft Rescue Fire Fighting Personnel, or Marine Fire Protection Personnel; and
- (2) possess valid documentation as a Driver/Operator-Aerial Apparatus from either:

(A) the International Fire Service Accreditation Congress; or

(B) the National Board on Fire Service Professional Qualifications issued by the Texas A&M Engineering Extension Service using the 2014 or later edition of the NFPA standard applicable to this discipline and meeting the requirements as specified in §439.1 [439.1(a)(2)] of this title (relating to Requirements-General); or

(3) complete a commission approved Driver/Operator-Aerial Apparatus training program and successfully pass the commission examination as specified in Chapter 439 of this title (relating to Examinations for Certification). An approved driver/operator-aerial apparatus training program must consist of one of the following:

(A) completion of an in-state Driver/Operator-Aerial Apparatus program meeting the requirements of the applicable NFPA standard and conducted by a commission certified training provider, that was submitted and approved through the commission's training prior approval system; or

(B) completion of an out-of-state training program that has been submitted to the commission for evaluation and found to meet the requirements of the applicable NFPA standard; or

(C) completion of a military training program that has been submitted to the commission for evaluation and found to meet the requirements of the applicable NFPA standard.

(b) Out-of-State or military training programs submitted to the commission for the purpose of determining equivalency will be considered equivalent if the training addresses all job performance requirements 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 August 7, 2017.

TRD-201702969

Tim Rutland

Executive Director

Texas Commission on Fire Protection

Earliest possible date of adoption: September 17, 2017

For further information, please call: (512) 936-3812

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# 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 25. HEALTH SERVICES

### PART 7. TEXAS MEDICAL DISCLOSURE PANEL

#### CHAPTER 601. INFORMED CONSENT

##### 25 TAC §601.2, §601.9

The Texas Medical Disclosure Panel withdraws the proposed amendments to §601.2, and §601.9, which appeared in the April 7, 2017, issue of the *Texas Register* (42 TexReg 1844).

Filed with the Office of the Secretary of State on August 7, 2017.

TRD-201702970

Noah Appel, M.D.

Chairman

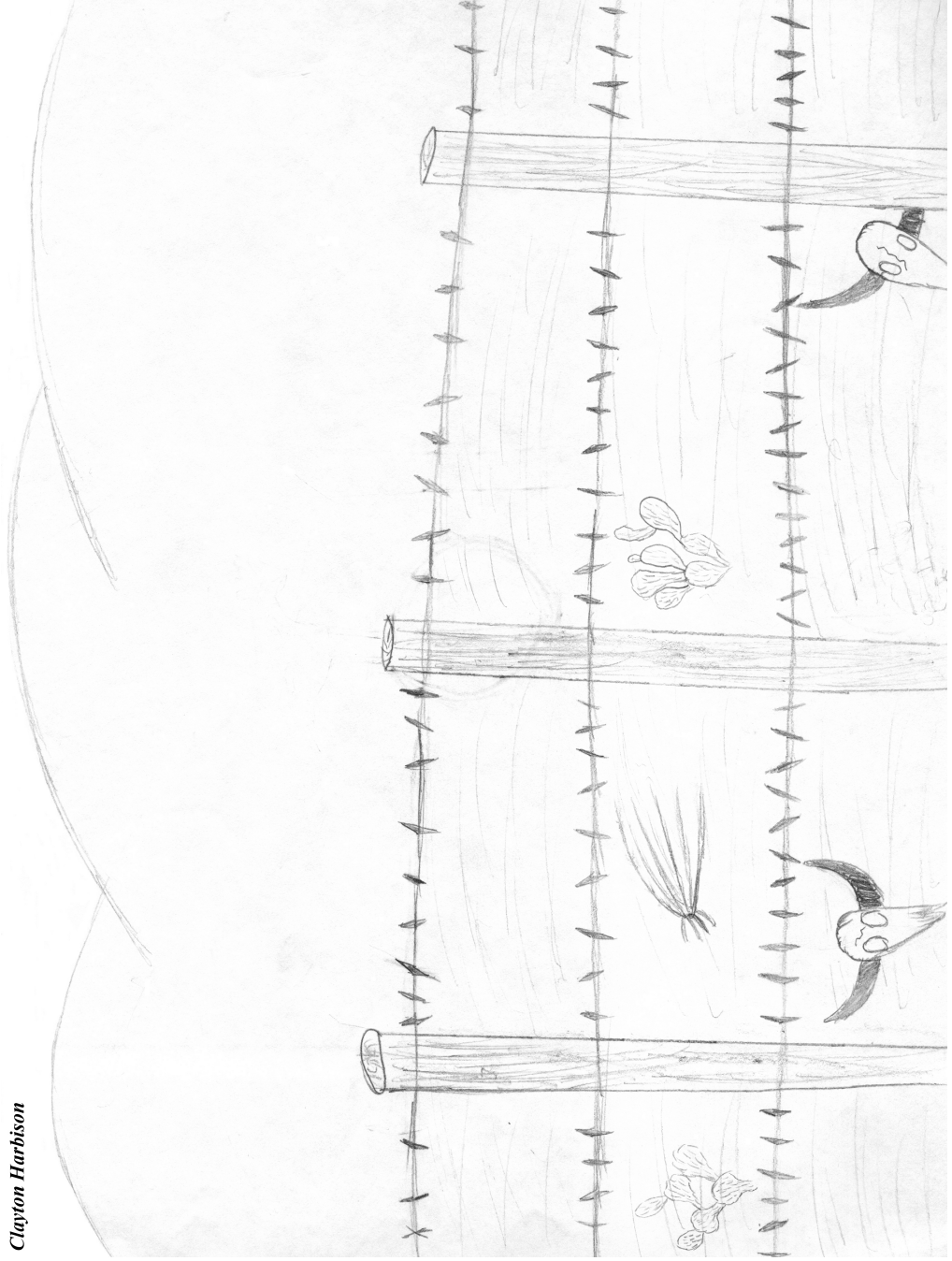
Texas Medical Disclosure Panel

Effective date: August 7, 2017

For further information, please call: (512) 776-6972



Clayton Harbison



# 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 4. AGRICULTURE

### PART 1. TEXAS DEPARTMENT OF AGRICULTURE

#### CHAPTER 12. WEIGHTS AND MEASURES

The Texas Department of Agriculture (the Department) adopts amendments to Texas Administrative Code, Title 4, Part 1, Chapter 12, Subchapter A, §12.1, relating to definitions, and Subchapter B, §12.13, relating to devices subject to registration and inspection; exemptions. The adoption is made without changes to the text as published in the July 7, 2017, issue of the *Texas Register* (42 TexReg 3455). The amendments were necessary to align administrative rules with amended §13.002 of the Texas Agriculture Code, enacted during the 85th Texas Legislature.

The adopted rules are amended to designate registration and inspection exemptions only for scales which are exclusively used to weigh food sold for immediate consumption.

The Department provided the proposal to industry contacts, including the Texas Restaurant Association. As well as providing the proposal to industry by email, the Department also discussed the proposal at public industry meetings on several occasions.

No written comments were received on the proposal.

#### SUBCHAPTER A. GENERAL PROVISIONS

##### 4 TAC §12.1

The amendments are adopted under Texas Agriculture Code (the Code), §13.1002, which provides that certain commercial weighing or measuring devices that are used to weigh food sold for immediate consumption are exempt from registration and inspection requirements, and §13.002, which authorizes the Department to enforce Chapter 13, relating to weighing or measuring devices.

The code affected by the adoption is Chapter 13 of the Texas Agriculture Code.

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

Filed with the Office of the Secretary of State on August 7, 2017.

TRD-201702973

Jessica Escobar

Assistant General Counsel

Texas Department of Agriculture

Effective date: August 27, 2017

Proposal publication date: July 7, 2017

For further information, please call: (512) 463-4075

### SUBCHAPTER B. DEVICES

#### 4 TAC §12.13

The amendments are adopted under Texas Agriculture Code (the Code), §13.1002, which provides that certain commercial weighing or measuring devices that are used to weigh food sold for immediate consumption are exempt from registration and inspection requirements, and §13.002, which authorizes the Department to enforce Chapter 13, relating to weighing or measuring devices.

The code affected by the adoption is Chapter 13 of the Texas Agriculture Code.

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

Filed with the Office of the Secretary of State on August 7, 2017.

TRD-201702974

Jessica Escobar

Assistant General Counsel

Texas Department of Agriculture

Effective date: August 27, 2017

Proposal publication date: July 7, 2017

For further information, please call: (512) 463-4075

## TITLE 10. COMMUNITY DEVELOPMENT

### PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

#### CHAPTER 20. SINGLE FAMILY PROGRAMS UMBRELLA RULE

##### 10 TAC §§20.1 - 20.16

The Texas Department of Housing and Community Affairs (the "Department") adopts the repeal of 10 TAC Chapter 20, concerning the Single Family Programs Umbrella Rule, §§20.1 - 20.16 without changes to the text as proposed in the May 12, 2017, issue of the *Texas Register* (42 TexReg 2473). The rules are adopted for repeal in connection with the adoption of new 10 TAC Chapter 20 concerning the Single Family Programs Umbrella Rule, which was published concurrently in the May 12, 2017, issue of the *Texas Register* (42 TexReg 2474).

REASONED JUSTIFICATION. The repeal of 10 TAC Chapter 20 concerning the Single Family Programs Umbrella Rule will

allow for the concurrent adoption of new 10 TAC Chapter 20 concerning the Single Family Programs Umbrella Rule.

COMMENTS. No comments concerning the proposed repeals were received.

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

The repeal affects no other code, article or statute.

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 August 4, 2017.

TRD-201702940

Timothy K. Irvine

Executive Director

Texas Department of Housing and Community Affairs

Effective date: August 24, 2017

Proposal publication date: May 12, 2017

For further information, please call: (512) 475-4828



## 10 TAC §§20.1 - 20.16

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC Chapter 20, Single Family Programs Umbrella Rule, §§20.1 - 20.16. This new rule is being adopted concurrently with the repeal of existing 10 TAC Chapter 20, Single Family Programs Umbrella Rule. Sections 20.1, 20.9, and 20.13 are adopted with changes to the proposed text as published in the May 12, 2017, issue of the *Texas Register* (42 TexReg 2474) and will be republished.

REASONED JUSTIFICATION. The new rule clarifies applicability of the Rule; updates definitions; further clarifies Household Eligibility requirements; states Affirmative Fair Housing Marketing Plan submission requirements; clarifies inspection requirements with respect to condemned and extremely substandard properties and addresses instances for waivers of final inspection/pending corrections; expands Loan, Lien and Mortgage Requirements; and simplifies limits for increases in award amounts.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS. The public comment period was from May 12, 2017, through June 12, 2017. Comments were accepted in writing and via email, with comments received from: (1) Judge Robert Blaschke of Refugio County, (2) Judge Carlos Urias of Culberson County, (3) Judge Pedro "Pete" Trevino, Jr., of Jim Wells County, (4) Roderick Hutto of City of Kountze, (5) Mayor Billy Slaughter of City of Trinity, (6) Mayor Mark Bricker of City of Bay City, (7) Lamar Schulz of City of Carrizo Springs, (8) Mayor Scott Martinez of City of O'Donnell, (9) Mayor Michael S. Wolfe, Sr., of City of Hempstead, (10) Sam A. Listi of City of Belton, (11) Sylvia Rucka of City of Eagle Lake, (12) Judge Stephanie Moreno of Bee County, (13) Mayor Gerald Sandusky of City of Bronte, (14) Melissa Truelove of City of Eldorado, (15) Mayor Pro-Tem Joe Holt of City of Josephine, (16) Mayor Sharion Scott of City of Wolfe City, (17) Brad Stafford of City of Navasota, (18) Charles Cloutman of Meals on Wheels Central Texas, (19) Rosa Gonzalez-Abrego of Easter Seals Central Texas, (20) Karen Rego of Langford Community Management Services, (21) Judy Telge

of Coastal Bend Center for Independent Living, and (22) Cassie Allred of Webb County Self-Help Center.

### §20.1. PURPOSE.

COMMENT SUMMARY: Commenter 19 stated that the applicability of the Single Family Programs Umbrella Rule to the State Housing Trust Fund's Amy Young Barrier Removal Program for people with disabilities should be excluded. Otherwise the requirements of the rule will make the program more difficult to administer and disproportionately harm people with disabilities in rural areas.

STAFF RESPONSE: While some of the Single Family Programs Umbrella Rule's applicability extends to the Amy Young Barrier Removal Program, there are significant portions of the rule that do not apply, such as: §20.10 Inspection Requirements for Construction Activities; §20.11 Survey Requirements; §20.12 Insurance Requirements; and §20.13 Loan, Lien and Mortgage Requirements for Activities (because the Amy Young Barrier Removal Program is a grant program). In addition, staff has modified §20.9(b)(3) Fair Housing, Affirmative Marketing and Reasonable Accommodations for the Amy Young Barrier Removal Program, which is further described below.

### §20.3. DEFINITIONS.

COMMENT SUMMARY: Commenter 18 stated that by defining the State Housing Trust Fund's Amy Young Barrier Removal Program as it is written in the board-approved Program Rule, instead of as it is written by a staff-approved Notice of Funding Availability, the program will be more inflexible and difficult to administer.

STAFF RESPONSE: The mirroring of program rules with program implementation is intended to incorporate public input and greatly simplify the interpretation and administration of programs. The HTF staff is currently drafting proposed amendments to the Housing Trust Fund Rule, which extends to the Amy Young Barrier Removal Program, and they will be presented for public comment prior to final approval. No changes to this section of the rule will be made in response to this comment.

### §20.8. SINGLE FAMILY HOUSING UNIT ELIGIBILITY REQUIREMENTS.

COMMENT SUMMARY: Commenters (1) through (17) and Commenter (20) all stated that it is infeasible to require applying households that may owe property taxes to be current with any taxing authority-approved payment plans for at least 6 consecutive months prior to date of initial application. This creates a delay in program implementation and could interfere with meeting interim program benchmarks (deadlines). Instead, the Commenters propose that applying households be allowed to demonstrate that they are current with property tax payment plans on a monthly basis after date of initial application date and through date of Department approval.

STAFF RESPONSE: The purpose of this amendment is to reduce the likelihood that assisted households will face imminent tax foreclosure and possibly lose their home, and to stabilize the Department's single family loan portfolio. Due to the length of time it takes for administrators to complete environmental reviews and prepare applications, building in six months of successful participation in a property tax payment plan is not infeasible. It also demonstrates to the Department and the administrators that the household has the ability to manage the responsibilities of homeownership and housing-related debt. It should be noted that this rule has been proposed specifically in reaction to a noted trend of single family loans within the Department's

portfolio not paying taxes. No changes to this section of the rule will be made in response to this comment.

#### §20.9. FAIR HOUSING, AFFIRMATIVE MARKETING AND REASONABLE ACCOMMODATIONS.

COMMENT SUMMARY: Commenters (1) through (21) all stated that it is infeasible to require a 30-day application cycle with a "neutral random selection process" because it could hinder the timely expenditure of funds and interfere with meeting other program benchmarks and requirements (such as title clearing) in a timely manner. The commenters requested that the HOME's Homeowner Rehabilitation Assistance Program be exempt from rule 20.9(b)(3) and/or that administrators be able to use the first complete-first served method as it is allowed by HUD.

STAFF RESPONSE: HUD program participants are required to establish application and selection processes that treat applicants equitably and determine program eligibility effectively. In HUD Notice H 2014-16 issued November 28, 2014, HUD published additional options for waitlist management and affirmative marketing in multifamily housing properties, stating that a random technique may "be appropriate in scenarios where individuals unable to apply in person at the onset of the opening would be at a distinct disadvantage in their placement on the waiting list."

Staff agrees that the first-come, first-served method has been acceptable to HUD, but it may still pose an impediment to applicants such as persons with disabilities or with limited English proficiency who could face obstacles to getting their application in first. The neutral random selection process is more likely than the first-come, first-served method to reach populations that are least likely to apply. Many of TDHCA's single family program activities, including the Homeowner Rehabilitation Assistance Program, are extremely competitive. Providing a 30-day application period followed by a neutral random selection process ensures that there is an equitable opportunity for all households to participate in the program.

Lastly, there is often a 30-day period between an administrator receiving award notification and receiving a contract for execution. Administrators may begin the 30-day period during this time to ensure the timely expenditure of funds, and administrators may start vetting applications within the 30-day application cycle. HOME staff may consider amending contracts and benchmarks to allow for an additional 30 days. No changes to this section of the rule will be made in response to this comment.

COMMENT SUMMARY: Commenter (20) requested that the Affirmative Marketing plan cover the length of the contracts and Reservation System Participation agreements, which are three years, instead of two years. This commenter also expressed concern over meeting the HOME requirement to assist one in every four homes with a household at a specific income level.

STAFF RESPONSE: Staff agrees and has revised §20.9(b) accordingly. The new rule (revision in italics) is "(b) Affirmative Marketing and Procedures. An Administrator receiving Federal or state funds must have an Affirmative Marketing Plan. The AFHMP must be submitted to the Department each time the Administrator applies for a new contract or a new type of activity. The plan must be submitted at a minimum of every *three* years if the Administrator continues to accept new applications."

In addition, staff have clarified in the rule that the HOME requirement to assist households at a specific income level can be rolled

into the preferences allowed under the rule. Applicants will be selected randomly from those meeting the defined preference.

COMMENT SUMMARY: Commenters (18), (19) and (21) stated that affirmative marketing efforts are redundant and unnecessary for the Amy Young Barrier Removal Program because this program is only available to eligible people with disabilities, a special population for whom administrators already make accommodations. Also, commenters stated that the 30-day open intake period for neutral, random selection followed by a first-come, first-served method goes against administrators' existing, effective priority systems already in place to serve those with urgent needs. Commenters requested that the Amy Young Barrier Removal Program be exempt from the requirements of the Single Family Umbrella Rule or exempt from this section of the rule.

STAFF RESPONSE: The Amy Young Barrier Removal Program assists persons with disabilities, one of seven protected classes in Texas. The Department may not exempt any housing provider from the requirements of the federal or Texas Fair Housing Act.

A neutral system for intake allows for affirmative marketing efforts to reach populations least likely to apply, including individuals who face barriers to submitting an application first, such as persons with disabilities or with limited English proficiency. It also avoids giving an advantage to persons that may be friends or family members of the Administrator, and thus more likely to hear about the program at an earlier date. However, staff agrees with commenters regarding the neutral, random selection process and has revised §20.9(b)(3) accordingly. The new rule (revision in italics) is "(3) After the required outreach efforts have been made, all Administrators must accept applications from possible eligible Applicants for a minimum of a 30-day period rather than a first-come, first-served basis when selecting among eligible Applicants. At the close of the 30-day period Administrators will select Applicants through a neutral random selection process developed by the Administrator. After Administrators have allowed for a 30-day period to accept applications and used a neutral random selection process to assist Households, they may accept applications on a first-come, first-served basis. *HOME Tenant Based Rental Assistance Reservation System Participants with disaster funds may request to be exempt from the 30-day period and the neutral random selection process, as necessary to respond to the disaster.*"

Staff also notes that under §20.9(b)(2)(B), Administrators with an existing list of applications are already exempt from affirmative marketing: "Administrators that currently have an existing list of Applicants and are not accepting new Applicants or establishing a waiting list are not required to affirmatively market that portion of their program, but must develop a plan as described below."

Staff also recognizes that some Amy Young Barrier Removal Program Administrators would like employ a preference in order to prioritize households that may be forced to reside in institutions if their homes are not made accessible. As a result, staff has revised §20.9(b)(4) to allow Administrators of the Amy Young Barrier Removal Program to have a preference prioritizing Households to prevent displacement from permanent housing, or to foster returning to permanent housing related to inaccessible features of the unit.

#### §20.13. LOAN, LIEN AND MORTGAGE REQUIREMENTS FOR ACTIVITIES.

COMMENT SUMMARY: Commenter (22) stated that the credit requirements are too stringent for the credit poor colonia pop-

ulation of Laredo and the target populations the Webb County Colonia Self-Help Centers is mandated to serve.

**STAFF RESPONSE:** The purpose of the mortgage requirements section of this rule is to decrease delinquencies, defaults and foreclosures so that Households do not lose their homes, and to stabilize the Department's single family loan portfolio. Such underwriting requirements better ensure that participating households have the ability to manage the responsibilities of homeownership and housing-related debt. The Colonia Self-Help Center Program provides forgivable loans and grants and this section of the rule does not apply. No changes to this section of the rule will be made in response to this comment.

**STATUTORY AUTHORITY.** The new rule is adopted pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

The new rule affects no other code, article or statute.

*§20.1. Purpose.*

This Chapter sets forth the common elements of the Texas Department of Housing and Community Affairs' (the "Department") single family Programs, which include the Department's HOME Investment Partnerships Program (HOME), State Housing Trust Fund (SHTF or HTF), Texas Neighborhood Stabilization (NSP), and Office of Colonia Initiatives (OCI) Programs and other single family Programs as developed by the Department. Single family Programs are designed to improve and provide affordable housing opportunities to low-income individuals and families in Texas and in accordance with Chapter 2306 of the Texas Government Code and any applicable statutes and federal regulations. Excluded from this Chapter are loans facilitated by the Department's pass through first-time homebuyer Programs utilizing bond financing structures or mortgage credit certificates that have no other Department funding.

*§20.9. Fair Housing, Affirmative Marketing and Reasonable Accommodations.*

(a) In addition to Chapter 1, Subchapter B of this Title, Administrators must comply with all applicable state and federal rules, statutes, or regulations, involving accessibility including the Fair Housing Act, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act, and the Architectural Barriers Act as well as state and local building codes that contain accessibility requirements; where local, state, or federal rules are more stringent, the most stringent rules shall apply. Administrators receiving Federal or state funds must comply with the Age Discrimination Act of 1975.

(b) **Affirmative Marketing and Procedures.** An Administrator receiving Federal or state funds must have an Affirmative Marketing Plan. The AFHMP must be submitted to the Department each time the Administrator applies for a new contract or a new type of activity. The plan must be submitted at a minimum of every three years if the Administrator continues to accept new applications.

(1) Administrators must use HUD Form 935.2B, the form on the Department's website, or create an equivalent AFHMP that includes:

(A) Identification of the population "least likely to apply" for the Administrator's Program(s) without special outreach efforts. Administrators may use the Department's single family affirmative marketing tool to determine populations "least likely to apply." If Administrators use another method to determine the populations "least likely to apply" the AFHMP must provide a detailed explanation of the methodology used. Persons with Disabilities must always be included as a population least likely to apply.

(B) Identification of the methods of outreach that will be used to attract persons identified as least likely to apply. Outreach methods must include identification of a minimum of three organizations with whom the Administrator plans to conduct outreach, and whose membership or clientele consists primarily of protected class members. If the Administrator is unable to locate three such groups, the reason must be documented in the file.

(C) Identification of the methods to be used for collection of data and periodic evaluation to determine the success of the outreach efforts. If efforts have been unsuccessful, the Administrator's AFHMP should be revised to include new or improved outreach efforts.

(D) Description of the fair housing trainings required for Administrator staff, including delivery method, training provider and frequency. Training must include requirements of the Fair Housing Act relating to financing and advertising, expected real estate broker conduct, as well as redlining and zoning for all programs, and discriminatory appraisal practices for programs involved in homebuyer transactions.

(E) A description for the provision of applicable counseling programs and educational materials that will be offered to Applicants. Administrators offering acquisition programs must require that potential home purchasers receive homeownership counseling and education at the time assistance is approved.

(2) **Applicability.**

(A) Affirmative marketing is required as long as an Administrator is accepting applications and/or until all dwelling units are sold in the case of single family homeownership programs.

(B) Administrators that currently have an existing list of Applicants and are not accepting new Applicants or establishing a waitlist are not required to affirmatively market until preparing to accept new Applications, but must develop a plan as described above. **EXAMPLE:** An Administrator has an active HOME Reservation System Participation Agreement with a closed waiting list. The Administrator must develop an affirmative marketing plan, but does not have to affirmatively market that portion of its program. The Administrator should serve its waitlist. When the Administrator is nearing the bottom of the waitlist it should begin to affirmatively market the program, open up the program to new Applicants, finish serving the existing Households on the waitlist, and all new Applicants will be held for 30 calendar days, and then selected based on the neutral random selection process.

(C) Administrators providing assistance in more than one service area must provide a separate plan for each market area in which the housing assistance will be provided.

(3) After the required outreach efforts have been made, all Administrators must accept applications from possible eligible Applicants for a minimum of a 30 calendar day period rather than a first-come, first-served basis when selecting among eligible Applicants. At the close of the 30 day period Administrators will select Applicants through a neutral random selection process developed by the Administrator. After Administrators have allowed for a 30 calendar day period to accept applications and used a neutral random selection process to assist Households, they may accept applications on a first-come, first-served basis. HOME Tenant Based Rental Assistance Reservation System Participants with disaster funds may request to be exempt from the 30 calendar day period and the neutral random selection process, as necessary to respond to the disaster.

(4) Administrators must include as an attachment to HUD Form 935.2B or equivalent AFHMP, a waitlist policy including any Department approved preferences used in selecting Applicants from



the list. Administrators of the Amy Young Barrier Removal Program may have a preference prioritizing Households to prevent displacement from permanent housing, or to foster returning to permanent housing related to inaccessible features of the unit. Administrators who have defined preferences in their written waitlist procedures or tenant selection plans, as applicable, will employ preferences first and select Applicants from the list of Applicants meeting the defined preference still using the neutral random selection process. Administrators of federally funded programs may only request to establish preferences included in Department planning documents, specifically the One Year Action Plan or Consolidated Plan, or as otherwise allowed for CDBG funded Activities. EXAMPLE: A HOME Program Administrator has specific program requirements to assist one in every four Households at 30% area median family income. This Administrator should use a neutral random selection process to rank Applicants, and select going down the list. When the Administrator must assist a Household at or below 30% area median income they will then go down the list and select, in order, a Household at the 30% income level.

(5) Administrators offering homeownership or rental assistance that allow the Household to relocate from their current residence must provide the Household access to mobility counseling. For homeownership, mobility counseling may be included in homeownership counseling and education trainings.

(A) Mobility counseling must, at a minimum, include easily understandable information that the Household can use in determining areas of opportunity within a service area, it must at minimum provide the following: poverty rates, average income information, school ratings, crime statistics, available area services, public transit, and other items the Administrator deems appropriate to fair housing. Administrators may use resources offered by "Community Commons" as a tool in identifying areas of opportunity in their community. This data resource can be located at <https://www.community-commons.org/>.

(B) Information provided for mobility counseling may be offered via the Administrator's website or in paper form.

(C) Administrators must collect signed certifications from Applicants acknowledging the receipt of information. Certifications may be collected as a standalone form or may be integrated into existing program forms.

(6) An analysis of the AFHMP must be conducted at the close out of the contract or Activity and attached to any subsequent AFHMP submitted for the same program.

(7) In the case of any Applicant denial, a letter providing the specific reason for the denial must be provided to the applicant within seven calendar days of the denial. Administrators must keep a record of all denied Applicants including the basis for denial. Such records must be retained for the record retention period described by the Agreement or other sources.

(8) Administrators must provide Applicants with eligibility criteria, which shall include the procedures for requesting a reasonable accommodation to the Administrator's rules, policies, practices, and services, particularly as it relates to the application process.

(9) Administrators must include the Equal Housing Opportunity logo and slogan on any commercial and other media used in marketing outreach.

(10) Copies of all outreach and media ads must be kept in a separate record and made available to the Department upon request.

(c) A copy of all reasonable accommodation requests and the Administrator's responses to such requests must be kept in addition to responses sent by the Administrator.

(d) Provisions Related to Limited English Proficiency.

(1) Administrators must have a Language Assistance Plan that ensures persons with Limited English Proficiency ("LEP") have meaningful access and an equal opportunity to participate in services, activities, programs, and other benefits.

(2) Materials that are critical for ensuring meaningful access to an Administrator's major activities and programs, including but not limited to Applications, mortgage loan applications, consent forms and notices of rights, should be translated for any population considered least likely to apply that meets the threshold requirements of Safe Harbor LEP provisions as provided by HUD and published on the Department's website. Materials considered critical for ensuring meaningful access should be outlined in the Administrator's Language Assistance Plan.

(3) If the Administrator is required to translate vital documents under Safe Harbors guidelines, they must include in their Language Assistance Plan how such translation services will be provided (e.g., whether the Administrator will use voluntary or contracted qualified translation services, telephonic services, or will identify bilingual staff that will be available to assist Applicants in completing vital documents and/or accessing vital services). If the Administrator plans to use bilingual staff in its translation services, contact information for bilingual staff members must be provided.

(4) The plan must be submitted to the Department upon request and be available for review during monitoring visits.

(5) Administrators must offer reasonable accommodations information and Fair Housing rights information in both English and Spanish, and other languages as required by the inclusion of "least likely to apply" groups to reach populations identified as least likely to apply.

(e) The plans noted in subsections (b)(1) and (d)(1) of this section, any documentation supporting the plans, and any changes made to the plans, must be kept in accordance with recordkeeping requirements for the specific Program, and in accordance with 10 TAC §1.409, relating to Records Retention.

