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Appointments

Appointments for February 23, 2021

Appointed to the Texas Transportation Commission, for a term to expire February 1, 2027, James B. "Bruce" Bugg, Jr. of San Antonio, Texas (Mr. Bugg is being reappointed).

Appointed to the Texas Transportation Commission, for a term to expire February 1, 2027, Wylie "Alvin" New of Christoval, Texas (Mr. New is being reappointed).

Appointments for February 24, 2021

Appointed to the Advisory Council on Cultural Affairs, for a term to expire February 1, 2025, Mike Arismendez, Jr. of Austin, Texas (Mr. Arismendez is being reappointed).

Appointed to the Advisory Council on Cultural Affairs, for a term to expire February 1, 2025, Ezzard G. Castillo of Floresville, Texas (Mr. Flores is being reappointed).

Appointed to the Advisory Council on Cultural Affairs, for a term to expire February 1, 2025, Ricardo J. Solis, Ph.D. of Laredo, Texas (Mr. Solis is being reappointed).

Designated as presiding officer of the Texas Early Learning Council, for a term to expire at the pleasure of the Governor, Sarah "Reagan" Miller of Austin (Ms. Miller is replacing Jacqueline M. "Jacquie" Porter of Georgetown).

Appointed to the Texas Farm and Ranch Lands Conservation Council, for a term to expire February 1, 2027, Leslie L.W. Kinsel of Cotulla, Texas (Ms. Kinsel is being reappointed).

Appointed to the Texas Farm and Ranch Lands Conservation Council, for a term to expire February 1, 2027, Natalie Cobb Koehler of Clifton, Texas (Ms. Koehler is being reappointed).

Appointments for February 25, 2021

Appointed to the Executive Council of Physical Therapy and Occupational Therapy Examiners, for a term to expire February 1, 2023, Manoranjan "Mano" Mahadeva of Plano, Texas (Mr. Mahadeva is being reappointed).

Appointed to the State Preservation Board, for a term to expire February 1, 2023, Alethea Swann Bugg of San Antonio, Texas (Ms. Bugg is being reappointed).

Appointed to the Texas State Board of Plumbing Examiners, for a term to expire September 5, 2025, David A. "Dave" Yelovich of Friendswood, Texas (replacing Calvin G. "Chip" Dence, Jr. of Victoria, who resigned).

Appointments for March 1, 2021

Appointed to the Governor's Committee on People with Disabilities, for a term to expire February 1, 2023, Ellen M. Bauman of Joshua, Texas (Ms. Bauman is being reappointed).

Appointed to the Governor's Committee on People with Disabilities, for a term to expire February 1, 2023, Elyse L. Lieberman, Ph.D. of Liberty Hill, Texas (Ms. Lieberman is being reappointed).

Appointed to the Governor's Committee on People with Disabilities, for a term to expire February 1, 2023, Eric N. Lindsay of San Antonio, Texas (Mr. Lindsay is being reappointed).

Appointed to the Governor's Committee on People with Disabilities, for a term to expire February 1, 2023, Kristie L. Orr, Ph.D. of College Station, Texas (Ms. Orr is being reappointed).

Appointed to the Governor's Committee on People with Disabilities, for a term to expire February 1, 2023, Dylan M. Rafaty of Plano, Texas (Mr. Rafaty is being reappointed).

Appointed to the Governor's Committee on People with Disabilities, for a term to expire February 1, 2023, Ricardo "Kris" Workman of Adkins, Texas (Mr. Workman is being reappointed).

Appointed to the Rehabilitation Council of Texas, for a term to expire October 29, 2021, April Pollirez of Amarillo, Texas (replacing Colton J. Read of New Braunfels, who resigned).

Appointed to the Texas State Council for Interstate Adult Offender Supervision, for a term to expire February 1, 2027, Pamela "Pam" Alexander-Schneider of Lubbock, Texas (Ms. Alexander-Schneider is being reappointed).

Greg Abbott, Governor

TRD-202100844

Executive Order GA-34

Relating to the opening of Texas in response to the COVID-19 disaster.

WHEREAS, I, Greg Abbott, Governor of Texas, issued a disaster proclamation on March 13, 2020, certifying under Section 418.014 of the Texas Government Code that the novel coronavirus (COVID-19) poses an imminent threat of disaster for all counties in the State of Texas; and

WHEREAS, in each subsequent month effective through today, I have renewed the disaster declaration for all Texas counties; and

WHEREAS, I have issued executive orders and suspensions of Texas laws in response to COVID-19, aimed at protecting the health and safety of Texans and ensuring an effective response to this disaster; and

WHEREAS, I issued Executive Order GA-08 on March 19, 2020, mandating social-distancing restrictions in accordance with guidelines promulgated by President Donald J. Trump and the Centers for Disease Control and Prevention (CDC); and

WHEREAS, I subsequently issued a series of superseding executive orders aiming to achieve the least restrictive means of combating the
evolving threat to public health by adjusting social-distancing restrictions while implementing a safe, strategic plan to reopen Texas; and

WHEREAS, under Executive Order GA-32, in effect since October 14, 2020, most establishments have been able to operate up to at least 75 percent of total occupancy, except in some areas with high hospitalizations as defined in that order, where most establishments have been able to operate up to at least 50 percent of total occupancy; and

WHEREAS, I also issued Executive Order GA-29, regarding the use of face coverings to control the spread of COVID-19, and a series of executive orders, most recently GA-31, limiting certain medical surgeries and procedures; and

WHEREAS, COVID-19 hospitalizations and the rate of new COVID-19 cases have steadily declined due to the millions of Texans who have voluntarily been vaccinated, many more who are otherwise immune, improved medical treatments for COVID-19 patients, abundant supplies of testing and personal protective equipment, and Texans' adherence to safe practices like social distancing, hand sanitizing, and use of face coverings; and

WHEREAS, in the Texas Disaster Act of 1975, the legislature charged the governor with the responsibility "for meeting ... the dangers to the state and people presented by disasters" under Section 418.011 of the Texas Government Code, and expressly granted the governor broad authority to fulfill that responsibility; and

WHEREAS, under Section 418.012, the "governor may issue executive orders ... hav[ing] the force and effect of law;"

NOW, THEREFORE, I, Greg Abbott, Governor of Texas, by virtue of the power and authority vested in me by the Constitution and laws of the State of Texas, and in accordance with guidance from medical advisors, do hereby order the following on a statewide basis effective at 12:01 a.m. on March 10, 2021:

1. In all counties not in an area with high hospitalizations as defined below:
   a. there are no COVID-19-related operating limits for any business or other establishment; and
   b. individuals are strongly encouraged to wear face coverings over the nose and mouth wherever it is not feasible to maintain six feet of social distancing from another person not in the same household, but no person may be required by any jurisdiction to wear or to mandate the wearing of a face covering.

   "Area with high hospitalizations" means any Trauma Service Area that has had seven consecutive days in which the number of COVID-19 hospitalized patients as a percentage of total hospital capacity exceeds 15 percent, until such time as the Trauma Service Area has seven consecutive days in which the number of COVID-19 hospitalized patients as a percentage of total hospital capacity is 15 percent or less. A current list of areas with high hospitalizations will be maintained at www.dshs.texas.gov/ga3031.

2. In any county located in an area with high hospitalizations as defined above:
   a. there are no state-imposed COVID-19-related operating limits for any business or other establishment;
   b. there is no state-imposed requirement to wear a face covering; and
   c. the county judge may use COVID-19-related mitigation strategies; provided, however, that:
      i. business and other establishments may not be required to operate at less than 50 percent of total occupancy, with no operating limits allowed to be imposed for religious services (including those conducted in churches, congregations, and houses of worship), public and private schools and institutions of higher education, and child-care services;
   ii. no jurisdiction may impose confinement in jail as a penalty for violating any order issued in response to COVID-19; and
   iii. no jurisdiction may impose a penalty of any kind for failure to wear a face covering or failure to mandate that customers or employees wear face coverings, except that a legally authorized official may act to enforce trespassing laws and remove violators at the request of a business establishment or other property owner.

3. In providing or obtaining services, every person (including individuals, businesses, and other legal entities) is strongly encouraged to use good-faith efforts and available resources to follow the Texas Department of State Health Services (DSHS) health recommendations, found at www.dshs.texas.gov/coronavirus.

4. Nothing in this executive order precludes businesses or other establishments from requiring employees or customers to follow additional hygiene measures, including the wearing of a face covering.

5. Nursing homes, state supported living centers, assisted living facilities, and long-term care facilities should follow guidance from the Texas Health and Human Services Commission (HHSC) regarding visitations, and should follow infection control policies and practices set forth by HHSC including minimizing the movement of staff between facilities whenever possible.

6. Public schools may operate as provided by, and under the minimum standard health protocols found in, guidance issued by the Texas Education Agency. Private schools and institutions of higher education are encouraged to establish similar standards.

7. County and municipal jails should follow guidance from the Texas Commission on Jail Standards regarding visitations.

8. Executive Orders GA-17, GA-25, GA-29, and GA-31 are rescinded in their entirety.

9. This executive order shall supersede any conflicting order issued by local officials in response to the COVID-19 disaster, but only to the extent that such a local order restricts services allowed by this executive order or allows gatherings restricted by this executive order. Pursuant to Section 418.016(a) of the Texas Government Code, I hereby suspend Sections 418.101(b) and 418.108 of the Texas Government Code, Chapter 81, Subchapter E of the Texas Health and Safety Code, and any other relevant statutes, to the extent necessary to ensure that local officials do not impose restrictions in response to the COVID-19 disaster that are inconsistent with this executive order, provided that local officials may enforce this executive order as well as local restrictions that are consistent with this executive order.

10. All existing state executive orders relating to COVID-19 are amended to eliminate confinement in jail as an available penalty for violating the executive orders. To the extent any order issued by local officials in response to the COVID-19 disaster would allow confinement in jail as an available penalty for violating a COVID-19-related order, that order allowing confinement in jail is superseded, and I hereby suspend all relevant laws to the extent necessary to ensure that local officials do not confine people in jail for violating any executive order or local order issued in response to the COVID-19 disaster. This executive order supersedes Executive Orders GA-17, GA-25, GA-29, GA-31, and GA-32, but does not supersede Executive Orders GA-10 or GA-13. This executive order shall remain in effect and in full force unless it is modified, amended, rescinded, or superseded by the governor. This executive order may also be amended by proclamation of the governor.
Given under my hand this the 2nd day of March, 2021.

Greg Abbott, Governor
TITLE 22. EXAMINING BOARDS
PART 9. TEXAS MEDICAL BOARD
CHAPTER 174. TELEMEDICINE
SUBCHAPTER A. TELEMEDICINE

22 TAC §174.5

The Texas Medical Board (Board) adopts, on an emergency basis, amendments to 22 TAC §174.5, effective March 3, 2021 at 12:01 a.m.

On March 13, 2020, the Governor of Texas certified COVID-19 as posing an imminent threat of disaster to the public health and safety and declared a state of disaster in all counties of Texas. On March 19, 2020, the Texas Governor issued a waiver suspending the strict enforcement of §174.5(e)(2)(A) which generally prohibits the utilization of telemedicine to prescribe scheduled drugs for the treatment of chronic pain. The waiver was issued in order to protect public health and curb the spread of COVID-19 by providing patients access to schedule drugs needed to ensure on-going treatment of chronic pain and avoid potential adverse consequences associated with the abrupt cessation of pain medication. On December 29, 2020, the Board adopted, on an emergency basis, amendments to 22 TAC §174.5. This rule is set to expire at 11:59 p.m. on March 2, 2021.

Therefore, the emergency amendment to §174.5(e) is immediately necessary to help the state’s physicians, physician assistants and other health care professionals continue to mitigate the risk of exposure to COVID-19 and provide necessary medical services to related to issuance of prescriptions including controlled substances for patients. Pursuant to the Governor’s declaration of disaster issued on March 13, 2020, related to COVID-19, physicians can continue to provide telephonic waivers for prescriptions for established patients after having an in-person or two audio and video communications telemedicine medical services within the last 90 days. This waiver and emergency rule includes allowing a physician to issue a prescription for the treatment of chronic pain with scheduled medications.

The emergency amendment would allow physicians to utilize telemedicine to issue refill prescriptions for scheduled medications to established chronic pain patients, if the physician has, within the past 90 days, seen a patient in-person or via a telemedicine visit using two-way audio and video communication.

Pursuant to Section 2001.034 and 2001.036(a)(2) of the Texas Government Code, the amendment is adopted on an emergency basis and with an expedited effective date because an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days’ notice. The emergency amendment shall be in effect for only 60 days or the duration of the time period that the Governor’s disaster declaration of March 13, 2020 in response to the COVID-19 pandemic is in effect, whichever is shorter, pursuant to Section 2001.034 of the Texas Government Code.

The emergency rule amendments are adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle.

Another statute affected by this rule is Chapter 111 of the Texas Occupations Code.

§174.5. Issuance of Prescriptions.
(a) The validity of a prescription issued as a result of a telemedicine medical service is determined by the same standards that would apply to the issuance of the prescription in an in-person setting.

(b) This rule does not limit the professional judgment, discretion or decision-making authority of a licensed practitioner. A licensed practitioner is expected to meet the standard of care and demonstrate professional practice standards and judgment, consistent with all applicable statutes and rules when issuing, dispensing, delivering, or administering a prescription medication as a result of a telemedicine medical service.

(c) A valid prescription must be:
(1) issued for a legitimate medical purpose by a practitioner as part of patient-practitioner relationship as set out in §111.005, of Texas Occupations Code; and
(2) meet all other applicable laws before prescribing, dispensing, delivering or administering a dangerous drug or controlled substance.

(d) Any prescription drug orders issued as the result of a telemedicine medical service, are subject to all regulations, limitations, and prohibitions set out in the federal and Texas Controlled Substances Act, Texas Dangerous Drug Act and any other applicable federal and state law.

(e) Limitation on Treatment of Chronic Pain. Chronic pain is a legitimate medical condition that needs to be treated but must be balanced with concerns over patient safety and the public health crisis involving overdose deaths. The Legislature has already put into place laws regarding the treatment of pain and requirements for registration and inspection of pain management clinics. Therefore, the Board has determined clear legislative intent exists for the limitation of chronic pain treatment through a telemedicine medical service.

(1) Treatment for Chronic Pain. For purposes of this rule, chronic pain has the same definition as used in §170.2(4) of this title (relating to Definitions).
For CHAPTER

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Background

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TEXAS

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NURSING

PART 11.

CHAPTER 217.

LICENSE, PEER

ASSISTANCE AND PRACTICE

22 TAC §217.24

Introduction. The Texas Board of Nursing (Board) adopts emergency amendments to §217.24, relating to Telemedicine Medical Service Prescriptions, pursuant to a finding of imminent peril to the public health, safety, and welfare, which requires adoption in fewer than thirty (30) days' notice, as authorized by Tex. Gov't. Code §2001.034.

Background

On March 13, 2020, the Governor of the State of Texas certified COVID-19 as posing an imminent threat of disaster to the public health and safety and declared a state of disaster in all counties of Texas. On March 23, 2020, the Office of the Governor granted a waiver of 22 Texas Administrative Code §217.24(e)(1), which prohibits an advanced practice registered nurse (APRN) from treating chronic pain with scheduled drugs through the use of telemedicine medical services, unless otherwise permitted under federal and state law. The waiver, however, expired on June 6, 2020.

The Board held a public meeting on June 8, 2020, to consider the adoption of an emergency rule to permit advanced practice registered nurses to treat chronic pain with scheduled drugs through the use of telemedicine medical services under certain conditions during the COVID-19 pandemic. At the conclusion of the meeting, the Board voted to adopt the emergency amendments to 22 Texas Administrative Code §217.24(e)(1). The emergency amendments took effect June 8, 2020; were published in the Texas Register on June 19, 2020; and expired on July 7, 2020. Because the continuation of the effects of the COVID-19 pandemic necessitated the continuation of the emergency rule beyond the July 7, 2020 expiration date, the Board held a public meeting on July 6, 2020, and again adopted emergency amendments to §217.24(e)(1). The emergency amendments took effect July 7, 2020; were published in the Texas Register on July 17, 2020; and expired on September 4, 2020. The Board again considered the need for the adoption of emergency amendments to §217.24(e)(1) in public meeting on September 4, 2020 and voted to adopt emergency amendments to §217.24(e)(1) at the conclusion of that meeting. The emergency amendments took effect September 5, 2020; were published in the Texas Register on September 18, 2020; and expired on November 3, 2020. The Board again considered the need for the adoption of emergency amendments to §217.24(e)(1) in public meeting on November 4, 2020, and voted to adopt emergency amendments to §217.24(e)(1) at the conclusion of that meeting. The emergency amendments took effect November 4, 2020; were published in the Texas Register on November 20, 2020; and expired on January 3, 2021.

The Board again considered the need for the adoption of emergency amendments to §217.24(e)(1) in public meeting on December 30, 2020, and voted to adopt emergency amendments to §217.24(e)(1) at the conclusion of that meeting. The emergency amendments took effect January 3, 2021; were published in the Texas Register on January 15, 2021; and will expire on March 3, 2021.

The Board has determined that the continuation of the effects of the COVID-19 pandemic necessitates the continuation of an emergency rule.

The adoption of emergency amendments to §217.24(e)(1) is immediately necessary to allow APRNs to continue to provide necessary treatment to established patients with chronic pain while mitigating the risk of exposure to COVID-19. Under the emergency amendments, an APRN may treat chronic pain with scheduled drugs through use of telemedicine medical services if a patient is an established chronic pain patient of the APRN, is seeking a telephone refill of an existing prescription, and the APRN determines that the telemedicine treatment is needed due to the COVID-19 pandemic. Further, the medical records must document the exception and the reason that a telemedicine visit was conducted instead of an in-person visit. The APRN must exercise appropriate professional judgment in
determining whether to utilize telemedicine medical services for the treatment of chronic pain with controlled substances. The emergency amendments will only apply to those APRNs whose delegating physicians agree to permit them to issue refills for these patients, and the services provided are limited to refills of controlled substances in Schedules III through V. Finally, these emergency amendments will only be in effect for a period of 60 days or the duration of the time period that the Governor's disaster declaration of March 13, 2020 in response to the COVID-19 pandemic is in effect, whichever is shorter.

Statutory Authority. The emergency amendments are adopted under the authority of the Tex. Occ. Code §301.151, which authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing. The emergency amendments are also adopted pursuant to Tex. Gov't. Code §2001.034 and §2001.036(a)(2) on an emergency basis and with an expedited effective date because an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice.

This emergency adoption also affects Texas Occupations Code Chapter 111.

§217.24. Telemedicine Medical Service Prescriptions.

(a) (d) (No change.)

(e) (No change.)

(1) Treatment of chronic pain with scheduled drugs through use of telemedicine medical services is prohibited, unless otherwise allowed under federal and state law. For purposes of this section, "chronic pain" means a state in which pain persists beyond the usual course of an acute disease or healing of an injury. Chronic pain may be associated with a chronic pathological process that causes continuous or intermittent pain over months or years.

(A) Notwithstanding paragraph (e)(1), treatment of chronic pain with scheduled drugs through use of telemedicine medical services is not prohibited by this rule if the patient is an established chronic pain patient of the APRN and is seeking telephone refil of an existing prescription, and the APRN determines that such telemedicine treatment is needed due to the COVID-19 pandemic.

(B) If a patient is treated for chronic pain with scheduled drugs through the use of telemedicine medical services as permitted by (e)(1)(A), the medical records must document the exception and the reason that a telemedicine visit was conducted instead of an in-person visit.

(C) An APRN, when determining whether to utilize telemedicine medical services for the treatment of chronic pain with controlled substances as permitted by (e)(1)(A), shall give due consideration to factors that include, at a minimum, date of the patient's last in-person visit, patient co-morbidities, and occupational related COVID risks. These are not the sole, exclusive, or exhaustive factors an APRN should consider under this rule.

(D) The emergency amendment of this rule effective March 4, 2021, shall be in effect for only 60 days or the duration of the time period that the Governor's disaster declaration of March 13, 2020 in response to the COVID-19 pandemic is in effect, whichever is shorter.

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

Filed with the Office of the Secretary of State on February 26, 2021.

TRD-202100816
Jena Abel
Deputy General Counsel
Texas Board of Nursing
Effective date: March 4, 2021
Expiration date: May 2, 2021
For further information, please call: (512) 305-6822

PART 36. COUNCIL ON SEX OFFENDER TREATMENT
CHAPTER 810. COUNCIL ON SEX OFFENDER TREATMENT
SUBCHAPTER A. LICENSED SEX OFFENDER TREATMENT PROVIDERS
22 TAC §810.4

The Council on Sex Offender Treatment (Council) adopts an emergency rule under Title 22, Texas Administrative Code, §810.4, concerning License Issuance and/or Renewal, to provide Licensed Sex Offender Treatment Providers (LSOTPs) with the flexibility to obtain additional continuing education hours online for licensure renewal requirements.

BACKGROUND AND PURPOSE

The purpose of the emergency rulemaking is to support the Governor's March 13, 2020, proclamation certifying that the COVID-19 virus poses an imminent threat of disaster in the state and declaring a state of disaster for all counties in Texas. In response to the COVID-19 outbreak and national, state, and local community efforts to contain the spread of the virus, including social distancing, the Council amends §810.4(7) to increase the maximum number of allowable online continuing education hours for license renewal from 12 hours to 24 hours. Under this emergency rule, online hours accrued to satisfy the continuing education ethics requirement do not count toward the maximum of 24 online hours.

As authorized by Texas Government Code §2001.034, the Council may adopt an emergency rule without prior notice or hearing upon finding that an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice. Emergency rules adopted under Texas Government Code §2001.034 may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

The Council finds that an imminent peril to the public health, safety, and welfare requires immediate adoption of this emergency rule. The emergency rule amendment is necessary to provide LSOTPs applicants with the flexibility to satisfy continuing education requirements for licensure online.

SECTION-BY-SECTION SUMMARY
The emergency rule amendment to §810.4(7) increases the maximum number of online continuing education hours for license renewal from 12 hours to 24 hours. There are no further changes to §810.4.

STATUTORY AUTHORITY

The emergency rulemaking is adopted under Texas Government Code §2001.034, which authorizes the adoption of emergency rules without prior notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days’ notice; under Texas Occupations Code, §110.158, which authorizes the Council to adopt rules necessary for the performance of its duties; and under Texas Occupations Code, §110.302, which requires the Council to adopt licensing requirements for sex offender treatment providers.

The emergency rule implements Texas Occupations Code Chapter 110.

§810.4. License Issuance and/or Renewal.

All new initial licenses shall expire on the last day of the licensee's birth month. The initial licensing period shall be at least 13 months and no more than 24 months. Subsequent licensing periods will be 24 months. In order to maintain eligibility for the licensure as a sex offender treatment provider, the mental health or medical license of each renewal shall be current and active. All renewal applicants shall comply with the following:

(1) - (6) (No change.)

(7) Licensees shall request pre-approval from the council for all online courses and courses taken at an institution of higher learning. All renewal applicants may count a maximum of 24 [42] online hours per biennial renewal period, not including ethics hours.

(8) - (11) (No change.)

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

Filed with the Office of the Secretary of State on February 23, 2021.

TRD-202100758
Aaron Pierce, PhD, LPC, LSOTP-S
Chairman
Council on Sex Offender Treatment
Effective date: February 23, 2021
Expiration date: June 22, 2021
For further information, please call: (512) 231-5721

TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 339. EMERGENCY RULE RELATED TO A STATE FACILITY, LOCAL INTELLECTUAL AND DEVELOPMENTAL DISABILITY AUTHORITY, LOCAL MENTAL HEALTH AUTHORITY, AND LOCAL BEHAVIORAL HEALTH AUTHORITY

SUBCHAPTER A. COVID-19 EMERGENCY RULE

26 TAC §339.101

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts on an emergency basis in Title 26 Texas Administrative Code (TAC), new Chapter 339, Subchapter A, §339.101, concerning an emergency rule in response to COVID-19 in order to ensure essential services are provided to individuals with intellectual and developmental disabilities (IDD). As authorized by Texas Government Code §2001.034, the Commission may adopt an emergency rule without prior notice or hearing upon finding that an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days’ notice. Emergency rules adopted under Texas Government Code §2001.034 may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

BACKGROUND AND PURPOSE

The purpose of the emergency rulemaking is to support the Governor's March 13, 2020, proclamation certifying that the COVID-19 virus poses an imminent threat of disaster in the state and declaring a state of disaster for all counties in Texas. In this proclamation, the Governor authorized the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster and directed that government entities and businesses would continue providing essential services. HHSC accordingly finds that an imminent peril to the public health, safety, and welfare of the state requires immediate adoption of this emergency rule regarding Temporary Changes to Requirements.

To protect individuals with IDD and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting a new emergency rule to temporarily change requirements in the following rules: 40 TAC §§2.46(e)(3), 2.105(f)(1), 2.109(e)(3), 2.274(a)(2)(B), 2.556(d)(1), 4.156(a), 4.156(e), 9.158(f), 9.161(i)(1) and (2), 9.161(i)(1)(A), and 9.582(c); and 26 TAC §§303.302(a)(2)(A)(ii), 303.102(46) and (54), and 303.601(b)(7).

The rule allows individuals additional time to request certain reviews conducted by a local intellectual and developmental disability authority (LIDDA) and administrative hearings conducted by HHSC, and to act to comply with certain accountability requirements. The rule allows a LIDDA or state facility more time to submit to HHSC an individual's request for an administrative hearing, a meeting between a service coordinator and an individual to be conducted by telephone or video conference, rather than face-to-face, and a visit to community living options to be conducted virtually rather than in-person. The rule changes the requirement that a LIDDA withdraw an offer of Home and Community-based Services Program services for certain reasons to a requirement that the LIDDA not withdraw an offer or obtain HHSC's approval before withdrawing an offer. The rule allows additional time for a LIDDA to complete certain activities after the LIDDA is notified of changes to an individual's level of need (LON) and additional time to notify HHSC if the LIDDA is unable to complete the activities, a LIDDA to assess an individual by telecommunication after the LIDDA is notified by HHSC of changes to an individual's LON, and a LIDDA more time to sub-

46 TexReg 1574 March 12, 2021 Texas Register
mit a plan of correction to HHSC after a review exit conference. The rule permits a LIDDA, local mental health authority, or local behavioral health authority to conduct preadmission screening and resident review level II evaluations and resident reviews, and a habilitation coordinator to provide habilitation coordination by telephone or video conference, rather than face-to-face.

### STATUTORY AUTHORITY

The emergency rulemaking is adopted under Texas Government Code §2001.034, §§31.055, and §531.021, and under Texas Human Resources Code §32.021. Texas Government Code §2001.034 authorizes the adoption of emergency rules without prior notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days’ notice. Texas Government Code §531.0055 authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by the health and human services system. Texas Government Code §531.021 gives HHSC the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program. Texas Human Resources Code §32.021 requires the Executive Commissioner of HHSC to adopt necessary rules for the proper and efficient operation of the Medicaid program.


#### §339.101. Temporary Changes to Requirements.

The following temporary changes are made to the rules identified in paragraphs (1) - (13) of this section, which relate to functions of a state facility, local intellectual and developmental disability authority (LIDDA), local mental health authority (LMHA), and local behavioral health authority (LBHA). After the emergency rule is withdrawn or expires, the Texas Health and Human Services Commission (HHSC) will exercise its enforcement discretion to apply the extended timelines established in this emergency rule to actions that were initiated while the emergency rule was in effect.

1. The 30-day period described in Texas Administrative Code (TAC) Title 40 §2.46(e)(3) (relating to Notification and Appeals Process) is extended to 120 days. Therefore, the written notification given to a person and legally authorized representative (LAR), by a LIDDA or LIDDA's contractor, must explain that the person or LAR may contact the LIDDA or the LIDDA's contractor within 120 days of the written notification to request a review of a decision to deny or terminate services.

2. The 30-day period described in 40 TAC §2.105(f)(1) (relating to Accountability) is extended to 120 days. Therefore, if a person or the person's parent complies with the applicable accountability requirement within 120 days, a LIDDA must adjust the person's account to reflect retroactive compliance.

3. The 10-working-day period described in 40 TAC §2.109(e)(3) (relating to Payments, Collections, and Non-payment) is extended to 90 calendar days. Therefore, a person or parent must submit a request to review a LIDDA's appeal decision to HHSC within 90 calendar days after the person or parent receives the appeal decision. In accordance with 40 TAC §2.109(e)(2), the LIDDA's notification of the appeal decision must describe this timeframe.

4. Beginning March 13, 2020, a LIDDA may provide the visit to community living options described in 40 TAC §2.274(a)(2)(B) (relating to Consideration of Living Options for Individuals Residing in State MR Facilities) virtually, including by using panoramic images or a video of the living option, instead of in person. If a virtual visit is not available, the LIDDA must document that a virtual visit is not available and provide an in-person or virtual visit as soon as possible.

5. Beginning March 13, 2020, the meeting described in 40 TAC §2.556(d)(1) (relating to LIDDA's Responsibilities) between a service coordinator and an individual may be conducted by telephone or video conference, rather than face-to-face.

6. The 30-day period described in 40 TAC §4.156(a) (relating to Request for an Administrative Hearing) is extended to 120 days. Therefore, if a person receives a notice described in 40 TAC §4.155(a) (relating to Notice), the person must submit a request for a hearing so that it is received by HHSC within 120 days of the notice.

7. The one-working-day period described in 40 TAC §4.156(e) is extended to 10 working days. Therefore, a state facility or LIDDA must submit a request for administrative hearing, made in accordance with 40 TAC §4.156(a), within 10 working days after it receives the request.

8. Beginning March 13, 2020, the requirement in 40 TAC §9.158(b) (relating to Process for Enrollment of Applicants) for a LIDDA to withdraw an offer of Home and Community-Based Services Program services, for a reason described in paragraphs (1) - (4) of this subsection, is changed to a requirement for a LIDDA to:

   A. not withdraw an offer; or

   B. obtain approval from HHSC to withdraw an offer for a reason described in paragraphs (1) - (4) of this subsection.

9. The 30-business-day period described in 40 TAC §9.161(i)(1) and (2) (relating to LOC Determination) is extended to 90 calendar days. Therefore, a LIDDA must complete the activities described in 40 TAC §9.161(i)(1)(A) - (C) within 90 calendar days after receiving notification from HHSC that an individual's level of need (LON) changes to a LON 1. If a LIDDA is unable to complete the activities described in 40 TAC §9.161(i)(1)(A) - (C) within 90 calendar days after receiving notification from HHSC, the LIDDA must notify HHSC of the reasons for the delay.

10. The requirement in 40 TAC §9.161(i)(1)(A) that a LIDDA assess an individual in-person, after receiving notification from HHSC that an individual's LON changes to a LON 1, is changed to allow a LIDDA to assess an individual by telecommunication after receiving notification from HHSC that an individual's LON changes to a LON 1.

11. The 30-calendar-day period described in 40 TAC §9.582(c) (relating to Compliance with TxHmL Program Principles for LIDDAs) is extended to 90 calendar days. Therefore, if an item of non-compliance from a review of a LIDDA remains uncorrected at the time of the review exit conference, the LIDDA must submit a plan of correction to HHSC within 90 calendar days after the review exit conference.

12. Beginning March 13, 2020, a LIDDA, LMHA, or LBHA may conduct the preadmission screening and resident review level II evaluations and resident reviews described in §§303.302(a)(2)(A)(ii) of this title (relating to LIDDA, LMHA, and LBHA Responsibilities Related to the PASRR Process) and §§303.102(46) and (54) of this title (relating to Definitions) by telephone or video conference, rather than face-to-face.

13. Beginning March 13, 2020, the assigned habilitation coordinator may provide habilitation coordination as required in §§303.601(b)(7) of this title (relating to Habilitation Coordination for a Designated Resident) by telephone or video conference, rather than face-to-face.
The agency certifies that legal counsel has reviewed the emergency adoption and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 24, 2021.

TRD-202100796

Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: February 24, 2021
Expiration date: June 23, 2021
For further information, please call: (512) 438-3135
PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

PART 7. STATE OFFICE OF ADMINISTRATIVE HEARINGS

CHAPTER 155. RULES OF PROCEDURE

SUBCHAPTER J. DISPOSITION OF CASE

1 TAC §155.503

The State Office of Administrative Hearings (SOAH) proposes amendments to Texas Administrative Code, Title 1, Part 7, Chapter 155, Rules of Procedure, Subchapter J, §155.503, concerning Dismissal Proceedings.

Explanation of Proposed Rules

SOAH recently amended its Rules of Procedure in Chapter 155, including amendments to §155.503 regarding the dismissal of contested case proceedings. The current rule in §155.503(c)(3) now provides that when a case is dismissed for a failure to prosecute a matter, the case will be remanded to the referring agency, unless the case is reinstated by order of the presiding judge in response to a timely motion for reinstatement.

While the procedure described in §155.503(c)(3) is suitable for most cases in which the one or more parties fail to prosecute their case, SOAH's administrative law judges recommend that the rule should be clarified to address the procedure to be followed where SOAH is authorized by law to render a final decision. Accordingly, the proposed amendments to §155.503(c)(3) would clarify that: (A) if SOAH is not authorized to render a final decision, then the case will be remanded to the referring agency; and (B) if SOAH is authorized to render a final decision, then SOAH will conclude its involvement in the matter and surrender jurisdiction. Both of these outcomes are supported by Texas Government Code, §2003.051.

