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IN THIS ISSUE

ATTORNEY GENERAL

Requests for Opinions.....4229

PROPOSED RULES

PUBLIC UTILITY COMMISSION OF TEXAS

PROCEDURAL RULES

16 TAC §22.52.....4231

DEPARTMENT OF STATE HEALTH SERVICES

MATERNAL AND INFANT HEALTH SERVICES

25 TAC §§37.601 - 37.611.....4233

STOCK MEDICATION IN SCHOOLS AND OTHER ENTITIES [EPINEPHRINE AUTO-INJECTOR AND ANAPHYLAXIS POLICIES]

25 TAC §§40.61 - 40.714236

25 TAC §§40.81 - 40.894238

HEALTH AND HUMAN SERVICES COMMISSION

MENTAL HEALTH EARLY INTERVENTION AND TREATMENT GRANT

26 TAC §§374.1 - 374.44240

TEXAS STATE SOIL AND WATER CONSERVATION BOARD

TECHNICAL ASSISTANCE

31 TAC §519.8.....4242

WITHDRAWN RULES

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CONTROL OF AIR POLLUTION BY PERMITS FOR NEW CONSTRUCTION OR MODIFICATION

30 TAC §116.615.....4245

ADOPTED RULES

TEXAS EDUCATION AGENCY

ADAPTATIONS FOR SPECIAL POPULATIONS

19 TAC §§89.1201, 89.1203, 89.1205, 89.1207, 89.1210, 89.1215, 89.1220, 89.1226 - 89.1230, 89.1233, 89.1235, 89.1240, 89.1245, 89.1250, 89.12654247

CHARTERS

19 TAC §100.1010.....4256

TEXAS BOARD OF PHYSICAL THERAPY EXAMINERS

CONTESTED CASE PROCEDURE

22 TAC §§343.5, 343.6, 343.8, 343.9, 343.21, 343.22, 343.36, 343.40, 343.414256

PRACTICE SETTINGS FOR PHYSICAL THERAPY

22 TAC §346.3.....4257

TEXAS STATE BOARD OF PLUMBING EXAMINERS

ADMINISTRATION

22 TAC §§361.1, 361.4, 361.6, 361.10, 361.12, 361.15.....4257

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

MUNICIPAL SOLID WASTE

30 TAC §330.647.....4263

TEXAS STATE SOIL AND WATER CONSERVATION BOARD

GENERAL PROCEDURES

31 TAC §518.10.....4267

AGRICULTURAL AND SILVICULTURAL WATER QUALITY MANAGEMENT

31 TAC §523.6.....4267

COMPTROLLER OF PUBLIC ACCOUNTS

STATEWIDE PROCUREMENT AND SUPPORT SERVICES

34 TAC §§20.281 - 20.294, 20.297, 20.2984268

RULE REVIEW

Proposed Rule Reviews

Office of Consumer Credit Commissioner4283

Texas Education Agency.....4283

Health and Human Services Commission.....4283

Adopted Rule Reviews

Department of Information Resources.....4284

Texas Commission on Environmental Quality4284

Texas Commission on Fire Protection4285

IN ADDITION

Office of the Attorney General

Request for Applications (RFA) for the Support Adoption Grant Program4289

Office of Consumer Credit Commissioner

Notice of Rate Ceilings.....4290

Texas Commission on Environmental Quality

Agreed Orders.....4290

Correction of Error.....4292

Correction of Error and Announcement of Additional Public Hearing for Proposed Revisions to 30 TAC Chapter 50.....4292

Notice of an Application to Amend a Certificate of Adjudication Application No. 12-2948B and Application No. 12-2949B4292

Notice of Application and Opportunity to Request a Public Meeting for a New Municipal Solid Waste Facility4294

Notice of Application and Public Hearing for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls Proposed Air Quality Registration Number 172917.....4294

Notice of District Petition4295

Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions4296

Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions4297

Notice of Water Quality Application4297

Update to the Water Quality Management Plan (WQMP)4297

General Land Office

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program4298

Texas Health and Human Services Commission

Public Notice - Texas State Plan for Medical Assistance Amendment4299

Texas Department of Insurance

Company Licensing4300

Texas Lottery Commission

Scratch Ticket Game Number 2525 "\$50, \$100 or \$500!"4300

Scratch Ticket Game Number 2532 "HOLIDAY 777"4305

Texas Parks and Wildlife Department

Correction of Error.....4312

Texas Public Finance Authority

Request for Proposals for Financial Advisor4312

Public Utility Commission of Texas

Notice of Application for Partial Relinquishment of Designation as an Eligible Telecommunications Carrier4313

Supreme Court of Texas

Order Approving Repeal of Texas Rule of Appellate Procedure 28.2 and Amendments to Texas Rule of Appellate Procedure 28.34313

Preliminary Approval of Amendments to the Rule for Magistrates in Inmate Litigation to Expand the Applicability of the Rule to Litigation Involving Certain Civilly Committed Individuals4318

Texas Department of Transportation

Public Notice - Photographic Traffic Signal Enforcement Systems: Municipal Reporting of Traffic Crashes4328

THE ATTORNEY GENERAL

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

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

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

Requests for Opinions

RQ-0001-AC

Requestor:

The Honorable John K. Greenwood

Lampasas County Attorney

409 South Pecan, Suite 203

Lampasas, Texas 76550

Re: Authority under Government Code chapter 74 of the Judge of a multi-county district to appoint different court coordinators for each county of the district (RQ-0001-AC)

Briefs requested by August 23, 2023

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

TRD-202302632

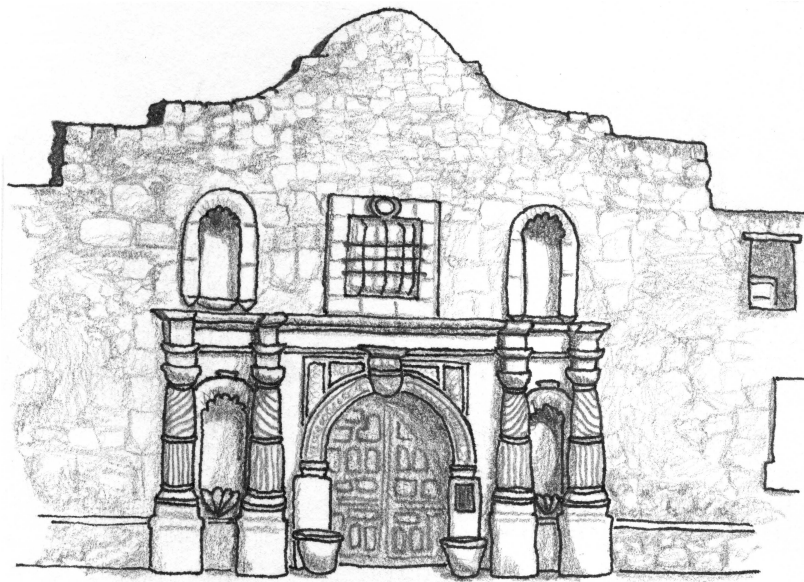
Austin Kinghorn

General Counsel

Office of the Attorney General

Filed: July 25, 2023





PROPOSED RULES

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

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

TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 22. PROCEDURAL RULES

SUBCHAPTER D. NOTICE

16 TAC §22.52

The Public Utility Commission of Texas (commission) proposes amendments to §22.52, relating to Notice in Licensing Proceedings. The proposed amendments will require the applicant in electric certificate of convenience and necessity proceedings except minor boundary changes to give notice that the deadline for intervention is 30 days after the date the formal application was filed with the commission. This modification will allow the commission to process certificate of convenience and necessity applications more expeditiously, as required by Senate Bill 1076, enacted by the 88th Texas Legislature (R.S.).

The proposed amendments also require an applicant for a certificate of convenience and necessity to provide notice of each substation that is proposed to be authorized by the certificate of convenience and necessity to property owners that live adjacent to the proposed substations. This modification will implement Senate Bill 365, enacted by the 88th Texas Legislature (R.S.).

Growth Impact Statement

The agency provides the following governmental growth impact statement for the proposed rules, as required by Texas Government Code §2001.0221. The agency has determined that for each year of the first five years that the proposed rules are in effect, the following statements will apply:

- (1) the proposed rules will not create a government program and will not eliminate a government program;
- (2) implementation of the proposed rules will not require the creation of new employee positions and will not require the elimination of existing employee positions;
- (3) implementation of the proposed rules will not require an increase and will not require a decrease in future legislative appropriations to the agency;
- (4) the proposed rules will not require an increase and will not require a decrease in fees paid to the agency;
- (5) the proposed rules will not create a new regulation, but will implement a new requirement enacted by Senate Bill 365;
- (6) the proposed rules will not repeal an existing regulation;

(7) the same number of individuals will be subject to the proposed rules' applicability as were subject to the applicability of the rule it is being proposed to replace; and

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

Fiscal Impact on Small and Micro-Businesses and Rural Communities

There is no adverse economic effect anticipated for small businesses, micro-businesses, or rural communities as a result of implementing the proposed rules. Accordingly, no economic impact statement or regulatory flexibility analysis is required under Texas Government Code §2006.002(c).

Takings Impact Analysis

The commission has determined that the proposed rules will not be a taking of private property as defined in chapter 2007 of the Texas Government Code.

Fiscal Impact on State and Local Government

John Poole, Engineering Specialist, Engineering Division, has determined that for each year of the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Public Benefits

John Poole has also determined that for each year of the first five years the proposed sections are in effect the public benefit anticipated as a result of enforcing the section will allow the commission to more expeditiously process CCN applications as required by Senate Bill 1076, and to provide more transparency on the siting of substations, as required by Senate Bill 365. There is no significant anticipated economic cost to persons who are required to comply with these sections as proposed. Any economic costs would vary from person to person and are difficult to ascertain. However, it is believed that the benefits accruing from implementation of the proposed sections will outweigh these costs.

Local Employment Impact Statement

For each year of the first five years the proposed sections are in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act §2001.022.

Costs to Regulated Persons

Texas Government Code §2001.0045(b) does not apply to this rulemaking because the commission is expressly excluded under §2001.0045(c)(7).

Public Hearing

The commission staff will conduct a public hearing on this rule-making if requested in accordance with Texas Government Code §2001.029. The request for a public hearing must be received by August 7, 2023. If a request for public hearing is received, commission staff will file in this project a notice of hearing.

Public Comments

Interested persons may file comments electronically through the interchange on the commission's website. Comments must be filed by August 7, 2023. Comments should be organized in a manner consistent with the organization of the proposed rules. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed rules. All comments should refer to Project Number 55153.

Statutory Authority

These amendments are proposed under the Public Utility Regulatory Act §14.002 and §14.052, which provide the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §14.052.

§22.52. *Notice in Licensing Proceedings.*

(a) Notice in electric licensing proceedings. In all electric licensing proceedings except minor boundary changes, the applicant must give notice in the following ways:

(1) Applicant must publish notice once of the applicant's intent to secure a certificate of convenience and necessity in a newspaper having general circulation in the county or counties where a certificate of convenience and necessity is being requested, no later than the week after the application is filed with the commission. This notice must identify the commission's docket number and the style assigned to the case by Central Records. In electric transmission line cases, the applicant must obtain the docket number and style no earlier than 25 days prior to making the application by filing a preliminary pleading requesting a docket assignment. The notice must identify in general terms the type of facility if applicable, and the estimated expense associated with the project. The notice must describe all routes without designating a preferred route or otherwise suggesting that a particular route is more or less likely to be selected than one of the other routes.

(A) The notice must include all the information required by the standard format established by the commission for published notice in electric licensing proceedings. The notice must state the date established for the deadline for intervention in the proceeding (date 30 [45] days after the date the formal application was filed with the commission[; or date 30 days after the date the formal application was filed with the commission for an application for certificate of convenience and necessity filed under PURA §39.203(e)]) and that a letter requesting intervention should be received by the commission by that date.

(B) - (E) (No change.)

(2) (No change.)

(3) Applicant must, on the date it files an application, mail notice of its application to the owners of land, as stated on the current county tax roll(s), who would be directly affected by the requested certificate. For purposes of this paragraph, land is directly affected if an easement or other property interest would be obtained over all or any portion of it, or if it contains a habitable structure that would be within 300 feet of the centerline of a transmission project of 230kV or less, or

within 500 feet of the centerline of a transmission project greater than 230kV. Land is also directly affected by the requested certificate if it is adjacent to a property on which a substation proposed to be authorized by the certificate of convenience and necessity is located or is directly across a highway, road, or street that is adjacent to a property on which such a substation is located.

(A) (No change.)

(B) The notice delivered to an owner of land adjacent to a property on which a proposed substation is located or directly across a highway, road, or street that is adjacent to a property on which such a substation is located must notify the owner of each proposed substation.

(C) [(B)] The notice must include a map as described in paragraph (1)(C) of this subsection.

(D) [(C)] Before final approval of any modification in the applicant's proposed route(s), applicant must provide notice as required under subparagraphs (A) through (C) [and (B)] of this paragraph to all directly affected landowners who have not already received such notice.

(E) [(D)] Proof of notice may be established by an affidavit affirming that the applicant sent notice by first-class mail to each of the persons listed as an owner of directly affected land on the current county tax roll(s). The proof of notice must include a list of all landowners to whom notice was sent and a statement of whether any formal contact related to the proceeding between the utility and the landowner other than the notice has occurred. This proof of notice must be filed with the commission no later than 20 days after the filing of the application.

(F) [(E)] Upon the filing of proof of notice as described in subparagraph (E) [(D)] of this paragraph, the lack of actual notice to any individual landowner will not in and of itself support a finding that the requirements of this paragraph have not been satisfied. If, however, the utility finds that an owner of directly affected land has not received notice, it must immediately advise the commission by written pleading and must provide notice to such landowner(s) by priority mail, with delivery confirmation, in the same form described in subparagraphs (A) through (C) [and (B)] of this paragraph, except that the notice must state that the person has fifteen days from the date of delivery to intervene. The utility must immediately file a supplemental affidavit of notice with the commission.

(4) The utility must hold at least one public meeting prior to the filing of its licensing application if 25 or more persons would be entitled to receive direct mail notice of the application. Direct mail notice of the public meeting must be sent by first-class mail to each of the persons listed on the current county tax rolls as an owner of land within 300 feet of the centerline of a transmission project of 230kV or less, an owner of land [or] within 500 feet of the centerline of a transmission project greater than 230kV, an owner of land directly adjacent to a property on which a substation proposed to be authorized by the certificate of convenience and necessity is located, or an owner of land across a highway, road, or street that is adjacent to such a substation. The utility must also provide written notice to the Department of Defense Siting Clearinghouse of the public meeting. In the notice for the public meeting, at the public meeting, and in other communications with a potentially affected person, the utility must not describe routes as preferred routes or otherwise suggest that a particular route is more or less likely to be selected than one of the other routes. In the event that no public meeting is held, the utility must provide written notice to the Department of Defense Siting Clearinghouse of the planned filing of an application prior to completion of the routing study.

(5) - (7) (No change.)

(b) (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 July 20, 2023.

TRD-202302604

Adriana Gonzales

Rules Coordinator

Public Utility Commission of Texas

Earliest possible date of adoption: September 3, 2023

For further information, please call: (512) 936-7322



TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 37. MATERNAL AND INFANT HEALTH SERVICES

SUBCHAPTER U. EPINEPHRINE

AUTO-INJECTOR POLICIES IN SCHOOLS

25 TAC §§37.601 - 37.611

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), proposes the repeal of §§37.601 - 37.611, concerning Epinephrine Auto-Injector Policies in Schools.

BACKGROUND AND PURPOSE

The purpose of the proposed repeal of 25 Texas Administrative Code (TAC) Chapter 37, Subchapter U, is to place all stock medication rules under 25 TAC Chapter 40. This rule proposal repeals 25 TAC, Chapter 37, Subchapter U. The new rules for 25 TAC Chapter 40, Subchapter E, Epinephrine Auto-Injector Policies in Schools, is published in this same issue of the *Texas Register*.

SECTION-BY-SECTION SUMMARY

The proposed repeal of §§37.601 - 37.611 removes the rules as no longer necessary under 25 TAC Chapter 37. The new rules in 25 TAC, Chapter 40, Subchapter F, §§40.81 - 40.89 aligns the rules with similar TAC rules relating to stock medications in schools, youth facilities, and other entities such as amusement parks, restaurants, and sport venues.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

(1) the proposed rules will not create or eliminate a government program;

(2) implementation of the proposed rules will not affect the number of DSHS employee positions;

(3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;

(4) the proposed rules will not affect fees paid to DSHS;

(5) the proposed rules will not create new rules;

(6) the proposed rules will repeal existing rules;

(7) the proposed rules will not change the number of individuals subject to the rules; and

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

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

Donna Sheppard has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The rules do not apply to small or micro-businesses, or rural communities.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas.

PUBLIC BENEFIT AND COSTS

Dr. Manda Hall, Associate Commissioner, Community Health Improvement Division, has determined that for each year of the first five years the rules are in effect, the public will benefit from having all stock medication rules in the same chapter of the TAC.

Donna Sheppard has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because the repeals will not require these persons to alter their current business practices.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

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

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule "23R051" in the subject line.

STATUTORY AUTHORITY

The repeals are adopted and authorized by Texas Education Code Chapter 38; and Texas Government Code §531.0055, and Texas Health and Safety Code §1001.075, which authorize the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code Chapter 1001.

The repeals implement Texas Government Code §531.0055; Texas Education Code Chapter 38; and Texas Health and Safety Code Chapter 1001.

§37.601. *Purpose.*

§37.602. *Voluntary Unassigned Epinephrine Auto-Injector Policies for School Districts, Open-enrollment Charter Schools, and Private Schools.*

§37.603. *Definitions.*

§37.604. *Applicability.*

§37.605. *Maintenance, Administration, and Disposal of Unassigned Epinephrine Auto-Injectors.*

§37.606. *Assignment and Recruitment of School Personnel and School Volunteers to be Trained to Administer Epinephrine Auto-Injectors.*

§37.607. *Training.*

§37.608. *Report on Administering Epinephrine Auto-Injectors.*

§37.609. *Notice to Parents Regarding Unassigned Epinephrine Auto-Injector Policies in Schools.*

§37.610. *Gifts, Grants, and Donations.*

§37.611. *Immunity from Liability.*

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 July 17, 2023.

TRD-202302566

Cynthia Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: September 3, 2023

For further information, please call: (512) 413-9089



CHAPTER 40. STOCK MEDICATION IN SCHOOLS AND OTHER ENTITIES [EPINEPHRINE AUTO-INJECTOR AND ANAPHYLAXIS POLICIES]

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), proposes new Subchapter E, §§40.61 - 40.71, concerning Epinephrine Auto-Injector Policies in Schools; and new Subchapter F, §§40.81 - 40.89, concerning Opioid Antagonist Medication Requirements in Schools. This proposal renames 25 Texas Administrative Code (TAC) Chapter 40, as "Stock Medication in Schools and Other Entities" to reflect the broader scope of stock medication rules that will be included under this chapter.

BACKGROUND AND PURPOSE

The purpose of the proposal is to implement Senate Bill (S.B.) 629, 88th Legislature, Regular Session, 2023, which amends Texas Education Code Chapter 38 by adding Subchapter E-1. S.B. 629 requires the Executive Commissioner of HHSC consult with the commissioner of the Texas Education Agency to adopt rules regarding maintenance, administration, and disposal of opioid antagonists. S.B. 629 also requires the rules to establish a process for checking inventory and the amount of training for school personnel and volunteers. Finally, S.B. 629 requires schools to report information on the administration of opioid antagonists to the commissioner of DSHS.

To place all stock medication rules under the same chapter in TAC, this rule proposal adds new Subchapter E, Epinephrine Auto-Injector Policies in Schools, to 25 TAC Chapter 40. The repeal of 25 TAC Chapter 37, Subchapter U is published in this same issue of the *Texas Register*.

This proposal adds new Subchapter F, Opioid Antagonist Medication Requirements in Schools, as required by S.B. 629.

SECTION-BY-SECTION SUMMARY

Subchapter E, Epinephrine Auto-Injector Policies In Schools

Proposed new §40.61 states the purpose of the subchapter, which is to establish minimum standards for administering, maintaining, and disposing of epinephrine auto-injectors in school districts, open-enrollment charter schools, and private schools who adopt unassigned epinephrine auto-injector policies. These standards are implemented under Texas Education Code Chapter 38, Subchapter E.

Proposed new §40.62 states that school districts, open-enrollment charter schools, and private schools may adopt and implement a written policy regarding the maintenance, administration, and disposal of unassigned epinephrine auto-injectors at each school campus. Policies adopted must comply with Texas Education Code §38.208.

Proposed new §40.63 defines terms used in Subchapter E.

Proposed new §40.64 states that the rules apply to any school district, open-enrollment charter school, or private school who voluntarily chooses to adopt and implement a written policy regarding the maintenance, administration, and disposal of unassigned epinephrine auto-injectors on each school campus.

Proposed new §40.65 outlines the standards for maintenance, administration, and disposal of unassigned epinephrine auto-injectors for school districts, open-enrollment charter schools, or private schools. The standards address unassigned epinephrine auto-injector prescriptions; policy implementation; training for school personnel or school volunteers to administer an unassigned epinephrine auto-injector; notification for emergency medical services and parents; records retention; and epinephrine auto-injector storage, replacement, and disposal.

Proposed new §40.66 addresses the assignment and recruitment of school personnel and school volunteers to be trained to administer epinephrine auto-injectors.

Proposed new §40.67 addresses training requirements for school personnel and volunteers in the recognizing of anaphylaxis signs and symptoms and administration of an unassigned epinephrine auto-injector.

Proposed new §40.68 requires schools to report on administering epinephrine auto-injectors per Texas Education Code §38.209.

Proposed new §40.69 addresses the notification to parents or guardians regarding unassigned epinephrine auto-injector policies in schools.

Proposed new §40.70 addresses gifts, grants, and donations that a school district, open-enrollment charter school, or private school may accept to implement the unassigned epinephrine auto-injector policy.

Proposed new §40.71 addresses the immunity from liability per Texas Education Code §38.215.

Subchapter F, Opioid Antagonist Medication Requirements In Schools

Proposed new §40.81 describes the purpose of the subchapter, which is to establish minimum standards for administering, maintaining, and disposing of opioid antagonist medication in school districts, open-enrollment charter schools, and private schools that adopt opioid antagonist medicine policies. These standards are implemented under Texas Education Code Chapter 38, Subchapter E-1.

Proposed new §40.82 defines terms used in Subchapter F relating to the maintenance, administration, and disposal of opioid antagonist medication.

Proposed new §40.83 states that the rules apply to school districts, open-enrollment charter schools, and private schools that may adopt and implement a written policy regarding the maintenance, administration, and disposal of opioid antagonist medication.

Proposed new §40.84 addresses unassigned opioid antagonist medication policy requirements in school districts, open-enrollment charter schools, or private schools.

Proposed new §40.85 states that once a policy is implemented, the school district, open-enrollment charter school, or private school must stock opioid antagonist medication. The new rule addresses the authorized healthcare provider prescription, administration to a person who is reasonably believed to be experiencing an opioid-related drug overdose, and the storage and disposal of opioid antagonist medication.

Proposed new §40.86 addresses training requirements for school personnel and school volunteers in the administration of opioid antagonist medication, recognition of opioid-related drug overdose, disposal of used or expired opioid antagonists, and use of an opioid antagonist trainer device.

Proposed new §40.87 addresses the required reporting of administering opioid antagonist medications and retention of records.

Proposed new §40.88 addresses gifts, grants, donations, and federal and local funds that a school district, open-enrollment charter school, or private school may accept to implement the unassigned opioid antagonist policy.

Proposed new §40.89 addresses the immunity from liability as outlined in this subchapter or Texas Education Code §38.227.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

Donna Sheppard has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The rule does not apply to small or micro-businesses, or rural communities.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas and to implement legislation that does not specifically state that §2001.0045 applies to the rules.

PUBLIC BENEFIT AND COSTS

Dr. Manda Hall, Associate Commissioner, Community Health Improvement Division, has determined that for each year of the first five years the rules are in effect, the public will benefit from safer public, charter, and private schools that are authorized to administer opioid antagonist medicine to a person who is reasonably believed to be experiencing an opioid overdose. The public will also benefit from having all stock medication rules in the same chapter of the TAC.

Donna Sheppard has also determined that for the first five years the rules are in effect, schools that are required to comply with the proposed rules or that elect to adopt and implement a voluntary policy regarding the maintenance, administration, and disposal of opioid antagonists may incur economic costs for opioid antagonist supplies. School campuses would most likely use a currently available over-the-counter, nasal spray opioid antagonist. DSHS estimates that nasal spray opioid antagonists cost approximately \$47.50 per box and have a shelf life of three years. Any school district, open-enrollment charter school, or private school that adopts a policy under this rule is recommended to stock 1-5 boxes of an opioid antagonist depending on the size of the school campus and need. Based on data from the Texas Education Agency, which is the agency that regulates public and charter schools, there are approximately 8,778 k-12 public campuses and 951 k-12 charter school campuses, in Texas in 2023. According to the Texas Private School Accreditation Commission, there are approximately 1,179 private k-12 schools in Texas

in 2023. Assuming all 10,908 schools adopt this policy and inventory is replaced due to use or expiration over the following three years, and the price of the medication is \$47.50, the total cost for schools will initially be \$518,130 (10,908 schools multiplied by \$47.50/medication) with an additional \$518,130, per year. The cost could be as high as (\$518,130 multiplied by 5 boxes) \$2,590,650 if all schools purchase, use, or replace over five years.

The cost may vary significantly due to: (1) not all schools are required to adopt a policy and stock medication, and some schools may choose not to do so; (2) the recommended amount of medication to stock varies depending on the need and size of the school campus; and (3) schools may be able to obtain opioid antagonist medication at no cost from HHSC, non-profit organizations, or other sources.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

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

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule "23R051" in the subject line.

SUBCHAPTER E. EPINEPHRINE AUTO-INJECTOR POLICIES IN SCHOOLS

25 TAC §§40.61 - 40.71

STATUTORY AUTHORITY

The new rules are required to comply with Texas Education Code Chapter 38, Subchapter E. The new rules are also authorized by Texas Government Code §531.0055, and Texas Health and Safety Code §1001.075, which authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code Chapter 1001.

The new rules implement Texas Education Code Chapter 38, Texas Government Code §531.0055, and Texas Health and Safety Code Chapter 1001.

§40.61. Purpose.

The purpose of this subchapter is to establish minimum standards for administering, maintaining, and disposing of epinephrine auto-injectors in school districts, open-enrollment charter schools, and private schools that adopt unassigned epinephrine auto-injector policies. These standards are implemented under Texas Education Code Chapter 38, Subchapter E.

§40.62. Voluntary Unassigned Epinephrine Auto-Injector Policies for School Districts, Open-enrollment Charter Schools, and Private Schools.

(a) A school district, open-enrollment charter school, or private school may adopt and implement a written policy regarding the maintenance, administration, and disposal of unassigned epinephrine auto-injectors at each school campus.

(b) If a written policy is adopted under this subchapter, the policy must comply with Texas Education Code §38.208 and this subchapter.

(c) A school district or open-enrollment charter school that chooses to adopt and implement a written unassigned epinephrine auto-injector policy under Texas Education Code Chapter 38, Subchapter E, and this subchapter, is not required to create an additional policy for care of certain students at risk for anaphylaxis under Texas Education Code §38.0151.

§40.63. Definitions.

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

(1) All hours the campus is open--At a minimum, during regular on-campus school hours, and when school personnel are physically on site for school-sponsored activities.

(2) Anaphylaxis--As defined in Texas Education Code §38.201.

(3) Authorized healthcare provider--A physician or person who has been delegated prescriptive authority under Texas Occupations Code Chapter 157.

(4) Campus--A unit of a school district, open-enrollment charter school, or private school that has an assigned administrator, has enrolled students who are counted for average daily attendance, has assigned instructional staff, provides instructional services to students, has one or more grades in the range from early childhood education through grade 12 or is ungraded, and complies with relevant Texas laws.

(5) Physician--As defined in Texas Education Code §38.201.

(6) Private school--As defined in Texas Education Code §38.201.

(7) School nurse--As defined in Title 19, Texas Administrative Code §153.1022.

(8) School personnel--As defined in Texas Education Code §38.201.

(9) School volunteer--As defined in Texas Education Code §22.053.

(10) Unassigned epinephrine auto-injector--An epinephrine auto-injector prescribed by an authorized healthcare provider in the name of the school issued with a non-patient-specific standing delegation order for the administration of an epinephrine auto-injector, issued by a physician or person who has been delegated prescriptive authority under Texas Occupations Code Chapter 157.

§40.64. Applicability.

This subchapter applies to any school district, open-enrollment charter school, or private school that voluntarily chooses to adopt and implement a written policy regarding the maintenance, administration, and disposal of unassigned epinephrine auto-injectors on each school campus.

§40.65. Maintenance, Administration, and Disposal of Unassigned Epinephrine Auto-Injectors.

(a) A school district, open-enrollment charter school, or private school shall obtain a prescription from an authorized healthcare provider each year, to stock, possess, and maintain at least one unassigned adult epinephrine auto-injector pack (two doses) on each school campus as described in Texas Education Code §38.211.

(1) A school may choose to stock unassigned pediatric epinephrine auto-injector packs, based on the need of the school's population.

(2) A school district or the governing body of an open-enrollment charter school or private school may develop, as part of the policy, provisions for additional doses to be stocked and utilized at off campus school events, or in transit to or from school events.

(b) Each school district superintendent, open-enrollment charter school administrator, or private school administrator will designate appropriate school personnel to coordinate and manage policy implementation, including training of school personnel, and the acquisition or purchase, usage, expiration, and disposal of unassigned epinephrine auto-injectors. Throughout the school calendar year, the designated school personnel shall coordinate with each campus to ensure that the unassigned epinephrine auto-injectors are checked monthly for expiration and usage and the findings are documented.

(c) At least one school personnel or one school volunteer who is authorized and trained to administer an unassigned epinephrine auto-injector must be present on campus during all hours the campus is open for school-sponsored activities.

(d) School personnel or school volunteers who are trained and authorized may administer an unassigned epinephrine auto-injector to a person who is reasonably believed to be experiencing anaphylaxis on a school campus, or as indicated in the school's unassigned epinephrine auto-injector policy.

(e) Local emergency medical services must be promptly notified by the school when an individual is suspected of experiencing anaphylaxis and when an epinephrine auto-injector is administered. If the trained school personnel or school volunteer is the only individual available to notify emergency medical services, the trained individual should administer the unassigned epinephrine auto-injector before notifying emergency medical services.

(f) The parent, legal guardian, or emergency contact must be promptly notified by the school when an unassigned epinephrine auto-injector is utilized on their child as soon as is feasible during the emergency response to suspected anaphylaxis. School records of the administration of the unassigned epinephrine auto-injector and suspected anaphylaxis must be provided to the parent or guardian of the recipient upon request.

(g) Records relating to implementation and administration of the school's unassigned epinephrine auto-injector policy shall be retained per the record retention schedule for records of public school districts found in Title 13, Texas Administrative Code §7.125.

(h) Unassigned epinephrine auto-injectors shall be stored in a secure, easily accessible area for an emergency, in accordance with the manufacturer's guidelines. It is recommended that the school administrator develop a map to be placed in high traffic areas that indicates the location of the unassigned epinephrine auto-injectors on each school campus. It is recommended that the map also indicates the locations of the automated external defibrillator.

(i) The school district, open-enrollment charter school, or private school shall develop a plan to replace, as soon as reasonably pos-

sible, any unassigned epinephrine auto-injector that is used or close to expiration.

(j) Used unassigned epinephrine auto-injectors shall be considered infectious waste and shall be disposed of according to the school's bloodborne pathogen control policy.

(k) Expired unassigned epinephrine auto-injectors shall be disposed of according to the school's medication disposal policy.

§40.66. Assignment and Recruitment of School Personnel and School Volunteers to be Trained to Administer Epinephrine Auto-Injectors.

(a) At each school campus in which a school adopts an unassigned epinephrine auto-injector policy, the school principal may:

(1) assign school personnel or school volunteers to be trained to administer unassigned epinephrine auto-injectors; or

(2) seek school personnel or school volunteers who volunteer to be trained to administer unassigned epinephrine auto-injectors.

(b) In order to increase the number of trained individuals in the administration of unassigned epinephrine auto-injectors, schools may distribute to school personnel and school volunteers in the school district, open-enrollment charter school, or private school, at least once per school year, a notice that includes:

(1) a description of the request seeking volunteers to be trained to administer an epinephrine auto-injector to a person believed to be experiencing anaphylaxis; and

(2) a description of the training that the school personnel or school volunteers will receive in the administration of epinephrine with an auto-injector.

(c) Trained school personnel or school volunteers who administer the unassigned epinephrine auto-injector must submit a signed statement indicating that they agree to perform the service of administering an unassigned epinephrine auto-injector to a student or individual that may be experiencing anaphylaxis.

§40.67. Training.

Each school district, open-enrollment charter school, or private school that adopts an unassigned epinephrine auto-injector written policy under this subchapter is responsible for training school personnel and school volunteers in the recognizing of anaphylaxis signs and symptoms and administration of an unassigned epinephrine auto-injector. Each assigned school personnel or school volunteer shall receive initial training and an annual refresher training. Training shall be consistent with the most recent Voluntary Guidelines for Managing Food Allergies in Schools and Early Care and Education Programs published by the federal Centers for Disease Control and Prevention.

(1) Training may be provided in a formal face-to-face training session or through an online education course.

(2) Training required under this subchapter must meet the requirements found in Texas Education Code §38.210 and include information on properly inspecting unassigned epinephrine auto-injectors for usage and expiration.

(3) The initial training must include hands-on training with an epinephrine auto-injector trainer.

(4) The annual refresher training must include a hands-on demonstration of administration skills.

(5) The training must also include information about promptly notifying local emergency medical services.

(6) Each school campus shall maintain training records and make available upon request a list of those school personnel or school

volunteers trained and authorized to administer the unassigned epinephrine auto-injector on the campus.

§40.68. Report on Administering Epinephrine Auto-Injectors.

(a) A report shall be submitted by the school no later than the 10th business day after the date school personnel or a school volunteer administers an epinephrine auto-injector in accordance with the unassigned epinephrine auto-injector policy adopted under this subchapter. The report shall be submitted to the individuals and entities identified in Texas Education Code §38.209, including the commissioner of the Texas Education Agency and the commissioner of the Department of State Health Services (DSHS).

(b) Notifications to the commissioner of DSHS shall be submitted on the designated electronic form available on the DSHS School Health Program website found at dshs.texas.gov.

§40.69. Notice to Parents Regarding Unassigned Epinephrine Auto-Injector Policies in Schools.

(a) If a school district, open-enrollment charter school, or private school implements an unassigned epinephrine auto-injector policy under this subchapter, the district or school shall provide written or electronic notice to a parent or guardian of each student in accordance with Texas Education Code §38.212.

(b) If a school district, open-enrollment charter school, or private school changes or discontinues the policy under this subchapter, written or electronic notice detailing the change or discontinuation must be provided to a parent or guardian of each student within 15 calendar days.

§40.70. Gifts, Grants, and Donations.

A school district, open-enrollment charter school, or private school may accept gifts, grants, donations, and federal and local funds to implement the unassigned epinephrine auto-injector policy in accordance with Texas Education Code §38.213.

§40.71. Immunity from Liability.

A person who in good faith takes, or fails to take, any action under this subchapter or Texas Education Code Chapter 38, Subchapter E is immune from civil or criminal liability or disciplinary action resulting from that action or failure to act in accordance with the Texas Education Code §38.215.

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 July 17, 2023.

TRD-202302567

Cynthia Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: September 3, 2023

For further information, please call: (512) 413-9089



SUBCHAPTER F. OPIOID ANTAGONIST MEDICATION REQUIREMENTS IN SCHOOLS

25 TAC §§40.81 - 40.89

STATUTORY AUTHORITY

The new rules are required to comply with Texas Education Code Chapter 38, Subchapter E. The new rules are also authorized

by Texas Government Code §531.0055, and Texas Health and Safety Code §1001.075, which authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code Chapter 1001.

The new rules implement Texas Education Code Chapter 38, Texas Government Code §531.0055, and Texas Health and Safety Code Chapter 1001.

§40.81. Purpose.

The purpose of this subchapter is to establish minimum standards for administering, maintaining, and disposing of opioid antagonist medication in school districts, open-enrollment charter schools, and private schools that adopt opioid antagonist medicine policies. These standards are implemented under Texas Education Code Chapter 38, Subchapter E-1.

§40.82. Definitions.

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

(1) Authorized healthcare provider--A physician, as defined in Texas Education Code §38.201, or person who has been delegated prescriptive authority by a physician under Texas Occupations Code Chapter 157.

(2) Campus--A unit of a school district, open-enrollment charter school, or private school that has an assigned administrator, has enrolled students who are counted for average daily attendance, has assigned instructional staff, provides instructional services to students, has one or more grades in the range from early childhood education through grade 12 or is ungraded, and complies with relevant Texas laws.

(3) Opioid antagonist--As defined in Texas Health and Safety Code §483.101, any drug that binds to opioid receptors and blocks or otherwise inhibits the effects of opioids acting on those receptors.

(4) Opioid-related drug overdose--As defined in Texas Health and Safety Code §483.101, a condition, evidenced by symptoms of extreme physical illness, decreased level of consciousness, constriction of the pupils, respiratory depression, or coma, that a layperson would reasonably believe to be the result of the consumption or use of an opioid.

(5) Private school--As defined in Texas Education Code §38.201.