#### *§20.13. Loan, Lien and Mortgage Requirements for Activities.*

(a) The term "borrower" in this section means the individual or Household who is borrowing funds from or through the Department for the acquisition, new construction and/or rehabilitation of a Principal Residence.

(b) The fees to be paid by the Department or borrower upfront or through the closing must be reasonable for the service rendered, in accordance with the typical fees paid in the market place for such activities and:

(1) Fees charged by third party Mortgage lenders are limited to the greater of two percent (2%) of the Mortgage Loan amount or \$3,500, including but not limited to origination, loan application, and/or underwriting fees, and

(2) Fees paid to other parties that are supported by an invoice and/or reflected on the Closing Disclosure will not be included in the limit in paragraph (1) of this subsection.

(c) Mortgage Loan Underwriting Requirements. The requirements in this paragraph shall apply to all non-forgivable amortizing Mortgage Loans.

(1) Total Debt-to-Income Ratio. The applicant's total Debt-to-Income Ratio shall not exceed 45 percent of Qualifying Income (unless otherwise allowed or dictated by a participating lender providing a fixed rate Mortgage Loan that is insured or guaranteed by the federal government or a conventional Mortgage Loan that adheres to the guidelines set by Fannie Mae and Freddie Mac.) A potential borrower's spouse who does not apply for the Mortgage Loan will be required to execute the information disclosure form(s) and the deed of trust as a "non-purchasing" spouse. The "non-purchasing" spouse will not be required to execute the note. For credit underwriting purposes all debts and obligations of the primary potential borrower(s) and the "non-purchasing" spouse will be considered in the potential borrower's total Debt-to-Income Ratio.

(2) Credit Qualifications.

(A) Potential borrowers must have a credit history that indicates reasonable ability and willingness to meet debt obligations. In order for the Department to make a reasonable determination, all borrowers must provide a credit release form. The Department may utilize credit reports if less than 90 days old as part of the loan application or obtain tri-merge credit reports on all potential borrowers submitted to the Department for approval at the time of loan application. In addition to the initial credit report, the Department may at its discretion obtain one or more additional credit reports before loan closing to ensure the potential borrower still meets Program requirements. Acceptable outstanding debt means that all accounts are paid as agreed and are current.

(B) Unacceptable Credit. Applicants meeting one or more of the following criteria will not be qualified to receive a single family Program loan from the Department.

(i) A credit history reflecting payments on any open consumer, retail and/or installment account (e.g., auto loans, signature loans, payday loans, credit cards or any other type of retail and/or installment loan, with the exception of a medical account) which have been delinquent for more than 30 days on two or more occasions within the last 12 months and must be current for the six months immediately preceding the loan application date.

(ii) A foreclosure or deed-in-lieu of foreclosure or a potential borrower in default on a mortgage at the time of the short sale any of which had occurred or been completed within the last 24 months prior to the date of loan application.

(iii) An outstanding Internal Revenue Service tax lien or any other outstanding tax liens where the potential borrower has not entered into a satisfactory repayment arrangement and been current for at least 12 months prior to the date of loan application.

(iv) A court-created or court-affirmed obligation or judgment caused by nonpayment that is outstanding at the date of loan application or any time prior to closing of the Mortgage Loan.

(v) Any account (with the exception of a medical account) that has been placed for "collection," "profit and loss" or "charged off" within the last 24 months prior to the date of loan application.

(vi) Any reported delinquency on any government debt at the date of loan application.

(vii) A bankruptcy that has been filed within the past 24 months prior to the date of loan.

(viii) Any reported child support payments in arrears unless the potential borrower has satisfactory payment arrangements for at least 12 months prior to the date of loan.

(C) Mitigation for Unacceptable Credit. The following exceptions will be considered as mitigation to the unacceptable credit criteria in subparagraph (B) of this paragraph:

(i) The potential borrower is a Domestic Farm Laborer and receives a substantial portion of his/her income from the production or handling of agriculture or aquacultural products, and has demonstrated the ability and willingness to meet debt obligations as determined by the Department.

(ii) The potential borrower has medical accounts that are delinquent or that have been placed for collection.

(iii) The potential borrower provides documentation to evidence that the outstanding delinquency or unpaid account has been paid or settled or the potential borrower has entered into a satisfactory repayment arrangement or debt management plan and been current for at least 12 consecutive months prior to the date of loan.

(iv) The potential borrower submits to the Department a written explanation of the cause for the previous delinquency, which is acceptable to the Executive Director or his or her designee.

(v) Any and all outstanding judgments must be released prior to closing of Mortgaged Loan.

(vi) If a potential borrower is currently participating in a debt management plan, the trustee or assignee provides a letter to the Department stating they are aware and agree with the potential borrower applying for a Mortgage Loan. If a potential borrower filed a bankruptcy, the bankruptcy must have been discharged or dismissed more than 12 months prior to the date of loan application and the potential borrower has re-established good credit with at least one existing or new active consumer account or credit account that is in good standing with no delinquencies for at least 12 months prior to the date of loan application.

(vii) If a Chapter 13 Bankruptcy was filed, a potential borrower must have satisfactorily made 12 consecutive payments and obtain court trustee's written approval to enter into Mortgage Loan.

(D) Liabilities.

(i) The potential borrower's liabilities include all revolving charge accounts, real estate loans, alimony, child support, installment loans, and all other debts of a continuing nature with more than ten (10) monthly payments remaining. Debts for which the potential borrower is a co-signer will be included in the total monthly obligations. For payments with ten or fewer monthly payments remaining, there shall be no late payments within the past 12 months or the debt will be included into the debt ratio calculation. Payments on installment debts which are paid off prior to funding are not included for qualification purposes. Payments on all revolving debts (e.g., credit cards, payday loans, lines of credit, unsecured loans) and certain types of installment loans that appear to be recurring in nature will be included in the Debt-to-Income Ratio calculation, even if the potential borrower intends to pay off the accounts, since the potential borrower can reuse those credit sources, unless the account is paid off and closed. If the credit report shows a revolving account with an outstanding balance but no specific minimum payment, the payment must be calculated as the greater of 5% of the outstanding balance or \$10. If the potential borrower provides a copy of the current statement reflecting the monthly payment that amount may be used for the debt ratio calculation.

(ii) Payments on any type of loan that have been deferred or have not yet commenced, including accounts in forbearance will be calculated using one percent (1%) of the outstanding balance or monthly payment reported on the potential borrower's credit report for student loans, whichever is less. Other types of loans with deferred

payment will be calculated using the monthly payment shown on the potential borrower's credit report. If the credit report does not include a monthly payment for the loan, the monthly payment shown in the loan agreement or payment statement will be utilized. If a potential borrower provides written evidence that debt will be deferred at least 12 months from the date of closing, the debt will not be included in the debt ratio calculation.

(E) Non-Traditional Credit and Insufficient Credit. Applicants must provide three lines of nontraditional credit such as utility payments, auto insurance, cell phone payments, child care or other credit, as approved by the Department, listed in their name and reflecting no more than one 30 day delinquency on payments due to nontraditional creditors within the last 12 months and meet the requirements of subparagraph (B) of this paragraph.

(F) Equal Credit Opportunity Act. The Department and/or the Administrator on behalf of the Department will comply with all federal and state laws and regulations relating to the extension of credit, including the Equal Credit Opportunity Act (ECOA) (15 U.S.C. 1691 et seq.) and its implementing regulation at 12 CFR Part 1002 (Regulation B) when qualifying potential borrower to receive a single family Program loan from the Department.

(d) The Department reserves the right to deny assistance in the event that the senior lien conditions are not to the satisfaction of the Department, as outlined in the Program Rules.

(e) Lien Position Requirements.

(1) A Mortgage Loan made by the Department shall be secured by a first lien on the real property if the Department's Mortgage Loan is the largest Mortgage Loan secured by the real property; or

(2) The Department may accept a Parity Lien position if the original principal amount of the leveraged Mortgage Loan is equal to or greater than the Department's Mortgage Loan; or

(3) The Department may accept a subordinate lien position if the original principal amount of the leveraged Mortgage Loan is at least fifty-five percent (55%) of the combined loans; however liens related to other subsidized funds provided in the form of grants and non-amortizing Mortgage Loans, such as deferred payment or Forgivable Loans, must be subordinate to the Department's payable Mortgage Loan.

(f) Loan Terms. All loan terms must meet all of the following criteria:

- (1) May not exceed a term of 30 years;
- (2) May not be for a term of less than five years; and
- (3) Interest rate may be as low as zero percent as provided in the Program Rules.

(g) Loan Assumption. A Mortgage Loan may be assumable if the Department determines the potential borrower assuming the Mortgage Loan is eligible according to the underwriting criteria of this section and complies with all Program requirements in effect at the time of the assumption.

(h) Cash Assets. Applicant with unrestricted cash assets in excess of \$25,000 must use such excess funds towards the acquisition of the property in lieu of loan proceeds. Unrestricted cash assets for this purpose are Net Family Assets defined in 24 CFR §5.603.

(i) Appraisals.

(1) An appraisal is required by the Department on each property that is part of an acquisition Activity, except for down pay-

ment assistance only, prior to closing to determine the current market value.

(2) The appraisal must conform to the Uniform Standards of Professional Appraisal Practice (USPAP) as adopted by the Appraisal Standards Board of the Appraisal Foundation.

(3) The Appraiser must have an active and current license by the Texas Appraisal Licensing and Certification Board.

(j) Combined Loan to Value. The Combined Loan to Value ratio of the property may not exceed 100 percent of the cost to acquire the property. The lien amounts of Forgivable Loans shall be included when determining the Combined Loan to Value ratio. The cost to acquire the property may exceed the appraised value only to the extent of closing costs but in no case may result in cash back to the borrower or exceed the limits under subsection (b)(1) of this section.

(k) Escrow Accounts.

(1) An escrow account must be established if:

(A) the Department holds a first lien Mortgage Loan which is due and payable on a monthly basis to the Department; or

(B) the Department holds a subordinate Mortgage Loan and the first lien lender does not require an escrow account, the Department may require an escrow account to be established.

(2) If an escrow account held by the Department is required under one of the provisions described in this subsection, then the following provisions described in subparagraphs (A) - (F) of this paragraph are applicable:

(A) The borrower must contribute monthly payments to cover the anticipated costs, as calculated by the Department, of real estate taxes, hazard and flood insurance premiums, and other related costs as applicable;

(B) Escrow reserves shall be calculated based on land and completed improvement values;

(C) The Department may require up to two months of reserves for hazard and/or flood insurance, and property taxes to be collected at the time of closing to establish the required escrow account;

(D) In addition, the Department may also require that the property taxes be prorated at the time of closing and those funds be deposited with the Department;

(E) The borrower will be required to deposit monthly funds to an escrow account with the Mortgage Loan servicer in order to pay the taxes and insurance. This will ensure that funds are available to pay for the cost of real estate taxes, insurance premiums, and other assessments when they come due;

(F) These funds are included in the borrower's monthly payment to the Department or to the servicer; and

(G) The Department will establish and administer the escrow accounts in accordance with the Real Estate Settlement and Procedures Act of 1974 (RESPA) under 12 U.S.C. §2601 and its implementing regulations at 12 CFR §1024 (Regulation X), as applicable.

(l) Requirements for Originating Mortgage Loans for the Department.

(1) Any Administrator or staff member of an Administrator originating Mortgage Loans for the Department must be properly licensed and registered as a residential mortgage loan originator in accordance with Chapters 157 and 180 of the Texas Finance Code and its implementing regulations at Chapter 81, Part 4 of Title 7 of the Texas Administrative Code, unless exempt from licensure or registration pur-

suant to the applicable state and federal laws and regulations regarding residential mortgage loans.

(A) The Department reserves the right to reject any Mortgage Loan application originated by an Administrator or individual that is not properly licensed or registered.

(B) The Department will not reimburse any expenses related to a rejected Mortgage Loan application received from an Administrator or individual that is not properly licensed or registered.

(2) Only Administrators approved by the Department may issue initial mortgage disclosures, including the Loan Estimate and other integrated disclosures for Mortgage Loans made by the Department as required under RESPA, Regulation X, the Dodd Frank Wall Street Reform and Consumer Protection Act (Dodd Frank) at 124 Stat.1375, the Truth in Lending Act (TILA) at 15 U.S.C. §1601 and its implementing regulations at 12 CFR §1026 (Regulation Z), and any applicable Texas laws, statutes, and regulations regarding consumer disclosures for residential mortgage loan transactions.

(A) The Department reserves the right to reject any application for Mortgage Loan and Loan Estimate submitted by an Administrator that has not received Department approval because the loan product as disclosed is not offered or the borrower does not qualify for that loan product.

(B) The Department will not reimburse any expenses related to a Loan Estimate or Application received from an Administrator that does not have Department approval.

(3) Only Administrators approved by the Department may issue final mortgage disclosures, including the Closing Disclosures and other integrated disclosures, for Mortgage Loans made by the Department as required under RESPA, Regulation X, Dodd Frank, TILA, Regulation ), and any applicable Texas laws, statutes, and regulations regarding consumer disclosures for residential mortgage loan transactions.

(A) The Department reserves the right to reject any Closing Disclosure issued by an Administrator or title company without Department approval.

(B) The Department reserves the right to refuse to fund a Mortgage Loan with a Closing Disclosure that does not have Department approval.

(4) The Department will not allow disbursement of any portion of the Department's Mortgage Loan for acquisition until seller delivers to the borrower a fully executed deed to the property. After execution of the deed, the deed must be recorded in the records of the county where the property is located.

(5) The first monthly mortgage payment upon closing of the Mortgage Loan with monthly scheduled payments will be due one full month after the last day of the month in which the Mortgage Loan closed. For example, if the Mortgage Loan closed on May 10th or May 30th, the first Mortgage payment will be due July 1st.

(m) Principal Residence. Loans are only permitted for potential borrowers who will occupy the property as their Principal Residence. The property must be occupied by the potential borrower within the later of 60 days after closing or completion of the final Draw of Department funds for rehabilitation or reconstruction and remain their Principal Residence as defined in the Mortgage Loan documents or in the case of Forgivable Loans, until the forgiveness period has concluded in accordance with the Mortgage documents.

(n) Life-of-Loan Flood Certifications will be required to monitor for FEMA flood map revisions and community participation status changes for the term of the Mortgage Loan.

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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Timothy K. Irvine

Executive Director

Texas Department of Housing and Community Affairs

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For further information, please call: (512) 475-4828

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**TITLE 13. CULTURAL RESOURCES**

**PART 2. TEXAS HISTORICAL COMMISSION**

**CHAPTER 26. PRACTICE AND PROCEDURE  
SUBCHAPTER B. IDENTIFICATION AND DESIGNATION OF LANDMARKS**

**13 TAC §26.8, §26.9**

The Texas Historical Commission (Commission) adopts amendments to §26.8, concerning the application process for designations for publicly-owned landmarks under the Texas Antiquities Code, and to §26.9, concerning the application process for designations for privately-owned landmarks without changes as proposed in the May 19, 2017, issue of the *Texas Register* (42 TexReg 2617). These amendments clarify the processes for casting of medallions for publicly- and privately-owned landmarks.

The Antiquities Code allows third-party nominators to submit an application for nomination for publicly-owned landmarks. In addition to the designation, nominators may also request a medallion, or marker, for the site. The adopted amendment to §26.8 clarifies the requirements for the casting of a medallion for publicly-owned landmarks.

The Texas Antiquities Code also allows a site on private land to be designated as a landmark with the written consent of the landowner. If a site on private land is designated as a landmark, the Texas Natural Resources Code §191.096 requires a medallion designating the landmark to be placed at the site. This amendment to §26.9 clarifies the process for the casting of a medallion for privately-owned landmarks.

Mark Wolfe, Executive Director, has determined that for the first five-year period the amended rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering these rules.

Mr. Wolfe has also determined that for the first five-year period the amended rule is in effect, the public benefit will be the preservation of and education about state historic resources.

Mr. Wolfe has also determined that there will be no impact on small or micro-businesses as a result of implementing these rules.

These amendments are adopted under the authority of Texas Government Code §442.005(b), which designates the Commission as the agency responsible for the administration of the Antiquities Code of Texas; Texas Government Code §442.005(q), which provides the Commission with the authority to promulgate rules to reasonably affect the purposes of the Commission; Texas Government Code §442.0051, which allows the Commission, by rule, to establish reasonable fees for commission purposes; Texas Natural Resources Code §191.092, which requires the Commission to adopt rules to establish the criteria for designation for publicly-owned landmarks; and Texas Natural Resources Code §191.096, which requires any site on private land which is designated a landmark to be marked as a landmark.

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

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 August 2, 2017.

TRD-201702901

Mark Wolfe

Executive Director

Texas Historical Commission

Effective date: August 22, 2017

Proposal publication date: May 19, 2017

For further information, please call: (512) 463-6100



## TITLE 16. ECONOMIC REGULATION

### PART 1. RAILROAD COMMISSION OF TEXAS

#### CHAPTER 1. PRACTICE AND PROCEDURE

The Railroad Commission of Texas adopts the repeal of rules in Chapter 1, Subchapters A through H, §§1.1 - 1.10, 1.21 - 1.30, 1.41 - 1.49, 1.61 - 1.65, 1.81 - 1.87, 1.101 - 1.108, 1.121 - 1.130, 1.141 - 1.152, and simultaneously adopts the following new subchapters and rules in Chapter 1: in new subchapter A, new §§1.1 - 1.10, relating to Definitions and General Provisions; in new subchapter B, new §§1.21 - 1.27, relating to Initiation of Contested Case Proceeding; in new subchapter C, new §§1.31 - 1.38, relating to Pleadings, Motions, and Other Documents; in new subchapter D, new §§1.41 - 1.45, relating to Notice and Service; in new subchapter E, new §§1.51 - 1.57, relating to Discovery; in new subchapter F, new §§1.61 - 1.68, relating to Evidence; in new Subchapter G, new §§1.101 - 1.112, relating to Hearings; and in new Subchapter H, §§1.121 - 1.131, relating to Decision; and in new Subchapter J, new §1.301, relating to Rulemaking. The repeals and new rules are adopted without changes from the proposed text as published in the March 17, 2017, issue of the Texas Register (42 TexReg 1214), except for §§1.1, 1.42, 1.52, 1.53, 1.55, 1.61, 1.126, 1.128, and 1.130, which are adopted with changes. In addition, §1.23 was withdrawn and re-proposed, and is adopted without change from the

proposed text as published in the June 23, 2017, issue of the *Texas Register* (42 TexReg 3222).

The Commission adopts the repeals and new sections to reorganize and update the rules in this chapter to clarify current Commission practice and procedures and reflect changes in statutory requirements.

Two bills passed by the 85th Legislature require non-substantive changes to §§1.1, 1.42, 1.126, 1.128, and 1.130. First, the Commission's Sunset Bill, House Bill 1818, requires that the Commission adopt a policy to encourage the use of alternative dispute resolution. That policy is reflected in subsection (c) of §1.1.

Second, Senate Bill 1446 made several non-substantive amendments to the Administrative Procedure Act (APA), Chapter 2001 of the Government Code, prompting conforming changes to §§1.42, 1.126, 1.128, and 1.130. Section 1.42 incorporates changes made to §2001.052, which permit an attachment that incorporates by reference the factual matters asserted in the complaint or petition to be included in the notice of hearing. Section 1.126 is adopted with changes to reflect amendments to §2001.142, which clarify the requirements for serving a final decision or order. Section 1.128 incorporates changes made to §2001.142, which clarify requirements and deadlines for motions for rehearing. Section 1.130 incorporates changes made to §2001.144, which clarify when a decision or order in a contested case is final.

The Commission received four comments on the proposed repeals and new rules. Two comments were from law firms, one was from a company, and one was from an individual. No associations submitted comments.

VideoPortal, an individual, submitted a general comment that the rules contain no provision for public notice to landowners and no provision for comment, protest, or a hearing on common carrier or gas utility status prior to the application being considered. The Commission disagrees that such language should be included in Chapter 1 as those topics are more appropriately addressed in substantive provisions governing the relevant application or permit, not the Commission's general rules of practice and procedure.

McElroy, Sullivan, Miller, Weber & Olmstead, LLP (McElroy Sullivan) submitted a comment on §1.3, regarding Exceptions and Suspension of Rules, suggesting that the ability to grant exceptions to "this chapter" be changed to "this part," so the Commission can retain broad power to grant exceptions to prevent waste or protect correlative rights. The Commission disagrees. "This chapter" is more appropriate because §1.3 addresses exceptions for rules governing Commission proceedings. Exceptions to substantive requirements, if available, are already provided in the applicable division's rules.

CenterPoint Energy, Inc. (Centerpoint) commented regarding proposed §1.23. Centerpoint expressed concern over a potential conflict between §1.23 and §7.45, relating to Quality of Service, and suggested that the Commission include language in §1.23 to resolve the conflict. The Commission agrees. On June 23, 2017, the Commission withdrew §1.23 as originally published and proposed a new version to address Centerpoint's concern. The new version of §1.23 includes subsection (g) to clarify that when a retail customer files a complaint against a gas utility, the parties must first attempt an informal resolution under §7.45 before utilizing the complaint procedure in §1.23. The revised version received no comments.

McElroy Sullivan suggested that §1.51 include "unless modified by the Commission's rules" in case the Texas Rules of Civil Procedure conflict with specific Commission rules. The Commission disagrees because it is not aware of any Commission rules that address the scope of discovery, as addressed in Texas Rule of Civil Procedure 192.3.

Similarly, McElroy Sullivan suggested that §1.61 include "unless modified by Commission rules" to prevent a conflict between the authorities cited in §1.61 and other Commission rules. The Commission agrees and adopts §1.61 with changes to address this comment.

McElroy Sullivan also commented on §1.124, relating to Oral Argument Before the Commission. The comment suggested a change to allow a party two minutes to respond to the presentation made by an examiner or ALJ at conference to ensure the Commissioners have relevant information to assist their decision-making process. The Commission disagrees. A decision may only be based on information that is in the record. Parties are already provided an opportunity to include any relevant information concerning a Proposal for Decision in the record by providing that information in the party's exceptions or replies.

The Commission also received several comments from Scott Douglass & McConnico LLP (SDM), which were filed after the comment deadline.

SDM commented that §1.36 creates an absolute deadline for filing motions before the contested case is included on an open meeting agenda "without offering any assurances that the parties will receive sufficient advance notice for when an item is placed on the open meeting agenda," and suggested the Commission provide notice no less than 20 days before the item is placed on the agenda. The Commission disagrees and has not included the suggested change. Chapter 1 does not contemplate filings after the Proposal for Decision is issued other than exceptions and replies, which are addressed in §1.122. The deadline in §1.36 will ensure Commission staff has sufficient time to prepare the contested case materials for presentation at conference.

SDM also commented on §1.37, suggesting that the Commission clarify the standard for granting petitions for leave to intervene. The Commission declines to include the suggested change. The language addressed in SDM's comment is existing language. Proposed §1.37 makes no substantive changes to the rights of parties or intervenors.

SDM commented on §1.51, suggesting that the Commission include language regarding discovery levels, similar to the Texas Rules of Civil Procedure, to clarify any ambiguity regarding the scope of discovery under §1.51. The Commission disagrees. The scope of discovery is covered by Texas Rule of Civil Procedure 192.3, which addresses the types of matters that are discoverable, not the methods or timelines for conducting discovery. The Commission is not aware of any Commission rules addressing the scope of discovery.

SDM commented on §1.52, suggesting the Commission move subsections (b) and (c) into another rule because they are related to a different subject matter. The Commission agrees and has reorganized sections 1.52 and 1.53 to separate language addressing discovery requests and responses from language specifically addressing depositions. Subsections (b) and (c) are stricken from §1.52 and moved to §1.53, and the language from §1.53 has been moved to new subsection (c) in §1.52. The Commission has also changed the title of §1.53 to reflect that the rule now includes the deposition-specific language from §1.52.

SDM also suggested a minor change to §1.53 to ensure consistency with §1.52. The Commission agrees and has clarified that discovery responses are due within 14 days of the date of the day the discovery request is served. That change is implemented in subsection (b) of §1.52, where the language from §1.53 was moved.

SDM commented that both sworn statements required in §1.55 are not necessary and suggested deleting the sworn statement required by subsection (c). The Commission agrees that both statements are not necessary and has reorganized §1.55 to eliminate one of the statements.

SDM's comment on §1.65 suggests the Commission include "by a party" to clarify that a late-filed exhibit may only be requested by a party and permitted by the Commissioners, the Hearings Director, or the examiner. The Commission disagrees. The proposed language allows the Commission to request an exhibit after the hearing, even if a party has not requested permission to file one.

## SUBCHAPTER A. DEFINITIONS AND GENERAL PROVISIONS

### 16 TAC §§1.1 - 1.10

The Commission adopts the repeals under Texas Government Code §2001.004, which requires a state agency to adopt rules of practice stating the nature and requirements of all available formal and informal procedures, and Texas Natural Resources Code §81.01006, which allows the Commissioners to adopt all rules necessary for the Commission's government and proceedings.

Cross-reference to statute: Texas Government Code §2001.004; Texas Natural Resources Code §81.01006.

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

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Haley Cochran

Rules Attorney, Office of General Counsel

Railroad Commission of Texas

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For further information, please call: (512) 475-1295



## SUBCHAPTER B. PLEADINGS

### 16 TAC §§1.21 - 1.30

The Commission adopts the repeals under Texas Government Code §2001.004, which requires a state agency to adopt rules of practice stating the nature and requirements of all available formal and informal procedures, and Texas Natural Resources Code §81.01006, which allows the Commissioners to adopt all rules necessary for the Commission's government and proceedings.

Cross-reference to statute: Texas Government Code §2001.004; Texas Natural Resources Code §81.01006.

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## SUBCHAPTER C. DOCKETING, NOTICE, AND SERVICE

### 16 TAC §§1.41 - 1.49

The Commission adopts the repeals under Texas Government Code §2001.004, which requires a state agency to adopt rules of practice stating the nature and requirements of all available formal and informal procedures, and Texas Natural Resources Code §81.01006, which allows the Commissioners to adopt all rules necessary for the Commission's government and proceedings.

Cross-reference to statute: Texas Government Code §2001.004; Texas Natural Resources Code §81.01006.

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## SUBCHAPTER D. PARTIES AND INTERVENTION

### 16 TAC §§1.61 - 1.65

The Commission adopts the repeals under Texas Government Code §2001.004, which requires a state agency to adopt rules of practice stating the nature and requirements of all available formal and informal procedures, and Texas Natural Resources Code §81.01006, which allows the Commissioners to adopt all rules necessary for the Commission's government and proceedings.

Cross-reference to statute: Texas Government Code §2001.004; Texas Natural Resources Code §81.01006.

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## SUBCHAPTER E. DISCOVERY

### 16 TAC §§1.81 - 1.87

The Commission adopts the repeals under Texas Government Code §2001.004, which requires a state agency to adopt rules of practice stating the nature and requirements of all available formal and informal procedures, and Texas Natural Resources Code §81.01006, which allows the Commissioners to adopt all rules necessary for the Commission's government and proceedings.

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## SUBCHAPTER F. EVIDENCE IN CONTESTED CASES

### 16 TAC §§1.101 - 1.108

The Commission adopts the repeals under Texas Government Code §2001.004, which requires a state agency to adopt rules of practice stating the nature and requirements of all available formal and informal procedures, and Texas Natural Resources Code §81.01006, which allows the Commissioners to adopt all rules necessary for the Commission's government and proceedings.

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## SUBCHAPTER G. HEARINGS

### 16 TAC §§1.121 - 1.130

The Commission adopts the repeals under Texas Government Code §2001.004, which requires a state agency to adopt rules of practice stating the nature and requirements of all available formal and informal procedures, and Texas Natural Resources Code §81.01006, which allows the Commissioners to adopt all rules necessary for the Commission's government and proceedings.

Cross-reference to statute: Texas Government Code §2001.004; Texas Natural Resources Code §81.01006.

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## SUBCHAPTER H. DECISION

### 16 TAC §§1.141 - 1.152

The Commission adopts the repeals under Texas Government Code §2001.004, which requires a state agency to adopt rules of practice stating the nature and requirements of all available formal and informal procedures, and Texas Natural Resources Code §81.01006, which allows the Commissioners to adopt all rules necessary for the Commission's government and proceedings.

Cross-reference to statute: Texas Government Code §2001.004; Texas Natural Resources Code §81.01006.

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## SUBCHAPTER A. DEFINITIONS AND GENERAL PROVISIONS

### 16 TAC §§1.1 - 1.10

The Commission adopts the new rules under Texas Government Code §2001.004, which requires a state agency to adopt rules of practice stating the nature and requirements of all available formal and informal procedures, and Texas Natural Resources Code §81.01006, which allows the Commissioners to adopt all rules necessary for the Commission's government and proceedings.

Cross-reference to statute: Texas Government Code §2001.004; Texas Natural Resources Code §81.01006.