Fiscal Note

Public Benefit. Kristofer S. Monson, Chief Administrative Law Judge for SOAH, has determined for the first five-year period the proposed rule amendment is in effect, there will be a benefit to the general public, state agencies, attorneys, and parties appearing at SOAH because the proposed rule amendments will provide a clearer understanding of procedures regarding dismissals based on a failure to prosecute.

Probable Economic Costs. Chief Judge Monson, has determined that for the first five-year period the proposed rule amendments are in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of the proposed rules. Additionally, Chief Judge Monson has determined that the proposed rule amendments do not have foreseeable implications relating to the costs or revenues of state or local government.

Fiscal Impact on Small Businesses, Micro-Businesses, and Rural Communities. There will be no adverse effect on small businesses, micro-businesses, or rural communities as a result of the proposed rule amendments. Because the agency has determined that the proposed rule amendments will have no adverse economic effects on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and Regulatory Analysis, as provided in Government Code §2006.002, is not required.

Local Employment Impact Statement. Chief Judge Monson has determined that the proposed rule amendments will not affect the local economy so the agency is not required to prepare a local employment impact statement under Government Code §2001.022.

Government Growth Impact Statement. Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed rule amendments. For the first five years the proposed rule amendments will be in effect, the agency has determined the following:

(1) The proposed rule amendments do not create or eliminate a government program.

(2) Implementation of the proposed rule amendments does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of the proposed rule amendments does not require an increase or decrease in future legislative appropriations to the agency.

(4) The proposed rule amendments do not require an increase or decrease in fees paid to the agency.

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

(6) The proposed rule amendments do not expand, limit, or repeal existing regulations.

(7) The proposed rule amendments do not increase the number of individuals subject to the rule's applicability.

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

Takings Impact Assessment. Chief Judge Monson has determined that the proposed rule amendments will not affect private real property interests, therefore SOAH is not required to prepare a takings impact assessment under Government Code §2007.043.

Submission of Comments
Written comments on the proposed rules may be submitted to Angela Pardo, State Office of Administrative Hearings, P.O. Box 13025, Austin, Texas 78711-3025 or by email to: questions@soah.texas.gov with the subject line "Default Rule Comments." The deadline for receipt of comments is 5:00 p.m. on April 12, 2021. All requests for a public hearing on the proposed rules, submitted under the Administrative Procedure Act, must be received by the State Office of Administrative Hearings no more than fifteen (15) days after the notice of proposed rules have been published in the Texas Register.

Statutory Authority

The rule amendments are proposed under: (1) Texas Government Code §2003.050, which provides that the Chief Administrative Law Judge shall adopt rules that govern procedures that relate to hearings conducted by SOAH; and (ii) Texas Government Code §2003.051, which provides that a state agency that has referred a matter to the office in which the office will conduct a hearing may not take any adjudicative action relating to the matter until the office has issued its proposal for decision or otherwise concluded its involvement in the matter.

Cross Reference to Statute


§155.503. Dismissal.

(a) Voluntary dismissal or non-suit.

(1) At any time before the date set by the judge for close of the record, the party that bears the burden of proof may move to dismiss a case or take a non-suit. Notice of the dismissal or non-suit shall be served on all parties in accordance with §155.105 of this chapter.

(2) Upon filing of a motion to dismiss or take a non-suit, the judge shall promptly dismiss the case from SOAH’s docket, unless such disposition would prevent a party from seeking relief to which it would otherwise be entitled.

(3) Any dismissal under this subsection shall have no effect on any motion for sanctions or costs pending at the time of dismissal, as determined by the judge.

(b) Agreed dismissal; settlement.

(1) At any time before the date set by the judge for close of the record, the parties may jointly move to dismiss a case in accordance with the agreement of the parties. Such motion shall be signed by the parties or their attorneys and filed with SOAH or entered on the record at the hearing or prehearing conference in accordance with §155.415 of this chapter.

(2) In accordance with an agreement of the parties, a severable portion of the proceeding may be disposed of under paragraph (1) of this subsection if it will not prejudice the proceedings as to any remaining parties.

(3) Upon filing or entering on the record of an agreed motion to dismiss, the judge shall promptly dismiss the case from SOAH’s docket, or otherwise release any dismissed parties unless otherwise ordered by the judge in accordance with paragraph (2) of this subsection.

(c) Failure to prosecute.

(1) A contested case may be dismissed in whole or in part for want of prosecution if the party seeking affirmative relief fails to prosecute the case in accordance with a requirement of statute, rule, or order of the judge. The order of dismissal shall:

(A) explain the party’s failure to prosecute; (B) inform the party of an opportunity to seek reinstatement of the case; and

(C) inform the party that the case is dismissed and will be remanded to the referring agency unless:

(i) the party files a motion to reinstate the case on the docket not later than 15 days after the issuance of the order; and

(ii) the motion to reinstate specifies the basis for the motion and addresses the grounds for dismissal stated in the judge's order.

(2) The judge may grant a motion to reinstate the case if the moving party shows good cause for the failure to prosecute.

(3) Unless the judge grants a motion to reinstate the case:

[In the absence of a timely motion to reinstate the case on the docket, the case will be remanded to the referring agency after the expiration of 15 days from the date of the order.]

(A) in a dismissal proceeding where SOAH is not authorized by law to issue a final decision, the case will be remanded to the referring agency after the expiration of 15 days from the date of the order.

(B) in a dismissal proceeding where SOAH is authorized by law to render a final decision, the judge will conclude SOAH’s involvement in the matter and surrender jurisdiction after the expiration of 15 days from the date of the order.

(4) Dismissal under this section removes the case from the SOAH docket without a decision on the merits.

(d) Other Dismissal Actions.

(1) The judge may dismiss a case or a portion of the case from SOAH’s docket for:

(A) lack of jurisdiction over the matter by the referring agency;

(B) lack of statute, rule, or contract authorizing SOAH to conduct the proceeding;

(C) mootness of the case;

(D) failure to state a claim for which relief can be granted;

(E) unnecessary duplication of proceedings; or

(F) abatement of the case for a period longer than 120 days. Dismissal under this subsection removes the case from the SOAH docket without prejudice to refiling.

(2) The judge may issue an order in response to a party's motion or after the judge notifies the parties of an intent to dismiss a case and allows time for responses.

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

Filed with the Office of the Secretary of State on March 1, 2021.

TRD-202100841
Shane Linkous
General Counsel
State Office of Administrative Hearings
Earliest possible date of adoption: April 11, 2021
For further information, please call: (512) 936-6624
The Texas State Library and Archives Commission (Commission) proposes amendments to §8.1, Definitions.

BACKGROUND. The Commission proposes amendments to §8.1 to expand TexShare affiliate membership to libraries that are components of federally recognized American Indian tribes or institutions of higher education accredited by accrediting agencies recognized by the Texas Higher Education Coordinating Board (THECB).

The TexShare consortium is a resource-sharing consortium operated as a program within the Commission for institutions of higher education and for public libraries, libraries of nonprofit corporations, and other types of libraries. Government Code §441.224 authorizes the Commission, by rule, to admit other types of libraries as members or as affiliated members. The Commission adopted §8.1 to clarify definitions related to the consortium and specify the criteria for membership and affiliate membership in TexShare.

Under §8.3, Consortium Membership and Affiliated Membership, public school districts and other eligible nonprofit libraries may apply for affiliate membership. Section 8.1(14) defines "eligible nonprofit library" as a library not qualified for consortium membership by virtue of being a public library, library of clinical medicine, library component of an institution of higher education, or public school district that is (A) physically located in Texas or able to provide services exclusively to Texas residents; (B) a specified type of non-profit organization; (C) a component of one of the listed types of entities; and (D) provides library services as defined in the rule. The proposed amendment to §8.1(14)(C)(i) would broaden the criteria for libraries that are components of institutions of higher education by removing the requirement that the institution of higher education hold a certificate of authorization from THECB. Instead, a library that is a component of an institution of higher education could be eligible if the institution is accredited by an accrediting agency recognized by THECB. The effect of this amendment would be that in addition to library components of institutions that hold certificates of authorization from THECB, library components of institutions that are exempt from THECB regulation may be eligible for affiliate membership, so long as they are accredited by a TCHBE recognized accreditor. The list of THECB recognized accreditors is available at the following link: http://reportcenter.highered.texas.gov/agency-publication/miscellaneous/private-post-secondary-institution-accrediting-agencies-2018/.

The proposed amendments to §8.1(14)(B)(iv) and §8.1(14)(C)(vii) would clarify the criteria for tribal libraries. An omission in §8.1(14)(C) had previously excluded these institutions from affiliate membership.

Additional nonsubstantive amendments clarify rule language and update punctuation for consistency with Texas Register preferences.
the proposed rules do not constitute a taking under Government Code, §2007.043.

REQUEST FOR PUBLIC COMMENT. Written comments on the proposed amendment and new rule may be submitted to Jennifer Peters, Director, Library Development and Networking, Texas State Library and Archives Commission, P.O. Box 12927, Austin, Texas, 78711, or via email at rules@tsl.texas.gov. To be considered, a written comment must be received no later than 30 days from the date of publication in the Texas Register.

STATUTORY AUTHORITY. This new rule is proposed under Government Code, §441.224, which authorizes the Commission to admit other types of libraries as members or as affiliated members of the consortium by rule.

CROSS REFERENCE TO STATUTE. Government Code, Chapter 441, Subchapter M.

§8.1. Definitions.

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

(1) Institution of higher education—A public junior college certified by the Texas Higher Education Coordinating Board as described by Education Code, §61.063; a general academic teaching institution as defined by Education Code, §61.003(3); a medical and dental unit as defined by Education Code, §61.003(5); a public technical institute as defined by Education Code, §61.003(7); a private or independent institution of higher education as defined by Education Code, §61.003(15); or a public state college as defined by Education Code, §61.003(16).

(2) TexShare Annual Report Survey--A report submitted to the commission each year by TexShare members and affiliate members. The report shall include questions concerning satisfaction with TexShare membership and programs. It may also be used to provide updates to institutional program participation contacts.

(3) Commission--The Texas State Library and Archives Commission.


(5) Director and Librarian--Chief executive and administrative officer of the commission.

(6) Public Library has the meaning assigned by Government Code, §441.122.

(7) Library of clinical medicine has the meaning assigned to Non-Profit Corporation by Government Code, §441.221.

(A) Extensive library services are defined as:

(i) Library is open and staffed a minimum of 45 hours per week; and

(ii) Staff includes a minimum of one full-time equivalent professional librarian (as defined in 13 TAC §1.84, relating to Professional Librarian); and

(iii) Library employs a library director for at least 40 hours per week in library duties; and

(iv) Services include circulation of materials, reference services, use of computers to access information sources, databases, or other similar services; and

(v) An institutionally-approved collection development policy updated at least every five years.

(B) Extensive collections in the fields of clinical medicine and the history of Medicine is defined as follows:

(i) Clinical medicine is defined as materials in the "W" category of the National Library of Medicine (NLM) classification scheme (www.nlm.nih.govclas/index.html).

(ii) History of Medicine is defined as:

(I) Materials fitting the scope of the NLM classification scheme (www.nlm.nih.govclas/index.html) under WZ-History of Medicine, Misc or in the NLM classification scheme under history of a particular medical subject (e.g. history of surgery (WO 11), history of dermatology (WR 11), history of gynecology (WP 11), etc.); or

(II) Unique archival materials (print materials, historical artifacts, and other resources) related to institutional history, or reflecting historically significant contributions of persons or institutions, or history of a particular area of health care.

(iii) "Extensive collections" is defined as a minimum of 12,000 library resources in the field of clinical medicine and history of medicine, in print and in electronic formats, comprised of books, journal titles, technical reports, videos, or databases.

(8) Public school district--Any school district or open enrollment district accredited by the Texas Education Agency under Texas Education Code, Section 11.001.

(9) Public school library--An organized collection of printed, audiovisual and/or computer resources in a public school or public school campus (elementary or secondary). A public school library makes resources and services available to all students, teachers, and administrators. Collections such as classroom "libraries" or collections of primarily textbooks or other similar classroom teaching materials are not public school libraries.

(10) Certified school librarian--A public school district staff member holding a current school librarian certificate issued by the State Board for Educator Certification under the authority of Education Code, Chapter 21, Subchapter B (§§21.031 - 21.058).

(11) Certified staff member--A public school district staff member holding a current certificate, license, permit, or other credential issued by the State Board for Educator Certification under the authority of Education Code, Chapter 21, Subchapter B (§§21.031 - 21.058).

(12) Consortium membership refers to membership held by those libraries meeting the eligibility criteria specified in §8.3(a)(1) of this chapter. Libraries meeting these requirements are referred to as "members" or "consortium members."

(13) Affiliate membership refers to membership held by public school districts and by eligible nonprofit libraries meeting the criteria specified in §8.3(a)(2) of this chapter. Libraries admitted under this section are referred to as "affiliate members."

(14) Eligible nonprofit library--A library not qualified for consortium membership by virtue of being a public library, library of clinical medicine, library component of an institution of higher education, or public school district that [is]:

(A) Is physically [Physically] located in Texas, or if physically located outside of Texas, capable of providing online library services exclusively to Texas residents.

(B) Is established [Established] as a nonprofit organization or administrative subdivision of a nonprofit organization:
(i) under the Texas Nonprofit Corporation Law (Texas Business Organizations Code §22.001 et seq.); [or]
(ii) recognized as exempt from federal income tax under section 501(c)(3) of the U.S. Internal Revenue Code; [or]
(iii) operated by a unit of local, state, or federal government; or
(iv) operated by a federally recognized American Indian tribe; [a designated tribal community library.]

(C) Is a [A] component of one of the following:
(i) An institution accredited by an accrediting agency recognized by holding a current certificate of authorization from the Texas Higher Education Coordinating Board as specified in 19 TAC §7.6 [§7.7]; [or]
(ii) Other agency of higher education as defined by Education Code, §61.003 (6); [or]
(iii) A full member of the National Network of Libraries of Medicine, South Central Region; [or]
(iv) The National Archives and Records Administration; [or]
(v) A U.S. Department of Defense installation; [or]
(vi) A non-public school accredited by an agency recognized by the Texas Private School Accreditation Commission; [or]
(vii) A federally recognized American Indian tribe; and

(D) Provides library services, defined as:
(i) Provides services including circulation of materials, reference services, and use of computers to access information sources; [and]
(ii) Is open and staffed a minimum of 20 hours per week; and
(iii) Employs a library director for at least 20 hours per week in library duties.

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

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Sarah Swanson
General Counsel
Texas State Library and Archives Commission
Earliest possible date of adoption: April 11, 2021
For further information, please call: (512) 463-5591

CHAPTER 155. RULES RELATING TO STANDARDS OF PRACTICE

22 TAC §155.3

The Texas Appraiser Licensing and Certification Board (TALCB) proposes new rule 22 TAC §155.3, Certain Uses of Logo or Name Prohibited.

The proposed new rule prohibits certain uses of the Board Logo and Name.

Kathleen Santos, General Counsel, has determined that for the first five-year period the proposed new rule is in effect, there will be no fiscal implications for the state or units of local government as a result of enforcing or administering the proposed new rule. There is no adverse economic impact anticipated for local or state employment, rural communities, small businesses, or micro businesses as a result of implementing the proposed new rule. There is no significant economic cost anticipated for persons who are required to comply with the proposed new rule. Accordingly, no Economic Impact statement or Regulatory Flexibility Analysis is required.

Ms. Santos has also determined that for each year of the first five years the proposed new rule is in effect the public benefits anticipated as a result of enforcing the proposed new rule will be requirements that are consistent with statutes and easier to understand, apply, and process.

Growth Impact Statement:
For each year of the first five years the proposed amendments and rules are in effect the amendments and rules will not:
create or eliminate a government program;
require the creation of new employee positions or the elimination of existing employee positions;
require an increase or decrease in future legislative appropriations to the agency;
require an increase or decrease in fees paid to the agency;
create a new regulation;
expand, limit or repeal an existing regulation; and
increase the number of individuals subject to the rule's applicability.

For each year of the first five years the proposed new rule is in effect, there is no anticipated impact on the state's economy.

Comments on the proposed new rule may be submitted to Kathleen Santos, General Counsel, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188 or emailed to: general.counsel@talcb.texas.gov. The deadline for comments is 30 days after publication in the Texas Register.

The new rule is proposed under Texas Occupations Code §1103.151, which authorizes TALCB to adopt rules for certifying or licensing an appraiser or appraiser trainee and §1103.154, which authorizes TALCB to adopt rules relating to professional conduct.

The statute affected by these amendments is Chapter 1103, Texas Occupations Code. No other statute, code or article is affected by the proposed amendments.

§155.3. Certain Uses of Logo or Name Prohibited.
A license holder, certificate holder, registrant or provider may not use all or part of the logo or name of the Board or another governmental agency in a manner that implies that the person:

(1) is a governmental agency;
(2) is endorsed by the Board or other agency other than as a license holder, certificate holder, registrant, or provider; or
(3) holds a special status that the Board or other agency has not granted.

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

Filed with the Office of the Secretary of State on February 26, 2021.

TRD-202100823
Kathleen Santos
General Counsel
Texas Appraiser Licensing and Certification Board
Earliest possible date of adoption: April 11, 2021
For further information, please call: (512) 936-3652

CHAPTER 157. RULES RELATING TO PRACTICE AND PROCEDURE
SUBCHAPTER F. [NEGOTIATED] RULEMAKING.

22 TAC §157.51

The Texas Appraiser Licensing and Certification Board (TALCB) proposes new rule 22 TAC §157.51, concerning Petition for Adoption of Rules.

The proposed new rule §157.51 implements a statutory requirement that state agencies must prescribe by rule the form for a petition for adoption of rules and the procedure for its submission, consideration, and disposition.

Kathleen Santos, General Counsel, has determined that for the first five-year period the proposed new rule is in effect, there will be no fiscal implications for the state or units of local government as a result of enforcing or administering the proposed new rule. There is no adverse economic impact anticipated for local or state employment, rural communities, small businesses, or micro businesses as a result of implementing the proposed new rule. There is no significant economic cost anticipated for persons who are required to comply with the proposed new rule. Accordingly, no Economic Impact statement or Regulatory Flexibility Analysis is required.

Ms. Santos has also determined that for each year of the first five years the proposed new rule is in effect the public benefits anticipated as a result of enforcing the proposed new rule will be requirements that are consistent with statutes and easier to understand, apply, and process.

Growth Impact Statement:
For each year of the first five years the proposed amendments and rules are in effect the amendments and rules will not:
--require the creation of new employee positions or the elimination of existing employee positions;
--require an increase or decrease in future legislative appropriations to the agency;
--require an increase or decrease in fees paid to the agency;
--create a new regulation;
--expand, limit or repeal an existing regulation; and
--increase the number of individuals subject to the rule’s applicability.

For each year of the first five years the proposed new rule is in effect, there is no anticipated impact on the state’s economy.

Comments on the proposed new rule may be submitted to Kathleen Santos, General Counsel, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188 or emailed to: general.counsel@talcb.texas.gov. The deadline for comments is 30 days after publication in the Texas Register.

The new rule is proposed under Texas Occupations Code §1103.154, which authorizes TALCB to adopt rules relating to professional conduct and Texas Government Code §2001.021, which requires state agencies to adopt by rule procedures for petitioning for the adoption of rules.

The statute affected by these amendments is Chapter 1103, Texas Occupations Code. No other statute, code or article is affected by the proposed amendments.

§157.51. Petition for Adoption of Rules.

(a) Any interested person, as defined by §2001.021, Government Code, may request a rule be adopted, amended, or repealed by submitting a written petition to the Board.

(b) The written petition must include:

(1) the person’s full name, mailing address, telephone number, and email address;

(2) a brief summary of the proposed action and its desired effect;

(3) a justification for the proposed action set out in narrative form with sufficient particularity to inform the Board the reasons and arguments on which the person is relying;

(4) if proposing a new rule, the text of the new rule in the exact form that is desired to be adopted; and

(5) if proposing an amendment or repeal, the specific section and text of the rule the person wants to change, with deletions crossed through and additions underlined.

(c) The written petition must be submitted to the Board by:

(1) delivering the petition in person to the Board’s headquarters;

(2) sending the petition via email to general.counsel@talcb.texas.gov; or

(3) sending the petition via fax to (512) 936-3788, ATTN: General Counsel.

(d) Not later than 60 days after the date of submission of a petition that complies with the requirements of this section, the Executive Committee, in consultation with Board staff, shall review the petition and either:
(1) deny the petition in writing, stating the reasons for the denial and advising of other methods the interested person may communicate his or her concerns to the Board; or

(2) initiate a rulemaking proceeding under Chapter 2001, Government Code, by directing that the petition be placed on the next agenda for discussion by:

(A) the Board; or

(B) the appropriate Board committee.

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

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Kathleen Santos
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CHAPTER 159. RULES RELATING TO THE PROVISIONS OF THE TEXAS APPRAISAL MANAGEMENT COMPANY REGISTRATION AND REGULATION ACT

22 TAC §159.155

The Texas Appraiser Licensing and Certification Board (TALCB) proposes amendments to 22 TAC §159.155, concerning Periodic Review of Appraisals.

The proposed amendments specify that an appraiser performing an appraisal review must perform a scope of work sufficient to ensure the appraisal subject to review complies with USPAP and remove specified requirements for a minimum scope of work.

Kathleen Santos, General Counsel, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for the state or units of local government as a result of enforcing or administering the proposed amendments. There is no adverse economic impact anticipated for local or state employment, rural communities, small businesses, or micro businesses as a result of implementing the proposed amendments. There is no significant economic cost anticipated for persons who are required to comply with the proposed amendments. Accordingly, no Economic Impact Statement or Regulatory Flexibility Analysis is required.

Ms. Santos has also determined that for each year of the first five years the proposed amendments and rules are in effect the amendments and rules will not:

--create or eliminate a government program;

--require the creation of new employee positions or the elimination of existing employee positions;

--require an increase or decrease in future legislative appropriations to the agency;

--require an increase or decrease in fees paid to the agency;

--create a new regulation;

--expand, limit or repeal an existing regulation; and

--increase the number of individuals subject to the rule's applicability.

For each year of the first five years the proposed amendments are in effect, there is no anticipated impact on the state's economy.

Comments on the proposed amendments may be submitted to Kathleen Santos, General Counsel, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188 or emailed to: general.counsel@talcb.texas.gov. The deadline for comments is 30 days after publication in the Texas Register.

The amendments are proposed under Texas Occupations Code §1104.051, which authorizes TALCB to adopt rules necessary to administer Chapter 1104.

The statute affected by these amendments is Chapter 1104, Texas Occupations Code. No other statute, code or article is affected by the proposed amendments.


(a) A license holder must review the work of appraisers performing appraisal services on 1-4 family unit properties collateralizing mortgage obligations by performing a review in accordance with Standards 3 and 4 of USPAP of:

(1) one of the first five appraisals performed for the license holder by each appraiser, prior to making a sixth assignment; and

(2) a total of two percent, randomly selected, of the appraisals performed for the AMC for each twelve-month period following the date of the AMC's registration.

(b) Appraisal reviews performed pursuant to subsection (a)(1) of this section will be counted toward the calculation of two percent for the purposes of subsection (a)(2) of this section.

(c) An appraisal review pursuant to subsection (a)(1) of this section is not required if the first five appraisals by an appraiser were completed before the AMC was required by the AMC Act to be registered with the Board.

(d) An appraiser is qualified to perform an appraisal review within the meaning of §1104.153 of the AMC Act if the appraiser conducting the review:

(1) is licensed or certified to act as an appraiser in Texas or another jurisdiction;

(2) holds the appropriate credential to have performed the appraisal being reviewed; and

(3) does not develop an opinion of value.

(e) To satisfy the requirements of the AMC Act and this rule, a license holder performing an appraisal review must perform a scope of work that is sufficient to ensure that methods, assumptions, data sources, and conclusions of the appraisal subject to review comply with USPAP [develop a credible opinion about the completeness, accuracy,
For the adequacy, relevance and reasonableness of the work under review and adhere to the following minimum scope of work:

(1) research and consult the appropriate data sources for the work being reviewed to, at a minimum, validate the significant characteristics of the comparables and the essential elements of the transactions including:

(A) the multiple listing service(s) or other recognized methods, techniques and data sources for the geographic area in which the work under review was performed; if the work under review included a sales comparison approach; and

(B) the sales or listing history of the property which is the subject of the work under review, if that property was sold within the three years prior to the effective date of the work under review or listed for sale as of the effective date of the work under review;

(2) provide a certification that complies with Standard 4 of USPAP

(f) If the reviewer elects to develop an opinion of value or review opinion, the review must comply with the additional provisions of Standards 3 and 4 of USPAP governing the development of an opinion of value or review opinion.

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

Filed with the Office of the Secretary of State on February 26, 2021.

TRD-202100825
Kathleen Santos
General Counsel
Texas Appraiser Licensing and Certification Board
Earliest possible date of adoption: April 11, 2021
For further information, please call: (512) 936-3652

PART 16. TEXAS BOARD OF PHYSICAL THERAPY EXAMINERS

CHAPTER 329. LICENSING PROCEDURE

22 TAC §329.1

The Texas Board of Physical Therapy Examiners proposes amending 22 Texas Administrative Code (TAC) §329.1, concerning General Licensure Requirements.

The amendment is proposed to add reference to the definitions of an accredited PT and PTA program; to differentiate between the school transcript requirement for an applicant by exam and an applicant by endorsement; to allow for digital submission of a letter of completion for applicants by exam; and to eliminate the requirement for a letter of completion for an applicant by endorsement if the transcript indicates the date the degree was conferred. The amendment will remove potential barriers to licensure and will improve the efficiency of issuing licenses.

Fiscal Note

Ralph A. Harper, Executive Director of the Executive Council of Physical Therapy & Occupational Therapy Examiners (ECP-TOTE), has determined that for the first five-year period this amendment is in effect there would be no increase or loss of revenue to the state. No fiscal implication to units of local government is anticipated as a result of enforcing or administering the rules.

Public Benefits and Costs

Mr. Harper has also determined that for the first five-year period this amendment is in effect there will be no effect on the public assurance that the provision of physical therapy services is by qualified licensees of the board. Additionally, there will be no cost to the public.

Local Employment Economic Impact Statement

The amendments are not anticipated to impact a local economy, so a local employment economic impact statement is not required.

Small and Micro-Businesses and Rural Communities Impact

Mr. Harper has determined that there will be no costs or adverse economic effects to small or micro-businesses or rural communities; therefore, an economic impact statement or regulatory flexibility analysis is not required.

Government Growth Impact Statement

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed rule amendments. For each year of the first five years the proposed amendment will be in effect, Mr. Harper has determined the following:

(1) The proposed rule amendments will neither create nor eliminate a government program.

(2) The proposed rule amendments will neither create new employee positions nor eliminate existing employee positions.

(3) The proposed rule amendments will neither increase nor decrease future legislative appropriations to the agency.

(4) The proposed rule amendments will neither require an increase nor a decrease in fees paid to the agency.

(5) The proposed rule amendment revises the language to an existing regulation by adding reference to the definitions of an accredited PT and PTA program; differentiating between the school transcript requirement for an applicant by exam and an applicant by endorsement; allowing for digital submission of a letter of completion for applicants by exam; and eliminating the requirement for a letter of completion for an applicant by endorsement if the transcript indicates the date the degree was conferred.

(6) The proposed rule amendments will neither repeal nor limit an existing regulation.

(7) The proposed rule amendments will neither increase nor decrease the number of individuals subject to the rule’s applicability.

(8) The proposed rule amendments will neither positively nor adversely affect this state’s economy.

Takings Impact Assessment

The proposed rule amendments will not impact private real property as defined by Tex. Gov’t Code §2007.003, so a takings impact assessment under Tex. Gov’t Code §2001.043 is not required.

Requirement for Rule Increasing Costs to Regulated Persons
Tex. Gov’t Code §2001.0045, Requirement for Rule Increasing Costs to Regulated Persons, does not apply to this proposed rule amendment.

Public Comment

Comments on the proposed amendment may be submitted to Karen Gordon, PT Coordinator, Texas Board of Physical Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701; email: karen@ptot.texas.gov. Comments must be received no later than 30 days from the date this proposed amendment is published in the Texas Register.

Statutory Authority

The amendment is proposed under Texas Occupation Code §453.102, which authorizes the Board to adopt rules necessary to implement chapter 453.

Cross-reference to Statute

The proposed amendment implements provisions in Sec. 453.203, Occupations Code, that pertain to evidence satisfactory to the board that an applicant has completed an accredited physical therapy educational program.


(a) Requirements. All applications for licensure shall include:

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

(4) documentation of academic qualifications:

(A) For applicants who completed their physical therapy education at an accredited PT or PTA program as defined in §321.1(1) and §321.1(2) of this title [in the U.S.], the documentation required is:

(i) a transcript sent directly to the board from the degree-granting institution [showing enrollment in the final semester of an accredited PT or PTA program as provided in §453.203 of the Act];

and

(ii) a statement submitted [signed] by the program director or other authorized school official, notarized or with the school seal affixed, stating that the applicant has successfully completed the PT or PTA program for applicants by exam.

(B) - (C) (No change.)

(5) (No change.)

(b) (i) (No change.)

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

Filed with the Office of the Secretary of State on February 24, 2021.

TRD-202100768
Ralph A. Harper
Executive Director
Texas Board of Physical Therapy Examiners
Earliest possible date of adoption: April 11, 2021
For further information, please call: (512) 305-6900

PART 17. TEXAS STATE BOARD OF PLUMBING EXAMINERS

CHAPTER 363. EXAMINATION AND REGISTRATION

22 TAC §363.2

The Texas State Board of Plumbing Examiners (Board) proposes amendments to 22 Texas Administrative Code §363.2.

Background and Purpose.

In accordance with §1301.4521 and Chapter 53 of the Occupations Code, the Board conducts reviews of individuals with a criminal background seeking licensure by the Board to evaluate their fitness and determine whether their criminal background disqualifies them from being licensed by or registered with the Board. In accordance with §411.122 of the Government Code, the Board is authorized to access criminal background records from the Texas Department of Public Safety (DPS) in order to conduct such reviews, including the submittal and registration of fingerprints with DPS to obtain criminal background records. On January 9, 2019, the Texas Sunset Advisory Commission (Sunset), pursuant to §325.012 of the Government Code, proposed a recommendation for statutory changes to Chapter 1301 of the Occupations Code (Plumbing License Law or PLL) that would require all licensees and registrants to submit and register their fingerprints with DPS. The recommendation comports with Sunset’s Model Standards for Licensing and Regulatory Agencies, which promote fingerprint-based criminal background checks over other types of criminal background checks, particularly when the duties and responsibilities of performing work with the license would allow the individual to enter a person’s home, and whether the licensee could injure or harm a member of the public. Fingerprint-based criminal background checks have become more useful, given the ability to participate in the Federal Rap Back program joined by Texas, and implemented on January 15, 2018, allowing for near-instant notification of additions to an individual’s criminal background, including crimes committed in other states. Taking the foregoing into consideration, the Board anticipates its enabling statute will be amended during the 87th Regular Session to include provisions requiring the Board to conduct fingerprint-based criminal background checks.

This proposal furthers the process for requiring fingerprint-based criminal background checks and continues to carry out the recommendation of Sunset absent a statutory mandate. The original rule adoption contemplates implementing the requirement for submittal and registration of fingerprints over time, in phases, by amending this rule from time-to-time to add additional license or registration types requiring the submittal and registration of fingerprints.

Section-By-Section Summary.

Amendments to §363.2, concerning General Qualifications, require an applicant for whom the submittal and registration of fingerprints is required to submit documentation of having successfully registered their fingerprints, to the extent they have not previously done so. A new subsection (f) was added in May 2019 governing which license type required the submittal and registration of fingerprints, allowing the Board to impose the requirement in phases by amending subsection (f). This proposal will impose

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the requirement for the submittal and registration of fingerprints on individuals seeking a license as a Journeyman Plumber.

Fiscal Impact on State and Local Government.

Lisa G. Hill, Executive Director, has determined that for the first five-year period the rule is in effect, there will be no fiscal implications for the state or local governments as a result of enforcing or administering the rule.

Public Benefits / Costs to Regulated Persons.

The Executive Director has determined that for each of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to have more comprehensive criminal background checks on individuals seeking licensure by the Board, better protecting the public’s health, safety, and welfare.

The Executive Director has further determined that for the first five years the rule is in effect, licensees or registrants required to submit and register their fingerprints with DPS will incur a one-time fee from DPS or its third-party processing vendor. Upon collection and belief, the current fee imposed for processing fingerprints is $38.25. The Board presently registers approximately 25,039 Plumber’s Apprentices who could become illegal for licensure. This rule would impose a one-time cumulative cost of $957,741.75 on such individuals. The rule would also require affected individuals to travel to a fingerprint collection office to have their fingerprints scanned. These travel costs will vary widely depending upon the individual’s place of residence. However, the third-party processing vendor currently utilized by DPS has approximately 109 locations throughout the state, including many in rural areas, providing for widespread access which should limit travel costs. Taking the foregoing into consideration, the Board asserts the economic costs imposed are minor, particularly considering the individual should be exempted from any further fingerprinting when they renew their license or seek another license type, provided the fingerprints on file continue to meet the requirements for registration with DPS and/or the Federal Bureau of Investigation.