(6) School personnel--As defined in Texas Education Code §38.201.

(7) School volunteer--As defined in Texas Education Code §22.053.

§40.83. Applicability.

This subchapter applies to any school district, open-enrollment charter school, or private school that adopts and implements a written policy regarding the maintenance, administration, and disposal of opioid antagonist medication on a campus or campuses.

§40.84. Required and Voluntary Opioid Antagonist Policies.

(a) Each school district shall adopt and implement a policy regarding the maintenance, administration, and disposal of opioid antagonists at each campus in the district that serves students in grades 6 through 12 and may voluntarily adopt and implement such a policy at each campus in the district, including campuses serving students in a grade level below grade 6.

(b) An open-enrollment charter school or private school may adopt and implement a policy regarding the maintenance, administration, and disposal of opioid antagonists. If a school adopts a policy under this subchapter, the opioid antagonist policy must comply with the Texas Education Code §38.222. The school may apply the policy:

(1) only at campuses of the school serving students in grades 6 through 12; or

(2) at each campus of the school, including campuses serving students in a grade level below grade 6.

(c) A policy adopted under this subchapter must:

(1) provide that school personnel and school volunteers who are authorized and trained may administer an opioid antagonist to a person who is reasonably believed to be experiencing an opioid-related drug overdose;

(2) require that each school campus subject to a policy adopted under this subchapter have one or more school personnel members or school volunteers authorized and trained to administer an opioid antagonist present during regular school hours;

(3) establish the number of opioid antagonists that must be available at each campus at any given time; and

(4) require that the supply of opioid antagonists at each school campus subject to a policy adopted under this subchapter must be stored in a secure location and be easily accessible to school personnel and school volunteers authorized and trained to administer an opioid antagonist.

§40.85. Maintenance, Administration, and Disposal of Opioid Antagonist Medication.

(a) Once a school district, open-enrollment charter school, or private school adopts an opioid antagonist medication policy, a campus that implements an opioid policy must stock opioid antagonist medication as defined by §40.84 of this subchapter (relating to Required and Voluntary Opioid Antagonist Policies).

(b) A campus must obtain a prescription from a physician or a person who has been delegated prescriptive authority each year to stock, possess, and maintain the established number of opioid antagonists determined by a school district, on each campus as described in Texas Education Code §38.225.

(1) The campus must renew this prescription or obtain a new prescription annually.

(2) The number of additional doses may be determined by an individual campus review led by a physician or a person who has been delegated prescriptive authority.

(c) A physician or other person who has been delegated prescriptive authority under Texas Occupations Code Chapter 157 and prescribes opioid antagonist medication under subsection (a) of this section must provide the school district, open-enrollment charter school, or private school with a standing order for administration of an opioid antagonist medication to a person who is reasonably believed to be experiencing an opioid-related drug overdose. The standing order must comply with the Texas Education Code §38.225.

(d) The unassigned opioid antagonist medication must be stored in a secure location and be easily accessible, in accordance with the manufacturer's guidelines and local policy of the school district, open-enrollment charter school, or private school.

(e) Used unassigned opioid antagonists shall be considered infectious waste and shall be disposed of according to the school's blood-borne pathogen control policy.

(f) Expired unassigned opioid antagonists must be disposed of in accordance with the Federal Drug Administration's disposal of unused medications guidelines and local policy of the school district, open-enrollment charter school, or private school.

§40.86. Training.

(a) Each school district, open-enrollment charter school, and private school that adopts a written unassigned opioid antagonist policy under Texas Education Code §38.222, is responsible for training school personnel and school volunteers in the administration of an opioid antagonist.

(b) Training under this subchapter must:

(1) include information on:

(A) recognizing the signs and symptoms of an opioid-related drug overdose;

(B) responding to an opioid-related drug overdose and administering an opioid antagonist;

(C) implementing emergency procedures, after administering an opioid antagonist;

(D) understanding the medical purpose and misuse of opioids;

(E) practicing the administration of an opioid antagonist with an opioid antagonist trainer device; and

(F) properly disposing of used or expired opioid antagonists;

(2) be provided annually in a formal training session or through online education; and

(3) be provided in accordance with the policy adopted under Texas Education Code §21.4515.

(c) Each campus must maintain training records and must make available upon request a list of school personnel and school volunteers that are trained and authorized to administer the unassigned opioid antagonist medication on the campus.

§40.87. Report on Administering Unassigned Opioid Antagonist Medication.

(a) Records relating to implementing and administering the school district, open-enrollment charter school, or private school's unassigned opioid antagonist medication policy must be retained per the campus record retention schedule.

(b) The campus must submit the report no later than the 10th business day after the date a school personnel member or school volunteer administers an opioid antagonist in accordance with the unassigned opioid antagonist medication policy adopted under this subchapter. The report shall be submitted to the individuals and entities identified in Texas Education Code §38.223.

(c) Notifications to the commissioner of the Department of State Health Services (DSHS) must be submitted on the designated electronic form available on DSHS's School Health Program website found at dshs.texas.gov.

§40.88. Gifts, Grants, and Donations.

A school district, open-enrollment charter school, or private school may accept gifts, grants, donations, and federal and local funds to implement this subchapter.

§40.89. Immunity from Liability.

A person who in good faith takes, or fails to take, any action under this subchapter, or Texas Education Code Chapter 38, Subchapter E-1, is

immune from civil or criminal liability or disciplinary action resulting from that action or failure to act in accordance with Texas Education Code §38.227.

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 July 17, 2023.

TRD-202302568

Cynthia Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: September 3, 2023

For further information, please call: (512) 413-9089



TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 374. MENTAL HEALTH EARLY INTERVENTION AND TREATMENT GRANT

26 TAC §§374.1 - 374.4

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes new §374.1, concerning Purpose and Objectives; §374.2, concerning Definitions; §374.3, concerning Eligibility Criteria for Applicants; and §374.4, concerning Application and Selection Process, in new Chapter 374 Mental Health Early Intervention and Treatment Grant.

BACKGROUND AND PURPOSE

The proposal is necessary to comply with Senate Bill (S.B.) 26, 88th Legislature, Regular Session, 2023, which adds new §531.09915 to the Texas Government Code effective September 1, 2023. Section 531.09915 requires the Health and Human Services Commission (HHSC) to implement a competitive grant program to support community-based initiatives that promote identification of mental health issues and improve access to early intervention and treatment for children and families and to establish by rule the application and eligibility requirements for an entity to be awarded a grant.

SECTION-BY-SECTION SUMMARY

Proposed new §374.1 describes the purpose and objective of the Mental Health Early Intervention and Treatment Grant, so that applicants understand the intent and general objectives of establishing community-based initiatives.

Proposed new §374.2 describes the definitions for terms used throughout the chapter.

Proposed new §374.3 lists the entities eligible for a grant awarded under the grant program in accordance with Texas Government Code §531.09915(e). The new rule is necessary to establish in rule eligibility requirements for entities applying for the grant.

Proposed new §374.4 describes the application and selection process leading to final award for potential applicants. The proposed new rule is necessary to establish in rule the application process for entities applying for the grant.

FISCAL NOTE

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

Participation in providing the new service described in the proposed new rules is optional; the rules merely provide guidance on application and eligibility requirements to receive the grant funds.

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities, as these rules do not apply to small or micro-businesses, or rural communities, and do not impose any additional costs on those required to comply.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rule does not impose a cost on regulated people, the rule relates to a state agency procurement, and it implements legislation that does not specifically state that §2001.0045 applies to the rules.

PUBLIC BENEFIT AND COSTS

Rob Ries, Deputy Executive Commissioner of Family Health Services, has determined that for each year of the first five years the rules are in effect, the public benefit will be to promote family preservation, better academic outcomes for children and youth, and positive social behaviors through earlier identification of mental health issues and improved access to early intervention and treatment for children and families.

Trey Wood has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because participation in providing the new service described in the proposed rules is optional.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

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

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be post-marked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 23R050" in the subject line.

STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.09915(d), which requires the Executive Commissioner of HHSC to establish by rule eligibility and application requirements for an entity to be awarded a Mental Health Early Intervention and Treatment Grant.

The new sections affect Texas Government Code §531.0055 and Texas Government Code §531.09915.

§374.1. Purpose and Objectives.

(a) Purpose. This chapter implements Texas Government Code §531.09915, which authorizes the Health and Human Services Commission to implement a competitive matching grant program to support the initial establishment and operation of community-based initiatives that promote identification of mental health issues and improve access to early intervention and treatment for children and families.

(b) Grant objectives. The grants awarded under this chapter are intended to assist with the establishment or operation of community-based initiatives that may:

(1) be evidence-based or otherwise demonstrate positive outcomes, including:

- (A) improved relationship skills;
- (B) improved self-esteem;
- (C) reduced involvement in the juvenile justice system;
- (D) participation in the relinquishment avoidance program under Texas Family Code Chapter 262, Subchapter E; and
- (E) avoidance of emergency room use; and

(2) include:

- (A) training; and

(B) services and supports for:

(i) community-based initiatives;

(ii) agencies that provide services to children and families;

(iii) individuals who work with children or caregivers of children showing atypical social or emotional development or other challenging behaviors; and

(iv) children in or at risk of placement in the foster care or juvenile justice system.

§374.2. Definitions.

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

(1) Applicant--An entity eligible to apply for a grant.

(2) Children--Individuals who are younger than 13 years of age.

(3) Commission--The Health and Human Services Commission.

(4) Early intervention--Services to identify and provide effective early support to children and young people who are at risk of poor outcomes.

(5) Grantee--A recipient of a grant awarded under this chapter.

§374.3. Eligibility Criteria for Applicants.

The following entities are eligible to apply for a grant:

(1) a hospital licensed under Texas Health and Safety Code Chapter 241;

(2) a mental hospital licensed under Texas Health and Safety Code Chapter 577;

(3) a hospital district;

(4) a local mental health authority, as defined in Texas Health and Safety Code §571.003;

(5) a child-care facility, as defined in Texas Human Resources Code §42.002;

(6) a county or municipality; and

(7) a nonprofit organization that is exempt from taxation under §501(a), Internal Revenue Code of 1986, as an exempt entity described in §501(c)(3) of that code.

§374.4. Application and Selection Process.

(a) Application and selection process.

(1) An applicant must submit an application for a grant directly to the Commission in the time and manner specified by the Commission.

(2) An application received after the deadline will not be considered.

(3) A panel selected by the Commission reviews and evaluates eligible, complete, and timely applications in accordance with the evaluation methodology published in the request for proposal or other notice of potential grant award issued by the Commission.

(b) Selection criteria. In selecting a grantee, the Commission must consider:

(1) the extent to which an applicant's proposed program meets the objectives established by Texas Government Code §531.09915; and

(2) other criteria established by the Commission as described in the specific request for proposal or other notice of potential grant award issued by the Commission.

(c) Award prioritization. In selecting grantees, the Commission prioritizes entities that work with children and family members of children with a high risk of experiencing a crisis or developing a mental health condition to reduce:

(1) the need for future intensive mental health services;

(2) the number of children at risk of placement in foster care or the juvenile justice system; or

(3) the demand for placement in:

(A) a state hospital, as defined in Texas Health and Safety Code §552.0011;

(B) an inpatient mental health facility, as defined in Texas Health and Safety Code §571.003; and

(C) a residential behavioral health facility.

(d) Contract execution.

(1) Grantees are required to execute a contract with the Commission on mutually agreeable terms and conditions in the manner and format prescribed by the Commission.

(2) The Commission does not distribute grant funds to a grantee before the execution of a contract with the Commission.

(3) A grantee is required under the contract to comply with:

(A) the performance objectives established by the Commission and monitored by the Commission through progress reports;

(B) any financial and reporting requirements established by the Commission;

(C) all applicable policies and procedures; and

(D) all applicable federal and state laws and their implementing regulations.

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 July 17, 2023.

TRD-202302569

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: September 3, 2023

For further information, please call: (512) 705-5138



TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 17. TEXAS STATE SOIL AND WATER CONSERVATION BOARD

CHAPTER 519. TECHNICAL ASSISTANCE

SUBCHAPTER A. TECHNICAL ASSISTANCE PROGRAM

31 TAC §519.8

The Texas State Soil and Water Conservation District Board proposes an amendment to the existing rule Title 31, Part 17, Subchapter A, §519.8, which limits the maximum pay for district employees. The agency is proposing the removal of the amount from the rule and basing the amount on a routine State Board decision every biennium.

Fiscal Note

Kenny Zajicek, Fiscal Officer, has determined that for each year of the first five years that the rule is in effect, there are no anticipated increases or reductions in costs to the state and local governments due to enforcing or administering the rule.

Kenny Zajicek, Fiscal Officer, has also determined that for each year of the first five years that the rule is in effect, there is no anticipated impact in revenue to state government as a result of enforcing or administering the rule.

Public Benefit and Cost Note

Kenny Zajicek, Fiscal Officer, has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to protect the public by establishing and maintaining a high standard of integrity, skills, and practice. By removing the rule for max pay for district employees, the Agency can recruit qualified personnel.

Local Employment Impact Statement

Kenny Zajicek, Fiscal Officer, has determined that the rule will not impact local employment or economy. The number of employees is finite. Thus, the board is not required to prepare a local employment impact statement pursuant to §2001.022, Government Code.

Economic Impact Statement and Regulatory Flexibility Analysis

Kenny Zajicek, Fiscal Officer, has determined that there are no anticipated adverse economic effects on small businesses, micro-businesses, or rural communities because of the rule. Thus, the Board is not required to prepare an economic impact statement or a regulatory flexibility analysis pursuant to §2006.002, Government Code, because the biennium budget allocates Technical Assistance Funds

Takings Impact Assessment

Kenny Zajicek, Fiscal Officer, has determined that no private real property interests are affected by the rule, as the rule does not concern real property. Thus, the board is not required to prepare a takings impact assessment pursuant to §2007.043, Government Code.

Public Benefit/Cost Note

Kenny Zajicek, Fiscal Officer, has determined, under Government Code §2001.024(a)(5), that for the first five-year period the amended rules are in effect, the public benefit will be efficient use of state resources. He further has determined there will be no probable economic cost to persons required to comply with the rule because the rule would provide funds to districts through the Technical Assistance Program.

Government Growth Impact Statement

For the first five years that the rule would be in effect, it is estimated that; the proposed rule would not create or eliminate a government program; implementation of the proposed rule would not require the creation of new employee positions or the elimination of existing employee positions; implementation of the proposed rule would not require an increase or decrease in future legislative appropriations to the agency; the proposed rule would not require an increase in the fees paid to the agency; the proposed rule would not create a new regulation; the proposed rule would not expand, limit, or repeal an existing regulation; the proposed rule would not increase or decrease the number of individuals subject to the rule's applicability; and the proposed rule would not positively or adversely affect the state's economy.

Environmental Rule Analysis

The proposed rule is not a "major environmental rule" as defined by Government Code §2001.0225. The proposed rule is not specifically intended to protect the environment or to reduce risks to human health from environmental exposure. Therefore, a regulatory environmental analysis is not required.

Request for Public Comments

The Texas State Soil and Water Conservation Board invites comments on the proposed rule amendment from any interested persons, including any member of the public. A written statement should be mailed or delivered to Heather Bounds, Texas State Soil and Water Conservation Board, 1497 Country View Lane, Temple, Texas 76504, or by e-mail to hbounds@TSS-WCB.Texas.Gov Comments will be accepted for 30 days following publication in the *Texas Register*. Comments must be received within 30 days after the publication of this proposal to be considered.

Statutory Authority

This rule is proposed pursuant to Texas Agriculture Code §201.020(a) and §203.012 provides the basis for the TSSWCB

to pass rules, which can be found in the Texas Administrative Code, Title 31 - Natural Resources and Conservation, Part 17 - Texas State Soil and Water Conservation Board and The General Appropriations Act, 88th(R) Strategy A.1.1. Riders 2&3.

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

§519.8. *Eligible Pay Rates.*

The State Board will establish a maximum hourly pay rate prior to the beginning of each biennium. Established pay rates will not exceed a 40-hour maximum per week. Expenditures for wages or salaries above the maximum pay rate or expenditures for hours over the maximum hours per week will not otherwise be eligible for reimbursement without prior approval from the State Board. If no new rate is established, the existing rate remains in effect. [hereby establishes a maximum pay rate of \$20.00 per hour not to exceed a maximum of 40 hours per week. With the prior approval of the State Board a district may exceed the maximum pay rate or maximum hours per week. Expenditures for wages or salaries that are above the maximum pay rate or expenditures for hours over the maximum hours per week will not otherwise be eligible for reimbursement.]

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 July 24, 2023.

TRD-202302622

Heather Bounds

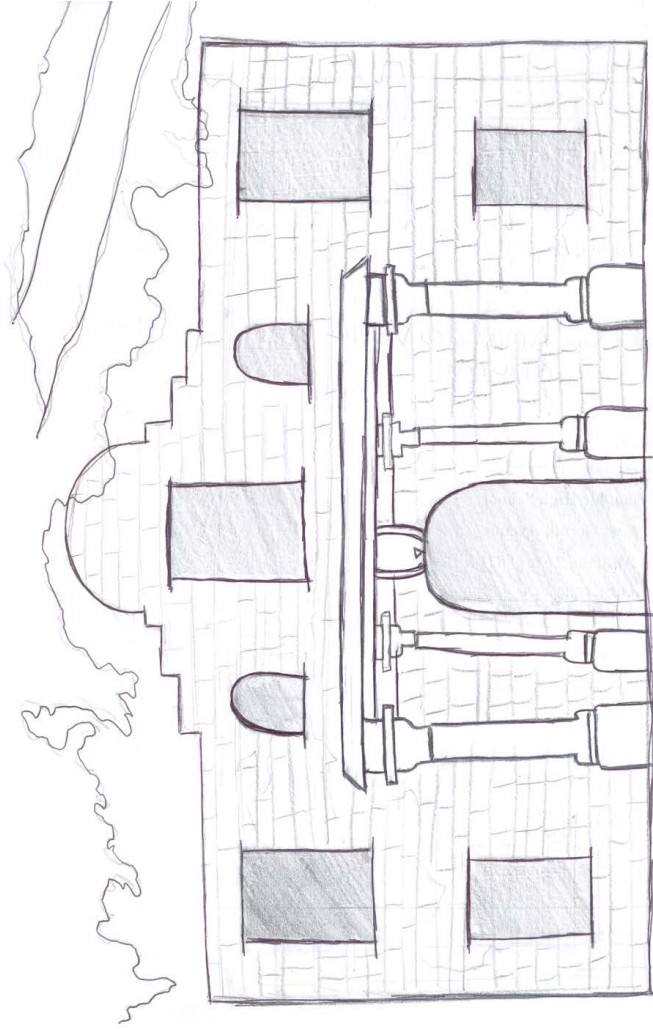
Government Affairs Specialist

Texas State Soil and Water Conservation Board

Earliest possible date of adoption: September 3, 2023

For further information, please call: (254) 778-8741





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 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 116. CONTROL OF AIR POLLUTION BY PERMITS FOR NEW CONSTRUCTION OR MODIFICATION SUBCHAPTER F. STANDARD PERMITS

30 TAC §116.615

The Texas Commission on Environmental Quality withdraws the proposed amendment to §116.615, which appeared in the March 10, 2023, issue of the *Texas Register* (48 TexReg 1404).

Filed with the Office of the Secretary of State on July 21, 2023.

TRD-202302613

Charmaine Backens

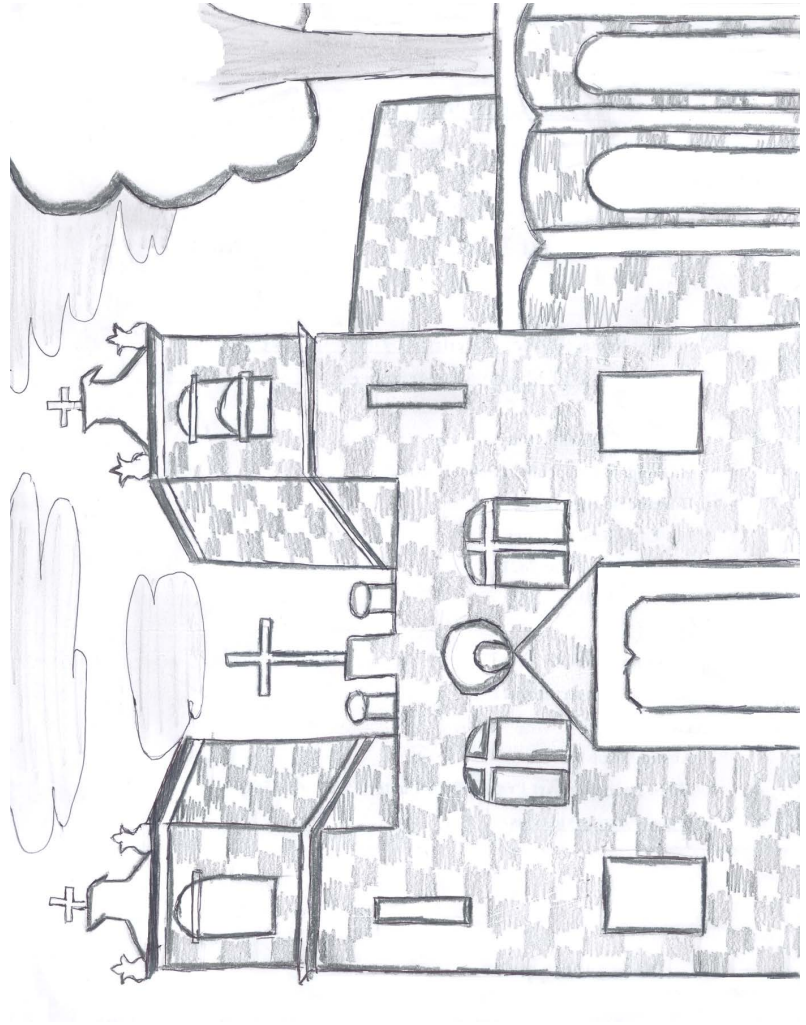
Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Effective date: July 21, 2023

For further information, please call:(512) 239-2678





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 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 89. ADAPTATIONS FOR SPECIAL POPULATIONS

SUBCHAPTER BB COMMISSIONER'S RULES CONCERNING STATE PLAN FOR EDUCATING ENGLISH LANGUAGE LEARNERS

19 TAC §§89.1201, 89.1203, 89.1205, 89.1207, 89.1210, 89.1215, 89.1220, 89.1226 - 89.1230, 89.1233, 89.1235, 89.1240, 89.1245, 89.1250, 89.1265

The Texas Education Agency (TEA) adopts amendments to §§89.1201, 89.1203, 89.1205, 89.1207, 89.1210, 89.1215, 89.1220, 89.1226-89.1230, 89.1233, 89.1235, 89.1240, 89.1245, 89.1250, and 89.1265, concerning the state plan for educating English learners. The amendments to §§89.1201, 89.1203, 89.1205, 89.1207, 89.1227-89.1230, 89.1233, 89.1235, 89.1240, 89.1245, 89.1250, and 89.1265 are adopted without changes to the proposed text as published in the April 21, 2023 issue of the *Texas Register* (48 TexReg 2023) and will not be republished. The amendments to §§89.1210, 89.1215, 89.1220, and 89.1226 are adopted with changes to the proposed text as published in the April 21, 2023 issue of the *Texas Register* (48 TexReg 2023) and will be republished. The adopted amendments align terminology with Senate Bill (SB) 2066, 87th Texas Legislature, Regular Session, 2021, and clarify policies and procedures for the education of emergent bilingual students and related program implementation.

REASONED JUSTIFICATION: In accordance with Texas Education Code, Chapter 29, Subchapter B, Bilingual Education and Special Language Programs, the commissioner has exercised rulemaking authority to establish rules to guide the implementation of bilingual education and special language programs. The commissioner's rules in Chapter 89, Subchapter BB, establish the policy that every student in the state who has a primary language other than English and who is identified as an emergent bilingual student must be provided a full opportunity to participate in a bilingual education or English as a second language (ESL) program. These rules outline the requirements of the bilingual education and ESL programs, including program content and design, home language survey, the language proficiency assessment committee (LPAC), testing and classification, facilities, parental authority and responsibility, staffing and staff development, required summer school programs, and evaluation.

The adopted amendments to Chapter 89, Subchapter BB, implement SB 2066, 87th Texas Legislature, Regular Session, 2021, by updating the term "English learner" to "emergent bilingual

student" throughout the rules. The amendments also provide clarification and make technical edits. In addition, the following changes have been made.

Section 89.1201, Policy, has been amended to more clearly identify the academic and linguistic progress expected of emergent bilingual students and the methods by which that progress is achieved.

Section 89.1203, Definitions, has been amended by adding new definitions and expanding others to ensure consistency, accuracy, and clarity for school districts.

Section 89.1205, Required Bilingual Education and English as a Second Language Programs, has been amended to include updated terminology in alignment with SB 2066.

Section 89.1207, Bilingual Education Exceptions and English as a Second Language Waivers, has been amended to include updated terminology in alignment with SB 2066.

Section 89.1210, Program Content and Design, has been amended to include updated terminology in alignment with SB 2066 and to provide clarity related to approved program models. Based on public comment noting an inadvertent omission, subsection (b)(2)(A) has been revised at adoption. Regarding the linguistic needs of a bilingual program, a statement has been added to specify that the English language proficiency standards are to be taught in conjunction with the Texas Essential Knowledge and Skills, which aligns with the same requirement for ESL programs.

Section 89.1215, Home Language Survey, has been amended to confirm that the original home language survey shall serve as the only survey that should be kept in a student's permanent record and transferred to any subsequent district in which the student enrolls. This section also includes an additional question to ensure a holistic understanding of a child's first language. The amendment clarifies the process for a parent to request a correction to the home language survey. Based on public comment, changes have been made at adoption to subsection (b)(1)-(3) to simplify the questions asked on the home language survey. The questions will now ask which languages are used at home; which languages are used by the child at home; and if the child had a previous home setting, which languages were used.

Section 89.1220, Language Proficiency Assessment Committee, has been amended to include alternative meeting methods as well as allow for the use of electronic signatures. Subsection (g) explicitly states when and for whom the LPAC should review all pertinent information. Subsection (k) includes more details to support LPAC decisions regarding reconsideration for program participation after reclassification. These changes incorporate stakeholder feedback from school districts and align with terminology used in SB 2066. Based on public comment, a change to subsection (g)(1)(B) has been made at adoption to require that

the LPAC recommend, rather than designate, the initial instructional placement. The LPAC's recommendation is still subject to parental approval. A similar change, based on public comment, has been made in subsection (g)(3)(D) to require the LPAC to recommend, rather than determine, exit from program.

Section 89.1226, Testing and Classification of Students, has been amended to update language and emphasize access to multiple programs for dual-identified students. Subsection (b) clarifies that the state-approved English language proficiency test must be administered within four calendar weeks of initial enrollment. Subsection (i) changes how a student can be reclassified as English proficient by requiring a composite proficiency rating in the areas of listening, speaking, reading, and writing rather than a proficiency rating in each of the four language domains. Subsection (k) clarifies that an emergent bilingual student may still be able to be reclassified if there are designated supports for non-linguistic purposes recommended by a committee other than the LPAC. In addition, further clarification has been added regarding the individualized reclassification process for an emergent bilingual student with a severe cognitive disability. These changes address clarification requested by school districts and align the section with the agency's policies on special education and assessment. A change to subsection (b) has been made at adoption to specify that a student shall be recommended for placement, rather than placed, into a required bilingual or ESL program after being identified as emergent bilingual. Based on public comment, a change to subsection (h) has been made at adoption to require the LPAC to recommend, rather than determine, placement. Finally, also based on public comment, a similar change to subsection (m) has been made at adoption to specify that the LPAC may recommend, rather than determine, that the state's assessments are not appropriate for students with significant cognitive disabilities.

Section 89.1227, Minimum Requirements for Dual Language Immersion Program Model, has been amended to use the term "partner language" and to include the development of the program's language allocation plan. Clarification is provided on the inclusion of former emergent bilingual students who have reclassified as English proficient for the duration of the program. Additionally, the amendment specifies that emergent bilingual students' access to dual language programs must not be restricted based on linguistic or academic measures in the partner language or English. These changes incorporate stakeholder feedback from school districts.

Section 89.1228, Two-Way Dual Language Immersion Program Model Implementation, has been amended to include a statement about access not being restricted for emergent bilingual students or non-emergent bilingual students based on linguistic or achievement measures in the partner language or English. The amendment also clarifies the district's commitment to program continuity. These changes incorporate stakeholder feedback from school districts.

Section 89.1229, General Standards for Recognition of Dual Language Immersion Program Models, has been amended to update language reflective of the Results Driven Accountability system.

Section 89.1230, Eligible Students with Disabilities, has been amended to more clearly explain the roles of the LPAC and the admission, review, and dismissal committee in the identification and monitoring of dual-identified students in an effort to align processes across the state.

Section 89.1233, Participation of English Proficient Students, has been amended to use the new term "non-emergent bilingual" for students who have never been identified as emergent bilingual students and clarify that non-emergent bilingual students may not make up more than 40% of the total bilingual education program students districtwide.

Section 89.1235, Facilities, has been amended to align with terminology of SB 2066.

Section 89.1240, Parental Authority and Responsibility, has been amended to include updated terminology in alignment with SB 2066 and provide explicit procedures for parental approvals, program changes, and parental denials.

Section 89.1245, Staffing and Staff Development, has been amended to clarify the use of Bilingual Education Allotment funds for salary supplements.

Section 89.1250, Required Summer School Programs, has been amended to include updated terminology in alignment with SB 2066.

Section 89.1265, Evaluation, has been amended to include updated terminology in alignment with SB 2066. The section title has also been amended to provide clarity on the contents of the section.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began April 21, 2023, and ended May 22, 2023. Following is a summary of public comments received and agency responses.

§89.1201, Policy

Comment: One teacher and two school administrators indicated disapproval of measuring both linguistic and academic progress of students.

Response: The agency disagrees. The state adheres to federal requirements in relation to measuring progress of emergent bilingual students.

§89.1203, Definitions

Comment: Ten administrators, one teacher, and a community member indicated disagreement on the organization within §89.1203 and disapproval of the use of various terms used in the definitions, such as temporary, primary language, English proficient, and emergent bilingual.

Response: The agency disagrees. Emergent bilingual is a statutory term provided in the Texas Education Code. Any changes in the use of that term would require legislative action. The other terms are either commonly used terms or terms used in other state and federal regulations and guidance.

Comment: A school administrator and a lobbyist asked that more specific language be added on how the funding should be tied to effective implementation of dual language programs and those under an alternative language program instead of teacher certifications.

Response: The agency disagrees that a change is needed. The monitoring of program implementation would require a legislative change.

§89.1205, Required Bilingual Education and English as a Second Language Programs

Comment: One administrator noted support for changes in the home language survey and requested a change to address bilin-

gual programs at Grade 6 when Grade 6 is housed at an elementary campus.

Response: The agency disagrees that a change is necessary at this time but will investigate whether future guidance can be provided on this topic.

§89.1207, Bilingual Education Exceptions and English as a Second Language Waivers

Comment: One administrator voiced disapproval that all teachers are not required to have an ESL certification and stated that if certification was required, it would reduce the need for waiver requests.

Response: This comment is outside the scope of the proposed rulemaking. In addition, a change requiring certification would require legislative action.

Comment: One lobbyist suggested having a streamlined process for submitting and approving exceptions and waivers and recommended removing the spending requirement of using 10% of bilingual education allotment funds. The commenter offered suggestions to improve the waiver process.

Response: The agency disagrees that additional detail is necessary for the rule but intends to provide guidance and training on a cyclical process for exceptions and waivers. The agency also disagrees with modifying the spending requirement because it would require a legislative change.

§89.1210, Program Content and Design

Comment: One administrator requested that changes be made in addition to changes that were made under House Bill (HB) 3, 86th Texas Legislature, 2019.

Response: The comment is outside the scope of the proposed rulemaking as the agency cannot change law.

Comment: One administrator sought clarity on the term "pull-out" and requested a change if it was not referring to pulling students out of a classroom.

Response: The agency disagrees that a change is necessary. The term "pull-out" is referring to a state-approved program and the certification of ESL teachers serving emergent bilingual students as defined in §89.1210(d)(2). Renaming the program model would require a legislative change.

Comment: One administrator and the Texas Public Charter Schools Association (TPCSA) made recommendations to include English development through the English language proficiency standards (ELPS) in the linguistic section.

Response: The agency agrees and has made a change to §89.1210(b)(2)(A) at adoption to state that for bilingual programs, the ELPS are used in conjunction with the Texas Essential Knowledge and Skills in the English language. This statement was inadvertently omitted with the proposed amendment, and the change now aligns with the same statement related to ESL programs.

Comment: One individual stated the sentence structure and word order should be modified throughout §89.1210.

Response: The agency disagrees and has determined that changes to sentence structure and word order are unnecessary.

§89.1215, Home Language Survey

Comment: Two administrators and one community member posed questions related to implementation of the changes to

§89.1215 and expectations for local education agencies when providing guidance to families providing the language(s) spoken at home and by the child.

Response: The agency provides the following clarification. The agency intends to provide guidance and training on the implementation of the amended rules once they become effective.

Comment: Two administrators commented in support of the changes to the home language survey.

Response: The agency agrees that the changes are necessary. In response to other comments, the rule was modified at adoption to simplify the questions asked on the home language survey.

Comment: Four teachers, twenty-three school administrators, one lobbyist, and one parent expressed concerns that the language of the home language survey questions and the inclusion of the third question would be confusing for families and difficult to translate.

Response: The agency agrees that further clarification is necessary. While the agency has determined that the third question is necessary, changes have been made at adoption to simplify the way in which the questions are asked.

§89.1220, Language Proficiency Assessment Committee

Comment: Five administrators suggested clarifying the terminology pertaining to an LPAC's authority from "determining" to "recommending."

Response: The agency agrees and has modified §89.1220(g)(1)(B) and (3)(D) at adoption to replace the terms "designate" and "determine" with "recommend." Conforming edits were made to §89.1226(b), (h), and (m).

Comment: One parent, four school administrators, and one teacher asked clarifying questions or made procedural suggestions on the parent role in LPAC meetings.

Response: The agency disagrees that changes are necessary to the rule text but will continue to provide additional guidance and training on the required members and their roles.

§89.1226, Testing and Classification of Students

Comment: Three parents, forty-seven school administrators, and thirty-seven teachers commented that moving to a composite score is a positive change.

Response: The agency agrees.

Comment: Ten administrators and five teachers requested that the agency reconsider the inclusion of State of Texas Assessments of Academic Readiness (STAAR®) results as a component of reclassification criteria.

Response: The comments are outside the scope of the proposed rulemaking as any changes related to STAAR® requirements would require legislative action.

Comment: One parent, three administrators, and three teachers disapproved of the speaking portion and other logistical aspects of the Texas English Language Proficiency Assessment System administration.

Response: The comments are outside the scope of the proposed rulemaking.

Comment: One community member, five school administrators, and three teachers asked for additional resources and guidance on the reclassification of emergent bilingual students.

Response: The agency disagrees that any changes are necessary to the rule to address reclassification, but the agency will continue to provide resources and guidance, including after the amended rules become effective.

§89.1227, Minimum Requirements for Dual Language Immersion Program Model

Comment: Two administrators asked for clarification or additional resources for dual language immersion programs focusing on emergent bilingual students when implementing a one-way program and especially with a two-way program.

Response: The agency disagrees that additional information on dual language immersion programs should be included in the rule, but the agency continuously seeks to develop tools and resources commensurate with its regulatory authority.

Comment: One teacher voiced general support for prioritization of the needs of emergent bilingual students.

Response: The agency agrees.

Comment: One individual suggested changing the sentence structure in §89.1227.

Response: The agency disagrees and has determined that changes to the sentence structure are unnecessary.

§89.1228, Two-Way Dual Language Immersion Program Model Implementation

Comment: Four administrators and one lobbyist commented generally on the participation/access of non-emergent bilingual students in two-way program models.

Response: The agency disagrees that the rule should be modified to address participation/access of non-emergent bilingual students in two-way program models, but the agency will continue to provide guidance and resources, including after the amended rules become effective.

§89.1229, General Standards for Recognition of Dual Language Immersion Program Models

Comment: One administrator asked how language would be reflective for non-English speakers.

Response: This comment is outside the scope of the proposed rulemaking.

§89.1230, Eligible Students with Disabilities

Comment: One administrator and two teachers expressed concerns related to students with disabilities and the reclassification criteria that students need to meet to participate in academic programs.

Response: The agency provides the following clarification. The agency's rules are in alignment with current federal and state law, and the agency will continue to provide necessary resources and guidance.

§89.1233, Participation of English Proficient Students

Comment: One administrator asked that additional resources be provided for emergent bilingual students when being identified with special needs.

Response: The agency provides the following clarification. The agency will continue to provide guidance and resources, including after the amended rules become effective.

§89.1235, Facilities

Comment: One individual commented that there should be a reasonability factor included in terms of mileage when districts concentrate their programs at a limited number of facilities.

Response: The agency disagrees. The issue addressed by the commenter would be expected to be a topic discussed as district decisions are made.

§89.1240, Parental Authority and Responsibility

Comment: One administrator and one community member called for the need to provide clear guidance on parental authority and responsibilities.

Response: The agency disagrees that the suggested guidance should be included in the rule, but the agency will continue to provide guidance and resources, including after the amended rules become effective.

Comment: One administrator asked if school districts have to use TEA-developed letters or if they could get those letters from other platforms.

Response: The agency provides the following clarification. Once TEA develops forms, districts will be expected to use the agency-developed letters.