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*§1.1. Purpose, Scope, and Conflict with Other Rules.*

(a) This chapter establishes a system for practice and procedure before the Railroad Commission of Texas to enable the just disposition of proceedings and public participation in contested case proceedings pursuant to the Administrative Procedure Act, Texas Government Code, Chapter 2001.

(b) This chapter governs the institution, conduct, and determination of Commission proceedings required or permitted by law, whether instituted by order of the Commission or by filing an application, complaint, petition, or other pleading. This chapter does not and shall not be construed to enlarge, diminish, modify, or otherwise alter the jurisdiction, powers, or authority of the Commission or the substantive rights of any person or agency.

(c) It is the policy of the Commission to encourage the fair and prompt resolution of internal and external disputes under the Commission's jurisdiction through alternative dispute resolution (ADR). ADR includes any procedure or combination of procedures described by Texas Civil Practice and Remedies Code Chapter 154, such as mediation, arbitration, and mini-trial.

(d) This chapter sets forth the general rules of practice and procedure for proceedings before the Commission. If a general provision of these rules conflicts with a statutory or other special provision governing the same proceeding, and the conflict is irreconcilable, then the special provision controls.

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## SUBCHAPTER B. INITIATION OF CONTESTED CASE PROCEEDING

### 16 TAC §§1.21, 1.22, 1.24 - 1.27

The Commission adopts the new rules under Texas Government Code §2001.004, which requires a state agency to adopt rules of practice stating the nature and requirements of all available formal and informal procedures, and Texas Natural Resources Code §81.01006, which allows the Commissioners to adopt all rules necessary for the Commission's government and proceedings.

Cross-reference to statute: Texas Government Code §2001.004; Texas Natural Resources Code §81.01006.

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### 16 TAC §1.23

The Commission adopts the new rules under Texas Government Code §2001.004, which requires a state agency to adopt rules of practice stating the nature and requirements of all available formal and informal procedures, and Texas Natural Resources Code §81.01006, which allows the Commissioners to adopt all rules necessary for the Commission's government and proceedings.

Cross-reference to statute: Texas Government Code §2001.004; Texas Natural Resources Code §81.01006.

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## SUBCHAPTER C. PLEADINGS, MOTIONS, AND OTHER DOCUMENTS

### 16 TAC §§1.31 - 1.38

The Commission adopts the new rules under Texas Government Code §2001.004, which requires a state agency to adopt rules of practice stating the nature and requirements of all available formal and informal procedures, and Texas Natural Resources Code §81.01006, which allows the Commissioners to adopt all rules necessary for the Commission's government and proceedings.

Cross-reference to statute: Texas Government Code §2001.004; Texas Natural Resources Code §81.01006.

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## SUBCHAPTER D. NOTICE AND SERVICE

### 16 TAC §§1.41 - 1.45

The Commission adopts the new rules under Texas Government Code §2001.004, which requires a state agency to adopt rules of practice stating the nature and requirements of all available formal and informal procedures, and Texas Natural Resources Code §81.01006, which allows the Commissioners to adopt all rules necessary for the Commission's government and proceedings.

Cross-reference to statute: Texas Government Code §2001.004; Texas Natural Resources Code §81.01006.

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§1.42. *Notice of Hearing.*

(a) In a contested case, each party is entitled to an opportunity:

(1) for hearing after reasonable notice of not less than 10 days; and

(2) to respond and to present evidence and argument on each issue involved in the case.

(b) Each notice of hearing shall include the following:

- (1) a statement of the time, place, and nature of the hearing;
- (2) a statement of the legal authority and jurisdiction under which the hearing is to be held;
- (3) a reference to the particular sections of the statutes and rules involved;
- (4) either a short, plain statement of the factual matters asserted or an attachment that incorporates by reference the factual matters asserted in the complaint or petition; and
- (5) any other statements required by law or directed by the Commission.

(c) If the Commission or a party is unable to state the factual matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. On timely written application, a more definite and detailed statement of the facts shall be submitted in writing to the Hearings Division, which shall issue an amended notice not less than seven days prior to the date set for the hearing.

(d) In a proceeding in which the Commission has the burden of proof, if the Commission intends to rely on a section of a statute or rule not previously referenced in the notice of hearing, the Hearings Division shall amend the notice to refer to the section of the statute or rule not less than seven days before the date set for the hearing. This subsection does not prohibit the Commission from filing an amended notice of hearing after the hearing has commenced. If the Commission files an amended notice of hearing after the hearing has commenced, the examiner shall grant a continuance of at least seven days at the request of any other party.

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## SUBCHAPTER E. DISCOVERY

### 16 TAC §§1.51 - 1.57

The Commission adopts the new rules under Texas Government Code §2001.004, which requires a state agency to adopt rules of practice stating the nature and requirements of all available formal and informal procedures, and Texas Natural Resources Code §81.01006, which allows the Commissioners to adopt all rules necessary for the Commission's government and proceedings.

Cross-reference to statute: Texas Government Code §2001.004; Texas Natural Resources Code §81.01006.

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#### §1.52. *Discovery Requests and Responses.*

(a) Requests for discovery and responses shall be served using a method of service authorized by §1.45 of this title (relating to

Service in Protested Contested Cases) and should not be filed with the Commission.

(b) Except for good cause shown, all requests for discovery shall be served at least 20 days prior to the hearing unless otherwise agreed by the parties.

(c) Responses to discovery requests shall be served within 14 days after the date of service of the request. The examiner or the Hearings Director may alter this deadline on the request of any party.

#### §1.53. *Request for Deposition.*

(a) If the parties disagree on the scheduling or scope of a deposition, a deposition request and proposed deposition discovery order shall be filed with the Docket Services Section and the examiner will set the matter for consideration at a prehearing conference.

(b) The deposition shall be returned to the Commission as provided in the APA, §2001.100.

#### §1.55. *Discovery Orders.*

(a) Discovery orders generally. The Hearings director or the examiner may issue protective orders, orders compelling discovery responses, and orders creating a discovery control plan. Requests for discovery orders shall contain a sworn statement that, after due diligence, the desired information cannot be obtained through informal means, and that good cause exists for requiring discovery. The request for a discovery order may be denied:

(1) if the request is untimely or unduly burdensome in light of the complexity of the proceeding;

(2) if the requesting party has failed to exercise due diligence;

(3) if the discovery would result in undue cost to the parties or unnecessary delay in the proceeding; or

(4) for other good cause in the interest of justice.

(b) Motion to compel. Unless otherwise ordered, a party alleging another party's failure to comply with discovery requests shall file a sworn motion to compel with the Docket Services Section at least 10 days prior to the hearing on the merits.

(c) Deposition discovery orders. The Hearings Director or the examiner is authorized to issue a subpoena to take a deposition, which shall require that the witness appear and produce, at the time the deposition is taken, books, records, papers, or other objects that may be necessary and proper for the purposes of the proceeding.

(d) In camera inspection. The Hearings Director or the examiner may conduct in camera inspections of materials when requested by a party or when necessary to determine facts required to issue appropriate discovery orders.

(e) Review by Commissioners. Any discovery order issued by the examiner or the Hearings Director is subject to review by an appeal to the Commissioners. Any party that chooses to appeal a discovery order shall follow the requirements set forth in §1.38 of this title (relating to Interim Rulings and Appeals of Interim Rulings). A discovery order does not constitute a final order or decision.

(f) Compliance. The Commission may enforce compliance with any discovery order or subpoena pursuant to Texas Government Code §§2001.089, 2001.094, and 2001.201, and the Texas Natural Resources Code, §81.053 and §81.064, or as otherwise permitted by law.

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## SUBCHAPTER F. EVIDENCE

### 16 TAC §§1.61 - 1.68

The Commission adopts the new rules under Texas Government Code §2001.004, which requires a state agency to adopt rules of practice stating the nature and requirements of all available formal and informal procedures, and Texas Natural Resources Code §81.01006, which allows the Commissioners to adopt all rules necessary for the Commission's government and proceedings.

Cross-reference to statute: Texas Government Code §2001.004; Texas Natural Resources Code §81.01006.

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#### §1.61. *Rules of Evidence.*

The Texas rules of evidence and Texas law with regard to evidence in nonjury civil cases shall apply in contested cases unless Commission rules specify otherwise. Irrelevant, immaterial, or unduly repetitious evidence may be excluded. When necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not admissible thereunder may nevertheless be admitted by the examiner (except where precluded by statute) if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. The rules of privilege recognized by law shall apply in Commission proceedings. Objections to evidentiary offers may be made and shall be noted in the record.

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## SUBCHAPTER G. HEARINGS

### 16 TAC §§1.101 - 1.112

The Commission adopts the new rules under Texas Government Code §2001.004, which requires a state agency to adopt rules of practice stating the nature and requirements of all available formal and informal procedures, and Texas Natural Resources Code §81.01006, which allows the Commissioners to adopt all rules necessary for the Commission's government and proceedings.

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## SUBCHAPTER H. DECISION

### 16 TAC §§1.121 - 1.131

The Commission adopts the new rules under Texas Government Code §2001.004, which requires a state agency to adopt rules of practice stating the nature and requirements of all available formal and informal procedures, and Texas Natural Resources Code §81.01006, which allows the Commissioners to adopt all rules necessary for the Commission's government and proceedings.

Cross-reference to statute: Texas Government Code §2001.004; Texas Natural Resources Code §81.01006.

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#### §1.126. *Final Decisions and Orders.*

(a) A final decision or final order adverse to any party in a contested case shall be in writing and shall be signed by two or more Commissioners. Final decisions or final orders shall include findings of fact and conclusions of law separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. If in accordance with §1.121 of this title (relating to Proposals for Decision) a party submits proposed findings of fact or conclusions of law as required by the examiner, the decision shall include a ruling or order on each proposed finding. All parties shall be notified of any decision or order pursuant to subsections (b) and (c) of this section.

(b) When a decision or order in a contested case that may become final under Texas Government Code, §2001.144 is signed or when an order ruling on a motion for rehearing is signed, the Commission shall deliver or send a copy of the decision or order to each party in accordance with subsection (c) of this section. The Commission shall keep a record documenting the provisions of the notice provided to each party.

(c) Methods of notice. The Commission shall notify each party to a contested case of any decision or order of the Commission using at least one of the following methods of service:

- (1) personal service;
- (2) if agreed to by the party to be notified, service by email to the party's current email address or fax number of the party's authorized representative, or of the party if the party is not represented;
- (3) service by first class, certified, or registered mail, or commercial delivery service sent to the last known address of the

party's authorized representative or of the party if the party is not represented; or

(4) service by a method required by a rule or order of the Commission.

*§1.128. Motions for Rehearing.*

(a) Motions for rehearing, if filed, must be filed by a party not later than the 25th day after the decision or order that is the subject of the motion is signed, unless the time for filing the motion for rehearing has been extended under subsection (e) of this section. A motion for rehearing must identify with particularity the findings of facts or conclusions of law that are the subject of the complaint and any evidentiary or legal ruling claimed to be erroneous. The motion must also state the legal and factual basis for the claimed error. On filing of the motion for rehearing, the movant shall serve copies of the motion on all other parties in accordance with §1.45 of this title (relating to Service in Protested Contested Cases).

(b) Replies to motions for rehearing must be filed not later than the 40th day after the date the decision or order that is subject of the motion is signed, or not later than the 10th day after the date a motion for rehearing is filed if the time for filing the motion for rehearing has been extended pursuant to subsection (e) of this section. On filing of the reply, copies of the reply shall be served on all other parties in accordance with §1.45 of this title.

(c) Motions for rehearing and replies to motions for rehearing may not be filed by fax or email unless permitted by the examiner or the Hearings director. The number of copies required to be filed will be determined by the examiner as noted in the notice to the parties issued with the proposal for decision. All copies shall be unstapled and three-hole punched for a three-ring binder.

(d) Commissioners shall act on a motion for rehearing not later than the 55th day after the date the decision or order that is the subject of the motion is signed or the motion for rehearing is overruled by operation of law.

(e) The deadline for filing a motion for rehearing may be extended as follows:

(1) The Commission may, on its own initiative or on the motion of any party for cause shown, by written order, extend the period of time for filing these motions and replies and for taking Commission action, provided that the Commission extends the time or takes the action not later than the 10th day after the date the period for filing a motion or reply or taking agency action expires. An extension shall not extend the period for Commission action beyond the 100th day after the date the decision or order that is the subject of the motion is signed. In the event of an extension, the motion for rehearing is overruled by operation of law on the date fixed by the order or, in the absence of a fixed date, on the 100th day after the decision or order that is the subject of the motion is signed;

(2) The parties may, by agreement and with the approval of the Commission, provide for a modification of the time periods provided in this section; or

(3) Pursuant to Texas Government Code, §2001.142.

(f) A subsequent motion for rehearing is not required after the Commission rules on a motion for rehearing unless the order disposing of the original motion for rehearing:

(1) modifies, corrects, or reforms in any respect the decision or order that is the subject of the complaint, other than a typographical, grammatical, or other clerical change identified as such by the agency in the order, including any modification, correction, or reformation that does not change the outcome of the contested case; or

(2) vacates the decision or order that is the subject of the motion and provides for a new decision or order.

(g) A subsequent motion for rehearing required by subsection (f) of this section must be filed not later than the 25th day after the date the order disposing of the original motion for rehearing is signed unless the deadline for filing the motion has been extended pursuant to applicable law.

*§1.130. Finality of Decisions or Orders.*

(a) A decision or order in a contested case is final:

(1) if a motion for rehearing is not filed on time, on the expiration of the period for filing a motion for rehearing;

(2) if a motion for rehearing is timely filed, on the date:

(A) the order denying the latest filed motion for rehearing is signed; or

(B) the latest filed motion for rehearing is overruled by operation of law;

(3) if the Commission finds that an imminent peril to the public health, safety, or welfare requires immediate effect of a decision or order, on the date the decision or order is signed, provided that the agency incorporates in the decision or order a factual and legal basis establishing an imminent peril to the public health, safety, or welfare; or

(4) on:

(A) the date specified in the decision or order for a case in which all parties agree to the specified date in writing or on the record; or

(B) if the agreed specified date is before the date the decision or order is signed, the date the decision or order is signed.

(b) If a decision or order is final under subsection (a)(3) of this section, the Commission shall recite in the decision or order the finding made under that subsection and the fact that the decision or order is final and effective on the date signed.

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## SUBCHAPTER J. RULEMAKING

### 16 TAC §1.301

The Commission adopts the new rules under Texas Government Code §2001.004, which requires a state agency to adopt rules of practice stating the nature and requirements of all available formal and informal procedures, and Texas Natural Resources Code §81.01006, which allows the Commissioners to adopt all rules necessary for the Commission's government and proceedings.

Cross-reference to statute: Texas Government Code §2001.004; Texas Natural Resources Code §81.01006.

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## TITLE 28. INSURANCE

### PART 1. TEXAS DEPARTMENT OF INSURANCE

#### CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

##### SUBCHAPTER C. TEXAS MEDICAL LIABILITY INSURANCE UNDERWRITING ASSOCIATION

###### 28 TAC §5.2004

The Texas Department of Insurance adopts amendments to 28 TAC §5.2004, concerning the Texas Medical Liability Insurance Underwriting Association's (JUA) Plan of Operation (Plan). TDI adopts the amendments without changes to the proposed text published in the June 23, 2017, issue of the *Texas Register* (42 TexReg 3250). TDI held a hearing on July 7, 2017, but did not receive any oral or written comments.

**REASONED JUSTIFICATION.** The Texas Legislature formed the JUA in 1975 to be the residual market for medical liability insurance. Senate Bill 18, 84th Legislature, Regular Session (2015) enacted Insurance Code Chapter 2203, Subchapter J, which requires the commissioner of insurance to determine whether a necessity exists to suspend the JUA's authority to issue new insurance policies.

To evaluate the JUA in response to SB 18, TDI requested information from the JUA on its operations and current policyholders. After reviewing the information, TDI determined that amendments to the Plan are necessary to help the JUA efficiently operate as the residual market for medical liability insurance. TDI adopts four amendments to the Plan:

1. Require that eligibility be based on two written rejections by carriers.
2. Require that eligibility for reapplication be based on two written rejections by carriers.
3. Remove the subsection that allows higher rates to be a criterion for eligibility.
4. Prohibit accepting applicants that owe deductibles to the JUA.

This order also updates §5.2004(a)(2). Before the amendment, §5.2004(a)(2) stated that the JUA could not issue policies after the date fixed in the Texas Medical Liability Insurance Association Act for a plan of suspension to become effective and operative. The date fixed in the Act was December 31, 1985. No plan of suspension became effective on that date, so that part of the section is obsolete. The amendment removes the reference to the date, but retains the requirement that if the JUA is suspended it cannot issue a policy with an effective date later than the date of suspension.

This order adopts updated citations to the Insurance Code to reflect changes made by the nonsubstantive recodification of the Insurance Code by House Bill 2922, 78th Legislature, Regular Session (2003), and HB 2017, 79th Legislature, Regular Session (2005). The order also adopts proposed nonsubstantive editorial and formatting changes to conform the rule text to TDI's current writing style and improve the rules clarity.

#### Discussion of Amendments

1. Require that eligibility be based on two written rejections by carriers. TDI amends 28 TAC §5.2004(b)(4)(A)(ii) and §5.2004(b)(4)(A)(iii) to specify a single way that applicants may show their inability to obtain coverage: by submitting written rejections from two voluntary market carriers. A carrier may be an insurer or a self-insurance trust created under Insurance Code Chapter 2212 (formerly Insurance Code Article 21.49-4).

Under §5.2004(b)(4)(A)(ii) and §5.2004(b)(4)(A)(iii), applicants seeking coverage from the JUA must provide evidence that they are unable to obtain coverage in the voluntary market. Evidence includes two rejections from carriers that provide the type of coverage applied for, and prior to the amendment, the rejections could be shown by valid notification from the carriers or by sworn affidavit of the applicant or applicant's agent. The amendment removes the sworn affidavit option.

The JUA's purpose is to serve as the residual market for medical liability insurance, available for licensed physicians and health care providers that cannot obtain coverage in the voluntary market. Requiring applicants to provide two written rejections as proof of the inability to obtain coverage will help ensure that the JUA will accept only applicants eligible for coverage. In addition, this will enable the JUA to document this information for each applicant.

2. Require that eligibility for reapplication be based on two written rejections by carriers. Section 5.2004(b)(4)(A)(ii) and §5.2004(b)(4)(A)(iii) require applicants to show their inability to obtain coverage from the voluntary market. In practice, the JUA also required this proof on reapplication, but that requirement was not expressly stated in the Plan.

For consistency with the JUA practices, TDI amends the Plan to expressly require that applicants show their inability to obtain coverage every time they reapply to the JUA. Policyholders must reapply at the end of their policy term. As the Plan is amended, on each reapplication for a policy applicants must be required to go through the same process that is required on their initial application. Because the JUA's purpose is to be a residual market, applicants should have to provide proof of rejection each time they apply for coverage, regardless of their prior coverage in the JUA.

3. Remove higher rates as a criterion for eligibility. TDI amends the Plan so that, in determining eligibility for JUA coverage, applicants are not considered rejected from a carrier if they are

accepted in the voluntary market at a rate higher than that available from the JUA. Prior to amendment, under §5.2004(b)(4)(B) it was considered a rejection if the applicant was accepted in the voluntary market at a higher rate than the rate offered by the JUA. The JUA's function is to operate as a residual market, not to be in price competition with the voluntary market. Therefore, higher prices should not be considered a rejection, and §5.2004(b)(4)(B) is amended to reflect this.

The amendment to remove higher rates from carriers as a reason for rejection does not apply to nursing homes and assisted living facilities. Insurance Code §2203.102 and 28 TAC §5.2004(b)(4)(A)(iii) require that nursing homes and assisted living facilities applying for coverage must show the inability to obtain substantially equivalent coverage and rates. Accordingly, nursing homes and assisted living facilities may still consider a higher price from a carrier in the voluntary market as a rejection from that carrier.

4. Prohibit accepting applicants that owe deductibles. TDI amends the JUA's underwriting standards by adding new §5.2004(b)(4)(A)(ix) to prohibit the JUA from accepting applicants that owe the JUA all or part of a deductible. Insurance Code §2203.104 and 28 TAC §5.2004(b)(4)(A)(viii) require that an applicant has no unpaid, uncontested premium, or assessment due from prior insurance. Amending the Plan to include unreimbursed deductibles will similarly allow the JUA to decline coverage to applicants that owe the JUA all or part of a deductible.

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

**STATUTORY AUTHORITY.** TDI adopts the amendments under Insurance Code Article 21.49-3, Sec. 12 and Sec. 13 and Insurance Code §§2203.053, 2203.054, 2203.101, 2203.102, 2203.104, and 36.001.

Insurance Code Article 21.49-3, Sec. 12, provides that at any time TDI finds that the association is no longer needed to accomplish the purposes for which it was created, TDI may issue an order suspending the association as of a certain date stated in the order.

Insurance Code Article 21.49-3, Sec. 13, provides that if TDI issues an order suspending the association, no policies may be issued by the association after the date of suspension.

Insurance Code §2203.053 requires that the plan of operation contain provisions relating to the establishment of necessary facilities; the association's management; the assessment of members and policyholders to defray losses and expenses; the administration of the policyholder's stabilization reserve funds; commission arrangements; reasonable and objective underwriting standards; the acceptance, assumption, and cession of reinsurance; the appointment of servicing insurers; and procedures for determining amounts of insurance to be provided by the association.

Insurance Code §2203.054 allows the commissioner to direct amendments to the association's plan of operation.

Insurance Code §2203.101 directs the commissioner to establish by order the categories of physicians and health care providers that are eligible to obtain insurance coverage from the association.

Insurance Code §2203.102 provides that a nursing home or assisted living facility not otherwise eligible for coverage under In-

surance Code §2203.101 is eligible for that coverage if it can show it made a verifiable effort to obtain coverage from a carrier in the voluntary market and was unable to obtain substantially equivalent coverage and rates.

Insurance Code §2203.104 states that a physician or health care provider included in a category eligible for insurance coverage by the association is entitled to apply to the association for coverage. On receipt of the premium and the policyholder's stabilization reserve fund charge, the association must issue a medical liability insurance policy if the association determines that the applicant meets the underwriting standards of the association prescribed by the plan of operation, and there is no unpaid and uncontested premium, charge, or assessment due from the applicant.

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

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

Filed with the Office of the Secretary of State on August 7, 2017.

TRD-201702962

Norma Garcia

General Counsel

Texas Department of Insurance

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Proposal publication date: June 23, 2017

For further information, please call: (512) 676-6584



## **TITLE 37. PUBLIC SAFETY AND CORRECTIONS**

### **PART 13. TEXAS COMMISSION ON FIRE PROTECTION**

#### **CHAPTER 425. FIRE SERVICE INSTRUCTORS**

##### **37 TAC §§425.3, 425.5, 425.7, 425.9**

The Texas Commission on Fire Protection (the commission) adopts amendments to Chapter 425, Fire Service Instructors, concerning, §425.3, Minimum Standards for Fire Service Instructor I Certification, §425.5, Minimum Standards for Fire Service Instructor II Certification, §425.7, Minimum Standards for Fire Service Instructor III Certification, and §425.9, Minimum Standards for Master Fire Service Instructor III Certification. The amendments are adopted without changes to the proposed text as published in the May 26, 2017, *Texas Register* (42 TexReg 2799) and will not be republished.

The amendments are adopted to delete obsolete language and make other minor language changes for clarification and consistency.

The adopted amendments correct a reference to another section of commission rules and will provide clarification and consistent rules regarding Fire Service Instructors.

No comments were received from the public regarding adoption of the amendments.

The amendments are adopted under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to adopt rules for the administration of its powers and duties; §419.032 which allows the commission to appoint fire protection personnel.

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 August 3, 2017.

TRD-201702911

Tim Rutland

Executive Director

Texas Commission on Fire Protection

Effective date: August 23, 2017

Proposal publication date: May 26, 2017

For further information, please call: (512) 936-3812



## CHAPTER 431. FIRE INVESTIGATION

The Texas Commission on Fire Protection (the commission) adopts amendments to Chapter 431, Fire Investigation, concerning, Subchapter A, Minimum Standards for Arson Investigator Certification, §431.3, Minimum Standards for Basic Arson Investigator Certification, §431.11, Minimum Standards for Arson Investigator Certification for Law Enforcement Personnel, Subchapter B, Minimum Standards For Fire Investigator Certification, §431.201, Minimum Standards for Fire Investigation Personnel, §431.203, Minimum Standards for Fire Investigator Certification, and §431.207, Minimum Standards for Advanced Fire Investigator Certification. The amendments are adopted without changes to the proposed text as published in the May 26, 2017, *Texas Register* (42 TexReg 2805) and will not be republished.

The amendments are adopted to clarify requirements for a person to obtain an Arson or Fire Investigator Certification.

The adopted amendments will provide clarification and consistent rules regarding Arson and Fire Investigator Certification.

No comments were received from the public regarding adoption of the amendments.

### SUBCHAPTER A. MINIMUM STANDARDS FOR ARSON INVESTIGATOR CERTIFICATION

#### 37 TAC §431.3, §431.11

The amendments are adopted under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to adopt rules for the administration of its powers and duties; §419.032 which allows the commission to appoint fire protection personnel.

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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Tim Rutland

Executive Director

Texas Commission on Fire Protection

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For further information, please call: (512) 936-3812



## SUBCHAPTER B. MINIMUM STANDARDS FOR FIRE INVESTIGATOR CERTIFICATION

#### 37 TAC §§431.201, 431.203, 431.207

The amendments are adopted under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to adopt rules for the administration of its powers and duties; §419.032 which allows the commission to appoint fire protection personnel.

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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Tim Rutland

Executive Director

Texas Commission on Fire Protection

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For further information, please call: (512) 936-3812



## CHAPTER 443. CERTIFICATION CURRICULUM MANUAL

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

The Texas Commission on Fire Protection (the commission) adopts amendments to Chapter 443, Certification Curriculum Manual, concerning, §443.1, Curriculum Approval by the Fire Fighter Advisory Committee, §443.3, Curriculum Approval by the Texas Commission on Fire Protection, §443.5, Effective Date of New Curricula or Changes to Curricula Required by Law or Rule, §443.7, Effective Date of New Curricula or Changes or Revisions to Existing Curricula Which Are Voluntary, and §443.9, National Fire Protection Association Standard. The amendments are adopted without changes to the proposed text as published in the May 26, 2017, *Texas Register*, (42 TexReg 2806) and will not be republished.

The amendments are adopted to reflect new procedures for curricula development for the commission's voluntary certifications.

The adopted amendments will allow training facilities to be able to design curricula more closely suited to local needs, thus expediting the training and credentialing of personnel charged with protecting the public.

No comments were received from the public regarding adoption of the amendments.

The amendments are adopted under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to adopt rules for the administration of its powers and du-

ties; §419.032 which allows the commission to appoint fire protection personnel.

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 August 3, 2017.

TRD-201702914

Tim Rutland

Executive Director

Texas Commission on Fire Protection

Effective date: August 23, 2017

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For further information, please call: (512) 936-3812



## CHAPTER 453. HAZARDOUS MATERIALS

The Texas Commission on Fire Protection (the commission) adopts amendments to Chapter 453, Hazardous Materials concerning, Subchapter A, Minimum Standards for Hazardous Materials Technician, §453.3, Minimum Standards for Hazardous Materials Technician Certification, §453.5, Examination Requirements, and §453.7, International Fire Service Accreditation Congress (IFSAC) Seal, Subchapter B, Minimum Standards For Hazardous Materials Incident Commander, §453.203, Minimum Standards for Hazardous Materials Incident Commander, and §453.205, Examination Requirements. The amendments are adopted without changes to the proposed text as published in the May 26, 2017, *Texas Register* (42 TexReg 2808) and will not be republished.

The amendments are adopted to reflect new procedures for curricula development for the commission's voluntary certifications.

The adopted amendments will allow training facilities to be able to design curricula more closely suited to local needs, thus expediting the training and credentialing of personnel charged with protecting the public.

No comments were received from the public regarding adoption of the amendments.

### SUBCHAPTER A. MINIMUM STANDARDS FOR HAZARDOUS MATERIALS TECHNICIAN

#### 37 TAC §§453.3, 453.5, 453.7

The amendments are adopted under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to adopt rules for the administration of its powers and duties; §419.032 which allows the commission to appoint fire protection personnel.

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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Tim Rutland

Executive Director

Texas Commission on Fire Protection

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For further information, please call: (512) 936-3812



## SUBCHAPTER B. MINIMUM STANDARDS FOR HAZARDOUS MATERIALS INCIDENT COMMANDER

#### 37 TAC §453.203, §453.205

The amendments are adopted under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to adopt rules for the administration of its powers and duties; §419.032 which allows the commission to appoint fire protection personnel.

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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Tim Rutland

Executive Director

Texas Commission on Fire Protection

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For further information, please call: (512) 936-3812



## CHAPTER 455. MINIMUM STANDARDS FOR WILDLAND FIRE PROTECTION CERTIFICATION

#### 37 TAC §455.3

The Texas Commission on Fire Protection (the commission) adopts amendments to Chapter 455, Minimum Standards for Wildland Fire Protection Certification, concerning, §455.3, Minimum Standards for Basic Wildland Fire Protection Certification. The amendments are adopted with changes to the proposed text as published in the May 26, 2017, *Texas Register*, (42 TexReg 2809).