One-for-One Rule Analysis.

This proposal indicates a fiscal note imposing costs on regulated persons which would ordinarily require the Board, prior to adoption of the amendments, to repeal or amend another regulation to negate those costs in accordance with Government Code §2001.0045. However, the Board asserts the proposed amendments are necessary to protect the health, safety, and welfare of the residents of Texas. A Journeyman Plumber is often allowed in private residences, schools, and elder care facilities where they are around people in a private setting, including children and other vulnerable individuals.

A Journeyman Plumber will often have unsupervised access to the building where the plumbing system is located and thus may be given access to valuable property. A Journeyman Plumber works with hazardous, explosive or volatile materials and may make crucial decisions impacting the health and safety of the public. Taking the foregoing into consideration, the Board asserts the duties and responsibilities of being licensed by or registered with the Board to perform plumbing require robust criminal background checks, and it is precisely the type of activity contemplated by Sunset’s Model Standards for Licensing and Regulatory Agencies in recommending fingerprint-based criminal background checks. As a result, the Board asserts this proposal is critical to protect the health, safety, and welfare of the public, and thus the Board is exempted from the requirements of Government Code §2001.0045.


For each of the first five years the proposed amendments are in effect, the agency has determined the following: (1) the rule does not create or eliminate a government program; (2) implementation of the rule does not require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the rule does not require an increase or decrease in future legislative appropriations to the agency; (4) the rule does not require an increase or decrease in fees paid to the agency; (5) the rule creates a new regulation imposing fingerprint requirements for certain individuals licensed by or registered with the Board; (6) the rule does not expand or limit an existing regulation; (7) the rule does not increase or decrease the number of individuals subject to the rule’s applicability; and (8) the rule does not positively or adversely affect the state’s economy.

Local Employment Impact Statement.

The Executive Director has determined that no local economies are substantially affected by the rule, and, as such, the Board is exempted from preparing a local employment impact statement pursuant to Government Code §2001.022.

Fiscal Impact on Small and Micro-Businesses, and Rural Communities, Generally.

The Board incorporates by reference the discussion concerning costs to regulated persons as a result of the rule, discussed supra. The Board licenses and registers individuals, and not businesses or corporate structures, to provide plumbing services to the public. This proposal would impose a one-time cost on those registrants to whom the rule applies of $38.25, plus indeterminate travel costs. While the Board intends to eventually impose fingerprinting requirements on all license and registration types over time, this proposal applies only to the Journeyman Plumber and is in addition to the original amendment requirement for the Tradesman Plumber Limited Licensee. According to statistics maintained by the Texas Comptroller of Public Accounts (Comptroller), 90.5% of businesses in Texas operating as building equipment contractors constitute a small business for purposes of Government Code §2006.001 (a category which includes plumbing contractors and other construction trades such as electrical contractors and heating, ventilation and air conditioning (HVAC) contractors). As a result, most licensees and registrants likely work for a business constituting a small or micro-business for purposes of Government Code §2006.001. Moreover, while the Tradesman Plumber-Limited License essentially relates to residential plumbing, a Journeyman Plumber may work on residential and commercial work making it likely the licensee and registrant may occasionally work for a small or micro-business. To the extent a plumbing company for whom an individual works elects to absorb these costs on behalf of its employees, small and micro-businesses will be adversely affected by these costs, though indirectly. Rural communities will similarly be impacted by said costs. The foregoing notwithstanding, other than deviations in travel costs, small and micro-businesses, and rural communities, will share identical costs per-person as compared to other sized businesses and urban areas, and their status as a small or micro-business, or a rural community, does not impact these costs.

Economic Impact Statement.

46 TexReg 1586 March 12, 2021 Texas Register
According to the Comptroller, there are 10,387 businesses in Texas operating as building equipment contractors and that constitute a small business for purposes of Government Code §2006.001. These statistics align with the Board's licensee population figures. Specifically, the Board has approximately 7,771 Master Plumber licensees who have records on file indicating they are serving as a Responsible Master Plumber and allowed by law to advertise and market plumbing services directly to the public, and whose services are required to contract for plumbing work, thereby serving as an analogue for the number of plumbing companies operating across Texas. The Board does not maintain or have access to information regarding the precise number of these plumbing companies that meet the definition of a small or micro-business, or how many licensees or registrants any particular company employs that would be affected by this proposal. However, were the anticipated adverse costs to be distributed evenly amongst these companies, it would result in a per-company cost of $92.21. Assuming the percentage of all building equipment contractors constituting small businesses (90%), established by the Comptroller, holds true when plugging companies are isolated, 771 such plumbing companies would be affected, resulting in a per-company cost of $123.25, to the extent the Plumber's Apprentice population was evenly distributed amongst such companies and most become Journeyman plumbers.

Of the 21,479 Plumber's Apprentice registered by the Board, 735 have a current mailing address on file indicating they may reside in a municipality meeting the definition of a rural community for purposes of Government Code §2006.001 (said mailing address is chosen by the licensee and may not actually be the licensee's place of residence; the municipality listed for purposes of the mailing address may differ from the actual situs of the address; and, the municipality may be located in a metropolitan area and may meet the definition of a rural community while not actually containing with traditional notions of a rural community (see, e.g., Bellaire, Texas)). Taking the foregoing into consideration, the rule may have a one-time adverse cumulative impact on rural communities of $18,462, representing 31.2% of the total adverse impact, excluding travel costs. Rural communities may be disproportionately affected by travel costs in connection with visiting an office of the third-party fingerprinting vendor to provide their fingerprints. However, DPS' third-party processing vendor presently has approximately 109 such locations throughout the state, including many in rural communities, providing convenient options and limiting travel costs for such individuals.

Regulatory Flexibility Analysis.

The Board considered alternative methods of accomplishing criminal background checks on individuals it licenses and registers to perform plumbing; namely, name-based criminal searches. However, as Sunset aptly points out in its Model Standards for Licensing and Regulatory Agencies, name-based criminal searches are inferior to fingerprint-based searches, particularly in light of participation in the Federal Rap Back program, as noted, supra. As a result, the Board determined that name-based searches are now antiquated by comparison, and inadequate to protect the health and safety of the public, particularly given the private settings to which a plumber is allowed access while performing their work, and the potential for harm to the public by a bad actor entrusted with that access. Having established that fingerprint-based criminal background checks are required to protect the public, the Board explored whether there were any options available to reduce the adverse impact of the rule. However, given that DPS has exclusive control over operating the fingerprint registration program, and the fees set by the third-party processing vendor are fixed and non-negotiable, the Board was unable to identify any alternatives to reduce the adverse impact of the rule.

Takings Impact Assessment.

The Board has determined there are no private real property interests affected by the rule; thus, the Board asserts preparation of a takings impact assessment, as provided by Government Code §2007.043, is not required.

Environmental Rule Analysis.

The Board has determined that this proposal is not brought with the specific intent to protect the environment or reduce risks to human health from environmental exposure; thus, the Board asserts this proposal is not a "major environmental rule" as defined by Government Code §2001.0225. As a result, the Board asserts preparation of an environmental impact analysis, as provided by said §2001.0225, is not required.

Public Comments.

Written comments regarding the amendments may be submitted by mail to Lisa G. Hill, Executive Director, at P.O. Box 4200, Austin, Texas 78765-4200, or by email to info@tsbpe.texas.gov with the subject line “Public Comment - Fingerprinting Requirements.” All comments must be received within 30 days of publication of this proposal.

Statutory Authority.

This proposal is made 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 chapter 1301 of the Occupations Code (Plumbing License Law or PLL). Amended §363.2 is proposed under the authority of, and to implement, §1301.4521 of the PLL. Amended §363.2 is also proposed under the authority of Chapter 53 of the Occupations Code and §411.122 of the Government Code.

This proposal affects the Plumbing License Law. No other statute is affected by this proposal.

§363.2. General Qualifications.

(a) To be eligible to receive any license or registration issued by the Board an applicant must be:

(1) a citizen or national of the United States; or

(2) an alien or non-immigrant eligible for licensure by the State of Texas.

(b) In order to qualify for any license, registration, or endorsement, an applicant must:

(1) meet all of the requirements of the Board;

(2) submit documentation evidencing successful submittal of fingerprints for criminal history background checks, as may be required by subsection (f) of this section or the PLL, if applicable;

(3) pay the required fee; and

(4) successfully complete and pass the examination, if applicable.

(c) An applicant may qualify for a Master Plumber License, Journeyman Plumber License, Tradesman Plumber-Limited License, Plumbing Inspector License, or Plumber's Apprentice Registration.

(1) A licensed Plumbing Inspector, Master Plumber or Journeyman Plumber may obtain a Medical Gas Piping Installation...
Endorsement, Multipurpose Residential Fire Protection Sprinkler Specialist Endorsement, or Water Supply Protection Specialist Endorsement.

2. A Tradesman Plumber-Limited may obtain a Drain Cleaner Registration.

3. A registered Plumber’s Apprentice may obtain a Residential Utilities Installer Registration, a Drain Cleaner-Restricted Registration or a Drain Cleaner Registration.

4. A Plumber’s Apprentice or Tradesman Plumber-Limited Licensee applying to take an examination must submit an Employer’s Certification Form (ECF) showing that the applicant has accrued the required hours of experience working in the plumbing trade.

1. If the applicant accrued the hours through employment with multiple employers, the applicant must submit a separate ECF completed by each employer the applicant worked for.

2. The ECF shall be completed by the Responsible Master Plumber (RMP) who was the RMP for the company at the time the applicant worked there or the licensee who supervised the applicant on the job.

3. If currently employed, the applicant shall:
   A. submit a request for an ECF in writing; and
   B. provide an ECF to the RMP or the licensee who supervised the applicant.

4. Once a written request for an ECF is received, the RMP or licensee shall return the completed ECF to the applicant within thirty (30) business days.

5. Upon separation of employment, or the end of a contract, an employer shall automatically provide a completed ECF to a Plumber’s Apprentice or Tradesman Plumber-Limited or send it to the Board.

6. To receive credit for experience working in the trade, the applicant must hold either a valid Plumber’s Apprentice Registration or Tradesman Plumber-Limited License at the time the hours were worked.

7. Fingerprinting Requirements. In accordance with §1301.4521 and Chapter 53 of the Occupations Code, the Board conducts reviews of individuals seeking licensure by the Board with a criminal background to evaluate their fitness and determine whether their criminal background disqualifies them from being licensed by or registered with the Board. In accordance with §411.122 of the Government Code, the Board is authorized to access criminal background records from the Texas Department of Public Safety (DPS) to conduct such reviews, including the submittal and registration with DPS of fingerprints from an individual seeking licensure with the Board, in order to obtain such records. Specifically, the Board’s fingerprinting requirements are as follows:

   1. Fingerprint required. The submittal and registration of fingerprints with DPS is required when applying for the following license or registration types: Tradesman Plumber-Limited License and Journeymen Plumber license.

   2. Re-submittal of fingerprints. The requirement to submit and register fingerprints applies to both an initial application for a license or registration as well as applications for renewal. However, once fingerprints have been submitted and registered with DPS, an individual ordinarily will not be required to re-submit their fingerprints, including renewals of a license or registration, or when applying for a different license or registration type. The foregoing notwithstanding, re-submittal of fingerprints may be required to the extent required by DPS or its third-party fingerprint processing vendor, for example, to comply with new or enhanced fingerprint records requirements, of if additional biometric data is required to conduct criminal background checks.

   3. Fingerprint procedures; fees. An applicant required to submit and register their fingerprints with DPS in accordance with paragraph (1) of this subsection must follow all instructions and procedures outlined by DPS and its third-party fingerprint processing vendor. The applicant is responsible for and must make payment directly to DPS and/or its designated third-party fingerprint processing vendor, all fees associated with the criminal background fingerprinting process, which is separate from the application fee imposed by the Board.

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

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Lisa Hill
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22 TAC §363.4

The Texas State Board of Plumbing Examiners (Board) proposes amendments to 22 Texas Administrative Code §363.4, concerning Master Plumber License.

Background and Justification

On January 9, 2019, the Texas Sunset Advisory Commission, pursuant to §325.012 of the Government Code, adopted a recommendation directing the Board to eliminate the requirement for individuals licensed by the Board to hold a high school diploma or certificate of high school equivalency in lieu thereof. On May 15, 2019, the board adopted amendments to 22 TAC §363.5 to eliminate the requirement for an individual to hold such high school diploma or certificate of high school equivalency in order to be eligible for a journeyman plumber license. The amendments, if adopted, would further implement the directive of sunset by eliminating the requirement for an individual to hold a high school diploma or certificate of high school equivalency in order to be eligible for a master plumber license.

Fiscal Impact on State and Local Government

Lisa G. Hill, Executive Director, has determined that for the first five year period the amended rule is in effect, there are no foreseeable increases or reductions in costs to the state or local governments as a result of enforcing or administering the amended rule. The Executive Director has further determined that for the first five year period the amended rule is in effect, there will be no foreseeable loss in revenue for the state or local governments as a result of enforcing or administering the amended rule. The amended rule may result in an indeterminate increase in revenue to the state in the form of application and license fees as more individuals will be eligible for, and may seek, licensure by the Board. No increase in revenue for local governments is anticipated as a result of the amended rule directly. However, to the extent the amended rule results in additional individuals being licensed by the Board, overall plumbing activity in the state may
increase, potentially increasing revenue to local governments requiring the permitting and inspection of plumbing work within their jurisdiction, derived from such permits.

Public Benefits

The Executive Director has determined that for each of the first five years the amended rule is in effect, the public benefit anticipated as a result of amending the rule will be the presence of additional plumbers in the marketplace. Thereby, increasing supply to meet heavy demand for licensed plumbing professionals, and reducing costs to consumers. Removing the requirement will also allow the Board to cease reviewing applications to determine compliance with the requirement, and thus free up agency resources to focus on other functions, such as investigating consumer complaints for the public's benefit.

Probable Economic Costs to Persons Required to Comply with the Rule

The Executive Director has further determined that for the first five years the amended rule is in effect, there are no substantial costs anticipated for persons required to comply with the amended rule.

One-for-One Rule Analysis

Given the amended rule does not have a fiscal note which imposes a cost on regulated persons, including another state agency, special district, or local government, the Board asserts proposal and adoption of the amended rule is not subject to the requirements of Government Code §2001.0045.

Government Growth Impact Statement

For each of the first five years the proposed amended rule is in effect, the agency has determined the following: (1) the amended rule does not create or eliminate a government program; (2) implementation of the amended rule does not require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the amended rule does not require an increase or decrease in future legislative appropriations to the agency; (4) the amended rule does not require an increase or decrease in fees paid to the agency by persons already regulated by the Board, and would not alter applicable fee amounts for licensure; however, as related, supra, the amended rule may result in additional individuals being licensed by the Board, which would cause additional fees to be paid to the agency; (5) the amended rule does not create a new regulation; (6) the amended rule does not expand or limit an existing regulation but remove a regulation, expanding the number of individuals eligible for licensure by the Board; (7) the amended rule does not increase or decrease the number of individuals subject to the rule's applicability; and (8) the amended rule does not adversely affect this state's economy and have the potential to positively impact the state's economy by putting additional licensed plumbers into the marketplace, spurring economic activity and growth.

Local Employment Impact Statement

The Executive Director has determined that no local economies are substantially affected by the amended rule, and, as such, the Board is exempted from preparing a local employment impact statement pursuant to Government Code §2001.022.

Fiscal Impact on Small and Micro-Businesses, and Rural Communities

The Executive Director has determined that the amended rule will not have an adverse effect on small or micro-businesses, or rural communities, because there are no substantial anticipated costs to persons who are required to comply with the amended rule. As a result, the Board asserts preparation of an economic impact statement and a regulatory flexibility analysis, as provided by Government Code §2006.002, are not required.

Takeings Impact Assessment

The Board has determined that there are no private real property interests affected by the amended rule; thus, the Board asserts preparation of a takings impact assessment, as provided by Government Code §2007.043, is not required.

Environmental Rule Analysis

The Board has determined that this proposal is not brought with the specific intent to protect the environment or reduce risks to human health from environmental exposure; thus, the Board asserts this proposal is not a "major environmental rule" as defined by Government Code §2001.0225. As a result, the Board asserts preparation of an environmental impact analysis, as provided by said §2001.0225, is not required.

Public Comments

Written comments regarding the amendments may be submitted by mail to Lisa G. Hill at P.O. Box 4200, Austin, Texas 78765-4200, or by email to info@tsbpe.texas.gov with the subject line "363.4 Rule Amendments." All comments must be received within 30 days of publication of this proposal.

Statutory Authority

This proposal is made 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 chapter 1301 of the Occupations Code (Plumbing License Law or PLL). This proposal affects the Plumbing License Law.

No other statute is affected by this proposal.

§363.4.  Master Plumber License.

(a) To be eligible for a Master Plumber License an applicant must[

[(1)] have obtained a high school diploma, or the equivalent of a high school diploma; and

[(2)] have held a Journeyman Plumber License issued in Texas or another state:

(1) [(3)] for at least four years; or

(2) [(4)] for at least one year if the applicant has successfully completed a training program approved by the United States Department of Labor, Office of Apprenticeship or another nationally-recognized apprentice training program accepted by the Board.

(b) An applicant who is licensed as a Master Plumber in another state must meet the requirements set forth in subsection (a) of this section.

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

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Executive Director  
Texas State Board of Plumbing Examiners  
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22 TAC §363.8
The Texas State Board of Plumbing Examiners (Board) proposes amendments to 22 TAC §363.8 concerning Plumbing Inspector License.

Background and Justification
On January 9, 2019 the Texas Sunset Advisory Commission (sunset), pursuant to Government Code §325.012, adopted a recommendation directing the board to eliminate the requirement for individuals licensed by the board to hold a high school diploma or certificate of high school equivalency in lieu thereof. On May 15, 2019 the board adopted amendments to 22 TAC §363.5 to eliminate the requirement for an individual to hold such high school diploma or certificate of high school equivalency in order to be eligible for a journeyman plumber license. The amendments, if adopted, would further implement the directive of sunset by eliminating the requirement for an individual to hold a high school diploma or certificate of high school equivalency in order to be eligible to receive a plumbing inspector license.

Fiscal Impact on State and Local Government
Lisa G. Hill, Executive Director, has determined that for the first five year period the amended rule is in effect, there are no foreseeable increases or reductions in costs to the state or local governments as a result of enforcing or administering the amended rule. The Executive Director has further determined that for the first five year period the amended rule is in effect, there will be no foreseeable loss in revenue for the state or local governments as a result of enforcing or administering the amended rule. The amended rule may result in an indeterminate increase in revenue to the state in the form of application and license fees as more individuals will be eligible for, and may seek, licensure by the Board. No increase in revenue for local governments is anticipated as a result of the amended rule directly. However, to the extent the amended rule results in additional individuals being licensed by the Board, overall plumbing activity in the state may increase, potentially increasing revenue to local governments requiring the permitting and inspection of plumbing work within their jurisdiction, derived from such permits.

Public Benefits
The Executive Director has determined that for each of the first five years the amended rule is in effect, the public benefit anticipated as a result of amending the rule will be the presence of additional plumbers in the marketplace. Thereby, increasing supply to meet heavy demand for licensed plumbing professionals, and reducing costs to consumers. Removing the requirement will also allow the Board to cease reviewing applications to determine compliance with the requirement, and thus free up agency resources to focus on other functions, such as investigating consumer complaints for the public's benefit.

Probable Economic Costs to Persons Required to Comply with the Rule
The Executive Director has further determined that for the first five years the amended rule is in effect, there are no substantial costs anticipated for persons required to comply with the rule.

One-for-One Rule Analysis
Given the rule does not have a fiscal note which imposes a cost on regulated persons, including another state agency, a special district, or local government, the Board asserts proposal and adoption of the rule is not subject to the requirements of Government Code §2001.0045.

Government Growth Impact Statement
For each of the first five years the amended rule is in effect, the agency has determined the following: (1) the amended rule does not create or eliminate a government program; (2) implementation of the amended rule does not require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the amended rule does not require an increase or decrease in future legislative appropriations to the agency; (4) the rule does not require an increase or decrease in fees paid to the agency by persons already regulated by the Board, and would not alter applicable fee amounts for licensure, however, as related, supra, the rule may result in additional individuals being licensed by the Board, which would cause additional fees to be paid to the agency; (5) the amended rule does not create a new regulation; (6) the amended rule does not expand or limit an existing regulation but removes a regulation, thus expanding the number of individuals eligible for licensure by the Board as plumbing inspectors; (7) the amended rule does not increase or decrease the number of individuals subject to the amended rule's applicability; and (8) the amended rule does not adversely affect this state's economy and have the potential to positively impact the state's economy by putting additional licensed plumbers into the marketplace, potentially spurring economic activity and growth.

Local Employment Impact Statement
The Executive Director has determined that no local economies are substantially affected by the rule, and, as such, the Board is exempted from preparing a local employment impact statement pursuant to Government Code §2001.022.

Fiscal Impact on Small and Micro-Businesses, and Rural Communities
The Executive Director has determined that the rule will not have an adverse effect on small or micro-businesses, or rural communities, because there are no substantial anticipated costs to persons who are required to comply with the rule. As a result, the Board asserts preparation of an economic impact statement and a regulatory flexibility analysis, as provided by Government Code §2006.002, are not required.

Takings Impact Assessment
The Board has determined that there are no private real property interests affected by the rule; thus, the Board asserts preparation of a takings impact assessment, as provided by Government Code §2007.043, is not required.

Environmental Rule Analysis
The Board has determined that this proposal is not brought with the specific intent to protect the environment or reduce risks to human health from environmental exposure; thus, the Board asserts this proposal is not a "major environmental rule" as defined by Government Code §2001.0225. As a result, the Board
asserts preparation of an environmental impact analysis, as provided by said §2001.0225, is not required.

Public Comments

Written comments regarding the amendments may be submitted by mail to Lisa G. Hill at P.O. Box 4200, Austin, Texas 78765-4200, or by email to info@tsbpe.texas.gov with the subject line “363.8 Rule Amendments.” All comments must be received within 30 days of publication of this proposal.

Statutory Authority

This proposal is made 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 chapter 1301 of the Occupations Code (Plumbing License Law or PLL).

This proposal affects the Plumbing License Law. No other statute is affected by this proposal.

§363.8. Plumbing Inspector License.

(a) To be eligible for a Plumbing Inspector License an applicant must:

1. [A] have obtained a high school diploma, or the equivalent of a high school diploma; and

2. hold one of the following:

1. [A] a current Journeyman or Master Plumber License issued in Texas or another state;

2. [B] a current Plumbing Inspector license issued in another state with licensing requirements substantially equivalent to the licensing requirements of the Board; or

3. [C] a current professional engineer or a professional architect license issued in Texas.

(b) An applicant who holds a Journeyman or Master Plumber License issued in another state must take and pass the examination developed by the Board.

(c) An applicant is exempt from the licensure requirement listed in subsection (a) [2] of this section if the applicant has completed a total of 500 hours of training or experience in the plumbing industry. An applicant may receive credit toward the 500 hours as follows:

1. 100 hours of credit for successful completion of a certification in the Uniform Plumbing Code or the International Plumbing Code, issued by the International Association of Plumbing and Mechanical Officials or the International Code Council plumbing code certification;

2. 100 hours of credit for successful completion of a Board-approved Medical Gas Piping Installation Endorsement training program;

3. 100 hours of credit for successful completion of a Board-approved Multipurpose Residential Fire Protection Sprinkler Specialist Endorsement training program;

4. 100 of hours credit for successful completion of a Board-approved Water Supply Protection Specialist Endorsement training program;

5. 100 hours of credit for successful completion of an approved Backflow Tester Certification program;

6. six (6) hours of credit for successful completion of any of the Board-approved CPE for Licensed Plumbers and Plumbing Inspectors courses;

7. up to 100 hours of credit for hours attending approved, documented and verified plumbing-related training academy or educational sessions;

8. up to 200 hours of credit for hours working in the trade or an approved, similar plumbing-related trade, as verified by former employers; or

9. up to 200 hours of credit for documented and verified on-the-job training in the enforcement of plumbing codes under the direct supervision of a licensed Plumbing Inspector.

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

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CHAPTER 365. LICENSING AND REGISTRATION

22 TAC §365.14

The Texas State Board of Plumbing Examiners (board) proposes amendments to 22 Texas Administrative Code (TAC) §365.14, concerning course year for continuing professional education programs.

Background and Justification

Pursuant to Occupations Code §1301.404, licensed plumbers are required to complete at least six hours of continuing professional education (CPE) each year and charges the board with authority to approve and administer such continuing education programs. Existing 22 TAC §365.14 establishes a course year for such CPE for which the providers of CPE and their materials are approved by the board each year. Specifically, under existing 22 TAC §365.14 begins on July 1 of each calendar year and ends on June 30 of the next calendar year. The amendments to §365.14, if adopted, would change the course year to begin on January 1 of each year and end on December 31 of each year and eliminate requirements determining when a licensee must take CPE based upon when their license expires in relation to the mid-year CPE approval process.

Fiscal Impact on State and Local Government

Lisa G. Hill, executive director for the board (executive director), has determined that for the first five year period the amended rule is in effect, there are no foreseeable increases or reductions in costs to the state or local governments as a result of enforcing or administering the rules. The executive director has further determined that for the first five year period the amended rule is in effect, there will be no foreseeable losses or increases in revenue for the state or local governments as a result of enforcing or administering the rules.

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Public Benefits

The executive director has determined that for each of the first five years the amended rule is in effect, the public benefit anticipated as a result of enforcing or administering the amended rule will be to have a simpler process for the CPE course year that interested persons of the public can better understand. A simpler process for approval of CPE providers and materials may remove potential barriers to entry allowing more CPE providers to seek approval of the board to become a CPE provider, potentially increasing competition amongst the CPE providers to provide new and innovative training methods or course materials which may better train licensed plumbers and benefit the public by raising the competency and skillfulness of licensed plumbers providing plumbing services to the public.

Probable Economic Costs to Persons Required to Comply with the Rule

The executive director has determined that for the first five years the amended rule is in effect, there are no substantial economic costs anticipated to persons required to comply with the amended rule.

One-for-One Rule Analysis

Given the amended rule does not have a fiscal note which imposes a cost on regulated persons, including another state agency, a special district, or local government, proposal and adoption of the rule is not subject to the requirements of Government Code §2001.0045.

Government Growth Impact Statement

For each of the first five years the amended rule is in effect, the board has determined the following: (1) the amended rule does not create or eliminate a government program; (2) implementation of the amended rule does not require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the amended rule does not require an increase or decrease in future legislative appropriations to the agency; (4) the amended rule does not require an increase or decrease in fees paid to the agency; (5) the amended rule does not create a new regulation; (6) the amended rule does not expand, limit, or repeal an existing regulation; (7) the amended rule does not increase or decrease the number of individuals subject to the rule’s applicability; and (8) the amended rule does not positively or adversely affect this state’s economy.

Local Employment Impact Statement

No local economies are substantially affected by the amended rule. As a result, preparation of a local employment impact statement pursuant to Government Code §2001.022 is not required.

Fiscal Impact on Small and Micro-Businesses, and Rural Communities

The amended rule will not have an adverse effect on small or micro-businesses, or rural communities because there are no substantial economic costs anticipated to persons required to comply with the amended rule. As a result, preparation of an economic impact statement and a regulatory flexibility analysis, as provided by Government Code §2006.002, are not required.

Takings Impact Assessment

There are no private real property interests affected by the amended rule. As a result, preparation of a takings impact assessment, as provided by Government Code §2007.043, is not required.

Public Comments

Written comments regarding the amended rule may be submitted by mail to Lisa G. Hill at P.O. Box 4200, Austin, Texas 78765-4200, or by email to info@tsbpe.texas.gov with the subject line “365.14 Rule Amendments.” All comments must be received within 30 days of publication of this proposal.

Statutory Authority

This proposal is made 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 chapter 1301 of the Occupations Code (Plumbing License Law). This proposal is also made under the authority of Occupations Code §1301.404 and §1301.405.

No other statute is affected by this proposal.

§365.14. Course Year for Continuing Professional Education Programs.

(a) The course year for Continuing Professional Education Programs begins on January 1st [July 1st] of each calendar year and ends on December 31st [June 30th] of each [the next] calendar year.

(b) The authority of a Course Provider approved under §365.16 of this chapter to provide CPE courses or a Course Instructor approved under §365.17 of this chapter to teach CPE courses runs concurrently with the course year [that starts on July 1st of the calendar year in which the provider or instructor is approved by the Board].

(c) A licensee or registered Drain Cleaner, Drain Cleaner- Restricted or Residential Utilities Installer shall complete at least six (6) hours of CPE before he or she may renew his or her license or registration. [Paragraphs 1 and 2 of this section and Figure 1 explain how license expiration dates align with the CPE course year.]

(1) An individual whose license or registration expires between January 1st and July 1st must take CPE between July 1st of the calendar year prior to the year in which the license or registration will expire and the expiration date of their license.

(2) An individual whose license or registration expires between September 1st and December 31st must take CPE between July 1st of the calendar year in which the license or registration will expire and the expiration date of their license.

(d) The authority of a Publisher of Course Materials approved under §363.15 of this chapter to sell course materials begins on December 1st or thirty-one (31) days prior to the start [July 1st] of the upcoming CPE course [calendar] year for [in] which the materials are approved and continues until the course materials are no longer required for the renewal of an expired license or registration.

(1) The Board may authorize the use of course materials prior to July 1st for industry-related programs or conferences if the person offering the program or conference submits:

(A) a written request stating the date, time, and place the materials will be used; and

(B) a statement from the Publisher that course materials will be used verifying that the materials will be available on the date included in the request.

(2) A request submitted pursuant to paragraph (1) of this subsection, shall be submitted no later than fifteen (15) business days before the regularly-scheduled January or April meeting of the Board.
The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency’s legal authority to adopt.

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CHAPTER 367. ENFORCEMENT
22 TAC §367.2
The Texas State Board of Plumbing Examiners (board) proposes amendments to §367.2, concerning code requirements.

Background and Justification
Occupations Code §1301.255 requires the board to adopt plumbing codes governing the minimum design, installation and maintenance requirements of a plumbing system. Specifically, the board was required to adopt the Uniform Plumbing Code (UPC), as published by the International Association of Plumbing and Mechanical Officials and the International Plumbing Code (IPC), as published by the International Code Council. Pursuant to Occupations Code §1301.551, municipalities with a population greater than 5,000 must regulate plumbing within their jurisdiction in accordance with the requirements of Occupations Code Chapter 1301. Municipalities below this threshold, meanwhile, may opt-in and elect to regulate plumbing within their jurisdiction in accordance with the requirements of Occupations Code Chapter 1301. Pursuant to Occupations Code §1301.255(c) the plumbing codes adopted by the board apply in areas that are not otherwise subject to regulation under Occupations Code Chapter 1301. Occupations Code §1301.255(b) authorizes the board to adopt later editions of the plumbing codes. Existing 22 TAC §367.2 adopted the 2012 editions of such codes. The amendments, if adopted, would adopt the 2018 editions of the UPC and IPC to ensure that plumbing systems designed, installed, and maintained in the state use modern materials and installation techniques, and conform to modern industry-recognized standards for function, efficiency, and safety.

Fiscal Impact on State and Local Government
Lisa G. Hill, executive director for the board (executive director), has determined that for the first five year period the amended rule is in effect, there are no foreseeable increases or reductions in costs to the state or local governments as a result of enforcing or administering the rules. The executive director has further determined that for the first five-year period the amended rule is in effect, there will be no foreseeable losses or increases in revenue for the state or local governments as a result of enforcing or administering the rules.

Public Benefits
The executive director has determined that for each of the first five years the amended rule is in effect, the public benefit anticipated as a result of enforcing or administering the amended rule will be to ensure that the plumbing systems utilized by the public in this state are designed, installed, and maintained using modern materials and installation techniques, and in conformity with industry-recognized standards for function, efficiency, and safety.

Probable Economic Costs to Persons Required to Comply with the Rule
The executive director has determined that for the first five years the amended rule is in effect, there are no substantial economic costs anticipated to persons required to comply with the amended rule. Plumbing work is contracted for and provided by and through a plumbing company. Any potential economic costs would be borne by such plumbing companies and not directly by any regulated persons of the board (licensees) required to comply with the rule. Ultimately, any potential economic costs incurred by a plumbing company are ordinarily passed along to the consumer. Moreover, the differences between the 2012 and 2018 editions of the UPC and IPC are incremental rather than monumental and will not impose radically different code requirements that might require a plumbing company to incur substantial economic costs. Additionally, most plumbing is simultaneously regulated at the municipal level for which the requirements of 22 TAC §367.2 do not apply. Many such municipal jurisdictions have already adopted plumbing codes later than the 2012 editions and plumbing companies in such jurisdictions are already subject to such requirements (including, potentially, the 2021 editions of such codes). The foregoing notwithstanding, the board welcomes comments or feedback in response to this proposal concerning any potential costs to regulated persons as a result of enforcing or administering the amended rule.

One-for-One Rule Analysis
Given the amended rule does not have a fiscal note which imposes a cost on regulated persons, including another state agency, a special district, or local government, proposal and adoption of the rule is not subject to the requirements of Government Code §2001.0045.