§89.1245, Staffing and Staff Development

Comment: One administrator asked for clarification regarding the use of bilingual education allotment funds to be used for supplemental teacher pay and whether it includes non-certified bilingual/ESL teachers.

Response: The agency disagrees that the suggested clarification should be included in the rule, but the agency will continue to provide guidance and resources, including after the amended rules become effective.

§89.1250, Required Summer School Programs

Comment: Three administrators commented on the 120-hour rule, citing difficulty in implementation.

Response: The agency disagrees that changes are necessary to the rule at this time, but the agency will consider this comment when developing future guidance or in future rulemaking.

Comment: One individual stated that the sentence structure in §89.1250 needed to be revised.

Response: The agency disagrees and has determined that changes to the sentence structure are unnecessary.

§89.1265, Evaluation

Comment: One community member asked clarifying questions on the requirement that a student's language development be added in program evaluation and parent notification.

Response: The agency disagrees that clarification should be provided in rule, but the agency will continue to provide guidance and resources, including after the amended rules become effective.

General comments

Comment: One parent, nineteen school administrators, one community member, and twenty-six teachers reported general support for the proposed rules.

Response: The agency agrees.

Comment: TPCSA expressed that the agency has interpreted language in HB 3 from the 2019 legislative session to mean that in certain instances where a waiver is approved for non-certified bilingual teachers, qualifying students do not generate the .05 weight. TPCSA recommended that the agency follow the legislative intent of HB 3.

Response: This comment is outside the scope of the proposed rulemaking.

Comment: One administrator expressed that a minimum number of minutes daily or weekly should be required to hold districts accountable to guarantee student progress.

Response: The agency disagrees and has determined that a minimum number of minutes should not be required through this rule action.

Comment: One administrator expressed that an August 8 implementation date for the rules would put a burden on districts.

Response: The agency provides the following clarification. The amended rules are required to go through the rulemaking process prescribed by law, and an effective date earlier than August 8 is not feasible.

STATUTORY AUTHORITY. The amendments are adopted under Texas Education Code (TEC), §29.053, which establishes the requirement of bilingual programs at elementary grades, and other special language programs such as English as a second language; TEC, §29.055, which requires bilingual programs and other special language programs to consider students' learning experiences and incorporate cultural aspects of the students' backgrounds; TEC, §29.058, which allows the participation of students who are not identified as emergent bilingual students to participate in a bilingual program; however, the percentage of non-emergent bilingual students may not exceed 40% of the number of students enrolled in the program; TEC, §29.060, which requires school districts to offer a bilingual education or special language program that is voluntary for emergent bilingual students entering Kindergarten or Grade 1; TEC, §29.062, which requires school districts comply with state policy in areas including: program content and design, program coverage, identification procedures, classification procedures, staffing, learning and testing materials, reclassification and the activities of the language proficiency assessment committees; and TEC, §29.063, which requires the establishment of a language proficiency assessment committee.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code, §§29.053, 29.055, 29.058, 29.060, 29.062, and 29.063.

§89.1210. Program Content and Design.

(a) Each school district required to offer a bilingual education or English as a second language (ESL) program shall provide each emergent bilingual student the opportunity to be enrolled in the required program at his or her grade level. Each student's level of proficiency shall be designated by the language proficiency assessment committee (LPAC) in accordance with §89.1220(g) of this title (relating to Language Proficiency Assessment Committee). The school district shall accommodate the instruction, pacing, and materials to ensure that emergent bilingual students have a full opportunity to master

the essential knowledge and skills of the required curriculum, which includes the Texas Essential Knowledge and Skills (TEKS) and English language proficiency standards (ELPS). Students participating in the bilingual education program may demonstrate their mastery of the essential knowledge and skills in either their primary language or in English for each content area.

(1) A bilingual education program of instruction established by a school district shall be a full-time program of dual-language instruction (English and primary language) that provides for learning academic and literacy skills in the primary language of the students enrolled in the program and for carefully structured and sequenced mastery of English language skills under Texas Education Code (TEC), §29.055(a).

(2) An ESL program of instruction established by a school district shall be a program of intensive instruction in English in which ESL teachers recognize and address language differences in accordance with TEC, §29.055(a).

(b) The bilingual education program and ESL program shall be integral parts of the general educational program required under Chapter 74 of this title (relating to Curriculum Requirements) to include foundation and enrichment areas, ELPS, and college and career readiness standards. In bilingual education programs, school districts shall purchase instructional materials in both program languages with the district's instructional materials allotment or otherwise acquire instructional materials for use in bilingual education classes in accordance with TEC, §31.029(a). Instructional materials for bilingual education programs on the list adopted by the commissioner of education, as provided by TEC, §31.0231, may be used as curriculum tools to enhance the learning process. The school district shall provide for ongoing coordination between the bilingual/ESL program and the general educational program. The bilingual education and ESL programs shall address the affective, linguistic, and cognitive needs of emergent bilingual students as follows.

(1) Affective.

(A) Emergent bilingual students in a bilingual program shall be provided instruction using content-based language instructional methods and/or their primary language to acclimate students to the school environment and to develop academic language skills, which instills confidence, self-assurance, and a positive identity with their cultural heritages. The program shall be designed to consider the students' learning experiences and shall incorporate the cultural aspects of the students' backgrounds in accordance with TEC, §29.055(b).

(B) Emergent bilingual students in an ESL program shall be provided instruction using content-based language instructional methods in English to acclimate students to the school environment and to develop academic language skills, which instills confidence, self-assurance, and a positive identity with their cultural heritages. The program shall be designed to incorporate the students' primary languages and learning experiences and shall incorporate the cultural aspects of the students' backgrounds in accordance with TEC, §29.055(b).

(2) Linguistic.

(A) Emergent bilingual students in a bilingual program shall be provided targeted and intentional academic language instruction to develop proficiency in listening, speaking, reading, and writing in both English and their primary language. The instruction in both languages shall be structured to ensure that the students master the required essential knowledge and skills and higher-order thinking skills in all subjects, providing individualized linguistically accommodated content instruction commensurate with the students' language profi-

ciency levels. The ELPS student expectations are provided for English development in conjunction with the TEKS.

(B) Emergent bilingual students in an ESL program shall be provided targeted and intentional academic language instruction to develop proficiency in listening, speaking, reading, and writing in the English language. The instruction in academic content areas shall be structured to ensure that the students master the required essential knowledge and skills and higher-order thinking skills in all subjects, providing individualized linguistically accommodated content instruction commensurate with the students' language proficiency levels. The ELPS student expectations are provided for English development in conjunction with the TEKS.

(3) Cognitive.

(A) Emergent bilingual students in a bilingual program shall be provided instruction in reading and language arts, mathematics, science, and social studies in both their primary language and English, using content-based language instructional methods in either their primary language, English, or both, depending on the program model(s) implemented by the district. The content area instruction in both languages shall be structured to ensure that the students master the required essential knowledge and skills and higher-order thinking skills in all subjects.

(B) Emergent bilingual students in an ESL program shall be provided instruction in English in reading and language arts, mathematics, science, and social studies using content-based language instructional methods. The instruction in academic content areas shall be structured to ensure that the students master the required essential knowledge and skills and higher-order thinking skills.

(c) The bilingual education program shall be implemented through at least one of the following program models.

(1) Transitional bilingual/early exit is a bilingual program model in which students identified as emergent bilingual students are served in both English and the students' primary language and are prepared to meet reclassification criteria to be successful in English instruction with no second language acquisition supports not earlier than two or later than five years after the student enrolls in school. Instruction in this program is delivered by a teacher appropriately certified in bilingual education under TEC, §29.061(b)(1), for the assigned grade level and content area. The goal of early-exit transitional bilingual education is for program participants to use their primary language as a resource while acquiring full proficiency in English. This model provides instruction in literacy and academic content through the medium of the students' primary language and English using content-based language instruction methods.

(2) Transitional bilingual/late exit is a bilingual program model in which students identified as emergent bilingual students are served in both English and the students' primary language and are prepared to meet reclassification criteria to be successful in English instruction with no second language acquisition supports not earlier than six or later than seven years after the student enrolls in school. Instruction in this program is delivered by a teacher appropriately certified in bilingual education under TEC, §29.061(b)(2), for the assigned grade level and content area. The goal of late-exit transitional bilingual education is for program participants to use their primary language as a resource while acquiring full proficiency in English. This model provides instruction in literacy and academic content through the medium of the students' primary language and English through content-based language instruction.

(3) Dual language immersion/one-way is a bilingual/biliteracy program model in which students identified as emergent bilingual

students are served in both English and the program's partner language and are prepared to meet reclassification criteria in order to be successful in English instruction with no second language acquisition supports not earlier than six or later than seven years after the student enrolls in school. Instruction provided in the partner language and English is delivered by a teacher appropriately certified in bilingual education under TEC, §29.061. When the instructional time for both the partner language and English is 50%, a paired-teaching arrangement may be utilized in which instruction provided in English may be delivered either by a teacher appropriately certified in bilingual education or by a different teacher certified in ESL in accordance with TEC, §29.061. The goal of one-way dual language immersion is for program participants to attain bilingualism and biliteracy in English and the partner language. This model provides ongoing instruction in literacy and academic content through content-based language instruction in English as well as the students' primary language, with at least half of the instruction delivered in the students' primary language for the duration of the program.

(4) Dual language immersion/two-way is a bilingual/biliteracy program model in which students identified as emergent bilingual students are integrated with non-emergent bilingual students and are served in both English and the program's partner language and are prepared to meet reclassification criteria in order to be successful in English instruction with no second language acquisition supports not earlier than six or later than seven years after the student enrolls in school. Instruction provided in English and the partner language is delivered by a teacher appropriately certified in bilingual education under TEC, §29.061. When the instructional time for both the partner language and English is 50%, a paired-teaching arrangement may be utilized in which instruction provided in English may be delivered either by a teacher appropriately certified in bilingual education or by a different teacher certified in ESL in accordance with TEC, §29.061. The goal of two-way dual language immersion is for program participants to attain bilingualism and biliteracy in English as well as the partner language. This model provides ongoing instruction in literacy and academic content through content-based language instruction in English and the partner language with at least half of the instruction delivered in the partner language for the duration of the program.

(d) The ESL program shall be implemented through one of the following program models.

(1) An ESL/content-based program model is an English acquisition program that serves students identified as emergent bilingual students through English instruction provided by a teacher appropriately certified in ESL under TEC, §29.061(c), using content-based language instruction methods in reading and language arts, mathematics, science, and social studies. The goal of content-based ESL is for emergent bilingual students to attain full proficiency in English in order to participate equitably in school.

(2) An ESL/pull-out program model is an English acquisition program that serves students identified as emergent bilingual students through English instruction using content-based language instruction methods provided by an appropriately certified ESL teacher under TEC, §29.061(c), through English reading and language arts in a pull-out or inclusionary delivery setting. The goal of ESL pull-out is for emergent bilingual students to attain full proficiency in English in order to participate equitably in school.

(e) Except in the courses specified in subsection (f) of this section, content-based language instructional methods, which may involve the use of the students' primary language, may be provided in any of the courses or electives required for promotion or graduation to assist students identified as emergent bilingual students to master the essential knowledge and skills for the required subject(s). The use of con-

tent-based language instruction shall not impede the awarding of credit toward meeting promotion or graduation requirements.

(f) In subjects such as art, music, and physical education, emergent bilingual students shall participate with their non-emergent bilingual peers in general education classes provided in the subjects. As noted in TEC, §29.055(d), elective courses included in the curriculum may be taught in a partner language. The school district shall ensure that emergent bilingual students enrolled in bilingual education and ESL programs have a meaningful opportunity to participate with non-emergent bilingual peers in all extracurricular activities.

(g) The required bilingual education or ESL program shall be provided to every emergent bilingual student with parental approval until such time that the student meets reclassification criteria as described in §89.1226(i) of this title (relating to Testing and Classification of Students) or graduates from high school. Parental approval is required when the LPAC recommends continued dual language immersion program participation beyond reclassification.

§89.1215. *Home Language Survey.*

(a) For each new student enrolling for the first time in a Texas public school in any grade from prekindergarten through Grade 12, the Texas Education Agency (TEA)-developed home language survey shall be administered. This home language survey will serve as the original and only home language survey throughout the student's educational experience in Texas public schools. School districts shall require that the survey be signed by the student's parent for each student in prekindergarten through Grade 8 or by the student in Grades 9-12 as permitted under Texas Education Code, §29.056(a)(1). It is the school district's responsibility to ensure that the student's parent understands the language used in the survey and its implications. The original copy of the survey shall be kept in the student's permanent record and transferred to any subsequent Texas public school districts in which the student enrolls.

(b) The TEA-developed home language survey shall be administered in English and a language that the parents can understand. The home language survey shall include the following questions.

- (1) "Which languages are used at home?"
- (2) "Which languages are used by the child at home?"

(3) "If the child had a previous home setting, which languages were used? If there was no previous home setting, answer Not Applicable (N/A)."

(c) If any response on the home language survey indicates that a language other than English is or was used for communication, the student shall be tested in accordance with §89.1226 of this title (relating to Testing and Classification of Students).

(d) For students previously enrolled in a Texas public school, the receiving district shall secure the student records, including the original home language survey and language proficiency assessment committee documentation as described in §89.1220(l) of this title (relating to Language Proficiency Assessment Committee), as applicable. All attempts to contact the sending district to request records shall be documented. Multiple attempts to obtain the student's original home language survey shall be made.

(e) If a parent determines an error was made when completing the original home language survey, the parent may request a correction only if:

- (1) the student has not yet been assessed for English proficiency; and

(2) corrections are made within two calendar weeks of the student's initial enrollment date in Texas public schools.

§89.1220. *Language Proficiency Assessment Committee.*

(a) School districts shall by local board policy establish and operate one or more language proficiency assessment committees (LPACs). The school district shall have on file a policy and procedures for the selection, appointment, and orientation of members of the LPAC(s).

(b) The LPAC shall include an appropriately certified bilingual educator (for students served through a bilingual education program), an appropriately certified English as a second language (ESL) educator (for students served through an ESL program), a parent of an emergent bilingual student participating in a bilingual or ESL program, and a campus administrator in accordance with Texas Education Code (TEC), §29.063.

(c) In addition to the three required members of the LPAC, the school district may add other trained members to the committee.

(d) No parent serving on the LPAC shall be an employee of the school district.

(e) A school district shall establish and operate a sufficient number of LPACs to enable them to discharge their duties within four weeks of the enrollment of an emergent bilingual student.

(f) All members of the LPAC, including parents, shall be acting for the school district and shall observe all laws and rules governing confidentiality of information concerning individual students. The school district shall be responsible for the orientation of all members of the LPAC, including the parents. The LPAC may use alternative meeting methods, such as phone or video conferencing and the use of electronic signatures that adhere to district policy.

(g) Upon a student's initial enrollment in Texas public schools, a student's transfer from a previous Texas public school district, and at the end of each school year, the LPAC shall review all pertinent information on all potential and identified emergent bilingual students, including emergent bilingual students with a parental denial of program participation, in accordance with §89.1226 of this title (relating to Testing and Classification of Students).

(1) For students initially enrolling in Texas public schools, the LPAC shall:

(A) designate the language proficiency level of each emergent bilingual student in accordance with the guidelines issued pursuant to §89.1226(b)-(f) of this title;

(B) recommend, subject to parental approval, the initial instructional placement of each emergent bilingual student in the required bilingual or ESL program without restricting access due to scheduling, staffing, or class size constraints; and

(C) facilitate the participation of emergent bilingual students in other special programs for which they are eligible while ensuring full access to the language program required under TEC, §29.053.

(2) For transferring students previously enrolled in a Texas public school district, the LPAC shall:

(A) review permanent record and LPAC documentation from the previous Texas school district to determine if the student has been identified as an emergent bilingual student based on the original home language survey and initial identification process;

(B) determine the continuation of the required bilingual or ESL program participation with parental approval for students pre-

viously identified as emergent bilingual or determine the need for monitoring of students who have previously met reclassification and are in their first two years of monitoring;

(C) review linguistic progress and academic achievement data of each emergent bilingual student to inform instructional practices; and

(D) facilitate the participation of emergent bilingual students in other special programs for which they are eligible while ensuring full access to the language program required under TEC, §29.053.

(3) At the end of the school year, for all identified emergent bilingual students, including emergent bilingual students with a parental denial of program participation, the LPAC shall:

(A) review language proficiency progress in English and, to the extent possible, the primary language of each emergent bilingual student;

(B) review academic achievement data in English and, to the extent possible, the primary language of each emergent bilingual student;

(C) reclassify eligible emergent bilingual students as English proficient in accordance with the criteria described in §89.1226(i) of this title;

(D) recommend exit from program of reclassified English proficient students, pending parental approval, or continuation of program participation for reclassified students participating in a dual language immersion one-way or two-way program model, according to the goals of the program; and

(E) prepare parental reports on student progress for all identified emergent bilingual students to be provided to parents within the first 30 calendar days after the beginning of the next school year, which include data on linguistic and academic progress, benefits of bilingual or ESL program participation, and the criteria for reclassification as English proficient.

(h) The LPAC shall give written notice to the student's parent, informing the parent that the student has been identified as an emergent bilingual student and requesting approval to place the student in the required bilingual education or ESL program not later than the 10th calendar day after the date of the student's classification in accordance with TEC, §29.056. The notice shall include information about the benefits of the bilingual education or ESL program for which the student has been recommended and that it is an integral part of the school program.

(i) Before the administration of the state criterion-referenced test each year, the LPAC shall determine the appropriate assessment option for each emergent bilingual student as outlined in Chapter 101, Subchapter AA, of this title (relating to Commissioner's Rules Concerning the Participation of English Language Learners in State Assessments).

(j) Pending completion of the identification process, receipt of LPAC documentation for transferring students, or parental approval of an identified emergent bilingual student's placement into the bilingual education or ESL program recommended by the LPAC, the school district shall place the student in the recommended program. Only emergent bilingual students with parental approval for program participation will be included in the bilingual education allotment.

(k) The LPAC shall monitor the academic progress of each student, including any student who previously had a parental denial of program participation, who has met criteria for reclassification in ac-

cordance with TEC, §29.056(g), for the first two years after reclassification. If the student earns a failing grade in a subject in the foundation curriculum under TEC, §28.002(a)(1), during any grading period in the first two school years after the student is reclassified, the LPAC shall determine, based on the student's second language acquisition needs, whether the student may require targeted instruction or, after careful consideration of multiple linguistic and academic data points, should be reconsidered for placement in a bilingual education or ESL program. In accordance with TEC, §29.0561, the LPAC shall review the student's performance and consider, at a minimum, the following:

(1) the total amount of time the student was enrolled in a bilingual education or ESL program;

(2) the student's grades each grading period in each subject in the foundation curriculum under TEC, §28.002(a)(1);

(3) the student's performance on each assessment instrument administered under TEC, §39.023(a) or (c);

(4) the number of credits the student has earned toward high school graduation, if applicable; and

(5) any disciplinary actions taken against the student under TEC, Chapter 37, Subchapter A (Alternative Settings for Behavior Management).

(l) The student's permanent record shall contain documentation of all actions impacting the emergent bilingual student.

(1) Documentation shall include:

(A) the original home language survey;

(B) the identification of the student as an emergent bilingual student;

(C) the designation of the student's level of language proficiency;

(D) the recommendation of program placement;

(E) parental approval or denial of placement into the program;

(F) the date of placement in the program;

(G) assessment information as outlined in Chapter 101, Subchapter AA, of this title;

(H) additional instructional linguistic accommodations provided to address the specific language needs of the student;

(I) the date of reclassification and the date of exit from the program with parental approval; and

(J) the results of monitoring for academic success, including students formerly classified as emergent bilingual students, as required under TEC, §29.063(c)(4).

(2) Current documentation as described in paragraph (1) of this subsection shall be forwarded in the same manner as other student records to another school district in which the student enrolls.

(m) A school district may place a student in or exit a student from a program without written approval of the student's parent if:

(1) the student is 18 years of age or has had the disabilities of minority removed;

(2) the parent provides approval through a phone conversation or e-mail that is documented in writing and retained; or

(3) an adult who the school district recognizes as standing in parental relation to the student provides written approval. This may

include a foster parent or employee of a state or local governmental agency with temporary possession or control of the student.

§89.1226. *Testing and Classification of Students.*

(a) The single state-approved English language proficiency test for identification of emergent bilingual students described in subsection (c) of this section shall be used as part of the standardized, statewide identification process.

(b) Within four calendar weeks of initial enrollment in a Texas public school, a student with a language other than English indicated on the home language survey shall be administered the state-approved English language proficiency test for identification as described in subsection (c) of this section and shall be identified as emergent bilingual and recommended for placement into the required bilingual education or English as a second language (ESL) program in accordance with the criteria listed in subsection (f) of this section.

(c) To identify emergent bilingual students, school districts shall administer to each student who has a language other than English as identified on the home language survey:

(1) in prekindergarten through Grade 1, the listening and speaking components of the state-approved English language proficiency test for identification; and

(2) in Grades 2-12, the listening, speaking, reading, and writing components of the state-approved English language proficiency test for identification.

(d) School districts that provide a bilingual education program at the elementary grades shall administer a language proficiency test in the primary language of the student who is eligible to be served in the bilingual education program. If the primary language of the student is Spanish, the school district shall administer the Spanish version of the state-approved language proficiency test for identification. If a state-approved language proficiency test for identification is not available in the primary language of the student, the school district shall determine the student's level of proficiency using informal oral language assessment measures.

(e) All language proficiency testing shall be administered by professionals or paraprofessionals who are proficient in the language of the test and trained in the language proficiency testing requirements of the test publisher.

(f) For placement into a bilingual education or ESL program, a student shall be identified as emergent bilingual using the following criteria.

(1) In prekindergarten through Grade 1, the student's score(s) from the listening and/or speaking components on the state-approved English language proficiency test for identification is/are below the level designated for indicating English proficiency.

(2) In Grades 2-12, the student's score(s) from the listening, speaking, reading, and/or writing components on the state-approved English language proficiency test for identification is/are below the level designated for indicating English proficiency.

(g) A student shall be identified as emergent bilingual if the student's beginning English language skills interfere with the completion of the English language proficiency assessment described in subsection (c) of this section.

(h) The language proficiency assessment committee (LPAC), in conjunction with the admission, review, and dismissal (ARD) committee, shall identify a student as emergent bilingual if the student's disabilities interfere with the completion of the English language proficiency assessment described in subsection (c) of this section. The

decision for placement into a bilingual education or ESL program shall be recommended by the LPAC, in conjunction with the ARD committee, in accordance with §89.1220(f) of this title (relating to Language Proficiency Assessment Committee), ensuring access to both the bilingual education or ESL program and the special education and related services needed to provide a free, appropriate public education as identified in the student's individualized education program.

(i) An emergent bilingual student may be reclassified as English proficient only at the end of the school year in which a student routinely demonstrates readiness for reclassification as English proficient and the ability to successfully participate in grade level content instruction that is delivered with no second language acquisition supports. This determination shall be based upon all of the following:

(1) a composite proficiency rating, which includes ratings in the areas of listening, speaking, reading, and writing, on the state-approved English language proficiency test for reclassification that is designated for indicating English proficiency;

(2) passing standard met on the reading assessment instrument under Texas Education Code (TEC), §39.023(a), or, for students at grade levels not assessed by the aforementioned reading assessment instrument, a score at or above the 40th percentile on both the English reading and the English language arts sections of the state-approved norm-referenced standardized achievement instrument; and

(3) the results of a subjective teacher evaluation using the state's standardized rubric.

(j) An emergent bilingual student may not be reclassified as English proficient in prekindergarten or Kindergarten. A school district must ensure that emergent bilingual students are prepared to meet academic standards required by TEC, §28.0211.

(k) An emergent bilingual student may not be reclassified as English proficient if the LPAC has recommended designated supports or accommodations on the state reading assessment instrument based on the student's second language acquisition needs. Designated supports or accommodations for non-linguistic purposes that are recommended for student use by any other committee, including the ARD committee for students served in special education, do not prevent the student from being eligible to reclassify.

(l) For emergent bilingual students who are also eligible for special education services, the standardized process for emergent bilingual student reclassification is followed in accordance with applicable provisions of subsection (i) of this section. However, annual meetings to review student progress and make recommendations for reclassification must be made in all instances by the LPAC, in conjunction with the ARD committee, in accordance with §89.1230(b) of this title (relating to Eligible Students with Disabilities). Additionally, the LPAC, in conjunction with the ARD committee, shall determine participation and designated support or accommodation decisions on state criterion-referenced and English language proficiency assessments that differentiate between language proficiency and disabling conditions in accordance with §89.1230(a) of this title.

(m) For an emergent bilingual student with a significant cognitive disability, the LPAC, in conjunction with the ARD committee, may recommend that the state's criterion-referenced and English language proficiency assessments used for reclassification are not appropriate because of the nature of the student's disabling condition. In these cases, the LPAC, in conjunction with the ARD committee, may recommend that the student take the state's alternate criterion-referenced and alternate English language proficiency assessments. Additionally, the LPAC, in conjunction with the ARD committee, may utilize the individualized reclassification process to determine appropriate

performance standard requirements for the state standardized reading assessment and English language proficiency assessment by language domain under subsection (i)(1) of this section and utilize the results of a subjective teacher evaluation using the state's standardized alternate rubric.

(n) Notwithstanding §101.101 of this title (relating to Group-Administered Tests), all tests used for the purpose of identification and reclassification of students and approved by TEA must be re-normed at least every eight years.

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 July 20, 2023.

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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Proposal publication date: April 21, 2023

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



CHAPTER 100. CHARTERS

SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING OPEN-ENROLLMENT CHARTER SCHOOLS

DIVISION 1. GENERAL PROVISIONS

19 TAC §100.1010

The Texas Education Agency adopts an amendment to §100.1010, concerning charter school performance frameworks. The amendment is adopted without changes to the proposed text as published in the May 5, 2023 issue of the *Texas Register* (48 TexReg 2315) and will not be republished. The amendment adopts in rule the *2022 Charter School Performance Framework (CSPF) Manual*, which is updated to comply with statutory provisions and the accountability framework currently used to rate the performance of open-enrollment charter schools in Texas.

REASONED JUSTIFICATION: Section 100.1010 defines the standards by which the commissioner will measure the performance of open-enrollment charter schools.

The adopted amendment replaces the *2021 CSPF Manual* with the *2022 CSPF Manual*. The 2022 version of the manual reflects the current accountability system and ratings.

Throughout the manual, language has been revised with clarifying edits such as updated dates and references to accountability indicators. Indicators that were not rated in 2021 reflect the most current rating methodology. To provide clarity for schools that were not rated under the accountability system, a designation of "N/A" is for the Academic Standard and the Alternative Education Accountability Academic Standard.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began May 5, 2023, and ended June 5, 2023. Following is a summary of the public comment received and agency response.

Comment: The Texas Association of School Administrators and Texas School Alliance expressed two issues with the proposal. The first concern was regarding how local education agencies (LEAs) with campuses rated NR: SB1365 would be scored on Indicator 1c: Campus Status. The second concern was regarding how LEAs were held accountable for performance of students in special populations.

Response: The agency provides the following clarification. For Indicator 1c, if an LEA has a campus rated NR: SB 1365, the LEA would receive an N/A for Indicator 1c, Academic Performance, and Tier Rating. If an LEA in this situation were to request an expansion amendment, they would be required to request a waiver for 19 TAC §100.33(b)(9)(A)(vi), which requires an LEA to be rated Tier 1 or Tier 2 on the most current CSPF. The 2022 CSPF takes into account the performance of student subgroups in 1a (Overall A-F score), 1b (Achievement Status for Student Groups), 1c (Campus Status), 3b (Program Requirements: Special Populations), and 3c (Program Requirements: Bilingual Education/English as a Second Language Populations). Separately from the CSPF, charter schools are also monitored for compliance with special education requirements through TEA's Office of Special Populations. The Office of Special Populations monitors LEAs related to Individuals with Disabilities Education Act, special populations, and federal and state statutes using a risk assessment index and holistic student-centered practices and provides targeted technical assistance and support for LEAs related to special education and special populations.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code, §12.1181, which requires the commissioner to develop and adopt performance frameworks to measure the performance of an open-enrollment charter school.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §12.1181.

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 July 21, 2023.

TRD-202302609

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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



TITLE 22. EXAMINING BOARDS

PART 16. TEXAS BOARD OF PHYSICAL THERAPY EXAMINERS

CHAPTER 343. CONTESTED CASE PROCEDURE

22 TAC §§343.5, 343.6, 343.8, 343.9, 343.21, 343.22, 343.36, 343.40, 343.41

The Texas Board of Physical Therapy Examiners adopts amendments to 22 Texas Administrative Code (TAC) Chapter 343. Contested Case Procedures, Occupations Code. Specif-

ically, the Board adopts amendments to §343.5. Licensure of Persons with a History of Substance Abuse, §343.6. Other Grounds for Denial of a License or Discipline of a Licensee, §343.8. Licensure of Persons with a History of Voluntary or Involuntary Psychiatric Hospitalization, §343.9. Licensure of Persons with Criminal Convictions, §343.21. Witness Fees and Expenses, §343.22. Service of Notice, §343.36. Filing and Receipt of Complaints, §343.40. Informal Conference, and §343.41. Agreed Orders.

The amendments are adopted without changes to the proposed text as published in the June 16, 2023 issue of the *Texas Register* (48 TexReg 3060). The rules will not be republished.

The amendments are adopted in order to provide clarity to the procedures for contested cases; to correct inaccurate and outdated references; and to conform the rules with the physical therapy provisions in Chapter 453, Occupations Code, with the administrative procedures in Chapter 2001, Government Code, and with the consequences of criminal conviction in Chapter 53, Occupations Code.

No public comment was received.

Statutory authority: The amendments are adopted under Texas Occupation Code §453.102, which authorizes the board to adopt rules necessary to implement chapter 453.

The amended rules are adopted under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

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 July 24, 2023.

TRD-202302618

Ralph Harper

Executive Director

Texas Board of Physical Therapy Examiners

Effective date: September 1, 2023

Proposal publication date: June 16, 2023

For further information, please call: (512) 305-6900



CHAPTER 346. PRACTICE SETTINGS FOR PHYSICAL THERAPY

22 TAC §346.3

The Texas Board of Physical Therapy Examiners adopts amendments to 22 Texas Administrative Code (TAC) §346.3. Early Childhood Intervention (ECI) Setting, relating to the provision of physical therapy services to infants and toddlers in an early childhood setting.

The amendments are adopted in order to update a Code of Federal Regulations reference, to eliminate the requirement for the completion of an evaluation and reevaluation to be done on-site allowing for provision via telehealth if indicated, to align the 60-day review of the plan of care (POC) to the requirement in other settings prior to continuation of treatment by a physical therapist assistant, and to report recommendations following a review of the POC to the ECI Interdisciplinary Team.

The amendments are adopted without changes to the proposed text as published in the June 16, 2023, issue of the *Texas Register* (48 TexReg 3063) and will not be republished.

No public comment was received.

The amended rule is adopted under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

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 July 24, 2023.

TRD-202302619

Ralph Harper

Executive Director

Texas Board of Physical Therapy Examiners

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For further information, please call: (512) 305-6900



PART 17. TEXAS STATE BOARD OF PLUMBING EXAMINERS

CHAPTER 361. ADMINISTRATION

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §§361.1, 361.4, 361.6, 361.10, 361.12, 361.15

The Texas State Board of Plumbing Examiners (Board) adopts the rule amendments to 22 Texas Administrative Code (TAC), Chapter 361, §§361.1(a)(3), (9), (14), (21), (23), (25), (36), (39), (47); 361.1(b); 361.4; 361.6; 361.10; 361.12; and 361.15 which concern definitions and general provisions. The rule amendments for §§361.4, 361.6, 361.10, 361.12, and 361.15 are adopted without changes to the proposed text published in the February 24th, 2023, issue of the *Texas Register* (48 TexReg 1011). These rules will not be republished. The published proposed rule amendment under §361.1(a)(18) regarding virtual supervision was not adopted as proposed which constitutes a change. Therefore, §361.1 will be republished.

REASONED JUSTIFICATION FOR THE ADOPTED RULE AMENDMENTS

The rules under 22 TAC, Chapter 361, support Texas Occupations Code, Chapter 1301, Texas State Board of Plumbing Examiners (Plumbing License Law or PLL).

The adopted rule amendments implement changes to the PLL as amended by House Bill 636, 87th Texas Legislature, Regular Session, 2021 (HB 636), and Board efforts to improve regulation of the industry by simplifying the rules as part of its four-year rule review. The rule simplification efforts, directed by the Board, make the rules easier to understand and enforce by eliminating unnecessary language, adding clarifying language, and restructuring regulations to make the rules more efficient. Unnecessary internal references to rule and statute have been eliminated to keep the rules current regardless of changes to statutes and rules.

SECTION-BY-SECTION SUMMARY

The adopted rule amends §361.1 which lists definitions. The definitions do not create any affirmative duty on or regulation of registrants or licensees. The definitions simply define terms for use by the rules and PLL. The specific definitions adopted are amended as follows:

(3) Advisory Committee. The language is updated to be more concise and eliminates unnecessary and outdated rule reference. This allows the rules to stay current regardless of changes to referenced laws or rules.

(9) Certificate of Insurance. The language is updated to be more concise and eliminates unnecessary and outdated rule and statutory references. This allows the rules to stay current regardless of changes to referenced laws or rules.

(14) Complaint. The language is updated to be more concise.

(21) Field Representative. The amendment makes the rule more concise by eliminating an unnecessary reference and correcting a spelling mistake.

(23) License. The language has been updated to be more concise.

(25) Maintenance Man or Maintenance Engineer. This definition defines what work maintenance staff may perform. The definition is amended to include longstanding and inadvertently repealed language showing that work incidental to and in connection with maintenance duties does not include cutting into fuel gas plumbing systems and installation of gas fueled water heaters. This language was present from 2000 until July 2017 when the rule was re-organized. Staff, discovering the inadvertent deletion during the four-year rule review, believe it was repealed in error. The long-standing language is reclaimed into the definition to provide clarifying guidance for ease of use and does not expand or restrict the current industry practice of maintenance men or maintenance engineers.

(36) Petitioner. The definition is updated to eliminate unnecessary references. This allows the rules to stay current regardless of changes to referenced laws or rules.

(39) Plumbing Inspector. The definition is updated to eliminate unnecessary references. This allows the rule to stay current regardless of changes to referenced laws or rules.

(47) Responsible Master Plumber (RMP). The definition is updated to eliminate unnecessary references. This allows the rule to stay current regardless of changes to referenced laws or rules.

The amendment at §361.1(b) deletes language that states that any definition not in rule is defined by the statute. This language is unnecessary and deleted to make the rules more concise.

The adopted rule amends §361.4 which makes the rule more concise by deleting language requiring the Board to set forth in writing procedures for its operation. These written procedures are not required in statute.

The adopted rule amends §361.6 on renewal fees for Medical Gas Installation, Multipurpose Residential Fire Protection Sprinkler Specialists, Water Supply Protection Specialists endorsements and the related late renewal fees. These fees are eliminated. The Board has not been collecting these fees. The rules simply update their current practice.

The adopted rule amends §361.10 on the Historically Underutilized Business (HUB) Program. The rule is amended to incorpo-

rate the rules of the Texas Comptroller of Public Accounts, not the Texas Facilities Commission as is appropriate.

The adopted rule amends §361.12 on advisory boards. Rule provisions, not required by statute, for advisory boards are eliminated to make the rule more concise. The Board currently has no advisory boards.

The adopted rule amends §361.15. Rule language about when the Board will elect a secretary is eliminated as unnecessary and not required by Section 1301.157 of the statute.

SUMMARY OF PUBLIC COMMENT

The Board drafted and distributed the proposed rule amendments to persons internal and external to the agency. The proposed rule amendments were published in the February 24th, 2023 issue of the *Texas Register* (48 TexReg 1101). No comment was received on the adopted rule amendments.

Public comments were received only on §361.1(a)(18), which was not adopted. Those comments are summarized below:

Comment: APHCCT opposed the proposed rule amendment stating that the change has the potential to negatively impact the health and safety of Texans, particularly in terms of faulty installation in homes and businesses. Loosening supervision restrictions by allowing virtual supervision poses risks to both customers and licensed plumbers because it can be exploited by unethical individuals seeking to cut corners in their work. The proposal does not adequately train individuals to install safe, sanitary plumbing. It is essential to have a licensed plumber on-site to demonstrate and explain the necessary steps and reasons behind proper installation to train a plumber. The use of virtual supervision may not provide the licensed plumber with a comprehensive view of the situation, as the on-site individual controls what they show and hide. Apprentices currently do not have to submit their fingerprints to the board, and without a licensed plumber present, the purpose of requiring fingerprints for customer protection is defeated.

Response: The Board appreciates the comment and as a result has determined not to adopt the rule amendment at §361.1(a)(18) as published.

Comment: The commentor opposed the rule amendment stating that permitting virtual offsite supervision will diminish the value of journeyman and tradesman licenses.

Response: The Board appreciates the comment and as a result has determined not to adopt the rule amendment at §361.1(a)(18) as published.

Comment: The commentor opposed the rule amendment stating that permitting virtual offsite supervision will diminish the value of journeyman and tradesman licenses.

Response: The Board appreciates the comment and as a result has determined not to adopt the rule amendment at §361.1(a)(18) as published.

Comment: The commentor expressed concern that permitting virtual supervision could take jobs away from licensed plumbers. However, virtual supervision could be useful if limited to on-site licensed plumbers sending progress updates to RMPS.

Response: The Board appreciates the comment and as a result has determined not to adopt the rule amendment at §361.1(a)(18) as published.