The amendments are adopted to reflect new procedures for curricula development for the commission's voluntary certifications.

The adopted amendments will allow training facilities to be able to design curricula more closely suited to local needs, thus expediting the training and credentialing of personnel charged with protecting the public.

No comments were received from the public regarding adoption of the amendments.

The amendments are adopted under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to adopt rules for the administration of its powers and duties; §419.032 which allows the commission to appoint fire protection personnel.



§455.3 *Minimum Standards for Basic Wildland Fire Protection Certification.*

In order to be certified as Basic Wildland Fire Protection personnel, an individual must:

(1) possess valid documentation of accreditation from the International Fire Service Accreditation Congress as Wildland Fire Fighter Level I; or

(2) complete a commission approved Basic Wildland Fire Protection program and successfully pass the commission examination as specified in Chapter 439 of this title (relating to Examinations for Certification). An approved Basic Wildland Fire Protection training program shall consist of one of the following:

(A) completion of the commission approved Basic Wildland Fire Fighter training program, as specified in the applicable chapter of the commission's Certification Curriculum Manual; or

(B) completion of the following National Wildfire Coordinating Group (NWCG) courses:

(i) S-130: Firefighter Training;

(ii) S-190: Introduction to Wildland Fire Behavior;

(iii) L-180: Human Factors on the Fireline; and

(iv) I-100: Introduction to the Incident Command System, or an equivalent basic incident command system course such as NIMS IS-100.

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 August 3, 2017.

TRD-201702917

Tim Rutland

Executive Director

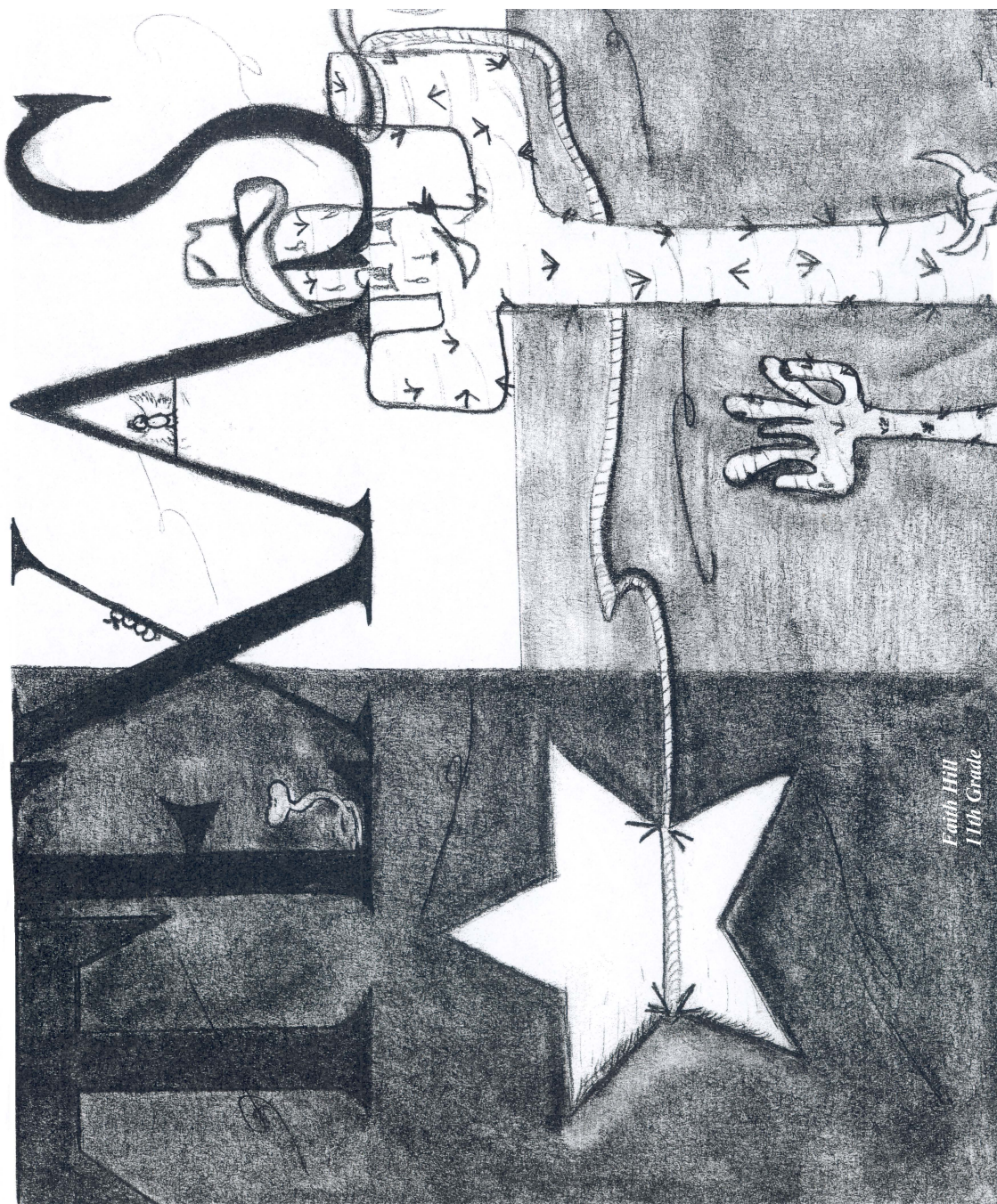
Texas Commission on Fire Protection

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For further information, please call: (512) 936-3812

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Faith Hill  
11th Grade

# TRANSFERRED RULES

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The Government Code, §2002.058, authorizes the Secretary of State to remove or transfer rules within the Texas Administrative Code when the agency that promulgated the rules is abolished. The Secretary of State will publish notice of rule transfer or removal in this section of the *Texas Register*. The effective date of a rule transfer is the date set by the legislature, not the date of publication of notice. Proposed or emergency rules are not subject to administrative transfer.

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## **Texas Department of Licensing and Regulation**

### Rule Transfer

During the 85th Legislative Session, the Texas Legislature passed House Bill 3078 (HB 3078), which transferred regulation of podiatry from the Texas State Board of Podiatric Medical Examiners to the Texas Commission of Licensing and Regulation and the Texas Department of Licensing and Regulation.

To comply with HB 3078, the administrative rules for the Texas State Board of Podiatric Medical Examiners found in Title 22, Part 18 of the Texas Administrative Code will be transferred to Title 16, Part 4. The transfer is effective September 1, 2017.

Figure: 16 TAC Chapter 130

<b>Current Rules</b> <b>Title 22. Examining Boards</b> <b>Part 18. Texas State Board of Podiatric Medical Examiners</b>	<b>Move to</b> <b>Title 16. Texas Department of Licensing and Regulation</b>
<b>CHAPTER 371. EXAMINATION AND LICENSURE</b>	<b>CHAPTER 130. PODIATRY</b>
	<b>SUBCHAPTER A. EXAMINATION AND LICENSURE</b>
§371.1 Definitions	§130.1 Definitions
§371.3 Fees	§130.2 Fees
§371.5 Applicant for License	§130.3 Applicant for License
§371.7 Qualifications for Licensure	§130.4 Qualifications for Licensure
§371.9 Qualification for Candidates	§130.5 Qualification for Candidates
§371.11 Approved Colleges of Podiatric Medicine in the United States	§130.6 Approved Colleges of Podiatric Medicine in the United States
§371.13 Developing Exams	§130.7 Developing Exams
§371.15 Administration and Scoring of Examination	§130.8 Administration and Scoring of Examination
§371.17 Examination Disqualification	§130.9 Examination Disqualification
§371.19 Licensing of Guaranteed Student Loan Defaulters	§130.10 Licensing of Guaranteed Student Loan Defaulters
§371.21 Re-Examination	§130.11 Re-Examination
§371.23 Review of Examination	§130.12 Review of Examination
§371.25 Residency Requirements, Program Responsibilities and Temporary Licensure	§130.13 Residency Requirements, Program Responsibilities and Temporary Licensure
<b>CHAPTER 373. ADVERTISING AND PRACTICE IDENTIFICATION</b>	<b>CHAPTER 130. PODIATRY</b>
	<b>SUBCHAPTER B ADVERTISING AND PRACTICE IDENTIFICATION</b>
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§373.3 Practitioner Identification	§130.21 Practitioner Identification
§373.5 Notify Board of Practice Name	§130.22 Notify Board of Practice Name
§373.7 Corporate Trade Names and Assumed Names	§130.23 Corporate Trade Names and Assumed Names
§373.9 Professional Corporations or Professional Associations	§130.24 Professional Corporations or Professional Associations
§373.11 Associations with Practitioners of Other Branches of the Healing Art	§130.25 Associations with Practitioners of Other Branches of the Healing Art
§373.13 Advertising	§130.26 Advertising
§373.15 Violations	§130.27 Violations
<b>CHAPTER 375. CONDUCT AND SCOPE OF PRACTICE</b>	<b>CHAPTER 130. PODIATRY</b>
	<b>SUBCHAPTER C. CONDUCT AND SCOPE OF PRACTICE</b>
§375.1 Definitions	§130.30 Definitions
§375.3 General	§130.31 General
§375.5 Hyperbaric Oxygen Guidelines	§130.32 Hyperbaric Oxygen Guidelines

§375.7 Nitrous Oxide/Oxygen Inhalation Conscious Sedation Guidelines	§130.33 Nitrous Oxide/Oxygen Inhalation Conscious Sedation Guidelines
§375.9 Consumer Information/Complaint Sign	§130.34 Consumer Information/Complaint Sign
§375.11 Offices	§130.35 Offices
§375.13 Public Participation in Meetings	§130.36 Public Participation in Meetings
§375.15 Relationships with Other Practitioners	§130.37 Relationships with Other Practitioners
§375.17 Identity of Surgeon	§130.38 Identity of Surgeon
§375.19 Fees and Informed Consent	§130.39 Fees and Informed Consent
§375.21 Records	§130.40 Records
§ 375.23 Reporting Medical Professional Liability Claims	§130.41 Reporting Medical Professional Liability Claims
§375.25 Severability	§130.42 Severability
§375.27 Report Change of Practice Address and/or Phone Number to the Board	§130.43 Report Change of Practice Address and/or Phone Number to the Board
§375.29 Compliance with Orders, Subpoenas, and Investigations	§130.44 Compliance with Orders, Subpoenas, and Investigations
§375.31 General Authority of Podiatrist to Delegate	§130.45 General Authority of Podiatrist to Delegate
§375.33 Sexual Misconduct	§130.46 Sexual Misconduct
<b>CHAPTER 376. VIOLATIONS AND PENALTIES</b>	<b>CHAPTER 130. PODIATRY</b>
	<b>SUBCHAPTER D. VIOLATIONS AND PENALTIES</b>
§376.1 Definitions	§130.50 Definitions
§ 376.3 Penalties	§130.51 Penalties
§376.5 Administrative Penalties	§130.52 Administrative Penalties
§376.7 Probation of Penalty	§130.53 Probation of Penalty
§376.9 Institution of Action by the Board	§130.54 Institution of Action by the Board
§376.11 Board Discretion Regarding Penalties	§130.55 Board Discretion Regarding Penalties
§376.13 Agreed Orders	§130.56 Agreed Orders
§376.15 Cease and Desist Orders	§130.57 Cease and Desist Orders
§376.17 Refund Orders	§130.58 Refund Orders
§376.19 Conditions of Suspension of License	§130.59 Conditions of Suspension of License
§376.21 Temporary Suspension of a License	§130.60 Temporary Suspension of a License
§376.23 Educational Courses	§130.61 Educational Courses
§376.25 Complaint Form	§130.62 Complaint Form
§376.27 Investigations of Complaints Filed with the Board	§130.63 Investigations of Complaints Filed with the Board
§376.29 Monitoring Licensee Compliance	§130.64 Monitoring Licensee Compliance
§376.31 Consequences of Background and Criminal History Checks	§130.65 Consequences of Background and Criminal History Checks
§376.33 Notice and Review	§130.66 Notice and Review
§376.35 Judicial Review	§130.67 Judicial Review
§376.37 Criminal History Evaluation Letters	§130.68 Criminal History Evaluation Letters
<b>CHAPTER 377. PROCEDURES GOVERNING GRIEVANCES, HEARINGS, AND APPEALS</b>	<b>CHAPTER 130. PODIATRY</b>

	<b>SUBCHAPTER E. PROCEDURES GOVERNING GRIEVANCES, HEARINGS, AND APPEALS</b>
§377.1 Definitions	§130.70 Definitions
§377.3 Scope of Rules	§130.71 Scope of Rules
§377.5 Filing Documents	§130.72 Filing Documents
§377.7 Agreements to be in Writing	§130.73 Agreements to be in Writing
§377.9 Service in Nonrulemaking Proceedings	§130.74 Service in Nonrulemaking Proceedings
§377.11 Conduct and Decorum	§130.75 Conduct and Decorum
§377.13 Classification of Parties	§130.76 Classification of Parties
§377.15 Parties in Interest	§130.77 Parties in Interest
§377.17 Appearance Personally or by Representative	§130.78 Appearance Personally or by Representative
§377.19 Classification of Pleadings	§130.79 Classification of Pleadings
§377.21 Form and Content of Pleadings	§130.80 Form and Content of Pleadings
§377.23 Motions	§130.81 Motions
§377.25 Amendments	§130.82 Amendments
§377.27 Incorporation by Reference of Board Records	§130.83 Incorporation by Reference of Board Records
§377.29 Personal Service	§130.84 Personal Service
§377.31 Prehearing Conference	§130.85 Prehearing Conference
§377.33 Motions for Postponement, Continuance, Withdrawal, or Dismissal of Application or Other Matters before SOAH or the Board	§130.86 Motions for Postponement, Continuance, Withdrawal, or Dismissal of Application or Other Matters before SOAH or the Board
§377.35 Place and Nature of Hearing	§130.87 Place and Nature of Hearing
§377.37 Order of Procedure	§130.88 Order of Procedure
§377.39 Dismissal without Hearing	§130.89 Dismissal without Hearing
§377.41 Limitation on Number of Witnesses	§130.90 Limitation on Number of Witnesses
§377.43 Exhibits	§130.91 Exhibits
§377.45 Offer of Proof	§130.92 Offer of Proof
§377.47 Depositions, Subpoenas, and Discovery	§130.93 Depositions, Subpoenas, and Discovery
§377.49 Proposals for Decision	§130.94 Proposals for Decision
§377.51 Filing of Exceptions, Briefs, and Replies	§130.95 Filing of Exceptions, Briefs, and Replies
§377.53 Form and Content of Briefs, Exceptions and Replies	§130.96 Form and Content of Briefs, Exceptions and Replies
§377.55 Oral Argument	§130.97 Oral Argument
§377.57 Motions for Rehearing	§130.98 Motions for Rehearing
§377.59 Show Cause Orders and Complaints	§130.99 Show Cause Orders and Complaints
<b>CHAPTER 378. CONTINUING EDUCATION AND LICENSE RENEWAL</b>	<b>CHAPTER 130. PODIATRY</b>
	<b>SUBCHAPTER F. CONTINUING EDUCATION AND LICENSE RENEWAL</b>
§378.1 Continuing Education Requirement	§130.100 Continuing Education Requirement
§378.3 Exceptions and Allowances	§130.101 Exceptions and Allowances
§378.5 Method of Approval of Hours	§130.102 Method of Approval of Hours
§378.7 Certification	§130.103 Certification
§378.9 Violations	§130.104 Violations
§378.11 Inactive License Status	§130.105 Inactive License Status
§378.13 License Activation and Renewal	§130.106 License Activation and Renewal

<b>CHAPTER 382. NON-CERTIFIED RADIOLOGIC TECHNICIANS</b>	<b>CHAPTER 130. PODIATRY</b>
	<b>SUBCHAPTER G. NON-CERTIFIED RADIOLOGIC TECHNICIANS</b>
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§382.3 Definitions	§130.121 Definitions
§382.5 Registration	§130.122 Registration
§382.7 Non-Certified Podiatric Technician's Scope of Practice	§130.123 Non-Certified Podiatric Technician's Scope of Practice
§382.9 Annual Renewal	§130.124 Annual Renewal
§382.11 Suspension, Revocation, or Non-renewal of Registration	§130.125 Suspension, Revocation, or Non-renewal of Registration
<b>CHAPTER 389. ORGANIZATION AND STRUCTURE</b>	<b>CHAPTER 130. PODIATRY</b>
	<b>SUBCHAPTER H. ORGANIZATION AND STRUCTURE</b>
§ 389.1 Purpose	§130.130 Purpose
§389.3 Definitions	§130.131 Definitions
§389.5 Professional Conduct	§130.132 Professional Conduct
§389.7 Membership and Employee Restrictions	§130.133 Membership and Employee Restrictions
§389.9 Grounds for Removal	§130.134 Grounds for Removal
<b>CHAPTER 390. PROCEDURES FOR THE NEGOTIATION AND MEDIATION OF CERTAIN BREACH OF CONTRACT CLAIMS ASSERTED BY CONTRACTORS AGAINST THE STATE OF TEXAS</b>	<b>CHAPTER 130. PODIATRY</b>
<b>SUBCHAPTER A. GENERAL</b>	<b>SUBCHAPTER I. PROCEDURES FOR THE NEGOTIATION AND MEDIATION OF CERTAIN BREACH OF CONTRACT CLAIMS ASSERTED BY CONTRACTORS AGAINST THE STATE OF TEXAS - GENERAL</b>
§390.1 Purpose	§130.140 Purpose
§390.3 Applicability	§130.141 Applicability
§390.5 Definitions	§130.142 Definitions
§390.7 Prerequisites to Suit	§130.143 Prerequisites to Suit
§390.9 Sovereign Immunity	§130.144 Sovereign Immunity
<b>SUBCHAPTER B. NEGOTIATION OF CONTRACT DISPUTES</b>	<b>SUBCHAPTER J. NEGOTIATION OF CONTRACT DISPUTES</b>
§390.21 Notice of Claim of Breach of Contract	§130.150 Notice of Claim of Breach of Contract
§390.23 Agency Counterclaim	§130.151 Agency Counterclaim
§390.25 Request for Voluntary Disclosure of Additional Information	§130.152 Request for Voluntary Disclosure of Additional Information
§390.27 Duty to Negotiate	§130.153 Duty to Negotiate
§390.29 Timetable	§130.154 Timetable
§390.31 Conduct of Negotiation	§130.155 Conduct of Negotiation
§390.33 Settlement Approval Procedures	§130.156 Settlement Approval Procedures
§390.35 Settlement Agreement	§130.157 Settlement Agreement
§390.37 Costs of Negotiation	§130.158 Costs of Negotiation

§390.39 Request for Contested Case Hearing	§130.159 Request for Contested Case Hearing
<b>SUBCHAPTER C. MEDIATION OF CONTRACT DISPUTES</b>	<b>SUBCHAPTER K. MEDIATION OF CONTRACT DISPUTES</b>
§390.47 Mediation Timetable	§130.160 Mediation Timetable
§390.49 Conduct of Mediation	§130.161 Conduct of Mediation
§390.51 Agreement to Mediate	§130.162 Agreement to Mediate
§390.53 Qualifications and Immunity of the Mediator	§130.163 Qualifications and Immunity of the Mediator
§390.55 Confidentiality of Mediation and Final Settlement Agreement	§130.164 Confidentiality of Mediation and Final Settlement Agreement
§390.57 Costs of Mediation	§130.165 Costs of Mediation
§390.59 Settlement Approval Procedures	§130.166 Settlement Approval Procedures
§390.61 Initial Settlement Agreement	§130.167 Initial Settlement Agreement
§390.63 Final Settlement Agreement	§130.168 Final Settlement Agreement
§390.65 Referral to the State Office of Administrative Hearings	§130.169 Referral to the State Office of Administrative Hearings
<b>SUBCHAPTER D. ASSISTED NEGOTIATION PROCESSES</b>	<b>SUBCHAPTER L. ASSISTED NEGOTIATION PROCESSES</b>
§390.71 Assisted Negotiation Processes	§130.170 Assisted Negotiation Processes
§390.73 Factors Supporting the Use of Assisted Negotiation Processes	§130.171 Factors Supporting the Use of Assisted Negotiation Processes
§390.75 Use of Assisted Negotiation Processes	§130.172 Use of Assisted Negotiation Processes

TRD-201703007





# REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

## Proposed Rule Reviews

Texas Commission on Fire Protection

### Title 37, Part 13

The Texas Commission on Fire Protection (commission) files this notice of intention to review and consider for re-adoption, revision, or repeal, Texas Administrative Code, Title 37, Part 13, Chapter 403, concerning Criminal Convictions and Eligibility for Certification. Chapter 403 consists of §403.1 Purpose, §403.3, Scope, §403.5, Access to Criminal History Record Information, §403.7, Criminal Convictions Guidelines, §403.9 Mitigating Factors, §403.11, Procedures for Suspension, Revocation, or Denial of a Certificate to Persons with Criminal Backgrounds, §403.15, Report of Convictions by an Individual or Department.

This review will be conducted pursuant to Texas Government Code §2001.039. The commission will accept comments for 30 days following publication of this notice in the *Texas Register* as to whether the reason for the rule continues to exist.

The Texas Commission on Fire Protection, which administers these rules, believes the reason for the rules contained in this chapter continue to exist. Any questions or written comments pertaining to this notice of intention to review should be directed to Tim Rutland, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas, 78768-2286 or by email at [info@tcfp.texas.gov](mailto:info@tcfp.texas.gov). Any proposed changes to the rules as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30-day public comment period prior to final adoption or repeal by the commission.

TRD-201702925

Tim Rutland

Executive Director

Texas Commission on Fire Protection

Filed: August 3, 2017



The Texas Commission on Fire Protection (commission) files this notice of intention to review and consider for re-adoption, revision, or repeal, Texas Administrative Code, Title 37, Part 13, Chapter 421, concerning Standards for Certification. Chapter 421 consists of §421.1, Procedures for Meetings, §421.3, Minimum Standards Set by the Commission, §421.5, Definitions, §421.9, Designation of Fire Protection Duties, §421.11, Requirement to Be Certified Within One Year, §421.13, Individual Certificate Holders, §421.15, Extension of Training Period, and §421.17, Requirement to Maintain Certification.

This review will be conducted pursuant to Texas Government Code §2001.039. The commission will accept comments for 30 days following publication of this notice in the *Texas Register* as to whether the reason for the rules continue to exist.

The Texas Commission on Fire Protection, which administers these rules, believes that the reason for the rules contained in this chapter continue to exist. Any questions or written comments pertaining to this notice of intention to review should be directed to Tim Rutland, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or by email at [info@tcfp.texas.gov](mailto:info@tcfp.texas.gov). Any proposed changes to the rules as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30-day public comment period prior to final adoption or repeal by the commission.

TRD-201702926

Tim Rutland

Executive Director

Texas Commission on Fire Protection

Filed: August 3, 2017



The Texas Commission on Fire Protection (commission) files this notice of intention to review and consider for re-adoption, revision, or repeal, Texas Administrative Code, Title 37, Part 13, Chapter 427, concerning Training Facility Certification. Chapter 427 consists of Subchapter A, On-Site Certified Training Provider, §427.1, Minimum Standards for Certified Training Facilities for Fire Protection Personnel, §427.3, Facilities, §427.5, Apparatus, §427.7, Protective Clothing, §427.9, Equipment, §427.11, Reference Material, §427.13, Records, §427.18, Live Fire Training Evolutions, and §427.19, General Information, Subchapter B, Distance Training Provider, §427.201, Minimum Standards for Distance Training Provider, §423.203, Records, and §423.209, General Information, Subchapter C, Training Programs For On-Site and Distance Training Providers, §427.301, General Provisions for Training Programs--On-Site and Distance Training Providers, §427.303, Training Approval Process for On-Site and Distance Training Providers, §427.305, Procedures for Testing Conducted by On-Site and Distance Training Providers, and §427.307, On-Site and Distance Training Provider Staff Requirements, and Subchapter D, Certified Training Facilities, §427.401, General Provisions for Training Facilities not Owned by the State of Texas or Operated by a Political Subdivision of the State of Texas, §401.403, Financial Standards, §427.405, Policy Regarding Complaints, §427.407, School Responsibilities Regarding Instructors, §427.409, Advertising, §427.411, Cancellations or Suspensions, and §427.413, Liabilities.

This review will be conducted pursuant to Texas Government Code §2001.039. The commission will accept comments for 30 days following publication of this notice in the *Texas Register* as to whether the reason for the rule continues to exist.

The Texas Commission on Fire Protection, which administers these rules, believes that the reason for the rules contained in this chapter continue to exist. Any questions or written comments pertaining to this notice of intention to review should be directed to Tim Rutland, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or by email at [info@tcfp.texas.gov](mailto:info@tcfp.texas.gov). Any proposed changes to the rules as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30-day public comment period prior to final adoption or repeal by the commission.

TRD-201702927

Tim Rutland  
Executive Director  
Texas Commission on Fire Protection  
Filed: August 3, 2017



The Texas Commission on Fire Protection (commission) files this notice of intention to review and consider for re-adoption, revision, or repeal, Texas Administrative Code, Title 37, Part 13, Chapter 429, concerning Minimum Standards For Fire Inspector Certification. Chapter 429 consists of §429.201, Minimum Standards For Fire Inspector Personnel, §429.203, Minimum Standards For Basic Fire Inspector Certification, §429.205, Minimum Standards For Intermediate Fire Inspector Certification, §429.207, Minimum Standards For Advanced Fire Inspector Certification, §429.209, Minimum Standards For Master Fire Inspector Certification, and §429.211, International Fire Service Accreditation Congress (IFSAC) Seal.

This review will be conducted pursuant to Texas Government Code §2001.039. The commission will accept comments for 30 days following publication of this notice in the *Texas Register* as to whether the reason for the rule continues to exist.

The Texas Commission on Fire Protection, which administers these rules, believes that the reason for the rules contained in this chapter continue to exist. Any questions or written comments pertaining to this notice of intention to review should be directed to Tim Rutland, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or by email at [info@tcfp.texas.gov](mailto:info@tcfp.texas.gov). Any proposed changes to the rules as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30-day public comment period prior to final adoption or repeal by the commission.

TRD-201702928

Tim Rutland  
Executive Director  
Texas Commission on Fire Protection  
Filed: August 3, 2017



The Texas Commission on Fire Protection (commission) files this notice of intention to review and consider for re-adoption, revision, or repeal, Texas Administrative Code, Title 37, Part 13, Chapter 439, concerning Examinations For Certification. Chapter 439 consists of Subchapter A, Examinations For On-Site Delivery Training, §439.1, Requirements--General, §439.3, Definitions, §439.5, Procedures, §439.7 Eligibility, §439.9, Grading, §439.11, Commission-Designated Performance Skill Evaluations, §439.13, Special Accommodations For Test-

ing, and §439.19, Number of Test Questions; and Subchapter B, Examinations For Distance Training, §439.201, Requirements--General, and §439.205, Performance Skill Evaluation.

This review will be conducted pursuant to Texas Government Code §2001.039. The commission will accept comments for 30 days following publication of this notice in the *Texas Register* as to whether the reason for the rule continues to exist.

The Texas Commission on Fire Protection, which administers these rules, believes that the reason for the rules contained in this chapter continue to exist. Any questions or written comments pertaining to this notice of intention to review should be directed to Tim Rutland, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or by email at [info@tcfp.texas.gov](mailto:info@tcfp.texas.gov). Any proposed changes to the rules as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30-day public comment period prior to final adoption or repeal by the commission.

TRD-201702929

Tim Rutland  
Executive Director  
Texas Commission on Fire Protection  
Filed: August 3, 2017



The Texas Commission on Fire Protection (commission) files this notice of intention to review and consider for re-adoption, revision, or repeal, Texas Administrative Code, Title 37, Part 13, Chapter 449, concerning Head of a Fire Department. Chapter 449 consists of Subchapter A, Minimum Standards For Head of a Suppression Fire Department, §449.1, Minimum Standards for the Head of a Suppression Fire Department, §449.3, Minimum Standards for Head of a Suppression Fire Department Certification, and Subchapter B, Minimum Standards for Head of a Prevention Only Fire Department, §449.201, Minimum Standards for the Head of a Prevention Only Department, and §449.203, Minimum Standards for Head of a Prevention Only Fire Department Certification.

This review will be conducted pursuant to Texas Government Code §2001.039. The commission will accept comments for 30 days following publication of this notice in the *Texas Register* as to whether the reason for the rule continues to exist.

The Texas Commission on Fire Protection, which administers these rules, believes that the reason for the rules contained in this chapter continue to exist. Any questions or written comments pertaining to this notice of intention to review should be directed to Tim Rutland, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or by email at [info@tcfp.texas.gov](mailto:info@tcfp.texas.gov). Any proposed changes to the rules as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30-day public comment period prior to final adoption or repeal by the commission.