Government Growth Impact Statement
For each of the first five years the amended rule is in effect, the board has determined the following: (1) the amended rule does not create or eliminate a government program; (2) implementation of the amended rule does not require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the amended rule does not require an increase or decrease in future legislative appropriations to the agency; (4) the amended rule does not require an increase or decrease in fees paid to the agency; (5) the amended rule does not create a new regulation; (6) the amended rule does not expand, limit, or repeal an existing regulation; (7) the amended rule does not increase or decrease the number of individuals subject to the rule’s applicability; and (8) the amended rule does not positively or adversely affect this state’s economy.

Local Employment Impact Statement
No local economies are substantially affected by the amended rule. As a result, preparation of a local employment impact statement pursuant to Government Code §2001.022 is not required.

Fiscal Impact on Small and Micro-Businesses and Rural Communities
The amended rule will not have an adverse effect on small or micro-businesses or rural communities because there are no substantial economic costs anticipated to persons required to com-
ply with the amended rule. As a result, preparation of an economic impact statement and a regulatory flexibility analysis, as provided by Government Code §2006.002, are not required.

Takings Impact Assessment

There are no private real property interests affected by the amended rule. As a result, preparation of a takings impact assessment, as provided by Government Code §2007.043, is not required.

Public Comments

Written comments regarding the amended rule may be submitted by mail to Lisa G. Hill at P.O. Box 4200, Austin, Texas 78765-4200, or by email to info@tsbpe.texas.gov with the subject line “367.2 Rule Amendments.” All comments must be received within 30 days of publication of this proposal.

Statutory Authority

This proposal is made 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 chapter 1301 of the Occupations Code (Plumbing License Law). This proposal is also made under the authority of Occupations Code §1301.255(b).

No other statute is affected by this proposal.

§367.2. Code Requirements.

(a) To protect the health and safety of the citizens of this state, the Board adopts the following plumbing codes:

(1) the 2018 [2012] Uniform Plumbing Code, as published by the International Association of Plumbing and Mechanical Officials; and


(A) the 2018 [2012] International Fuel Gas Code; and

(B) the 2018 [2012] International Residential Code.

(b) To ensure the proper design, installation, and maintenance of plumbing systems within its jurisdiction, a political subdivision may adopt a plumbing code with any amendments necessary to address local concerns provided that the amendments do not substantially vary with the rules or laws of this state.

(c) Plumbing must be installed in accordance with all applicable plumbing codes adopted by the political subdivision in which the plumbing is being installed.

(1) Plumbing installed by an individual licensed under the PLL in an unincorporated area of the county or other area where no plumbing code has been adopted must be installed in accordance with a plumbing code adopted under subsection (a) of this section.

(2) A plumbing installation that was started prior to the Board’s adoption of the plumbing codes listed in subsection (a) of this section may be completed under the requirements of the codes in effect at the time permits for the installation were issued or work on the installation commenced.

(3) In addition to all applicable plumbing codes, Liquefied Petroleum Gas (LP-Gas) piping must be installed in accordance with all applicable rules adopted by the Texas Railroad Commission.

(d) Any piping connecting a plumbing fixture, including a water closet, to a potable water supply shall be installed to prevent the back flow of nonpotable substances into the potable water system in accordance with the applicable plumbing code and state laws. Water closet fill valves (ball cocks) shall be of the antisiphon, integral vacuum breaker type with the critical level (the air inlet portion of the vacuum breaker) installed at least one (1) inch above the flood level rim of the fixture (the inlet of the water closet overflow tube).

(e) Plumbing installed in compliance with a code adopted under subsection (a) or (b) of this section must be inspected by a Plumbing Inspector licensed under the PLL and Board Rule §367.4 of this title (relating to Standards of Conduct - Plumbing Inspectors).

(f) A licensee or registrant shall not install, and a person shall not require a licensee or registrant to install, plumbing that is not in compliance with the Plumbing License Law or any other laws of this state, Board Rules, or any applicable plumbing codes.

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

Filed with the Office of the Secretary of State on March 1, 2021.

TRD-202100835

Lisa Hill
Executive Director
Texas State Board of Plumbing Examiners

Earliest possible date of adoption: April 11, 2021

For further information, please call: (512) 936-5233

PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 533. PRACTICE AND PROCEDURE

SUBCHAPTER E. PETITION FOR ADOPTION OF RULES

22 TAC §533.50

The Texas Real Estate Commission (TREC) proposes new rule 22 TAC §533.50, concerning Petition for Adoption of Rules, in Chapter 533, Practice and Procedure. The proposed new rule §533.50 implements a statutory requirement that state agencies must prescribe by rule the form for a petition for adoption of rules and the procedure for its submission, consideration, and disposition. The proposed new rule is recommended by the Executive Committee.

Abby Lee, Deputy General Counsel, has determined that for the first five-year period the proposed new rule is in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the section. There is no adverse economic effect anticipated for small businesses, micro-businesses, rural communities, or local or state employment as a result of implementing the proposed new rule. There is no significant economic cost anticipated for persons who are required to comply with the proposed new rule. Accordingly, no Economic Impact Statement or Regulatory Flexibility Analysis is required.

Ms. Lee also has determined that for each year of the first five years the section as proposed is in effect, the public benefit anticipated as a result of enforcing the new rule as proposed will
be improved clarity and transparency for both members of the public and license holders as a result of implementing a well-defined procedure for such petitioning, as well as requirements that comply with statute.

For each year of the first five years the proposed new rule is in effect, the new rule will not:

- create or eliminate a government program;
- require the creation of new employee positions or the elimination of existing employee positions;
- require an increase or decrease in future legislative appropriations to the agency;
- require an increase or decrease in fees paid to the agency;
- expand, limit or repeal an existing regulation;
- increase or decrease the number of individuals subject to the rule's applicability; or
- positively or adversely affect the state's economy.

Comments on the proposal may be submitted to Abby Lee, Deputy General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188 or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the Texas Register.

The new rule is proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102, as well as Texas Government Code §2001.021, which requires state agencies to adopt by rule procedures for petitioning for the adoption of rules.

The statutes affected by this proposal are Chapters 1101 and 1102, Texas Occupations Code. No other statute, code or article is affected by the proposed new rule.

§533.50 Petition for Adoption of Rules.

(a) Any interested person, as defined by §2001.021, Government Code, may request a rule be adopted, amended, or repealed by submitting a written petition to the Commission.

(b) The written petition must include:

(1) the person's full name, mailing address, telephone number, and email address;
(2) a brief summary of the proposed action and its desired effect;
(3) a justification for the proposed action set out in narrative form with sufficient particularity to inform the Commission the reasons and arguments on which the person is relying;
(4) if proposing a new rule, the text of the new rule in the exact form that is desired to be adopted; and
(5) if proposing an amendment or repeal, the specific section and text of the rule the person wants to change, with deletions crossed through and additions underlined.

(c) The written petition must be submitted to the Commission by:

(1) delivering the petition in person to the Commission's headquarters;
(2) sending the petition via email to general.counsel@trec.texas.gov; or

(3) sending the petition via fax to (512) 936-3788, ATTN: General Counsel.

(d) Not later than 60 days after the date of submission of a petition that complies with the requirements of this section, the Chair of the Commission, in consultation with Commission staff, shall review the petition and either:

(1) deny the petition in writing, stating the reasons for the denial; or

(2) initiate a rulemaking proceeding under Chapter 2001, Government Code, by directing that the petition be placed on the next agenda for discussion by:

(A) the Commission; or

(B) the appropriate advisory committee with subject matter jurisdiction.

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

Filed with the Office of the Secretary of State on February 24, 2021.

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Abby Lee
Deputy General Counsel
Texas Real Estate Commission
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For further information, please call: (512) 936-3057

CHAPTER 535. GENERAL PROVISIONS

SUBCHAPTER R. REAL ESTATE INSPECTORS

22 TAC §535.220

The Texas Real Estate Commission (TREC) proposes amendments to §535.220, Professional Conduct and Ethics, in Subchapter R of Chapter 535, General Provisions. The proposed amendment clarifies that the consent an inspector must receive from the inspector's client to receive a fee or other valuable consideration for referring services that are not settlement services or other products to the client must be in writing. The Texas Real Estate Inspector Committee recommends this proposed amendment.

Abby Lee, Deputy General Counsel, has determined that for the first five-year period the proposed amendment is in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the section. There is no adverse economic effect anticipated for small businesses, micro-businesses, rural communities, or local or state employment as a result of implementing the proposed amendment. There is no significant economic cost anticipated for persons who are required to comply with the proposed amendment. Accordingly, no Economic Impact Statement or Regulatory Flexibility Analysis is required.

Ms. Lee also has determined that for each year of the first five years the section as proposed is in effect, the public benefit anticipated as a result of the change is improved clarity for license holders and greater consumer protection.
For each year of the first five years the proposed amendment is in effect, the amendment will technically expand an existing regulation by requiring the consent to be in writing, but will not:
- create or eliminate a government program;
- require the creation of new employee positions or the elimination of existing employee positions;
- require an increase or decrease in future legislative appropriations to the agency;
- require an increase or decrease in fees paid to the agency;
- create a new regulation;
- limit or repeal an existing regulation;
- increase or decrease the number of individuals subject to the rule's applicability; or
- positively or adversely affect the state's economy.

Comments on the proposal may be submitted to Abby Lee, Deputy General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188 or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the Texas Register.

The amendment is proposed under Texas Occupations Code §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102.

The statute affected by this proposal is Chapter 1102, Texas Occupations Code. No other statute, code or article is affected by the proposed amendment.

§35.220. Professional Conduct and Ethics.

(a) The responsibility of those persons who engage in the business of performing independent inspections of improvements in real estate transactions imposes integrity beyond that of a person involved in ordinary commerce. Each inspector must maintain a high standard of professionalism, independence, objectivity and fairness while performing inspections in a real estate transaction. Each inspector license holder must also uphold, maintain, and improve the integrity, reputation, and practice of the home inspection profession.

(b) The relationship between an inspector and a client should at a minimum meet the following guidelines.

(1) In accepting employment as an inspector, the inspector should protect and promote the interest of the client to the best of the inspector's ability and knowledge, recognizing that the client has placed trust and confidence in the inspector.

(2) In the interest of the client and the inspector's profession, the inspector should endeavor always to maintain and increase the inspector's level of knowledge regarding new developments in the field of inspection.

(3) The inspector should conduct the inspector's business in a manner that will assure the client of the inspector's independence from outside influence and interests that might compromise the inspector's ability to render a fair and impartial opinion regarding any inspection performed.

(c) The relationship between an inspector and the public should at a minimum meet the following guidelines.

(1) The inspector should deal with the general public at all times and in all manners in a method that is conducive to the promotion of professionalism, independence and fairness to the inspector's, the inspector's business and the inspection industry.

(2) The inspector should attempt to assist the general public in recognizing and understanding the need for inspections, whether the inspector is selected to perform such inspection or not.

(3) The inspector accepts the duty of protecting the public against fraud, misrepresentation or unethical practices in the field of real estate inspections.

(d) The relationship of the inspector with another inspector should at a minimum meet the following guidelines.

(1) The inspector should bind himself to the duty of maintaining fairness and integrity in all dealings with other inspectors and other persons performing real estate inspections.

(2) The inspector should cooperate with other inspectors to insure the continued promotion of the high standards of the real estate inspection profession and pledges himself to the continued pursuit of increasing competence, fairness, education and knowledge necessary to achieve the confidence of the public.

(3) If an inspector has knowledge of a possible violation of the rules of the Commission or Chapter 1102, the inspector should report the possible violation to the Commission.

(e) An inspector shall comply with the following requirements.

(1) An inspector shall not inspect a property when any compensation or future referrals depend on reported findings or on the closing or settlement of a property.

(2) In this section, "settlement service" means a service provided in connection with a prospective or actual settlement, and "settlement service provider" includes, but is not limited to, any one or more of the following:

(A) federally related mortgage loan originator;
(B) mortgage broker;
(C) a lender or other person who provides any service related to the origination, processing or funding of a real estate loan;
(D) a title service provider;
(E) an attorney;
(F) a person who prepares documents, including notarization, delivery, and recordation;
(G) a person who provides credit report services;
(H) an appraiser;
(I) an inspector;
(J) a settlement agent;
(K) a person who provides mortgage insurance services;
(L) a person who provides services involving hazard, flood, or other casualty insurance, homeowner's warranties, or residential service contract;
(M) a real estate agent or broker; and
(N) a person who provides any other services for which a settlement service provider requires a borrower or seller to pay.
(3) An inspector shall not pay or receive a fee or other valuable consideration to or from any other settlement service provider for, but not limited to, the following:

(A) the referral of inspections;

(B) inclusion on a list of inspectors, preferred providers, or similar arrangements; or

(C) inclusion on lists of inspectors contingent on other financial agreements.

(4) An inspector shall not receive a fee or other valuable consideration, directly or indirectly, for referring services that are not settlement services or other products to the inspector's client without the client's written consent.

(5) This section does not prohibit an inspector from paying or receiving a fee or other valuable consideration, such as to or from a contractor, for services actually rendered.

(6) An inspector shall not accept employment to repair, replace, maintain or upgrade systems or components of property covered by the Standards of Practice under this subchapter to the inspector has performed an inspection under a real estate contract, lease, or exchange of real property within 12 months of the date of the inspection.

(7) Inspectors shall not disclose inspection results or client information without prior approval from the client. Inspectors, at their discretion, may disclose observed immediate safety hazards to occupants exposed to such hazards when feasible.

(8) This subsection does not prohibit:

(A) normal promotional or educational activity that is not conditioned on the referral of business and that does not involve the defraying of expenses that otherwise would be incurred; or

(B) a payment at market rates to any person for goods actually furnished or for services actually performed.

(f) The inspector should make a reasonable attempt to cooperate with other professionals and related tradespersons at all times and in all manners in a method that is conducive to the promotion of professionalism, independence and fairness to the inspector, the inspector's business, and the inspection industry.

(g) Each active licensed inspector shall provide the consumer notice adopted under §331.18 of this title in the manner described by that section.

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

Filed with the Office of the Secretary of State on February 24, 2021.

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Abby Lee
Deputy General Counsel
Texas Real Estate Commission

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For further information, please call: (512) 936-3057

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 556. NURSE AIDES

26 TAC §§556.2, 556.3, 556.6, 556.9

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §§556.2, concerning Definitions; §§556.3, concerning Nurse Aide Training and Competency Evaluation Program (NATCEP) Requirements; §§556.6, concerning Competency Evaluation Requirements; and §§556.9, concerning Nurse Aide Registry and Renewal.

BACKGROUND AND PURPOSE

The purpose of the proposal is to allow a NATCEP provider to offer certain components of required training online in a virtual classroom location. A NATCEP is a program approved by HHSC to train and evaluate an individual’s ability to work as a nurse aide in a nursing facility. Currently, all NATCEP training is provided in a classroom and clinical setting.

This program initiative is a response to a critical shortage in trained nurse aides in nursing homes. External stakeholders, such as Texas Health Care Association and Leading Age, have requested that HHSC allow NATCEP providers to offer online training opportunities for portions of the NATCEP classroom curriculum. This option will increase the number of nurse aides qualified for employment in a nursing facility.

Due to the challenges presented by the COVID-19 pandemic and the need for greater awareness and emphasis on infection control, HHSC is also proposing NATCEP providers increase infection control training and continuing education requirements for nurse aides.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §§556.2 adds definitions for "classroom training," "clinical training," "infection control," and "personal protective equipment," and amends the definitions for "employee misconduct registry," "nurse aide registry," and "informal review."

The proposed amendment to §§556.3 standardizes the minimum number of hours of training required to be provided by a NATCEP to a trainee by deleting obsolete language, allows for certain hours to be provided online with security and identification verification requirements, requires eight hours of infection control that include training with personal protective equipment (PPE) before a trainee has any direct contact with a resident, and requires a NATCEP to maintain records of training and make these available to HHSC. The proposed amendment to §§556.3(e)(3) updates the civil money penalty of not less than $10,697 to align with current Centers for Medicare and Medicaid Services requirements.

The proposed amendment to §§556.6 allows only HHSC, or an entity HHSC approves, to provide a competency evaluation, which must be administered by a skills examiner at an approved evaluation site and deletes the requirements that a NATCEP must provide a facility to administer a competency evaluation and administer a competency evaluation to other eligible trainees from another NATCEP.

The proposed amendment to §§556.9 adds the requirement that a nurse aide must complete an HHSC course in infection control and PPE every year.
FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

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

The proposed rules will give NATCEP providers the option to provide a portion of the NATCEP training online. NATCEP providers that choose not to add an online component to their training program will not incur any additional costs because of the proposed rules. In addition, no rural communities contract with HHSC in any program or service affected by the proposed rule. HHSC lacks sufficient information to determine the economic impact on small businesses, micro-businesses, or rural communities.

HHSC determined that alternative methods to achieve the purpose of the proposed rules for small businesses, micro-businesses, or rural communities would not be consistent with ensuring the health, safety, and welfare of the residents of Texas.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas and do not impose a cost on regulated persons.

PUBLIC BENEFIT AND COSTS

David Kosstroun, Deputy Executive Commissioner for Regulatory Services, has determined that for each year of the first five years the rules are in effect, the public benefit will be more flexibility for trainees to participate in NATCEP from a provider that choses to provide a portion of the training online, which will increase the number of nurse aides qualified for employment. As a result, nursing facilities will have more ability to meet required staffing levels and resident needs.

Trey Wood has also determined that for the first five years the rule is in effect, there could be a cost to persons required to comply with the rule as proposed. The proposed rule gives NATCEP providers the option to provide a portion of the NATCEP training online. NATCEP providers that do not choose to add an online component to their training program will not incur any additional costs because of these rules. HHSC lacks sufficient information to determine the economic impact to persons required to comply.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Bridney Jones at (512) 438-4266 in HHSC Long-term Care Regulatory Services. Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or 4900 North Lamar Boulevard, Austin, Texas 78751; or emailed to HHSRulesCoordinationOffice@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the Texas Register. Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 19R027" in the subject line.

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Human Resources Code §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program; and Texas Health and Safety Code Chapter 250, which requires HHSC to maintain a Nurse Aide Registry.

The amendments implement Texas Government Code §§531.0055 and 531.021; Texas Human Resources Code §32.021; and Texas Health and Safety Code §242.037 and Chapter 250.

§556.2. Definitions.

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

(1) Abuse--The willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain, or mental anguish.

(2) Act--The Social Security Act, codified at United States Code, Title 42, Chapter 7.

(3) Active duty--Current full-time military service in the armed forces of the United States or as a member of the Texas military
forces, as defined in Texas Government Code §437.001, or similar military service of another state.

(4) Active status--The designation given to a nurse aide listed on the NAR who is eligible to work in a nursing facility.

(5) Armed forces of the United States--The Army, Navy, Air Force, Coast Guard, or Marine Corps of the United States, including reserve units of those military branches.

(6) Classroom training--The teaching of curriculum components through in-person instruction taught in a physical classroom location, which may include skills practice, or through online instruction taught in a virtual classroom location.

(7) Clinical training--The teaching of hands-on care of residents in a nursing facility under the required level of supervision of a licensed nurse, which may include skills practice prior to performing the skills through hands-on care of a resident. The clinical training provides the opportunity for a trainee to learn to apply the classroom training to the care of residents with the assistance and required level of supervision of the instructor.

(8) [46] Competency evaluation--A written or oral examination and a skills demonstration administered by a skills examiner to test the competency of a trainee.

(9) [22] Competency evaluation application--An HHSC form used to request HHSC approval to take a competency evaluation.

(10) [83] Curriculum--The publication titled Texas Curriculum for Nurse Aides in Long Term Care Facilities developed by HHSC.

(11) [93] Direct supervision--Observation of a trainee performing skills in a NATCEP.

(12) [109] Employee misconduct registry (EMR)--[EMR--Employee misconduct registry.] The registry maintained by HHSC in accordance with Texas Health and Safety Code, Chapter 253, to record findings of reportable conduct by certain unlicensed employees.

(13) [44] Facility--A nursing facility that participates in Medicaid, a skilled nursing facility that participates in Medicare, or a nursing facility that participates in both Medicaid and Medicare.

(14) [42] Facility-based NATCEP--A NATCEP offered by or in a facility.

(15) [44] General supervision--Guidance and ultimate responsibility for another person in the performance of certain acts.

(16) [44] HHSC--The Texas Health and Human Services Commission or its designee.

(17) Infection control--Principles and practices that prevent or stop the spread of infections in the facility setting.

(18) [45] Informal Review (IR)--[IR--Informal review.] An opportunity for a nurse aide to dispute a finding of misconduct [made by HHSC] by providing testimony and supporting documentation to an impartial HHSC staff person.

(19) [46] Licensed health professional--A person licensed to practice healthcare in the state of Texas including:

(A) a physician;

(B) a physician assistant;

(C) a physical, speech, or occupational therapist;

(D) a physical or occupational therapy assistant;

(E) a registered nurse;

(F) a licensed vocational nurse; or

(G) a licensed social worker.

(20) [42] Licensed nurse--A registered nurse or licensed vocational nurse.

(21) [48] LVN--Licensed vocational nurse. An individual licensed by the Texas Board of Nursing to practice as a licensed vocational nurse.

(22) [49] Military service member--A person who is on active duty.

(23) [20] Military spouse--A person who is married to a military service member.

(24) [24] Military veteran--A person who has served on active duty and who was discharged or released from active duty.

(25) [22] Misappropriation of resident property--The deliberate misplacement, exploitation, or wrongful, temporary or permanent use of a resident's belongings or money without the resident's consent.

(26) [24] NATCEP--Nurse aide training and competency evaluation program. A program approved by HHSC to train and evaluate an individual's ability to work as a nurse aide in a facility.

(27) [25] Neglect--The failure to provide goods and services necessary to avoid physical harm, mental anguish, or mental illness.

(28) [26] Non-facility-based NATCEP--A NATCEP not offered by or in a facility.

(29) [22] Nurse aide--An individual who provides nursing or nursing-related services to residents in a facility under the supervision of a licensed nurse and who has successfully completed a NATCEP or has been determined competent by waiver or reciprocity. This term does not include an individual who is a licensed health professional or a registered dietitian or who volunteers services without monetary compensation.

(30) Nurse Aide Registry (NAR)--A listing of nurse aides, maintained by HHSC, that indicates if a nurse aide has active status, revoked status, or is unemployed based on a finding of having committed an act of abuse, neglect or misappropriation of resident property.

(31) [28] Nurse aide training and competency evaluation program (NATCEP) application--A HHSC form used to request HHSC initial approval to offer a NATCEP, to renew approval to offer a NATCEP, or to request HHSC approval of changed information in an approved NATCEP application.

(32) [29] Nursing services--Services provided by nursing personnel that include, but are not limited to:

(A) promotion and maintenance of health;

(B) prevention of illness and disability;

(C) management of health care during acute and chronic phases of illness;

(D) guidance and counseling of individuals and families; and...
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§1819(h)(2)(A)(ii) of the Act; or

§1919(h)(2)(A) of the Act;

(3) there is no other NATCEP offered within a reasonable distance from the facility; and

(4) an adequate environment exists for operating a NATCEP in the facility.

(g) A person who wants to contract with a facility in accordance with subsection (f) of this section must submit a completed application to HHSC in accordance with §556.4 of this chapter (relating to Filing and Processing an Application for a Nurse Aide Training and Competency Evaluation Program (NATCEP)) and include the name of the prohibited facility in the application. HHSC may withdraw the application within two years of approving it if HHSC determines that the facility is no longer prohibited from offering a NATCEP.

(h) A NATCEP must provide at least 100 hours of training to a trainee. The 100 hours must include:

(1) 60 hours of classroom training; and

(2) 40 hours of clinical training with at least one program instructor for every 10 trainees.

(1) Before September 1, 2013, a NATCEP must provide at least 75 hours of training to a trainee. The 75 hours must include:

(1) 51 hours of classroom training; and

(2) 24 hours of clinical training, which includes care of residents and has at least one program instructor for every 10 trainees.

(i) A NATCEP that provides online training must:

(1) maintain records in accordance with subsection (q) of this section and otherwise comply with this chapter;

(2) adopt, implement, and enforce a policy and procedures for establishing that a trainee who registers in an online training is the same trainee who participates in and completes the course. This policy and associated procedures must describe the procedures the NATCEP uses to:

(A) verify a trainee’s identity;

(B) ensure protection of a trainee’s privacy and personal information; and

(C) document the hours completed by each trainee; and

(3) verify on the NATCEP application that the online course has the security features required under paragraph (2) of this subsection.

(1) Effective September 1, 2013, a NATCEP must provide at least 100 hours of training to a trainee. The 100 hours must include:

(1) 60 hours of classroom training; and

(2) 40 hours of clinical training with at least one program instructor for every 10 trainees.
(2) 40 hours of clinical training, which includes care of residents and has at least one program instructor for every 10 trainees.

(j) A NATCEP must teach the curriculum established by HHSC and described in the Code of Federal Regulations, Title 42, §483.152. The NATCEP must include at least 16 introductory hours of classroom training in the following areas before a trainee has any direct contact with a resident:

(1) communication and interpersonal skills;
(2) infection control;
(3) safety and emergency procedures, including the Heimlich maneuver;
(4) promoting a resident's independence;
(5) respecting a resident's rights;
(6) basic nursing skills, including:
   (A) taking and recording vital signs;
   (B) measuring and recording height and weight;
   (C) caring for a resident's environment;
   (D) recognizing abnormal changes in body functioning and the importance of reporting such changes to a supervisor; and
   (E) caring for a resident when death is imminent;
(7) personal care skills, including:
   (A) bathing;
   (B) grooming, including mouth care;
   (C) dressing;
   (D) toileting;
   (E) assisting with eating and hydration;
   (F) proper feeding techniques;
   (G) skin care; and
   (H) transfers, positioning, and turning;
(8) mental health and social service needs, including:
   (A) modifying the aide's behavior in response to a resident's behavior;
   (B) awareness of developmental tasks associated with the aging process;
   (C) how to respond to a resident's behavior;
   (D) allowing a resident to make personal choices, providing and reinforcing other behavior consistent with the resident's dignity; and
   (E) using a resident's family as a source of emotional support;
(9) care of cognitively impaired residents, including:
   (A) techniques for addressing the unique needs and behaviors of a resident with a dementia disorder including Alzheimer's disease;
   (B) communicating with a cognitively impaired resident;
   (C) understanding the behavior of a cognitively impaired resident;
   (D) appropriate responses to the behavior of a cognitively impaired resident; and
   (E) methods of reducing the effects of cognitive impairments;
(10) basic restorative services, including:
   (A) training a resident in self care according to the resident's abilities;
   (B) use of assistive devices in transferring, ambulation, eating, and dressing;
   (C) maintenance of range of motion;
   (D) proper turning and positioning in bed and chair;
   (E) bowel and bladder training; and
   (F) care and use of prosthetic and orthotic devices; and
(11) a resident's rights, including:
   (A) providing privacy and maintenance of confidentiality;
   (B) promoting the resident's right to make personal choices to accommodate their needs;
   (C) giving assistance in resolving grievances and disputes;
   (D) providing needed assistance in getting to and participating in resident, family, group, and other activities;
   (E) maintaining care and security of the resident's personal possessions;
   (F) promoting the resident's right to be free from abuse, mistreatment, and neglect and the need to report any instances of such treatment to appropriate facility staff; and
   (G) avoiding the need for restraints in accordance with current professional standards.

(k) A NATCEP must have a program director and a program instructor when the NATCEP applies for initial approval by HHSC in accordance with §556.7 of this chapter (relating to Review and Reapproval of a Nurse Aide Training and Competency Evaluation Program (NATCEP)) and to maintain HHSC approval. The program director and program instructor must meet the requirements of §556.5(a) and (b) of this chapter (relating to Program Director, Program Instructor, Supplemental Trainers, and Skills Examiner Requirements).

(l) A NATCEP must teach eight hours of infection control that includes the proper use of personal protective equipment (PPE) before a trainee has any direct contact with a resident.

(m) A NATCEP must verify that a trainee:
   (1) is not listed on the NAR in revoked status;
   (2) is not listed as unemployable on the EMR; and
   (3) has not been convicted of a criminal offense listed in Texas Health and Safety Code (THSC), §250.006(a), or convicted of a criminal offense listed in THSC, §250.006(b) within the five years immediately before participating in the NATCEP.

(n) A NATCEP must ensure that a trainee:
   (1) completes the first 16 introductory hours of training (Section I of the curriculum) before having any direct contact with a resident;
(2) only performs services for which the trainee has been trained and has been found to be proficient by a program instructor;

(3) is under the direct supervision of a licensed nurse when performing skills as part of a NATCEP until the trainee has been found competent by the program instructor to perform that skill;

(4) is under the general supervision of a licensed nurse when providing services to a resident after a trainee has been found competent by the program instructor; and

(5) is clearly identified as a trainee during the clinical training portion of the NATCEP.

(o) [(n)] A NATCEP must submit a NATCEP application to HHSC if the information in an approved NATCEP application changes. A NATCEP may not continue training or start new training until HHSC approves the change. HHSC conducts a review of the NATCEP information if HHSC determines the changes are substantive.

(p) [(o)] A NATCEP must use an [a] HHSC performance record to document major duties or skills taught, trainee performance of a duty or skill, satisfactory or unsatisfactory performance, and the name of the instructor supervising the performance. At the completion of the NATCEP, the trainee and the employer, if applicable, will receive a copy of the performance record.

(q) [(p)] A NATCEP must maintain records for each session of classroom training, whether offered in person or online, and of clinical training, and must make these records [and make them] available to HHSC or its designees at any reasonable time. [The records must include:]

1. The classroom and clinical training records must include:
   A. [(1)] dates and times of all classroom and clinical training;
   B. [(2)] the full name and social security number of each [a] trainee;
   C. [(3)] a [attendance] record of the date and time of each classroom and clinical training session a trainee attends;
   D. [(4)] a final course grade [for the training portion of the NATCEP] that indicates pass or fail for each [a] trainee; and
   E. [(5)] a [daily] physical or electronic sign-in record [records] for each classroom and clinical training session. An electronic sign-in must include a form of identity verification for the trainee conducted in compliance with the requirements of subsection (i)(2) of this section.

2. A NATCEP must provide to HHSC, on the NATCEP application, the physical address where all records are maintained and must notify HHSC of any change in the address provided.

(r) [(q)] A facility must not charge a nurse aide for any portion of the NATCEP, including any fees for textbooks or other required course materials, if the nurse aide is employed by or has received an offer of employment from a facility on the date the nurse aide begins a NATCEP.

(s) [(r)] HHSC reimburses a nurse aide for a portion of the costs incurred by the nurse aide to complete a NATCEP if the nurse aide is employed by or has received an offer of employment from a facility within 12 months after completing the NATCEP.

(t) [(s)] HHSC must approve a NATCEP before the NATCEP solicits or enrolls trainees.

(u) [(t)] HHSC approval of a NATCEP only applies to the required curriculum and hours. HHSC does not approve additional content or hours.

(v) [(u)] A new employee or trainee orientation given by a facility to a nurse aide employed by the facility does not constitute a part of a NATCEP.

(w) [(v)] A NATCEP that provides training to renew a nurse aide's listing on the NAR must include training in geriatrics and the care of residents with a dementia disorder, including Alzheimer's disease.

§556.6. Competency Evaluation Requirements.

(a) Only HHSC, or an entity HHSC approves, may provide a competency evaluation, which must be administered by a [A] skills examiner [must administer a competency evaluation] at an approved evaluation site.

(b) A trainee is eligible to take a competency evaluation if the trainee has successfully completed the training portion of a NATCEP, as determined by the program director, or is eligible under §556.11 of this chapter (relating to Waiver, Reciprocity, and Exemption Requirements).

(c) If a trainee cannot take a competency evaluation at the NATCEP location where the trainee received training, the trainee may take a competency evaluation at another location approved to offer [approved NATCEP that offers] the [competency] evaluation [and accepts the trainee for a competency evaluation].

(d) An eligible trainee [who does not take a competency evaluation at the location where the trainee received training] must obtain from the program director a signed competency evaluation application and a certificate or letter of completion of training. The trainee must arrange [with another approved NATCEP] to take the competency evaluation at an approved location and must follow the instructions on the competency evaluation application.

(e) A NATCEP must:

1. Provide a facility where a trainee may perform the skills demonstration and a location where a trainee may take the written or oral examination;

   1. [(1)] promptly, after one of its trainees successfully completes the NATCEP training, approve trainees to take a competency evaluation [offer a competency evaluation to its own trainees promptly after successful completion of the training portion of a NATCEP];

   2. [(2)] promptly, after one of its trainees successfully completes the NATCEP training, approve trainees to take a competency evaluation [offer a competency evaluation to its own trainees promptly after successful completion of the training portion of a NATCEP];

   3. [(3)] administer a competency evaluation to other eligible trainees the NATCEP has accepted for the competency evaluation;

   4. [(4)] provide the trainee with information regarding scheduling [schedule] a competency evaluation; and

   5. [(5)] ensure that the [trainee] trainees] accurately complete [complete] the competency evaluation applications.

(f) A trainee must:

1. [(f)] take a competency evaluation within 24 months after completing the training portion of a NATCEP;

   1. [(1)] verify the arrangements for a competency evaluation [evaluations];

   2. [(2)] complete a competency evaluation application and submit the application in accordance with application instructions;

   3. [(3)] request another competency evaluation if the trainee fails a competency evaluation; and
(5) meet any other procedural requirements specified by HHSC or its designated skills examiner.