Comment: The commentor opposed the rule amendment. Permitting virtual offsite supervision will diminish the value of journeyman and tradesman licenses.

Response: The Board appreciates the comment and as a result has determined not to adopt the rule amendment at §361.1(a)(18) as published.

Comment: The commentor opposed the rule amendment. Allowing virtual supervision puts the public at risk by drastically reducing the required skill level of individuals performing plumbing work. However, the amendment would benefit hiring and increase production but considers the cost to public safety too high.

Response: The Board appreciates the comment and as a result has determined not to adopt the rule amendment at §361.1(a)(18) as published.

Comment: The commentor opposed the rule amendment. Concerned that this change would seriously impact the installation of plumbing systems, especially medical gasses, fuel gas systems, sanitary sewer, and potable water systems. Virtual supervision will harm on-the-job learning processes and the Board's enforcement of this rule.

Response: The Board appreciates the comment and as a result has determined not to adopt the rule amendment at §361.1(a)(18) as published.

Comment: The commentor opposed the rule amendment because it incentivizes RMPs to only employ apprentice plumbers instead of tradesmen or journeymen. Asserts that RMPs should not be able to supervise from miles or states away.

Response: The Board appreciates the comment and as a result has determined not to adopt the rule amendment at §361.1(a)(18) as published.

Comment: The commentor opposed the rule amendment because it will be detrimental to the public's health. Concerned that video supervision is susceptible to manipulation and is an insufficient tool to train new apprentices or prevent dangerous situations on-site. Argues that this amendment harms the necessary hands-on training and supervision required of the profession.

Response: The Board appreciates the comment and as a result has determined not to adopt the rule amendment at §361.1(a)(18) as published.

Comment: The commentor opposed the rule amendment because it is not a sufficient option for supervising plumbers.

Response: The Board appreciates the comment and as a result has determined not to adopt the rule amendment at §361.1(a)(18) as published.

Comment: The commentor opposed the rule amendment because it will diminish the value of plumbing licenses and contradicts the importance of education in the industry. Indirect supervision increases the risk of accidents and problems.

Response: The Board appreciates the comment and as a result has determined not to adopt the rule amendment at §361.1(a)(18) as published.

Comment: The commentor opposed the rule amendment because virtual supervision is inadequate. It is impossible to see the job's full parameters and necessary details from offsite.

Response: The Board appreciates the comment and as a result has determined not to adopt the rule amendment at §361.1(a)(18) as published.

Comment: The commentor opposed the rule amendment because inexperienced plumbers should not have to video call their supervisors at every job.

Response: The Board appreciates the comment and as a result has determined not to adopt the rule amendment at §361.1(a)(18) as published.

Comment: The commentor opposed the rule amendment because it will act as a loophole for companies to employ inexperienced apprentice plumbers in Texas to work without real supervision. The commentor recommends limiting this rule to exclude plumbers with limited time in the trade.

Response: The Board appreciates the comment and as a result has determined not to adopt the rule amendment at §361.1(a)(18) as published.

Comment: The commentor opposed the rule amendment because virtual supervision is insufficient. Concerned that allowing virtual job supervision is not as effective as providing a presence on the job site.

Response: The Board appreciates the comment and as a result has determined not to adopt the rule amendment at §361.1(a)(18) as published.

Comment: The commentor opposed the rule amendment because it will diminish industry integrity. Journeyman and Tradesman licenses will be devalued and replaced by less expensive apprentices. Companies will rely on apprentices that need no prerequisites threatening the industry's integrity. The commentor has concern that the amendment lacks distinction between new residential, existing residential, and commercial plumbing, and recommends restricting the rule for apprentices qualified to take the examination instead of all apprentices. The commentor recommends a minimum of one year of apprentice work before qualifying for virtual supervision and the exclusion of commercial plumbing. Virtual supervision should be limited to minor residential repairs, not including slab leaks, water heaters, gas work, or tunnel jobs.

Response: The Board appreciates the comment and as a result has determined not to adopt the rule amendment at §361.1(a)(18) as published.

Comment: The commentor opposed the rule amendment because permitting virtual supervision will destroy tradesman licenses. Additionally, it would be difficult for a RMP to properly view the on-site work.

Response: The Board appreciates the comment and as a result has determined not to adopt the rule amendment at §361.1(a)(18) as published.

Comment: The commentor opposed the rule amendment because virtual supervision may incentivize inexperienced apprentices to avoid seeking guidance from supervisors. In this situation, the health and safety of plumbers and the public may be at risk.

Response: The Board appreciates the comment and as a result has determined not to adopt the rule amendment at §361.1(a)(18) as published.

Comment: The commentor opposed the rule amendment because the proposed language is too broad. There is concern that

this change will negate the necessity of tradesman and journeyman licenses. The commentor recommends excluding commercial work from virtual supervision.

Response: The Board appreciates the comment and as a result has determined not to adopt the rule amendment at §361.1(a)(18) as published.

Comment: The commentor supports RMPs being fully responsible for direct supervision, including virtual.

Response: The Board appreciates the comment.

Comment: The commentor supports the use of modern technology to allow RMPs to supervise experienced apprentices performing simple activities. The amendment would allow for more efficient management, and the liability of the apprentice's work will still fall back on the RMP and the company.

Response: The Board appreciates the comment.

Comment: The commentor supports the ability to remotely supervise experienced apprentices because it helps address the industry's labor shortage.

Response: The Board appreciates the comment.

Comment: The commentor states that virtual visual oversight will make it easier to put workers on job sites but is concerned with RMP's supervising multiple job sites simultaneously. The commentor requests clarification as to whether this allows for intermittent video/virtual oversight or if continuous supervision is required.

Response: The Board appreciates the comment and as a result has determined not to adopt the rule amendment at §361.1(a)(18) as published.

BOARD ACTION

At its meeting on June 27, 2023, the Board adopted the proposed rule amendments as published, with the exception of the proposed definition on virtual supervision at §361.1(a)(18).

STATUTORY AUTHORITY

The rules are adopted under the authority of § 1301.251(2) of the Occupations Code, which requires the Board to adopt and enforce rules necessary to administer and enforce the Plumbing License Law.

§361.1. *Definitions.*

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

- (1) APA--The Administrative Procedure Act, Chapter 2001 of the Texas Government Code.
- (2) Adopted Plumbing Code--A plumbing code, including a fuel gas code adopted by the Board or a political subdivision, in compliance with §1301.255 and §1301.551 of the Plumbing License Law.
- (3) Advisory Committee--A committee appointed by the presiding officer of the board created to assist the board in exercising its powers and duties.
- (4) Appliance Connection--An appliance connection procedure using only a code-approved appliance connector that does not require cutting into or altering the existing plumbing system.
- (5) Applicant--An individual seeking to obtain a license, registration or endorsement issued by the Board.
- (6) Board--The Texas State Board of Plumbing Examiners.

(7) Board Member--An individual appointed by the governor and confirmed by the senate to serve on the Board.

(8) Building Sewer--The part of the sanitary drainage system outside of the building, which extends from the end of the building drain to a public sewer, private sewer, private sewage disposal system, or other point of sewage disposal.

(9) Certificate of Insurance--A form submitted to the Board certifying that the Responsible Master Plumber carries insurance coverage as specified in the Plumbing License Law and Board Rules.

(10) Chief Examiner--An employee of the Board who, under the direction of the Executive Director, coordinates and supervises the activities of the Board examinations and registrations.

(11) Cleanout--A fitting, other than a p-trap, approved by the adopted plumbing code and designed to be installed in a sanitary drainage system to allow easy access for cleaning the sanitary drainage system.

(12) Code-Approved Appliance Connector--A semi-rigid or flexible assembly of tube and fittings approved by the adopted plumbing code and designed for connecting an appliance to the existing plumbing system without cutting into or altering the existing plumbing system.

(13) Code-Approved Existing Opening--For the purposes of drain cleaning activities described in §1301.002(3) of the Plumbing License Law, a code-approved existing opening is any existing cleanout fitting, inlet of any p-trap or fixture, or vent terminating into the atmosphere that has been approved and installed in accordance with the adopted plumbing code.

(14) Complaint--A written complaint filed with the Board against a person whose activities are subject to the jurisdiction of the Board.

(15) Contested Case--A proceeding in which the legal rights, duties, or privileges of a party are to be determined by the Board after an opportunity for adjudicative hearing.

(16) Continuing Professional Education or CPE--Approved courses/programs required for a licensee or registrant.

(17) Director of Enforcement--An employee of the Board who meets the definition of "Field Representative" and, under the direction of the Executive Director, coordinates and supervises the activities of the Field Representatives.

(18) Direct Supervision--

(A) The on-the-job oversight and direction of a registered plumber's Apprentice performing plumbing work by a licensed plumber who is fulfilling his or her responsibility to the client and employer by ensuring the following:

(i) that the plumbing materials for the job are properly prepared prior to assembly according to the material manufacturers recommendations and the requirements of the adopted plumbing code; and

(ii) that the plumbing work for the job is properly installed to protect health and safety by meeting the requirements of the adopted plumbing code and all requirements of local and state ordinances, regulations and laws.

(B) The on-the-job oversight and direction by a licensed Plumbing Inspector of an individual training to qualify for the Plumbing Inspector Examination.

(C) For plumbing work performed only in the construction of a new one-family or two-family dwelling in an unincorporated area of the state, a Responsible Master Plumber is not required to provide for the continuous or uninterrupted on-the-job oversight of a Registered Plumber's Apprentice's work by a licensed plumber, however, the Responsible Master Plumber must:

(i) provide for the training and management of the Registered Plumber's Apprentice by a licensed plumber;

(ii) provide for the review and inspection of the Registered Plumber's Apprentice's work by a licensed plumber to ensure compliance with subparagraph (A)(i) and (ii) of this paragraph; and

(iii) upon request by the Board, provide the name and plumber's license number of the licensed plumber who is providing on-the-job training and management of the Registered Plumber's Apprentice and who is reviewing and inspecting the Registered Plumber's Apprentice's work on the job, or the name and plumber's license number of the licensed plumber who trained and managed the Registered Plumber's Apprentice and who reviewed and inspected the Registered Plumber's Apprentice's work on a job.

(19) Endorsement--A certification issued by the Board as an addition to a Master Plumber, Plumbing Inspector, or Journeyman Plumber License or a Plumber's Apprentice Registration, including a Drain Cleaner Registration, a Drain Cleaner-Restricted Registration, and a Residential Utilities Installer Registration.

(20) Executive Director--The executive director of the Texas State Board of Plumbing Examiners who is employed by the Board as the executive head of the agency.

(21) Field Representative--An employee of the Board who is:

(A) knowledgeable of the Plumbing License Law and of municipal ordinances related to plumbing;

(B) qualified by experience and training in good plumbing practice and compliance with the Plumbing License Law;

(C) designated by the Board to assist in the enforcement of the Plumbing License Law and Board rules;

(D) licensed by the Board as a plumber; and

(E) hired to:

(i) make on-site license and registration checks to determine compliance with the Plumbing License Law;

(ii) investigate complaints; and

(iii) assist municipal plumbing inspectors in cooperative enforcement of the Plumbing License Law.

(22) Journeyman Plumber--An individual licensed under the Plumbing License Law who has met the qualifications for registration as a Plumber's Apprentice or for licensure as a Tradesman Plumber-Limited, who has completed at least 8,000 hours working under the supervision of a Responsible Master Plumber, who supervises, engages in, or works at the actual installation, alteration, repair, service and renovating of plumbing, and who has successfully fulfilled the examinations and requirements of the Board.

(23) License--A license, registration, certification, or endorsement issued by the Board.

(24) Licensing and Registering--The process of granting, denying, renewing, reinstating, revoking, or suspending a license, registration or endorsement.

(25) Maintenance Man or Maintenance Engineer--An individual who:

(A) is an employee, and not an independent contractor or subcontractor;

(B) performs plumbing maintenance work incidental to and in connection with other employment-related duties; and

(C) does not engage in plumbing work for the general public.

(D) For the purposes of paragraph 25(B), "incidental to and in connection with" includes the repair, maintenance and replacement of existing potable water piping, existing sanitary waste and vent piping, existing plumbing fixtures and existing water heaters. It does not include cutting into fuel gas plumbing systems and the installation of gas fueled water heaters.

(E) An individual who erects, builds, or installs plumbing not already in existence may not be classified as a maintenance man or maintenance engineer. Plumbing work performed by a maintenance man or maintenance engineer is not exempt from state law and municipal rules and ordinances regarding plumbing codes, plumbing permits and plumbing inspections.

(26) Master Plumber--An individual licensed under the Plumbing License Law who is skilled in the design, planning, superintending, and the practical installation, repair, and service of plumbing, who is knowledgeable about the codes, ordinances, or rules and regulations governing those matters, who alone, or through an individual or individuals under his supervision, performs plumbing work, and who has successfully fulfilled the examinations and requirements of the Board.

(27) Medical Gas Piping Installation Endorsement--

(A) A certification entitling the holder of a Master or Journeyman Plumber License to install piping that is used solely to transport gases used for medical purposes including, but not limited to, oxygen, nitrous oxide, medical air, nitrogen, or medical vacuum.

(B) A certification entitling the holder of a Plumbing Inspector License to inspect medical gas and vacuum system installations.

(28) Multipurpose Residential Fire Protection Sprinkler Specialist Endorsement--

(A) A certification entitling the holder of a Master or Journeyman Plumber License to install a multipurpose residential fire protection sprinkler system in a one or two family dwelling.

(B) A certification entitling the holder of a Plumbing Inspector License to inspect a multipurpose residential fire protection sprinkler system.

(29) Military service member--A person who is currently serving in the armed forces of the United States, in a reserve component of the armed forces of the United States, including the National Guard, or in the state military service of any state.

(30) Military spouse--A person who is married to a military service member who is currently on active duty.

(31) Military veteran--A person who has served in the army, navy, air force, marine corps, or coast guard of the United States, or in an auxiliary service of one of those branches of the armed forces.

(32) One-Family Dwelling--A detached structure designed for the residence of a single family that does not have the characteristics of a multiple family dwelling, and is not primarily designed for

transient guests or for providing services for rehabilitative, medical, or assisted living in connection with the occupancy of the structure.

(33) Party--A person or state agency named or admitted as a party to a contested case.

(34) Paid Directly--As related to §1301.255(e) of the Plumbing License Law, "paid" and "directly" have the common meanings and "paid directly" means that compensation for plumbing inspections must be paid by the political subdivision to the individual Licensed Plumbing Inspector who performed the plumbing inspections or the plumbing inspection business which utilized the plumbing inspector to perform the inspections.

(35) Person--An individual, partnership, corporation, limited liability company, association, governmental subdivision or public or private organization of any character other than an agency.

(36) Petitioner--A person requesting the Board to adopt, amend or repeal a rule pursuant to §2001.021 of the Texas Government Code and the Board Rules.

(37) Plumbing--

(A) All piping, fixtures, appurtenances, and appliances, including disposal systems, drain or waste pipes, multipurpose residential fire protection sprinkler systems or any combination of these that supply, distribute, circulate, recirculate, drain, or eliminate water, gas, medical gasses and vacuum, liquids, and sewage for all personal or domestic purposes in and about buildings where persons live, work, or assemble; connect the building on its outside with the source of water, gas, or other liquid supply, or combinations of these, on the premises, or the water main on public property; and carry waste water or sewage from or within a building to the sewer service lateral on public property or the disposal or septic terminal that holds private or domestic sewage.

(B) The installation, repair, service, maintenance, alteration, or renovation of all piping, fixtures, appurtenances, and appliances on premises where persons live, work, or assemble that supply gas, medical gasses and vacuum, water, liquids, or any combination of these, or dispose of waste water or sewage. Plumbing includes the treatment of rainwater to supply a plumbing fixture or appliance. The term "service" includes, but is not limited to, cleaning a drain or sewer line using a cable or pressurized fluid.

(38) Plumbing Company--A person who engages in the plumbing business.

(39) Plumbing Inspection--Any of the inspections required in the Plumbing License Law, including any check of multipurpose residential fire protection sprinkler systems, pipes, faucets, tanks, valves, water heaters, plumbing fixtures and appliances by and through which a supply of water, gas, medical gasses or vacuum, or sewage is used or carried that is performed on behalf of any political subdivision, public water supply, municipal utility district, town, city or municipality to ensure compliance with the adopted plumbing and gas codes and ordinances regulating plumbing.

(40) Plumbing Inspector--Any individual who is employed by a political subdivision or state agency, or who contracts as an independent contractor with a political subdivision or state agency, for the purpose of inspecting plumbing work and installations in connection with health and safety laws, ordinances, and plumbing and gas codes, who has no financial or advisory interests in any plumbing company, and who has successfully fulfilled the examinations and requirements of the Board.

(41) Plumbing License Law or PLL--Chapter 1301 of the Texas Occupations Code.

(42) Pocket Card--A card issued by the Board which:

(A) certifies that the holder has a Responsible Master Plumber License, Master Plumber License, Journeyman Plumber License, Tradesman Plumber-Limited License, Plumbing Inspector License, or a Plumber's Apprentice Registration; and

(B) lists any Endorsements obtained by the holder.

(43) Political Subdivision--A political subdivision of the State of Texas that includes a:

(A) city;

(B) county;

(C) school district;

(D) junior college district;

(E) municipal utility district;

(F) levee improvement district;

(G) drainage district;

(H) irrigation district;

(I) water improvement district;

(J) water control improvement district;

(K) water control preservation district;

(L) freshwater supply district;

(M) navigation district;

(N) conservation and reclamation district;

(O) soil conservation district;

(P) communication district;

(Q) public health district;

(R) river authority; and

(S) any other governmental entity that:

(i) embraces a geographical area with a defined boundary;

(ii) exists for the purpose of discharging functions of government; and

(iii) possesses authority for subordinate self-government through officers selected by it.

(44) P-Trap--A fitting connected to the sanitary drainage system for the purpose of preventing the escape of sewer gasses from the sanitary drainage system and designed to be removed to allow for cleaning of the sanitary drainage system. For the purposes of drain cleaning activities described in §1301.002(2) of the Plumbing License Law, a p-trap includes any integral trap of a water closet, bidet, or urinal.

(45) Public Water System--A system for the provision to the public of water for human consumption through pipes or other constructed conveyances. Such a system must have at least 15 service connections or serve at least 25 individuals at least 60 days out of the year. Two or more systems with each having a potential to serve less than 15 connections or less than 25 individuals, but owned by the same person, firm, or corporation and located on adjacent land will be considered a public water system when the total potential service connections in the combined systems are 15 or greater or if the total number of individuals served by the combined systems total 25 or greater, at least 60 days out of the year. Without excluding other meanings of the terms "indi-

vidual" or "served," an individual shall be deemed to be served by a water system if the individual lives in, uses as the individual's place of employment, or works in a place to which drinking water is supplied from the water system.

(46) Respondent--A person charged in a complaint filed with the Board.

(47) Responsible Master Plumber or RMP--A licensed Master Plumber who:

(A) allows the person's Master Plumber License to be used by only one plumbing company for the purpose of offering and performing plumbing work;

(B) is authorized to obtain permits for plumbing work;

(C) assumes responsibility for plumbing work performed under the person's license;

(D) has submitted a certificate of insurance as required by the Plumbing License Law and Board Rules; and

(E) When used in Board forms, applications or other communications by the Board, the abbreviation "RMP" shall mean Responsible Master Plumber.

(48) Registration--A document issued by the Board to certify that the named individual fulfilled the requirements of the PLL and Board Rules to register as a Plumber's Apprentice.

(49) Rule--An agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of the agency. The term includes the amendment or repeal of a prior rule but does not include statements concerning only the internal management or organization of the agency and not affecting private rights or procedures.

(50) Supervision--The general oversight, direction and management of plumbing work and individuals performing plumbing work by a Responsible Master Plumber, or licensed plumber designated by the RMP.

(51) System--An interconnection between one or more public or private end users of water, gas, sewer, or disposal systems that could endanger public health if improperly installed.

(52) Tradesman Plumber-Limited Licensee--An individual who has completed at least 4,000 hours working under the direct supervision of a Journeyman or Master Plumber as a registered Plumber's Apprentice, who has passed the required examination and fulfilled the other requirements of the Board, or successfully completed a career and technology education program, who constructs, installs, changes, repairs, services, or renovates plumbing for one-family or two-family dwellings under the supervision of a Responsible Master Plumber, and who has not met or attempted to meet the qualifications for a Journeyman Plumber License.

(53) Two-Family Dwelling--A detached structure with separate means of egress designed for the residence of two families ("duplex") that does not have the characteristics of a multiple family dwelling and is not primarily designed for transient guests or for providing services for rehabilitative, medical, or assisted living in connection with the occupancy of the structure.

(54) Water Supply Protection Specialist--A Master or Journeyman Plumber who holds the Water Supply Protection Specialist Endorsement issued by the Board to engage in customer service inspections, as defined by rule of the Texas Commission on Environmental Quality, and the installation, service, and repair of plumbing associ-

ated with the treatment, use, and distribution of rainwater to supply a plumbing fixture or appliance.

(55) Water Treatment--A business conducted under contract that requires experience in the analysis of water, including the ability to determine how to treat influent and effluent water, to alter or purify water, and to add or remove a mineral, chemical, or bacterial content or substance. The term also includes the installation and service of potable water treatment equipment in public or private water systems and making connections necessary to complete installation of a water treatment system. The term does not include treatment of rainwater or the repair of systems for rainwater harvesting.

(56) Yard Water Service Piping--The building supply piping carrying potable water from the water meter or other source of water supply to the point of connection to the water distribution system at the building.

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 July 18, 2023.

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 330. MUNICIPAL SOLID WASTE SUBCHAPTER O. REGIONAL AND LOCAL SOLID WASTE MANAGEMENT PLANNING AND FINANCIAL ASSISTANCE GENERAL PROVISIONS

30 TAC §330.647

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendment to 30 Texas Administrative Code (TAC) §330.647.

Amended 30 TAC §330.647 is adopted without changes to the proposed text as published in the February 24, 2023, issue of the *Texas Register* (48 TexReg 1020) and, therefore, will not be republished.

Background and Summary of the Factual Basis for the Adopted Rule

In Texas, 24 regional planning commissions, also known as councils of governments (COGs), have the primary responsibility under Texas Health and Safety Code (THSC), §363.0615 for regional solid waste management planning. All 24 COGs submitted regional solid waste management plans to TCEQ, and TCEQ reviewed the plans in accordance with THSC, Chapter 363, Subchapter D. This rulemaking adopts the approved

regional solid waste management plans in compliance with THSC, §363.062(f), which states the commission will adopt the plans by rule. THSC, §363.062 and 30 TAC §330.641 describe the procedures for submission and approval of the regional solid waste management plans.

These new regional solid waste management plans will replace existing regional plans developed in 2002. The period for the existing regional solid waste management plans is from 2002 to 2022. All 24 COGs will reference the goals and strategies in the commission-approved plans in their implementation activities and projects.

The regional solid waste management plans include goals and strategies for implementing and promoting proper waste disposal management, waste diversion from landfills, recycling, and waste minimization, as well as initiatives for reducing illegal dumping of waste in each planning region. The regional solid waste management plans also describe the regions' current and anticipated activities as required by 30 TAC §330.643(a)(3). Plan requirements include documenting and estimating future growth for the region's population and commercial and industrial base; estimating future solid waste amounts by type; descriptions of current and planned waste management activities; and assessment and adequacy of existing waste management facilities, practices, and programs. The regional solid waste management plans also require assessment of current and future efforts of source reduction and waste minimization activities, as well as reuse and recycling of waste.

The regional solid waste management plans were developed by each COG using the most recent population, business, industry, and solid waste management data available from the State of Texas, universities, and financial and business entities. Local stakeholders were also surveyed to solicit feedback and ideas on goals and strategies.

Notice of the plans' availability for public review was published in local newspapers and/or media pages, and public comment meetings were scheduled and held in all 24 COG areas. The final regional solid waste management plans were approved by each COG's Solid Waste Advisory Committee and Board of Directors.

Section by Section Discussion

§330.647, Approved Regional and Local Solid Waste Management Plans

The commission adopts amended §330.647(a) to specify that subsection (d) contains the adopted regional solid waste management plans.

The commission adopts new §330.647(d)(1)-(24) to incorporate the approved regional solid waste management plans by reference.

Final Regulatory Impact Determination

The commission reviewed the rulemaking adoption under the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the statute. A "major environmental rule" is a rule that is specifically intended to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state

or a sector of the state. This rulemaking adoption is administrative in nature and is not specifically intended to protect the environment or reduce risks to human health from environmental exposure, nor does it affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Rather, this rulemaking is procedurally required for the commission to adopt the approved regional solid waste management plans by rule in accordance with THSC, §363.062(f).

Furthermore, Texas Government Code §2001.0225 only applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general powers of the agency instead of under a specific state law. The rulemaking adoption action does not exceed a standard set by federal law, an express requirement of state law, a requirement of a delegation agreement, or adopt a rule solely under the general powers of the commission but is authorized by specific sections of the Texas Water Code, the Texas Government Code, and the Texas Health and Safety Code, which are cited in the statutory authority section of this preamble. Therefore, this rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225.

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received regarding the draft regulatory impact analysis determination.

Takings Impact Assessment

The commission evaluated this rulemaking adoption and performed analysis of whether the adopted rule constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this rulemaking adoption is to adopt the new regional solid waste management plans for the 2022-2042 planning period that the commission has approved to replace the existing regional solid waste management plans from the 2002-2022 planning period, in accordance with THSC, §363.062(f), which states that the commission shall adopt an approved regional solid waste management plan by rule. The adopted rule will substantially advance this stated purpose by amending 30 TAC §330.647(a) and adding §330.647(d)(1)-(24) to incorporate the new approved regional solid waste management plans by reference into 30 TAC Chapter 330, Subchapter O.

Promulgation and enforcement of the adopted rule will be neither a statutory nor a constitutional taking of private real property. Specifically, the adopted rule does not affect a landowner's rights in private real property because this rulemaking does not burden (constitutionally), nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the rules. In other words, the adopted rule will not burden private real property because the adopted rule is not directed at private real property owners. The rule adopts plans reflecting goals and objectives for solid waste management that regional and local councils of governments submitted to the commission for review. Therefore, the adopted rule will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the adopted rule and found the adoption is a rulemaking identified in the Coastal Coordination Act implementation rules, 31 TAC §29.11(b)(4) (relating to Actions and Rules Subject to the Coastal Management Program (CMP)), and will, therefore, require that goals and policies of the Texas CMP be considered during the rulemaking process.

The commission reviewed this action for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the rulemaking is administrative in nature and will have no substantive effect on commission actions subject to the CMP and is, therefore, consistent with CMP goals and policies.

The commission invited public comment regarding the consistency of this rulemaking with the CMP goals and policies during the public comment period. No comments were received.

Public Comment

The commission held a public hearing on March 23, 2023. The comment period closed on March 27, 2023. The commission received comments from Harris County Pollution Control Services (PCS) and one individual. The two commenters were neither in support of nor against the proposed rule revisions. The two commenters suggested changes to the proposed rule revisions.

Response to Comments

Comment

PCS commented that many landfills in Texas have permitted heights that are hundreds of feet in elevation and that recyclables are being disposed of in landfills. PCS expressed concern with future expansion of municipal solid waste (MSW) facilities and that expansion of MSW facilities may lead to nuisance complaints from the public. PCS noted that the Houston-Galveston Area Council's (HGAC) draft Regional Solid Waste Management Plan contains objectives to encourage development of larger regional facilities, expansion of existing MSW facilities, and development of transfer stations and citizen collection stations. PCS recommended an increase in the recycling rate percentage goals contained within the regional solid waste management plans to reduce expansion of MSW facilities in the future.

Response

THSC, §363.064 describes the required contents of a regional solid waste management plan. THSC, §363.064(a)(8) and 30 TAC §330.635(a)(2)(B)(ii) state that a regional solid waste management plan must establish recycling rate goals that are appropriate to the region. COGs used historical data, current recycling rates, population projections, local solid waste management plans, and stakeholder input to determine recycling rate goals that are appropriate for their regions, and these regional goals may differ from the statewide goal in THSC, §361.422(a). The HGAC plan establishes a recycling rate goal of 31% that HGAC determined is appropriate for its region because of historical data, waste generation projections, and current and projected improvements of recycling programs in the region. The commission determined through its review of the regional solid waste management plans, in accordance with THSC, §363.062, that all COGs, including HGAC, met the requirement of including an appropriate regional recycling rate goal in their regional solid waste management plans.

THSC, §363.064(a)(11) requires COGs to "assess the need for new waste disposal capacity" in their regional solid waste management plans. Additionally, 30 TAC §330.643(a)(3)(D)

requires a "description and assessment of the adequacy of existing resource recovery, storage, transportation, treatment, and disposal facilities and practices, and programs for the collection and disposal of household hazardous wastes." HGAC is a COG subject to this requirement. The commission determined through its review of the regional solid waste management plans, in accordance with THSC, §363.062, that HGAC met the requirement to assess the need for new waste disposal capacity in its region, including recycling facilities, disposal facilities, transfer stations, and citizen collection centers.

In accordance with 30 TAC §305.122(d), "[t]he issuance of a permit does not authorize any injury to persons or property or an invasion of other property rights, or any infringement of state or local law or regulations." MSW facilities are required to operate in a way that prevents the occurrence of nuisance conditions in accordance with 30 TAC §330.15. If a facility violates a term of its permit or other authorization or applicable rules or regulations, the owner or operator of the facility may be subject to an enforcement action. The commission has made no changes in response to this comment.

Comment

PCS commented that other states are achieving recycling rates of over 40 percent and recommended that TCEQ should reevaluate the achievable recycling rate goal of 40 percent for the State of Texas that is provided in THSC, §361.422(a).

Response

The Texas state legislature initiates changes to solid waste management requirements in statute, and the commission's role is to adopt rules that implement the legislation pursuant to the Texas Government Code, Chapter 2001. While §361.422(a) provides a state goal to reduce municipal solid waste disposal through source reduction and recycling, legislation codified in THSC, §363.064 states the requirements for regional solid waste management plans. THSC, §363.064(a)(8) requires that a regional solid waste management plan must "establish recycling rate goals appropriate to the area covered by the plan." Additionally, THSC, §363.064(a) provides that a regional solid waste management plan must identify additional opportunities and make recommendations for encouraging and achieving waste minimization and waste reuse or recycling.

The recycling goal in THSC, §361.422(a) was implemented through actions in Chapter 328 of the agency's rules. Chapter 328 is outside the scope of this rulemaking. The commission has made no changes in response to this comment.

Comment

PCS expressed concern that private recycling partnerships, such as the Houston Recycling Collaborative and the Community and Industry Partnership, are being developed without the knowledge or support of the COG, thereby reducing the COG's facilitation of such partnerships and reducing their availability to the public.

Response

While THSC, Chapter 363, Subchapter D does not require TCEQ or the COGs to participate in or support private recycling partnerships, TCEQ will always encourage community partnerships between local businesses, non-governmental organizations, local governments, and the public as a way to understand the many perspectives from a community. TCEQ will notify HGAC of the Community and Industry Partnership and the Houston Re-

cycling Collaborative. The commission has made no changes in response to this comment.

Comment

PCS commented that TCEQ should ensure MSW facilities comply with THSC §363.066(a) upon the commission's adoption of the regional solid waste management plans.

Response

The commission acknowledges this comment. THSC, §363.066(a) provides, "[o]n the adoption of a regional or local solid waste management plan by commission rule, public and private solid waste management activities and state regulatory activities must conform to that plan." This rulemaking adoption does not change the requirement in THSC, §363.066(a) or the commission's implementation of it. Instead, this rulemaking adoption incorporates by reference the 24 regional solid waste management plans for years 2022 through 2042. The commission determined, through its review of the regional solid waste management plans, that all COGs met the requirement in 30 TAC §330.643(a)(3)(O) to identify in the regional solid waste management plans the processes the regions will use to evaluate whether a proposed MSW facility would conform to the regional plan. COGs may evaluate whether proposed MSW activities would conform to the regional solid waste management plan's goals and objectives and provide that determination to TCEQ. The Executive Director may consider recommendations in COGs' conformance reviews during technical review of applications for MSW facilities. TCEQ is responsible for making final determinations approving or denying MSW facility applications. The commission has made no change in response to this comment.

Comment

PCS commented that some of the public notices to announce public meetings for the purpose of receiving public comment about proposed regional solid waste management plans were not published 15 days in advance of the public meetings in accordance with 30 TAC §330.639(d). PCS further commented that the public was not given an adequate opportunity to review and comment on the proposed regional solid waste management plans when public notices did not meet the rule requirement. PCS recommended that TCEQ review the public notices and require re-publication of any notices that did not meet the requirements of 30 TAC §330.639(d).

Response

During review of the regional solid waste management plans, TCEQ determined that, although some COGs published notice of their plans less than 15 days before their public meetings about the plans, the COGs substantially complied with 30 TAC §330.639 in notifying the public about the plans. In developing their plans, the COGs solicited input from stakeholders through several methods, including meetings and surveys. Each COG's advisory committee, composed of members representing a broad range of interests, including local government staff, public officials, private operators, citizen groups, and interested individuals, also provided input on the plans. All 24 COGs published notice of their plans' availability for public review in local newspapers and/or on the COGs' websites and media pages and held public meetings to receive comments on their draft plans before submitting them to TCEQ. Some of the COGs, including HGAC, made changes to their plans based on the public comments they received, as documented in their regional

plans. All regional solid waste management plans were listed on the COGs' agendas and approved by their boards of directors at meetings held open to the public. In August 2022, before this rulemaking, the commission published additional notice of the draft regional solid waste management plans and provided the public with an additional opportunity, not required by rule, to submit informal comments on the draft plans during an informal 30-day comment period. Many of the COGs posted notice of the informal comment period on their websites and/or media pages. No comments were received during that comment period. Also, with this rulemaking, there was a public comment opportunity in March 2023. The commission has made no changes in response to this comment.

Comment

PCS commented that, when considering public comment about solid waste permitting actions, the Executive Director often responds that public comments are outside of the Executive Director's jurisdiction to consider or that regulatory requirements of the solid waste permitting action have been met.

Response

Sometimes a public comment is submitted in response to a solid waste permit application that addresses a subject outside the agency's jurisdiction. In accordance with 30 TAC Chapters 39 and 55, the executive director considers and responds to all timely, relevant and material, or significant public comments about permit applications and draft permits, but may only consider issues that are within TCEQ's jurisdiction as it has been established by the legislature when determining whether to make a change in response to public comment. TCEQ is not able to impose requirements or address matters for which the legislature has not conferred authority to the agency to do so. The commission has made no changes in response to this comment.

Comment

An individual expressed concern regarding how TCEQ and COGs track recycling rates. The individual commented that measuring the average amount of waste disposed per person for each county would allow TCEQ and counties in Texas to see which county recycling programs are effective and which are not. The individual requested that TCEQ and the COGs require landfills to report the amount of waste disposed for each county from which waste has originated, in addition to each landfill reporting the total amount of waste disposed in the landfill.

Response

30 TAC §330.643(a)(3) requires COGs to include the following data in their regional solid waste management plans: population patterns, commercial and industrial data, demographic information necessary to estimate solid waste quantities and characteristics, and estimates of future and current solid waste amounts by type. The data requirements do not include the average amount of waste disposed for each county. TCEQ reviewed the regional solid waste management plans according to the requirements in 30 TAC Chapter 330, Subchapter O, and the purpose of this rulemaking is to adopt the plans that were approved using the requirements in place at the time of the review.

30 TAC §330.675(a)(1)(C) requires municipal solid waste disposal facilities to report the amount of waste they receive for processing or disposal. However, THSC, Chapter 363, Subchapter D does not authorize COGs to require landfills to report the amount of waste disposed for each county from which waste has

originated. The commission has made no change in response to this comment.

Comment

An individual expressed concern about the effectiveness of current efforts in Texas to recycle mattresses. Specifically, the individual voiced concern that the Mattress Recycling Council, if established in Texas, would destroy mattresses that could be refurbished. The individual requested that mattress inspectors be established again. The individual stated that each city in Texas has a Salvation Army and requested that the Salvation Army be included in decisions regarding the collection of mattresses to be refurbished.

Response

The commission acknowledges receipt of this comment. The requirements for the manufacture, sale, and distribution of mattresses are described in 25 TAC, Chapter 205, Subchapter A. These rules are under the authority of the Texas Department of State Health Services. Issues regarding the collection of mattresses to be refurbished should be presented to the Texas Department of State Health Services. The commission has made no changes in response to this comment.

Statutory Authority

The rulemaking is adopted under Texas Water Code (TWC), §5.102 (relating to General Powers), which provides the commission the power to perform any acts necessary and convenient to the commission's exercise of its jurisdiction and powers as provided in this code and other laws; TWC, §5.103 (relating to Rules), which authorizes the commission to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state; TWC, §5.105 (relating to General Policy), which provides the commission with the authority to establish and approve by rule all general policy of the commission; the Administrative Procedures Act under Texas Government Code, Chapter 2001, which authorizes the commission as a state agency to adopt rules pursuant to the rulemaking process; and Texas Health and Safety Code (THSC), §363.062 (relating to Regional Solid Waste Management Plan), which authorizes the commission to consider for approval and to adopt by rule an approved regional solid waste management plan that is developed and submitted to the commission for review in accordance with THSC, §363.0615 (relating to Responsibility for Regional Planning).

The adopted rulemaking implements THSC, Chapter 363, Subchapter D (relating to Regional and Local Solid Waste Management Plans).

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 July 21, 2023.