TRD-201702930

Tim Rutland  
Executive Director  
Texas Commission on Fire Protection  
Filed: August 3, 2017



The Texas Commission on Fire Protection (commission) files this notice of intention to review and consider for re-adoption, revision, or repeal, Texas Administrative Code, Title 37, Part 13, Chapter 451,

concerning Fire Officer. Chapter 451 consists of Subchapter A, Minimum Standards For Fire Officer I, §451.1, Fire Officer I Certification, §451.3, Minimum Standards For Fire Officer I Certification, §451.5, Examination Requirements, and §451.7, International Fire Service Accreditation Congress (IFSAC) Seal, Subchapter B, Minimum Standards For Fire Officer II, §451.201, Fire Officer II Certification, §451.203, Minimum Standards For Fire Officer II Certification, §451.205, Examination Requirements, and §451.207, International Fire Service Accreditation Congress (IFSAC) Seal, Subchapter C, Minimum Standards for Fire Officer III, §451.301, Fire Officer III Certification, §451.303, Minimum Standards for Fire Officer III Certification, §451.305, Examination Requirements, and §451.307, International Fire Service Accreditation Congress (IFSAC) Seal, and Subchapter D, Minimum Standards For Fire Officer IV, §451.401, Fire Officer IV Certification, §451.403, Minimum Standards for Fire Officer IV Certification, §451.405, Examination Requirements, and §451.407, International Fire Service Accreditation Congress (IFSAC) Seal.

This review will be conducted pursuant to Texas Government Code §2001.039. The commission will accept comments for 30 days following publication of this notice in the *Texas Register* as to whether the reason for the rule continues to exist.

The Texas Commission on Fire Protection, which administers these rules, believes that the reason for the rules contained in this chapter continue to exist. Any questions or written comments pertaining to this notice of intention to review should be directed to Tim Rutland, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or by email at [info@tcfp.texas.gov](mailto:info@tcfp.texas.gov). Any proposed changes to the rules as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30-day public comment period prior to final adoption or repeal by the commission.

TRD-201702931  
Tim Rutland  
Executive Director  
Texas Commission on Fire Protection  
Filed: August 3, 2017



The Texas Commission on Fire Protection (commission) files this notice of intention to review and consider for re-adoption, revision, or repeal, Texas Administrative Code, Title 37, Part 13, Chapter 455, concerning Minimum Standards For Wildland Fire Protection Certification. Chapter 455 consists of §455.1, Minimum Standards for Wildland Fire Protection Personnel, §455.3, Minimum Standards For Basic Wildland Fire Protection Certification, §455.5, Minimum Standards for Intermediate Wildland Fire Protection Certification and, §455.7, Examination Requirements.

This review will be conducted pursuant to Texas Government Code §2001.039. The commission will accept comments for 30 days following publication of this notice in the *Texas Register* as to whether the reason for the rule continues to exist.

The Texas Commission on Fire Protection, which administers these rules, believes that the reason for the rules contained in this chapter continue to exist. Any questions or written comments pertaining to this notice of intention to review should be directed to Tim Rutland, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas, 78768-2286 or by email at [info@tcfp.texas.gov](mailto:info@tcfp.texas.gov). Any proposed changes to the rules as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30-day public comment period prior to final adoption or repeal by the commission.

TRD-201702932  
Tim Rutland  
Executive Director  
Texas Commission on Fire Protection  
Filed: August 3, 2017



## Adopted Rule Reviews

Texas Commission on Fire Protection

### Title 37, Part 13

The Texas Commission on Fire Protection (commission) adopts the review of Texas Administrative Code, Title 37, Part 13, Chapter 423, concerning Fire Suppression. The review was conducted pursuant to Texas Government Code, Chapter 2001, §2001.039.

The commission received no comments on the proposed rule review, which was published in the February 3, 2017, issue of the *Texas Register* (42 TexReg 495).

As a result of the review, the following Subchapters are being amended, Subchapter A, §§423.1, 423.3, 423.5, 423.7, 423.9, 423.11, 423.13, Subchapter B, §§423.201, 423.203, 423.205, 423.207, 423.209, 423.211, and Subchapter C, §§423.301, 423.303, 423.305, 423.307, and 423.309. The sections are being amended in separate rulemakings in accordance with the Texas Administrative Procedures Act.

This concludes the review of Texas Administrative Code, Title 37, Part 13, Chapter 423.

TRD-201702921  
Tim Rutland  
Executive Director  
Texas Commission on Fire Protection  
Filed: August 3, 2017



The Texas Commission on Fire Protection (commission) adopts the review of Texas Administrative Code, Title 37, Part 13, Chapter 441, concerning Continuing Education. The review was conducted pursuant to Texas Government Code, Chapter 2001, §2001.039.

The commission received no comments on the proposed rule review, which was published in the June 9, 2017, issue of the *Texas Register* (42 TexReg 3019).

The commission has determined that the reasons for initially adopting the rule continues to exist and readopts the chapter without changes.

This concludes the review of Texas Administrative Code, Title 37, Part 13, Chapter 441.

TRD-201702922  
Tim Rutland  
Executive Director  
Texas Commission on Fire Protection  
Filed: August 3, 2017



The Texas Commission on Fire Protection (commission) adopts the review of Texas Administrative Code, Title 37, Part 13, Chapter 453, concerning Hazardous Materials. The review was conducted pursuant to Texas Government Code, Chapter 2001, §2001.039.

The commission received no comments on the proposed rule review, which was published in the June 9, 2017, issue of the *Texas Register* (42 TexReg 3019).

The commission has determined that the reasons for initially adopting the rule continue to exist and readopts the chapter without changes.

This concludes the review of Texas Administrative Code, Title 37, Part 13, Chapter 453.

TRD-201702923

Tim Rutland

Executive Director

Texas Commission on Fire Protection

Filed: August 3, 2017



The Texas Commission on Fire Protection (commission) adopts the review of Texas Administrative Code, Title 37, Part 13, Chapter 457, concerning Minimum Standards For Incident Safety Officer Certification. The review was conducted pursuant to Texas Government Code, Chapter 2001, §2001.039.

The commission received no comments on the proposed rule review, which was published in the June 9, 2017, issue of the *Texas Register* (42 TexReg 3019).

The commission has determined that the reasons for initially adopting the rule continue to exist and readopts the chapter without changes.

This concludes the review of Texas Administrative Code, Title 37, Part 13, Chapter 457.

TRD-201702924

Tim Rutland

Executive Director

Texas Commission on Fire Protection

Filed: August 3, 2017



# TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word “Figure” followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 19 TAC §101.4003(a)

## Alternate Assessments Standards

Alternate Assessment	TAKS Exit-Level Mathematics		TAKS Exit-Level English Language Arts		TAKS Exit-Level Science		TAKS Exit-Level Social Studies	
	Assessment	Passing Score	Assessment	Passing Score	Assessment	Passing Score	Assessment	Passing Score
SAT — Administered March 2016 and After	Mathematics	360	Evidence-Based Reading and Writing	360				
SAT* — Administered January 2016 and Before	Mathematics	461	Critical Reading	472				
			Writing	472				
ACT† — Administered September 2015 and After	Mathematics	15	Reading	13	Science	14		
			English	10				
ACT† — Administered June 2015 and Before	Mathematics	19.5	Reading	17.7	Science	14		
			Combined English and Writing	17.7				
			Reading	342				
TSI**	Mathematics	336	Objective Writing and Sentence Skills	350				
			Writing	4				
STAAR‡	Algebra I	3266	English II Combined	2970				
			English II Reading	1551	Biology	3269	U.S. History	3159
			English II Writing	1395				

\*To use SAT Critical Reading and Writing assessments, a student must meet the score requirements for both components.

†To use ACT Reading and English assessments or Reading and Combined English and Writing assessments, a student must meet the score requirements for both components.

\*\*To use TSI English language arts assessments, a student must meet the score requirements for all three components.

‡To use STAAR English II assessment, a student must meet the score requirements for either English II combined or for both the English II Reading and Writing components.

DISCLOSURE AND CONSENT - ANESTHESIA and/or  
PERIOPERATIVE PAIN MANAGEMENT (ANALGESIA)

TO THE PATIENT: *You have the right, as a patient, to be informed about your condition and the recommended anesthesia/analgesia to be used so that you may make the decision whether or not to receive the anesthesia/analgesia after knowing the risks and hazards involved. This disclosure is not meant to scare or alarm you; it is simply an effort to make you better informed so you may give or withhold your consent to the anesthesia/analgesia.*

I voluntarily request that anesthesia and/or perioperative pain management care (analgesia) as indicated below be administered to me (the patient). I understand it will be administered by an anesthesia provider and/or the operating practitioner, and such other health care providers as necessary. Perioperative means the period shortly before, during and shortly after the procedure.

I understand that anesthesia/analgesia involves additional risks and hazards but I request the use of anesthetics/analgesia for the relief and protection from pain or anxiety during the planned and additional procedures. 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, brain damage, paralysis, or death.

I also understand that other complications may occur. Those complications include but are not limited to:

*Check planned anesthesia/analgesia method(s) and have the patient/other legally responsible person 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.

\_\_\_\_\_ 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.

\_\_\_\_\_ 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.

Additional comments/risks:

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I understand that no promises have been made to me as to the result of anesthesia/analgesia methods.

I have been given an opportunity to ask questions about my anesthesia/analgesia methods, the procedures to be used, the risks and hazards involved, and alternative forms of anesthesia/analgesia. I believe that I have sufficient information to give this informed consent.

This form has been fully explained to me, I have read it or have had it read to me, the blank spaces have been filled in, and I understand its contents.

PATIENT/OTHER LEGALLY RESPONSIBLE PERSON (signature required)

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DATE: \_\_\_\_\_ TIME: \_\_\_\_\_  
A.M. /P.M.

WITNESS:

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Signature

---

Name (Print)

---

Address (Street or P.O. Box)

---

City, State, Zip



Figure: 25 TAC §601.9(2)

REVELACIÓN Y CONSENTIMIENTO -ANESTESIA y  
CONTROL DE DOLOR (ANALGESIA) PERIOPERATORIO

AL PACIENTE: *tiene derecho, como paciente, a ser informado sobre su enfermedad y la anestesia/analgesia recomendada que se usará, de modo que usted pueda tomar la decisión de si recibir la anestesia/analgesia o no después de conocer los riesgos y los peligros relacionados. Esta revelación no tiene como fin asustarlo o alarmarlo; es simplemente un esfuerzo por tenerlo mejor informado para que usted pueda dar o negar su consentimiento para la anestesia/analgesia.*

Solicito voluntariamente que me administren a mí (el paciente) la anestesia y la atención de control de dolor (analgesia) perioperatoria, según lo indicado a continuación. Entiendo que será administrada por un proveedor de anestesia, el profesional que realice la operación o algún otro proveedor de salud de ese tipo, de ser necesario. Perioperatorio significa el periodo poco antes de, durante y poco después del procedimiento.

Entiendo que la anestesia / analgesia implica riesgos y peligros adicionales, pero pido el uso de anestésicos / analgesia para el alivio y protección contra el dolor o la ansiedad durante los procedimientos planeados y adicionales. Me doy cuenta de que el tipo de anestesia / analgesia puede tener que ser cambiado posiblemente sin explicación para mí.

Entiendo que pueden ocurrir complicaciones graves, pero raras, con todos los métodos anestésicos/analgésicos. Algunos de estos riesgos son problemas de respiración y del corazón, reacciones a la medicina, daño nervioso, paro cardíaco, daño cerebral, parálisis o la muerte.

También entiendo que podrían ocurrir otras complicaciones. Entre esas complicaciones se incluyen:

*Marque los métodos de anestesia/analgesia planeados y haga que el paciente/otra persona legalmente responsable ponga sus iniciales.*

\_\_\_\_\_ ANESTESIA GENERAL –lesión a las cuerdas vocales, los dientes, los labios, los ojos; estar consciente durante el procedimiento; disfunción de la memoria/pérdida de la memoria; daño a órganos permanente; daño cerebral.

\_\_\_\_\_ ANESTESIA/ANALGESIA DE BLOQUEO REGIONAL -daño nervioso; dolor persistente; sangrado/hematoma; infección; necesidad médica de usar anestesia general en vez; daño cerebral.

\_\_\_\_\_ ANESTESIA/ANALGESIA ESPINAL -daño nervioso; dolor de espalda persistente; dolor de cabeza; infección; sangrado/hematoma epidural; dolor crónico; necesidad médica de usar anestesia general en vez; daño cerebral.

\_\_\_\_\_ ANESTESIA/ANALGESIA EPIDURAL -daño nervioso; dolor de espalda persistente; dolor de cabeza; infección; sangrado/hematoma epidural; dolor crónico; necesidad médica de usar anestesia general en vez; daño cerebral.

\_\_\_\_\_ SEDACIÓN PROFUNDA - disfunción de la memoria/pérdida de la memoria; necesidad médica de usar anestesia general en vez; daño a órganos permanente; daño cerebral.

\_\_\_\_\_ MODERADA SEDACIÓN - disfunción de la memoria/pérdida de la memoria; necesidad médica de usar anestesia general en vez; daño a órganos permanente; daño cerebral.

\_\_\_\_\_ ANESTESIA PRENATAL / INFANTIL TEMPRANA - Posibles efectos negativos a largo plazo sobre la memoria, el comportamiento y el aprendizaje con exposición prolongada o repetida a anestesia general / sedación moderada / sedación profunda durante el embarazo y en la primera infancia.

Comentarios/riesgos adicionales:

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Entiendo que no me han prometido nada con respecto al resultado de los métodos de anestesia/analgesia.

Me han dado la oportunidad de hacer preguntas sobre los métodos de anestesia/analgesia, los procedimientos que se usarán, los riesgos y los peligros relacionados, y las formas de anestesia/analgesia alternativas. Creo tener suficiente información para dar este consentimiento informado.

Me han explicado completamente este formulario, lo he leído o me lo han leído, se han rellenado los espacios en blanco, y entiendo el contenido de éste.

PACIENTE/OTRA PERSONA LEGALMENTE RESPONSABLE (se requiere una firma)

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FECHA: \_\_\_\_\_ HORA: \_\_\_\_\_  
a.m. /p.m.

TESTIGO:

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Firma

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Nombre (en letra de molde)

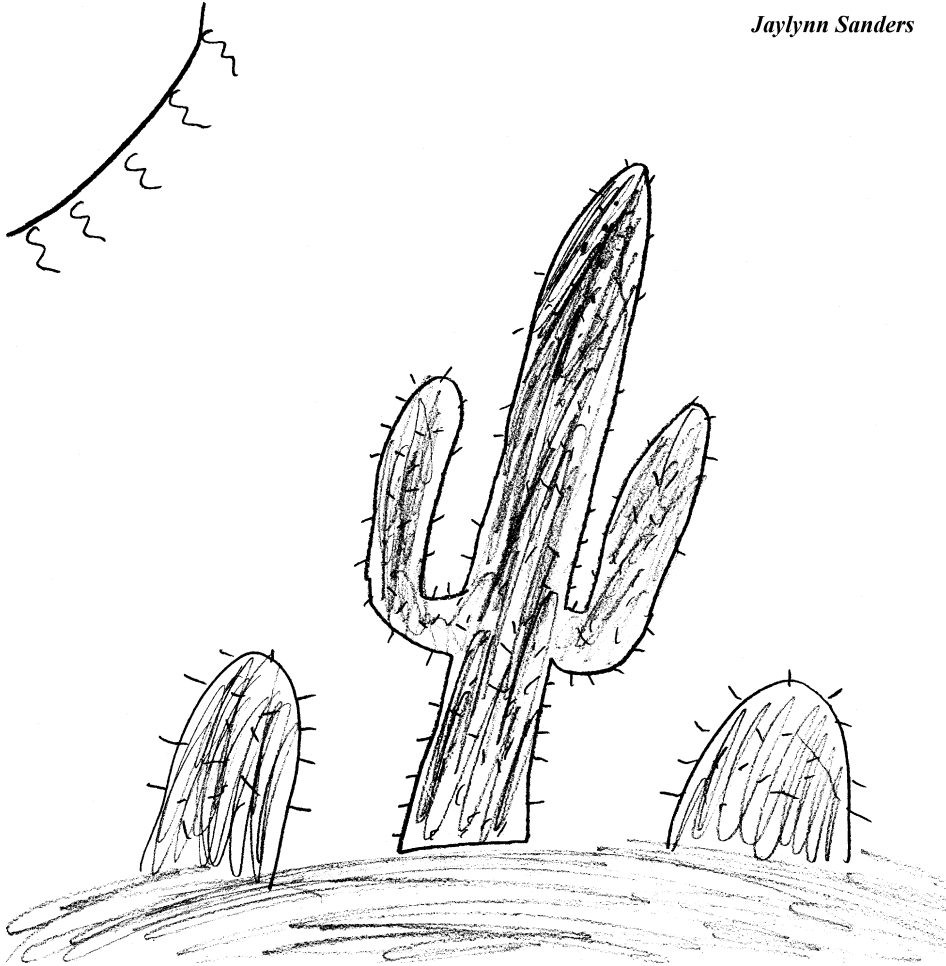
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Domicilio (calle y número o apartado postal)

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Ciudad, estado y código postal

*Jaylynn Sanders*



# 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.

## Texas State Affordable Housing Corporation

### Notice of Public Hearing Regarding the Issuance of Bonds

Notice is hereby given of a public hearing to be held by the Texas State Affordable Housing Corporation (the "Issuer") at the Offices of the Issuer at 2200 East Martin Luther King Jr. Blvd., Austin, Texas 78702 on September 14, 2017 at 8:30 a.m., on the proposed issuance by the Issuer of one or more series of multifamily housing revenue bonds (the "Bonds") to provide financing for the acquisition, construction and equipping of the following multifamily housing project (the "Project"), as well as to fund working capital for the Project and reserve funds and costs of issuance for the Bonds:

Spring Gardens Apartments, 4540 Lasater Road, Balch Springs, Texas 75181.

The maximum aggregate face amount of the Bonds to be issued with respect to the Project is \$14,000,000. The owner of the Project is LDG Spring Gardens, LP, a Texas Limited Partnership.

All interested persons are invited to attend the public hearing to express orally, or in writing, their views on the Projects and the issuance of the Bonds. Further information with respect to the proposed Bonds will be available at the hearing or upon written request prior thereto addressed to the Issuer at 2200 East Martin Luther King Jr. Boulevard, Austin, Texas 78702, Attention: David W. Danenfelzer; (512) 477-3562.

Individuals who require auxiliary aids in order to attend this meeting should contact Laura Ross, ADA Responsible Employee, at (512) 477-3560 at least two days before the meeting so that appropriate arrangements can be made.

Individuals may transmit written testimony or comments regarding the subject matter of this public hearing to David Danenfelzer at [ddanenfelzer@tsahc.org](mailto:ddanenfelzer@tsahc.org).

TRD-201703024

David Long

President

Texas State Affordable Housing Corporation

Filed: August 9, 2017



### Notice of Public Hearing Regarding the Issuance of Bonds

Notice is hereby given of a public hearing to be held by the Texas State Affordable Housing Corporation (the "Issuer") at the Balch Springs Library Learning Center at 12450 Elam Road, Balch Springs, Texas 75180, on August 30, 2017, at 6:00 p.m., on the proposed issuance by the Issuer of one or more series of multifamily housing revenue bonds (the "Bonds") to provide financing for the acquisition, construction and equipping of the following multifamily housing project (the "Project"), as well as to fund working capital for the Project and reserve funds and costs of issuance for the Bonds:

Spring Gardens Apartments, 4540 Lasater Road, Balch Springs, Texas 75181.

The maximum aggregate face amount of the Bonds to be issued with respect to the Project is \$14,000,000. The owner of the Project is LDG Spring Gardens, LP, a Texas Limited Partnership.

All interested persons are invited to attend the public hearing to express orally, or in writing, their views on the Projects and the issuance of the Bonds. Further information with respect to the proposed Bonds will be available at the hearing or upon written request prior thereto addressed to the Issuer at 2200 East Martin Luther King Jr. Boulevard, Austin, Texas 78702, Attention: David W. Danenfelzer; (512) 477-3562.

Individuals who require auxiliary aids in order to attend this meeting should contact Laura Ross, ADA Responsible Employee, at (512) 477-3560 at least two days before the meeting so that appropriate arrangements can be made.

Individuals may transmit written testimony or comments regarding the subject matter of this public hearing to David Danenfelzer at [ddanenfelzer@tsahc.org](mailto:ddanenfelzer@tsahc.org).

TRD-201703025

David Long

President

Texas State Affordable Housing Corporation

Filed: August 9, 2017



## Office of the Attorney General

### Texas Water Code and Texas Health and Safety Code Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Water Code and the Texas Health & Safety Code. Before the State may settle a judicial enforcement action under the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Texas Water Code and the Texas Health & Safety Code.

Case Title and Court: *Sulphur Springs, Texas, and the State of Texas, acting by and through the Texas Commission on Environmental Quality v. Rumsey Site Construction, LLC and West Side Construction Co. Inc.*, Cause No. CV-42507, 62nd Judicial District Court, Hopkins County, Texas.

Nature of Defendants' Operations: Defendants Rumsey Site Construction, LLC ("Rumsey") and West Side Construction Company Inc. ("West Side") were subcontractors engaged in the construction of the Pioneer Crossing senior living facility located at 668 Gossett Lane in Sulphur Springs, Hopkins County, Texas (the "Site"). Defendant Rumsey and Defendant West Side both served as excavation subcontractors hired to perform excavation work at the Site. Both Defendants performed work at the Site during the 100-day period during which the Site lacked authorization to discharge under the general permit for construction-related stormwater discharges. In addition, Defendant

Rumsey allegedly directed the installation of an unauthorized tap into Sulphur Springs' sanitary sewer system, thereby routing stormwater runoff from the Site into the sewer line. Defendant West Side allegedly directed the intentional pumping of pooled stormwater and construction debris from the Site directly into a nearby creek.

Proposed Agreed Judgment: The Agreed Final Judgment orders civil penalties of \$48,500 against Defendant Rumsey Site Construction, LLC, and \$14,250 against Defendant West Side Construction Co. Inc. The civil penalties will be equally divided between Sulphur Springs and the State of Texas. Furthermore, Defendant Rumsey will pay Sulphur Springs and the State of Texas \$33,650 and \$2,850 in attorney's fees respectively; Defendant West Side will pay Sulphur Springs and the State of Texas \$7,900 and \$2,850 in attorney's fees respectively. Defendants will bear all costs of court.

For a complete description of the proposed settlement, the proposed Agreed Final Judgment should be reviewed in its entirety. Requests for copies of the judgment, and written comments on the proposed settlement, should be directed to Erin Rodman, Assistant Attorney General, Office of the Attorney General, P.O. Box 12548, MC 066, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-201702981  
Amanda Crawford  
General Counsel  
Office of the Attorney General  
Filed: August 8, 2017

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**Comptroller of Public Accounts**

**Certification of the Average Closing Price of Gas and Oil - July 2017**

The Comptroller of Public Accounts, administering agency for the collection of the Oil Production Tax, has determined, as required by Tax Code, §202.058, that the average taxable price of oil for reporting period July 2017 is \$37.04 per barrel for the three-month period beginning on April 1, 2017, and ending June 30, 2017. Therefore, pursuant to Tax Code, §202.058, oil produced during the month of July 2017, from a qualified low-producing oil lease, is not eligible for a credit on the oil production tax imposed by Tax Code, Chapter 202.

The Comptroller of Public Accounts, administering agency for the collection of the Natural Gas Production Tax, has determined, as required by Tax Code, §201.059, that the average taxable price of gas for reporting period July 2017 is \$2.31 per mcf for the three-month period beginning on April 1, 2017, and ending June 30, 2017. Therefore, pursuant to Tax Code, §201.059, gas produced during the month of July 2017, from a qualified low-producing well, is eligible for a 100% credit on the natural gas production tax imposed by Tax Code, Chapter 201.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of West Texas Intermediate crude oil for the month of July 2017 is \$46.68 per barrel. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall not exclude total revenue received from oil produced during the month of July 2017, from a qualified low-producing oil well.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of gas for the month of July 2017 is \$2.96 per MMBtu. Therefore, pursuant to Tax Code,

§171.1011(r), a taxable entity shall exclude total revenue received from gas produced during the month of July 2017, from a qualified low-producing gas well.

Inquiries should be submitted to Teresa G. Bostick, Director, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528.

TRD-201703027  
Lita Gonzalez  
General Counsel  
Comptroller of Public Accounts  
Filed: August 9, 2017

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**Notice of Contract Award**

The Texas Comptroller of Public Accounts, on behalf of the Texas Prepaid Higher Education Tuition Board, announces this notice of award for certified public accounting services to RSM US LLC, 811 Barton Spring Road, Suite 550, Austin, Texas 78704, under Request for Proposals No. 219i ("RFP"). The total amount of the contract is not to exceed \$235,400.00. The term of the contract is September 1, 2017, through August 31, 2018, with option to renew for three (3) one-year renewals, one (1) year at a time. The RFP was published in the March 3, 2017, issue of the *Texas Register* (42 TexReg 1041).

TRD-201702935  
Vicki L. Rees  
Assistant General Counsel, Contracts  
Comptroller of Public Accounts  
Filed: August 4, 2017

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**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 08/14/17 - 08/20/17 is 18% for Consumer<sup>1</sup>/Agricultural/Commercial<sup>2</sup> credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 08/14/17 - 08/20/17 is 18% for Commercial over \$250,000.

<sup>1</sup> Credit for personal, family or household use.

<sup>2</sup> Credit for business, commercial, investment or other similar purpose.

TRD-201702988  
Leslie Pettijohn  
Commissioner  
Office of Consumer Credit Commissioner  
Filed: August 8, 2017

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**Court of Criminal Appeals**

In the Court of Criminal Appeals of Texas

Misc. Docket No. 17-009

**ORDER CONCERNING ADOPTION OF TEXAS RULE OF APPELLATE PROCEDURE 4.6**

**ORDERED** that:

By order dated June 5, 2017, in Misc. Docket No. 17-007, the Court of Criminal Appeals promulgated Rule of Appellate Procedure 4.6, effective September 1, 2017. The public comment period has expired.

The Court of Criminal Appeals has determined that implementation of this rule should be delayed to allow the Court time to thoroughly consider public comments received during the comment period. Therefore, Rule of Appellate Procedure 4.6 will not become effective on September 1, 2017.

The Clerk is directed to:

- a. file a copy of this order with the Secretary of State;
- b. cause a copy of this order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;
- c. send a copy of this order to each elected member of the Legislature; and
- d. submit a copy of the order for publication in the *Texas Register*.

Dated: August 7, 2017.