(g) A competency evaluation must consist of:

(1) a skills demonstration that requires the trainee to demonstrate five randomly selected skills drawn from a pool of skills that are generally performed by nurse aides, including all personal care skills listed in the curriculum; and

(2) a written or oral examination, which includes 60 scored multiple choice questions selected from a pool of test items that address each course requirement in the curriculum. Written examination questions must be printed in a test booklet with a separate answer sheet. An oral examination must be a recorded presentation read from a prepared text in a neutral manner that includes questions to test reading comprehension.

(h) A trainee with a disability, including a trainee with dyslexia as defined in Texas Education Code § 51.970 (relating to Instructional Material for Blind and Visually Impaired Students and Students with Dyslexia), may request a reasonable accommodation for the competency evaluation under the Americans with Disabilities Act.

(i) To successfully complete the [a NATCEP] competency evaluation, a trainee must achieve a score HHSC designates as a passing [pass] score on:

(1) the skills demonstration[, as determined by HHSC]; and

(2) the written or oral examination[, as determined by HHSC].

(j) A trainee who fails the skills demonstration or the written or oral examination may retake the competency evaluation twice.

(1) A trainee must be advised of the areas of the competency evaluation that the trainee did not pass.

(2) If a trainee fails a competency evaluation three times, the trainee must complete the training portion of a NATCEP before taking a competency evaluation again.

(k) HHSC informs a trainee before taking a competency evaluation that HHSC records successful completion of the competency evaluation on the NAR.

(l) HHSC records successful completion of the competency evaluation on the NAR within 30 days after the date the trainee passes the competency evaluation.

(m) A facility must not offer or serve as a competency evaluation site if the facility is prohibited from offering a NATCEP under the provisions of §556.3(e) of this chapter (relating to Nurse Aide Training and Competency Evaluation Program (NATCEP) Requirements).

(n) A trainee may not be charged [facility must not charge a nurse aide] for any portion of a competency evaluation if the trainee [nurse aide] is employed by or has received an offer of employment from a facility on the date the trainee [nurse aide] takes the competency evaluation.

(o) HHSC reimburses a nurse aide for a portion of the costs incurred by the individual [nurse aide] to take a competency evaluation if the individual [nurse aide] is employed as a nurse aide by, or has received an offer of employment from, a facility within 12 months after taking the competency evaluation.

§556.9. Nurse Aide Registry and Renewal.

(a) To be listed on the NAR as having active status, a nurse aide must successfully complete a NATCEP, as described in §556.6(i) of this chapter (relating to Competency Evaluation Requirements).

(b) HHSC does not charge a fee to list a nurse aide on the NAR or to renew the nurse aide's listing of active status on the NAR.

(c) A nurse aide listed on the NAR must inform HHSC of the nurse aide's current address and telephone number.

(d) A listing of active status on the NAR expires 24 months after the nurse aide is listed on the NAR or 24 months after the last date of verified employment as a nurse aide, whichever is earlier. To renew active status on the NAR, the following requirements must be met:

(1) A facility must submit a HHSC Employment Verification form to HHSC that documents that the nurse aide has performed paid nursing or nursing-related services at the facility during the preceding year.

(2) A nurse aide must submit a HHSC Employment Verification form to HHSC to document that the nurse aide has performed paid nursing or nursing-related services, if documentation is not submitted in accordance with paragraph (1) of this subsection by the facility or facilities where the nurse aide was employed.

(3) A nurse aide must complete an HHSC course in infection control and proper use of PPE every year.

(4) [34] A nurse aide must complete at least 24 hours of in-service education every two years. The in-service education must include training in geriatrics and the care of residents with a dementia disorder, including Alzheimer's disease. The in-service education must be provided by:

(A) a facility;

(B) an approved NATCEP;

(C) HHSC; or

(D) a healthcare entity, other than a facility, licensed or certified by HHSC; by the Department of State Health Services; or by the Board of Nursing.

(5) [44] No more than 12 hours of the in-service education required by paragraph (4) [34] of this subsection may be provided by an entity described in paragraph (4)(D) [34][D] of this subsection.

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

Filed with the Office of the Secretary of State on February 25, 2021.

TRD-202100812
Karen Ray
Chief Counsel
Health and Human Services Commission

Earliest possible date of adoption: April 11, 2021
For further information, please call: (512) 701-8109

TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS
CHAPTER 5. FUNDS MANAGEMENT (FISCAL AFFAIRS)
SUBCHAPTER D. CLAIMS PROCESSING--PAYROLL

34 TAC §5.39, §5.49

The Comptroller of Public Accounts proposes amendments to §5.39, concerning hazardous duty pay and §5.49, concerning longevity pay.

The amendments to §5.39 update the format of the definitions in subsection (a) to present them in the same format as other definitions listed in Chapter 5; delete the definitions of institution of higher education and TYC in subsection (a) because they are no longer used in this section; add definitions of calendar month, day, TABC, TJJD, and TPWD in subsection (a); change TYC to TJJD in subsections (b), (c), and (f) to reflect the current name of the agency; update the definition of "state employee" in subsection (b)(2)(A) as it applies to individuals employed by TJJD to reflect changes made by the legislature in House Bill 3689, 86th Legislature (2019); change 12 month to 12-month in subsections (c) and (f) to correct the grammar in these subsections; clarify in subsection (e)(1) that an individual who is on leave without pay for a full calendar month does not accrue lifetime service credit for the month; clarify the process for determining an employee's effective service date in subsection (e)(3) to make it easier to understand when it is applied to an employee who has been employed one or more times by the state; and change Parks and Wildlife Department to TPWD in subsection (g), Texas Department of Criminal Justice to TDCJ in subsections (a) and (g), and Texas Alcoholic Beverage Commission to TABC in subsection (g), to use the defined acronym for these agencies.

The amendments to §5.49 add definitions of hazardous duty position and lifetime service credit, and update citations, in subsection (a); clarify the process for determining a state employee's effective service date in subsection (d) to make it easier to understand when it is applied to an employee who has been employed one or more times by the state; update the citation in subsection (i); and clarify in subsection (i) that an individual who leaves a position that accrues lifetime service credit (or that would have accrued lifetime service credit had the longevity pay law been in effect when the individual left the position) to serve in the military and is reemployed with the state after completing that service in accordance with any applicable federal or state veterans' reemployment law accrued lifetime service credit during that service, even if the individual is on leave without pay during the individual's period of military service.

Tom Currah, Chief Revenue Estimator, has determined that during the first five years that the proposed amended rules are in effect, the rules: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy.

Mr. Currah also has determined that the proposed amendments would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed amended rules would benefit the public by improving the clarity and implementation of the section. There would be no significant anticipated economic cost to the public. The proposed amended rules would have no fiscal impact on small businesses or rural communities.

Comments on the proposals may be submitted to Rob Coleman, Director, Fiscal Management Division, at rob.coleman@cpa.texas.gov or P.O. Box 13528 Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the Texas Register.

The amendments to §5.39 are proposed under Government Code, §659.308, which authorizes the comptroller to adopt rules to administer Government Code, Chapter 659, Subchapter L, concerning hazardous duty pay. The amendments to §5.49 are proposed under Government Code, §659.047, which requires the comptroller to adopt rules to administer Government Code, Chapter 659, Subchapter D, concerning longevity pay.


(a) Definitions. The following words and terms, when used [Except as otherwise provided] in this section, shall have the following meanings, unless the context clearly indicates otherwise.[:]

(1) Calendar month--The period from the first day through the last day of January, February, March, April, May, June, July, August, September, October, November, or December.

(2) [(1)]"Classified position--A [" means a] position included in the position classification plan in the General Appropriations Act, Article IX.

(3) [(2)]"Correctional officer--An [" Officer..."] employee in a job class designated by TDCJ [the Texas Department of Criminal Justice] as a correctional officer holding a hazardous duty position[ and reported annually to the Comptroller of Public Accounts before the start of each fiscal year].

(4) Day--The 24 consecutive hour period beginning at 12:00 midnight and ending at 11:59 p.m.

(5) [(3)]"Full-time state employee--Has [" has] the meaning assigned by Government Code, §659.301(1).

(6) [(4)]"Hazardous duty position--A [" means a] position in the service of the state that:
(A) renders any individual holding that position a "state employee," as defined in paragraph (11) [(10)] of this subsection; or
(B) requires the performance of hazardous duty.

[(5)] "Institution of higher education" has the meaning assigned by Government Code, §659.301(3).

(7) [(6)]"Lifetime service credit--The [" means the] number of months that an individual has served in a hazardous duty position during the individual's lifetime.

(8) [(7)]"Part-time state employee--Has [" has] the meaning assigned by Government Code, §659.301(4).

(9) [(8)]"Regular hours--The [" means the] number of hours an individual actually works during a month.

(10) [(9)]"Standard hours--The [" means the] total number of hours that an individual would work during a month if the individual worked exactly eight hours during each workday of that month.
(11) [§659.302(a) (b)] State employee--An ["means an"] individual who is a state employee under subsection (b)(1)(A) or (b)(2)(A) of this section.

(12) TABC--The Texas Alcoholic Beverage Commission.

(13) [§659.302(a) (b)] TDCJ--Texas Department of Criminal Justice.

(14) TJJD--The Texas Juvenile Justice Department.

(15) [§659.302(a) (b)] TPWD--The Texas Parks and Wildlife Department.

(16) [§659.302(a) (b)] "TYC" means the Texas Youth Commission.

(17) [§659.302(a) (b)] Type 1 grandfathered employee--An ["means an"] state employee whose compensation for services provided to the state during any month before August 1987, included hazardous duty pay that was based on total state service performed before May 29, 1987.

(18) [§659.302(a) (b)] Workday--Has ["has"] the meaning assigned by Government Code, §659.301(6).

(b) Receiving hazardous duty pay.

(1) Individuals not employed by TJJD [TYC].

(A) In this paragraph, "state employee" has the meaning assigned by Government Code, §659.301(5).

(B) Hazardous duty pay may not be paid to an individual who does not satisfy both of the criteria in Government Code, §659.302(a), except as provided in subsection (g) of this section, concerning type 2 grandfathered employees.

(C) An individual’s ceasing to be a state employee sometime during a month does not affect the individual’s hazardous duty pay entitlement for that month. The full amount of hazardous duty pay must be paid to the individual.

(D) For purposes of Government Code, §659.302(a)(2), the 12 months of lifetime service credit are not required to be 12 continuous months.

(E) This paragraph does not apply to an individual employed by TJJD [TYC].

(2) Individuals employed by TJJD [TYC].

(A) In this paragraph, "state employee" means an individual who:

(i) [§659.302(a) (b)] does not work at TYC's central office; and

(ii) [§659.302(a) (b)] has routine direct contact with youth:

(I) placed in a residential facility of TJJD [TYC]; or

(II) released under TJJD's [TYC's] supervision;

(iii) is an investigator, inspector general, security officer, or apprehension specialist employed by TJJD’s office of the inspector general.

(B) Except as provided in Government Code, §659.303, TJJD [TYC] may include hazardous duty pay in the compensation paid to an individual for services rendered during a month if the individual:

(i) is a state employee for any portion of the first workday of the month; and

(ii) has completed at least 12 months of lifetime service credit not later than the last day of the preceding month.

(C) Hazardous duty pay may not be paid to an individual who does not satisfy both of the criteria in subparagraph (B) of this paragraph.

(D) An individual's ceasing to be a state employee sometime during a month does not affect the individual's hazardous duty pay eligibility for that month.

(E) For purposes of subparagraph (B)(ii) of this paragraph, the 12 months of lifetime service credit are not required to be 12 continuous months.

(F) This paragraph applies only to an individual employed by TJJD [TYC].

(1) Monthly amount for individuals employed by TJJD [TYC].

(A) The amount of hazardous duty pay that TJJD [TYC] pays monthly to a full-time state employee must be expressed in terms of a specific dollar amount for each 12-month [42 month] period of lifetime service credit and, for type 1 grandfathered employees, for each 12-month [42 month] period of state service credit. The amount must be the same for each type of service credit.

(B) The amount of hazardous duty pay that TJJD [TYC] pays monthly to a full-time state employee may not exceed $10 for each 12-month [42 month] period of lifetime service credit accrued by the employee.

(C) In this paragraph, "state employee" has the meaning assigned by subsection (b)(2)(A) of this section.

(D) This paragraph applies only to an individual employed by TJJD [TYC].

(2) Part-time state employees.

(A) The amount of a part-time state employee's hazardous duty pay is equal to the product of:

(i) the amount of hazardous duty pay that the employee would receive if the employee were a full-time state employee; and

(ii) a quotient:

(I) the numerator of which is equal to the number of hours the employee normally works each week, not to exceed 40; and

(II) the denominator of which is equal to 40.

(B) For purposes of subparagraph (A)(ii)(I) of this paragraph, the number of hours that a part-time state employee normally works each week during a particular month is equal to the number of hours that the employee is scheduled to work each week as of the first workday of that month.

(3) Hourly state employees. The amount of an hourly state employee's hazardous duty pay for a particular month is equal to the product of:

(A) the amount of hazardous duty pay that the employee would receive if the employee were a full-time state employee; and

(B) a quotient:
(i) the numerator of which is equal to the number of regular hours for the employee for that month, not to exceed the number of standard hours for that month; and

(ii) the denominator of which is equal to the number of standard hours for that month.

(4) Correctional officers of TDCJ.

(A) The amount of hazardous duty pay for a particular month for a full-time correctional officer employed by TDCJ is the lesser of:

(i) $12 for each 12-month [12 month] period of lifetime credit accrued by the employee; or

(ii) $300.

(B) The amount of hazardous duty pay that TDCJ pays a part-time correctional officer is equal to the product of:

(i) the amount of hazardous duty pay that the employee would receive if the employee were a full-time correctional officer; and

(ii) a quotient:

(I) the numerator of which is equal to the number of hours the employee normally works each week, not to exceed 40; and

(II) the denominator of which is equal to 40.

(C) The amount of hazardous duty pay that TDCJ pays an hourly correctional officer is equal to the product of:

(i) the amount of hazardous duty pay that the employee would receive if the employee were a full-time correctional officer; and

(ii) a quotient:

(I) the numerator of which is equal to the number of regular hours for the employee for that month, not to exceed the number of standard hours for that month; and

(II) the denominator of which is equal to the number of standard hours for that month.

(d) Timing for payment of hazardous duty pay.

(1) Employees paid once each month.

(A) This paragraph applies to a state employee only if the employee is normally paid once each month.

(B) Any hazardous duty pay that is included in the compensation earned by a state employee during a particular month must be paid in its entirety at the same time the compensation is paid to the employee.

(2) Employees paid twice each month.

(A) This paragraph applies to a state employee only if the employee is normally paid twice each month.

(B) Any hazardous duty pay that is included in the compensation earned by a state employee during a particular month must be paid in its entirety at the same time that the compensation earned by the employee during the first half of the month is paid to the employee.

(3) Employees paid once every two weeks.

(A) This paragraph applies to a state employee only if the employee is normally paid once every two weeks.

(B) The hazardous duty pay that is included in the compensation earned by a state employee during a particular month must be paid in its entirety on the pay day that is closest to the date that a monthly employee is paid the compensation earned by the employee during that month.

(e) Lifetime service credit.

(1) Accrual. An individual accrues lifetime service credit for the period the individual holds a hazardous duty position. However, an individual who is on leave without pay for a full calendar month does not accrue lifetime service credit for the month.

(2) Amount. The amount of an individual's lifetime service credit at any particular time is equal to the number of months that have elapsed since the individual's effective service date. A month begins on the same day each month as the effective service date and ends on the day before that day during the next month, regardless of how many days are included in the month.

(3) Effective service date.

(A) An individual's "effective service date" [effective service date] is used to determine the amount of [the first day of] the individual's [current continuous employment in a hazardous duty position, unless subparagraph (B) of this paragraph applies because the individual accrued] lifetime service credit for the purpose of [during previous employments in] hazardous duty pay [positions].

(B) "Effective" [The effective] service date [of an individual who accrued lifetime service credit during previous employments in hazardous duty positions] is determined by completing the following steps: [counting backwards from the first day of the individual's current continuous employment in a hazardous duty position. The number of days to count backwards is equal to the individual's "number of days served," which is determined by counting each day of those employments. The individual accrues one full day of credit for any part of a day employed in a hazardous duty position.]

(i) adding together all days the individual was employed in a hazardous duty position in all previous periods of employment with the state;

(ii) counting backward from the first day of the individual's current continuous employment with the state in a hazardous duty position using the total number of days calculated in clause (i) of this subparagraph; and

(iii) counting forward the number of months in which the individual was on leave without pay for any full calendar month during all periods of employment in a hazardous duty position using the date calculated in clause (ii) of this subparagraph.

(C) An example of determining a state employee's effective service date is as follows: The employee's first day of employment at your agency is February 5, 2021. The employee was previously employed in a hazardous duty position from October 8, 2011 to August 31, 2017, or 2,155 days. During that employment, the employee had one period of leave without pay from December 7, 2015 to February 2, 2016, for a total of one full calendar month of leave without pay. To determine the employee's effective service date, first count backwards 2,155 days from February 5, 2021, to arrive at March 15, 2015. Then count forward one month (the number of months in which the individual was on leave without pay for any full calendar month during all periods of employment in a hazardous duty position) from March 15, 2015 to arrive at April 15, 2015, which is the employee's effective service date.

(D) An individual accrues one full day of credit for any part of a day the individual is employed in a hazardous duty position.
(4) Transfers. For the purposes of paragraph (3)(A) of this subsection, an individual's transfer from one state agency to another does not interrupt continuity of employment if no workdays occur between the two employments.

(f) Exceptions for type 1 grandfathered employees.

(1) State service credit. For purposes of this subsection, the amount of an individual's state service credit equals the sum of:

(A) the amount of the individual's lifetime service credit; and

(B) the number of months during the individual's lifetime that the individual has provided services to the state in a position that is not a hazardous duty position.

(2) Applicability of other subsections. Subsections (a) - (e) of this section apply to a type 1 grandfathered employee except as provided in this subsection.

(3) Amount for non-hourly employees.

(A) The amount of hazardous duty pay for a type 1 grandfathered employee who is not hourly and who is not employed by TJJD [TXC] is equal to the sum of:

(i) $10 for each 12-month [12 month] period of state service credit the employee finished accruing before May 29, 1987; and

(ii) $10 for each 12-month [12 month] period of lifetime service credit that is accrued after the date, which must be before May 29, 1987, on which the employee finished accruing the last 12-month [12 month] period of state service credit.

(B) The amount of hazardous duty pay for a type 1 grandfathered employee who is not hourly and who is employed by TJJD [TXC] is equal to the sum of:

(i) the dollar amount specified by TJJD [TXC] under subsection (c)(2) of this section for each 12-month [12 month] period of state service credit the employee finished accruing before May 29, 1987; and

(ii) the dollar amount specified by TJJD [TXC] under subsection (c)(2) of this section for each 12-month [12 month] period of lifetime service credit that is accrued after the date, which must be before May 29, 1987, on which the employee finished accruing the last 12-month [12 month] period of state service credit.

(4) Amount for hourly employees. The amount of hazardous duty pay for an hourly type 1 grandfathered employee is equal to the product of:

(A) the amount calculated under paragraph (3) of this subsection; and

(B) a quotient:

(i) the numerator of which is equal to the number of regular hours for the employee for that month, not to exceed the number of standard hours for that month; and

(ii) the denominator of which is equal to the number of standard hours for that month.

(5) Limitation. A type 1 grandfathered employee may not receive more than $10 for each 12-month [12 month] period of state service credit or lifetime service credit, regardless of the number of positions the employee holds or the number of hours the employee works each week.

(g) Exceptions for type 2 grandfathered employees.

(1) Applicability of other subsections. Subsections (a) - (e) of this section apply to a type 2 grandfathered employee as if the employee were a state employee, except as provided in this subsection.

(2) Entitlement for certain TPWD [Parks and Wildlife Department] personnel. Hazardous duty pay must be included in the compensation paid for services rendered to the state during a month by an individual who:

(A) is not a state employee on the first workday of that month;

(B) is one of the commissioned law enforcement personnel of TPWD [the Parks and Wildlife Department] for any portion of the first workday of that month; and

(C) on May 29, 1987, was receiving or was entitled to receive [be receiving] hazardous duty pay because the individual on that date was one of the commissioned law enforcement personnel of TPWD [the Parks and Wildlife Department].

(3) Entitlement for certain employees of TDCJ [the Texas Department of Criminal Justice]. Hazardous duty pay must be included in the compensation paid for services rendered to the state during a month by an individual who:

(A) is not a state employee on the first workday of that month;

(B) holds any of the following positions with TDCJ [the Texas Department of Criminal Justice] for any portion of the first workday of that month:

(i) a correctional officer I through warden;

(ii) a position that requires the individual to work on a unit and have routine direct contact with inmates, e.g., farm manager, livestock supervisor, maintenance foreman, shop foreman, medical assistant, food service supervisor, steward, education consultant, commodity specialist, correctional counselor;

(iii) a position assigned to an administrative office and requiring routine direct contact with inmates, e.g., investigator, compliance monitor, an accountant routinely required to audit unit operations, sociologist, interviewer, classification officer, supervising counselor;

(iv) a position that requires the individual to respond to emergency situations involving inmates, e.g., director, deputy director, assistant director, administrative duty offices, except that not more than 25 administrative duty officers may qualify under this clause;

(v) a position that requires the individual to work within the prison compound or have daily contact with inmates, except that not more than 500 individuals may qualify under this clause; or

(vi) a warden I or II, assistant warden, major of correctional officers, captain of correctional officers, lieutenant of correctional officers, sergeant of correctional officers, or correctional officer I, II, or III; and

(C) on May 29, 1987, was receiving or was eligible to receive hazardous duty pay because the individual on that date held a position with the Texas Department of Corrections that is listed in subparagraph (B) of this paragraph.

(4) Entitlement for certain employees of TABC [the Texas Alcoholic Beverage Commission]. Hazardous duty pay must be included in the compensation paid for services rendered to the state during a month by an individual who:
(A) is not a state employee on the first workday of that month;

(B) holds any of the following positions with TABC [the Texas Alcoholic Beverage Commission] for any portion of the first workday of that month:

(i) chief or assistant chief of enforcement and marketing practices;

(ii) district supervisor or assistant district supervisor;

(iii) senior agent or agent I, II, or III;

(iv) port of entry supervisor or port of entry inspector I or II;

(v) supervising auditor I or II or auditor I, II, or III;

(vi) assistant director of auditing and tax reporting; or

(vii) senior tax auditor; and

(C) on May 29, 1987, was receiving or was eligible to receive hazardous duty pay because the individual on that date:

(i) held a position with TABC [the Texas Alcoholic Beverage Commission] that is listed in subparagraph (B)(i) - (iii) of this paragraph; or

(ii) both:

(I) held a position with TABC [the Texas Alcoholic Beverage Commission] that is listed in subparagraph (B)(iv) - (vii) of this paragraph; and

(II) was receiving hazardous duty pay on August 31, 1981, because the individual on that date was engaged in full time law enforcement work while holding any of the following classified positions:

(-a-) supervisor tax collector;

(-b-) tax collector I or II;

(-c-) district supervisor;

(-d-) chief or assistant chief, enforcement division;

(-e-) assistant district supervisor;

(-f-) inspector I or II;

(-g-) supervising auditor I;

(-h-) auditor I, II, or III;

(-i-) supervisor or assistant supervisor, marketing practices;

(-j-) special project director;

(-k-) director of auditing; or

(-l-) assistant director of auditing.

§5.49. Longevity Pay.

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

(1) Calendar month--The period from the first day through the last day of January, February, March, April, May, June, July, August, September, October, November, or December.

(2) Day--The 24 consecutive hour period beginning at 12:00 midnight and ending at 11:59 p.m.

(3) Full-time state employee--Has the meaning assigned by Government Code, §659.041(2) [§659.041].

(4) Hazardous duty position--Has the meaning assigned by §5.39(a)(6) of this title (relating to Hazardous Duty Pay).

(5) [44] Institution of higher education--Has the meaning assigned by Education Code, §61.003(8) [§61.003], but does not include a public junior or community college.

(6) Lifetime service credit--The number of months that an individual has served in a position listed in Government Code, §659.046, during the individual's lifetime.

(7) [64] Military--The Armed Forces of the United States, the Texas National Guard, the Texas State Guard, or a reserve component of the Armed Forces of the United States.

(8) [66] Retiree--A state employee who retires from state employment and who receives an annuity based wholly or partly on service as a state officer or state employee in a public retirement system, as defined by Government Code, §802.001(3) [§802.001], that was credited to the state employee.

(9) [52] State agency--

(A) a board, commission, department, office, or other entity that is in the executive branch of state government, including an institution of higher education;

(B) the legislature or a legislative agency; or

(C) the supreme court, the court of criminal appeals, a court of appeals, the state bar, or another state judicial agency.

(10) [55] State employee--Has the meaning assigned by Government Code, §659.041(4) [§659.041].

(11) [59] Workday--Any day that is not Saturday, Sunday, or a state or national holiday under Government Code, §662.003. The term includes a state or national holiday on which a state employee is not entitled to a paid day off from work under Government Code, §662.005.

(b) Authority. Longevity pay is governed by Government Code, Chapter 659, Subchapter D, the General Appropriations Act; and the rules adopted by the comptroller under Government Code, Chapter 659, Subchapter D.

(c) Verification of prior state employment periods. A state agency that currently employs a state employee who accrued lifetime service credit during one or more previous employments shall verify the amount of that credit.

(d) Effective service date.

(1) A state employee's "effective service date" is used to determine the amount of the employee's lifetime service credit.

(2) "Effective service date" is determined by completing the following steps:

(A) adding together all days the employee served in all previous periods of employment with the state;

(B) subtracting the number of days in which the employee was on leave without pay for any full calendar month from the total number of days calculated in subparagraph (A) of this paragraph; and

(C) counting backward from the first day of the employee's current continuous employment with the state using the total number of days calculated in subparagraph (A) [46] of this paragraph; and

(C) except as provided in subsection (1) of this section, counting forward the number of months in which the employee was
on leave without pay for any full calendar month during all periods of employment using the date calculated in subparagraph (B) of this paragraph.

(3) An example of determining a state employee's effective service date is as follows: The employee's first day of employment at your agency is February 10, 2021. The employee had two previous periods of state employment. The first previous period of employment was from January 6, 2017 to May 25, 2017, or 140 days. The second previous period of employment was from October 1, 2018 to December 31, 2020, or 823 days. During the employee's second previous period of employment, the employee had one period of leave without pay from March 25, 2019 to April 30, 2019, for a total of one full calendar month of leave without pay. To determine the employee's effective service date, first add together the total number of days in the employee's two previous periods of state employment to arrive at 933 days. Next, count backward 933 days from February 10, 2021, to arrive at June 24, 2018. Finally, count forward one month (the number of months in which the employee was on leave without pay for any full calendar month during all periods of employment) from June 24, 2018 to arrive at July 24, 2018, which is the employee's effective service date.

(4) [64] An individual's transfer from one state agency to another shall not interrupt continuity of employment if no workdays occur between the two employments.

(e) Workday. If an individual is a state employee for any part of a workday, the individual is considered to be a state employee for the entire workday for the purpose of longevity pay.

(f) Change in status. A full-time state employee in paid status on the first workday of the calendar month is entitled to the full amount of longevity pay for that calendar month even if the employee terminates state employment after the first workday of that calendar month.

(g) Employees of Institutions of Higher Education.

(1) The determinations required by Government Code, §659.0411(a) and (b) must be made publicly available to all employees under the institution's or board of regent's jurisdiction and must be made available to the comptroller, upon request by the comptroller.

(2) The determinations required by Government Code, §659.0411(a) and (b) shall not take effect until they have been made publicly available to all employees under the institution's or board of regent's jurisdiction.

(3) The determinations required by Government Code, §659.0411(b) must apply to every institution under the board of regent's jurisdiction.

(h) Return to work retirees who leave state employment.

(1) A retiree who retired from state employment on or after June 1, 2005, is not entitled to longevity pay upon returning to state employment.

(2) A retiree who retired from state employment prior to June 1, 2005, and did not return to state employment prior to September 1, 2005, is not entitled to longevity pay upon returning to state employment.

(3) A retiree who retired from state employment prior to June 1, 2005, returned to state employment prior to September 1, 2005, and subsequently leaves state employment, is not entitled to longevity pay upon returning to state employment.

(i) Public retirement system. "Public retirement system," as the term is used in Government Code, §659.042(7) and subsection (a)(8) of this section, includes the Employees Retirement System of Texas; Teacher Retirement System; and Optional Retirement Program as described in Government Code, Chapter 830.

(j) Hazardous duty pay.

(1) A state employee's lifetime service credit for the purpose of longevity pay shall include any period served in a hazardous duty position, except as provided in Government Code, §659.046(f)(2) or paragraph (2) of this subsection.

(2) A state employee is not entitled to accrue lifetime service credit for the purpose of longevity pay during the period the employee serves in a hazardous duty position that entitles the employee to receive hazardous duty pay. When the employee is no longer serving in the hazardous duty position, the employee is entitled to accrue the lifetime service credit for the purpose of longevity pay for the period the employee previously served in the hazardous duty position.

(3) For the purpose of longevity pay, lifetime service credit is accrued during the one year that a state employee serves in a hazardous duty position before becoming eligible or entitled to receive hazardous duty pay. The amount of longevity pay the employee receives during that year is based on the credit accrued during that year. But, the lifetime service credit used to calculate the amount of longevity pay received by the employee while receiving hazardous duty pay shall not include the one year waiting period.

(4) If a state employee received hazardous duty pay based on total state service performed before May 29, 1987, and held a position that required the performance of hazardous duty on May 29, 1987, the employee's lifetime service credit for the purpose of longevity pay shall not include any state service credit the employee accrued for the purpose of hazardous duty pay before May 29, 1987.

(k) Contract for less than 12 calendar months. An individual eligible to accrue lifetime service credit who works for a state agency under a formal written contract for less than 12 calendar months each year accrues 12 calendar months of credit each year if the individual is constantly under contract during the calendar months the individual does not work. The individual is constantly under contract if the individual's contract for the next work period is entered into before the end of the existing work period, even though the individual will not work during the interim period.

(l) Military service. If an individual leaves a position that accrues lifetime service credit (or that would have accrued lifetime service credit had the longevity pay law been in effect when the individual left the position) to serve in the military and the individual is reemployed by the state after completing that service in accordance with any applicable federal or state veterans' reemployment law, the individual accrued lifetime service credit during that service, even if the individual is on leave without pay during the individual's period of military service.

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

Filed with the Office of the Secretary of State on February 26, 2021.

TRD-202100818
Vicky North
General Counsel for Fiscal and Agency Affairs
Comptroller of Public Accounts
Earliest possible date of adoption: April 11, 2021
For further information, please call: (512) 475-0387
PART I. PURPOSE AND BACKGROUND

The proposed amendments to the rule provide modified term limits for the committee chair and vice chair, establish certain duties of the vice chair, and provide modified term length parameters for all committee members.

The proposed amendment is authorized under Texas Government Code §434.010, granting the commission the authority to establish rules, and Texas Government Code §434.0101, granting the commission the authority to establish rules governing the agency's advisory committees.

PART II. EXPLANATION OF SECTIONS

§452.2. Advisory Committees.

Subparagraph (a)(3) alters the term length of the chair from annually to one-to-two years but no more than two years as chair during his or her appointment to the committee; adds vice chair and establishes the term length as one-to-two years but no more than two years during his or her appointment to the committee; and authorizes the vice chair to perform the duties of the chair in the event the chair is unavailable or unable to perform those duties.

Subparagraph (a)(4)(A) deletes four-year staggered terms for committee members and establishes that, "The term of office for each member will be determined by the commission in order to achieve staggered terms."

PART III. IMPACT STATEMENTS

FISCAL NOTE

Michelle Nall, Chief Financial Officer of the Texas Veterans Commission, has determined for each year of the first five years the proposed rule amendment will be in effect, there will not be an increase in expenditures or revenue for state and local government as a result of administering the proposed rule.

COSTS TO REGULATED PERSONS

Ms. Nall has also determined there will not be anticipated economic costs to persons required to comply with the proposed rule.

LOCAL EMPLOYMENT IMPACT

Jim Martin, Interim Director, Veterans Employment Services of the Texas Veterans Commission, has determined that there will not be a significant impact upon employment conditions in the state as a result of the proposed rule.

SMALL BUSINESS, MICRO BUSINESS AND RURAL COMMUNITIES IMPACT

Anna Baker, Manager, Veterans Entrepreneur Program of the Texas Veterans Commission, has determined that the proposed rule will not have an adverse economic effect on small businesses, micro businesses or rural communities as defined in Texas Government Code §2006.001. As a result, an Economic Impact Statement and Regulatory Flexibility Analysis is not required.

PUBLIC BENEFIT

Shawn Deabay, Deputy Executive Director of the Texas Veterans Commission, has determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated as a result of administering the amended rule will increase participation within each of the agency's two remaining advisory committees.

GOVERNMENT GROWTH IMPACT STATEMENTS

Mr. Deabay has also determined that for each year of the first five years that the proposed rule amendment is in effect, the following statements will apply:

(1) The proposed rule amendment will not create or eliminate a government program.