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Texas Commission on Environmental Quality

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For further information, please call: (512) 239-2678



TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 17. TEXAS STATE SOIL AND WATER CONSERVATION BOARD

CHAPTER 518. GENERAL PROCEDURES SUBCHAPTER C. RESTRICTIONS ON ASSIGNMENT OF VEHICLES

31 TAC §518.10

Introduction:

The Texas State Soil and Water Conservation Board adopts the new rule Pursuant to Government Code, Sec. 2171.1045, adopted under Section 2171.104, relating to the assignment and use of the agency's vehicles. During an internal audit, it was determined that the agency had yet to adopt rules per the statute. The proposed new rule was posted for public comment in the *Texas Register* on April 21, 2023, page (48 TexReg 2084); no comments were received. The rule is adopted without changes to the text as published in the *Texas Register* and will not be republished.

Justification: During an internal audit, it was determined that the agency had yet to adopt rules per the statute.

How the Rule will Function: This rule identifies the assignment of the agency vehicles and acceptable use of the agency vehicles.

Comments: No public comments were received.

Statutory Authority: Government Code, Sec. 2171.1045, each state agency shall adopt rules, consistent with the management plan adopted under Section 2171.104.

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 July 24, 2023.

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CHAPTER 523. AGRICULTURAL AND SILVICULTURAL WATER QUALITY MANAGEMENT

31 TAC §523.6

The Texas State Soil and Water Conservation Board (Board) has completed the review of Title 31, Texas Administrative Code, Part 17, Chapter 523.6(e)(5), which limits the amount of cost share incentive funding per operating unit to \$15,000. The agency adopted without changes the amendment to remove the amount from rule and base it on a routine state board decision within the Water Quality Management Plan Program. This rule was published for comment in the May 5, 2023, issue

of the *Texas Register* (48 TexReg 2320). The rule will not be republished.

With the enactment of Senate Bill 503 (73rd Regular Session - Sims / Counts) in 1993, the Texas Legislature designated the Texas State Soil and Water Conservation Board (TSSWCB) the lead agency in the state for the abatement, management, and prevention of nonpoint source pollution from agricultural or silvicultural sources. Additionally, the Legislature authorized the agency to administer a certified Water Quality Management Plan (WQMP) Program, complete with a cost-share program to incentivize participation and offset the cost of implementing soil and water land improvement measures for lands within the state. While the TSSWCB makes the program available on a statewide basis, the State Board approves priorities based on activity and geography to target the cost-share incentive funding to the areas of the state that exhibit the most need for nonpoint source pollution abatement.

The amendment will identify the maximum allowable amount of cost-share funds that may be applied to any single operating unit and will be adopted by the State Board prior to the beginning of each biennium. This provision applies only to general revenue funds appropriated by the Texas Legislature to assist program participants with the implementation of soil and water conservation land improvement measures as allowed by Agriculture Code §201.301. In cases where the funding for cost-share incentives originates from sources other than appropriations made directly to this program by the Texas Legislature, the maximum allowable amount of cost-share incentive funding per operating unit will be established by the terms of the contractual agreement providing the funds until otherwise specified by the State Board.

The board received no comments in response to its request for comment published in the May 5, 2023, issue of the *Texas Register* (48 TexReg 2320).

The amendment is adopted under the Texas Agriculture Code, title 7, Chapter 201, §201.020, which authorizes the State Board to adopt rules that are necessary for the performance of its functions under the Agriculture Code.

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

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

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 20. STATEWIDE PROCUREMENT AND SUPPORT SERVICES

SUBCHAPTER D. SOCIO-ECONOMIC PROGRAM

DIVISION 1. HISTORICALLY UNDERUTILIZED BUSINESSES

34 TAC §§20.281 - 20.294, 20.297, 20.298

The Comptroller of Public Accounts adopts amendments to §20.281, concerning policy and purpose, §20.282, concerning definitions, §20.283, concerning evaluation of active participation in the control, operation, and management of entities, §20.284, concerning statewide annual HUB utilization goals, §20.285, concerning subcontracts, §20.286, concerning state agency planning responsibilities, §20.287, concerning state agency reporting requirements, §20.288, concerning the certification process, §20.289, concerning protests, §20.290, concerning recertification, §20.291, concerning revocation, §20.292, concerning certification and compliance reviews, §20.293, concerning Texas historically underutilized business certification directory, §20.294, concerning graduation procedures, §20.297, concerning HUB forum programs in state agencies, and §20.298, concerning mentor-protégé program, with changes to the proposed text as published in the February 3, 2023, issue of the *Texas Register* (48 TexReg 477). The rules will be republished.

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

The amendments of §20.282 update and rearrange the definitions as needed and expressly refer to additional applicable definitions located in §20.25.

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

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

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

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

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

provides the current name of the directory and informs that it is an online resource.

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

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

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

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

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

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

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

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

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

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

The amendment of former paragraph (20) deletes the definition of "person or natural person" and moves the definition of "per-

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

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

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

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

The amendments of former paragraphs (26), (28), (31), and (32) delete the definitions of "SBA," "subcontractor funds," "treasury funds," and "USAS" because these terms are not used in Chapter 20, Subchapter D, Division 1.

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

The amendment of former paragraph (29), renumbered paragraph (21), revises the definition of "size standards" for ease of understanding and to add a cross-reference to §20.294, concerning graduation procedures.

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

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

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

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

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

2161 definition of "economically disadvantaged person," which the comptroller considers more appropriate than the reference it replaces.

The amendments of §20.285 reorganize and condense the rule for ease of readability.

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

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

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

The amendment of subsection (d) consolidates and organizes information about the four methods by which a respondent may demonstrate a good faith effort to include HUBs in subcontracting, which information was previously scattered among several subsections. While the four methods are substantially the same as before, the revised rule gives them names: the solicitation method, the all-HUB-subcontractors method, the meeting-or-exceeding-HUB-goal method, and the self-performing method. Paragraph (1), which covers the solicitation method, clarifies that neither the day on which the respondent sends notice to a HUB nor the day on which the respondent submits its response counts toward the minimum number of days the respondent must give HUBs to bid on subcontract work. Paragraph (3), which covers the meeting-or-exceeding-HUB-goal method, eliminates from the conditions of meeting the utilization goal the prohibition on using HUBs with which the respondent has existing contracts that have been in place for more than five years. This prohibition was inconsistent with the statutory aim of increasing HUB participation in state contracts, which is not limited to new HUBs or new HUB subcontracting relationships.

The amendment of subsection (e) improves style and adds clarity, and further clarifies that revisions of a submitted HUB subcontracting plan may be made in accordance with subsection (b)(4).

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

The amendment of subsection (g) allows the state agency to accept progress assessment reports from the contractor electroni-

cally, provided that the electronic report meets the comptroller's formatting and content requirements.

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

New subsection (i) states the rule for amending a HUB subcontracting plan. Because HUB subcontracting plan amendments may occur outside the context of monitoring a contractor's compliance with the HUB subcontracting plan, the two subjects no longer occupy the same subsection. New subsection (i) also clarifies that a contractor must demonstrate good faith by complying with the requirements of subsection (d) in the development of an amended HUB subcontracting plan. Although the substance of the rule is not significantly changed from the prior version, it is condensed.

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

The amendment of §20.287 adds a descriptive title to each subsection for ease of use. The revised subsection (b) eliminates language related to contractor reporting of payments to subcontractors, which duplicated a requirement in §20.285. The revised subsection (d) provides the correct reference to the statute which addresses group purchasing for health care. The revised subsection (e) eliminates the term "bids," which was not defined, and instead refers to the defined term "responses" and clarifies that the comptroller reports the graduation rates for HUBs, rather than subgroups of HUBs, consistent with Government Code, §2161.121(a)(3). The revised subsection (g) eliminates the term "HUB credit," which was not defined, and instead refers to HUB "expenditure," consistent with Government Code, §2161.122(c). The revised subsection (g) adds a new clause stating that if a business is certified as a HUB for at least one day during a reporting period, all payments to that business for the entire period qualify as HUB expenditures. The amendment deletes subsection (h), which restated reporting requirements contained in §20.285.

The amendment of §20.288 revises the section for accuracy, concision, and ease of comprehension. The revised subsection (a) refers to the online HUB certification system, which is the only accepted method for an applicant to request certification. The revised subsection (c) requires an applicant to provide evidence of Texas residency that is satisfactory to the comptroller. Sub-

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

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

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

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

The amendment of §20.292 revises the section to provide additional detail and improve ease of comprehension. The revised subsection (a) distinguishes between certification reviews and compliance reviews and specifies that the methods of conducting reviews are desk reviews, virtual reviews, and in-person, on-site reviews. A description of the consequences of a review is moved from subsection (a) to revised subsection (d). The standard for active participation and control by a qualifying owner is relocated from §20.292(c) to §20.283(c) in order to consolidate rules on the same subject. The revised subsection (d) expressly states that HUB certification may be denied or revoked after a certification or compliance review.

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

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

The amendment of subsection (a) clarifies that the size of an entity includes affiliate businesses as defined by the Small Business Administration rules referenced therein. This includes enti-

ties that own a HUB or HUB applicant, as well as entities owned by an owner of a HUB or HUB applicant. A HUB applicant that exceeds the size standards in combination with its affiliates will be denied certification or recertification. A HUB that is found to exceed the size standards in combination with its affiliates during a compliance review will graduate from the HUB program.

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

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

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

The amendment of §20.298 revises the section for ease of comprehension and to eliminate surplus wording. The revised subsection (a) clarifies that the purpose of the Mentor-Protégé Program is to foster relationships between experienced contractors and HUBs and to increase the ability of HUBs to participate in state contracts and subcontracts. The revised subsection (a) eliminates a redundant statement of the objective of the Mentor-Protégé Program and a description of certain features of the program, which are already described in other subsections. The revised subsection (b) states that agencies "shall consider" certain factors in implementing the Mentor-Protégé Program, rather than stating that agencies "are encouraged to" consider the factors. The amended subsection (e) expressly requires, as a condition of participating as a mentor, an entity's registration on the Centralized Master Bidders List. The revised subsection (h) eliminates unclear guidance regarding the revocation of a protégé's HUB status while the protégé is participating as a subcontractor. As with any other change to a HUB subcontracting plan, the contractor shall work with the state agency in good faith to amend the plan in compliance with §20.285.

The comptroller received comments regarding adoption of the amendment from three parties.

Karen L. Gross (Manager, Supplier Diversity Programs/HUB Coordinator, UTMB Health) made no statement of position for or against adoption, but recommended removal of a possible unintended hyphen in the "meeting-or-exceeding-HUB-goal" method in §20.285(d)(3).

The comptroller has confirmed the referenced hyphens were intended and thus declines to adopt this recommendation.

Karen L. Gross next recommended that each of the four good faith effort methods covered in §20.285(d) be titled to match "the names of the forms."

The comptroller declines to change or remove the proposed titles for the following reasons. Section 20.285 did not previously contain titles for the four good faith effort methods. The proposed titles for three of the good faith effort methods ("all-HUB-subcontractors," "meeting-or-exceeding-HUB-goal," and "self-performing") are substantially the same as the titles of the corresponding HUB subcontracting plan forms prescribed by the comptroller. The remaining good faith effort method is completed by soliciting bids on subcontracts from a specified number of HUBs and organizations. It corresponds to a form titled, "Good Faith Effort with Attachment B." It is the judgment of the comptroller that that title does not describe the method or distinguish it from other methods. The title in the proposed rule, "solicitation method," is more descriptive and better fitting.

Pauline E. Anton and Samuel Guzman (President and CEO, and Chairman of the Board, respectively, Texas Association of Mexican American Chambers of Commerce; no statement of position for or against adoption) stated that proposed changes would not require prime contractors or state agencies to ensure the utilization of historically underutilized businesses. They cited amended §20.285(e) and new §20.285(i) as examples and stated that revisions of a HUB subcontracting plan should only be allowed for clarifications of minor deficiencies. They opined that the referenced subsections do not require monitoring and that the amended §20.285 would allow a prime contractor to represent that it will utilize HUB subcontractors in its initial HUB subcontracting plan submission, and then revise the HUB subcontracting plan following award and instead utilize non-HUB subcontractors. They stated further that the prime contractor must demonstrate good faith in the development of the HUB subcontracting plan "{a}t every step."

The proposed rule was not intended to reduce contractors' obligations to undertake good faith efforts to include HUBs in subcontracting, nor to relieve state agencies of their obligations to monitor contractors' efforts. To make that perfectly clear, the comptroller adopts §20.285 with the following revisions. Subsection (e) no longer includes language referring to revisions for clarity and maximum HUB utilization. Instead, that subsection provides that prior to award, revisions may only be made to cure minor deficiencies in accordance with §20.285(b)(4). Subsection (i), which covers an amendment of a HUB subcontracting plan during the term of a contract, clarifies that the requirement in §20.285(d) to develop a HUB subcontracting plan in good faith (and complete good faith effort methods) also applies to an amended HUB subcontracting plan.

Ms. Anton and Mr. Guzman next stated the rules must require agencies to monitor contracts "to ensure that HUBs are utilized at the highest level to meet the Good Faith minimum of twenty percent (20%)."

There is not currently a requirement in statute or rule for state agencies to utilize a certain "minimum" percentage of historically underutilized businesses in state contracting. Government Code, Chapter 2161, directs the comptroller to adopt rules to provide goals for increasing contract awards from state agencies to qualified HUBs, and further provides all state agencies shall make a good faith effort to increase contract awards for construction and the purchase of goods or services specifically. The comptroller's rules in turn set out statewide HUB goals for procurement categories (e.g., 21.1% for commodities contracts). In consideration of the limited authority provided in statute, the comptroller declines to adopt a 20% minimum rate of HUB utilization.

Laura Cagle-Hinojosa (no statement of position for or against adoption) noted, with respect to §20.285(i), that the statement in the preamble that HUB subcontracting plan revisions "are not part of monitoring a contractor's compliance with the HUB subcontracting plan" (48 TexReg 479) is inaccurate.

The purpose of new §20.285(i) was to separate monitoring provisions from amendment provisions. Although contract monitoring may reveal a need to amend the HUB subcontracting plan, amendments may also occur outside the context of monitoring a contractor's compliance with the HUB subcontracting plan. The adoption reflects this intent. Further, in connection with the comments that follow, subsection §20.285(i) now refers to changes in the HUB subcontracting plan made during the term of the contract as "amendments" rather than "revisions."

Ms. Cagle-Hinojosa next recommended the addition of a sentence in §20.282 that informs additional applicable definitions can be found in §20.25 of this title.

It was the intent of the revision to avoid conflicting or duplicative definitions between Chapter 20 and Subchapter D, Division 1. The proposed sentence is consistent with that intent and may be helpful in navigating the rules. The comptroller has added this as the second sentence of §20.282.

Ms. Cagle-Hinojosa next stated that Government Code, §2161.001(2), defines a historically underutilized business as an entity with its principal place of business in this state, and that the amended definition of "principal place of business" in §20.282(15) should address that requirement. The amended §20.288, concerning the certification process, does not address this requirement and focuses on residency.

The comptroller agrees that the requirement to maintain a principal place of business in Texas is a material component of the definition of a historically underutilized business. The comptroller has accordingly defined "historically underutilized business" in §20.282(7) as an entity that maintains its principal place of business in Texas, consistent with Government Code, §2161.001(2), in addition to other requirements.

Ms. Cagle-Hinojosa next recommended keeping language stricken from the definition of historically underutilized business coordinator in §20.282(8). The stricken language is a restatement of the portion of Government Code, §2161.062(e), that provides a state agency with a biennial budget greater than \$10 million shall designate a historically underutilized business coordinator; a procurement director may serve as a historically underutilized business coordinator; and for agencies that employ a coordinator, the position within the agency's structure must be at least equal to the position of procurement director.

The stricken language merely restates the statute, as noted. Furthermore, these requirements applicable to a state agency do not define the role of a HUB coordinator. Therefore, the comptroller adopts the definition of historically underutilized business coordinator in §20.282(8) without revision.

Ms. Cagle-Hinojosa next recommended keeping language stricken from §20.285(a). The stricken language specifies that in determining whether subcontracting opportunities are probable under a contract with an expected value of \$100,000 or more, a state agency must measure the contract value "over the life of the contract (including any renewals)." The comment informed that agencies had historically approached valuation of contracts inconsistently, as some would only consider the value during the initial term of the contract in determining whether a

HUB subcontracting plan was required. The recommendation was thus to keep the stricken language to avoid inconsistencies in measuring value of contracts.

Contract value is defined in §20.25 to include amendments, extensions, and renewals of a contract. That definition applies to all of Chapter 20, including the proposed rules. By referring to contract value, the proposed §20.285(a) requires agencies to include amendments, extensions, and renewals. Because the recommendation would not further clarify the intent of §20.285(a), that section is adopted without revision.

Ms. Cagle-Hinojosa next stated that §20.285(b)(4) and §20.285(e), which both address the pre-award phase of reviewing whether a HUB subcontracting plan is responsive, are in conflict. Whereas §20.285(b)(4) only provides for revisions of a HUB subcontracting plan to cure minor deficiencies, §20.285(e) allowed revisions "for clarity and maximum HUB utilization." Per the comment, the revisions described in §20.285(e) were too vague and effectively allowed a respondent to submit a revised HUB subcontracting plan, which "has been stated as a major issue for non-attainment of minority/women businesses in disparity studies." Ms. Cagle-Hinojosa further stated revisions of a HUB subcontracting plan during the pre-award phase should be permitted only in connection with clarifications necessary to confirm compliance with the good faith effort requirements.

In response to these comments, and in the interest of clarity, the comptroller has revised §20.285(e) to remove the language authorizing revisions for "clarity and maximum HUB utilization." Instead, the rule states that a submitted HUB subcontracting plan may be revised in accordance with §20.285(b)(4). This change makes clear that revisions of a submitted HUB subcontracting plan may only be made to cure minor deficiencies.

Ms. Cagle-Hinojosa next recommended deleting from the examples of material deficiencies in a HUB subcontracting plan, in §20.285(b)(4), the following: "...producing a description of the resources the respondent will use to self-perform the work." Per the comment, the "evidence for self-performing should be reflected within the actual response," but an agency may request a clarification to determine whether a respondent is self-performing as stated in its HUB subcontracting plan. The comment cited §20.285(d)(4), which expressly provides a state agency may request, and a respondent shall provide, the types of documentation enumerated in §20.285(d)(4)(A)-(D). The comment further informed this documentation is submitted through a clarification request.

In response to this comment, the comptroller has revised the quoted portion of §20.285(b)(4). The updated §20.285(b)(4) clarifies that this example of a material deficiency refers to the omission of the statement of how a contractor intends to fulfill the entire contract that is expressly required by §20.285(d)(4). This initial statement must be submitted with the original HUB subcontracting plan before the response deadline. Although the state agency may allow the contractor to clarify its plan to self-perform the work after the deadline under §20.285(d)(4)(A)-(D), it cannot excuse the contractor's failure to submit its plan with its solicitation response.

Ms. Cagle-Hinojosa next recommended the addition of language to §20.285(h)(1) that expressly requires a state agency, as part of its responsibility to monitor a contractor's compliance with its HUB subcontracting plan, to determine whether the contractor is utilizing only subcontractors named in the HUB subcontracting

plan. Per the comment, this task is an important component of ensuring compliance with a HUB subcontracting plan and any amendments require completion of the good faith effort methods described in §20.285(d).

The recommendation is consistent with the intent of proposed §20.285(h)(1) and helps to clarify the state agency's monitoring obligations. The comptroller agrees with the recommendation, and adopts the rule with the addition of the suggested language.

Ms. Cagle-Hinojosa next recommended, in §20.285(i), replacing "revised" with "amended" in connection with changes made to the HUB subcontracting plan during the term of the contract. The reasoning for the recommendation was that a HUB subcontracting plan becomes a contract provision and thus must be amended rather than revised.

The comptroller agrees with the recommendation and has updated §20.285(i) accordingly.

Ms. Cagle-Hinojosa next recommended the addition of language to §20.285(i)(1) and §20.285(i)(3) that expressly provides a contractor must demonstrate good faith by complying with the requirements of §20.285(d) in the development of an amended HUB subcontracting plan. The reasoning was that the recommended language sets out a process for complying with Government Code, §2161.253(b), which requires the contractor to describe good faith efforts made to find and utilize other historically underutilized businesses when subcontracting differs from the original HUB subcontracting plan.

The recommendation is consistent with the intent of proposed §20.285(i) and helps to clarify the standard for approving a contractor's proposed amendment to a HUB subcontracting plan. The comptroller adopts the rule with the recommended modification.

In addition to changes made in response to specific comments, the comptroller made the following revisions to further clarify the rules or their intent, or to make clerical edits determined beneficial during staff review of the proposed rules and comments received.

In §20.282(9), concerning the definition of "HUB directory," "website" has been replaced with "website."

In §20.282(17), a stray "and" has been deleted at the end of subparagraph (B).

In §20.282(21), the word "concerning" is replaced with "relating to," to be consistent with the other rules.

Section 20.284(d)(2)(K), concerning procedures that a state agency may adopt in making a good faith effort to assist HUBs in receiving a portion of its awarded contracts, has been revised to provide that HUB-subcontracting-plan-compliance training may also be conducted at agency HUB forums. The comptroller has made this change to provide the full range of options for state agencies to conduct the training for the purpose of demonstrating good faith effort.

Section 20.285(e) has been revised to provide that a HUB subcontracting plan shall "become a provision of" the state agency's contract, which replaces the statement in the proposed amendment of subsection (e) that the HUB subcontracting plan shall "be incorporated into" the state agency's contract. This revision has been made for clarity and to align with Government Code, Chapter 2161.

Section 20.285(h)(1) is adopted with a grammatical correction, replacing the phrase "HUB progress assessment reports" with "each HUB progress assessment report."

These amendments are adopted under Government Code, §2161.0012, which authorizes the comptroller to adopt rules to efficiently and effectively administer Government Code, Chapter 2161 regarding historically underutilized businesses.

These amendments implement Government Code, Chapter 2161.

§20.281. *Policy and Purpose.*

It is the policy of the comptroller to encourage the use of historically underutilized businesses (HUBs) by state agencies and to assist agencies in the implementation of this policy through race, ethnic, and gender-neutral means. The purpose of the HUB program is to promote full and equal business opportunities for all businesses in an effort to remedy disparity in state procurement and contracting in accordance with the HUB utilization goals specified in the State of Texas Disparity Study.

§20.282. *Definitions.*

The following words and terms, when used in this division, shall have the following meanings, unless the context clearly indicates otherwise. Additional applicable definitions are located in §20.25 of this title.

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

(2) Application--The information, documents, and representations submitted by an applicant that constitute its request for certification as a historically underutilized business.

(3) Commodities--Any tangible goods.

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

(5) Economically disadvantaged person--Has the meaning assigned by Government Code, §2161.001(3).

(6) Graduation--When a certified HUB exceeds the size standards and becomes ineligible for continued certification as a result.

(7) Historically underutilized business (HUB)--A business organization described in subparagraphs (A) - (F) of this paragraph that is certified by the comptroller because it has not exceeded the size standards established by §20.294 of this title, maintains its principal place of business in Texas, and is:

(A) a corporation formed for the purpose of making a profit in which at least 51% of all classes of the shares of stock or other equitable securities are owned by one or more qualifying owners;

(B) a sole proprietorship created for the purpose of making a profit that is 100% owned, operated, and controlled by a qualifying owner;

(C) a partnership formed for the purpose of making a profit in which 51% of the assets and interest in the partnership is owned by one or more qualifying owners;

(D) a joint venture in which each entity is a HUB;

(E) a supplier contract between a HUB and a prime contractor under which the HUB is directly involved in the manufacture or

distribution of the supplies or materials or otherwise warehouses and ships the supplies; or

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

(8) Historically underutilized business (HUB) coordinator--The staff member designated by a state agency to be primarily responsible for overseeing the implementation of HUB laws and monitoring attainment of HUB utilization goals.

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

(10) HUB subcontracting plan--Written plan identifying whether a contract will be self-performed or include the use of subcontractors, which subcontractors will be used, how much of the contract each subcontractor will receive, and how subcontractors were selected.

(11) Mentor-Protégé Program--A program designed by the comptroller to encourage agencies to work with prime contractors and HUBs to foster long-term relationships.

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

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

(14) Person--A human being.

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

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

(17) Qualifying owner--A person who:

(A) is a resident of the State of Texas;

(B) has a proportionate interest and demonstrates active participation in the control, operation, and management of an applicant;

(C) is a member of one of the following groups:

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

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

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

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

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

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

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

(18) Resident of the State of Texas-- An individual who:

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

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

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

(20) Subcontractor--An entity that contracts with a prime contractor to work or contribute toward completing work under a purchase order or other contract. The term does not include employees of the contractor but includes contracted workers who will work on the contract.

(21) Size standards--Graduation and eligibility thresholds established by the comptroller under §20.294 (relating to Graduation Procedures).

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

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

(24) Work--Providing goods or performing services pursuant to a contract.

(25) Working day--Normal business day of a state agency, not including weekends, federal or state holidays.

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

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

(1) appearance and relative scope of responsibility of qualifying owners in articles of incorporation or partnership formation documents;

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

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

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

(5) the percentages of profit and risk available to the qualifying owner under the corporate or partnership agreements;

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

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

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

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

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

(b) The comptroller may request any additional information it considers necessary to evaluate an applicant as a HUB.

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

§20.284. *Statewide Annual HUB Utilization Goals.*

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

(b) The statewide HUB utilization goals are:

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

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

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

(4) 23.7% for professional services contracts;

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

(6) 21.1% for commodities contracts.

(c) State agencies shall establish HUB utilization goals for each procurement category identified in subsection (b) of this section. Agencies may set their HUB utilization goals higher or lower than the statewide utilization goals. However, the statewide HUB utilization

goals shall be the starting point for establishing state agency-specific goals. State agency-specific HUB utilization goals shall be based on:

- (1) a state agency's fiscal year expenditures and total contract expenditures;
- (2) the availability to a state agency of HUBs in each procurement category;
- (3) the state agency's historic utilization of HUBs; and
- (4) other relevant factors.

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

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

(2) the state agency's adoption and implementation of the following procedures:

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

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

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

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

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

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

(G) develop and apply a written methodology to determine whether their HUB utilization goals are appropriate under the Disparity Study, or whether the statewide HUB utilization goals from the Disparity Study are appropriate for the state agency, and taking into account the provisions of Government Code, §2161.002(d);

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

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

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

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

(e) A state agency may also demonstrate good faith under this section by submitting a supplemental letter with documentation to the comptroller with their HUB report or legislative appropriations request including other relevant information, such as:

(1) identifying the percentage of contracts (prime and sub-contracts) awarded to businesses that are not HUBs, but that are owned by economically disadvantaged persons as defined in Government Code, §2161.001;

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

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

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

(5) demonstrating assistance to business entities in obtaining HUB certification.

§20.285. Subcontracts.

(a) Analyzing potential contracts of \$100,000 or more. In accordance with Government Code, Chapter 2161, Subchapter F, each state agency that considers entering into a contract with an expected value of \$100,000 or more shall, before it solicits responses, determine whether subcontracting opportunities are probable under the contract.

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

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

(B) check the HUB directory for HUBs that may be available to perform the contract work; and

(C) consider whether subcontracting is probable for only a subset of the work expected to be performed or the funds to be expended under the contract.

(2) State agencies may consider additional sources of information regarding the probability of subcontracting, including:

(A) information from other state agencies and local governments; and

(B) information about past state contracts with similar scopes of work.

(b) Requiring HUB subcontracting plans.

(1) If a state agency determines that subcontracting opportunities are probable, the solicitation shall state that probability and explicitly require that any response include a completed HUB subcontracting plan to be considered responsive. The solicitation shall state the applicable HUB utilization goal, and provide information on where to find and how to complete the comptroller's HUB subcontracting plan form.

(2) A state agency shall require HUB subcontracting plans to be submitted with each response. If a state agency permits responses to be submitted in parts, with deadlines for each part, the solicitation shall specify which deadline applies to the HUB subcontracting plan and shall not open responses until after the HUB subcontracting plan is due.

(3) A state agency shall reject any response that does not include a completed and timely HUB subcontracting plan due to material failure to comply with Government Code, §2161.252(b).

(4) If a properly submitted HUB subcontracting plan contains minor deficiencies, such as failure to sign or date the plan or failure to submit already-existing evidence that a good faith effort was

completed, the state agency may allow the respondent to cure the minor deficiency. A state agency may not allow a respondent to cure material deficiencies, including completion of a good faith effort after the response deadline (such as contacting minority trade organizations or producing the statement of how the respondent intends to self-perform the work that is required by subsection (d)(4) of this section).

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

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

(1) Solicitation Method. To complete the solicitation method, the respondent shall comply with all requirements of this clause.

(A) The respondent shall divide the work into reasonable lots or portions consistent with prudent industry practices.

(B) The respondent shall notify, in writing, at least two trade organizations or development centers that serve economically disadvantaged persons, of the subcontracting opportunities that the respondent intends to subcontract.

(C) The respondent shall notify, in writing, at least three HUBs of the subcontracting opportunities that the respondent intends to subcontract. The respondent shall provide the notice described in this subclause to three or more HUBs per subcontracting opportunity that provide the type of work required.

(D) The notices required by subparagraphs (B) and (C) of this paragraph shall include the scope of work, information regarding location to review plans and specifications, information about bonding and insurance requirements, required qualifications, and other contract requirements and identify a contact person.

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

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

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

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

(2) All-HUB-Subcontractors Method. The respondent may use the all-HUB-subcontractors method to demonstrate a good faith effort for any subcontracting opportunity by submitting documen-

tation that 100% of subcontracting opportunities will be performed by HUBs.

(3) Meeting-or-Exceeding-HUB-Goal Method. The respondent may use the meeting-or-exceeding-HUB-goal method to demonstrate a good faith effort for any subcontracting opportunity by submitting documentation that it will utilize one or more HUBs to perform subcontracts with a total value that will meet or exceed the HUB utilization goal identified by the procuring state agency in the solicitation.

(4) Self-performing Method. The respondent may use the self-performing method to demonstrate a good faith effort for any subcontracting opportunity by providing a statement of how it intends to fulfill the entire contract, including each subcontracting opportunity, with its own equipment, supplies, materials, and employees. The respondent shall provide the following if requested by the procuring state agency:

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

(B) monthly payroll records showing employees engaged in the contract;

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

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

(5) Subcontracting to a HUB Protégé. If the respondent is a mentor in a mentor-protégé agreement that is registered with the comptroller under §20.298 of this title (relating to Mentor-Protégé Program), the respondent may demonstrate a good faith effort for any subcontracting opportunity by subcontracting the work to its protégé.

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

(e) Accepting or rejecting the HUB subcontracting plan. The state agency shall review the respondent's HUB subcontracting plan prior to award. The HUB subcontracting plan shall become a provision of the state agency's contract. The agency and contractor may agree to revise the submitted HUB subcontracting plan in accordance with subsection (b)(4) of this section. State agencies shall review the documentation submitted by the respondent to determine if the respondent made a good faith effort. If the state agency determines that a HUB subcontracting plan was not developed in good faith or the good faith effort was incomplete, the state agency shall reject the response. The state agency shall document the reasons for rejection in the contract file.

(f) Contractor records. The contractor shall maintain records documenting its compliance with the HUB subcontracting plan.

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

(h) Monitoring HUB subcontracting plan compliance.

(1) During the term of the contract, the state agency shall monitor the contractor's subcontracting by reviewing each HUB

progress assessment report to determine whether it complies with the HUB subcontracting plan. The state agency shall perform monitoring at intervals corresponding to invoice submissions. The state agency shall determine if the value of the payments to HUBs meets or exceeds the HUB subcontracting plan, and whether the contractor is utilizing only subcontractors named in the HUB subcontracting plan. The state agency shall document the contractor's performance in the contract file.

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

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

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

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

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

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

(i) Amending the HUB subcontracting plan.

(1) Before the contractor performs or subcontracts any part of the contract in a manner that is not consistent with its HUB subcontracting plan, it shall submit an amended HUB subcontracting plan to the state agency for its review and approval. The contractor shall demonstrate good faith by complying with the requirements of subsection (d) of this section in the development of the amended HUB subcontracting plan. Failure to comply with this section may be deemed a breach of the contract subject to any remedies provided by Government Code, Chapter 2161 and other applicable law.

(2) The state agency may approve requested changes to the HUB subcontracting plan by amending the contract. The reasons for amending the HUB subcontracting plan shall be recorded in the contract file.

(3) If a state agency expands the scope of work through a change order or contract amendment, including a renewal that expands the scope of work, it shall determine if the additional scope of work contains additional probable subcontracting opportunities. If the state agency determines probable subcontracting opportunities exist, the state agency shall require the contractor to submit for its review and approval an amended HUB subcontracting plan for the additional probable subcontracting opportunities. The contractor shall demonstrate good faith by complying with the requirements of subsection (d) of this section in the development of the amended HUB subcontracting plan.

§20.286. State Agency Planning Responsibilities.

(a) Agencies are required to prepare a written HUB business plan, which shall provide for increasing the utilization of HUBs in purchasing, and in public works contracts in accordance with Government Code, §2161.123.

(b) Pursuant to Government Code, §2161.003, state agencies shall adopt the comptroller's rules related to administering Government Code, Chapter 2161, Subchapters B and C.

(c) Agencies must include a detailed report with their legislative appropriations request that shows the extent to which the agency complied with Government Code, Chapter 2161, and the rules of the comptroller relating to HUBs. The report should include the state agency's effort to identify HUBs for contracts and subcontracts, the agency's utilization of HUBs, and the agency's successes and shortfalls at increasing HUB participation.

§20.287. State Agency Reporting Requirements.

(a) Non-treasury funds. State agencies will report to the comptroller, not later than March 15 of each year regarding the previous six-month period and on September 15 of each year regarding the preceding fiscal year, the payments made for the purchase of goods and services awarded and actually paid from non-treasury funds by the state agency. The report shall include information requested by the comptroller and shall be in a form prescribed by the comptroller. State agencies' purchases from state term contracts or group purchases which are paid from non-treasury funds must be identified on the report as such so that they may be reflected on the comptroller's report of its own purchases.

(b) Monthly information. State agencies shall maintain and compile monthly information relating to the use of HUBs by the agency and each of their operating divisions, including information regarding subcontractors and suppliers.

(c) Spending totals. State agencies will report to the comptroller, not later than March 15 of each year regarding the previous six-month period and on September 15 of each year regarding the preceding fiscal year, the total dollar amount of HUB and non-HUB contracting and subcontracting participation in all of the agencies' contracts for the purchase of goods, services and public works. State agencies must include contracting and subcontracting participation paid from treasury and non-treasury funds.

(d) Group purchasing report. State agencies that participate in a group purchasing program under Government Code, §2155.144 shall submit a separate report to the comptroller, not later than March 15 of each year regarding the previous six-month period and September 15 of each year regarding the preceding fiscal year, of purchases that are made through the group purchasing program and shall report the dollar amount of each purchase that is allocated to the reporting state agency.

(e) Consolidated report. The comptroller shall prepare a consolidated report based on a compilation and analysis of the reports submitted by each state agency and other information available to the comptroller. These reports of HUB purchasing and contracts shall form a record of each state agency's purchases in which the state agency selected the contractor. If the contractor was selected by the comptroller as part of its state term contract program, the purchase will be reflected on the comptroller's report of its own purchases. The comptroller report will contain the following information:

(1) the total dollar amount of payments made by each state agency;

(2) the total number of HUBs paid by each state agency;

(3) the total number of contracts awarded to HUBs by each state agency;

(4) the number of responses received from HUBs by each state agency; and

(5) the graduation rate of HUBs as defined in §20.294 of this title (relating to Graduation Procedures).

(f) Report to legislature. On May 15 of each year, the comptroller shall submit the consolidated report regarding the previous six-month period and on November 15 of each year regarding the preceding fiscal year to the presiding officer of each house of the legislature, the members of the legislature and the joint select committee.

(g) Determination of HUB expenditures. State agencies shall report as HUB expenditures the total payments made directly to certified prime and subcontractor HUBs under the Vendor Identification Number in the comptroller's HUB directory as follows:

(1) A state agency shall report as HUB expenditures payments made to prime and subcontractor HUBs who were certified for at least one day during the reporting period.

(2) When the prime contractor is a HUB, it must perform at least 25% of the total value of the contract with its own or leased employees, as defined by the Internal Revenue Service, in order for the state agency to report all payments to the prime contractor for the contract as HUB expenditures. If a HUB prime contractor performs less than 25% of the total value of contract with its employees or leased employees, the state agency shall only report as HUB expenditures the value of the contract that was actually performed by the contractor and its HUB subcontractors.

§20.288. Certification Process.

(a) A business seeking certification as a HUB must submit an application through the online HUB certification system, affirming under penalty of perjury that the business qualifies as a HUB.

(b) If requested by the comptroller, the applicant must provide any and all materials and information necessary to demonstrate a qualifying active participation in the control, operation, and management of the HUB.

(c) A person claiming Texas residency must prove residency status by submitting:

(1) a current valid Texas driver's license or I.D. card; and

(2) additional evidence of residency satisfactory to the comptroller, such as an appraisal statement for Texas real property (including whether a homestead exemption was claimed for that real property) or most recent paid utility statements.

(d) The comptroller shall certify the applicant as a HUB or provide the applicant with written justification of its denial of certification within 90 days after the date the comptroller receives an application.

(e) The comptroller may reject an application based on one or more of the following:

(1) the application is not satisfactorily completed;

(2) the applicant does not meet the requirements of the definition of HUB;

(3) the application contains false information;

(4) the applicant does not provide required information in connection with the certification review conducted by the comptroller; or

(5) the applicant has an unfavorable record of performance on prior contracts with the state.