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Sharon Keller, Presiding Judge

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Michael Keasler, Judge

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Barbara Hervey, Judge

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Elsa Alcala, Judge

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Bert Richardson, Judge

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Kevin P. Yearly, Judge

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David Newell, Judge

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Mary Lou Keel, Judge

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Scott Walker, Judge

TRD-201703002

Deana Williamson

Clerk

Court of Criminal Appeals

Filed: August 8, 2017

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## Texas Commission on Environmental Quality

### Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the proposed orders and the op-

portunity 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 September 18, 2017. 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 September 18, 2017. 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: Air Liquide Large Industries U.S. LP; DOCKET NUMBER: 2017-0526-AIR-E; IDENTIFIER: RN100215334; LOCATION: Freeport, Brazoria County; TYPE OF FACILITY: carbon monoxide and hydrogen production plant; RULES VIOLATED: 30 TAC §§101.20(3), 116.715(a), and 122.143(4), Flexible Permit Numbers 32274, PSD-TX-995M1, and N-042, Special Conditions (SC) Number 6.B, Federal Operating Permit (FOP) Number O2391, Special Terms and Conditions (STC) Number 11, and Texas Health and Safety Code (THSC), §382.085(b), by failing to comply with the carbon monoxide (CO) concentration limit for the Auxiliary Boiler, Emissions Point Number (EPN) AUXSTACK; 30 TAC §§101.20(3), 116.715(a), and 122.143(4), Flexible Permit Numbers 32274, PSD-TX-995M1, and N-042, SC Number 5.B, FOP Number O2391, STC Number 11, and THSC, §382.085(b), by failing to comply with the CO concentration limit for the Steam Methane Reformer, EPN SMRSTACK; 30 TAC §122.143(4) and §122.145(2)(A), FOP Number O2391, General Terms and Conditions, and THSC, §382.085(b), by failing to report all instances of deviations; and 30 TAC §§101.20(3), 116.715(a), and 122.143(4), Flexible Permit Numbers 32274, PSD-TX-995M1, and N-042, SC Number 14.B, FOP Number O2391, STC Number 11, and THSC, §382.085(b), by failing to conduct cylinder gas audits no closer than two months apart; PENALTY: \$27,200; ENFORCEMENT COORDINATOR: Carol McGrath, (210) 403-4063; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: Amos Blake Benson; DOCKET NUMBER: 2017-0861-WOC-E; IDENTIFIER: RN109726760; LOCATION: Brownfield, Lamb County; TYPE OF FACILITY: on-site sewage facility; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: \$175; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 269-2576; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(3) COMPANY: BLUEBONNET YOUTH RANCH; DOCKET NUMBER: 2017-0829-PWS-E; IDENTIFIER: RN101280832; LOCATION: Yoakum, DeWitt County; TYPE OF FACILITY: youth ranch; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas

Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for trihalomethanes, based on the locational running annual average; and 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification to the executive director regarding the failure to conduct triggered source monitoring during the month of April 2016; PENALTY: \$230; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(4) COMPANY: City of Bridge City; DOCKET NUMBER: 2015-1057-MWD-E; IDENTIFIER: RN102846037; LOCATION: Bridge City, Orange County; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1) and (4), and Texas Pollutant Discharge Elimination System Permit Number WQ0010051001, Permit Conditions Number 2.d, by failing to take all reasonable steps to prevent any discharge of sludge use or disposal which has a reasonable likelihood of adversely affecting human health or the environment; PENALTY: \$76,500; Supplemental Environmental Project offset amount of \$76,500; ENFORCEMENT COORDINATOR: Melissa Castro, (512) 239-0855; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(5) COMPANY: City of Odem; DOCKET NUMBER: 2017-0594-PWS-E; IDENTIFIER: RN101406387; LOCATION: Odem, San Patricio County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.117(c)(2)(B), (h), and (i)(1), by failing to collect lead and copper tap samples at the required ten sample sites, have the samples analyzed, and report the results to the executive director (ED) for the January 1, 2016 - December 31, 2016, monitoring period; 30 TAC §290.117(c)(2)(C), (h), and (i)(1), by failing to collect lead and copper tap samples at the required ten sample sites, have the samples analyzed, and report the results to the ED for the January 1, 2013 - December 31, 2015, monitoring period; and 30 TAC §290.117(i)(6) and (j), by failing to provide a consumer notification of lead tap water monitoring results to persons served at the sites that were tested, and failing to mail a copy of the consumer notification of tap results to the ED along with certification that the consumer notification has been distributed for the January 1, 2016 - December 31, 2016, monitoring period; PENALTY: \$825; ENFORCEMENT COORDINATOR: Ryan Byer, (512) 239-2571; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(6) COMPANY: City of Rio Hondo; DOCKET NUMBER: 2017-0395-PWS-E; IDENTIFIER: RN101209195; LOCATION: Rio Hondo, Cameron County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes based on the locational running annual average; 30 TAC §290.117(c)(2)(A), (h), and (i)(1), by failing to collect lead and copper tap samples at the required 20 sample sites for the January 1, 2016 - June 30, 2016, monitoring period, have the samples analyzed, and report the results to the executive director (ED); 30 TAC §290.117(c)(2)(C), (h), and (i)(1) and §290.122(c)(2)(A) and (f), by failing to collect lead and copper tap samples at the required ten sample sites for the January 1, 2013 - December 31, 2015, monitoring period, have the samples analyzed, and report the results to the ED, and failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to collect lead and copper tap samples for the January 1, 2013 - December 31, 2015, monitoring period; 30 TAC §290.271(b) and §290.274(a) and (c), 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 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 years 2014 and 2015; and 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to conduct increased coliform monitoring for the month of November 2015, the failure to conduct chlorite monitoring for the month of May 2015, the failure to submit a Surface Water Monthly Operating Report for the month of April 2015, and the non-acute surface water treatment technique violation during the month of January 2015; PENALTY: \$967; ENFORCEMENT COORDINATOR: Sarah Kim, (512) 239-4728; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(7) COMPANY: City of Waller; DOCKET NUMBER: 2017-0649-PWS-E; IDENTIFIER: RN101383891; LOCATION: Waller, Waller County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.117(c)(2)(C), (h), and (i)(1), by failing to collect lead and copper tap samples at the required ten sample sites, have the samples analyzed, and report the results to the executive director (ED) for the January 1, 2013 - December 31, 2015, monitoring period; 30 TAC §290.117(c)(2)(B), (h), and (i)(1) and §290.122(c)(2)(A) and (f), by failing to collect lead and copper tap samples at the required ten sample sites, have the samples analyzed, and report the results to the ED for the January 1, 2016 - December 31, 2016, monitoring period, and failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to collect lead and copper tap samples for the January 1, 2016 - December 31, 2016 monitoring period; 30 TAC §290.117(i)(6) and (j), by failing to provide a consumer notification of lead tap water monitoring results to persons served at the sites that were tested, and failing to mail a copy of the consumer notification of tap results to the ED along with certification that the consumer notification has been distributed in a manner consistent with TCEQ requirements for the January 1, 2016 - December 31, 2016, monitoring period; and 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to submit a Disinfectant Level Quarterly Operating Report for the third quarter of 2016; PENALTY: \$480; ENFORCEMENT COORDINATOR: Jason Fraley, (512) 239-2552; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(8) COMPANY: Coastal Gulf and International Laboratories, Incorporated.; DOCKET NUMBER: 2017-0686-IHW-E; IDENTIFIER: RN106879562; LOCATION: Nederland, Jefferson County; TYPE OF FACILITY: third-party laboratory that serves as cargo and vessel inspectors, commodities evaluators, and sample testers for oil products; RULES VIOLATED: 30 TAC §335.10(c) and 40 Code of Federal Regulations §262.20(a), by failing to accurately and correctly prepare manifests for hazardous and Class I non-hazardous waste; 30 TAC §335.9(a)(1), by failing to maintain records of all hazardous waste and industrial solid waste activities; and 30 TAC §335.6(c), by failing to submit a Notice of Registration; PENALTY: \$4,037; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3421; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(9) COMPANY: Everett, David P. Sr.; DOCKET NUMBER: 2017-0860-WOC-E; IDENTIFIER: RN103615159; LOCATION: Clifton, Bosque County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: \$175; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE:



6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(10) COMPANY: Fikes Wholesale, Incorporated dba Taylor Food Mart 2152; DOCKET NUMBER: 2017-0227-PST-E; IDENTIFIER: RN102406881; LOCATION: Stephenville, Erath County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.72, by failing to report a suspected release to the TCEQ within 24 hours of discovery; 30 TAC §334.74, by failing to investigate a suspected release of a regulated substance within 30 days of discovery; and 30 TAC §205.6 and TWC, §5.702, by failing to pay outstanding General Permit Wastewater fees for TCEQ Financial Account Number 20502741 for fiscal year 2017; PENALTY: \$12,600; ENFORCEMENT COORDINATOR: Stephanie McCurley, (512) 239-2607; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(11) COMPANY: Fort Worth Transportation Authority; DOCKET NUMBER: 2017-0434-PST-E; IDENTIFIER: RN102029121; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: a fleet refueling facility; RULES VIOLATED: 30 TAC §334.74, by failing to investigate a suspected release of a regulated substance within 30 days of discovery; and 30 TAC §334.50(d)(9)(A)(v) and §334.72, by failing to report a suspected release to the TCEQ within 72 hours of discovery; PENALTY: \$16,125; ENFORCEMENT COORDINATOR: Benjamin Sakmar, (512) 239-1704; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(12) COMPANY: Houston Refining LP; DOCKET NUMBER: 2016-2070-AIR-E; IDENTIFIER: RN100218130; LOCATION: Houston, Harris County; TYPE OF FACILITY: petroleum refining plant; RULES VIOLATED: 30 TAC §§101.20(1) and (3), 116.715(a), 117.8100(a)(1)(A), and 122.143(4), Texas Health and Safety Code (THSC), §382.085(b), 40 Code of Federal Regulations (CFR) §60.13(d)(1), Federal Operating Permit (FOP) Number O1372, Special Terms and Conditions (STC) Number 1.A, and Flexible Permit Numbers 2167 and PSDTX985, Special Conditions (SC) Number 8, by failing to maintain the Continuous Emission Monitoring System in good working order and operating properly during normal plant operations; 30 TAC §§101.20(1) and (3), 116.715(a), and 122.143(4), THSC, §382.085(b), 40 CFR §60.103a(h), FOP Number O1372, STC Numbers 1.A and 26, and Flexible Permit Numbers 2167 and PSDTX985, SC Number 25, by failing to comply with the concentration limits; and 30 TAC §§101.20(3), 116.715(a), and 122.143(4), THSC, §382.085(b), FOP Number O1372, STC Number 26, and Flexible Permit Numbers 2167 and PSDTX985, SC Number 1, by failing to prevent unauthorized emissions; PENALTY: \$77,626; Supplemental Environmental Project offset amount of \$31,050; ENFORCEMENT COORDINATOR: Jo Hunsberger, (512) 239-1274; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(13) COMPANY: JPN ENTERPRISE, LLC dba GSES Dry Clean Super Center; DOCKET NUMBER: 2017-0337-MLM-E; IDENTIFIER: RN104111158; LOCATION: Allen, Collin County; TYPE OF FACILITY: dry cleaning facility; RULES VIOLATED: 30 TAC §337.11(d)(3), by failing to ensure that a valid, current agency registration certificate is displayed at the facility and posted in a public area where the certificate is clearly visible; 30 TAC §337.20(e)(3)(A), by failing to install a dike or other secondary containment structure around each storage area for dry cleaning waste or wastewater; 30 TAC §337.20(e)(6)(B) and §337.72(3), by failing to visually inspect each installed secondary containment structure weekly to ensure that the structure is not damaged and keep a log of the inspections; 30 TAC §337.70(b) and §337.72(1) and (2), by failing to maintain dry cleaner records for a minimum of five years; and 30 TAC §335.4, by

failing to cause, suffer, allow, or permit the unauthorized disposal of industrial hazardous waste; PENALTY: \$4,612; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3421; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(14) COMPANY: Livingston Care Associates, Incorporated and Polk Health Holdings LLC; DOCKET NUMBER: 2017-0296-MWD-E; IDENTIFIER: RN101718765; LOCATION: Livingston, Polk County; TYPE OF FACILITY: a wastewater treatment plant; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0013388001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; 30 TAC §305.125(1) and TPDES Permit Number WQ0013388001, Section III.G., by failing to submit the annual sludge report for the monitoring periods of 2013 - 2016; 30 TAC §217.152(c) and §305.125(1), and TPDES Permit Number WQ0013388001, Operational Requirements Number 1, by failing to ensure that the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained; 30 TAC §305.125(1) and (17) and §319.7(d) and TPDES Permit Number WQ0013388001, Monitoring and Reporting Requirements Number 1, by failing to timely submit monthly effluent reports at intervals specified in the permit; 30 TAC §305.125(1) and (17) and §319.7(d) and TPDES Permit Number WQ0013388001, Monitoring and Reporting Requirements Number 1, by failing to collect monitoring results at intervals specified in the permit; 30 TAC §305.125(1) and (17) and TPDES Permit Number WQ0013388001, Monitoring and Reporting Requirements Number 7.c., by failing to report in writing any effluent violation which deviates from the permitted effluent limitation by more than 40% to the TCEQ Beaumont Regional Office and the Enforcement Division within five working days of becoming aware of the non-compliance; 30 TAC §305.125(1) and §319.11(a) and TPDES Permit Number WQ0013388001, Monitoring and Reporting Requirements Number 2.a., by failing to properly collect effluent samples; and 30 TAC §305.125(1) and §319.11(a) and TPDES Permit Number WQ0013388001, Monitoring and Reporting Requirements Number 4, by failing to include and report additional monitoring results on monthly Discharge Monitoring Reports; PENALTY: \$27,084; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(15) COMPANY: MELROSE WATER SUPPLY CORPORATION; DOCKET NUMBER: 2017-0509-PWS-E; IDENTIFIER: RN102689346; LOCATION: Nacogdoches, Nacogdoches County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(n)(2), by failing to provide an accurate and up-to-date map of the distribution system so that valves and mains can be easily located during emergencies; 30 TAC §290.46(m)(4), by failing to maintain all water treatment units, storage and pressure maintenance facilities, distribution system lines, and related appurtenances in a watertight condition; 30 TAC §290.46(q)(1) and (2), by failing to issue a boil water notification to the persons served by the facility within 24 hours of a low pressure event or water outage using the prescribed format in 30 TAC §290.47(c); 30 TAC §290.44(a)(4), by failing to install water transmission and distribution lines below the frost line and in no case less than 24 inches below ground surface; and 30 TAC §290.46(e)(4)(C), by failing to operate the facility under the direct supervision of at least two water works operators who hold a Class C or higher license; PENALTY: \$2,286; ENFORCEMENT COORDINATOR: Ryan Byer, (512) 239-2571; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(16) COMPANY: Muhammad Zaman dba Hoffs Food Stop; DOCKET NUMBER: 2017-0666-PST-E; IDENTIFIER: RN101746956; LOCATION: Mathis, San Patricio County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.48(c) and §334.50(d)(1)(b) and TWC, §26.3475(c)(1), by failing to conduct effective manual or automatic inventory control procedures for all underground storage tanks (USTs); and 30 TAC §334.602(a), by failing to identify and designate at least one individual for the UST facility to be trained and certified as a Class C operator; PENALTY: \$5,625; ENFORCEMENT COORDINATOR: Carlos Molina, (512) 239-2557; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(17) COMPANY: NHB Corporation dba EZ Mart 2; DOCKET NUMBER: 2017-0675-PST-E; IDENTIFIER: RN101675056; LOCATION: Waco, McLennan County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month, and failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: \$3,128; ENFORCEMENT COORDINATOR: Margarita Dennis, (817) 588-5892; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(18) COMPANY: R.N.A. CORPORATION dba RNA Chevron; DOCKET NUMBER: 2017-0514-PST-E; IDENTIFIER: RN102838729; LOCATION: Alvin, Brazoria County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.241(c)(1) and Texas Health and Safety Code, §382.085(b), by failing to complete all Stage II decommissioning activity within 30 calendar days after the date the decommissioning activity was initiated; 30 TAC §334.10(b)(1)(B) and §334.49(e)(1), by failing to maintain all underground storage tank (UST) records and make them immediately available for inspection upon request by agency personnel; 30 TAC §334.45(c)(3)(A), by failing to ensure that the emergency shutoff valves are securely anchored at the base of the dispensers; and 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month; PENALTY: \$5,564; ENFORCEMENT COORDINATOR: John Paul Fennell, (512) 239-2616; REGIONAL OFFICE: 5425 Polk Street, Suite H Houston, Texas 77023-1452, (713) 767-3500.

(19) COMPANY: Ramiro Munoz dba Blue Shadow Village MH Park; DOCKET NUMBER: 2017-0508-PWS-E; IDENTIFIER: RN109690412; LOCATION: Carrizo Springs, Dimmit County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(e)(1) and (h)(1) and Texas Health and Safety Code, §341.035(a), by failing to submit plans and specifications to the executive director for review and approval prior to the construction of a new public water supply; 30 TAC §290.46(n)(3), by failing to maintain copies of well completion data such as well material setting data, geological log, sealing information, disinfection information, microbiological sample results, and a chemical analysis report of a representative sample of water from the well; 30 TAC §290.42(b)(1) and (e)(3), by failing to provide disinfection facilities for the groundwater supply to ensure that continuous and effective disinfection can be achieved under all conditions for the purpose of microbiological control and distribution protection; and 30 TAC §290.46(e)(4)(A), by failing to operate the facility under the direct supervision of a licensed water works operator who holds a Class D or higher license; PENALTY: \$896; ENFORCEMENT COORDINATOR: Ryan Byer, (512) 239-2571; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(20) COMPANY: RIGHT LANE ENTERPRISE INCORPORATED dba Chilly Market; DOCKET NUMBER: 2017-0612-PST-E; IDENTIFIER: RN102226693; LOCATION: Grand Prairie, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tank for releases at a frequency of at least once every month; PENALTY: \$4,500; ENFORCEMENT COORDINATOR: Jo Hunsberger, (512) 239-1274; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(21) COMPANY: Stephen Joel Friedman; DOCKET NUMBER: 2017-0800-MWD-E; IDENTIFIER: RN101526929; LOCATION: Houston, Harris County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: TWC, §26.121(a)(1) and 30 TAC §305.65 and §305.125(2), by failing to maintain authorization to discharge wastewater into or adjacent to any water in the state; and TWC, §5.702 and 30 TAC §21.4, by failing to pay Consolidated Water Quality fees and associated late fees for TCEQ Financial Administration Account Number 23001001 for Fiscal Years 2015 - 2017; PENALTY: \$1,125; ENFORCEMENT COORDINATOR: Claudia Corrales, (432) 620-6138; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(22) COMPANY: Texas Department of Transportation; DOCKET NUMBER: 2017-0356-PWS-E; IDENTIFIER: RN102674090; LOCATION: Whittsett, Live Oak County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.43(c) and (3), by failing to provide each ground storage tank with the minimum number, size, and type of roof vents, man ways, drains, sample connections, access ladders, overflows, liquid level indicators, and other appurtenances as specified in these rules, and failed to ensure that overflows terminating at any point above ground level are located near enough and at a position accessible from a ladder or balcony for inspection purposes; 30 TAC §290.45(f)(1), by failing to make a water purchase contract available to the executive director (ED) in order that production, storage, service pump, or pressure maintenance capacity may be properly evaluated; 30 TAC §290.43(c)(4), by failing to provide all water storage tanks with a liquid level indicator located at the tank site; 30 TAC §290.45(d)(2)(B)(v) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to provide a minimum pressure tank capacity of 220 gallons with additional capacity, if necessary, based on a sanitary survey conducted by the ED; 30 TAC §290.39(j) and (j)(1)(A) and THSC, §341.0351, by failing to notify and obtain approval of plans and specifications from the ED prior to making any significant change or addition to the system's production, treatment, storage, pressure maintenance, or distribution facilities; PENALTY: \$930; Supplemental Environmental Project offset amount of \$745; ENFORCEMENT COORDINATOR: Michaele Garza, (210) 403-4076; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(23) COMPANY: WINNIE WELDING WORKS AND CONSTRUCTION, INCORPORATED; DOCKET NUMBER: 2017-0336-WQ-E; IDENTIFIER: RN108511510; LOCATION: Winnie, Chambers County; TYPE OF FACILITY: sand mining operation; RULES VIOLATED: TWC, §26.121(a)(2), 30 TAC §281.25(a)(4), 40 Code of Federal Regulations (CFR) §122.26(a), and Texas Pollutant Discharge Elimination System (TPDES) Multi-Sector General Permit (MSGP) Number TXR05CL89, Part III, Section E.2.b, by failing to take all reasonable steps to minimize or prevent any discharge into or adjacent to any water in the state that has a reasonable likelihood of adversely affecting human health or the environment; and 30 TAC §281.25(a)(4), 40 CFR §122.26(a), and TPDES MSGP Number TXR05CL89, Part III, Section A, by failing to develop and implement a Stormwater Pollution Prevention Plan as required by TPDES MSGP Number

TXR05CL89; PENALTY: \$5,750; ENFORCEMENT COORDINATOR: Larry Butler, (512) 239-2543; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(24) COMPANY: Zubair Ullah dba EZ Stop; DOCKET NUMBER: 2017-0515-PST-E; IDENTIFIER: RN101802650; LOCATION: Kingsville, Kleberg County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(b)(2) and TWC, §26.3475(d), by failing to provide corrosion protection to all underground metal components of an underground storage tank (UST) system which are designed or used to convey, contain, or store regulated substances; 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month; and 30 TAC §334.7(d)(1)(B) and 334.7(d)(3), by failing to notify the agency of any change or additional information regarding the USTs within 30 days of the occurrence of the change or addition or within 30 days from the date on which the owner or operator first became aware of the change or addition; PENALTY: \$7,875; ENFORCEMENT COORDINATOR: Benjamin Sakmar, (512) 239-1704; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

TRD-201702980

Gitanjali Yadav

Acting Director, Litigation Division

Texas Commission on Environmental Quality

Filed: August 8, 2017



#### Enforcement Orders

An agreed order was adopted regarding AZEL H CORP. dba Moon Mart, Docket No. 2015-1336-PST-E on August 8, 2017, assessing \$5,000 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Jake Marx, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding MRUBEL ENTERPRISE INC dba Ruiz Market, Docket No. 2016-1734-PST-E on August 8, 2017, assessing \$3,000 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Ryan Rutledge, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Amron Properties L.L.C., Docket No. 2016-1963-PST-E on August 8, 2017, assessing \$5,250 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Amanda Patel, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201703008

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: August 9, 2017



#### Notice of a Public Meeting and a Proposed Renewal with Amendment of a General Permit Authorizing the Discharge of Stormwater Associated with Construction Activities

The Texas Commission on Environmental Quality (TCEQ or commission) proposes to renew and amend the Texas Pollutant Discharge Elim-

ination System (TPDES) General Permit Number TXR150000, authorizing the discharge of stormwater and certain non-stormwater discharges from construction activities into or adjacent to surface water in the state. The proposed general permit applies to the entire state of Texas. General permits are authorized by Texas Water Code, §26.040.

**PROPOSED GENERAL PERMIT.** The executive director has prepared a proposed general permit with amendments to the existing general permit authorizing the discharge of stormwater and certain types of non-stormwater from small construction sites (one acre to less than five acres) and large construction sites (five acres or larger) into or adjacent to surface water in the state. The proposed changes to the general permit are described in the fact sheet.

The executive director proposes to require dischargers to submit a Notice of Intent (NOI) to obtain authorization to discharge. The proposed general permit also specifies when permit coverage can be obtained without submitting a NOI, when a waiver from permit coverage may be obtained, and when permit coverage under a separate individual TPDES permit must be obtained. This general permit would also authorize the discharge of stormwater from industrial activities at construction sites that directly support the construction activity and are located at, adjacent to, or in close proximity to the permitted construction site. Non-stormwater discharges that are not specifically listed in the general permit are not authorized by the general permit. No significant degradation of high quality waters is expected and existing uses will be maintained and protected.

The executive director has reviewed this action for consistency with the goals and policies of the Texas Coastal Management Program (CMP), according to General Land Office regulations, and has determined that the action is consistent with applicable CMP goals and policies.

A copy of the proposed general permit and fact sheet are available for viewing and copying at the TCEQ Office of the Chief Clerk located at the TCEQ's Austin office, at 12100 Park 35 Circle, Building F. These documents are also available at the TCEQ's 16 regional offices and on the TCEQ website at <https://www.tceq.texas.gov/permitting/stormwater>.

**PUBLIC COMMENT AND PUBLIC MEETING.** You may submit public comments about this general permit in writing or orally at the public meeting held by the TCEQ. The purpose of a public meeting is to provide the opportunity to submit written or oral comments or to ask questions about the general permit. A public meeting is not a contested case hearing.

The public meeting will be held at 1:30 p.m., September 18, 2017, in TCEQ's complex at 12100 Park 35 Circle, Building E, Room 201S, Austin, Texas.

Written public comments must be received within 30 days from the date this notice is published. Written comments may be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at <https://www.tceq.texas.gov/about/comments.html>.

**APPROVAL PROCESS.** After the comment period, the executive director will consider all the public comments and prepare a written response. The response will be filed with the TCEQ Office of the Chief Clerk at least ten days before the scheduled commission's agenda meeting when the commission will consider approval of the general permit. The commission will consider all public comments in making its decision and will either adopt the executive director's response or prepare its own response to the comments. The commission will issue its written response on the general permit at the same time the commission issues or denies the general permit. A copy of any issued general permit and Response to Comment will be made available to the public for inspection.

tion at the agency's Austin office, regional offices, and via weblink. A notice of the commissioners' action on the proposed general permit and a copy of its Response to Comment will be mailed to each person who submitted public comment or requested to be on the mailing list. Also, a notice of the Commission's action on the proposed general permit with a weblink to the Response to Comment will be published in the *Texas Register*.

**MAILING LISTS.** In addition to submitting public comments, you may ask to be placed on a mailing list to receive future public notices mailed by the Office of the Chief Clerk. You may request to be added to: 1) the mailing list for this specific general permit; 2) the permanent mailing list for a specific county; or 3) both. Clearly specify the mailing lists to which you wish to be added and send your request to the TCEQ Office of the Chief Clerk at the address previously mentioned. Unless you otherwise specify, you will be included only on the mailing list for this specific general permit.

**INFORMATION.** If you need more information about the proposed general permit or the permitting process, please call the TCEQ Public Education Program, toll free, at (800) 687-4040. General information about the TCEQ can be found at our website at <https://www.tceq.texas.gov>.

Further information may also be obtained by calling the Stormwater and Pretreatment Team, TCEQ Water Quality Division, at (512) 239-4671.

*Si desea información en español, puede llamar (800) 687-4040.*

TRD-201702979

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: August 8, 2017



#### Notice of a Public Meeting and a Proposed Renewal with Amendment of a General Permit Authorizing the Discharge of Stormwater Associated with Construction Activities

The Texas Commission on Environmental Quality (TCEQ or commission) proposes to renew and amend the Texas Pollutant Discharge Elimination System (TPDES) General Permit Number TXR150000, authorizing the discharge of stormwater and certain non-stormwater discharges from construction activities into or adjacent to surface water in the state. The proposed general permit applies to the entire state of Texas. General permits are authorized by Texas Water Code §26.040.

**PROPOSED GENERAL PERMIT.** The executive director has prepared a proposed general permit with amendments to the existing general permit authorizing the discharge of stormwater and certain types of non-stormwater from small construction sites (one acre to less than five acres) and large construction sites (five acres or larger) into or adjacent to surface water in the state. The proposed changes to the general permit are described in the fact sheet.

The executive director proposes to require dischargers to submit a Notice of Intent (NOI) to obtain authorization to discharge. The proposed general permit also specifies when permit coverage can be obtained without submitting a NOI, when a waiver from permit coverage may be obtained, and when permit coverage under a separate individual TPDES permit must be obtained. This general permit would also authorize the discharge of stormwater from industrial activities at construction sites that directly support the construction activity and are located at, adjacent to, or in close proximity to the permitted construction site. Non-stormwater discharges that are not specifically listed in the

general permit are not authorized by the general permit. No significant degradation of high quality waters is expected and existing uses will be maintained and protected.

The executive director has reviewed this action for consistency with the goals and policies of the Texas Coastal Management Program (CMP), according to General Land Office regulations, and has determined that the action is consistent with applicable CMP goals and policies.

A copy of the proposed general permit and fact sheet are available for viewing and copying at the TCEQ Office of the Chief Clerk located at the TCEQ's Austin office, at 12100 Park 35 Circle, Building F. These documents are also available at the TCEQ's 16 regional offices and on the TCEQ website at <https://www.tceq.texas.gov/permitting/stormwater>.

**PUBLIC COMMENT AND PUBLIC MEETING.** You may submit public comments about this general permit in writing or orally at the public meeting held by the TCEQ. The purpose of a public meeting is to provide the opportunity to submit written or oral comments or to ask questions about the general permit. A public meeting is not a contested case hearing.

The public meeting will be held at **1:30 p.m., September 18, 2017**, in TCEQ's complex at 12100 Park 35 Circle, Building E, Room 201S, Austin, Texas.

**Written public comments must be received within 30 days from the date this notice is published. Written comments may be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at <https://www.tceq.texas.gov/about/comments.html>.**

**APPROVAL PROCESS.** After the comment period, the executive director will consider all the public comments and prepare a written response. The response will be filed with the TCEQ Office of the Chief Clerk at least ten days before the scheduled commission's agenda meeting when the commission will consider approval of the general permit. The commission will consider all public comments in making its decision and will either adopt the executive director's response or prepare its own response to the comments. The commission will issue its written response on the general permit at the same time the commission issues or denies the general permit. A copy of any issued general permit and Response to Comment will be made available to the public for inspection at the agency's Austin office, regional offices, and via weblink. A notice of the commissioners' action on the proposed general permit and a copy of its Response to Comment will be mailed to each person who submitted public comment or requested to be on the mailing list. Also, a notice of the Commission's action on the proposed general permit with a weblink to the Response to Comment will be published in the *Texas Register*.

**MAILING LISTS.** In addition to submitting public comments, you may ask to be placed on a mailing list to receive future public notices mailed by the Office of the Chief Clerk. You may request to be added to: 1) the mailing list for this specific general permit; 2) the permanent mailing list for a specific county; or 3) both. Clearly specify the mailing lists to which you wish to be added and send your request to the TCEQ Office of the Chief Clerk at the address previously mentioned. Unless you otherwise specify, you will be included only on the mailing list for this specific general permit.

**INFORMATION.** If you need more information about the proposed general permit or the permitting process, please call the TCEQ Public Education Program, toll free, at (800) 687-4040. General information about the TCEQ can be found at our website at <https://www.tceq.texas.gov>.

Further information may also be obtained by calling the Stormwater and Pretreatment Team, TCEQ Water Quality Division, at (512) 239-4671.

*Si desea información en español, puede llamar (800) 687-4040.*

Issued: August 7, 2017

TRD-201703013

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: August 9, 2017



### Notice of Public Hearing

on Assessment of Administrative Penalties and Requiring Certain Actions of Danny Joe Cypert

SOAH Docket No. 582-17-5419

TCEQ Docket No. 2016-1299-LII-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - September 7, 2017

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed April 24, 2017 concerning assessing administrative penalties against and requiring certain actions of Danny Joe Cypert, for violations in Travis County, Texas, of: Texas Occ. Code §1903.251, Texas Water Code §37.003, and 30 Texas Admin. Code §30.5(a) and (b), and §344.34(a).