(2) Implementation of the proposed rule amendment will not require creation of new employee positions, or elimination of existing employee positions.

(3) Implementation of the proposed rule amendment will not require an increase or decrease in future legislative appropriations to the agency.

(4) No fees will be created by the proposed rule amendment.

(5) The proposed rule amendment will not require new regulations.

(6) The proposed rule amendment has no effect on existing regulations.

(7) The proposed rule amendment has no effect on the number of individuals subject to the rule's applicability.

(8) The proposed rule amendment has no effect on this state's economy.

PART IV. COMMENTS

Comments on the proposed amended rule may be submitted to Texas Veterans Commission, Attention: General Counsel, P.O. Box 12277, Austin, Texas 78711; faxed to (512) 475-2395; or emailed to rulemaking@tvc.texas.gov. For comments submitted electronically, please include "Chapter 452 Rules" in the subject line. The commission must receive comments postmarked no later than 30 days from the date this proposal is published in the Texas Register.

PART V. STATUTORY AUTHORITY

The rule amendment is proposed under Texas Government Code §434.010 which authorizes the commission to establish rules it considers necessary for its administration; and Texas Government Code Section §434.0101, granting the commission authority to establish rules governing the agency's advisory committees.

The rule amendment is proposed to implement General Appropriations Act, Article I, Texas Veterans Commission Rider IX,
85th Legislature, Regular Session, 2017, which authorizes the commission to reimburse advisory committees.

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

§432.2. Advisory Committees.

(a) The commission may establish advisory committees in accordance with Texas Government Code, Chapter 2110. The following shall apply to each advisory committee:

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

(3) Committee chair and vice chair. The chair and vice chair of each advisory committee is selected by [annually from among] the committee's voting members. Committee chair and vice chair term lengths are one or two-year terms as determined by the committee's voting members, and are limited to two years of service as the chair or vice chair during their appointment to the committee. The committee chair determines the agenda for each meeting. The vice chair shall perform the chair duties when the chair is unavailable or unable to perform.

(4) Conditions of membership.

(A) Terms of service. The term of office for each member [appointed by the commission shall be staggered for a four-year term] will be determined by the commission in order to achieve staggered terms. In the event that a member [appointed by the commission] cannot complete his or her term, or is removed by the commission, the commission shall appoint a qualified replacement to serve the remainder of the term.

(B) - (D) (No change.)

(5) - (10) (No change.)

(b) - (d) (No change.)
The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 22, 2021.

TRD-202100731
Houston John Goodell
General Counsel
Texas Veterans Commission

Earliest possible date of adoption: April 11, 2021
For further information, please call: (512) 463-3288

CHAPTER 460. FUND FOR VETERANS' ASSISTANCE PROGRAM

SUBCHAPTER A. GENERAL PROVISIONS REGARDING THE FUND FOR VETERANS' ASSISTANCE PROGRAM

40 TAC §§460.3, 460.8, 460.10

The Texas Veterans Commission (commission) proposes amendments to Chapter 460, Subchapter A, §460.3, Applicant Eligibility; §460.8, Grant Objectives; and §460.10, Limitations of Grant Funds.

PART I. PURPOSE AND BACKGROUND

The proposed amendments are made to eliminate redundant language and modify the objectives of the Fund for Veterans' Assistance Grant Program. The proposed rule amendments update obsolete references to provide current citations to the Code of Federal Regulations, which provide a government-wide framework for grants management.

PART II. EXPLANATION OF SECTIONS

SUBCHAPTER A. GENERAL PROVISIONS REGARDING THE FUND FOR VETERANS' ASSISTANCE PROGRAM

Section 460.3. Applicant Eligibility

Subsection (a) adds the words "Any of" to avoid the perception that an entity applying for a grant must satisfy multiple subcategories and therefore ensure maximum participation in the grant application process.

Subsection (a)(3) deletes specification of "private" to ensure inclusion of all IRS Code §501(c)(3) non-profit entities.

Subsection (a)(5) deletes "Nonprofit organization authorized to do business in Texas with experience providing services to veterans," a redundant item to subsection (b)(4) and therefore unnecessary assuming deletion of "private" in subsection (a)(3).

Subsection (b)(3) deletes the term "including" to allow for interpretation that if a unit of state or federal government is not specified in the items that follow, they are eligible. Adding "research institutions," to provide specificity that is necessary to prevent commission grants from funding research.

Section 460.8. Grant Objectives.

Section 460.8(7) adds Pro bono, aligning the Rule to match the language defined in Texas Government Code §434.024(5).

Section 460.8(8) deletes the term "development" to clarify the use of grant funding by professional services networks.

Section 460.8(9) adds "veterans mental health treatment" to specifically address existing programs that meet treatment needs for veterans mental health.

Section 460.8(10) adds "participation in Veteran Treatment Court programs" to specifically address current participation in Veteran Treatment Court programs.

Section 460.8(11) adds "home modification projects" to specifically address participation in home modification projects.

Section 460.10. Limitations on Grant Funds.

Section 460.10(7) inserts language to avoid grantee reimbursement requests for expenses, which have no value or relevance to the grant project funded by the commission.

Section 460.10(10) removes catchall provision to prevent any cost that is not allowable under the Grant Agreement, the Fund for Veterans’ Assistance Fiscal guidelines, and State of Texas Uniform Grant Management Standards. Inserts language to prevent the use of grant funds for medical costs as well as lists examples of what medical costs might be.

Section 460.10(11) adds language to prevent payment of stipends to beneficiaries, volunteers, students, interns, employees, and members of the board of directors.

Section 460.10(12) adds language preventing funding of capital assets located outside Texas to ensure that grant funding benefits remain inside the state.
Section 460.10(13) contains language formerly located in §460.10(10). The new paragraphs contain catchall provisions to prevent any cost that is not allowable under the Grant Agreement, the Fund for Veterans' Assistance Fiscal guidelines, and State of Texas Uniform Grant Management Standards.

PART III. IMPACT STATEMENTS

FISCAL NOTE

Michelle Nall, Chief Financial Officer of the Texas Veterans Commission, has determined for each year of the first five years the proposed rule amendments will be in effect, there will not be an increase in expenditures or revenue for state and local government as a result of administering the proposed rules.

COSTS TO REGULATED PERSONS

Ms. Nall, Chief Financial Officer, has also determined there will not be anticipated economic costs to persons required to comply with the proposed rules.

LOCAL EMPLOYMENT IMPACT

Jim Martin, Director, Veterans Employment Services of the Texas Veterans Commission, has determined that there will not be a significant impact upon employment conditions in the state as a result of the proposed rules.

SMALL BUSINESS, MICRO BUSINESS AND RURAL COMMUNITIES IMPACT

Anna Baker, Manager, Veterans Entrepreneur Program of the Texas Veterans Commission, has determined that the proposed rules will not have an adverse economic effect on small businesses, micro businesses or rural communities as defined in Texas Government Code §2006.001. As a result, an Economic Impact Statement and Regulatory Flexibility Analysis is not required.

PUBLIC BENEFIT

Shawn Deabay, Deputy Executive Director of the Texas Veterans Commission, has determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated as a result of administering the amended rules will increase participation within each of the agency’s two remaining advisory committees.

GOVERNMENT GROWTH IMPACT STATEMENT

Mr. Deabay has also determined that for each year of the first five years that the proposed rule amendments are in effect, the following statements will apply:

(1) The proposed rule amendments will not create or eliminate a government program.

(2) Implementation of the proposed rule amendments will not require creation of new employee positions, or elimination of existing employee positions.

(3) Implementation of the proposed rule amendments will not require an increase or decrease in future legislative appropriations to the agency.

(4) No fees will be created by the proposed rule amendments.

(5) The proposed rule amendments will not require new regulations.

(6) The proposed rule amendments has no effect on existing regulations.

(7) The proposed rule amendments has no effect on the number of individuals subject to the rules’ applicability.

(8) The proposed rule amendments have no effect on this state’s economy.

PART IV. COMMENTS

Comments on the proposed amended rules may be submitted to Texas Veterans Commission, Attention: General Counsel, P.O. Box 12277, Austin, Texas 78711; faxed to (512) 475-2395; or emailed to rulemaking@tvc.texas.gov. For comments submitted electronically, please include “Chapter 452 Rules” in the subject line. The commission must receive comments postmarked no later than 30 days from the date this proposal is published in the Texas Register.

PART V. STATUTORY AUTHORITY

The rule amendments are proposed under Texas Government Code §434.010 which authorizes the commission to establish rules it considers necessary for its administration; and Texas Government Code Section §434.0101, granting the commission authority to establish rules governing the agency’s advisory committees. The rule amendments are proposed to implement General Appropriations Act, Article I, Texas Veterans Commission Rider IX, 85th Legislature, Regular Session, 2017, which authorizes the commission to reimburse advisory committees.

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

§460.3. Applicant Eligibility.

(a) Any of the following are eligible to apply for grant funds:

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

(3) IRS Code §501(c)(3) nonprofit organizations authorized to do business in Texas; or

(4) Texas chapters of IRS Code §501(c)(4) veterans service organizations. [or]

[[5] Nonprofit organizations authorized to do business in Texas with experience providing services to veterans.]

(b) Any of the following are not eligible to apply for grant funds:

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

(3) Units of federal or state government, [including] state agencies, colleges, [and] universities, and research institutions.

(4) - (5) (No change.)

(c) (No change.)

§460.8. Grant Objectives.

It is the objective of the Fund for Veterans’ Assistance to provide reimbursement grants to meet the needs of veterans and their families. Such needs include, but are not limited to, the following:

(1) - (6) (No change.)

(7) Pro bono legal services, excluding criminal defense; [and]

(8) [development of] professional services networks;

(9) veteran mental health treatment;

(10) participation in Veteran Treatment Court programs; and
§460.10. Limitations on Grant Funds.

Grant funds cannot be used for the following:

(1) - (6) (No change.)

(7) any expense that is not necessary to complete the grant project, or not consistent with the Grant Agreement;

(8) (No change.)

(9) contributions that support or oppose candidates for public or party office, or to support or oppose any ballot propositions; [ai]

(10) medical costs, including physician fees, prescription medications, over-the-counter medications, medical insurance premiums or copays, emergency/after-hours clinic fees, and prescribed prosthetics; [any cost that is not allowable under the Grant Agreement, the Fund for Veterans' Assistance Fiscal Guidelines, State of Texas Uniform Grant Management Standards (UGMS), or 2 C.F.R. 200 - Uniform Administrative Requirements, Costs Principles, and Audit Requirements for Federal Awards. ]

(11) stipends for beneficiaries, volunteers, students, interns, employees, and members of the board of directors;

(12) payments for capital assets that are not physically in Texas; and

(13) any cost that is not allowable under the Grant Agreement, the Fund for Veterans' Assistance Fiscal Guidelines, State of Texas Uniform Grant Management Standards (UGMS), or 2 C.F.R. 200 - Uniform Administrative Requirements, Costs Principles, and Audit Requirements for Federal Awards.

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

Filed with the Office of the Secretary of State on February 22, 2021.

TRD-202100730
Houston John Goodell
General Counsel
Texas Veterans Commission
Earliest possible date of adoption: April 11, 2021
For further information, please call: (512) 463-3288

SUBCHAPTER B. MONITORING ACTIVITIES

40 TAC §460.23

The Texas Veterans Commission (commission) proposes amendments to Chapter 460, Subchapter B, §460.23, Fiscal Monitoring.

PART I. PURPOSE AND BACKGROUND

The proposed rule amendments update obsolete references to provide current citations to the Code of Federal Regulations, which provide a government-wide framework for grants management. Previous federal regulations found in OMB Circulars are now superseded by recent modifications to the Uniform Grant Guidance in the Code of Federal Regulations.

PART II. EXPLANATION OF SECTION

SUBCHAPTER B. MONITORING ACTIVITIES.

Section 460.23. Fiscal Monitoring.

Section 460.23(c) deletes obsolete references to OMB Circulars A-87 and A-122 and replaces them with the updated reference to Title 2, Part 200 of the Code of Federal Regulations.

PART III. IMPACT STATEMENTS

FISCAL NOTE

Michelle Nall, Chief Financial Officer of the Texas Veterans Commission, has determined for each year of the first five years the proposed rule amendments will be in effect, there will not be an increase in expenditures or revenue for state and local government as a result of administering the proposed rule.

COSTS TO REGULATED PERSONS

Ms. Nall, Chief Financial Officer, has also determined there will not be anticipated economic costs to persons required to comply with the proposed rule.

LOCAL EMPLOYMENT IMPACT

Jim Martin, Director, Veterans Employment Services of the Texas Veterans Commission, has determined that there will not be a significant impact upon employment conditions in the state as a result of the proposed rule.

SMALL BUSINESS, MICRO BUSINESS AND RURAL COMMUNITIES IMPACT

Anna Baker, Manager, Veterans Entrepreneur Program of the Texas Veterans Commission, has determined that the proposed rule will not have an adverse economic effect on small businesses, micro businesses or rural communities as defined in Texas Government Code §2006.001. As a result, an Economic Impact Statement and Regulatory Flexibility Analysis is not required.

PUBLIC BENEFIT

Shawn Deabay, Deputy Executive Director of the Texas Veterans Commission, has determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated as a result of administering the amended rule will increase participation within each of the agency's two remaining advisory committees.

GOVERNMENT GROWTH IMPACT STATEMENT

Mr. Deabay has also determined that for each year of the first five years that the proposed rule amendments are in effect, the following statements will apply:

(1) The proposed rule amendments will not create or eliminate a government program.

(2) Implementation of the proposed rule amendments will not require creation of new employee positions, or elimination of existing employee positions.

(3) Implementation of the proposed rule amendments will not require an increase or decrease in future legislative appropriations to the agency.

(4) No fees will be created by the proposed rule amendments.

(5) The proposed rule amendments will not require new regulations.

(6) The proposed rule amendments has no effect on existing regulations.

PROPOSED RULES March 12, 2021 46 TexReg 1613
The proposed rule amendments have no effect on the number of individuals subject to the rule's applicability.

The proposed rule amendments have no effect on this state's economy.

**PART IV. COMMENTS**

Comments on the proposed amended rule may be submitted to Texas Veterans Commission, Attention: General Counsel, P.O. Box 12277, Austin, Texas 78711; faxed to (512) 475-2395; or emailed to rulemaking@tvc.texas.gov. For comments submitted electronically, please include "Chapter 452 Rules" in the subject line. The commission must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register*.

**PART V. STATUTORY AUTHORITY**

The rule amendments are proposed under Texas Government Code §434.010 which authorizes the commission to establish rules it considers necessary for its administration; and Texas Government Code Section §434.0101, granting the commission authority to establish rules governing the agency's advisory committees. The rule amendments are proposed to implement General Appropriations Act, Article I, Texas Veterans Commission Rider IX, 85th Legislature, Regular Session, 2017, which authorizes the commission to reimburse advisory committees.

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

§460.23. Fiscal Monitoring.

(a) - (b) (No change.)

(c) Processes and procedures used to assess a Grantee shall include a review, evaluation, and determination regarding compliance with the Grant Agreement, the Fund for Veterans' Assistance Fiscal Guidelines, the State of Texas Uniform Grant Management Standards (UGMS), and 2 C.F.R. 200 - Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. [OMB Circular A-87 (Cost Principles for State and Local, and Indian Tribal Governments) or OMB Circular A-122 (Cost Principles for Nonprofit Organizations), and other documents, processes and systems as determined by the Agency.]

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

Filed with the Office of the Secretary of State on February 22, 2021.

TRD-202100859
Houston John Goodell
General Counsel
Texas Veterans Commission

Earliest possible date of adoption: April 11, 2021

For further information, please call: (512) 463-3288

◆ ◆ ◆
The Health and Human Services Commission withdraws the emergency adoption of the new §339.101, Subchapter A, which appeared in the October 2, 2020, issue of the Texas Register (45 TexReg 6832).

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ADMITTED
RULES

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

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 353. MEDICAID MANAGED CARE

SUBCHAPTER C. DELIVERY SYSTEM AND PROVIDER PAYMENT INITIATIVES

1 TAC §353.1309, §353.1311

The Texas Health and Human Services Commission (HHSC) adopts new §353.1309, concerning Texas Incentives for Physicians and Professional Services; and new §353.1311, concerning Quality Metrics for the Texas Incentives for Physician and Professional Services Program. New §353.1309 and §353.1311 are adopted with changes to the proposed text as published in the December 25, 2020, issue of the Texas Register (45 TexReg 9367). The text of the rules will be republished.

BACKGROUND AND JUSTIFICATION

The purpose of the new rules is to describe the circumstances under which HHSC will direct a Medicaid managed care organization (MCO) to provide a uniform per member per month payment, certain incentive payments, and a uniform percentage rate increase to physician groups in the MCO’s network in a participating service delivery area (SDA) for the provision of physician and professional services. The rules also describe the methodology used by HHSC to determine the amounts of the payments or rate increase.

Currently, Texas’ Medicaid physician payments, made through either the fee-for-service (FFS) or managed care models, do not always cover all Medicaid allowable costs for physician and professional services. HHSC is adopting these new rules to align with the ongoing efforts to transition from the Delivery System Reform Incentive Payment (DSRIP) program and the Network Access Improvement Program (NAIP).

Healthcare policy experts believe that increasing reimbursements in a value- or incentive-based manner may result in improved health outcomes for clients. HHSC anticipates that the increased payments to certain physician groups will support access to services, promote better health outcomes, and increase focus on improving quality goals that are established as part of the Texas Medicaid program.

In May 2016, the Centers for Medicare and Medicaid Services (CMS) finalized a rule that allows a state to direct expenditures under its contract with an MCO under certain limited circumstances. Under the federal rule, a state may direct an MCO to raise rates for a class of providers of a particular service by a uniform dollar amount or percentage, or as a performance incentive, subject to approval of the contract arrangements by CMS. To obtain approval, the arrangements must be based on the utilization and delivery of services; direct expenditures equally, and using the same terms of performance, for a class of providers of a particular service; advance at least one of the goals and objectives of the state’s managed care quality strategy and have an evaluation plan to measure the effectiveness of the arrangements at doing so; not condition provider participation on an intergovernmental transfer (IGT); and not be automatically renewed.

These new rules authorize HHSC to use IGTs from governmental entities or from other state agencies to support capitation payment increases in one or more SDAs. Each MCO within the SDA would be contractually required by the state to increase payments by a per member per month payment, a performance incentive payment, or a uniform percentage for one or more classes of physician groups in the MCO network that provide services within the SDA.

Conceptual Framework

Eligibility:

HHSC determines eligibility for payments by physician group class. The SDA must have at least one governmental entity willing to provide IGT to support increased payments. Also, to be eligible for the reimbursement increase, a physician group must be within a class designated by HHSC to receive the increase.

HHSC will classify physician groups into three groups: health-related institution physician groups, indirect medical education physician groups, and other physician groups. The classifications allow HHSC to direct reimbursement increases where they are most needed and to align with the quality goals of the program. The reimbursement increase will be uniform for all providers within each class; but if HHSC directs rate increases to more than one class within an SDA, the reimbursement increase may vary between classes.

Services subject to rate increase:

HHSC may direct rate increases for all or a subset of physician and professional services based on advancing the goals and objectives of HHSC’s managed care quality strategy.

Determination of rate increase:

HHSC will consider several factors in determining the percentage rate increase that will be directed for one or more classes of physician groups within an SDA, including the amount of available funding; the class or classes of physician groups eligible to receive the increase; the type of service subject to the increase; budget neutrality; and the actuarial soundness of the capitation payment needed to support the increase.

Reconciliation and recoupment:
HHSC will follow the methodology described in Texas Administrative Code Title 1 §353.1301 to reconcile the amount of non-federal funds expended under this section and to authorize recoupments of overpayments or disallowed amounts.

COMMENTS
The 31-day comment period ended January 25, 2021.

During this period, HHSC received feedback regarding the proposed rules from thirty (30) commenters: American College of Obstetricians and Gynecologists-District XI (Texas); Amerigroup Texas, Inc.; Baylor College of Medicine; Children's Health System of Texas; Community Health Systems; Coryell Health; Dell Medical School at UT Austin; Discovery Medical Network; Doctors Hospital at Renaissance, Ltd. (DHR Health); Gjerset & Lorenz, LLP; Mitchell County Hospital; Raymondville Pediatrics; Rolling Plains Memorial Hospital; Teaching Hospitals of Texas (THOT); Texas Academy of Family Physicians; Texas Association of Community Health Plans;

Texas Association of Health Plans; Texas Association of Obstetricians and Gynecologists; Texas Chapter of the American College of Physicians Services;

Texas Children's Hospital; Texas Essential Healthcare Partnerships (TEHP); Texas Hospital Association; Texas Medical Association (TMA); Texas Organization of Rural & Community Hospitals (TORCH); Texas Pediatric Society; Travis County Healthcare District, d/b/a Central Health; University Health; University of Texas at Southwestern Medical Center; University of Texas Health Science Center at Houston; and University of Texas Health Science Center at Tyler.

A summary of the comments received and HHSC's responses to the comments follow.

Definitions
Comment: The proposed definition of "Health Related Institution (HRI) physician practice group" in §353.1309(b)(1) says it must be "associated with an institution named in the Texas Education Code §63.002". Several commenters asked HHSC to clarify what is meant by "associated with" for purposes of determining eligibility to participate in this class. For example, the commenters asked "does a written contract between a physician group and an HRI named in the Texas Education Code to provide resident training meet the requirement? Or, is HHSC's intent that only the physician groups owned and operated by the HRI are eligible?"

One commenter said HHSC should revise the definition to ensure that all physician groups owned or operated by, contracted with, or otherwise affiliated or associated with a hospital district created under Chapter 281 of the Texas Health and Safety Code are included in the definition.

Response: HHSC agrees with commenters that additional clarity to the definition would be beneficial and amended the rule in response to these comments. HHSC has updated the definition of HRI physician group at §353.1309(b)(1) to clarify that the term means a physician group owned or operated by the HRI.

Comment: Multiple commenters asked HHSC for clarification on the definition of "Indirect Medical Education (IME) physician practice group" in §353.1309(b)(2). Some of the commenters noted that the inpatient reimbursement rule at 1 TAC §355.8052(d) does not use the term "IME add-on," but instead describes two separate medical education add-ons -- one for urban hospitals and one for children's hospitals. The commenters said the use of the term "IME add-on" leaves room for multiple interpretations of physician practice groups eligible to participate in the program as a member of this class.

Other commenters recommended HHSC amend the definition to clarify that Component Three includes IME physician practice groups and practices affiliated with children's hospitals that receive graduate medical education funding.

Response: HHSC agrees with commenters that additional clarity to the definition would be beneficial and amended the rule in response to these comments. HHSC updated the definition of an IME physician group at §353.1309(b)(2) to clarify that it applies to a hospital receiving either a medical education add-on or a teaching medical education add-on as described in 1 TAC §355.8052.

Comment: Multiple commenters recommended HHSC revise the definition of "Indirect Medical Education (IME) physician practice group" in §353.1309(b)(2) to accommodate various hospital-affiliated physician group structures utilized in Texas by IME hospitals, such as 501(a) organizations. One commenter opposed HHSC removing the requirement that IME physician practice groups assign their billing rights to the IME hospital with whom they contract. The commenter said removing the assignment requirement will open the program up to more providers which will significantly further dilute their potential benefit.

Response: HHSC declines to revise the rule as recommended. Eligibility for the IME physician group will be based upon the billing provider’s national provider identification (NPI) number only. The various hospital-affiliated physician group structures noted by the commenters may be eligible to participate under Component Three if they can meet the requirements of the "Other" physician group class and if the participation requirements are met.

Comment: Three commenters requested the definition "IME physician practice group" also clarify that the threshold for eligibility of a physician group will be tied to whether the hospital with which the group is affiliated has an approved teaching program during the applicable Texas Incentives for Physicians and Professional Services (TIPPS) program period that makes the hospital eligible to receive the IME add-on, instead of being tied to actual receipt of the add-on.

Response: HHSC declines to revise the rule as suggested. Eligibility for the IME physician group will be assessed at the time of application for the program period and will be determined based upon whether the hospital with which the group is affiliated is receiving the IME add-on at the time the application is made.

Comment: One commenter noted that neither the term "physician practice group" nor "physician group" is defined and that both are used throughout the proposed rules. The commenter requested HHSC adopt "physician practice group" throughout the rules and remove references to "physician group." The commenter also requested that whichever term is chosen to be defined.

Response: HHSC agrees with the commenter that only one term should be used throughout the rules. The correct term is "physician group." The rules are amended accordingly.

Eligibility for Participation in TIPPS
Comment: One commenter supports that the program allows individual members in a class to participate without the whole class.
Response: HHSC appreciates the support. No changes were made in response to this comment.

Comment: Multiple commenters noted that the rules do not define "professional services" or directly address their inclusion. The commenters asked HHSC to clarify whether and how the rules apply to other professional services, such as services provided by advanced practice nurse practitioners or physician assistants. The commenters also asked HHSC to clarify if proposed §353.1309(c)(1) includes other professional services.

Response: HHSC declines to make revisions based on this comment. The taxonomy code list associated with physician groups will be published online when the TIPPS application is posted. These taxonomy codes may include services delivered by other medical professionals operating as part of a physician group.

Comment: One commenter expressed appreciation for including community-based physicians in the program.

Response: HHSC appreciates the support. No changes were made in response to this comment.

Comment: Two commenters were concerned that the pool for Total Other Physicians concentrates all the benefits in metropolitan centers, and eliminates almost all benefits for rural areas, except a few physicians that are part of larger groups associated with HRI or IME. The commenters acknowledged and are appreciative of HHSC’s efforts to implement a directed payment program for rural health clinics but said that the new program only pertains to clinical services and neglects to deal with the largest and critical rural Medicaid services, namely obstetrical and behavioral health care in rural communities. One of the commenters proposed HHSC include an additional class for physician practices employed, affiliated, or contracted with rural hospitals.

Response: HHSC declines to revise the rule as suggested. The rule as proposed does not exclude rural physicians from participating in TIPPS, unless they are unable to meet the participation requirements.

Comment: One commenter asked if HHSC will determine eligibility based on provider identifier (e.g., NPI or Texas Provider Identification (TPI) number), Tax Identification Number (TIN), or something else. For example, if a hospital has multiple physician groups, each with their own TIN, that all bill using the same billing entity/TPI, would the individual physician groups be eligible to participate separately in TIPPS if they meet the requirements for one of the three classes?

Response: No changes were made in response to this comment. Eligibility will be determined based upon the billing provider’s NPI and taxonomy code combination.

Comment: One commenter asked where they can obtain a list of TIPPS eligible physician groups under IME.

Response: No changes were made in response to this comment. Eligibility in the IME add-on class is defined in the rule. The taxonomy code list associated with physician groups will be published online when the application is posted. HHSC will determine eligibility based on the applications received.

Comment: Two commenters are concerned that rural providers aren't allowed to participate in Component One or Component Two. The commenter said these services have been key to achieving quality improvement goals and are currently not reimbursed or significantly underpaid by MCOs. The other commenter said it appears that less than 10 percent of the program will be devoted to the other physician category, and that won't be enough to motivate small community physician practices to participate.

Response: No changes were made in response to this comment. The eligibility groups in TIPPS are not focused on a specific region or demographic criteria; therefore, rural providers are not categorically limited from participation in Component One or Component Two. HHSC recognizes that the number of physician groups that practice at hospitals meeting the criteria described or owned or operated by an HRI and located in a rural community may be limited. This program is designed as a transition from NAIP and DSRIP so a large focus of the funding allocations to Components One and Two are targeted to these historical program participants. However, in an effort to expand the program to new providers, HHSC created Component Three which is open to all other physician groups. HHSC will continue to evaluate the distribution of funds amongst the three components and will scale the components in accordance with the quality and value-incentives that the program seeks to create.

Comment: One of the commenters argued that Component One and Component Two represent a significant number of quality improvement activities that will cease after DSRIP due to zero funding or enhanced payment. This includes Care Coordination, Care Transitions, Telehealth and Preventive Health Screenings. One commenter also asked why primary care isn’t included in Component Three.

Response: No changes were made in response to this comment. There is a separate process to submit feedback on measures and HHSC welcomes any suggestions for evidence-based measures. Many of the proposed measures are based on DSRIP measures and best practices to continue the success of DSRIP.

Comment: Multiple commenters recommended revisions to proposed §353.1309(c)(2) which specifies that physician groups must have a minimum denominator volume of 30 Medicaid managed care patients in at least 60 percent of the quality metrics in each component to be eligible to participate in the component. Most of the commenters recommended the language be clarified to allow physicians to meet the minimum requirements by counting their total Medicaid managed care patients rather than counting by health plan. These commenters reasoned that physicians who participate in Medicaid often contract with more than one Medicaid MCO, so while in aggregate they may have 30 Medicaid patients in at least 60 percent of the quality metrics, they may not for every plan. These commenters also recommended the threshold be set at 50 percent, at least for physicians eligible for Component Three, to accommodate a wider array of physician specialties.

One commenter recommended the language be amended to require a minimum of 30 Medicaid (both fee-for-service and managed care) patients in at least 60 percent of the quality metrics in each component to be eligible for that component. This commenter said tying the denominator to Medicaid managed care patients potentially ignores the fact that DSRIP, which is largely the predecessor to TIPPS, included Medicaid fee-for-service patients in addition to patients in managed care.

Another commenter said that HHSC should consider increasing the proposed minimum volume.

Response: The minimum denominator volume of 30 Medicaid managed care patients is intended to apply across all included Medicaid managed care program health plans and not by each individual health plan or managed care program. The minimum
volume is intended to align with the requirement that directed payment programs are based on Medicaid managed care utilization. The majority of Texas Medicaid patients are in managed care. The minimum volume of 30 aligns with use in other quality programs.

However, HHSC agrees that the program should accommodate many specialties and that a minimum patient denominator of 60 percent may be too limiting. HHSC made a change in response to this comment and revised the requirement in §353.1309(c)(2) from 60 percent to 50 percent based on stakeholder feedback.

Comment: Two commenters suggested that physician services provided to Medicaid patients by Federally Qualified Health Center (FQHC) and community-based practices be eligible to report, participate in, and receive payments under proposed Components One, Two, and Three.

Response: HHSC declines to revise the rule as suggested. Physician services provided by and billed by FQHCs already have a federally directed enhanced reimbursement rate and are therefore excluded. Community-based groups may be eligible under the Other category.

Data sources for historical units of service and clients served

Comment: One commenter noted that relationships between MCOs and hospitals vary, as do payment methodologies. As a result, there are times when looking at information in a specific way, such as by Current Procedural Terminology (CPT) or by Diagnosis Related Group may present a distorted view of payment. In order to recognize these situations, but not distort program computations, the commenter recommended that HHSC use a methodology that accounts for related party payments where if a provider with the same Tax Identification Number as the payor is paid more than 200 percent of the Medicaid reimbursement fee schedule then a calculated average payment rate from the rest of the provider pool is applied to the related party units of service.

Response: HHSC agrees that when payments to a related-party exceed the average reimbursement rate paid to non-related parties, an adjustment to the data used for calculation of allocations and funds should be made. HHSC has amended the rule to add §353.1309(d)(10) to specify that if a provider with the same Tax Identification Number as the payor is being paid more than 200 percent of the Medicaid reimbursement on average for the same services in a one-year period, then a related-party-adjustment will be applied to the encounter data for those encounters. This adjustment will apply a calculated average payment rate from the rest of the provider pool to the related-parties' paid units of service.

Comment: Proposed §353.1309(d)(2) states that HHSC will use the most recently available Medicaid encounter data for a complete state fiscal year to determine eligibility status of other physician practices. Multiple commenters requested HHSC clarify in the rules where HHSC will obtain the data. The commenters said the rules imply but do not clearly specify that HHSC will rely upon data already available within its data warehouse rather than obtaining data from the MCOs or eligible physician practices. The commenters also noted that the rules do not outline a process for a physician practice to correct any potential data discrepancies between the state and practice level data.

Response: No changes were made in response to these comments. HHSC will use historical encounter data provided by MCOs. Physician groups will need to address any data discrepancies with their MCOs.

Comment: One commenter strongly agrees with using commercial rates to determine the various payment amounts described in TIPPS. However, on occasion, it might be possible that the rate for certain services cannot be calculated, often for lack of information. As such, the commenter requested HHSC add the following as new §353.1309(d)(7):

"If HHSC is unable to compute an actuarially sound payment rate based on private payor information described in subparagraph (d)(6) for any services, then those services will be removed from consideration from this program."

Response: HHSC agrees with the commenter and added the suggested language as new §353.1309(d)(7).

Comment: One commenter said that not all services are appropriate for rate increases under the auspices of the program as described and that they do not believe it was HHSC’s intent to inadvertently allow certain services to be eligible for TIPPS. The commenter added that to the extent that TIPPS would replace DSRIP and NAIP, the experience from those programs should inform eligibility for TIPPS. The commenter requested HHSC add the following as new §353.1309(d)(8):

"All services delivered at an FQHC, dental services, and ambulance services are excluded from the scope of this program."

Response: HHSC agrees with the commenter and added the suggested language as new §353.1309(d)(8).