(f) The comptroller may approve the existing certification program of one or more local governments or nonprofit organizations in this state that certify historically underutilized businesses, minority business enterprises, women's business enterprises, or disadvantaged business enterprises that substantially fall under the same definition, to the extent applicable for HUBs found in Government Code, §2161.001, and maintain them on the comptroller's HUB directory, if the local government or nonprofit organization:

(1) meets or exceeds the standards established by the comptroller and

(2) agrees to the terms and conditions as required by statute relative to the agreement between the local government or nonprofits for the purpose of certification of HUBs.

(g) The agreement in subsection (f) of this section must take effect immediately and contain conditions as follows:

(1) allow for automatic certification of businesses certified by the local government or nonprofit organization as prescribed by the comptroller;

(2) provide for the efficient updating of the HUB directory;

(3) provide for a method by which the comptroller may efficiently communicate with businesses certified by the local government or nonprofit organization;

(4) provide those businesses with information about the state's Historically Underutilized Business Program; and

(5) require that a local government or nonprofit organization that enters into an agreement under subsection (f) of this section, complete the certification of an applicant with written justification of its certification denial within the period established by the comptroller in its rules for certification.

(h) The comptroller will not accept the certification of a local government or nonprofit organization that charges money for the certification of businesses to be listed on the HUB directory.

(i) The comptroller may terminate an agreement made under this section if a local government or nonprofit organization fails to meet the standards established by the comptroller for certifying HUBs. In the event of the termination of an agreement, those HUBs that were certified as a result of the agreement will maintain their HUB status during the fiscal year in which the agreement was in effect. Businesses which are removed from the HUB directory as a result of the termination of an agreement with a local government or nonprofit organization may apply to the comptroller for certification.

(j) The certification is valid for a four-year period beginning on the date the comptroller certifies the applicant as a HUB. If the certification was granted by an organization other than the comptroller under subsections (f) and (g) of this section, it is valid for the period granted by that organization.

§20.289. Protests.

An applicant may protest the comptroller's denial or revocation of certification by filing a protest through the online HUB certification system within 30 days after the date the comptroller sent notice of the denial or revocation to the applicant. The director will consider the protest and issue a final decision. The director's decision shall be the final administrative action of the comptroller.

§20.290. Recertification.

Upon expiration of the four-year period, a HUB that desires recertification must:

- (1) submit an application through the online HUB certification system; and
- (2) comply with the requirements specified in §20.288 of this title (relating to the Certification Process) which apply to the recertification process.

§20.291. Revocation.

(a) The comptroller shall revoke the certification of a HUB if the comptroller determines that a business does not meet the definition of HUB or that the business fails to provide requested information in connection with a certification review conducted by the comptroller. The comptroller shall provide the business with written notice of the proposed revocation. A HUB shall have 30 days from receipt of the written notice to provide written documentation through the online HUB certification system stating the basis for disputing the revocation. The comptroller shall evaluate the documentation to determine the HUB's eligibility, and provide the applicant with written notification of the decision.

(b) If a HUB is barred from participating in state contracts in accordance with Government Code, §2155.077, the comptroller shall revoke the certification of that business for a period commensurate with the debarment period.

(c) Businesses that have had their HUB status revoked may not be included in meeting statewide or state agency HUB utilization goals after the end of the last reporting period in which they held certification for at least one day.

§20.292. Certification and Compliance Reviews.

(a) The comptroller will conduct certification reviews of applicants and compliance reviews of certified HUBs. The comptroller may perform random or targeted compliance desk, virtual, or in-person, onsite reviews. The comptroller may verify the information submitted by a business is accurate, and the business continues to meet all HUB eligibility requirements after certification has been granted. Certification and compliance reviews of any business may be conducted upon determining a review is warranted.

(b) Businesses subject to certification and compliance reviews must provide the comptroller with any information requested to verify the eligibility of the business.

(c) The applicant's business documentation shall be reviewed to substantiate the required level of participation and control, and must demonstrate responsibility in the critical areas of the business' operation as set forth in §20.283 of the title (relating to Evaluation of Active Participation in the Control, Operation, and Management of Entities).

(d) If a business does not meet all eligibility requirements or does not provide requested information within the timeframe specified by the comptroller, the business will be denied certification or have its certification revoked.

§20.293. Historically Underutilized Business Directory.

The comptroller provides an online HUB directory that is updated daily to indicate current certification status. Access to the HUB directory is free and open to the public.

§20.294. Graduation Procedures.

(a) **Size Standards.** A HUB shall graduate from being eligible for HUB certification when it has maintained gross receipts or total employment levels during four consecutive years which, including all affiliates, exceed the U.S. Small Business Administration size standards set forth in 13 CFR Part 121.

(b) **Graduation.** Businesses that achieve the size standards identified in subsection (a) of this section have reached a competitive status in overcoming the effects of discrimination. The comptroller shall review, as part of the certification or recertification process, the financial revenue or relevant data of a business to determine whether the size standards identified in subsection (a) of this section have been achieved. When the comptroller determines that the business exceeds the applicable size standard, the comptroller shall inform the business that it has graduated and is no longer certified as a HUB, and shall remove the business from the HUB directory.

(c) **Effects of Graduation.**

(1) Businesses that have graduated from the HUB program may not be included in meeting statewide or state agency HUB utilization goals after the end of last reporting period in which they held certification for at least one day.

(2) A business that has graduated or does not qualify as a HUB under this title, shall be eligible to reapply for HUB certification only after demonstrating that it meets the qualifications for HUB, including the size standards.

(3) A business is considered a successor in interest if it has acquired substantially all of the assets and liabilities of another business. The application of the successor in interest to a HUB that has graduated will be treated as a reapplication of the HUB. The successor in interest applicant must show that it meets the size standards before it is considered eligible to apply.

§20.297. HUB Forum Programs for State Agencies.

(a) In accordance with Government Code, §2161.066, the comptroller shall design a program of forums in which HUBs are invited by state agencies to deliver technical and business presentations that demonstrate their capability to do business with the state agency:

(1) to senior managers and procurement personnel at state agencies that acquire goods and services of a type supplied by the HUBs; and

(2) to prime contractors or vendors with the state who may be subcontracting for goods and services of a type supplied by the HUBs.

(b) Each state agency with a biennial appropriation exceeding \$10 million shall participate in the forums by sending senior managers and procurement personnel to attend relevant presentations. The state agency will inform their prime contractors or vendors about presentations relevant to subcontracting opportunities for HUBs and small businesses. The comptroller and each agency that has a HUB coordinator shall:

(1) design its own forum program and model the program, to the extent appropriate, following the format established by the comptroller;

(2) sponsor presentations by HUBs at the state agency offices unless state agency facilities will not accommodate forum participants as determined and documented by the HUB Coordinator; and

(3) identify and invite HUBs to make marketing presentations on the types of goods and services they provide.

(c) Agencies may elect to implement forums individually or cooperatively with other agencies. The state agency's forum programs may include, but are not limited to, the following initiatives:

(1) providing marketing information that will direct HUBs to key staff within the agency;

(2) requesting other state agencies to assist in the preparation and planning of the forum when necessary;

(3) informing HUBs about potential contract opportunities and future awards; and

(4) preparing an annual report of each sponsored and cosponsored forum.

§20.298. *Mentor-Protégé Program.*

(a) The Mentor-Protégé Program is a program administered by the comptroller in accordance with Government Code, §2161.065, and implemented by state agencies. The purpose of the Mentor-Protégé Program is to foster long-term relationships between experienced contractors and HUBs and to increase the ability of HUBs to obtain and perform contracts and subcontracts for state agency business. Each state agency with a biennial appropriation that exceeds \$10 million shall implement the Mentor-Protégé Program.

(b) Each state agency that implements the Mentor-Protégé program shall consider:

(1) the needs of protégé businesses requesting to be mentored;

(2) the availability of mentors who possess unique skills, talents, and experience related to the mission of the state agency's program; and

(3) the state agency's staff and other resources.

(c) Agencies may elect to implement the Mentor-Protégé Program individually or in cooperation with other agencies, public entities, or private organizations. Agencies are encouraged to implement a Mentor-Protégé Program to address the needs of protégé businesses in the following areas:

(1) construction;

(2) commodities; and

(3) services.

(d) State agencies may consider, but are not limited to, the following factors in developing their Mentor-Protégé Program:

(1) internal procedures, including an application process, regarding the Mentor-Protégé Program which identifies the eligibility criteria and the selection criteria for mentors and potential HUB protégé businesses;

(2) recruitment of contractor mentors and protégés;

(3) documentation of the roles and expectations of the state agency, the mentor and the protégé;

(4) monitoring progress of mentor-protégé relationships;

(5) key agency resources including senior managers and procurement personnel to assist with the implementation of the program;

(6) partnerships with local governmental and nonprofit entities;

(7) the appropriate length of time for mentor-protégé relationships to continue (generally limited to four years);

(8) guidance related to the Mentor-Protégé Program in the Disparity Study; and

(9) assessment of the effectiveness of their Mentor-Protégé Program by conducting periodic surveys and interviews of mentors and protégés.

(e) A state agency's Mentor-Protégé Program implementation must include mentor eligibility and selection criteria. In determining the eligibility and selection of a mentor, state agencies shall require each mentor to be registered on the Centralized Master Bidders List (CMBL); and may additionally consider the following criteria:

(1) whether the mentor has extensive work experience and can provide developmental guidance in areas that meet the needs of the protégé, including but not limited to, business, financial, and personnel management; technical matters such as production, inventory control and quality assurance; marketing; insurance; equipment and facilities; and other related resources;

(2) whether the mentor is in "good standing" with the State of Texas and is not in violation of any state statutes, rules or governing policies;

(3) whether the mentor has mentoring experience;

(4) the number of protégés that a mentor can appropriately assist;

(5) whether the mentor has a successful past work history with the state agency;

(6) the amount of time a HUB has participated as a mentor in the program, or in other agencies' programs; and

(7) whether and to what extent the mentor and protégé businesses share management, board members, partners, current or former employees, or other resources that might indicate that they are related or affiliated businesses.

(f) A state agency's Mentor-Protégé Program implementation must include protégé eligibility and selection criteria. In determining the eligibility and selection of HUB protégés, state agencies may use the following criteria:

(1) whether the protégé is eligible and willing to become certified as a HUB;

(2) whether the protégé's business has been operational for at least one year;

(3) whether the protégé is willing to participate with a mentor and will identify the type of guidance that is needed for its development;

(4) whether the protégé is in "good standing" with the State of Texas and is not in violation of any state statutes, rules, or governing policies;

(5) whether the protégé is involved in a mentoring relationship with another contractor;

(6) the amount of time a HUB has participated as a protégé in the program, or in other agencies' programs; and

(7) whether and to what extent the mentor and protégé businesses share management, board members, partners, employees, or other resources that might indicate that they are related or affiliated businesses.

(g) The mentor and the protégé should agree on the nature of their involvement under the state agency's Mentor-Protégé Program. The state agency will monitor the progress of the relationship. The mentor and protégé relationship should be reduced to writing and may include, but is not limited to, the following:

(1) identification of the developmental areas in which the protégé needs guidance;

(2) the time period which the developmental guidance will be provided by the mentor;

(3) points of contact that will oversee the agreement of the mentor and protégé;

(4) procedure for a mentor to notify the protégé in advance if it intends to withdraw from the program or terminate the mentor-protégé relationship;

(5) procedure for a protégé to notify the mentor in advance if it intends to terminate the mentor-protégé relationship; and

(6) a mutually agreed upon timeline to report the progress of the mentor-protégé relationship to the state agency.

(h) The protégé must maintain its HUB certification status for the duration of the agreement.

(i) Each state agency must notify its mentors and protégés that participation is voluntary. The notice must include written documentation that participation in the state agency's Mentor-Protégé Program implementation is neither a guarantee of a contract opportunity nor a promise of business; but the program's intent is to foster positive long-term business relationships.

(j) State agencies may demonstrate their good faith under this section by submitting a supplemental letter with documentation to the comptroller with their HUB report or legislative appropriations request identifying the progress and testimonials of mentors and protégés that participate in the state agency's program.

(k) Each state agency that implements the Mentor-Protégé Program must report that information to the comptroller upon comple-

tion of a signed agreement by both parties. Information regarding the Mentor-Protégé Agreement shall be reported in a form prescribed by the comptroller within 21 calendar days after the agreement has been signed. The comptroller will register that agreement on the approved list of mentors and protégés. Approved Mentor-Protégé Agreements are valid for all state agencies in determining good faith effort for the particular area of subcontracting to be performed by the protégé as identified in the HUB subcontracting plan.

(l) The comptroller shall retain and make available to state agencies all registered Mentor-Protégé Agreements. The sponsoring state agency shall monitor and report the termination of an existing Mentor-Protégé Agreement that has been registered with the comptroller within 21 calendar days.

The agency certifies that legal counsel has reviewed the 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 July 20, 2023.

TRD-202302605

Don Neal

General Counsel Operations and Support Legal Services

Comptroller of Public Accounts

Effective date: August 9, 2023

Proposal publication date: February 3, 2023

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



REVIEW OF AGENCY RULES

This section contains notices of state agency rule review as directed by the Texas Government Code, §2001.039. Included here are proposed rule review notices, which

invite public comment to specified rules under review; and adopted rule review notices, which summarize public comment received as part of the review. The complete text of an agency's rule being reviewed is available in the *Texas Administrative Code* on the Texas Secretary of State's website.

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the website and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Office of Consumer Credit Commissioner

Title 7, Part 5

On behalf of the Finance Commission of Texas (commission), the Office of Consumer Credit Commissioner files this notice of intention to review and consider for re adoption, revision, or repeal, Texas Administrative Code, Title 7, Part 5, Chapter 83, Subchapter B, concerning Rules for Credit Access Businesses.

This rule review will be conducted pursuant to Texas Government Code, §2001.039. The commission will accept written comments received on or before the 30th day after the date this notice is published in the *Texas Register* as to whether the reasons for adopting these rules continue to exist.

The Office of Consumer Credit Commissioner, which administers these rules, believes that the reasons for adopting 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 Matthew Nance, General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705, or by email to rule.comments@occc.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 public comment period prior to final adoption or repeal by the commission.

TRD-202302642

Matthew Nance

General Counsel

Office of Consumer Credit Commissioner

Filed: July 25, 2023



Texas Education Agency

Title 19, Part 2

Texas Education Agency (TEA) proposes the review of 19 TAC Chapter 97, Planning and Accountability, Subchapter AA, Accountability and Performance Monitoring; Subchapter BB, Memoranda of Understanding; Subchapter EE, Accreditation Status, Standards, and Sanctions; and Subchapter FF, Commissioner's Rules Concerning the Job Corps Diploma Program, pursuant to Texas Government Code, §2001.039.

As required by Texas Government Code, §2001.039, TEA will accept comments as to whether the reasons for adopting Chapter 97, Subchapters AA, BB, EE, and FF, continue to exist.

The public comment period on the review begins August 4, 2023, and ends September 4, 2023. A form for submitting public comments on the proposed rule review is available on the TEA website at <https://tea.texas.gov/about-tea/laws-and-rules/commissioner-rules-tac/commissioner-of-education-rule-review>.

TRD-202302659

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Filed: July 26, 2023



Health and Human Services Commission

Title 26, Part 1

The Texas Health and Human Services Commission (HHSC) proposes to review and consider for re adoption, revision, or repeal the chapter listed below, in its entirety, contained in Title 26, Part 1, of the Texas Administrative Code:

Chapter 551, Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions

Subchapter A Introduction

Subchapter B Application Procedures

Subchapter C Standards for Licensure

Subchapter D General Requirements for Facility Construction

Subchapter F Inspections, Surveys, and Visits

Subchapter G Abuse, Neglect, and Exploitation; Complaint and Incident Reports and Investigations

Subchapter H Enforcement

Subchapter J Respite Care

Subchapter L Provisions Applicable to Facilities Generally

This review is conducted in accordance with the requirements of Texas Government Code §2001.039, which requires state agencies, every four years, to assess whether the initial reasons for adopting a rule continue to exist. After reviewing its rules, the agency will readopt, readopt with amendments, or repeal its rules.

Comments on the review of Chapter 551, Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions, may be submitted to HHSC Rules Coordination Office, Mail Code 4102, P.O. Box 13247, Austin, Texas 78711-3247, or by email to HHSCRulesCoordinationOffice@hhs.texas.gov. When emailing com-

ments, please indicate "Comments on Proposed Rule Review Chapter 551" in the subject line. The deadline for comments is on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register*.

The text of the rule sections being reviewed will not be published, but may be found in Title 26, Part 1, of the Texas Administrative Code or on the Secretary of State's website at: [https://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac_view=4&ti=26&pt=1&ch=551](https://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=4&ti=26&pt=1&ch=551).

TRD-202302602
Jessica Miller
Director, Rules Coordination Office
Health and Human Services Commission
Filed: July 19, 2023

Adopted Rule Reviews

Department of Information Resources

Title 1, Part 10

The Texas Department of Information Resources (department) has completed its review of 1 Texas Administrative Code (TAC) Chapter 204, concerning Interagency Contracts for Information Resources Technology, pursuant to Texas Government Code § 2001.039, which requires agency rules to be reviewed at least every four years. The department determined the reasons for initially adopting 1 TAC Chapter 204 no longer exist.

Notice of the rule review was published in the May 18, 2018, issue of the *Texas Register* (43 TexReg 3249). No comments were received as a result of that notice.

As a result of the rule review, the department published proposed amendments repealing 1 TAC Chapter 204 in the May 29, 2020, issue of the *Texas Register* (45 TexReg 3559). The DIR Board adopted the repeal of 1 TAC Chapter 204 at the open meeting of the DIR Board of Directors on August 20, 2020, the adoption notice for which was published in the September 4, 2020, issue of the *Texas Register* (45 TexReg 6225).

The department's review of 1 TAC Chapter 204 is concluded.

TRD-202302625
Joshua Godbey
General Counsel
Department of Information Resources
Filed: July 24, 2023

The Texas Department of Information Resources (department) has completed its review of 1 Texas Administrative Code (TAC) Chapter 211, concerning Information Resources Managers, pursuant to Texas Government Code § 2001.039, which requires agency rules to be reviewed at least every four years. The department determined the reasons for initially adopting 1 TAC Chapter 211 continue to exist.

Notice of the rule review was published in the November 22, 2019, issue of the *Texas Register* (44 TexReg 7189). No comments were received as a result of that notice.

As a result of the rule review, the department published proposed amendments to 1 TAC Chapter 211 in the November 11, 2022, issue of the *Texas Register* (47 TexReg 7500). The DIR Board adopted the amended rules at the open meeting of the DIR Board of Directors on February 16, 2023, the adoption notice for which were published in the March 3, 2023, issue of the *Texas Register* (48 TexReg 1279).

The department's review of 1 TAC Chapter 211 is concluded.

TRD-202302624
Joshua Godbey
General Counsel
Department of Information Resources
Filed: July 24, 2023

Texas Commission on Environmental Quality

Title 30, Part 1

The Texas Commission on Environmental Quality (commission) has completed its Rule Review of 30 Texas Administrative Code (TAC) Chapter 17, Tax Relief for Property Used for Environmental Protection, as required by Texas Government Code, §2001.039. Texas Government Code, §2001.039, requires a state agency to review and consider for readoption, readoption with amendments, or repeal each of its rules every four years. The commission published its Notice of Intention to Review for these rules in the March 10, 2023, issue of the *Texas Register* (48 TexReg 1454).

The review assessed whether the initial reasons for adopting the rules continue to exist and the commission has determined that those reasons exist. The rules in Chapter 17 are necessary to implement Texas Tax Code, §11.31, Pollution Control Property, and the Texas Constitution, Article 8, §1-1, Exemption from Ad Valorem Taxation of Property Used for Control of Air, Water or Land Pollution. The rules in Chapter 17 provide the process for owners of eligible property to apply for a determination of pollution control use for property installed to meet or exceed environmental laws, rules, or regulations. Chapter 17 also establishes the procedures for the executive director to manage and process those applications. Additionally, Chapter 17 provides the process for applicants or appraisal districts to appeal a determination made by the executive director to the commission.

Public Comment

The public comment period closed on April 10, 2023. The commission did not receive comments on the rules review of this chapter.

As a result of the review, the commission finds that the reasons for adopting the rules in 30 TAC Chapter 17 continue to exist and readopts these sections in accordance with the requirements of Texas Government Code, §2001.039.

TRD-202302608
Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: July 21, 2023

The Texas Commission on Environmental Quality (commission) has completed its Rule Review of 30 Texas Administrative Code (TAC) Chapter 18, Voter-Approval Tax Relief for Pollution Control Requirements, as required by Texas Government Code, §2001.039. Texas Government Code, §2001.039, requires a state agency to review and consider for readoption, readoption with amendments, or repeal each of its rules every four years. The commission published its Notice of Intention to Review for these rules in the March 10, 2023, issue of the *Texas Register* (48 TexReg 1454).

The review assessed whether the initial reasons for adopting the rules continue to exist and the commission has determined that those reasons exist. The rules in Chapter 18 are necessary to implement the Voter-Approval Tax Rate Relief for Pollution Control Requirements established

in Texas Tax Code, §26.045, which helps ensure political subdivisions have funding to pay for facilities, devices, or methods for the control of air, water, or land pollution that is necessary to meet the requirements of a permit issued by the commission.

Public Comment

The public comment period closed on April 10, 2023. The commission did not receive comments on the rules review of this chapter.

As a result of the review, the commission finds that the reasons for adopting the rules in 30 TAC Chapter 18 continue to exist and readopts these sections in accordance with the requirements of Texas Government Code, §2001.039.

TRD-202302610

Charmaine Backens

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: July 21, 2023



The Texas Commission on Environmental Quality (commission) has completed its Rule Review of 30 Texas Administrative Code (TAC) Chapter 298, Environmental Flow Standards for Surface Water, as required by Texas Government Code, §2001.039. Texas Government Code, §2001.039, requires a state agency to review and consider for re-adoption, re-adoption with amendments, or repeal each of its rules every four years. The commission published its Notice of Intent to Review these rules in the March 10, 2023, issue of the *Texas Register* (48 TexReg 1454).

The review assessed whether the initial reasons for adopting the rules continue to exist and the commission has determined that those reasons exist. The Chapter 298 rules are necessary to implement requirements in Texas Water Code, Chapter 11. Chapter 298 contains the environmental flow standards for specified river basin and bay systems in Texas. These rules provide for environmental flow standards that apply to certain water rights applications, including specific schedules of flow quantities for different locations in a river system, as well as a schedule for revision of the adopted environmental flow standards.

Public Comment

The public comment period closed on April 10, 2023. The commission did not receive comments on the rules review of this chapter.

As a result of the review the commission finds that the reasons for adopting the rules in 30 TAC Chapter 298 continue to exist and readopts these sections in accordance with the requirements of Texas Government Code, §2001.039.

TRD-202302611

Charmaine Backens

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: July 21, 2023



The Texas Commission on Environmental Quality (commission) has completed its Rule Review of 30 Texas Administrative Code (TAC) Chapter 334, Underground and Aboveground Storage Tanks, as required by Texas Government Code, §2001.039. Texas Government Code, §2001.039, requires a state agency to review and consider for re-adoption, re-adoption with amendments, or repeal each of its rules every four years. The commission published its Notice of Intent to Review these rules in the March 10, 2023, issue of the *Texas Register* (48 TexReg 1454).

The review assessed whether the reasons for initially adopting the rules continue to exist, and the commission has determined that those reasons do continue to exist. The rules in Chapter 334 are required because the relevant stated policy and the purposes of the Texas Water Code (TWC), Chapter 26, Subchapter I, are to: (1) maintain and protect the quality of groundwater and surface water resources in the state from certain substances in underground storage tanks (UST) and aboveground storage tanks (AST) that may pollute groundwater and surface water resources; and (2) require the use of all reasonable methods, including risk-based corrective action, to implement this policy. TWC, §26.345, authorizes the commission to develop a regulatory program regarding underground and aboveground storage tanks, and to adopt rules necessary to carry out that purpose. Additionally, TWC, Chapter 26, Subchapter K, establishes occupational licensing and registration requirements for professionals who install, repair, or remove USTs and professionals that perform corrective actions for releases from ASTs or USTs.

The commission establishes a regulatory program in Chapter 334 and addresses topics such as: tank registration (authorized by TWC, §26.346); tank standards (authorized by TWC, §26.347); leak detection and record maintenance (authorized by TWC, §26.348); reporting of releases and corrective action (authorized by TWC, §26.349); tank closure requirements (authorized by TWC, §26.350); corrective action requirements (authorized by TWC, §26.351); financial responsibility requirements (authorized by TWC, §26.352); and occupational licensing for UST contractors, UST on-site supervisors, corrective action specialists, and corrective action project managers (authorized by TWC, §26.452, §26.456, §26.364, and §26.366).

Additionally, Texas' program is an "approved state program," meaning that the State of Texas is approved to administer and enforce an underground storage tank program in lieu of the federal program under Subtitle I of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 United States Code, §6991 *et seq.* Texas' program is administered by the TCEQ.

Public Comment

The public comment period closed on April 10, 2023. The commission did not receive comments on the rules review of this chapter.

As a result of the review the commission finds that the reasons for initially adopting the rules in 30 TAC Chapter 334 continue to exist and readopts these sections in accordance with the requirements of Texas Government Code, §2001.039.

TRD-202302612

Charmaine Backens

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: July 21, 2023



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 421, concerning Standards for 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 December 23, 2022, issue of the *Texas Register* (47 TexReg 8759).

The commission has determined that the reasons for initially adopting the rule continue to exist and readopts the chapter with amended changes to §421.17 Requirement to Maintain Certification.

This concludes the review of Texas Administrative Code, Title 37, Part 13, Chapter 421.

TRD-202302640

Mike Wisko

Agency Chief

Texas Commission on Fire Protection

Filed: July 25, 2023



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 October 15, 2021, issue of the *Texas Register* (46 TexReg 7079).

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 423.

TRD-202302652

Mike Wisko

Agency Chief

Texas Commission on Fire Protection

Filed: July 25, 2023



The Texas Commission on Fire Protection (commission) adopts the review of Texas Administrative Code, Title 37, Part 13, Chapter 431, concerning Fire Investigator. 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 December 23, 2022, issue of the *Texas Register* (47 TexReg 8760).

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 431.

TRD-202302650

Mike Wisko

Agency Chief

Texas Commission on Fire Protection

Filed: July 25, 2023



The Texas Commission on Fire Protection (commission) adopts the review of Texas Administrative Code, Title 37, Part 13, Chapter 433, concerning Driver/Operator. 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 December 23, 2022, issue of the *Texas Register* (47 TexReg 8760).

The commission has determined that the reasons for initially adopting the rule continue to exist and readopts the chapter with amended changes to §433.5 Examination Requirements.

This concludes the review of Texas Administrative Code, Title 37, Part 13, Chapter 433.

TRD-202302641

Mike Wisko

Agency Chief

Texas Commission on Fire Protection

Filed: July 25, 2023



The Texas Commission on Fire Protection (commission) adopts the review of Texas Administrative Code, Title 37, Part 13, Chapter 437, concerning Fees. 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 December 23, 2022, issue of the *Texas Register* (47 TexReg 8760).

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 437.

TRD-202302651

Mike Wisko

Agency Chief

Texas Commission on Fire Protection

Filed: July 25, 2023



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 December 23, 2022, issue of the *Texas Register* (47 TexReg 8761).

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 441.

TRD-202302633

Mike Wisko

Agency Chief

Texas Commission on Fire Protection

Filed: July 25, 2023



The Texas Commission on Fire Protection (commission) adopts the review of Texas Administrative Code, Title 37, Part 13, Chapter 443, concerning Certification Curriculum Manual. 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 December 23, 2022, issue of the *Texas Register* (47 TexReg 8761).

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 443.

TRD-202302647

Mike Wisko

Agency Chief

Texas Commission on Fire Protection

Filed: July 25, 2023



The Texas Commission on Fire Protection (commission) adopts the review of Texas Administrative Code, Title 37, Part 13, Chapter 447, concerning Part-Time Fire Protection Employee. 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 December 23, 2022, issue of the *Texas Register* (47 TexReg 8761).

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 447.

TRD-202302634

Mike Wisko

Agency Chief

Texas Commission on Fire Protection

Filed: July 25, 2023



The Texas Commission on Fire Protection (commission) adopts the review of Texas Administrative Code, Title 37, Part 13, Chapter 449, concerning Head of Fire Department. 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 December 23, 2022, issue of the *Texas Register* (47 TexReg 8761).

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 449.

TRD-202302635

Mike Wisko

Agency Chief

Texas Commission on Fire Protection

Filed: July 25, 2023



The Texas Commission on Fire Protection (commission) adopts the review of Texas Administrative Code, Title 37, Part 13, Chapter 451, concerning Fire Officer. 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 December 23, 2022, issue of the *Texas Register* (47 TexReg 8762).

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 451.

TRD-202302636

Mike Wisko

Agency Chief

Texas Commission on Fire Protection

Filed: July 25, 2023



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 December 23, 2022, issue of the *Texas Register* (47 TexReg 8762).

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-202302637

Mike Wisko

Agency Chief

Texas Commission on Fire Protection

Filed: July 25, 2023



The Texas Commission on Fire Protection (commission) adopts the review of Texas Administrative Code, Title 37, Part 13, Chapter 455, concerning Minimum Standards for Wildland Fire Protection 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 December 23, 2022, issue of the *Texas Register* (47 TexReg 8762).

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 455.

TRD-202302638

Mike Wisko

Agency Chief

Texas Commission on Fire Protection

Filed: July 25, 2023



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 December 23, 2022, issue of the *Texas Register* (47 TexReg 8762).

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-202302639

Mike Wisko
Agency Chief
Texas Commission on Fire Protection
Filed: July 25, 2023



IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Office of the Attorney General

Request for Applications (RFA) for the Support Adoption Grant Program

The Office of the Attorney General (OAG) is soliciting applications for projects that support the Support Adoption Grant Program. The purpose of the OAG Support Adoption Grant Program is to provide funds, using a competitive allocation method, as described in Chapter 402 of the Government Code.

Applicable Funding Source for Support Adoption Grant Program:

The Support Adoption Grant Program receives funding from a separate trust fund established by the Comptroller of Public Accounts outside the general revenue fund that the OAG is authorized to administer to make grants to an eligible organization. The Support Adoption account is authorized by Chapter 504.662 of the Transportation Code, and Chapter 402.036 of the Government Code, and is funded by fees collected for the purchase of a Support Adoption License Plate, as well as gifts, grants, donations and legislative appropriations. All funding is contingent upon an appropriation to the OAG by the Texas Legislature. The OAG makes no commitment that an Application, once submitted, or a grant, once funded, will receive subsequent funding.

Eligibility Requirements:

An Applicant Organization must be a Non-Profit, as well as either an 1) adoption agency, 2) as defined by Family Code Section 162.402; an authorized agency, as defined by Family Code Section 162.402; or 3) be an eligible organization, as defined by Government Code Section 402.036(g)(1), to apply for the Support Adoption Grant Program. Non-profit Applicants with 26 U.S.C. § 501(c)(3) status must be in good standing with the Comptroller of Public Accounts and "in existence" with the Secretary of State.

- An adoption agency is a person, other than a natural parent or guardian of a child, who plans for the placement of or places a child in the home of a prospective adoptive parent. See Texas Family Code section 162.402(4).

- An authorized agency is a public agency authorized to care for or to place children for adoption or a private entity approved for that purpose by the Department of Family and Protective Services (DFPS) through a license, certification, or other means. The term includes a licensed child-placing agency or a previously licensed child-placing agency that has ceased operations and has transferred its adoption records to the vital statistics unit or an agency authorized by the DFPS to place children for adoption and a licensed child-placing agency that has been acquired by, merged with, or otherwise succeeded by an agency authorized by the DFPS to place children for adoption. See Texas Family Code section 162.402(7).

- Other eligible organizations must meet all of the following requirements:

-- An organization that provides services in this state and is exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, by being listed as an exempt charitable organization under Section 501(c)(3) of that code;

-- Provides counseling and material assistance to pregnant women who are considering placing their children for adoption or to prospective adoptive parents;

-- Does not charge for services provided, except for adoption-related costs or fees;

-- Does not provide abortions or abortion-related services, or make referrals to abortion providers;

-- Is not affiliated with an organization that provides abortions or abortion-related services or makes referrals to abortion providers; and

-- Does not contract with an organization that provides abortions or abortion-related services or makes referrals to abortion providers.

Eligibility: The OAG will initially screen each application for eligibility. Applications will be deemed ineligible if the application is submitted by an ineligible applicant; the application is not filed in the manner and form required by the Application Kit; the application is filed after the deadline established in the Application Kit; or the application does not meet other requirements as stated in the RFA and the Application Kit.

How to Obtain Application Kit: The OAG will post the Application Kit on the OAG's website at <https://www.texasattorneygeneral.gov/divisions/grants>. Updates and other helpful reminders about the application process will also be posted at this location. Potential Applicants are encouraged to refer to the site regularly.

Deadlines and Filing Instructions for the Grant Application:

In order to apply, the Applicant must email the following point of contact information to Grants@oag.texas.gov:

- First Name

- Last Name

- Email Address

- Organization Legal Name

The point of contact will receive a response from the Grants@oag.texas.gov email address. If the Organization Legal Name provided is a Non-Profit with 26 U.S.C. § 501(c)(3) status, in good standing with the Comptroller of Public Accounts, and "in existence" with the Secretary of State, the point of contact will receive the FY 2024-2025 Support Adoption Excel Grant Application to complete and submit to Grants@oag.texas.gov by the deadline. If a request is received from an individual (not representing an organization) or an agency which is not a Non-Profit, the requester will receive notice that they did not meet the criteria to receive a grant application.

Application Deadline: The Applicant must submit its application, including all required attachments, to the OAG by the deadline established in the Application Kit.

Filing Instructions: Strict compliance with the submission instructions, as provided in the Application Kit, is required. The OAG will **not** consider an Application if it is not submitted by the due date. The OAG will **not** consider an Application if it is not in the manner and form as stated in the Application Kit.

Minimum and Maximum Amounts of Funding Available: Minimum and maximum amounts of funding are subject to change as stated in the Application Kit. The minimum grant request the OAG will consider is \$2,500. As of the date this Application Kit is published, the amount available in the Support Adoption account to award is approximately \$30,000. Applications requesting an amount below the minimum will not be considered.

Start Date and Length of Grant Contract Period: The term of this grant contract is up to two years from November 1, 2023 through August 31, 2025, subject to and contingent on funding and approval by the OAG.

No Match or Volunteer Requirements: There are no match or volunteer requirements.

Award Criteria: The OAG will make funding decisions that support the efficient and effective use of public funds. Scoring and review components will include, but are not limited to, information provided by the applicant on the proposed project activities and budget. Funding decisions will use a competitive allocation method. All grant decisions including, but not limited to, eligibility, evaluation and review, and funding rest completely within the discretionary authority of the OAG. The decisions made by the OAG are final and are not subject to appeal.

Grant Purpose Area: All grant projects must address one or more of the purpose areas as stated in the Application Kit.

Funding for Applications may be prioritized for pre-adoption counseling, post-adoption counseling and advertising relating to adoption. Applicants are encouraged to prioritize their needs and explain the reason for their funding request.

Prohibitions on Use of Support Adoption Grant Program Funds: OAG grant funds may not be used to support activities related to providing abortions or abortion-related services, or making referrals to abortion providers. OAG grant funds may not be used to support or pay the costs of equipment, overtime, out-of-state travel, dues, or lobbying; any portion of the salary or any other compensation for an elected government official; the purchase or lease of vehicles; the purchase of promotional items or recreational activities; costs of travel that are unrelated to the direct delivery of services that support the OAG grant-funded program; the costs for consultants or vendors who participate directly in writing a grant application; or for any unallowable costs set forth in applicable state or federal law, rules, regulations, guidelines, policies, procedures or cost principles. Grant funds may not be used to purchase any other products or services the OAG identifies as inappropriate or unallowable within this RFA or the Application Kit.

OAG Contact Person: If additional information is needed, contact the Grants Administration Division at Grants@oag.texas.gov or (512) 936-0792.

TRD-202302607
Austin Kinghorn
General Counsel
Office of the Attorney General
Filed: July 20, 2023

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 07/31/23 - 08/06/23 is 18% for consumer¹ credit.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 07/31/23 - 08/06/23 is 18% for commercial² credit.

¹ Credit for personal, family, or household use.

² Credit for business, commercial, investment, or other similar purpose.