The hearing will allow Danny Joe Cypert, 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 Danny Joe Cypert, 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 **Danny Joe Cypert** to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes. Danny Joe Cypert, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Texas Water Code §7.054 and chs. 7 and 37, Texas Occ. Code ch. 1903, and 30 Texas Admin. Code chs. 30, 70, and 344; Texas 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 Admin. Code §70.108 and §70.109 and ch. 80, and 1 Texas Admin. Code ch. 155.

Further information regarding this hearing may be obtained by contacting Jess Robinson, 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 Vic McWherter, 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 <http://www.tceq.texas.gov/goto/eFilings> or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

In accordance with 1 Texas Admin. Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at [www.soah.texas.gov](http://www.soah.texas.gov), or in printed format upon request to SOAH."

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: August 7, 2017

TRD-201703010

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: August 9, 2017



### Notice of Public Hearing

on Assessment of Administrative Penalties and Requiring Certain Actions of Diana Alvis and Gene R. Alvis

SOAH Docket No. 582-17-5420

TCEQ Docket No. 2017-0095-PST-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - September 7, 2017

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed May 15, 2017, concerning assessing administrative penalties against and requiring certain actions of Diana Alvis and Gene R. Alvis, for violations in Newton County, Texas, of: Tex. Water Code §26.3475(d) and 30 Tex. Admin. Code §§334.7(d)(3) and (e)(2), 334.49(c)(2)(C) and (c)(4)(C), and 334.54(b)(2), (c)(1), and (e)(2).

The hearing will allow Diana Alvis and Gene R. Alvis, 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 Diana Alvis and Gene R. Alvis, 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 **Diana Alvis and Gene R. Alvis** to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes. Diana Alvis and Gene R. Alvis, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Tex. Water Code §7.054, Tex. Water Code chs. 7 and 26, and 30 Tex. Admin. Code chs. 70 and 334; 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 Tex. Admin. Code §§70.108 and 70.109 and ch. 80, and 1 Tex. Admin. Code ch. 155.

Further information regarding this hearing may be obtained by contacting Isaac Ta, 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 Vic McWherter, 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 <http://www.tceq.texas.gov/goto/eFilings> or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

In accordance with 1 Tex. Admin. Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at [www.soah.texas.gov](http://www.soah.texas.gov), or in printed format upon request to SOAH."

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: August 7, 2017

TRD-201703009

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: August 9, 2017



### Notice of Public Hearing

on Assessment of Administrative Penalties and Requiring Certain Actions of Elsa Salazar

SOAH Docket No. 582-17-5050

TCEQ Docket No. 2016-1637-MSW-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - September 7, 2017

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed February 1, 2017 concerning assessing administrative penalties against and requiring certain actions of Elsa Salazar, for violations in Hidalgo County, Texas, of: 30 Tex. Admin. Code §330.15(a) and (c).

The hearing will allow Elsa Salazar, 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 Elsa Salazar, 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 **Elsa Salazar** to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes. Elsa Salazar, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Tex. Water Code §7.054, Tex. Water Code ch. 7, Tex. Health & Safety Code ch. 361, and 30 Tex. Admin. Code chs. 70 and 330; Tex. Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Tex. Admin. Code §70.108 and §70.109 and ch. 80, and 1 Tex. Admin. Code ch. 155.

Further information regarding this hearing may be obtained by contacting Ian Groetsch, 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 Vic McWherter, 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 <http://www.tceq.texas.gov/goto/eFilings> or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

In accordance with 1 Tex. Admin. Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at [www.soah.texas.gov](http://www.soah.texas.gov), or in printed format upon request to SOAH."

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

TRD-201703011  
Bridget C. Bohac  
Chief Clerk  
Texas Commission on Environmental Quality  
Filed: August 9, 2017



### Notice of Public Hearing

on Assessment of Administrative Penalties and Requiring Certain Actions of Franklin D. Rifenburg, Marie C. Rifenburg, and William P. Easley D/B/A We Recycle Texas

SOAH Docket No. 582-17-5418

TCEQ Docket No. 2016-1435-MLM-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - September 7, 2017

William P. Clements Building  
300 West 15th Street, 4th Floor  
Austin, Texas 78701

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed February 9, 2017 concerning assessing administrative penalties against and requiring certain actions of Franklin D. Rifenburg, Marie C. Rifenburg, and William P. Easley d/b/a We Recycle Texas, for violations in Comal County, Texas, of: 40 C.F.R. §262.11 and §279.22(b), (c)(1) and (d), Texas Water Code §26.121(a), and 30 Texas Admin. Code §§324.1, 324.4, 330.7(a), 330.15(a) and (c), 335.2, 335.4, 335.62, 335.503, and 335.504.

The hearing will allow Franklin D. Rifenburg, Marie C. Rifenburg, and William P. Easley d/b/a We Recycle Texas, 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 Franklin D. Rifenburg, Marie C. Rifenburg, and William P. Easley d/b/a We Recycle Texas, 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 **Franklin D. Rifenburg, Marie C. Rifenburg, and William P. Easley d/b/a We Recycle Texas** to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes. Franklin D. Rifenburg, Marie C. Rifenburg, and William P. Easley d/b/a We Recycle Texas, the Execu-

tive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Texas Water Code §7.054 and chs. 7 and 26, Texas Health & Safety Code chs. 361 and 371, 30 Texas Admin. Code chs. 70, 324, 330, and 335, and 40 C.F.R. pts. 262 and 279; Texas 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 Admin. Code §70.108 and §70.109 and ch. 80, and 1 Texas Admin. Code ch. 155.

Further information regarding this hearing may be obtained by contacting Lena Roberts, 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 Vic McWherter, 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 <http://www.tceq.texas.gov/goto/eFilings> or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

In accordance with 1 Texas Admin. Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at [www.soah.texas.gov](http://www.soah.texas.gov), or in printed format upon request to SOAH."

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: August 7, 2017  
TRD-201703012  
Bridget C. Bohac  
Chief Clerk  
Texas Commission on Environmental Quality  
Filed: August 9, 2017



### Notice of Public Hearing

on Assessment of Administrative Penalties and Requiring Certain Actions of Southwest Convenience Stores, LLC dba 7 Eleven 57812 and 7 Eleven 57816

SOAH Docket No. 582-17-5421

TCEQ Docket No. 2016-1411-PST-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - September 7, 2017

William P. Clements Building  
300 West 15th Street, 4th Floor  
Austin, Texas 78701

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed June 8, 2017, concerning assessing administrative penalties against and requiring certain actions of Southwest Convenience Stores, LLC dba 7 Eleven 57812 and 7 Eleven 57816, for violations in Midland County, Texas, of: 30 Tex. Admin. Code §334.72 and §334.74.

The hearing will allow Southwest Convenience Stores, LLC dba 7 Eleven 57812 and 7 Eleven 57816, 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 Southwest Convenience Stores, LLC dba 7 Eleven 57812 and 7 Eleven 57816, 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 **Southwest Convenience Stores, LLC dba 7 Eleven 57812 and 7 Eleven 57816** to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes.

Southwest Convenience Stores, LLC dba 7 Eleven 57812 and 7 Eleven 57816, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Tex. Water Code §7.054 and Tex. Water Code chs. 7 and 26 and 30 Tex. Admin. Code chs. 70 and 334; 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 Tex. Admin. Code §§70.108 and 70.109 and ch. 80, and 1 Tex. Admin. Code ch. 155.

Further information regarding this hearing may be obtained by contacting Audrey Liter, 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 Vic McWherter, 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 <http://www.tceq.texas.gov/goto/eFilings> or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

In accordance with 1 Tex. Admin. Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at [www.soah.texas.gov](http://www.soah.texas.gov), or in printed format upon request to SOAH."

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: August 7, 2017

TRD-201703014

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: August 9, 2017

## Texas Ethics Commission

### List of Late Filers

Below is a list from the Texas Ethics Commission naming the filers who failed to pay the penalty fine for failure to file the report, or filing a late report, in reference to the specified filing deadline. If you have any questions, you may contact Michelle Gonzales at (512) 463-5800.

#### **Deadline: Monthly Report due May 5, 2017, for Committees**

Keith A. Houser, Citizens For Property Rights, 1219 Whispering Ln., Southlake, Texas 76092-4614

Bonita C. Ocampo, Tarrant County Tejano Democrats, 3803 S. Jones St., Fort Worth, Texas 76110-5512

Deanna Everett Tollerton, Williamson County Young Democrats, 13224 Marrero Dr., Austin, Texas 78729

#### **Deadline: Lobby Activities Report due April 10, 2017**

Courtney Boswell, 919 Congress Ave., Ste. 535, Austin, Texas 78701

#### **Deadline: Lobby Activities Report due May 10, 2017**

Courtney Boswell, 919 Congress Ave., Ste. 535, Austin, Texas 78701

James Andrew Campbell, P.O. Box 195892, Dallas, Texas 75219

Vanus J. Priestley, P.O. Box 200194, Austin, Texas 78720

Steven C. Ray, P.O. Box 1377, Austin, Texas 78767

#### **Deadline: Lobby Activities Report due June 12, 2017**

James Andrew Campbell, P.O. Box 195892, Dallas, Texas 75219

Wil Galloway, 408 W. 14th St., Austin, Texas 78701

Brent W. Gattis, 9860 Flint Rock Rd., Manassas, Virginia 20112

Steven C. Ray, P.O. Box 1377, Austin, Texas 78767

Jennifer E. Sellers, 511 Clover Flat Rd., Cedar Park, Texas 78631

TRD-201702920

Seana Willing

Executive Director

Texas Ethics Commission

Filed: August 3, 2017

### List of Late Filers

Below is a list from the Texas Ethics Commission naming the filers who failed to pay the penalty fine for failure to file the report, or filing a late report, in reference to the specified filing deadline. If you have any questions, you may contact Julia Shinn at (512) 463-5800.

#### **Deadline: 8 Day Pre-Election Report due February 22, 2016, for Candidates and Officeholders**

William W. Ruth, 1406 E. Main Street, Ste. 200, Fredericksburg, Texas 78624

TRD-201702963



Seana Willing  
Executive Director  
Texas Ethics Commission  
Filed: August 7, 2017

◆ ◆ ◆  
**Office of the Governor**

**Notice of Application and Priorities for the Justice Assistance Grant Program Federal Application**

The Governor's Criminal Justice Division (CJD) is planning to apply for federal fiscal year (FFY) 2017 formula funds under the Edward Byrne Justice Assistance Grant (JAG) program administered by the U.S. Department of Justice, Bureau of Justice Assistance. The FFY 2017 allocation to Texas is estimated to be \$13.3 million.

CJD proposes to use the FFY 2017 award to fund initiatives that target border security, violent crimes, organized criminal activity, improve technology, substance abuse diversion programs and offender reentry into the community.

Comments regarding the proposed use of JAG funds should be submitted in writing within 30 days from the date of this announcement in the *Texas Register*. Comments may be submitted to the attention of Ms. Margie Fernandez-Prew, Criminal Justice Division (CJD), Texas Office of the Governor, by email at [margie.fernandez-prew@gov.texas.gov](mailto:margie.fernandez-prew@gov.texas.gov) or by mail to the Office of the Governor, Criminal Justice Division, Post Office Box 12428, Austin, Texas 78711. You may also request a copy of the application upon its completion from Ms. Fernandez-Prew.

TRD-201702933  
Bayley Irby  
Special Assistant  
Office of the Governor  
Filed: August 3, 2017

◆ ◆ ◆  
**Texas Health and Human Services Commission**

**Public Notice - Texas State Plan for Medical Assistance Amendments**

The Texas Health and Human Services Commission (HHSC) announces its intent to submit amendments to the Texas State Plan for Medical Assistance under Title XIX of the Social Security Act. The proposed amendments are effective September 1, 2017.

The purpose of these amendments is to update the fee schedules in the current state plan by adjusting fees, rates, or charges for physical, occupational, and speech therapy for:

Early and Periodic Screening, Diagnosis and Treatment Services (EPSDT);

Physicians and Other Practitioners; and

Home Health Services.

The proposed amendments are estimated to result in an aggregate cost savings of \$284,985 for the remainder of federal fiscal year (FFY) 2017, consisting of \$160,105 in federal funds and \$124,880 in state general revenue. For FFY 2018, the estimated cost savings is \$6,344,495, consisting of \$3,608,749 in federal funds and \$2,735,746 in state general revenue. For FFY 2019, the estimated cost savings is \$38,567,233 consisting of \$22,129,878 in federal funds and \$16,437,355 in state general revenue.

Further detail on specific rates and percentage changes is available on the HHSC Rate Analysis website under the September 1, 2017,

proposed effective date at: <http://www.hhsc.state.tx.us/Rad/rate-packets.shtml>.

**Rate Hearing.** A rate hearing was held on July 19, 2017, at 9:00 a.m. in Austin, Texas. Information about the proposed rate changes and the hearing can be found in the June 30, 2017, issue of the *Texas Register* at pages (3435-3436) at <http://www.sos.state.tx.us/texreg/index.shtml>.

**Copy of Proposed Amendments.** Interested parties may obtain a free copy of the proposed amendments or additional information about the amendments by contacting Doneshia Ates, State Plan Coordinator, by mail at the Health and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, TX 78711; by telephone at (512) 428-1963; by facsimile at (512) 730-7472; or by email at [Doneshia.Ates@hhsc.state.tx.us](mailto:Doneshia.Ates@hhsc.state.tx.us). Copies of the proposed amendments will be available for review at the local county offices of the Texas Department of Aging and Disability Services.

**Written Comments.** Written comments and/or requests to review comments may be sent by U.S. mail, overnight mail, special delivery mail, hand delivery, fax, or email:

**U.S. Mail.**

Texas Health and Human Services Commission  
Attention: Rate Analysis, Mail Code H-400  
P.O. Box 149030  
Austin, Texas 78714-9030

**Overnight mail, special delivery mail, or hand delivery.**

Texas Health and Human Services Commission  
Attention: Rate Analysis, Mail Code H-400  
Brown-Heatly Building  
4900 North Lamar Blvd  
Austin, Texas 78751

Phone number for package delivery: (512) 730-7401

**Fax.**

Attention: Rate Analysis at (512) 730-7475

**Email.**

[RADAcuteCare@hhsc.state.tx.us](mailto:RADAcuteCare@hhsc.state.tx.us)

TRD-201702982

Karen Ray  
Chief Counsel  
Texas Health and Human Services Commission  
Filed: August 8, 2017

◆ ◆ ◆  
**Public Notice - Waiver Amendment to the Home and Community-based Services Program**

The Texas Health and Human Services Commission (HHSC) is submitting to the Centers for Medicare & Medicaid Services (CMS) a request for an amendment of the Home and Community-based Services (HCS) waiver program, a waiver implemented under the authority of section 1915(c) of the Social Security Act. CMS has approved this waiver through August 31, 2018. The proposed effective date for the amendment is January 1, 2018, with no changes to cost neutrality.

This amendment request proposes to make the following changes:

Currently, HCS providers are required to submit cost reports to HHSC on an annual basis. HHSC will implement a streamlined cost reporting system for intellectual and developmental disabilities (IDD) providers that requires the submission of cost reports every other year beginning on January 1, 2018.

The HCS waiver provides services and supports to individuals with intellectual disabilities who live in their own homes, a family member's home, or community settings such as small three and four person homes. To be eligible for the waiver, individuals must meet financial eligibility criteria and meet the level of care required for admission into an intermediate care facility for individuals with intellectual disabilities.

An individual may obtain a free copy of the proposed waiver amendment, including the HCS settings transition plan, or ask questions, obtain additional information, or submit comments regarding this amendment or the HCS settings transition plan, by contacting Jacqueline Pernell by U.S. mail, telephone, fax, or email. The addresses are as follows:

**U.S. Mail**

Texas Health and Human Services Commission  
Attention: Jacqueline Pernell, Waiver Coordinator, Policy Development Support  
PO Box 13247  
Mail Code H-600  
Austin, Texas 78711-3247

**Telephone**

(512) 428-1931

**Fax**

Attention: Jacqueline Pernell, Waiver Coordinator, at (512) 487-3403

**Email**

[TX\\_Medicaid\\_Waivers@hhsc.state.tx.us](mailto:TX_Medicaid_Waivers@hhsc.state.tx.us).

In addition, the HHSC local offices will post this notice for 30 days. The complete waiver amendment request can be found online on the Health and Human Services website at <http://www.dads.state.tx.us/providers/HCS/>.

TRD-201702987

Karen Ray  
Chief Counsel  
Texas Health and Human Services Commission  
Filed: August 8, 2017



**Public Notice - Waiver Amendment to the Texas Home Living**

The Texas Health and Human Services Commission (HHSC) is submitting to the Centers for Medicare & Medicaid Services (CMS) a request for an amendment to the Texas Home Living (TxHmL) waiver program, a waiver implemented under the authority of section 1915(c) of the Social Security Act. CMS has approved this waiver through February 28, 2022. The proposed effective date for this amendment is January 1, 2018, with no changes to cost neutrality.

This amendment request proposes to make the following changes:

1. Currently, TxHmL providers are required to submit cost reports to HHSC on an annual basis. HHSC will implement a streamlined cost reporting system for intellectual and developmental disabilities (IDD)

providers that requires the submission of cost reports every other year beginning on January 1, 2018.

2. Delete language regarding (1) rate increases based on appropriations by the 84th Texas Legislature effective September 1, 2015; and (2) additional cost reporting requirements mandated as a result of the rate increases. The 85th Texas Legislature, Regular Session (2017) did not maintain the appropriation for the rate increases.

3. Revise language to reflect HHSC administrative authority regarding rate methodology rules in the waiver.

TxHmL provides essential community-based services and supports to individuals with IDD living in their own homes or with their families. Services and supports are intended to enhance quality of life, functional independence, and health and well-being in continued community-based living and to enhance, rather than replace, existing informal or formal supports and resources. Services include day habilitation, respite, supported employment, prescription medications, financial management services, support consultation, adaptive aids, audiology services, behavioral support, community support, dental treatment, dietary service, employment assistance, minor home modifications, occupational therapy services, physical therapy services, nursing, and speech-language pathology.

An individual may obtain a free copy of the proposed waiver amendment, including the TxHmL settings transition plan, or ask questions, obtain additional information, or submit comments regarding this amendment or the TxHmL settings transition plan, by contacting Jacqueline Pernell by U.S. mail, telephone, fax, or email. The addresses are as follows:

**U.S. Mail**

Texas Health and Human Services Commission  
Attention: Jacqueline Pernell, Waiver Coordinator, Policy Development Support  
P.O. Box 13247  
Mail Code H-600  
Austin, Texas 78711-3247

**Telephone**

(512) 428-1931

**Fax**

Attention: Jacqueline Pernell, Waiver Coordinator, at (512) 487-3403

**Email**

[TX\\_Medicaid\\_Waivers@hhsc.state.tx.us](mailto:TX_Medicaid_Waivers@hhsc.state.tx.us)

In addition, the HHSC local offices will post this notice for 30 days. The complete waiver amendment request can be found online on the Health and Human Services website at: <https://hhs.texas.gov/doing-business-hhs/provider-portals/resources/stakeholder-involvement>.

TRD-201702986

Karen Ray  
Chief Counsel  
Texas Health and Human Services Commission  
Filed: August 8, 2017



**Department of State Health Services**

Licensing Actions for Radioactive Materials

During the first half of July, 2017, the Department of State Health Services (Department) has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables (in alphabetical order by location). The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX [Texas]" indicates that the radioactive material may be used on a temporary basis at locations throughout the state.

In issuing new licenses and amending and renewing existing licenses, the Department's Radiation Safety Licensing Branch has determined that the applicant has complied with the licensing requirements in Title 25 Texas Administrative Code (TAC), Chapter 289, for the noted action. In granting termination of licenses, the Department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC, Chapter 289. In granting exemptions to the licensing requirements of Chapter 289, the Department has determined that the exemption is not prohibited by law and will not result in a significant risk to public health and safety and the environment.

A person affected by the actions published in this notice may request a hearing within 30 days of the publication date. A "person affected" is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. 25 TAC §289.205(b)(15); Health and Safety Code §401.003(15). Requests must be made in writing and should contain the words "hearing request," the name and address of the person affected by the agency action, the name and license number of the entity that is the subject of the hearing request, a brief statement of how the person is affected by the action what the requestor seeks as the outcome of the hearing, and the name and address of the attorney if the requestor is represented by an attorney. Send hearing requests by mail to: Hearing Request, Radiation Material Licensing, MC 2835, PO Box 149347, Austin, Texas 78714-9347, or by fax to: 512-834-6690, or by e-mail to: RAMlicensing@dshs.state.tx.us.

NEW LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
Houston	MVP Imaging L.L.C.	L06867	Houston	00	07/03/17
Throughout TX	Tetra Tech. Inc.	L06868	Midland	00	07/06/17
Throughout TX	SGS North America Inc.	L06869	Deer Park	00	07/14/17

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
Angleton	Isotherapeutics Group L.L.C.	L05969	Angleton	38	07/05/17
Austin	Seton Family of Hospitals	L00268	Austin	159	07/05/17
Austin	Austin Radiological Association	L00545	Austin	204	07/10/17
Austin	ARA St. David's Imaging L.P.	L05862	Austin	80	07/10/17
Bishop	BASF Corporation	L06855	Bishop	02	07/07/17
Brenham	Scott & White Hospital Brenham dba Baylor Scott & White Medical Center – Brenham	L03419	Brenham	34	07/14/17
Dallas	Texas Health Presbyterian Hospital Dallas	L04288	Dallas	38	07/03/17
Desoto	Diab Americas L.P.	L06208	Desoto	01	07/13/17
Eagle Pass	Fort Duncan Medical Center, L.P.	L05640	Eagle Pass	16	07/14/17
El Paso	El Paso County Hospital District dba University Medical Center of El Paso	L00502	El Paso	76	07/11/17
Grapevine	Healthtexas Provider Network dba Cardiovascular Consultants – Grapevine	L06396	Grapevine	04	07/07/17
Houston	Memorial Hermann Health System dba Memorial Hermann Southwest Hospital	L00439	Houston	231	07/13/17
Houston	Baylor College of Medicine	L00680	Houston	123	07/14/17

AMENDMENTS TO EXISTING LICENSES ISSUED (continued):

Houston	Memorial Hermann Health System dba Memorial Hermann Sugarland Hospital	L03457	Houston	65	07/03/17
Houston	Texas Childrens Hospital	L04612	Houston	74	07/13/17
Houston	Memorial Hermann Medical Group	L06430	Houston	25	07/05/17
Ingleside	The Chemours Company F.C., L.L.C.	L06745	Ingleside	05	07/12/17
Killeen	Metroplex Health System dba Metroplex Hospital	L03185	Killeen	32	07/14/17
Lubbock	Caprock Cardiovascular Center L.L.P.	L06783	Lubbock	02	07/03/17
New Braunfels	Christus Santa Rosa Health Care Corporation dba Christus Santa Rosa Hospital – New Braunfels	L02429	New Braunfels	50	07/06/17
Orange	Chevron Phillips Chemical Company L.P.	L00031	Orange	60	07/14/17
Pasadena	Celanese Ltd.	L01130	Pasadena	77	07/13/17
Round Rock	Columbia / St. David's Healthcare System L.P. dba Medical Center of Round Rock	L03469	Round Rock	54	07/11/17
Throughout TX	Team Industrial Services Inc.	L00087	Alvin	244	07/05/17
Throughout TX	RWLS L.L.C. dba Renegade Services	L06307	Andrews	35	07/06/17
Throughout TX	Profrac Services L.L.C.	L06808	Cisco	03	07/11/17
Throughout TX	Alliance Geotechnical Group Inc.	L05314	Dallas	33	07/14/17
Throughout TX	Crest Pumping Technologies L.L.C.	L06838	Fort Worth	05	07/10/17
Throughout TX	Component Sales and Service Inc.	L02243	Houston	32	07/05/17
Throughout TX	Greater Houston Heart Specialists P.A.	L05666	Houston	11	07/11/17
Throughout TX	C & J Spec-Rent Services Inc.	L06712	Houston	05	07/03/17
Throughout TX	SET Environmental Inc.	L06837	Houston	01	07/07/17
Throughout TX	Non Destructive Inspection Corporation	L02712	Lake Jackson	149	07/11/17
Throughout TX	Schlumberger Technology Corporation	L00109	Sugar Land	74	07/14/17
Throughout TX	Alliance Engineering Group Inc.	L06147	Taylor	06	07/10/17
Throughout TX	Pumpco Energy Services Inc.	L06507	Valley View	15	07/12/17
Tyler	Mother Frances Hospital Regional Health Care Center dba Christus Mother Frances Hospital – Tyler	L01670	Tyler	206	07/03/17
Webster	Texas Oncology P.A. dba Deke Slayton Memorial Cancer Center	L06465	Webster	06	07/10/17

RENEWAL OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
Hallettsville	Lavaca Hospital District dba Lavaca Medical Center	L04397	Hallettsville	15	07/11/17
Throughout TX	Professional Service Industries Inc.	L03642	Spring	31	07/06/17

TERMINATIONS OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
Azle	Texas Health Harris Methodist Hospital Azle	L03230	Azle	33	07/05/17
Corpus Christi	Sherwin Alumina L.P. dba Sherwin Alumina Company	L00200	Corpus Christi	51	07/06/17
Palestine	East Texas Physicians Alliance L.L.P.	L05583	Palestine	10	07/03/17

TRD-201702964

Lisa Hernandez  
General Counsel  
Department of State Health Services  
Filed: August 7, 2017

◆ ◆ ◆  
**Texas Department of Housing and Community Affairs**

**Notice of Public Hearing - Multifamily Housing Revenue Bonds (Casa Brendan Apartments)**

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Issuer") in the City of Stephenville Council Chambers, 298 West Washington Street, Stephenville, Texas 76401 at 12:00 p.m. on August 30, 2017. The hearing is regarding an issue of tax-exempt multifamily residential rental development revenue bonds in an aggregate principal amount not to exceed \$6,000,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Issuer. The proceeds of the Bonds will be loaned to THF Casa Brendan, LP, a Texas limited partnership, or a related person or affiliate thereof (the "Borrower"), to finance the costs of acquiring and rehabilitating a multifamily housing development for seniors. The housing development is described as follows: an approximately 86-unit multifamily housing development located at 1300 West Hyman Street, Stephenville, Erath County, Texas 76401 (the "Development"). Upon the issuance of the Bonds, the Development will be owned by the Borrower.

All interested parties are invited to attend such public hearing to express their views with respect to the Development and the issuance of the Bonds. Questions or requests for additional information may be directed to Shannon Roth at the Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711-3941; (512) 475-3929; and/or shannon.roth@tdhca.state.tx.us.

Persons who intend to appear at the hearing and express their views are invited to contact Shannon Roth in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Shannon Roth prior to the date scheduled for the hearing. Individuals who require a language interpreter for the public hearing should contact Elena Peinado at (512) 475-3814 at least five days prior to the hearing date so that appropriate arrangements can be made. Personas que hablan español y requieren un intérprete, favor de llamar a Elena Peinado al siguiente número (512) 475-3814 por lo menos cinco días antes de la junta para hacer los preparativos apropiados.

Individuals who require auxiliary aids in order to attend this hearing should contact Nicole Krueger, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at (800) 735-2989 at least five days before the hearing so that appropriate arrangements can be made.

This notice is published and the hearing is to be held in satisfaction of the requirements of Section 147(f) of the Internal Revenue Code of 1986, as amended.

<http://www.tdhca.state.tx.us/multifamily/communities.htm>

TRD-201702978

Timothy K. Irvine

Executive Director

Texas Department of Housing and Community Affairs

Filed: August 7, 2017

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**Notice of Public Hearing - Multifamily Housing Revenue Bonds (Casa Inc. and Nuestro Hogar Developments)**

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Issuer") at the City of Fort Worth Public Library East Regional Branch, 6301 Bridge Street, Fort Worth, Texas 76112 at 6:00 p.m. on August 30, 2017. The hearing is regarding two issues of tax-exempt multifamily residential rental development revenue bonds in an aggregate principal amount not to exceed \$31,000,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series by the Issuer (the "Bonds") to finance a portion of the costs of the two multifamily housing developments described below (the "Developments").

Proceeds of the Bonds in an aggregate amount not to exceed \$25,000,000 will be loaned to THF Casa, LP, a Texas limited partnership, or a related person or affiliate thereof (the "Casa Borrower"), to finance a portion of the costs of acquiring and rehabilitating a multifamily housing development for seniors. The housing development is described as follows: an approximately 200-unit multifamily housing development located at 3201 Sondra Drive, Fort Worth, Tarrant County, Texas 76107 (the "Fort Worth Development"). Upon the issuance of the Bonds, the Fort Worth Development will be owned by the Casa Borrower.