Comment: One commenter is concerned that only certain encounter data should be used when calculating payments. Encounters with a reported paid amount of zero or negative dollars would skew the calculations inappropriately. The commenter requested HHSC add the following as new §353.1309(d)(9):

"Encounter data used to calculate payments for this program must be designated as paid status. Encounters reported as a paid status, but with zero or negative dollars as a reported paid amount will not be included in the data used to calculate payments for this program."

Response: HHSC agrees with the commenter and added the suggested language as new §353.1309(d)(9).

Comment: One commenter asked HHSC to share a list of eligible NPIs and taxonomy codes with the MCOs. This commenter referenced proposed §353.1309(d)(1) which says "HHSC will use encounter data and will identify encounters based upon the billing provider’s national provider identification (NPI) number and taxonomy code combination that are billed as a professional encounter only."

Response: No changes were made in response to this comment. The taxonomy code list associated with physician groups will be published online when the application is posted. HHSC will determine eligibility based on the applications received.

Comment: One commenter asked HHSC to provide the list of CPT codes eligible for rate increases under Component Three. The commenter also asked if the same CPT codes are used in the attribution methodology.

Response: No changes were made in response to this comment. For the state fiscal year 2022 program proposal, specific CPT codes were posted in the TIPPS Requirements document here: https://hhs.texas.gov/sites/default/files/documents/laws-regu
Comment: Three commenters are concerned that proposed §353.1309(e)(2) would effectively make a physician practice group ineligible to participate in TIPPS if it has paid a consultant or lawyer fees for assistance with TIPPS if revenue from TIPPS payments is used to cover such fees, regardless of the underlying fee structure. The commenters added that while it appears that consulting fees and legal fees that are paid from a physician practice group's non-TIPPS revenue sources would not cause any issues under proposed §353.1309(e)(2), isolating revenue from TIPPS payments in such a way that such revenue is not utilized for consulting and legal services related to TIPPS may be administratively difficult for many physician practice groups.

If HHSC is unwilling to remove proposed §353.1309(e)(2) completely, the commenters recommend revising the certification to be more narrowly tailored and bars a group if it uses TIPPS revenue to pay fees to a consultant or legal advisor contingent on the amount of the group's TIPPS revenue.

Response: HHSC agrees with the commenter that the rule language should be refined to more clearly prohibit contingency fees for services that are based solely on the amount of the physician group's TIPPS revenue. HHSC also agrees that physician groups may utilize consultants, advisors, or legal counsel for a variety of reasons. HHSC has amended §353.1309(e)(2) to specify that no part of any TIPPS payment will be used to pay a contingent fee, nor may the entity's agreement with the physician group use a reimbursement methodology that contains any type of incentive, directly or indirectly, for inappropriately inflating, in any way, claims billed to the Medicaid program including the physician group's receipt of TIPPS funds, and the certification must be received by HHSC with the enrollment application.

Comment: Three commenters strongly oppose proposed §353.1309(e)(3) and recommend it be removed. Proposed §353.1309(e)(3) would impose as a condition of participation in TIPPS that "[t]he entity that owns the physician practice group must submit to HHSC, upon demand, copies of contracts it has with third parties that reference the administration of, or payments from, TIPPS." The commenters strongly believe that this condition, particularly in combination with proposed §353.1309(e)(2), would not only impose a significant new administrative burden for participating private physician practice groups, but it would also constitute an intrusion of the state government into private contracting and enterprise.

Two of the commenters added that at a minimum, the broad language of §353.1309(e)(3) should be revised to state that "If a provider has changed ownership or management in the past five (5) years in a way that impacts eligibility for this program, the provider must submit to HHSC, upon demand, copies of contracts it has with third parties with respect to the transfer of ownership and/or the management of the provider and which reference the administration of, or payment from, this program."

Response: HHSC agrees with the commenter that HHSC does not wish to impose significant administrative burdens or to infringe upon third parties' relationships to which no governmental entity is a party. HHSC's intent of the proposed language was specific to instances where a change of ownership has occurred that would impact the eligibility of the provider. HHSC made a change to §353.1309(e)(3) to clarify the applicability of this provision.

Comment: One commenter agrees with the proposal to make TIPPS an application-based program but is concerned that the enrollment period in proposed §353.1309(e)(1) is too short. The commenter said without knowing what would be required in the application, 21 days could prove insufficient time to provide an accurate application. The commenter requested that §353.1309(e)(1) be amended to read "no less than 30 calendar days."

Response: HHSC declines to revise the rule as suggested. HHSC is working to ensure that the application for the program will minimize administrative burden on providers as much as possible.

Non-federal share of TIPPS payments

Comment: Two commenters noted that proposed §353.1309(f)(2) appears to require all sponsoring governmental entities to submit a declaration of intent to transfer IGT to HHSC for the entire program period. However, subsection (f)(1) only requires that HHSC provide notice of "suggested IGT responsibilities for the program period" to eligible and enrolled HRI and IME physician groups prior to the IGT declaration of intent deadline. The notice to those entities would include the "estimated utilization for eligible and enrolled other physician practice groups within the same service delivery area." The commenters said it is unclear whether HHSC intends to provide notice to sponsoring governmental entities of the "other" group or whether it intends for the sponsoring governmental entities of the HRI and IME physician groups to fund the non-federal share of the TIPPS rate increases to the "other" class.

The commenters asked HHSC to clarify whether the "other" class members will be required to identify a sponsoring governmental entity to be notified of suggested IGT amounts.

Response: No changes were made in response to this comment. IGT suggestions are informational in nature and are non-binding. HHSC will make IGT suggestions for governmental entities participating as HRI physician groups or IME physician groups. Actual IGT received will be pooled at the SDA level and will be used for all providers of any class within the SDA proportionally.

Comment: Multiple commenters recommended HHSC revise the rules to specify that if general revenue becomes available, it could be allocated to TIPPS. The commenters understand that general revenue is not currently available but believe the proposed language in §353.1309(f) precludes the possibility of gaining general revenue dollars in the future.

Response: No changes were made in response to this comment. If HHSC receives legislative direction to modify the program's funding source, HHSC will amend the rules at that time.

Comment: One commenter asked HHSC to confirm that the IGT notification in §353.1309(e)(1) and the "suggested IGT responsibility" in §353.1309(f)(1) are the same. The commenter also requested the terms be defined in the rule.

Response: HHSC amended §353.1309(b) to include definitions of these terms and made small modifications to other parts of the rule to more clearly distinguish between these terms.

Comment: Two commenters requested HHSC amend §353.1309(f)(3) to revise the timeline for collecting IGTs. One of the commenters requested HHSC allow for quarterly, instead of semi-annual IGTs. The other commenter asked HHSC to
consider collecting IGTs on a timeline that is more contemporaneous with the lump-sum payment distributions, similar to NAIP, DSRIP, Uncompensated Care (UC), and Disproportionate Share Hospital. This commenter said the proposed IGT process poses significant cash flow burdens on sponsoring governmental entities and is unnecessary if HHSC proceeds with directing lump-sum payments based on historical utilization because, like DSRIP, HHSC will have "known" payment amounts.

Response: IGT transfers for directed-payment programs will be made semi-annually for all programs. However, HHSC made edits to §353.1309(f)(2) and (3) in response to this comment to ensure units of local government have adequate time to prepare for the semi-annual IGT transfer.

Comment: One commenter said their understanding of the proposed rule is that if in a given service area, no sponsoring entity puts up funds, then no physician practice groups in the area would be eligible to earn TIPPS funds. The commenter recommended HHSC consider other approaches to pooling IGT for the program, including doing so at the state level while putting safeguards in place to ensure Medicaid providers that have a source of IGT (HRIs and IME hospitals) put up their fair share to participate.

Response: No changes were made in response to this comment. HHSC considered both statewide and SDA-wide pooling of funds during the development stage of the program, but believes that the majority of governmental entities prefer uniformity on an SDA-basis.

TIPPS capitation rate components

Comment: One commenter asked if they will get re-evaluated for their valuation amount for TIPPS or will their valuation stay the same from DSRIP into TIPPS. The commenter also asked how their valuation will be calculated.

Response: No changes were made in response to this comment. TIPPS payment amounts will be based upon the proportion of utilization of a provider to the total utilization of all participating providers. Actual amounts available may fluctuate from year to year. There are no pre-determined valuations as those in DSRIP.

Comment: One commenter asked if there is any indication of what the increase will be to meet the performance measures.

Response: No changes were made in response to this comment. This is out of the scope of the rules as measure performance requirements are being determined through a separate process.

Comment: Multiple commenters advocated for HHSC to limit participation in Component Three to community physicians only, which is the only TIPPS component these physicians are eligible to participate in. The commenters said that given the limited amount of dollars within this component (i.e., 10 percent of total TIPPS funding), the more physicians who are eligible and meet performance metrics, the fewer dollars will be available proportionately.

Response: No changes were made in response to this comment. HHSC believes that the targeted rate increase for the codes in Component Three will incentivize providers in all classes to provide access to quality care. For this reason, HHSC believes all classes of providers should be included in this component.

Comment: One commenter asked HHSC to clarify how and when each TIPPS component will be paid and what the practical difference is between the Component One PMPM increase and the rate increase for Component Two and Component Three.

Response: No changes were made in response to this comment. Component One will be paid on a monthly lump sum basis based upon historical numbers of clients served and subject to the reconciliation described in 353.1309(g)(1)(E). Component Two of TIPPS will be paid on a semi-annual lump sum basis based upon historical Medicaid utilization. Component Three will be paid as a uniform rate increase on per claim basis based upon actual Medicaid utilization.

Comment: One commenter asked if Component Two is for all charges for all managed care Medicaid patients, regardless of care setting.

Response: No changes were made in response to this comment. Component Two will be based upon historical paid claims, not charges, for the billing provider participating in the component.

Distribution of TIPPS Payments

Comment: One commenter asked if the payments will be made through a claim-by-claim basis or a lump sum.

Response: No changes were made in response to this comment. Component One will be paid on a monthly lump sum basis. Component Two of TIPPS will be paid on a semi-annual lump sum basis. Component Three will be paid as a uniform rate increase on per claim basis.

Comment: One commenter asked HHSC to discontinue the practice of using the MCO’s claim system as an intermediary pass-through system. According to the commenter, IGT dollars are provided to MCOs capitation merely to pass-through payments to providers and MCOs should not be a fiduciary intermediary in funding providers. The commenter said maintaining the integrity of a claim system is paramount to avoid downstream confusions. The commenter asked HHSC to replicate the Quality Incentive Payment Program (QIPP) for Nursing Facilities in a similar way for TIPPS. In QIPP, upon completion, HHSC notifies the MCOs of the eligible incentive payment for the applicable providers and the funds provided are completely autonomous of the MCO’s Claims System.

Response: No changes were made in response to this comment. Component One and Component Two of TIPPS will be paid on a basis that does not require modification of the claiming system. Component Three will require a modification to claims as HHSC is directing MCOs to increase rates on a uniform basis for achievement and to pay claims at the percentage increase.

Comment: Multiple commenters recommended the proposed payment requirements for Component Three be amended to include “improvement over self” (IOS) measures in §353.1309(h)(1)(E). For Component Three, a physician practice would have to “achieve a minimum of one benchmark measure to be eligible for full payment.” The commenters noted that of the currently proposed six measures for Component Three, only one - comprehensive diabetes care - is a “benchmark measure.” The currently proposed rules would therefore seem to impose a mandatory requirement that to receive payment, physician practices must achieve the benchmark measure for comprehensive diabetes care. Not all community physicians will be able to meet every measure in Component Three. For example, this benchmark measure generally does not apply to general pediatricians.

Response: HHSC agrees that achieving one benchmark may be challenging for community physicians and revised §353.1309(h)(1)(D), (E), and (F) to address achievement and minimum volume.
Comment: One commenter noted that proposed §353.1309(h)(1) describes the required achievement necessary for payment with respect to both Component Two and Component Three (i.e., number of benchmarks that must be met), but does not specify the same with respect to Component One. The commenter asked HHSC to clarify this difference.

Response: No changes were made in response to this comment. Component One includes structure measures that require reporting on status rather than achievement. If reporting is complete, then requirements have been met.

Comment: One commenter noted that proposed §353.1309(h)(1) describes the payment frequency with respect to both Component One (monthly) and Component Two (semi-annually), but does not appear to specify the same with respect to Component Three. The commenter asked HHSC to clarify how frequently payments will be made under Component Three.

Response: No changes were made in response to this comment. For Component Three, the payments to providers will be on a per claim basis and paid as a uniform rate increase above the Medicaid managed care contracted rate. However, eligibility to receive such an increase will be determined based upon achievement semi-annually.

Reconciliation

Comment: One commenter is concerned that there may be a conflict if different criteria are used to estimate the distribution of TIPPS funds as described in §353.1309(d) and the reconciliation as described in §353.1309(g)(1)(E).

Response: No changes were made in response to this comment. Subsection (d) describes the initial eligibility criteria whereas (g)(1)(E) describes the reconciliation process that will ensure the estimated clients served were actually served.

Comment: One commenter requested clarification around the MCO reconciliation process for all components. The commenter asked if HHSC is proposing a reconciliation process that will operate in the same manner as QIPP. The commenter said that if payments are made on a per claim basis, HHSC must make an assumption up front, and asked how the reconciliation is handled if that amount is insufficient.

Response: No changes were made in response to this comment. Reconciliations related to the transfer of intergovernmental transfer funds are made in accordance with the process described in §353.1301(g). In TIPPS an additional reconciliation will be performed for Component 1 if there is a variation between the historical number of clients served and actual clients served.

Funding Allocation

Comment: Considering critical physician groups' participation in historical DSRIP and NAIP, one commenter was concerned that the proposed eligibility and allocation methodology in TIPPS may not result in an equitable allocation of available funding. The commenter said this could result in material changes in funding for these historical participants and impact access for clients.

Response: No changes were made in response to this comment. This program is designed as a transition from NAIP and DSRIP, so a large focus of the funding allocations to Components One and Two are targeted to these historical program participants. However, in an effort to expand the program to new providers, HHSC created Component Three which is open to other physician groups. HHSC will continue to evaluate the distribution of funds amongst the three components and will scale the components in accordance with the quality and value-incentives that the program seeks to create.

Comment: One commenter said the pool for Total Other Physicians is unreasonably low and does not provide funding to follow the patients. From the data in the TIPPS model posted on HHSC’s website, the Medicaid physician payments of $458 million comprise 66 percent of the total Medicaid expenditures, but only receive 9 percent of the TIPPS benefits. The Other Physicians receive an 11 percent increase, while HRI receives 238 percent increase and IME receive 134 percent increase. According to the commenter, to promote a program that increases the payments double and triple for only one third of the patients is not reasonable and is not geared to actually improving care. The commenter also thinks the disproportional distribution to urban areas is also unreasonable.

Response: No changes were made in response to this comment. The funding allocation in TIPPS is not focused on a specific region or demographic criteria; therefore, rural providers are not categorically limited from receiving payments through the program. This program is designed as a transition from NAIP and DSRIP so a large focus of the funding allocations to Components One and Two are targeted to these historical program participants. However, in an effort to expand the program to new providers, HHSC created Component Three which is open to other physician groups. HHSC will continue to evaluate the distribution of funds amongst the three components and will scale the components in accordance with the quality and value-incentives that the program seeks to create.

Comment: Referencing the TIPPS modeling HHSC shared, two commenters expressed concern with the community physician allocation for their service delivery area and noted that the allocation isn’t proportional to the Medicaid enrollment for that service delivery area.

Response: No changes were made in response to this comment. HHSC released modeling for illustrative purposes only. Inclusion of other community physicians is based on their actual utilization. There is no participation allocation amongst the SDAs.

Comment: One commenter noted that they are eligible to receive the IME add-on but have not yet applied so they are not included in the modeling that HHSC posted to its website on January 22, 2021. The commenter said they plan to apply for the IME add-on for effect in SFY 2022 and asked if HHSC would update the modeling to include them.

Response: No changes were made in response to this comment. HHSC released modeling for illustrative purposes only. Physician groups will be able to enroll and provide HHSC with NPIs that they wish HHSC to use to determine eligibility at the time of the annual application.

Comment: One commenter said that they delegate their billing of professional services delivered to an IME hospital eligible to participate in the rule but were not included in HHSC’s modeling for the program.

Response: No changes were made in response to this comment. HHSC released modeling for illustrative purposes only. Physician groups will be able to enroll and provide HHSC with NPIs that they wish HHSC to use to determine eligibility at the time of the annual application.

Comment: One commenter requested the HRI class be eligible to receive payments based on 100 percent of the average
commercial rate (ACR). The commenter reasoned that a significant portion of the program is dedicated to per member per month payments, thus further promoting value over volume, and believes the level of effort necessitated by TIPPS merits an increase in reimbursement. The commenter also reasoned that HRIs are providing at least some of the non-federal share of payments for the community physicians and that it appears from the modeling HHSC shared that payments to the community physicians are made possible through the ACR of the other two eligibility groups, which the commenter says has the impact of artificially reducing the payments that an HRI could receive through TIPPS.

Response: No changes were made in response to this comment. HHSC will determine the size of the program each year as a matter of policy after having considered program goals, available room under budget neutrality limits, and other factors that HHSC considers relevant. The proposed program size is not within the scope of the rules.

Comment: One commenter expressed concern with the annual pool size HHSC announced for the TIPPS program, saying it's significantly less than the pool size discussed during the workgroup in fall 2020. This commenter requested additional funding be dedicated to the TIPPS program and requested HHSC provide justification for the reduced TIPPS funding in light of increases in other programs, particularly increases in CHIRP funding.

Response: No changes were made in response to this comment. HHSC will determine the size of the program each year as a matter of policy after having considered program goals, available room under budget neutrality limits, and other factors that HHSC considers relevant. The proposed program size is not within the scope of the rules.

Quality Metrics

Comment: Multiple commenters said Medicaid MCOs have substantially similar quality and performance initiatives as part of their value-based payment (VBP) and quality improvement initiatives and are concerned that TIPPS could result in duplicative data collection and reporting. The commenters recommended HHSC clarify in the rules that if physicians already participate in an MCO VBP arrangement with substantially similar requirements, then that initiative could be a potential proxy for TIPPS, allowing physicians to still earn dollars without enrolling in a separate initiative.

Alternatively, the commenters said HHSC should consider collecting the aggregate of all Medicaid member quality data across all MCOs for each practice, do the calculation, and then direct each MCO on the amount of payment to make to the physician.

Response: No changes were made in response to this comment. HHSC encourages providers to participate in VBP initiatives with MCOs. HHSC is not involved in these varied arrangements so cannot require alignment of reporting. HHSC has made an effort to align measures with MCO quality programs, when known, to reduce provider burden and advance quality improvement in a coordinated manner. Due to data lags, MCO reported data would not be available in a timely fashion to trigger payments within the program year.

Comment: Multiple commenters expressed concern with the timeline between the release of the proposed quality metrics for the program and the publication of the finalized quality metrics. Some commenters recommended at least a 30-day period to allow physicians to sufficiently analyze the proposed metrics and the potential impact participating in the program will have on their practices, and to determine whether to participate. Other commenters recommended the notice, hearing, and finalization of the quality metrics be moved to earlier in the fiscal year to ensure providers have enough time for reporting systems to be in place prior to the applicable program year. One commenter recommended HHSC propose to CMS that any new measures not require data collection until year 2 of the program.

Response: No changes were made in response to this comment. Due to the timeline required for preprint submission to CMS and incorporation of public comment, the period cannot be extended. HHSC developed the proposed quality measures during stakeholder meetings in fall 2020. HHSC will begin engaging stakeholders in fall 2021 regarding quality requirements for Year 2 of TIPPS. CMS has stated that baseline data needs to be based on the year prior to the program or the first year, so HHSC must require data collection beginning in Year 1.

Comment: One commenter believes the proposed process creates a conflict between existing incentive processes, measures and expectations mandated by HHSC within the Uniform Managed Care Contract. Individual Providers, Groups and MCOs have more than 25 different measure options. The commenter said it is vital that quality incentive programs do not overextend on scope with a large mixture of measures causing incremental improvement in place of organic improvement across the State.

Response: No changes were made in response to this comment. The focus of the measures was based on stakeholder feedback gathered in fall 2020. Providers wanted a menu of measures to better align with variation in provider type and population served. CMS does not allow for a menu. Having a greater number of measures with achievement tied to a smaller number of measures was a solution to help providers focus efforts on most meaningful measures for their practice. There is a separate process to submit feedback on measures and HHSC welcomes any suggestions for evidence-based measures.

Performance Requirements

Comment: One commenter said that since they are a specialty clinic, they do not see specific populations and, therefore, do not have clients that fit the description of some of the metrics listed in Components Two and Three. The commenter asked if there will be an opportunity to be excluded from reporting and meeting those metrics.

Response: No changes were made in response to this comment. Physician groups are required to meet a minimum volume in measures in at least 50 percent of measures to be eligible for the Component. All measures must be reported while achievement is based on measures that meet the minimum denominator volume of 30 Medicaid managed care patients. Measures that do not meet the minimum volume are excluded from calculating achievement. CMS requires that all providers within a class report on the same measures.

Comment: One commenter asked how HHSC will determine if a provider meets the reporting criteria during the first quarter. Will it be determined by an attestation on the application that the provider will provide reporting?

Response: No changes were made in response to this comment. HHSC will require reporting be submitted to HHSC in the first quarter in a format defined by HHSC.
Comment: Multiple commenters requested HHSC clarify that a physician group is required to report only on the metrics for which the physician practice is eligible. Without the clarification, the proposed language could be interpreted to include all quality metrics in Components One, Two, and Three. The commenters pointed out that Community physicians are ineligible to participate in Components One and Two.

Response: HHSC agrees with the commenters that the reporting requirements should be clearer. HHSC added language to §353.1311(d)(1) to clarify that reporting is required of all measures within the Component in which a physician group is participating.

Comment: Two commenters said HHSC is explicitly proposing to condition TIPPS Components Two and Three, which together comprise 35 percent of the total TIPPS payment opportunity, on provider achievement of certain quality metrics. The commenters added that the pay-for-performance requirement under TIPPS is significantly more onerous than what CMS requires and what HHSC is proposing for the new hospital directed payment program, which only includes reporting requirements. One of the commenters requested an explanation for HHSC’s rationale for creating very different standards and expectations in regard to quality metrics for TIPPS, specifically in comparison to CHIRP.

Response: No changes were made in response to this comment. Federal regulations permit states to direct payments made by MCOs to providers in certain circumstances when the payment arrangement is intended to advance a goal or objective in the Medicaid quality strategy. States may direct payments as either a value-based payment, a minimum fee schedule, a uniform rate increase, or a maximum fee schedule. HHSC currently utilizes all of these and decides which option it believes will best advance the quality goal or objective that is being addressed through the program.

Comment: Two commenters said HHSC should allow participating providers to carry forward reporting and payment opportunities, to the extent a participating provider fails to achieve a particular metric at the first reporting opportunity. One of the commenters requested HHSC consider permitting at least one carry-forward reporting opportunity, similar to those allowed under the DSRIP program.

Response: No changes were made in response to this comment. HHSC believes that payments should be made only for achievement of performance measures in the reporting period and that, if a provider fails to meet measures, funds should be redistributed to other providers who were successful. HHSC is also unable to carry forward program values from one program period as the reimbursement through actuarially sound capitated rates to the MCOs would not enable this to occur. HHSC will consider providers’ lack of achievement in setting Year 2 goals and reporting timing.

Comment: One commenter asked how HHSC will communicate performance requirements have been met across all components with MCOs.

Response: No changes were made in response to this comment. Similar to the QIPP program, HHSC will provide a dashboard/scoring card to direct MCOs on performance and payments. HHSC will also make the scorecard available to the public.

Comment: One commenter said that MCOs believe it is important to align measures with current MCO and Alternative Payment Model (APM) measure as to not confuse or frustrate providers.

The commenter asked if measure calculations will be done for providers based on statewide performance as opposed to MCO or SDA performance. The commenter said that MCOs would prefer HHSC rank providers based on this data and make payments determinations.

Response: No changes were made in response to this comment. HHSC has proposed measures that align with other programs such as DSRIP, MCO P4Q program, and CMS Core Sets. Payment for performance will be based on provider-reported data and achievement. MCO and state data will be used for evaluation purposes. HHSC may consider other methods for payments in later years when IOS measures begin reporting performance.

Comment: One commenter asked if performance targets will be based solely on the Medicaid managed care payer population or all payers.

Response: No changes were made in response to this comment. Performance achievement will be based on Medicaid managed care.

MCOs

Comment: Multiple commenters said it’s unclear if HHSC will administer some or all of the program. The commenters believe that if HHSC will be the administrator, it has the potential to create additional administrative complexity and costs. For example, as proposed, physician groups will be required to submit a separate TIPPS application to HHSC rather than to the MCO(s) in which they participate. The commenters said that given the vast majority of Medicaid patients are covered by MCOs, it seems more straightforward for MCOs instead of HHSC to amend current contract agreements with network physicians to allow them to enroll in TIPPS. The commenters also added that given the MCOs already have physician encounter data, it seems more straightforward for the MCOs to determine eligibility.

Response: No changes were made in response to this comment. Federal regulations permit states to direct payments made by MCOs to providers in certain circumstances when the payment arrangement is intended to advance a goal or objective in the Medicaid quality strategy. HHSC believes that by administering the enrollment process for the program, HHSC will be able to ensure that all Medicaid managed care utilization is considered when determining eligibility as some providers may not meet the minimum thresholds through encounters with each individual MCO.

Comment: One commenter said having funds pass through the MCOs adds another administrative layer and additional costs that can be better utilized by providers.

Response: No changes were made in response to this comment. Federal regulations permit states to direct payments made by MCOs to providers in certain circumstances when the payment arrangement is intended to advance a goal or objective in the Medicaid quality strategy. HHSC believes that TIPPS will meet this standard and will support Medicaid clients in accessing high quality services.

Comment: One commenter said MCOs need clarification around:

a. now amounts will be calculated and provided to plans;
b. data and reporting needed by HHSC and detailed information on how HHSC and the plans will exchange data;

c. expectations related to reconciliation; and

d. expectations related to agreements with providers and how these arrangements will impact existing provider contracts.

Response: No changes were made in response to this comment. The Medicaid managed care contracts between HHSC and the MCOs will describe the parties’ responsibilities in implementing TIPPS.

Comment: One commenter said MCOs will need direction regarding how to identify and distinguish between the physician practice groups in their claims systems and time to make required claims systems modifications.

Response: No changes were made in response to this comment. The Medicaid managed care contracts between HHSC and the MCOs will describe the parties’ responsibilities in implementing TIPPS.

**General**

Comment: One commenter expressed appreciation that the program ensures those physician practices participating in NAIP and DSRIP have a path to continue providing care.

Response: HHSC appreciates the support. No changes were made in response to this comment.

Comment: One commenter expressed appreciation for HHSC acknowledging the need to increase physician Medicaid payment rates.

Response: HHSC appreciates the support. No changes were made in response to this comment.

Comment: One commenter expressed concern about the Medicaid rates paid to physicians. The commenter proposed three solutions. First, to pair Medicaid with Medicare reimbursement. Second, to standardize all activities performed by Medicaid MCO plans. Third, to offer alternative healthcare models, such as the successful Medicaid ACO Model used by Ohio State.

Response: No changes were made in response to this comment. This comment is outside the scope of the rule proposal. This rule is not intended to address the base Medicaid reimbursement for physicians, but to direct certain payments used to advance a goal or objective in the Medicaid quality strategy.

Comment: One commenter noted that even though the target beneficiaries are Medicaid Star, Star+Plus and possibly Star Kids, the eligibility for Components Two and Three use the language Medicaid Managed care patients. The commenter said that per the HHSC website, it appears that all Medicaid Managed Care means all Star Programs and asked if the only outlier is Traditional Medicaid. If Traditional Medicaid is the only outlier, the commenter asked HHSC to confirm if the financial incentives would apply to all Medicaid Managed Care and not to traditional Medicaid patients even though the reporting for Components Two and Three includes all payers.

If all Medicaid managed care patients assigned to a physician associated with an HRI or IME would enable the PMPM increase under Component One, the commenter then asked how HHSC would advise a physician group to determine the total predicted value.

Response: No changes were made in response to this comment. HHSC will determine on an annual basis which Medicaid managed care models the TIPPS program will be included in. Financial incentives are based only on Medicaid managed care utilization. Components Two and Three require stratified reporting on participating managed care program, Other Medicaid, Uninsured, and Other Insurance.

Comment: In the introduction to §353.1309, it states that "TIPPS is designed to incentivize physicians and certain medical professionals to improve quality, access, and innovation in the provision of medical services to Medicaid recipients through the use of metrics that are expected to advance at least one of the goals and objectives of the state’s managed care quality strategy." Multiple commenters believe that as drafted, it does not appear that TIPPS, which itself is a type of value-based payment initiative, harmonizes or integrates with the state’s Medicaid managed care program generally or the quality and value-based payment strategy specifically.

Response: No changes were made in response to this comment. TIPPS measures are intended to address the draft Quality Strategy goals of promoting optimal health for Texans, providing the right care in the right place at the right time, and promoting effective practices for people with chronic, complex, and serious conditions. The measures also align with some of the other MCO quality programs like P4Q.

Comment: Multiple commenters noted that the rules do not clearly articulate how the data will flow and be analyzed among the physicians, MCOs, and the state. The commenters asked if contracted physicians will submit their performance data to the MCOs for analysis and determination of achievement (or lack thereof) for each measure, or whether HHSC will make the determination.

Response: No changes were made in response to this comment. HHSC is proposing that data be reported to the State for analysis and determination.

Comment: Multiple commenters said that while they understand the imperative to implement the program within the year to maintain funding for physician practices currently receiving DSRIP funding, they recommend that after the semi-annual implementation date, HHSC (1) report on the number and percent of all eligible physician practices by component who elected to participate; (2) for those who chose to participate, report on their overall performance success rate by component and measure; (3) evaluate barriers to participation as identified by participating and nonparticipating practices; and (4) reconvene stakeholders to review findings and make recommendations.

Response: No changes were made in response to this comment. HHSC plans to begin engaging stakeholders in fall 2021 to prepare for requirements for Year 2 of TIPPS. Any quality data available at the time will be shared.

Comment: One commenter suggested HHSC implement separate rate enhancement and incentive pay-for-performance payment components rather than the proposed 100 percent pay-for-performance approach. The commenter believes that increasing physician payments will increase participating physicians and expand patient choice as well as attract high quality providers to participate in Medicaid. The commenter also said this modification would model the program more similarly to the CHIRP and QIPP programs.

Response: No changes were made in response to this comment. HHSC believes that the TIPPS program as designed incentivizes...
value and quality in accordance with the program goals and federal regulations related to state directed payments.

STATUTORY AUTHORITY

The new rules are adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; Texas Government Code §531.021(b-1), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for Medicaid payments under Texas Human Resources Code, Chapter 32; and Texas Government Code §533.002, which authorizes HHSC to implement the Medicaid managed care program.


(a) Introduction. This section establishes the Texas Incentives for Physicians and Professional Services (TIPPS) program. TIPPS is designed to incentivize physicians and certain medical professionals to improve quality, access, and innovation in the provision of medical services to Medicaid recipients through the use of metrics that are expected to advance at least one of the goals and objectives of the state’s managed care quality strategy.

(b) Definitions. The following definitions apply when the terms are used in this section. Terms that are used in this section may be defined in §533.1301 of this subchapter (relating to General Provisions) or §533.1311 of this subchapter (relating to Quality Metrics for the Texas Incentives for Physicians and Professional Services Program).

1. Health Related Institution (HRI) physician group—A network physician group owned or operated by an institution named in Texas Education Code §63.002.

2. Indirect Medical Education (IME) physician group—A network physician group contracted with, owned, or operated by a hospital receiving either a medical education add-on or a teaching medical education add-on as described in §355.8052 of this title (relating to Inpatient Hospital Reimbursement) for which the hospital is assigned or retains billing rights for the physician group.

3. Intergovernmental Transfer (IGT) Notification—Notice and directions regarding how and when IGTs should be made in support of the program.

4. Network physician group—A physician group located in the state of Texas that has a contract with a Managed Care Organization (MCO) for the delivery of Medicaid covered benefits to the MCO’s enrollees.

5. Other physician group—A network physician group other than those specified under paragraphs (1) and (2) of this subsection.

6. Program period—A period of time for which an eligible and enrolled physician group may receive the TIPPS amounts described in this section. Each TIPPS program period is equal to a state fiscal year beginning September 1 and ending August 31 of the following year.

7. Total program value—The maximum amount available under the TIPPS program for a program period, as determined by HHSC.

8. Suggested IGT responsibility—Notice of potential amounts that a governmental entity may wish to consider transferring in support of the program.

(c) Eligibility for participation in TIPPS. A physician group is eligible to participate in TIPPS if it complies with the requirements described in this subsection.

1. Physician group composition. A physician group must indicate the eligible physicians, clinics, and other locations to be considered for payment and quality measurement purposes in the application process.

2. Minimum volume. Physician groups must have a minimum denominator volume of 30 Medicaid managed care patients in at least 50 percent of the quality metrics in each Component to be eligible to participate in the Component.

3. The physician group is:

A. an HRI physician group;
B. an IME physician group; or
C. any other physician group that:

i. can achieve the minimum volume as described in paragraph (2) of this subsection;
ii. is located in a service delivery area with at least one sponsoring governmental entity; and
iii. served at least 250 unique Medicaid managed care clients in the prior state fiscal year.