TRD-202302661
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: July 26, 2023

Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **September 5, 2023**. TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on **September 5, 2023**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission's enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: City of Ballinger; DOCKET NUMBER: 2023-0547-PWS-E; IDENTIFIER: RN101409928; LOCATION: Ballinger, Runnels 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; PENALTY: \$3,475; ENFORCEMENT COORDINATOR: Miles Caston, (512) 239-4593; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(2) COMPANY: DEER PARK REFINING LIMITED PARTNERSHIP; DOCKET NUMBER: 2023-0340-AIR-E; IDENTIFIER:

RN111372785; LOCATION: Deer Park, Harris County; TYPE OF FACILITY: petroleum refinery; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(c), 116.715(a), and 122.143(4), Flexible Permit Numbers 21262 and PSDTX928M1, Special Conditions Number 1, Federal Operating Permit Number O1669, General Terms and Conditions and Special Terms and Conditions Number 24, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$13,375; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$13,375; ENFORCEMENT COORDINATOR: Desmond Martin, (512) 239-2814; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(3) COMPANY: Eastman Chemical Texas City, Incorporated; DOCKET NUMBER: 2023-0598-AIR-E; IDENTIFIER: RN100212620; LOCATION: Texas City, Galveston County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §§101.20(2), 113.130, 116.115(c), and 122.143(4), 40 Code of Federal Regulations (CFR) §63.182(d)(1), New Source Review Permit Number 5260B, Special Conditions Number 5, Federal Operating Permit Number O1400, General Terms and Conditions and Special Terms and Conditions Numbers 1.A and 16, and Texas Health and Safety Code, §382.085(b), by failing to submit the 40 CFR Part 63 Subpart H semiannual periodic report; PENALTY: \$7,800; ENFORCEMENT COORDINATOR: Johnnie Wu, (512) 239-2524; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(4) COMPANY: ExxonMobil Oil Corporation; DOCKET NUMBER: 2023-0194-AIR-E; IDENTIFIER: RN102450756; LOCATION: Beaumont, Jefferson County; TYPE OF FACILITY: oil refinery; RULES VIOLATED: 30 TAC §§101.20(3), 116.715(a), and 122.143(4), New Source Review Permit Numbers 49138, GHGPSDTX161M1, PSDTX1506M1, PSDTX768M2, PSDTX799M1, PSDTX802M1, PSDTX932M1, and PSDTX992M2, Special Conditions Number 1, Federal Operating Permit Number O2000, General Terms and Conditions and Special Terms and Conditions Number 18, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$25,000; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$12,500; ENFORCEMENT COORDINATOR: Johnnie Wu, (512) 239-2524; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(5) COMPANY: Ferguson Food Mart LLC dba EZ Stop 3; DOCKET NUMBER: 2022-0965-PST-E; IDENTIFIER: RN110581154; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued underground storage tank (UST) delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; and 30 TAC §344.50(b)(1)(B) and TWC, §26.3475(c)(1), by failing to monitor the UST installed on or after January 1, 2009, in a manner which will detect a release at a frequency of at least once every 30 days by using interstitial monitoring; PENALTY: \$32,713; ENFORCEMENT COORDINATOR: Karolyn Kent, (512) 239-2536; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: RIVER CITY READY MIX, INCORPORATED; DOCKET NUMBER: 2022-0212-AIR-E; IDENTIFIER: RN100844026; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: concrete batch plant; RULES VIOLATED: 30 TAC

§116.110(a) and Texas Health and Safety Code, §382.0518(a) and §382.085(b), by failing to obtain authorization prior to constructing or modifying a source of air contaminants; PENALTY: \$7,500; ENFORCEMENT COORDINATOR: Heather Lancour, (806) 468-0507; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 492-3096.

(7) COMPANY: Texas Carriers, LLC; DOCKET NUMBER: 2022-0652-AIR-E; IDENTIFIER: RN111022695; LOCATION: Laredo, Webb County; TYPE OF FACILITY: trucking company; RULES VIOLATED: 30 TAC §101.4 and Texas Health and Safety Code, §382.085(a) and (b), by failing to prevent nuisance dust conditions; PENALTY: \$5,625; ENFORCEMENT COORDINATOR: Desmond Martin, (512) 239-2814; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(8) COMPANY: UNION WATER SUPPLY CORPORATION; DOCKET NUMBER: 2022-0155-MWD-E; IDENTIFIER: RN102915501; LOCATION: Garciasville, Starr County; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: 30 TAC §305.125(1) and (17) and §319.7(d) and Texas Pollutant Discharge Elimination System Permit Number WQ0015867001, Monitoring and Reporting Requirements Number 1, by failing to timely submit monitoring results at the intervals specified in the permit; PENALTY: \$930; ENFORCEMENT COORDINATOR: Taylor Williamson, (512) 239-2097; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(9) COMPANY: Utilities Investment Company, Incorporated; DOCKET NUMBER: 2022-0173-PWS-E; IDENTIFIER: RN101260669; LOCATION: Trinity, Walker County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(j)(1)(A) and Texas Health and Safety Code (THSC), §341.0351, by failing to notify the Executive Director and receive approval prior to making any significant change or addition where the change in the existing distribution system results in an increase or decrease in production, treatment, storage, or pressure maintenance capacity; 30 TAC §290.42(l), by failing to compile and maintain a thorough and up-to-date plant operations manual for operator review and reference; 30 TAC §290.45(b)(1)(A)(i) and THSC, §341.0315(c), by failing to provide a well capacity of 1.5 gallons per minute per connection; and 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the system's facilities and equipment; PENALTY: \$6,650; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 881-6991; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(10) COMPANY: Zapata County; DOCKET NUMBER: 2021-1578-PWS-E; IDENTIFIER: RN101218949; LOCATION: San Ygnacio, Zapata County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(l)(5), by failing to meet the conditions for an issued exception; 30 TAC §290.42(e)(7)(A)(ii), by failing to ensure when chlorine and ammonia are added to distribution water that has a chloramine residual, that the ammonia is added first; 30 TAC §290.45(b)(2)(H) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to maintain logs of all emergency power use and maintenance and keep on file for a period of not less than three years and make the logs available, upon request, for executive director (ED) review; 30 TAC §290.46(d)(2)(B) and §290.110(b)(4) and THSC, §341.0315(c), by failing to maintain a disinfectant residual of at least 0.5 milligrams per liter of chloramine throughout the distribution system at all times; 30 TAC §290.46(f)(2) and (3)(A)(ii)(I), by failing to maintain water works operation and maintenance records and make them readily available for review by the ED upon request; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping

practices to ensure the good working condition and general appearance of the system's facilities and equipment; 30 TAC §290.46(s)(2)(B)(iii) and (iv), by failing to check the calibration of the facility's five on-line turbidimeters with primary standards at least once every 90 days, and check the calibration with a primary standard, a secondary standard, or the manufacturer's proprietary calibration confirmation device or by comparing the results from the on-line unit with the results from a properly calibrated benchtop unit at least once every week; 30 TAC §290.46(s)(2)(C)(ii), by failing to verify the accuracy of the facility's continuous disinfectant analyzer at least once every seven days with a chlorine solution of known concentration or by comparing the results from the on-line analyzer with the results of an approved benchtop method; 30 TAC §290.46(s)(2)(D), by failing to verify the accuracy of the analyzer used to determine the effectiveness of chloramination in accordance with the manufacturer's recommendations every 90 days; 30 TAC §290.110(c)(1)(B)(i), by failing to take three grab samples a day to monitor the disinfectant residual of the water at each entry point; 30 TAC §290.110(c)(4)(E), by failing to monitor the total chlorine residual downstream of any chlorine and ammonia injection points in the distribution system weekly and whenever the chemical dose is changed; 30 TAC §290.110(c)(5)(C), by failing to collect and analyze weekly samples to ensure that chemical addition is effective and the proper chlorine to ammonia ratio is achieved or whenever the chemical dosage is changed; 30 TAC §290.111(e)(3)(B), by failing to properly monitor the turbidity level of the combined filter effluent at least every four hours that the system serves water to the public; 30 TAC §290.111(e)(5)(C)(iii), by failing to ensure that if the continuous turbidity monitoring equipment malfunctions, the system conducts grab sampling every four hours in lieu of continuous monitoring, but for no more than 14 working days following the failure of the equipment; and 30 TAC §290.111(h), by failing to properly complete the Surface Water Monthly Operating Reports submitted to the commission; PENALTY: \$9,010; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$7,208; ENFORCEMENT COORDINATOR: Samantha Salas, (512) 239-1543; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

TRD-202302629

Gitanjali Yadav

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: July 25, 2023



Correction of Error

The Texas Commission on Environmental Quality (TCEQ) published proposed amendments to 30 TAC §290.47 in the July 14, 2023, issue of the *Texas Register* (48 TexReg 3835). Due to an error by TCEQ, the text for subsection (a) was published incorrectly. The new language listed for paragraphs (1) and (2) of subsection (a) was included in error. The correct text for subsection (a) is as follows:

(a) Appendix A. Recognition as a Superior or Approved Public Water System.

Figure: 30 TAC §290.47(a) (No change.)

TRD-202302615

Charmaine Backens

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: July 21, 2023



Correction of Error and Announcement of Additional Public Hearing for Proposed Revisions to 30 TAC Chapter 50

In the July 14, 2023 issue of the *Texas Register* (48 TexReg 3937), the Texas Commission on Environmental Quality (TCEQ or commission) published notice of public hearing on the proposed revisions to 30 Texas Administrative Code Chapter 50 (Project No. 2023-130-050-LS). The commission incorrectly stated that we will hold a public hearing on Monday, August 1, 2023. The correct date is Tuesday, August 1, 2023.

Due to this error, the commission will hold the hearing on Tuesday, August 1, 2023 and an additional hybrid virtual and in-person public hearing on this proposal in Austin on Tuesday, August 15, 2023, at 10:00 a.m. in Building E, Room 201S at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Individuals who plan to attend the hearing virtually and want to provide oral comments and/or want their attendance on record must register by Friday, August 11, 2023. To register for the hearing, please email Rules@tceq.texas.gov and provide the following information: your name, your affiliation, your email address, your phone number, and whether or not you plan to provide oral comments during the hearing. Instructions for participating in the hearing will be sent on Monday, August 14, 2023, to those who register for the hearing.

Members of the public who do not wish to provide oral comments but would like to view the hearing may do so at no cost at:

https://teams.microsoft.com/l/meetup-join/19%3ameeting_MTRi-ODdkZGMtOTM2OS00ZDJiLTkzODQtNjk0NmJkYTI3M2Ex%40thread.v2/0?context=%7b%22Tid%22%3a%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2c%22Oid%22%3a%22e74a40ea-69d4-469d-a8ef-06f2c9ac2a80%22%2c%22IsBroadcastMeeting%22%3atru%7d

If you need translation services, please contact TCEQ at 800-687-4040. Si desea información general en español, puede llamar al 800-687-4040.

The comment period will be extended until Tuesday, August 15, 2023. Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to fax4808@tceq.texas.gov. Electronic comments may be submitted at: <https://tceq.commentinput.com/>. File size restrictions may apply to comments being submitted via the TCEQ Public Comment system. All comments should reference Rule Project Number 2023-130-050-LS. For further information, please contact Amy Browning, Environmental Law Division, (512) 239-0891.

TRD-202302617

Charmaine Backens

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: July 24, 2023



Notice of an Application to Amend a Certificate of Adjudication Application No. 12-2948B and Application No. 12-2949B

Notices Issued July 25, 2023

Chester E. Dickson and Linda Diane Dickson (Owners/ Applicants), 2699 Sparta Road, Belton, Texas 76513, seek an amendment to Certificate of Adjudication No. 12-2948 to increase the maximum combined diversion rate from 2.23 cfs (1,000 gpm) to 6.69 cfs (3,000 gpm), and to add a place of use for agricultural purposes in Bell County. More information on the application and how to participate in the permitting process is given below.

The application and fees were received on November 8, 2019. Additional information was received on March 13 and 16, 2020. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on April 27, 2020.

The Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if granted, would include special conditions including, but not limited to, stream-flow restrictions. The application, technical memoranda, and Executive Director's draft permit are available for viewing on the TCEQ web page at: https://www.tceq.texas.gov/permitting/water_rights/wr-permitting/view-wr-pend-apps.

Alternatively, you may request a copy of the documents by contacting the TCEQ Office of the Chief Clerk by phone at (512) 239-3300 or by mail at TCEQ OCC, Notice Team (MC-105), P.O. Box 13087, Austin, Texas 78711.

Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice. A public meeting is intended for the taking of public comment and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application.

The TCEQ may grant a contested case hearing on this application if a written hearing request is filed within 30 days from the date of newspaper publication of this notice. The Executive Director may approve the application unless a written request for a contested case hearing is filed within 30 days after newspaper publication of this notice.

To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" (4) a brief and specific description of how you would be affected by the application in a way not common to the general public; and (5) the location and distance of your property relative to the proposed activity. You may also submit proposed conditions to the requested permit which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the permit and will forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments, or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at <https://www14.tceq.texas.gov/epic/eComment/> by entering ADJ 2948 in the search field. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Public Education Program at (800) 687-4040. General information regarding the TCEQ can be found at our web site

at www.tceq.texas.gov. Si desea información en español, puede llamar al (800) 687-4040 o por el internet al <http://www.tceq.texas.gov>.

APPLICATION NO. 12-2949B

Chester E. Dickson and Linda Diane Dickson (Owners/Applicants), 2699 Sparta Road, Belton, Texas 76513, seek an amendment to Certificate of Adjudication No. 12-2949 to increase the maximum combined diversion rate from 2.23 cfs (1,000 gpm) to 6.69 cfs (3,000 gpm) and add a place of use for agricultural purposes in Bell County. More information on the application and how to participate in the permitting process is given below.

The application and fees were received on November 8, 2019. Additional information was received on March 13 and 16, 2020. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on April 27, 2020.

The Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if granted, would include special conditions including, but not limited to, stream-flow restrictions. The application, technical memoranda, and Executive Director's draft permit are available for viewing on the TCEQ web page at: https://www.tceq.texas.gov/permitting/water_rights/wr-permitting/view-wr-pend-apps. Alternatively, you may request a copy of the documents by contacting the TCEQ Office of the Chief Clerk by phone at (512) 239-3300 or by mail at TCEQ OCC, Notice Team (MC-105), P.O. Box 13087, Austin, Texas 78711.

Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice. A public meeting is intended for the taking of public comment, and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application.

The TCEQ may grant a contested case hearing on this application if a written hearing request is filed within 30 days from the date of newspaper publication of this notice. The Executive Director may approve the application unless a written request for a contested case hearing is filed within 30 days after newspaper publication of this notice.

To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" (4) a brief and specific description of how you would be affected by the application in a way not common to the general public; and (5) the location and distance of your property relative to the proposed activity. You may also submit proposed conditions to the requested permit which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the permit and will forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments, or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at <https://www14.tceq.texas.gov/epic/eComment/> by entering ADJ 2949 in the search field. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Public Education Program at (800) 687-4040.

General information regarding the TCEQ can be found at our web site at www.tceq.texas.gov. Si desea información en español, puede llamar al (800) 687-4040 o por el internet al <http://www.tceq.texas.gov>.

TRD-202302667

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: July 26, 2023



Notice of Application and Opportunity to Request a Public Meeting for a New Municipal Solid Waste Facility

Notice issued on July 20, 2023

Proposed Registration No. 40335

Application. BAP Kennor Landfill, LLC has applied to the Texas Commission on Environmental Quality (TCEQ) for proposed Registration No. 40335 to construct and operate a Type V municipal solid waste recycling facility. The proposed facility, BAP Kennor C&D Recycling Facility, will be located at 3411 Silver Creek Road, Fort Worth 76108, in Tarrant County. The applicant is requesting authorization to store and recycle construction and demolition waste materials. The registration application is available for viewing and copying at the White Settlement Library, 8215 White Settlement Road, Fort Worth, Texas 76108 and may be viewed online at <https://parkhill.com/tceq-permits/>. The following link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice: <https://arcg.is/Ou5a11>. For exact location, refer to application.

Alternative Language Notice/Aviso de Idioma Alternativo. Alternative language notice in Spanish is available at www.tceq.texas.gov/goto/mswapps. El aviso de idioma alternativo en español está disponible en www.tceq.texas.gov/goto/mswapps.

Public Comment/Public Meeting. You may submit public comments or request a public meeting on this application. Written public comments or written requests for a public meeting must be submitted to the Office of the Chief Clerk at the address included in the information section below. If a public meeting is held, comments may be made orally at the meeting or submitted in writing by the close of the public meeting. A public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the development is to be located, or if there is a substantial public interest in the proposed development. The purpose of the public meeting is for the public to provide input for consideration by the commission, and for the applicant and the commission staff to provide information to the public. A public meeting is not a contested case hearing. The executive director will review and consider public comments and written requests for a public meeting submitted during the comment period. The comment period shall begin on the date this notice is published and end 30 calendar days after this notice is published. The comment period shall be extended to the close of any public meeting. The executive director is not required to file a response to comments.

Executive Director Action. The executive director shall, after review of an application for registration, determine if the application will be approved or denied in whole or in part. If the executive director acts on an application, the chief clerk shall mail or otherwise transmit notice of the action and an explanation of the opportunity to file a motion to overturn the executive director's decision. The chief clerk shall mail this notice to the owner and operator, the public interest counsel, to adjacent landowners as shown on the required land ownership map and landowners list, and to other persons who timely filed public comment

in response to public notice. Not all persons on the mailing list for this notice will receive the notice letter from the Office of the Chief Clerk.

Information Available Online. For details about the status of the application, visit the Commissioners' Integrated Database (CID) at www.tceq.texas.gov/goto/cid. Once you have access to the CID using the above link, enter the registration number for this application, which is provided at the top of this notice.

Mailing List. If you submit public comments, you will be added to the mailing list for this application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. To be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

Agency Contacts and Information. All public comments and requests must be submitted either electronically at www14.tceq.texas.gov/epic/eComment/ or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. Please be aware that any contact information you provide, including your name, phone number, email address and physical address will become part of the agency's public record. For more information about this registration application or the registration process, please call the TCEQ's Public Education Program, Toll Free, at (800) 687-4040 or visit their webpage, www.tceq.texas.gov/goto/pep. General information regarding the TCEQ can be found on our website at www.tceq.texas.gov/. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from BAP Kennor Landfill, LLC at the address stated above or by calling Mr. Tom Noons at (469) 591-1380.

TRD-202302666

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: July 26, 2023



Notice of Application and Public Hearing for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls Proposed Air Quality Registration Number 172917

APPLICATION. Five Star Concrete LLC, 2 Grist Mill Road, Umland, Texas 78640-9363 has applied to the Texas Commission on Environmental Quality (TCEQ) for an Air Quality Standard Permit for a Permanent Concrete Batch Plant with Enhanced Controls Registration Number 172917 to authorize the operation of a concrete batch plant. The facility is proposed to be located at the following driving directions: from the intersection of Interstate Highway 35 and County Road 304 West, travel Northwest on County Road 304 West for approximately 2.17 miles, location will be on the left, in Jarrell, Bell County, Texas 76571. This application is being processed in an expedited manner, as allowed by the commission's rules in 30 Texas Administrative Code, Chapter 101, Subchapter J. This link to an electronic map of the site or facility's general location is provided as a public courtesy and not part of the application or notice. For exact location, refer to application. <https://gisweb.tceq.texas.gov/Location-Mapper/?marker=-97.606413,30.876496&level=13>. This application was submitted to the TCEQ on May 26, 2023. The primary function of this plant is to manufacture concrete by mixing materials including

(but not limited to) sand, aggregate, cement and water. The executive director has determined the application was technically complete on July 13, 2023.

PUBLIC COMMENT / PUBLIC HEARING. Public written comments about this application may be submitted at any time during the public comment period. The public comment period begins on the first date notice is published and extends to the close of the public hearing. Public comments may be submitted either in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087, or electronically at www14.tceq.texas.gov/epic/eComment/. Please be aware that any contact information you provide, including your name, phone number, email address and physical address will become part of the agency's public record.

A public hearing has been scheduled, that will consist of two parts, an informal discussion period and a formal comment period. During the informal discussion period, the public is encouraged to ask questions of the applicant and TCEQ staff concerning the application, but comments made during the informal period will not be considered by the executive director before reaching a decision on the permit, and no formal response will be made to the informal comments. During the formal comment period, members of the public may state their comments into the official record. **Written comments about this application may also be submitted at any time during the hearing.** The purpose of a public hearing is to provide the opportunity to submit written comments or an oral statement about the application. **The public hearing is not an evidentiary proceeding.**

The Public Hearing is to be held:

Thursday, September 7, 2023, at 6:00 p.m.

Salado Middle School (Cafeteria)

1169 Williams Road

Salado, Texas 76571

RESPONSE TO COMMENTS. A written response to all formal comments will be prepared by the executive director after the comment period closes. The response, along with the executive director's decision on the application, will be mailed to everyone who submitted public comments and the response to comments will be posted in the permit file for viewing.

The executive director shall approve or deny the application not later than 35 days after the date of the public hearing, considering all comments received within the comment period, and base this decision on whether the application meets the requirements of the standard permit.

CENTRAL/REGIONAL OFFICE. The application will be available for viewing and copying at the TCEQ Central Office and the TCEQ Waco Regional Office, located at 6801 Sanger Avenue Suite 2500, Waco, Texas 76710-7826, during the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, beginning the first day of publication of this notice.

INFORMATION. If you need more information about this permit application or the permitting process, please call the Public Education Program toll free at (800) 687-4040. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from Five Star Concrete, LLC, 2 Grist Mill Road, Uhlund, Texas 78640-9363, or by calling Mr. Stephen Hampton, Compliance Manager at (512) 398-7797.

Notice Issuance Date: July 25, 2023

TRD-202302668

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: July 26, 2023



Notice of District Petition

Notice issued July 19, 2023

TCEQ Internal Control No. D-06192023-037; Nine Hidden Lake, LTD., a Texas limited partnership, and Parsons Green, LTD., a Texas limited partnership (collectively, the "Petitioners") filed a petition for the creation of Hidden Lakes Municipal Utility District No. 1 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, § 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner holds title to a majority in value of the land to be included in the proposed District; (2) there are no lienholders on the property to be included in the proposed District; (3) the proposed District will contain approximately 403.651 acres of land located within Travis County, Texas; and (4) all of the land within the proposed district is located wholly within the extraterritorial jurisdiction of the City of Austin (City). The petition further states that the work to be done by the District at the present time is: (i) the construction of a water distribution system for domestic purposes; (ii) the construction of a sanitary sewer system; (iii) the control, abatement and amendment of the harmful excess of waters and the reclamation and drainage of overflowed lands within the District; (iv) the construction and financing of macadamized, graveled, or paved roads, or improvements in aid of those roads; and (v) such other construction, installation, maintenance, purchase and operation of such additional facilities, systems, plants and enterprises as shall be consistent with the purposes for which the District is organized, all to the extent authorized by law from time to time. It is specifically proposed that the District be granted the authority to design, acquire, construct, finance, issue bonds for, operate, maintain, and convey to this state, a county, or a municipality for operation and maintenance, a road, or any improvement in aid of the road, pursuant to Texas Water Code, Section 54.234. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioners that the cost of said project will be approximately \$76,525,500. The financial analysis in the application was based on an estimated \$52,685,000 (\$20,950,000 for water, wastewater, and drainage plus \$21,260,000 for roads and \$10,475,000 for recreational facilities) at the time of submittal. In accordance with Local Government Code § 42.042 and Texas Water Code § 54.016, a petition was submitted to the City, requesting the City's consent to the creation of the District. After more than 90 days passed without receiving consent, a petition was submitted to the City to provide water and sewer services to the District. The 120-day period for reaching a mutually agreeable contract as established by the Texas Water Code § 54.016(c) expired and information provided indicates that the Petitioner and the City have not executed a mutually agreeable contract for service. Pursuant to Texas Water Code § 54.016(d), failure to execute such an agreement constitutes authorization for the Petitioner to proceed to the TCEQ for inclusion of their Property into the District.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete

notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.texas.gov.

TRD-202302665

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: July 26, 2023



Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **September 5, 2023**. TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the appli-

cable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on September 5, 2023**. The designated attorneys are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: Rivero Restaurants, Inc.; DOCKET NUMBER: 2020-1373-PWS-E; TCEQ ID NUMBER: RN102683240; LOCATION: 6534 United States Highway 67 South near San Angelo, Tom Green County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(z), by failing to create a nitrification action plan for systems distributing chloraminated water; 30 TAC §290.121(a) and (b), by failing to develop and maintain an accurate and up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the facility will use to comply with the monitoring requirements; 30 TAC §290.42(l), by failing to compile and maintain a thorough and up-to-date plant operations manual for operator review and reference; 30 TAC §290.42(j), by failing to ensure that all chemicals used in treatment of water supplied by public water systems conform to American National Standards Institute/National Sanitation Foundation Standard 60 for Drinking Water Treatment Chemicals; 30 TAC §290.110(c)(4)(A), by failing to monitor the disinfectant residual at representative locations throughout the distribution system at least once every seven days; 30 TAC §290.110(e)(4)(B), by failing to retain the Disinfection Level Quarterly Operating Reports and provide a copy if requested by the executive director (ED); 30 TAC §290.110(c)(5), by failing to conduct chloramine effectiveness sampling to ensure that monochloramine is the prevailing chloramine species and that nitrification is controlled; 30 TAC §290.46(f)(2) and (3)(A)(i)(III) and (ii)(III), by failing to maintain water works operation and maintenance records and make them readily available for review by the ED upon request; Texas Health and Safety Code, §341.0315(c) and 30 TAC §290.45(f)(1) and (4), by failing to provide a water purchase contract that authorizes a maximum daily purchase rate, or a uniform purchase rate in the absence of a specified daily purchase rate, plus the actual production capacity of the system of at least 0.6 gallons per minute per connection; 30 TAC §290.46(m)(1)(A), by failing to inspect the facility's four ground storage tanks annually; and 30 TAC §290.46(m)(1)(B), by failing to inspect the facility's two pressure tanks annually; PENALTY: \$7,462; STAFF ATTORNEY: Taylor Pearson, Litigation, MC 175, (512) 239-5937; REGIONAL OFFICE: San Angelo Regional Office, 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(2) COMPANY: U.S. Department of the Interior; DOCKET NUMBER: 2022-1086-MWD-E; TCEQ ID NUMBER: RN102657418; LOCATION: approximately 0.67 miles northwest of the intersection of Basin Junction Road and Window View Drive, Chisos Basin, Big Bend National Park, Brewster County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §217.36(a) and (i) and §305.125(1) and (5), and Texas Pollutant Discharge Elimination System Permit Number WQ0012865001, Operational Requirement Number 4, by failing to install adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failures; PENALTY: \$3,562; STAFF ATTORNEY: Erandi Ratnayake, Litigation, MC 175, (512) 239-6515; REGIONAL OFFICE: El Paso Regional Office, 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

TRD-202302630

Gitanjali Yadav
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: July 25, 2023



Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent the Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **September 5, 2023**. The commission will consider any written comments received, and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on September 5, 2023**. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on the DO shall be submitted to the commission in **writing**.

(1) COMPANY: A DEEL'S BUSINESS INC. dba A DEELS 2; DOCKET NUMBER: 2021-0895-PST-E; TCEQ ID NUMBER: RN102007960; LOCATION: 125 South Farm-to-Market Road 1194, Lufkin, Angelina County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.10(b)(2), by failing to assure that all recordkeeping requirements are met; 30 TAC §334.48(c) and §334.50(d)(1)(B), by failing to conduct effective inventory control procedure for all USTs involved in the retail sale of motor fuels; TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide release detection for the piping associated with the UST system; and 30 TAC §334.606, by failing to maintain operator training certification records on-site and make them available for inspection upon request by agency personnel; PENALTY: \$6,550; STAFF ATTORNEY: Marilyn Norrod, Litigation, MC 175, (512) 239-5916; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(2) COMPANY: Teresa Flores; DOCKET NUMBER: 2021-0611-MSW-E; TCEQ ID NUMBER: RN11231700; LOCATION: 17921

Fabens-Carlsbad Road, Clint, El Paso County; TYPE OF FACILITY: unauthorized scrap tire storage site; RULES VIOLATED: Texas Health and Safety Code, §361.112(a) and 30 TAC §328.60(a), by failing to obtain a scrap tire storage site registration for the site prior to storing more than 500 used or scrap tire on the ground or 2,000 used or scrap tires in enclosed and lockable containers; PENALTY: \$5,000; STAFF ATTORNEY: Katherine Keithley, Litigation, MC 175, (512) 239-0620; REGIONAL OFFICE: El Paso Regional Office, 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4940.

TRD-202302631
Gitanjali Yadav
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: July 25, 2023



Notice of Water Quality Application

The following notice was issued on July 19, 2023:

The following notice does not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087 WITHIN (30) DAYS FROM THE DATE THIS NOTICE IS ISSUED.

INFORMATION SECTION

Lone Star Industries, Inc., which operates Maryneal Cement Plant, a portland and masonry cement manufacturer, has applied to the TCEQ for a minor amendment to Texas Pollutant Discharge Elimination System Permit No. WQ0003905000 to authorize the removal of flow meters from the existing permit for Outfalls 001 and 002, correct the location coordinates for Outfalls 001 and 002, and update the water flow diagram based on site conditions. The draft permit authorizes the discharge of utility wastewater and stormwater on an intermittent and flow-variable basis via Outfall 001, and stormwater runoff on an intermittent and flow-variable basis via Outfall 002. The facility is located at 202 Country Road 306, near the City of Maryneal, Nolan County, Texas 79535.

TRD-202302664
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: July 26, 2023



Update to the Water Quality Management Plan (WQMP)

The Texas Commission on Environmental Quality (TCEQ or commission) requests comments from the public on the draft July 2023 Update to the WQMP for the State of Texas.

Download the draft July 2023 WQMP Update at https://www.tceq.texas.gov/permitting/wqmp/WQmanagement_updates.html or view a printed copy at the TCEQ Library, Building A, 12100 Park 35 Circle, Austin, Texas. Please periodically check the following website for updates, in the event the TCEQ Library is closed due to COVID-19 restrictions: https://www.tceq.texas.gov/permitting/wqmp/WQmanagement_comment.html.

The WQMP is developed and promulgated in accordance with the requirements of Federal Clean Water Act, §208. The draft update includes projected effluent limits of specific domestic dischargers, which may be useful for planning in future permit actions. The draft update

may also contain service area populations for listed wastewater treatment facilities, designated management agency information, and total maximum daily load (TMDL) revisions.

Once the commission certifies a WQMP update, it is submitted to the United States Environmental Protection Agency (EPA) for approval. For some Texas Pollutant Discharge Elimination System (TPDES) permits, the EPA's approval of a corresponding WQMP update is a necessary precondition to TPDES permit issuance by the commission.

Deadline

All comments must be received at the TCEQ no later than **5:00 p.m. on September 5, 2023.**

How to Submit Comments

Comments must be submitted in writing to:

Maria Benitez Texas Commission on Environmental Quality Water Quality Division, MC 148 P.O. Box 13087 Austin, Texas 78711-3087

Comments may also be faxed to (512) 239-4420 *or* emailed to Maria Benitez at Maria.Benitez@tceq.texas.gov, but must be followed up with written comments by mail within five working days of the fax or email date or by the comment deadline, whichever is sooner.

For further information, or questions, please contact Ms. Benitez at (512) 239-6705 or by email at Maria.Benitez@tceq.texas.gov.

TRD-202302654

Charmaine Backens

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: July 26, 2023



General Land Office

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 *Federal Register* pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 26. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of July 15, 2023 to July 21, 2023. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§30.20(f), 30.30(h), and 30.40(e), the public comment period extends 30 days from the date published on the Texas General Land Office web site. The notice was published on the web site on Friday, July 28, 2023. The public comment period for this project will close at 5:00 p.m. on Sunday, August 27, 2023.

FEDERAL AGENCY ACTIVITIES:

Applicant: Department of the Navy

Location: The project site is located at the Naval Air Station Corpus Christi, Texas.

Project Description: The Navy proposes to replace the existing T-44C Pegasus aircraft with the new T-54A aircraft for the multi-engine maritime flight training program. The T-44C fleet is nearing the end of its service life and requires upgrades to address existing training capability gaps. New aircraft would provide the latest technology and would

promote public health and safety. The replacement of aircraft will also require demolition, construction, and renovation of Navy support facilities and infrastructure at Naval Air Station Corpus Christi, Texas.

Type of Application: Department of the Navy's webpage for the Environmental Assessment for the T-54 Multi-Engine Training System at Naval Air Station Corpus Christi, Texas.

CMP Project No: 23-1251-F2

FEDERAL AGENCY ACTIONS:

Applicant: Passport Shores, LLC

Location: The project site is located on a 55.81-acre tract of land located in Landblock 244, Burton & Danforth Subdivision adjacent to the Gulf Intracoastal Waterway (GIWW), on the east side of State Highway 35 (Bus) and north of Palm Harbor Subdivision, approximately 3 miles north of Aransas Pass, in Aransas County, Texas.

Latitude and Longitude: 27.9722, -97.0899

Project Description: The applicant proposes to amend the footprint for a previously authorized project for a waterfront residential development as depicted on the attached plans (figures 1-3). The revised project would eliminate the previously authorized access channel and residential canals and place clean fill material within approximately 28 acres of the site. Overall, the proposed fill area is composed of 19.11 acres of upland, 7.48 acres of salt marsh, and 1.41 acres of salt flats, which would require 13,665 cubic yards of fill in jurisdictional area. No work has been initiated at the project site at this time.

The applicant has stated that they have avoided and minimized the environmental impacts by eliminating the access channel and residential canals. Aquatic resources have been avoided to the maximum extent practicable, the current project design would reduce impacts to Waters of the US by approximately 1.2 acres, no activity is proposed below the mean high-water line of the adjacent waterbody, and therefore, the amendment would remove all impacts to submerged aquatic vegetation. Additionally, the permittee would complete permittee responsible mitigation consistent with the existing permit authorization including preserving in perpetuity the on-site aquatic habitats that will not be impacted by this project.

The existing mitigation plan would remain unchanged. The plan provides in-kind creation of 6.48 acres of salt marsh on-site, and 2.55 acres created off-site. In total, the applicant proposes to create 9.03 acres of salt marsh to compensate for the unavoidable impacts to this habitat. The mitigation area will employ a deed restriction to preserve 24.25 acres of salt marsh habitat in perpetuity. The plan also provides creation of 0.86 acre of salt flat habitat and preservation of an additional 4.03 acres of salt flat habitat in perpetuity.

Type of Application: U.S. Army Corps of Engineers permit application # SWG-2003-01965. This application will be reviewed pursuant to Section 404 of the Clean Water Act. Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality as part of its certification under §401 of the Clean Water Act.

CMP Project No: 23-1283-F1

Applicant: City of League City

Location: The project site is located in Magnolia Creek and Cedar Gully, at west of Interstate 45 and south of Main Street, in League City, Galveston County, Texas.

Latitude and Longitude: 29.478651, -95.148884

Project Description: The applicant proposes to discharge a total of approximately 342 cubic yards of concrete into a total of 3,668 linear

feet of streams (1.07 acres), and 0.2 acre of open water at 56 separate locations along the banks of Magnolia Creek and Cedar Gully. This project proposes spot repairs to correct erosion conditions, intermittent shoreline repairs, bank stabilization, slope paving in spots, and to replace culverts that are not functioning correctly. Bank stabilization will be required for the culvert replacement locations. The purpose of the project is to return Magnolia Creek and Cedar Gully to their intended function. Outfalls along the channels will be removed and replaced with HDPE pipe to adhere to City standards, in some cases improving velocity and slope. This modified approach allows for the current shape of the Magnolia Creek to only be disturbed at the most pertinent areas. The re-design of the project will result in only temporary impacts to install erosion protection and/or bank stabilization measures and will not result in a net loss of waters of the United States.

The applicant has stated that they have avoided and minimized the environmental impacts by avoiding impacts to 8,471 linear feet (1.83 acres) of streams, 11.75 acres of emergent wetlands, and 21.45 acres of open water features. The applicant has stated that the project will restore the original flow regime within Magnolia Creek and Cedar Gully. The applicant has provided an assessment of the affected stream reaches that demonstrate that this project will have no change in the condition of the affected streams. Therefore, no additional compensatory mitigation has been proposed for this project.

Type of Application: U.S. Army Corps of Engineers permit application # SWG-2022-00077. This application will be reviewed pursuant to Section 404 of the Clean Water Act. Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality as part of its certification under §401 of the Clean Water Act.

CMP Project No: 23-1312-F1

Applicant: Cameron County

Location: The project site is located along approximately 500 feet of shoreline in the Laguna Madre, within Isla Blanca County Park, at 33174 State Park Road 100, in South Padre Island, Cameron County, Texas 78597.

Latitude and Longitude: 26.96794, -97.16263

Project Description: The applicant proposes to construct a shoreline restoration project that involves the following improvements: (1) construction of two native fill templates each measuring approximately 250-foot long, (2) construction of one offshore breakwater measuring 200-foot-long by 80-foot-wide, (3) construction of two shore-attached groins, each approximately 140-foot-long by 80-foot-wide, and (4) construction of two scour protection areas located within gaps between the offshore breakwater and shore-attached groins measuring 100-foot-long by 80-foot-wide, each. Suitable fill material to construct the fill templates would be obtained from the excavation of the Scour Protection Areas, placed at the Native Fill Material Beneficial Placement Areas shown in the attached drawings on six sheets. If the material is not beach quality, it would be hauled off site, and native fill material from approved sand sources located at Isla Blanca County Park or riverine sand from the Olmito Sand Pit may be utilized. The proposed offshore breakwater and groin structures would be constructed using either armor and bedding stone, or an alternative material type/units composed of concrete, steel, mesh, geogrid, geotextile, stone, piles, chains, anchors, oyster shell, or similar. Scour protection installation would include excavation and fill consisting of marine mattress material as a means to prevent scour within the gaps of the structures.

The stated purpose of the project is to protect the shoreline from erosional forces caused by daily wave action, storm-related events and ship wakes from vessels traversing through the Brazos Santiago Pass

by utilizing a combination of non-structural (native fill) and structural (breakwater, groins, scour protection) methods.