Proceeds of the Bonds in an aggregate amount not to exceed \$6,000,000 will be loaned to THF Nuestro Hogar, LP, a Texas limited partnership, or a related person or affiliate thereof (the "Nuestro Hogar Borrower"), to finance a portion of the costs of acquiring and rehabilitating a multifamily housing development for seniors. The housing development is described as follows: an approximately 65-unit multifamily housing development located at 709 Magnolia Street, Arlington, Tarrant County, Texas 76012 (the "Arlington Development"). Upon the issuance of the Bonds, the Arlington Development will be owned by the Nuestro Hogar Borrower.

All interested parties are invited to attend such public hearing to express their views with respect to the Developments and the issuance of the Bonds. Questions or requests for additional information may be directed to Shannon Roth at the Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711-3941; (512) 475-3929; and/or shannon.roth@tdhca.state.tx.us.

Persons who intend to appear at the hearing and express their views are invited to contact Shannon Roth in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Shannon Roth prior to the date scheduled for the hearing. Individuals who require a language interpreter for the public hearing should contact Elena Peinado at (512) 475-3814 at least five days prior to the hearing date so that appropriate arrangements can be made. Personas que hablan español y requieren un intérprete, favor de llamar a Elena Peinado al siguiente número (512) 475-3814 por lo menos cinco días antes de la junta para hacer los preparativos apropiados.

Individuals who require auxiliary aids in order to attend this hearing should contact Nicole Krueger, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at (800) 735-2989 at least five days before the hearing so that appropriate arrangements can be made.

This notice is published and the hearing is to be held in satisfaction of the requirements of Section 147(f) of the Internal Revenue Code of 1986, as amended.

TRD-201702972

Timothy K. Irvine  
Executive Director  
Texas Department of Housing and Community Affairs  
Filed: August 7, 2017

◆ ◆ ◆  
**Texas Department of Insurance**

**Company Licensing**

Application for THE SAVINGS BANK LIFE INSURANCE COMPANY OF MASSACHUSETTS, a foreign life, accident, and/or health company, to change its name to THE SAVINGS BANK MUTUAL LIFE INSURANCE COMPANY OF MASSACHUSETTS. The home office is in Woburn, Massachusetts.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Jeff Hunt, 333 Guadalupe Street, MC 305-2C, Austin, Texas 78701.

TRD-201703023  
Norma Garcia  
General Counsel  
Texas Department of Insurance  
Filed: August 9, 2017

◆ ◆ ◆  
**Texas Department of Motor Vehicles**

**Request for Qualifications #608-17-4252 - For Organizational Assessment of Information Technology Services Division and Enterprise Project Management Office Consulting Services**

The Texas Department of Motor Vehicles (department or TxDMV) announces a Request for Qualifications (RFQ) for consulting services, pursuant to Government Code, Chapter 2254, Subchapter B. The term of the contract will be from contract award to completion or January 31, 2018, whichever is earliest. The RFQ will be released and posted on August 18, 2017, via the Electronic State Business Daily (ESBD) website at <http://esbd.cpa.state.tx.us/>.

**PURPOSE**

The TxDMV is seeking to enter into a contract with a contractor to provide assistance and consulting to analyze the Information Technology Services Division (ITSD) and the Enterprise Project Management Office (EPMO) staffing levels across all teams, current skillsets, salaries, strengths, weaknesses, threats, and opportunities and overall preparedness to meet the current and future demands of the department. In addition, the contractor should identify potential efficiency gains and cost reductions as a result of possible organizational restructuring and process realignment to obtain maximum efficiency.

**BACKGROUND**

The 81st Texas Legislature created TxDMV on November 1, 2009, by removing a portion of the Motor Carrier Division, all of the Motor Vehicle Division, the Automobile Burglary and Theft Prevention Authority, and the Vehicle Titles and Registration Division from the Texas Department of Transportation. As a result, a new organizational structure was implemented as well as new policies and procedures. The Information Technology Services Division and the Enterprise Project Management Office were established later as independent divisions within TxDMV.

TxDMV has been working with the Texas Department of Transportation (TxDOT) to separate technology and associated daily support operations with total separation expected in August 2017. In addition, the department has embarked on multiple technology modernization

efforts and projects which has significantly changed the technology footprint and the associated skills required of our staff to support and maintain those new systems.

**EVALUATION CRITERIA AND SCORING**

The department will comply with §2254.027 of the Texas Government Code regarding the selection of a consultant. Section 2254.027 states as follows:

In selecting a consultant, a state agency shall:

1. Base its choice on demonstrated competence, knowledge, and qualifications and on the reasonableness of the proposed fee for the services; and
2. If other considerations are equal, give preference to a consultant whose principal place of business is in the state or who will manage the consulting contract wholly from an office in the state.

The evaluation criteria and review process are further described in the complete RFQ, which will be posted on August 18, 2017, on the ESBD website at <http://esbd.cpa.state.tx.us/>. Using a defined scoring matrix, the department will score the responses that are not disqualified. The department reserves the right to negotiate with the vendor(s) after scoring. The department reserves the right to accept or reject any or all responses submitted. The department is not obligated to execute a contract on the basis of this notice or the posting/distribution of any RFQ. The department will not pay for any costs incurred by any entity in responding to this notice or the RFQ.

**DEADLINE FOR RESPONSE**

The anticipated closing date for the receipt of responses is Monday, October 2, 2017, at 3:00 p.m.

The department reserves the right to change any and all dates/deadlines listed herein.

**PROCUREMENT PROCESS**

This proposed procurement is contingent on the approval from the Governor's Office. The department reserves the right in its sole discretion to amend this RFQ to clarify, revise, supplement, or delete any provision or to add new provisions. In the event that a revision to the RFQ becomes necessary, an addendum will be posted on the ESBD website at <http://esbd.cpa.state.tx.us/>. It is the responsibility of respondents to check the ESBD site frequently for any changes to the RFQ.

In the event of a conflict between this notice and the posting on the ESBD, the posting on the ESBD controls. Any parties interested in obtaining a complete copy of the RFQ should go to the ESBD website at <http://esbd.cpa.state.tx.us/> and download the RFQ or contact the department Point of Contact below. Any correspondence regarding procurement issues (including cost, responses, etc.) for this RFQ prior to the award of any contract shall be made in writing only to the department Point of Contact listed below.

**DEPARTMENT POINT OF CONTACT**

Paula Ramsey, Purchasing & Contract Coordinator

Texas Department of Motor Vehicles

4000 Jackson Avenue

Austin, Texas 78731

Telephone number: (512) 465-4193

Email: [Paula.Ramsey@TxDMV.gov](mailto:Paula.Ramsey@TxDMV.gov)

TRD-201703006

David D. Duncan  
General Counsel  
Texas Department of Motor Vehicles  
Filed: August 8, 2017

◆ ◆ ◆  
**Public Utility Commission of Texas**

**Notice of Application for Sale, Transfer, or Merger**

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on July 12, 2017, pursuant to the Texas Water Code.

Docket Style and Number: Application of Undine Texas, LLC and Suburban Utility Company for Sale, Transfer, or Merger of Facilities and Certificate Rights in Harris County, Docket No. 47396

The Application: Undine Texas, LLC seeks to acquire all of the water assets and certificated service area of Suburban Utility Company under water certificate of convenience and necessity number 10835. Quadvest L.P is serving as temporary manager of Suburban's public water systems. Undine requests the Commission waive the notice requirement for good cause shown and additionally waive hearing in order to expedite the acquisition proposed in this proceeding.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the commission as soon as possible as an intervention deadline will be imposed. A comment or request to intervene should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326. Further information may also be obtained by calling the commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Docket Number 47396.

TRD-201703026  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: August 9, 2017

◆ ◆ ◆  
**Notice of Application for Sale, Transfer, or Merger**

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on July 25, 2017, pursuant to the Texas Water Code.

Docket Style and Number: Application of Community Utility Company and Undine Texas, LLC for Sale, Transfer, or Merger of Facilities and Certificate Rights in Harris and Montgomery Counties, Docket Number 47441.

The Application: Undine Texas, LLC seeks to acquire all of the water assets and certificated service area of Community Utility Company under water certificate of convenience and necessity number 10350. Undine requests that the Commission waive the notice requirement for good cause shown and additionally waive hearing in order to expedite the acquisition proposed in this proceeding.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the commission as soon as possible as an intervention deadline will be imposed. A comment or request to intervene should be mailed to Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326. Further information may also be obtained by calling the commission's Office of Customer Protection

at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Docket Number 47441.

TRD-201702999  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: August 8, 2017

◆ ◆ ◆  
**Notice of Application for Sale, Transfer, or Merger**

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on July 28, 2017, pursuant to the Texas Water Code.

Docket Style and Number: Application of Gastonia Scurry Utilities District and West Cedar Creek Municipal Utility District for Sale and Transfer of Certificate Rights in Kaufman County, Docket No. 47454.

The Application: Gastonia Scurry Special Utilities District and West Cedar Creek Municipal Utility District filed an application for the sale and transfer of certificate rights in Kaufman County. West Cedar Creek seeks to acquire a portion of Gastonia's water certificate of convenience and necessity. The area being requested is approximately 335.7 acres and serves 0 current customers.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the commission as soon as possible as an intervention deadline will be imposed. A comment or request to intervene should be mailed to Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326. Further information may also be obtained by calling the commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Docket Number 47454.

TRD-201702918  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: August 3, 2017

◆ ◆ ◆  
**Notice of Application for Sale, Transfer, or Merger**

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on August 4, 2017, under Public Utility Regulatory Act, Tex. Util. Code Ann. §39.154 and §39.158.

Docket Style and Number: Application of Horse Ridge Wind, LLC Under §39.158 of the Public Utility Regulatory Act, Docket Number 47475.

The Application: Horse Ridge Wind filed an application for approval of the conveyance of certain passive Class B membership interests in Horse Ridge by Siemens Financial Services, Inc. and BNP Paribas US Wholesale Holdings, Corp. (the investors). Following the proposed transaction, the combined generation capacity of Horse Ridge, investors, and their affiliates would be 1.66% which is less than 20% of the installed capacity in, or capable of delivering electricity to, ER-COT.

Persons wishing to intervene or comment on the action sought should contact the commission as soon as possible as an intervention deadline will be imposed. A comment or request to intervene should be mailed to P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 47475.

TRD-201702984  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: August 8, 2017



#### Notice of Application for Sale, Transfer, or Merger

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on August 7, 2017, pursuant to the Texas Water Code.

Docket Style and Number: Application of Undine Texas, LLC and Consumers Water, Inc. for Sale, Transfer, or Merger of Facilities and Certificate Rights in Harris and Montgomery Counties, Docket No. 47477.

The Application: Undine Texas, LLC seeks to acquire all of the water assets and certificated service area of Consumers Water, Inc. under water certificate of convenience and necessity number 10347. Undine requests the Commission waive the notice requirement for good cause shown and additionally waive hearing in order to expedite the acquisition proposed in this proceeding.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the commission as soon as possible as an intervention deadline will be imposed. A comment or request to intervene should be mailed to Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326. Further information may also be obtained by calling the commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Docket Number 47477.

TRD-201703000  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: August 8, 2017



#### Notice of Application for Transfer of Facilities, Transfer of Rights Under and Amendment to Certificates of Convenience and Necessity, and for Other Regulatory Approvals

Notice is given to the public of an application by Sharyland Utilities, L.P., Sharyland Distribution & Transmission Services, L.L.C., and Oncor Electric Delivery Company LLC filed with the Public Utility Commission of Texas (commission) on August 4, 2017, under Public Utility Regulatory Act §§14.101, 39.262, and 39.915.

Docket Style And Number: Joint Report and Application of Sharyland Utilities, L.P., Sharyland Distribution & Transmission Services, L.L.C., and Oncor Electric Delivery Company LLC for Transfer of

Facilities, Transfer of Rights Under and Amendment of Certificates of Convenience And Necessity, and for other Regulatory Approvals, Docket Number 47469.

The Application: Sharyland Utilities, L.P., Sharyland Distribution & Transmission Services, L.L.C., and Oncor Electric Delivery Company LLC entered into an agreement and plan of merger in which they will exchange certain assets with each other and Oncor will purchase certain associated property from Sharyland resulting in all of Sharyland's existing retail electric delivery customers becoming Oncor's retail electric delivery customers and Sharyland serving only as a transmission service provider.

Persons who wish to intervene in or comment upon this application should notify the commission. A request to intervene or request for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326. Further information may also be obtained by calling the Public Utility Commission at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. The deadline to intervene is September 5, 2017. All correspondence should refer to Docket Number 47469.

TRD-201702983  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: August 8, 2017



#### Notice of Application to Amend Certificated Service Area Boundaries

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on August 4, 2017, for an amendment to certificated service area boundaries within Comal County, Texas.

Docket Style and Number: Application of New Braunfels Utilities to Amend its Certificate of Convenience and Necessity for Service Area Boundary in Comal County. Docket Number 47476.

The Application: New Braunfels Utilities (NBU) filed an application for a service area boundary exception to allow NBU to provide service to a specific customer located within the certificated service area of Pedernales Electric Cooperative, Inc. (PEC). NBU and PEC have provided a service area exchange agreement.

Persons wishing to comment on the action sought or intervene should contact the commission no later than August 25, 2017, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 47476.

TRD-201702985  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: August 8, 2017



#### Notice of Application to Obtain a Water Certificate of Convenience and Necessity



Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application to obtain a water certificate of convenience and necessity (CCN) in Real County, Texas.

Docket Style and Number: Application of Summit Ridge, LLC for a Water Certificate of Convenience and Necessity in Medina County, Docket Number 47463.

The Application: The total area being requested includes approximately 870 acres, with zero current customers. Summit Ridge owns and plans to develop the subject property, including a community water system. The proposed utility service area is located approximately 2.3 miles east-southeast of the community of Mico.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. A deadline for intervention in this proceeding will be established. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 47463.

TRD-201702919  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: August 3, 2017



#### Notice of Application to Relinquish a Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on July 31, 2017, to relinquish a service provider certificate of operating authority.

Style and Docket Number: Application of Fusion Connect, LLC to Relinquish a Service Provider Certificate of Operating Authority, Docket Number 47456.

Application: Fusion Connect, LLC seeks to relinquish service provider certificate of operating authority number 60484 because it is not offering any services to any Texas customers, and has no future prospects of remaining in business in Texas.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than August 25, 2017. Hearing and speech impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 47456.

TRD-201702934  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: August 3, 2017



#### Notice of Intent to Implement a Minor Rate Change Under 16 Texas Administrative Code §26.171

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on August 8, 2017, to implement a minor rate change under 16 Texas Administrative Code §26.171.

Tariff Control Title and Number: Notice of Southwest Texas Telephone Company for Approval of a Minor Rate Change Under 16 Texas Administrative Code §26.171 and PURA Section 53, Subchapter G, Tariff Control Number 47478.

The Application: Southwest Texas Telephone Company (STTC) filed an application with the Commission for revisions to its General Exchange Tariff. STTC proposed an effective date of September 1, 2017. The estimated revenue increase to be recognized by the STTC is \$204 in gross annual intrastate revenues. STTC has 3,677 access lines (residence and business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by August 26, 2017, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the commission by August 26, 2017. Requests to intervene should be filed with the commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326, or you may call the commission at (512) 936-7120 or toll-free (800) 735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Tariff Control Number 47478.

TRD-201703029  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: August 9, 2017



#### Texas Veterans Commission

Request for Applications Concerning the Texas Veterans Commission Fund for Veterans' Assistance, General Assistance Grant Program

**Filing Authority.** The availability of grant funds is authorized by Texas Government Code, §434.017.

**Eligible Applicants.** The Texas Veterans Commission (TVC) is requesting applications from organizations eligible to apply for grant funding. Eligible Applicants are units of local government, IRS Code §501(c)(19) posts or organizations of past or present members of the Armed Forces, IRS Code §501(c)(3) private nonprofit corporations authorized to conduct business in Texas, Texas chapters of IRS Code §501(c)(4) veterans service organizations, and nonprofit organizations authorized to do business in Texas with experience providing services to veterans.

**Description.** The purpose of this Request for Applications (RFA) is to seek grant applications from Eligible Applicants for General Assistance reimbursement grants using funds from the Fund for Veterans' Assistance (FVA). The TVC is authorized to award grants to Eligible Applicants addressing the needs of Texas veterans and their families. These needs include, but are not limited to: emergency financial assistance; transportation services; legal services, excluding criminal defense; family, child, and supportive services; employment, training/job placement assistance; and development of professional services networks.

The Texas Veterans Commission has currently established the following priorities: widespread distribution of grants across the state; encourage a diversity of services within geographic regions; outstanding

grant applications; and the service categories of financial assistance and supportive services. The priorities for this 2018-2019 General Assistance Grant will be outlined in the RFA.

**Grant Funding Period.** Grants awarded will begin on July 1, 2018, and end on June 30, 2019. All grants are reimbursement grants. Reimbursement will only be made for those expenses that occur within the term of this grant. No pre-award spending is allowed.

**Grant Amounts.** For this solicitation, the minimum grant award will be \$5,000. The maximum grant award for regional projects will be \$300,000. The maximum grant award for statewide projects will be \$500,000.

**Number of Grants to be Awarded and Total Available.** The anticipated total funding available across all four FVA grant programs is \$26,000,000. The number of awards made will be contingent upon the amount of funding requested and awarded to Eligible Applicants. This total amount of grant funding is subject to change due to availability of funds.

**Selection Criteria.** TVC staff will use an eligibility checklist and evaluation rubric to review all applications. All eligible applications will be evaluated and forwarded to the FVA Advisory Committee for its review and consideration. The FVA Advisory Committee will prepare a funding recommendation to be presented to the Commission for action. The Commission makes the final funding decisions based upon the FVA Advisory Committee's funding recommendation. Applications must address all requirements of the RFA to be considered for funding.

TVC is not obligated to approve an application, provide funds, or endorse any application submitted in response to this solicitation. There is no expectation of continued funding. This issuance does not obligate TVC to award a grant or pay any costs incurred in preparing a response.

**Requesting the Materials Needed to Complete an Application.** All information needed to respond to this solicitation will be posted to the TVC website at <http://tvc.texas.gov/Apply-For-A-Grant.aspx> on or about Monday, August 21, 2017. All applications must be submitted both electronically and in hard-copy, as per the posted solicitation guidelines.

**Further Information.** In order to assure that no prospective applicant may obtain a competitive advantage because of acquisition of information unknown to other prospective applicants; all questions must be submitted via email to [grants@tvc.texas.gov](mailto:grants@tvc.texas.gov). All questions and the written answers will be posted on the TVC website as per the RFA.

**Deadline for Receipt of an Application.** Applications must be received by TVC by 5:00 p.m. on Thursday, October 26, 2017 at the Stephen F. Austin Building, 1700 N. Congress Avenue, Suite 800, Austin, Texas 78701 to be considered for funding.

TRD-201703005  
Charles Catoe  
Director, Fund for Veterans' Assistance  
Texas Veterans Commission  
Filed: August 8, 2017



Request for Applications Concerning the Texas Veterans  
Commission Fund for Veterans' Assistance, Housing 4 Texas  
Heroes Grant Program

**Filing Authority.** The availability of grant funds is authorized by Texas Government Code, §434.017.

**Eligible Applicants.** The Texas Veterans Commission (TVC) is requesting applications from organizations eligible to apply for grant funding. Eligible Applicants are units of local government, IRS Code §501(c)(19) posts or organizations of past or present members of the Armed Forces, IRS Code §501(c)(3) private nonprofit corporations authorized to conduct business in Texas, Texas chapters of IRS Code §501(c)(4) veterans service organizations, and nonprofit organizations authorized to do business in Texas with experience providing services to veterans.

**Description.** The purpose of this Request for Applications (RFA) is to seek grant applications from Eligible Applicants for Housing 4 Texas Heroes reimbursement grants using funds from the Fund for Veterans' Assistance (FVA). The TVC is authorized to award grants to Eligible Applicants addressing the needs of Texas veterans and their families. These needs include, but are not limited to: homeless Veteran support, Veteran homelessness prevention, temporary assistance to families of Veterans undergoing treatment at Texas medical facilities, and home modification assistance.

The Texas Veterans Commission has currently established the following priorities: widespread distribution of grants across the state; encourage a diversity of services within geographic regions; outstanding grant applications; and the service category of Home Modification Assistance. The priorities for this 2018-2019 Housing 4 Texas Heroes Grant will be outlined in the RFA.

**Grant Funding Period.** Grants awarded will begin on July 1, 2018, and end on June 30, 2019. All grants are reimbursement grants. Reimbursement will only be made for those expenses that occur within the term of this grant. No pre-award spending is allowed.

**Grant Amounts.** For this solicitation, the minimum grant award will be \$5,000. The maximum grant award will be \$500,000.

**Number of Grants to be Awarded and Total Available.** The anticipated total funding available across all four FVA grant programs is \$26,000,000. The number of awards made will be contingent upon the amount of funding requested and awarded to Eligible Applicants. This total amount of grant funding is subject to change due to availability of funds.

**Selection Criteria.** TVC staff will use an eligibility checklist and evaluation rubric to review all applications. All eligible applications will be evaluated and forwarded to the FVA Advisory Committee for its review and consideration. The FVA Advisory Committee will prepare a funding recommendation to be presented to the Commission for action. The Commission makes the final funding decisions based upon the FVA Advisory Committee's funding recommendation. Applications must address all requirements of the RFA to be considered for funding.

TVC is not obligated to approve an application, provide funds, or endorse any application submitted in response to this solicitation. There is no expectation of continued funding. This issuance does not obligate TVC to award a grant or pay any costs incurred in preparing a response.

**Requesting the Materials Needed to Complete an Application.** All information needed to respond to this solicitation will be posted to the TVC website at <http://tvc.texas.gov/Apply-For-A-Grant.aspx> on or about Monday, August 21, 2017. All applications must be submitted both electronically and in hard-copy, as per the posted solicitation guidelines.

**Further Information.** In order to assure that no prospective applicant may obtain a competitive advantage because of acquisition of information unknown to other prospective applicants; all questions must be submitted via email to [grants@tvc.texas.gov](mailto:grants@tvc.texas.gov). All questions and the written answers will be posted on the TVC website as per the RFA.

**Deadline for Receipt of an Application.** Applications must be received by TVC by 5:00 p.m. on Thursday, November 2, 2017, at the Stephen F. Austin Building, 1700 N. Congress Avenue, Suite 800, Austin, Texas 78701 to be considered for funding.

TRD-201703004

Charles Catoe

Director, Fund for Veterans' Assistance

Texas Veterans Commission

Filed: August 8, 2017



Request for Applications Concerning the Texas Veterans Commission Fund for Veterans' Assistance, Veterans Mental Health Grant Program

**Filing Authority.** The availability of grant funds is authorized by Texas Government Code, §434.017.

**Eligible Applicants.** The Texas Veterans Commission (TVC) is requesting applications from organizations eligible to apply for grant funding. Eligible Applicants are units of local government, IRS Code §501(c)(19) posts or organizations of past or present members of the Armed Forces, IRS Code §501(c)(3) private nonprofit corporations authorized to conduct business in Texas, Texas chapters of IRS Code §501(c)(4) veterans service organizations, and nonprofit organizations authorized to do business in Texas with experience providing services to veterans.

**Description.** The purpose of this Request for Applications (RFA) is to seek grant applications from Eligible Applicants for Veterans Mental Health reimbursement grants using funds from the Fund for Veterans' Assistance (FVA). The TVC is authorized to award grants to Eligible Applicants addressing the needs of Texas veterans and their families. These needs include, but are not limited to: clinical counseling services, peer-delivered services, and non-clinical support services.

The Texas Veterans Commission has currently established the following priorities: widespread distribution of grants across the state; encourage a diversity of services within geographic regions; and outstanding grant applications. The priorities for this 2018-2019 Veterans Mental Health Grant will be outlined in the RFA.

**Grant Funding Period.** Grants awarded will begin on July 1, 2018, and end on June 30, 2019. All grants are reimbursement grants. Reimbursement will only be made for those expenses that occur within the term of this grant. No pre-award spending is allowed.

**Grant Amounts.** For this solicitation, the minimum grant award will be \$5,000. The maximum grant award will be \$500,000.

**Number of Grants to be Awarded and Total Available.** The anticipated total funding available across all four FVA grant programs is \$26,000,000. The number of awards made will be contingent upon the amount of funding requested and awarded to Eligible Applicants. This total amount of grant funding is subject to change due to availability of funds.

**Selection Criteria.** TVC staff will use an eligibility checklist and evaluation rubric to review all applications. All eligible applications will be evaluated and forwarded to the FVA Advisory Committee for its review and consideration. The FVA Advisory Committee will prepare a funding recommendation to be presented to the Commission for action. The Commission makes the final funding decisions based upon the FVA Advisory Committee's funding recommendation. Applications must address all requirements of the RFA to be considered for funding.

TVC is not obligated to approve an application, provide funds, or endorse any application submitted in response to this solicitation. There is no expectation of continued funding. This issuance does not obligate TVC to award a grant or pay any costs incurred in preparing a response.

**Requesting the Materials Needed to Complete an Application.** All information needed to respond to this solicitation will be posted to the TVC website at <http://tvc.texas.gov/Apply-For-A-Grant.aspx> on or about Monday, August 21, 2017. All applications must be submitted both electronically and in hard-copy, as per the posted solicitation guidelines.

**Further Information.** In order to assure that no prospective applicant may obtain a competitive advantage because of acquisition of information unknown to other prospective applicants, all questions must be submitted via email to [grants@tvc.texas.gov](mailto:grants@tvc.texas.gov). All questions and the written answers will be posted on the TVC website as per the RFA.

**Deadline for Receipt of an Application.** Applications must be received by TVC by 5:00 p.m. on Thursday, November 2, 2017, at the Stephen F. Austin Building, 1700 N. Congress Avenue, Suite 800, Austin, Texas 78701 to be considered for funding.

TRD-201703003

Charles Catoe

Director, Fund for Veterans' Assistance

Texas Veterans Commission

Filed: August 8, 2017



Request for Applications Concerning the Texas Veterans Commission Fund for Veterans' Assistance, Veterans Treatment Court Grant Program

**Filing Authority.** The availability of grant funds is authorized by Texas Government Code, Section 434.017.

**Eligible Applicants.** The Texas Veterans Commission (TVC) is requesting applications from units of local government to apply for grant funding. Only units of local government will be considered eligible applicants for this grant.

**Description.** The purpose of this Request for Applications (RFA) is to seek grant applications from Eligible Applicants for Veterans Treatment Court reimbursement grants using funds from the Fund for Veterans' Assistance (FVA). The TVC is authorized to award grants to Eligible Applicants addressing the needs of Texas veterans and their families.

The Texas Veterans Commission has currently established the following priorities: widespread distribution of grants across the state; encourage a diversity of services within geographic regions; and outstanding grant applications. The priorities for this 2018 - 2019 Veterans Treatment Court Grant will be outlined in the RFA.

**Grant Funding Period.** Grants awarded will begin on July 1, 2018, and end on June 30, 2019. All grants are reimbursement grants. Reimbursement will only be made for those expenses that occur within the term of this grant. No pre-award spending is allowed.

**Grant Amounts.** For this solicitation, the minimum grant award will be \$5,000. The maximum grant award will be \$500,000.

**Number of Grants to be Awarded and Total Available.** The anticipated total funding available across all four FVA grant programs is \$26,000,000. The number of awards made will be contingent upon the amount of funding requested and awarded to Eligible Applicants. This total amount of grant funding is subject to change due to availability of funds.

**Selection Criteria.** TVC staff will use an eligibility checklist and evaluation rubric to review all applications. All eligible applications will be evaluated and forwarded to the FVA Advisory Committee for its review and consideration. The FVA Advisory Committee will prepare a funding recommendation to be presented to the Commission for action. The Commission makes the final funding decisions based upon the FVA Advisory Committee's funding recommendation. Applications must address all requirements of the RFA to be considered for funding.

TVC is not obligated to approve an application, provide funds, or endorse any application submitted in response to this solicitation. There is no expectation of continued funding. This issuance does not obligate TVC to award a grant or pay any costs incurred in preparing a response.

**Requesting the Materials Needed to Complete an Application.** All information needed to respond to this solicitation will be posted to the TVC website at <http://tvc.texas.gov/Apply-For-A-Grant.aspx> on or about Monday, August 21, 2017. All applications must be submitted both electronically and in hard-copy, as per the posted solicitation guidelines.

**Further Information.** In order to assure that no prospective applicant may obtain a competitive advantage because of acquisition of information unknown to other prospective applicants, all questions must be submitted via email to [grants@tvc.texas.gov](mailto:grants@tvc.texas.gov). All questions and the written answers will be posted on the TVC website as per the RFA.

**Deadline for Receipt of an Application.** Applications must be received by TVC by 5:00 P.M. on Thursday, November 2, 2017, at the Stephen F. Austin Building, 1700 N. Congress Avenue, Suite 800, Austin, Texas 78701 to be considered for funding.

TRD-201703001

Charles Catoe

Director, Fund for Veterans' Assistance

Texas Veterans Commission

Filed: August 8, 2017



## 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 40 (2015) is cited as follows: 40 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 "40 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 40 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
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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