The applicant has stated that they have avoided and minimized the environmental impacts by avoiding impacts to jurisdictional wetlands and special aquatic sites, including seagrass and oysters. Best Management Practices (BMPs) such as silt curtains and silt fencing would be utilized during excavation and placement of native fill material, placement of material for constructing the offshore breakwater and two shore-attached groins, and placement of scour protection material to minimize impact to adjacent wetlands and special aquatic sites. Immediately before construction, a seagrass survey would be performed by the applicant and final adjustments to the positions of the proposed breakwater and groins would be made to ensure complete avoidance of all existing seagrasses. No mitigation is being proposed since there would be no permanent impacts to jurisdictional wetlands or aquatic resources (seagrass, oysters, mangroves). The project footprint would only encompass current areas of unvegetated bay bottom.

Type of Application: U.S. Army Corps of Engineers permit application # SWG-2023-00264. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act. Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality as part of its certification under §401 of the Clean Water Act.

CMP Project No: 23-1334-F1

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection, may be obtained from the Texas General Land Office Public Information Officer at 1700 N. Congress Avenue, Austin, Texas 78701, or via email at pialegal@glo.texas.gov. Comments should be sent to the Texas General Land Office Coastal Management Program Coordinator at the above address or via email at federal.consistency@glo.texas.gov.

TRD-202302646

Mark Havens

Chief Clerk

General Land Office

Filed: July 25, 2023

Texas Health and Human Services Commission

Public Notice - Texas State Plan for Medical Assistance Amendment

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 will be effective September 1, 2023.

The purpose of the amendments is to update the fee schedules in the current state plan by adjusting fees, rates, or charges for the following services:

Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS);

Early and Periodic Screening, Diagnostic and Treatment Services;

Home Health Services; and

Physicians and Other Practitioners

The proposed amendment is estimated to result in an annual aggregate expenditure of \$1,519,774 for federal fiscal year (FFY) 2023, consisting of \$947,883 in federal funds and \$571,891 in state general revenue. For FFY 2024, the estimated annual aggregate savings is (\$166,595)

consisting of (\$100,840) in federal funds and (\$65,755) in state general revenue. For FFY 2025, the estimated annual aggregate savings is (\$163,700) consisting of (\$98,466) in federal funds and (\$65,234) in state general revenue.

Further detail on specific reimbursement rates and percentage changes will be made available on the HHSC Provider Finance website under the proposed effective date at: <https://pfd.hhs.texas.gov/rate-packets>.

Rate Hearing.

A Rate Hearing was conducted in person and online on May 19, 2023. Information about the proposed rate changes and hearings was published in the April 21, 2023, issue of the *Texas Register* (48 TexReg 2159). Additional information and the notice of hearings can be found at <https://www.sos.state.tx.us/texreg/index.shtml>. Archived recordings of the hearings can be found at <https://www.hhs.texas.gov/about/meetings-events>.

Additional hearings may be scheduled to receive additional commentary. Notice of any hearings will be published in the *Texas Register* as well as on the HHSC Meetings and Events website.

Copy of Proposed Amendment.

Interested parties may obtain additional information and/or a free copy of the proposed amendment by contacting Nicole Hotchkiss, State Plan Policy Advisor, by mail at the Health and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, Texas 78711; by telephone at (512) 487-3349; by facsimile at (512) 730-7472; or by e-mail at Medicaid_Chip_SPA_Inquiries@hhs.state.tx.us. Copies of the proposed amendment will be available for review at the local county offices of HHSC, (which were formerly the local offices of the Texas Department of Aging and Disability Services).

Written Comments.

Written comments about the proposed amendment and/or requests to review comments may be sent by U.S. mail, overnight mail, special delivery mail, hand delivery, fax, or email:

U.S. Mail

Texas Health and Human Services Commission

Attention: Provider Finance Department

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: Provider Finance Department

North Austin Complex

Mail Code H-400

4601 W. Guadalupe St.

Austin, Texas 78751

Phone number for package delivery: (512) 730-7401

Fax

Attention: Provider Finance at (512) 730-7475

Email

PFDAcuteCare@hhs.texas.gov

Preferred Communication.

For quickest response, please use e-mail or phone, if possible, for communication with HHSC related to this state plan amendment.

TRD-202302643

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: July 25, 2023

Texas Department of Insurance

Company Licensing

Application for incorporation in the state of Texas for AVLA US Insurance Company, a domestic fire and/or casualty company. The home office is in Dallas, Texas.

Application for incorporation in the state of Texas for Fenyx Health Insurance Company, a domestic life, accident and/or health company. The home office is in Austin, Texas.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of John Carter, 1601 Congress Ave., Suite 6.900, Austin, Texas 78711.

TRD-202302660

Justin Beam

Chief Clerk

Texas Department of Insurance

Filed: July 26, 2023

Texas Lottery Commission

Scratch Ticket Game Number 2525 "\$50, \$100 or \$500!"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2525 is "\$50, \$100 OR \$500!". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2525 shall be \$10.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2525.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, MONEY BAG SYMBOL, \$50.00, \$100 and \$500.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2525 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
27	TWSV

28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
41	FRON
42	FRTO
43	FRTH
44	FRFR
45	FRFV
46	FRSX
47	FRSV
48	FRET
49	FRNI
50	FFTY
51	FFON
52	FFTO
53	FFTH
54	FFFR
55	FFFV
56	FFSX

57	FFSV
58	FFET
59	FFNI
60	SXTY
MONEY BAG SYMBOL	WIN\$
\$50.00	FFTY\$
\$100	ONHN
\$500	FVHN

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2525), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 050 within each Pack. The format will be: 2525-0000001-001.

H. Pack - A Pack of the "\$50, \$100 OR \$500!" Scratch Ticket Game contains 050 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket back 001 and 050 will both be exposed.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "\$50, \$100 OR \$500!" Scratch Ticket Game No. 2525.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "\$50, \$100 OR \$500!" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose fifty-five (55) Play Symbols. If the player matches any of the YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the PRIZE for that number. If the player reveals a "MONEY BAG" Play Symbol, the player wins the PRIZE for that symbol instantly. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly fifty-five (55) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Scratch Ticket shall be intact;
6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;
8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The Scratch Ticket must not be counterfeit in whole or in part;
10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;
11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;
13. The Scratch Ticket must be complete and not miscut, and have exactly fifty-five (55) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;
14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the fifty-five (55) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the fifty-five (55) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. A Ticket can win up to ten (10) times in accordance with the approved prize structure.

B. Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

C. The top Prize Symbol will appear on every Ticket unless restricted by other parameters, play action or prize structure.

D. Each Ticket will have five (5) different WINNING NUMBERS Play Symbols.

E. Non-winning YOUR NUMBERS Play Symbols will all be different.

F. Non-winning Prize Symbols will never appear more than nine (9) times.

G. The "MONEY BAG" (WIN\$) Play Symbol will never appear in the WINNING NUMBERS Play Symbol spots.

H. The "MONEY BAG" (WIN\$) Play Symbol will never appear more than two (2) times on winning Tickets.

I. The "MONEY BAG" (WIN\$) Play Symbol will only appear on winning Tickets.

J. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 50 and \$50).

2.3 Procedure for Claiming Prizes.

A. To claim a "\$50, \$100 OR \$500!" Scratch Ticket Game prize of \$50.00, \$100.00 or \$500.00, a claimant shall sign the back of the

Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$50.00, \$100.00 or \$500.00 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. As an alternative method of claiming a "\$50, \$100 OR \$500!" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is \$1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

2. in default on a loan made under Chapter 52, Education Code;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

D. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "\$50, \$100 OR \$500!" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "\$50, \$100 OR \$500!" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 7,200,000 Scratch Tickets in Scratch Ticket Game No. 2525. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2525 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$50.00	576,000	12.50
\$100.00	180,000	40.00
\$500.00	7,200	1,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 9.43. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2525 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2525, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-202302663

Bob Biard
General Counsel
Texas Lottery Commission
Filed: July 26, 2023



Scratch Ticket Game Number 2532 "HOLIDAY 777"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2532 is "HOLIDAY 777". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2532 shall be \$5.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2532.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 02, 03, 04, 05, 06, 08, 09, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25, 26, 28, 29, 30, 31, 32, 33, 34, 35, 36, 38, 39, 40, 41, 42, 43, 44, 45, 46, 48, 49, 7 SYMBOL, 77 SYMBOL, 777 SYMBOL,

\$5.00, \$10.00, \$15.00, \$20.00, \$50.00, \$100, \$250, \$500, \$1,000 and \$100,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2532 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
28	TWET
29	TWNI
30	TRTY
31	TRON

32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
38	TRET
39	TRNI
40	FRTY
41	FRON
42	FRTO
43	FRTH
44	FRFR
45	FRFV
46	FRSX
48	FRET
49	FRNI
7 SYMBOL	WIN\$
77 SYMBOL	DBL
777 SYMBOL	TRP
\$5.00	FIV\$
\$10.00	TEN\$
\$15.00	FFN\$
\$20.00	TWY\$
\$50.00	FFTY\$
\$100	ONHN
\$250	TOFF
\$500	FVHN
\$1,000	ONTH
\$100,000	100TH

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2532), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 2532-0000001-001.

H. Pack - A Pack of the "HOLIDAY 777" Scratch Ticket Game contains 075 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket 001 will be shown on the front of the Pack; the back of Ticket 075 will be revealed on the back of the Pack. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack. Every other Pack will reverse; i.e., reverse order will be: the back of Ticket 001 will be shown on the front of the Pack and the front of Ticket 075 will be shown on the back of the Pack.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "HOLIDAY 777" Scratch Ticket Game No. 2532.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "HOLIDAY 777" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose fifty-one (51) Play Symbols. BONUS PLAY INSTRUCTIONS: If a player reveals 2 matching prize amounts in the same BONUS, the player wins that amount. HOLIDAY 777 PLAY INSTRUCTIONS: If the player matches any of the YOUR NUMBERS Play Symbols to any of the HOLIDAY NUMBERS Play Symbols, the player wins the prize for that number. If the player reveals a "7" Play Symbol, the player wins the prize for that symbol instantly. If the player reveals a "77" Play Symbol, the player wins DOUBLE the prize for that symbol. If the player reveals a "777" Play Symbol, the player wins TRIPLE the prize for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly fifty-one (51) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Scratch Ticket shall be intact;

6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly fifty-one (51) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the fifty-one (51) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the fifty-one (51) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

B. GENERAL: A Ticket can win as indicated by the prize structure.

C. GENERAL: A Ticket can win up to twenty-three (23) times.

D. GENERAL: The "7" (WIN\$), "77" (DBL) and "777" (TRP) Play Symbols will never appear in any of the three (3) BONUS play areas.

E. BONUS: A Ticket can win up to one (1) time in each of the three (3) BONUS play areas.

F. BONUS: A Ticket will not have matching non-winning Prize Symbols across the three (3) BONUS play areas.

G. BONUS: Non-winning Prize Symbols in a BONUS play area will not be the same as winning Prize Symbols from another BONUS play area.

H. BONUS: A non-winning BONUS play area will have two (2) different Prize Symbols.

I. HOLIDAY 777: A Ticket can win up to twenty (20) times in the main play area.

J. HOLIDAY 777: No matching non-winning YOUR NUMBERS Play Symbols will appear on a Ticket.

K. HOLIDAY 777: A non-winning Prize Symbol will never match a winning Prize Symbol.

L. HOLIDAY 777: On winning and Non-Winning Tickets, the top cash prizes of \$1,000 and \$100,000 will each appear at least once, except on Tickets winning twenty-three (23) times and with respect to other parameters, play action or prize structure.

M. HOLIDAY 777: Tickets winning more than one (1) time will use as many HOLIDAY NUMBERS Play Symbols as possible to create matches, unless restricted by other parameters, play action or prize structure.

N. HOLIDAY 777: No matching HOLIDAY NUMBERS Play Symbols will appear on a Ticket.

O. HOLIDAY 777: All YOUR NUMBERS Play Symbols will never equal the corresponding Prize Symbol (i.e., \$5 and 05, \$10 and 10, \$15 and 15 and \$20 and 20).

P. HOLIDAY 777: On all Tickets, a Prize Symbol will not appear more than three (3) times, except as required by the prize structure to create multiple wins.

Q. HOLIDAY 777: On Non-Winning Tickets, a HOLIDAY NUMBERS Play Symbol will never match a YOUR NUMBERS Play Symbol.

R. HOLIDAY 777: The "7" (WIN\$) Play Symbol will never appear on the same Ticket as the "77" (DBL) or "777" (TRP) Play Symbols.

S. HOLIDAY 777: The "7" (WIN\$) Play Symbol will win the prize for that Play Symbol.

T. HOLIDAY 777: The "7" (WIN\$) Play Symbol will never appear more than once on a Ticket.

U. HOLIDAY 777: The "7" (WIN\$) Play Symbol will never appear on a Non-Winning Ticket.

V. HOLIDAY 777: The "7" (WIN\$) Play Symbol will never appear as a HOLIDAY NUMBERS Play Symbol.

W. HOLIDAY 777: The "77" (DBL) Play Symbol will never appear more than once on a Ticket.

X. HOLIDAY 777: The "77" (DBL) Play Symbol will win DOUBLE the prize for that Play Symbol and will win as per the prize structure.

Y. HOLIDAY 777: The "77" (DBL) Play Symbol will never appear on a Non-Winning Ticket.

Z. HOLIDAY 777: The "77" (DBL) Play Symbol will never appear as a HOLIDAY NUMBERS Play Symbol.

AA. HOLIDAY 777: The "777" (TRP) Play Symbol will never appear more than once on a Ticket.

BB. HOLIDAY 777: The "777" (TRP) Play Symbol will win TRIPLE the prize for that Play Symbol and will win as per the prize structure.

CC. HOLIDAY 777: The "777" (TRP) Play Symbol will never appear on a Non-Winning Ticket.

DD. HOLIDAY 777: The "777" (TRP) Play Symbol will never appear as a HOLIDAY NUMBERS Play Symbol.

EE. HOLIDAY 777: The "77" (DBL) and the "777" (TRP) Play Symbols can appear on the same winning Ticket, as indicated by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "HOLIDAY 777" Scratch Ticket Game prize of \$5.00, \$10.00, \$15.00, \$20.00, \$40.00, \$50.00, \$100, \$250 or \$500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$40.00, \$50.00, \$100, \$250 or \$500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "HOLIDAY 777" Scratch Ticket Game prize of \$1,000 or \$100,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "HOLIDAY 777" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is \$1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not vali-

dated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;
2. in default on a loan made under Chapter 52, Education Code;
3. in default on a loan guaranteed under Chapter 57, Education Code; or
4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or
- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "HOLIDAY 777" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "HOLIDAY 777" Scratch Ticket Game, the

Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 7,200,000 Scratch Tickets in Scratch Ticket Game No. 2532. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2532 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$5.00	848,000	8.49
\$10.00	320,000	22.50
\$15.00	176,000	40.91
\$20.00	192,000	37.50
\$40.00	60,000	120.00
\$50.00	44,000	163.64
\$100	25,400	283.46
\$250	5,000	1,440.00
\$500	3,200	2,250.00
\$1,000	75	96,000.00
\$100,000	5	1,440,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.30. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2532 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2532, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-202302623
 Bob Biard
 General Counsel
 Texas Lottery Commission
 Filed: July 24, 2023

◆ ◆ ◆
Texas Parks and Wildlife Department

Correction of Error

The Texas Parks and Wildlife Department adopted amendments to 31 TAC §65.42 and §65.64 in the July 28, 2023, issue of the *Texas Register* (48 TexReg 4122). Due to an error by the Texas Register, the amendments were incorrectly listed as 31 TAC §65.42 and §65.47. The correct text should be shown as follows:

31 TAC §65.42, §65.64
 TRD-202302626

◆ ◆ ◆
Texas Public Finance Authority

Request for Proposals for Financial Advisor

The Texas Public Finance Authority (the "Authority") solicits responses to a Request for Proposals ("RFP") from firms with the qualifications and experience required to provide financial advisory services to assist the Authority beginning on or about September 1,

2023, and ending August 31, 2025, or, at the option of the Authority, through August 31, 2027.

The Authority will make its selection based on demonstrated competence, experience, knowledge and qualifications, as well as the reasonableness of the proposed fee and any conflicts of interest or potential conflicts of interest identified. The Authority may prioritize the selection of firms whose principal place of business is in Texas.

A copy of the RFP is available on the Authority's website at <http://www.tpfa.texas.gov/rfp.aspx> and the Electronic State Business Daily ("ESBD") at <http://www.txsmartbuy.com/esbd>.

Responses are due no later than 3:00 p.m. (CST) on August 17, 2023, pursuant to the instructions in the RFP.

TRD-202302616

Kevin Van Oort

General Counsel

Texas Public Finance Authority

Filed: July 21, 2023



Public Utility Commission of Texas

Notice of Application for Partial Relinquishment of Designation as an Eligible Telecommunications Carrier

Notice is given to the public of an application filed with the Public Utility Commission of Texas on July 24, 2023, for partial relinquishment of designation as an eligible telecommunications carrier under 16 Texas Administrative Code §26.418.

Docket Title and Number: Petition of Boomerang Wireless, LL dba enTouch Wireless for Partial Relinquishment of Eligible Telecommunications Carrier Designation on a Wireless Basis (Low-Income only)

in a Certain Service Area Previously Served by Verizon Wireless and Removal of AT&T Mobility as an Underlying Carrier, Docket Number 55280.

The Application: Boomerang Wireless seeks partial relinquishment of designation as an eligible telecommunications carrier in the service area served by Verizon Wireless and the removal of AT&T Mobility as an underlying carrier, effective October 20, 2023.

Persons who wish to file a motion to intervene or comments on the application should contact the commission 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 55280.

TRD-202302645

Andrea Gonzalez

Rules Coordinator

Public Utility Commission of Texas

Filed: July 25, 2023



Supreme Court of Texas

Order Approving Repeal of Texas Rule of Appellate Procedure 28.2 and Amendments to Texas Rule of Appellate Procedure 28.3

Supreme Court of Texas


Misc. Docket No. 23-9047

Order Approving Repeal of Texas Rule of Appellate Procedure 28.2 and Amendments to Texas Rule of Appellate Procedure 28.3

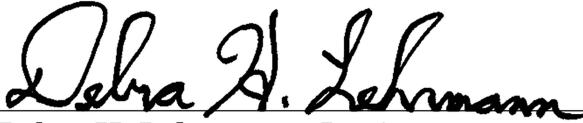
ORDERED that:

1. The Court invites public comments on the repeal of Texas Rule of Appellate Procedure 28.2 and on amendments to Texas Rules of Appellate Procedure 28.3.
2. To effectuate the Act of May 11, 2023, 88th Leg., R.S., ch. 209 (S.B. 1603, codified at TEX. CIV. PRAC. & REM. CODE § 54.014(g)-(h)), the repeal and amendments are effective September 1, 2023. But the repeal and amendments may later be changed in response to public comments. The Court requests public comments be submitted in writing to rulescomments@txcourts.gov by November 1, 2023.
3. The Clerk is directed to:
 - a. file a copy of this Order with the Secretary of State;
 - b. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;
 - c. send a copy of this Order to each elected member of the Legislature; and
 - d. submit a copy of this Order for publication in the *Texas Register*.

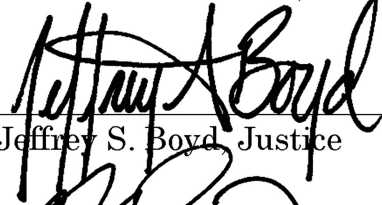
Dated: July 25, 2023.



Nathan L. Hecht, Chief Justice



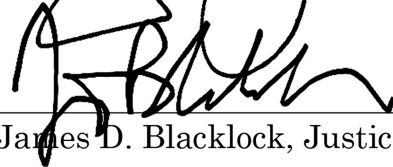
Debra H. Lehrmann, Justice



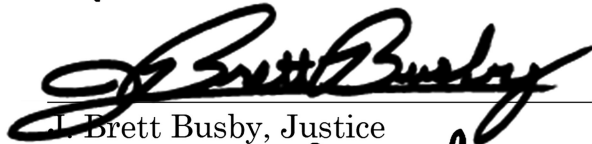
Jeffrey S. Boyd, Justice



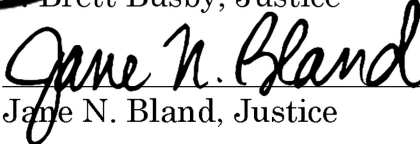
John P. Devine, Justice



James D. Blacklock, Justice



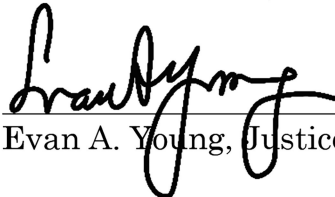
Brett Busby, Justice



Jane N. Bland, Justice



Rebeca A. Huddle, Justice



Evan A. Young, Justice

TEXAS RULES OF APPELLATE PROCEDURE

Rule 28. Accelerated, Agreed, and Permissive Appeals in Civil Cases

28.3. Permissive Appeals in Civil Cases.

- (a) *Petition Required.* When a trial court has permitted an appeal from an interlocutory order that would not otherwise be appealable, a party seeking to appeal must petition the court of appeals for permission to appeal.
- (b) *Where Filed.* The petition must be filed with the clerk of the court of appeals having appellate jurisdiction over the action in which the order to be appealed is issued. The First and Fourteenth Courts of Appeals must determine in which of those two courts a petition will be filed.
- (c) *When Filed.* The petition must be filed within 15 days after the order to be appealed is signed. If the order is amended by the trial court, either on its own or in response to a party's motion, to include the court's permission to appeal, the time to petition the court of appeals runs from the date the amended order is signed.
- (d) *Extension of Time to File Petition.* The court of appeals may extend the time to file the petition if the party:
 - (1) files the petition within 5 days after the deadline, and
 - (2) files a motion complying with Rule 10.5(b).
- (e) *Contents.* The petition must:
 - (1) contain the information required by Rule 25.1(d) to be included in a notice of appeal;
 - (2) attach a copy of the order from which appeal is sought;
 - (3) contain a table of contents, index of authorities, issues presented, and a statement of facts; and
 - (4) argue clearly and concisely why the order to be appealed involves a controlling question of law as to which there is a substantial ground for difference of opinion and how an immediate appeal

from the order may materially advance the ultimate termination of the litigation.

- (f) *Response; Reply; Cross-Petition; Time for Filing.* If any party timely files a petition, any other party may file a response or a cross-petition within 10 days. A party may file a response to a cross-petition within 10 days of the date the cross-petition is filed. A petitioner or cross-petitioner may reply to any matter in a response within 7 days of the date the response is filed. The court of appeals may extend the time to file a response, reply, and cross-petition.
- (g) *Length of Petition, Cross-Petition, Response, and Reply.* A petition, cross-petition, response, and reply must comply with the length limitations in Rule 9.4(i)(2)(D)-(E).
- (h) *Service.* A petition, cross-petition, response, and reply must be served on all parties to the trial court proceeding.
- (i) *Docketing Statement.* Upon filing the petition, the petitioner must file the docketing statement required by Rule 32.1.
- (j) *Time for Determination.* Unless the court of appeals orders otherwise, a petition, and any cross-petition, response, and reply, will be determined without oral argument, no earlier than 10 days after the petition is filed.
- (k) *When Petition Granted.* If the petition is granted, a notice of appeal is deemed to have been filed under Rule 26.1(b) on that date, and the appeal is governed by the rules for accelerated appeals. A separate notice of appeal need not be filed. A copy of the order granting the petition must be filed with the trial court clerk.
- (l) *When Petition Denied.* If the court of appeals denies the petition, the court must explain in its decision the specific reasons for its finding that an appeal is not warranted. On petition for review, the Supreme Court may review the court of appeals' denial de novo, and, if the Supreme Court concludes that the statutory prerequisites for a permissive appeal are met, the Supreme Court may direct the court of appeals to grant permission to appeal.

Comment to 2023 change: Rule 28.2 is repealed. Rule 28.3 is amended to implement sections 51.014(g) and (h) of the Civil Practice and Remedies Code and governs the procedure for all permissive appeals filed after September 1, 2023.

TRD-202302653
Jaclyn Daumerie
Rules Attorney
Supreme Court of Texas
Filed: July 25, 2023

Preliminary Approval of Amendments to the Rule for
Magistrates in Inmate Litigation to Expand the Applicability
of the Rule to Litigation Involving Certain Civilly Committed
Individuals



Supreme Court of Texas

Misc. Docket No. 23-9045

Preliminary Approval of Amendments to the Rule for Magistrates in Inmate Litigation to Expand the Applicability of the Rule to Litigation Involving Certain Civilly Committed Individuals

ORDERED that:

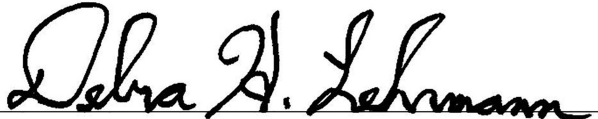
1. On December 11, 1996, in Misc. Dkt. No. 96-9273, the Court adopted the Rule for Magistrates in Inmate Litigation pursuant to section 14.013 of the Texas Civil Practice and Remedies Code.
2. In accordance with the Act of May 17, 2023, 88th Leg., R.S., ch. 351 (S.B. 1179, codified at TEX. CIV. PRAC. & REM. CODE § 14A.061) and the Act of May 12, 2023, 88th Leg., R.S., ch. 203 (S.B. 1180, codified at TEX. CIV. PRAC. & REM. CODE § 14A.061), the Court proposes amendments to the Rule to expand its applicability to litigation involving certain civilly committed individuals.
3. The Court invites public comments on the proposed amendments to the Rule, now titled Rule for Magistrates in Inmate Litigation and Litigation Involving Certain Civilly Committed Individuals.
4. Comments regarding the proposed amendments should be submitted in writing to rulescomments@txcourts.gov by November 1, 2023.
5. The Court will issue an order finalizing the amendments after the close of the comment period. The Court may change the amendments in response to public comments. The Court expects the amendments to take effect on December 1, 2023.
6. The Clerk is directed to:
 - a. file a copy of this Order with the Secretary of State;

- b. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the Texas Bar Journal;
- c. send a copy of this Order to each elected member of the Legislature;
and
- d. submit a copy of this Order for publication in the Texas Register.

Dated: July 19, 2023.



Nathan L. Hecht, Chief Justice



Debra H. Lehrmann, Justice



Jeffrey S. Boyd, Justice



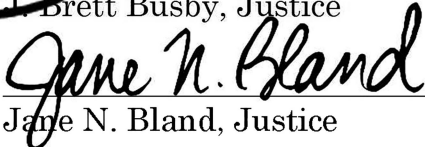
John P. Devine, Justice



James D. Blacklock, Justice




J. Brett Busby, Justice



Jane N. Bland, Justice



Rebeca A. Huddle, Justice



Evan A. Young, Justice

**RULE FOR MAGISTRATES IN INMATE LITIGATION AND LITIGATION
INVOLVING CERTAIN CIVILLY COMMITTED INDIVIDUALS**

1.01 AUTHORITY

This rule is promulgated under authority of Sections 14.013 and 14A.061, Civil Practice and Remedies Code.

2.01 APPOINTMENT

(a) A judge of a court having jurisdiction of a suit subject to Chapters 14 or 14A, Civil Practice and Remedies Code, may appoint a full-time or part-time magistrate to perform the duties authorized by ~~that those~~ chapters if the commissioners court of a county in which the court has jurisdiction authorizes the employment of a magistrate.

(b) If a court has jurisdiction in more than one county, a magistrate appointed by that court may serve only in a county in which the commissioners court has authorized the magistrate's appointment.

(c) If more than one court in a county has jurisdiction of a suit under Chapters 14 or 14A, the commissioners court may authorize the appointment of a magistrate for each court or may authorize one or more magistrates to share service with two or more courts.

(d) If a magistrate serves more than one court, the magistrate's appointment must be made with the unanimous approval of all the judges under whom the magistrate serves.

3.01 QUALIFICATIONS

To be eligible for appointment as a magistrate, a person must meet the requirements and qualifications to serve as a judge of the court or courts for which the magistrate is appointed.

4.01 COMPENSATION

(a) If funds are provided to the Supreme Court by appropriation or interagency contracts as provided by Section 14.013-(b) or 14A.061(b), Civil Practice and Remedies Code, a magistrate may be paid a salary, on an hourly basis, ~~or on a per-case basis, or on such other basis as may be specified by administrative order of the Supreme Court.~~

(b) If funds are not provided to the Supreme Court, a magistrate may be paid a salary or fees provided in the schedule of fees adopted by the judges of the county pursuant to Article 26.05, Code of Criminal Procedure, as approved by the commissioners court in which the magistrate serves.

(c) If paid a salary, the magistrate's salary is paid from the county fund available for payment of officers' salaries. If paid by fee, the magistrate's fees are paid from the general fund of the county.

5.01 TERMINATION OF MAGISTRATE

(a) A magistrate who serves a single court serves at the will of the judge of that court.

(b) The employment of a magistrate who serves more than two courts may only be terminated by a majority vote of all the judges of the courts which the magistrate serves.

(c) The employment of a magistrate who serves two courts may be terminated by either of the judges of the courts which the magistrate serves.

6.01 CASES THAT MAY BE REFERRED

Except as provided by this rule, a judge of a court may refer to a magistrate any suit brought by an inmate, as defined in section 14.001(3), Civil Practice and Remedies Code, or a civilly committed individual, as defined in section 14A.001(1), Civil Practice and Remedies Code, in a district, county, or justice of the peace, or small claims court in which a Statement of Inability to Afford Payment of Court Costs or a similar ~~an~~ affidavit or unsworn declaration of inability to pay costs is filed by the inmate or civilly committed individual. This rule does not apply to an action brought under the Family Code.

7.01 ORDER OF REFERRAL

(a) In referring a case to a magistrate, the judge of the referring court ~~shall~~must render:

(1) an individual order of referral; or

(2) a general order of referral specifying the class and type of cases to be heard by the magistrate.

(b) The order of referral may limit the power or duties of a magistrate.

8.01 AUTHORITY OF MAGISTRATES

Except as limited by an order of referral, a magistrate has the same jurisdiction, authority, and power as the judge of the referring court under Chapters 14 and 14A, Civil Practice and Remedies Code, including, but not limited to the authority to:

- (1) dismiss a claim pursuant to Sections 14.003, 14.005, 14.006, ~~or~~ 14.010, 14A.051, 14A.053, 14A.054, or 14A.058, Civil Practice and Remedies Code,
- (2) order payment of costs pursuant to Sections 14.006, ~~and~~ 14.007, 14A.054, or 14A.055, Civil Practice and Remedies Code, and
- (3) hold hearings as provided in Sections 14.003, 14.008, 14A.051, or 14A.056, Civil Practice and Remedies Code.

9.01 POWERS OF MAGISTRATE

A magistrate may:

- (1) conduct a hearing;
- (2) hear evidence;
- (3) compel production of relevant evidence;
- (4) rule on the admissibility of evidence;
- (5) issue a summons for the appearance of witnesses;
- (6) examine a witness;
- (7) swear a witness for a hearing;
- (8) make findings of fact on evidence;
- (9) formulate conclusions of law;
- (10) recommend an order to be rendered in a case;
- (11) regulate all proceedings in a hearing before the magistrate; and
- (12) take action as necessary and proper for the efficient performance of the

magistrate's duties.

10.01 ATTENDANCE OF BAILIFF

A bailiff may attend a hearing by a magistrate if directed by the referring court.

11.01 COURT REPORTER

(a) A court reporter is not required during a hearing held by a magistrate appointed under this rule.

(b) A party, the magistrate, or the referring court may provide for a reporter during the hearing.

(c) The record may be preserved by any other means approved by the magistrate.

(d) The referring court or magistrate may tax the expense of preserving the record as costs.

12.01 WITNESS

(a) A witness appearing before a magistrate is subject to the penalties for perjury provided by law.

(b) A referring court may fine or imprison a witness who:

(1) failed to appear before a magistrate after being summoned; or

(2) improperly refused to answer questions if the refusal has been certified to the court by the magistrate.

13.01 REPORT

(a) The magistrate's report may contain the magistrate's findings, conclusion, or recommendations. The magistrate's report must be in writing in the form directed by the referring court. The form may be a notation on the referring court's docket sheet.

(b) ~~After a hearing, the~~ magistrate ~~shall~~must provide the parties ~~participating in the hearing~~ notice of the substance of the magistrate's report.

(c) Notice ~~may~~must be given to the parties: by a method authorized by section 80.002, Government Code.

~~(1) in open court, or an oral statement or a copy of the magistrate's written report; or~~

~~(2) by certified mail, return receipt requested.~~

(d) If notice is given by mail, ~~the~~ magistrate ~~shall~~must certify the date of mailing of notice ~~by certified mail~~. Notice is considered given on the third day after the date of mailing.

(e) ~~After a hearing conducted by a magistrate, t~~The magistrate ~~shall~~must send the magistrate's signed and dated report and all other papers relating to the case to the referring court.

14.01 NOTICE OF RIGHT TO APPEAL

~~(a) Notice of the right of appeal to the judge of the referring court shall~~must be given to ~~all~~the parties in the magistrate's report.

~~(b) The notice may be given:~~

~~(1) by oral statement in open court;~~

~~(2) by posting inside or outside the courtroom of the referring court;~~
or

~~(3) as otherwise directed by the referring court.~~

15.01 ORDER OF COURT

(a) Pending appeal of the magistrate's report to the referring court, the decisions and recommendations of the magistrate are in full force and effect and are enforceable as an order of the referring court, except for orders providing for incarceration, civil commitment, or for the appointment of a receiver.

(b) If an appeal to the referring court is not filed or the right to an appeal to the referring court is waived, the findings and recommendations of the magistrate become the order of the referring court only on the referring court's signing an order conforming to the magistrate's report.

16.01 JUDICIAL ACTION ON MAGISTRATE'S REPORT

Unless a party files a written notice of appeal, the referring court may:

- (1) adopt, modify, or reject the magistrate's report;
- (2) hear further evidence; or
- (3) recommit the matter to the magistrate for further proceedings.

17.01 APPEAL TO REFERRING COURT

(a) A party may appeal a magistrate's report by filing notice of appeal not later than ~~the third~~ 10 days after the date the party receives notice of the substance of the magistrate's report as provided by 13.01.

(b) An appeal to the referring court must be in writing specifying the findings and conclusions of the magistrate to which the party objects. The appeal is limited to the specified findings and conclusions.

(c) On appeal to the referring court, the parties may present witnesses as in a hearing de novo on the issues raised in the appeal.

(d) Notice of an appeal to the referring court ~~shall~~ must be given to the opposing attorney under Rule 21a, Texas Rules of Civil Procedure.

(e) If an appeal to the referring court is filed by a party, any other party may file an appeal to the referring court not later than the seventh day after the date the initial appeal was filed.

(f) The referring court, after notice to the parties, ~~shall~~ must hold a hearing on all appeals not later than ~~the 30th~~ days after the date ~~on which the magistrate's report was adopted by the referring court~~ the appeal is submitted in writing.

(g) The parties may waive the right of appeal to the referring court in writing or on the record.

18.01 APPELLATE REVIEW

(a) Failure to appeal to the referring court, by waiver or otherwise, ~~the approval by the referring court of a magistrate's report~~ does not deprive a party of the right to appeal to or request other relief from a court of appeals or the ~~s~~Supreme ~~e~~Court.

(b) The date an order or judgment by the referring court is signed is the controlling date for the purposes of appeal to or request for other relief from a court of appeals or the ~~s~~Supreme ~~e~~Court.

19.01 IMMUNITY

A magistrate appointed under the subchapter has the judicial immunity of a district judge. All existing immunity granted a magistrate by law, express or implied, continues in full force and effect.

TRD-202302603
Jaclyn Daumerie
Rules Attorney
Supreme Court of Texas
Filed: July 19, 2023

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Texas Department of Transportation

Public Notice - Photographic Traffic Signal Enforcement Systems: Municipal Reporting of Traffic Crashes

The Texas Department of Transportation (department) is requesting that each municipality subject to the requirements of Transportation Code §707.004(d) provide the required data to the department **no later than October 27, 2023** in order for the department to meet the deadline for an annual report mandated by the Texas Legislature.

Pursuant to Section 7 of House Bill 1631, 86th Legislature, Regular Session, municipalities meeting certain criteria may continue to operate photographic traffic signal enforcement systems. Pursuant to Transportation Code §707.004(d), each such municipality must continue to compile and submit to the department annual reports after installation showing the number and type of crashes that have occurred at the intersection.

Those municipalities that do not meet the criteria contained in Section 7 of House Bill 1631, 86th Legislature, Regular Session can no longer

implement or operate photographic traffic enforcement systems with respect to highways or streets under their jurisdiction.

The department is required by Transportation Code §707.004 to produce an annual report of the information submitted to the department by December 1 of each year.

The department has created a web page detailing municipal reporting requirements and to allow the required data to be submitted electronically:

<https://www.txdot.gov/inside-txdot/division/traffic/safety/laws/red-light.html>

For additional information contact the Texas Department of Transportation, Traffic Operations Division, 125 East 11th Street, Austin, Texas 78701-2483 or call (512) 416-3260.

TRD-202302644
Becky Blewett
Deputy General Counsel
Texas Department of Transportation
Filed: July 25, 2023

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How to Use the Texas Register

Information Available: The sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Review of Agency Rules - notices of state agency rules review.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words “TexReg” and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 48 (2023) is cited as follows: 48 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written “48 TexReg 2 issue date,” while on the opposite page, page 3, in the lower right-hand corner, would be written “issue date 48 TexReg 3.”

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: <http://www.sos.state.tx.us>. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State’s website at <http://www.sos.state.tx.us/tac>.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
26. Health and Human Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to Update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule’s *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION Part 4. Office of the Secretary of State Chapter 91. Texas Register

1 TAC §91.1.....950 (P)

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