(d) Data sources for historical units of service and clients served. Historical units of service are used to determine a physician group’s eligibility status and the estimated distribution of TIPPS funds across enrolled physician groups.

1. HHSC will use encounter data and will identify encounters based upon the billing provider's national provider identification (NPI) number and taxonomy code combination that are billed as a professional encounter only.

2. HHSC will use the most recently available Medicaid encounter data for a complete state fiscal year to determine eligibility status of other physician groups.

3. HHSC will use the most recently available Medicaid encounter data for a complete state fiscal year to determine distribution of TIPPS funds across eligible and enrolled physician groups.

4. In the event of a disaster, HHSC may use data from a different state fiscal year at HHSC’s discretion.

5. The data used to estimate eligibility and distribution of funds will align with the data used for purposes of setting the capitated rates for managed care organizations for the same period.

6. HHSC will calculate the estimated rate that an average commercial payor would have paid for the same services using either data that HHSC obtains independently or data that is collected from providers through the application process described in subsection (c) of this section.

7. If HHSC is unable to compute an actuarially sound payment rate based on private payor information described in paragraph (6) of this subsection for any services, then those services will be removed from consideration from the TIPPS program.

8. All services billed and delivered at a Federally Qualified Health Center, dental services, and ambulance services are excluded from the scope of the TIPPS program.
(9) Encounter data used to calculate payments for this program must be designated as paid status. Encounters reported as a paid status, but with zero or negative dollars as a reported paid amount will not be included in the data used to calculate payments for the TIPPS program.

(10) If a provider with the same Tax Identification Number as the payor is being paid more than 200 percent of the Medicaid reimbursement on average for the same services in a one-year period, then a related-party-adjustment will be applied to the encounter data for those encounters. This adjustment will apply a calculated average payment rate from the rest of the provider pool to the related-party paid units of service.

e) Participation requirements. As a condition of participation, all physician groups participating in TIPPS must allow for the following.

(1) The physician group must submit a properly completed enrollment application by the due date determined by HHSC. The enrollment period will be no less than 21 calendar days, and the final date of the enrollment period will be at least nine days prior to the release of suggested IGT responsibilities.

(2) The entity that bills on behalf of the physician group must certify, on a form prescribed by HHSC, that no part of any TIPPS payment will be used to pay a contingent fee nor may the entity’s agreement with the physician group use a reimbursement methodology that contains any type of incentive, directly or indirectly, for inappropriately inflating, in any way, claims billed to the Medicaid program, including the physician group's receipt of TIPPS funds. The certification must be received by HHSC with the enrollment application described in paragraph (1) of this subsection.

(3) If a provider has changed ownership in the past five years in a way that impacts eligibility for the TIPPS program, the provider must submit to HHSC, upon demand, copies of contracts it has with third parties with respect to the transfer of ownership or the management of the provider and which reference the administration of, or payment from, the TIPPS program.

(f) Non-federal share of TIPPS payments. The non-federal share of all TIPPS payments is funded through IGTs from sponsoring governmental entities. No state general revenue is available to support TIPPS.

(1) HHSC will communicate suggested IGT responsibilities for the program period with all TIPPS eligible and enrolled HRI physician groups and IME physician groups at least 10 calendar days prior to the IGT declaration of intent deadline. Suggested IGT responsibilities will be based on the maximum dollars available under the TIPPS program for the program period as determined by HHSC, plus eight percent; forecasted member months for the program period as determined by HHSC; and the distribution of historical Medicaid utilization across HRI physician groups and IME physician groups, plus estimated utilization for eligible and enrolled other physician groups within the same service delivery area, for the program period. HHSC will also communicate estimated maximum revenues each eligible and enrolled physician group could earn under TIPPS for the program period with those estimates based on HHSC’s suggested IGT responsibilities and an assumption that all enrolled physician groups will meet 100 percent of their quality metrics.

(2) Sponsoring governmental entities will determine the amount of IGT they intend to transfer to HHSC for the entire program period and provide a declaration of intent to HHSC 21 business days before the first half of the IGT amount is transferred to HHSC.

(A) The declaration of intent is a form prescribed by HHSC that includes the total amount of IGT the sponsoring governmental entity intends to transfer to HHSC.

(B) The declaration of intent is certified to the best knowledge and belief of a person legally authorized to sign for the sponsoring governmental entity but does not bind the sponsoring governmental entity to transfer IGT.

(3) HHSC will issue an IGT notification to specify the date that IGT is requested to be transferred no fewer than 14 business days before IGT transfers are due. Sponsoring governmental entities will transfer the first half of the IGT amount by a date determined by HHSC, but no later than June 1. Sponsoring governmental entities will transfer the second half of the IGT amount by a date determined by HHSC, but no later than December 1. HHSC will publish the IGT deadlines and all associated dates on its Internet website by March 15 of each year.

(4) Reconciliation. HHSC will reconcile the amount of the non-federal funds actually expended under this section during each program period with the amount of funds transferred to HHSC by the sponsoring governmental entities for that same period using the methodology described in §353.1301(g) of this subchapter.

(g) TIPPS capitation rate components. TIPPS funds will be paid to Managed Care Organizations (MCOs) through three components of the managed care per member per month (PMPM) capitation rates. The MCOs’ distribution of TIPPS funds to the enrolled physician groups will be based on each physician group’s performance related to the quality metrics as described in §353.1311 of this subchapter. The physician group must have provided at least one Medicaid service to a Medicaid client in each reporting period to be eligible for payments.

(1) Component One.

(A) The total value of Component One will be equal to 65 percent of total program value.

(B) Allocation of funds across qualifying HRI and IME physician groups will be proportional, based upon historical Medicaid clients served.

(C) Monthly payments to HRI and IME physician groups will be triggered by performance requirements as described in §353.1311 of this subchapter.

(D) Other physician groups are not eligible for payments from Component One.

(E) HHSC will reconcile the interim allocation of funds across qualifying HRI and IME physician groups to the actual distribution of Medicaid clients served across these physician groups during the program period as captured by Medicaid MCOs contracted with HHSC for managed care 180 days after the last day of the program period. This reconciliation will only be performed if the weighted average (weighted by Medicaid clients served during the program period) of the absolute values of percentage changes between each practice group’s proportion of historical Medicaid clients served and actual Medicaid clients served is greater than 18 percent.

(2) Component Two.

(A) The total value of Component Two will be equal to 25 percent of total program value.

(B) Allocation of funds across qualifying HRI and IME physician groups will be proportional, based upon historical Medicaid utilization.
(C) Payments to physician groups will be triggered by achievement of performance requirements as described in §353.1311 of this subchapter.

(D) Other physician groups are not eligible for payments from Component Two.

(3) Component Three.

(A) The total value of Component Three will be equal to 10 percent of total program value.

(B) Allocation of funds across physician groups will be proportional, based upon actual Medicaid utilization of specific procedure codes as identified in the final quality metrics or performance requirements described in §353.1311 of this subchapter.

(C) Payments to physician groups will be triggered by achievement of performance requirements as described in §353.1311 of this subchapter during the reporting period prior to the payment period.

(4) Funds that are non-disbursed due to failure of one or more physician groups to meet performance requirements will be distributed across all qualifying physician groups in the service delivery area based on each physician group's proportion of total earned TIPPS funds from Components One, Two and Three combined at the end of the year.

(h) Distribution of TIPPS payments.

(1) Before the beginning of the program period, HHSC will calculate the portion of each PMPM associated with each TIPPS enrolled practice group broken down by TIPPS capitation rate component, quality metric, and payment period. For example, for a physician group, HHSC will calculate the portion of each PMPM associated with that group that would be paid from the MCO to the physician group as follows.

(A) Monthly payments from Component One as performance requirements are met will be equal to the total value of Component One for the physician group divided by twelve.

(B) Semi-annual payments from Component Two associated with each quality metric will be equal to the total value of Component Two associated with the quality metric divided by two.

(C) Payments from Component Three associated with each quality metric will be equal to the total value of Component Three attributed as a uniform rate increase based upon historical utilization.

(D) For purposes of the calculation described in subparagraph (B) of this paragraph, a physician group must achieve a minimum of 75 percent of benchmark measures for which the provider has a minimum denominator volume of 30 Medicaid managed care patients to be eligible for full payment of the benchmark measures. If a physician group achieves 50 percent of benchmark measures for which the provider has a minimum denominator volume of 30 Medicaid managed care patients, it is eligible for 75 percent payment. If a physician group achieves 25 percent of benchmark measures for which the provider has a minimum denominator volume of 30 Medicaid managed care patients, it is eligible for 50 percent payment.

(E) For purposes of the calculation described in subparagraph (C) of this paragraph, a physician group must achieve a minimum of 50 percent of benchmark measures for which the provider has a minimum denominator volume of 30 Medicaid managed care patients to be eligible for full payment.

(F) For purposes of the calculation described in subparagraph (C) of this paragraph, in situations where a practice does not have minimum denominator volume of 30 Medicaid managed care patients for a quality metric to be calculated, the funding associated with that metric will be evenly distributed across all remaining metrics within the component for which the provider has the minimum denominator volume of 30 Medicaid managed care patients.

(2) MCOs will distribute payments to enrolled physician groups as they meet their reporting and quality metric requirements. Payments will be equal to the portion of the TIPPS PMPM associated with the achievement for the time period in question multiplied by the number of member months for which the MCO received the TIPPS PMPM.

(i) Changes in operation. If an enrolled physician group closes voluntarily or ceases to provide Medicaid services, the physician group must notify the HHSC Provider Finance Department by hand delivery, United States (U.S.) mail, or special mail delivery within 10 business days of closing or ceasing to provide Medicaid services. Notification is considered to have occurred when the HHSC Provider Finance Department receives the notice.

(j) Reconciliation. HHSC will reconcile the amount of the non-federal funds actually expended under this section during each program period with the amount of funds transferred to HHSC by the sponsoring governmental entities for that same period using the methodology described in §353.1301(g) of this subchapter and, as applicable, subsection (g)(1)(E) of this section.

(k) Recoupment. Payments under this section may be subject to recoupment as described in §353.1301(j) and §353.1301(k) of this subchapter.

§353.1311. Quality Metrics for the Texas Incentives for Physicians and Professional Services Program.

(a) Introduction. This section establishes the quality metrics that may be used in the Texas Incentives for Physician and Professional Services (TIPPS) program.

(b) Definitions. The following definitions apply when the terms are used in this section. Terms that are used in this section may be defined in §353.1301 of this subchapter (relating to General Provisions) or §353.1309 of this subchapter (relating to the Texas Incentives for Physicians and Professional Services).

(1) Baseline—An initial standard used as a comparison against performance in each metric throughout the program period to determine progress in the quality metrics.

(2) Benchmark—A metric-specific initial standard set prior to the start of the program period and used as a comparison against a physician group's progress throughout the program period.

(3) Measurement Period (MP)—The time period used to measure achievement of a quality metric.

(c) Quality metrics. For each program period, HHSC will designate one or more metrics for each TIPPS capitation rate component.

(1) Each quality metric will be identified as a structure measure, improvement over self (IOS) measure, or benchmark measure.

(2) Any metric developed for inclusion in TIPPS will be evidence-based.

(d) Performance requirements. For each program period, HHSC will specify the performance requirement that will be associated with the designated quality metric. Achievement of performance requirements will trigger payments for the TIPPS capitation rate components as described in §353.1309 of this subchapter. The following performance requirements are associated with the quality metrics described in subsection (c) of this section.
Effective April 46

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achieve a structure measure, providers must report their progress on associated activities for each MP.

(A) To achieve a structure measure, providers must report their progress on associated activities for each MP.

(B) Achievement of an IOS measure is based on reporting of the baseline for each MP. For each program period except the one beginning September 1, 2021, achievement is based on meeting or exceeding during the MP the benchmark set prior to the start of the program period.

(C) Achievement of a benchmark measure is based on reporting for each MP and meeting or exceeding during the MP the benchmark set prior to the start of the program period.

(3) Reporting frequency. Achievement will be reported semi-annually unless otherwise specified by the quality metric.

(e) Notice and hearing.

(1) HHSC will publish notice of the proposed metrics and their associated performance requirements no later than January 31 preceding the first month of the program period. The notice must be published either by publication on HHSC’s website or in the Texas Register. The notice required under this section will include the following:

(A) instructions for interested parties to submit written comments to HHSC regarding the proposed metrics and performance requirements; and

(B) the date, time, and location of a public hearing.

(2) Written comments will be accepted for 15 business days following publication. There will also be a public hearing within that 15-day period to allow interested persons to present comments on the proposed metrics and performance requirements.

(f) Publication of Final Metrics and Performance Requirements. Final quality metrics and performance requirements will be provided through HHSC’s website on or before February 28 of the calendar year that also contains the first month of the program period. If Centers for Medicare and Medicaid Services requires changes to quality metrics or performance requirements after February 28 of the calendar year but before the first month of the program period, HHSC will provide notice of the changes through HHSC’s website.

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

CHAPTER 75. APPLICATIONS

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), adopts: the repeal of existing rules at 7 Texas Administrative Code (TAC) Chapter 75, Subchapter A, §§75.1 - 75.3, 75.5 - 75.7, 75.9, and 75.10; Subchapter C, §§75.31, 75.34, and 75.35; Subchapter D, §§75.83 - 75.86 and 75.90; and Subchapter E, §§75.121, 75.123, and §75.125; new rules at 7 TAC Chapter 75, Subchapter A, §§75.1 - 75.3, 75.6, and 75.10; Subchapter C, §§75.31 and §§75.35; Subchapter D, §§75.83 and §§75.90; Subchapter E, §§75.123; and new Subchapter F, §§75.201 - 75.204; and amendments to existing rules in 7 TAC Chapter 75, Subchapter A, §§75.8; Subchapter B, §§75.25 - 75.27; Subchapter C, §§75.32, 75.33, 75.36, 75.38, 75.39, and 75.41; Subchapter D, §§75.81, 75.82, 75.87 - 75.89, and 75.91; and Subchapter E, §§75.122, 75.124, 75.126, and 75.127, without changes to the text as published in the January 1, 2021 issue of the Texas Register (46 TexReg 20). The rules will not be republished.

Explanation of and Justification for the Rules

The existing rules under 7 TAC Chapter 75 partially implement Finance Code Subtitle C, the Texas Savings Bank Act. The adopted rules were identified during the department's periodic review of 7 TAC Chapter 75, conducted pursuant to Government Code §2001.039.

Changes Concerning Additional Offices

Finance Code §92.063 requires a savings bank to obtain the approval of the department's commissioner (commissioner) in order to establish an office other than the savings bank's home office approved under its banking charter. Existing §75.31, among other things, reasserts the requirements of Finance Code §92.063. The adopted rules repeal and replace existing §75.31. Adopted new §75.31 (repealed and replaced), at subsection (e), contains a list of activities that, when performed at a location other than the home or a branch office of a savings bank, is deemed by rule not to constitute an additional office of the savings bank requiring prior approval of the commissioner to establish. Existing §75.32, concerning Types of Additional Offices, describes specific types of additional offices other than a home or a branch office that are recognized by the commissioner and require the commissioner's prior approval to establish. Existing §75.32(a) is amended to eliminate loan production offices, administrative offices, and deposit production offices as "additional offices" for purposes of the Texas Savings Bank Act, to correspond with the activities typically performed at these offices becoming sanctioned to be performed at a location other than an approved home or branch office, as provided by new §75.31 (repealed and replaced). Other sanctioned activities in new §75.31 (repealed and replaced) include the operation of automated or remote banking equipment (e.g., ATMs), advertising, the operation of information technology equipment, participation at trade association and community events, and the provision of customer service ancillary to banking functions. Adopted new §75.31 (repealed and replaced) requires a savings bank seeking to permanently close an approved office to comply with the notice requirements of federal law and provide the department with a copy of such notice. Adopted new §75.31 (repealed and replaced) also clarifies that upon closure of the office, any prior approval to have opened such office is deemed revoked and a savings bank seeking to reopen such office must seek new approval in order to do so.

Changes Concerning the Selling of Assets

Title 7. Banking and Securities

Part 4. Department of Savings and Mortgage Lending

Filed with the Office of the Secretary of State on March 1, 2021.

TRD-202100842
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Effective date: March 21, 2021
Proposal publication date: December 25, 2020
For further information, please call: (512) 424-6637

Title 7. Banking and Securities

Part 4. Department of Savings and Mortgage Lending

46 TexReg 1630 March 12, 2021 Texas Register
Under existing §75.81, concerning Reorganization, Merger, Consolidation or Purchase and Assumption Transaction, sale of a savings bank's assets made "in bulk [and not] in the ordinary course of business" constitutes a purchase and assumption transaction under the rule, requiring application with the department and approval from the commissioner. The adopted rules amend §75.81 such that the selling of assets in this fashion is no longer considered to constitute a purchase and assumption transaction under the rule.

Changes Concerning Application Procedures

The adopted rules make various changes concerning how applications are filed with the department. The adopted rules create a new Subchapter F, concerning General Provisions, designed to contain requirements of general applicability in the chapter. Existing §75.121, concerning Definitions, containing definitions applicable to the entirety of Chapter 75, is repealed and its subject matter addressed by new Subchapter F, §75.201, concerning Definitions. Adopted new §75.201 largely reconstitutes the definitions in existing §75.121, however, new definitions are added for the terms "FDIC" and "managing officer," as that term is used in Finance Code §92.055. The existing rules in Chapter 75 provide that, for most application types, the applicant must publish a public notice of the application in a newspaper of general circulation in the county or counties affected by the relief sought by the application. A new §75.203 is added in new Subchapter F to establish uniform requirements for making such notices. The existing rules for each application type are also changed (amended, or by repeal and replacement of the rule) to clarify and establish by rule the county or counties where the public notice must be published.

Changes Concerning Hearings on Applications

Existing §75.10, concerning Change of Name, §75.33, concerning Branch Office Applications, §75.35, concerning Mobile Facilities, §75.38, concerning Change of Home or Branch Office Location, and §75.83, concerning Notice of Hearing (reorganization, merger, or consolidation), create processes and procedures governing how hearings are conducted for each application type addressed by each such rule by referring to and adopting the processes and procedures governing charter applications, contained in existing Chapter 75, Subchapter A. The adopted rules establish separate processes and procedures specific to each such rule, rather than by adopting by reference the processes and procedures applicable to charter applications. Existing §75.7, concerning Motions for Rehearing, which establishes certain timelines for a motion for rehearing made pursuant to Finance Code §91.006, is repealed, and its subject matter addressed by new Subchapter F, §75.203, concerning Motions for Rehearing. Adopted new §75.203 also extends the time period for filing a reply to a motion for rehearing from 25 days after the date the order was signed under existing §75.7, to 30 days after the date the order was signed.

Other Modernization and Update Changes.

The adopted rules make changes to modernize and update the rules including: adding and replacing language for clarity and to improve readability; removing unnecessary or duplicative provisions; and updating terminology.

Summary of Public Comments

Publication of the commission's proposal for the rule amendments, new rules, and repeals recited a deadline of 30 days to receive public comments, or January 31, 2021. A public hearing, in accordance with Government Code §2001.029 was not required. No comments were received.

SUBCHAPTER A. CHARTER APPLICATIONS

7 TAC §§75.1 - 75.3, 75.5 - 75.7, 75.9, 75.10

Statutory Authority

The repeals are adopted under the authority of Finance Code §11.302(a), which authorizes the commission to adopt rules applicable to state savings banks. The adopted rules are also adopted under the authority of Finance Code §96.002(a), which authorizes the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks.

The adopted rules affect the statutes contained in Finance Code Subtitle C, the Texas State Savings Bank 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 February 23, 2021.

TRD-202100747
Iain A. Berry
Associate General Counsel
Department of Savings and Mortgage Lending
Effective date: March 15, 2021
Proposal publication date: January 1, 2021
For further information, please call: (512) 475-1535

7 TAC §§75.1 - 75.3, 75.6, 75.8, 75.10

Statutory Authority

The rules are adopted under the authority of Finance Code §11.302(a), which authorizes the commission to adopt rules applicable to state savings banks. The adopted rules are adopted under the authority of Finance Code §96.002(a), which authorizes the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks. 7 TAC §§75.1 - 75.3 and 75.6 are adopted under the authority of, and to implement, Finance Code: §96.002(a), for those specific subject matters outlined in paragraph (2) of that subsection; Chapter 92, Subchapter B; §§92.203; and §§92.601(b). 7 TAC §75.8 is adopted under the authority of, and to implement, Finance Code: §96.002(a), for those specific subject matters outlined in paragraphs (2) and (14) of that subsection; §§92.051; §§92.060; and §§92.063. 7 TAC §75.10 is adopted under the authority of, and to implement, Finance Code: §96.002(a), for those specific subject matters outlined in paragraphs (2) and (14) of that subsection; and §§92.063.

The adopted rules affect the statutes contained in Finance Code Subtitle C, the Texas State Savings Bank 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 February 23, 2021.
SUBCHAPTER B. EXPEDITED APPLICATIONS

7 TAC §§75.25 - 75.27

Statutory Authority

The rules are adopted under the authority of Finance Code §11.302(a), which authorizes the commission to adopt rules applicable to state savings banks. The adopted rules are also adopted under the authority of Finance Code §96.002(a), which authorizes the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks. 7 TAC §§75.25 - 75.27 are adopted under the authority of, and to implement, Finance Code §96.002(a), for those specific subject matters outlined in paragraph (2) of that subsection.

The adopted rules affect the statutes contained in Finance Code Subtitle C, the Texas State Savings Bank 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 February 23, 2021.

SUBCHAPTER C. HOLDING COMPANIES

7 TAC §§75.31, 75.34, 75.35

Statutory Authority

The repeals are adopted under the authority of Finance Code §11.302(a), which authorizes the commission to adopt rules applicable to state savings banks. The adopted rules are also adopted under the authority of Finance Code §96.002(a), which authorizes the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks.

The adopted rules affect the statutes contained in Finance Code Subtitle C, the Texas State Savings Bank 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.

SUBCHAPTER D. REORGANIZATION, MERGER, CONSOLIDATION, CONVERSION, PURCHASE, AND ASSUMPTION AND ACQUISITION

7 TAC §§75.81 - 75.83, 75.87 - 75.91

Statutory Authority

The rules are adopted under the authority of Finance Code §11.302(a), which authorizes the commission to adopt rules applicable to state savings banks. The adopted rules are also adopted under the authority of Finance Code §96.002(a), which authorizes the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks.
Chapter 7 TAC §§75.81 - 75.83 and 75.88 are adopted under the authority of, and to implement, Finance Code: §96.002(a), for those specific subject matters outlined in paragraphs (2) and (13) of that subsection; and Chapter 92, Subchapters C and H. 7 TAC §75.88 is also adopted under the authority of, and to implement, Finance Code Chapter 92, Subchapter I. 7 TAC §75.89 is adopted under the authority of, and to implement, Finance Code: §96.002(a), for those specific subject matters outlined in paragraphs (2) and (13) of that subsection; and Chapter 92, Subchapter F. 7 TAC §75.90 is adopted under the authority of, and to implement, Finance Code: §96.002(a), for those specific subject matters outlined in paragraphs (2) and (13) of that subsection; and Chapter 92, Subchapter G. 7 TAC §75.91 is adopted under the authority of, and to implement, Finance Code: §96.002(a), for those specific subject matters outlined in paragraphs (2) and (13) of that subsection; and §92.052.

The adopted rules affect the statutes contained in Finance Code Subtitle C, the Texas State Savings Bank 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.

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Iain A. Berry
Associate General Counsel
Department of Savings and Mortgage Lending
Effective date: March 15, 2021
Proposal publication date: January 1, 2021
For further information, please call: (512) 475-1535

7 TAC §§75.83 - 75.86, 75.90

Statutory Authority

The repeals are adopted under the authority of Finance Code §11.302(a), which authorizes the commission to adopt rules applicable to state savings banks. The adopted rules are also adopted under the authority of Finance Code §96.002(a), which authorizes the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks.

The adopted rules affect the statutes contained in Finance Code Subtitle C, the Texas State Savings Bank 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.

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Iain A. Berry
Associate General Counsel
Department of Savings and Mortgage Lending
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For further information, please call: (512) 475-1535

SUBCHAPTER E. CHANGE OF CONTROL

7 TAC §§75.121, 75.123, 75.125

Statutory Authority

The repeals are adopted under the authority of Finance Code §11.302(a), which authorizes the commission to adopt rules applicable to state savings banks. The adopted rules are also adopted under the authority of Finance Code §96.002(a), which authorizes the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks.

The adopted rules affect the statutes contained in Finance Code, Subtitle C, the Texas State Savings Bank 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.

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Iain A. Berry
Associate General Counsel
Department of Savings and Mortgage Lending
Effective date: March 15, 2021
Proposal publication date: January 1, 2021
For further information, please call: (512) 475-1535

7 TAC §§75.122 - 75.124, 75.126, 75.127

Statutory Authority

The rules are adopted under the authority of Finance Code §11.302(a), which authorizes the commission to adopt rules applicable to state savings banks. The adopted rules are also adopted under the authority of Finance Code §96.002(a), which authorizes the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks. 7 TAC §§75.122 - 75.124, 75.126 and 75.127 are adopted under the authority of, and to implement, Finance Code: §96.002(a), for those specific subject matters outlined in paragraphs (2) and (10) of that subsection; and Chapter 92, Subchapter L. 7 TAC §75.122 is also adopted under the authority of Finance Code §96.002(b).

The adopted rules affect the statutes contained in Finance Code Subtitle C, the Texas State Savings Bank 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 February 23, 2021.

TRD-202100755
SUBCHAPTER F. GENERAL PROVISIONS

7 TAC §§75.201 - 75.204

Statutory Authority

The rules are adopted under the authority of Finance Code §11.302(a), which authorizes the commission to adopt rules applicable to state savings banks. The adopted rules are also adopted under the authority of Finance Code §96.002(a), which authorizes the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks. 7 TAC §§75.201 - 75.204 are adopted under the authority of, and to implement, Finance Code §96.002(a), for those specific subject matters outlined in paragraphs (2) and (10) of that subsection; and Chapter 92, Subchapter L. 7 TAC §75.122 is also adopted under the authority of Finance Code §96.002(b).

The adopted rules affect the statutes contained in Finance Code Subtitle C, the Texas State Savings Bank Act.

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

Filed with the Office of the Secretary of State on February 23, 2021.

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Iain Berry
Associate General Counsel
Department of Savings and Mortgage Lending
Effective date: March 15, 2021
Proposal publication date: January 1, 2021
For further information, please call: (512) 475-1535
TAC Chapter 75, wherein the subject matter of existing §§76.71 - 76.73 is addressed in such chapter.

Other Modernization and Update Changes
The adopted rules make changes to modernize and update the rules including: adding and replacing language for clarity and to improve readability; removing unnecessary or duplicative provisions; and updating terminology.

Summary of Public Comments
Publication of the commission's proposal for the rule amendments, new rules, and repeals recited a deadline of 30 days to receive public comments, or February 7, 2021. A public hearing in accordance with Government Code §2001.029 was not required. No comments were received.

SUBCHAPTER A. BOOKS, RECORDS, ACCOUNTING PRACTICES, FINANCIAL STATEMENTS AND RESERVES
7 TAC §§76.1, 76.2, 76.4 - 76.7, 76.12
Statutory Authority
The adopted rules are adopted under the authority of Finance Code §11.302(a), which authorizes the commission to adopt rules applicable to state savings banks. The adopted rules are also adopted under the authority of Finance Code §96.002(a), which authorizes the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks. 7 TAC §76.1 is adopted under the authority of, and to implement, Finance Code: §96.002(a), for those specific subject matters outlined in paragraphs (3) and (5) of that subsection; §92.201; and §96.056. 7 TAC §76.2 is adopted under the authority of, and to implement, Finance Code: §96.002(a), for those specific subject matters outlined in paragraphs (3) and (4) of that subsection; and §92.201. 7 TAC §76.4 is adopted under the authority of, and to implement, Finance Code: §96.002(a), for those specific subject matters outlined in paragraphs (7) and (11) of that subsection; §§96.051; and §96.053. 7 TAC §76.5 is adopted under the authority of, and to implement, Finance Code §96.002(a), for those specific subject matters outlined in paragraph (11) of that subsection. 7 TAC §76.6 is adopted under the authority of, and to implement, Finance Code §96.002(a), for those specific subject matters outlined in paragraph (9) of that subsection. 7 TAC §76.7 is adopted under the authority of, and to implement, Finance Code §96.002(a), for those specific subject matters set forth in paragraph (11) of that subsection. 7 TAC §76.12 is adopted under the authority of, and to implement, Finance Code: §96.002(a), for those specific subject matters set forth in paragraph (11) of that subsection; §§92.051(b)(2); §92.058(c)(2); §92.062; §92.157; and §§92.205.
The adopted rules affect the statutes contained in Finance Code Subtitle C, the Texas State Savings Bank 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.

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TRD-202100785

Iain A. Berry
Associate General Counsel
Department of Savings and Mortgage Lending
Effective date: March 16, 2021
Proposal publication date: January 8, 2021
For further information, please call: (512) 475-1535

SUBCHAPTER B. CAPITAL AND CAPITAL OBLIGATIONS
7 TAC §§76.21 - 76.26
Statutory Authority
The adopted rules are adopted under the authority of Finance Code §11.302(a), which authorizes the commission to adopt rules applicable to state savings banks. The adopted rules are also made under the authority of Finance Code §96.002(a), which authorizes the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks. 7 TAC §76.21 and §76.22 are adopted under the authority of, and to implement, Finance Code: §96.002(a), for those specific subject matters set forth in paragraphs (1) and (11) of that subsection; §§92.052(b); §§92.053(b); §§92.054; §§92.102; and §§92.203. 7 TAC §76.23 is adopted under the authority of, and to implement, Finance Code: §96.002(a), for those specific subject matters set forth in paragraphs (1) and (11) of that subsection; §§92.203; and Chapter 96, Subchapter C. 7 TAC §§76.24 - 76.26 is adopted under the authority of, and to implement, Finance Code: §96.002(a), for those subject matters set forth in paragraph (11); and §§93.004(b).
The adopted rules affect the statutes contained in Finance Code Subtitle C, the Texas State Savings Bank 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.

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TRD-202100789
Iain A. Berry
Associate General Counsel
Department of Savings and Mortgage Lending
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Proposal publication date: January 8, 2021
For further information, please call: (512) 475-1535

SUBCHAPTER C. HOLDING COMPANIES
7 TAC §§76.41 - 76.47

Statutory Authority

The adopted rules are adopted under the authority of Finance Code §11.302(a), which authorizes the commission to adopt rules applicable to state savings banks. The adopted rules are also adopted under the authority of Finance Code §96.002(a), which authorizes the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks. 7 TAC §§76.41 - 76.47 are adopted under the authority of, and to implement, Finance Code: §96.002(a), for those specific subject matters outlined in paragraphs (11) and (15) of that subsection; and §97.002. 7 TAC §76.41 is further adopted under the authority of, and to implement, Finance Code §97.002. 7 TAC §76.42 is further adopted under the authority of, and to implement, Finance Code §97.004. 7 TAC §76.43 is further adopted under the authority of, and to implement, Finance Code §97.005. 7 TAC §76.44 is further adopted under the authority of, and to implement, Finance Code §97.006. 7 TAC §76.45 is further adopted under the authority of, and to implement, Finance Code §97.007. 7 TAC §76.46 is further adopted under the authority of, and to implement, Finance Code §97.003. 7 TAC §76.47 is further adopted under the authority of, and to implement, Finance Code Chapter 98, Subchapter B.

The adopted rules affect the statutes contained in Finance Code Subtitle C, the Texas State Savings Bank 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 February 24, 2021.
TRD-202100789
Iain A. Berry
Associate General Counsel
Department of Savings and Mortgage Lending
Effective date: March 16, 2021
Proposal publication date: January 8, 2021
For further information, please call: (512) 475-1535

SUBCHAPTER D. FOREIGN SAVINGS BANKS
7 TAC §76.61

Statutory Authority

The adopted rules are adopted under the authority of Finance Code §11.302(a), which authorizes the commission to adopt rules applicable to state savings banks. The adopted rules are also adopted under the authority of Finance Code §96.002(a), which authorizes the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks.

The adopted rules affect the statutes contained in Finance Code Subtitle C, the Texas State Savings Bank 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 February 24, 2021.
TRD-202100790
Iain A. Berry
Associate General Counsel
Department of Savings and Mortgage Lending
Effective date: March 16, 2021
Proposal publication date: January 8, 2021
For further information, please call: (512) 475-1535

SUBCHAPTER E. HEARINGS
7 TAC §§76.71 - 76.73

Statutory Authority

The adopted rules are adopted under the authority of Finance Code §11.302(a), which authorizes the commission to adopt rules applicable to state savings banks. The adopted rules are also adopted under the authority of Finance Code §96.002(a), which authorizes the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks.

The adopted rules affect the statutes contained in Finance Code Subtitle C, the Texas State Savings Bank 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.

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Iain A. Berry
Associate General Counsel
Department of Savings and Mortgage Lending
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For further information, please call: (512) 475-1535

46 TexReg 1636  March 12, 2021  Texas Register
SUBCHAPTER F. FEES AND CHARGES
7 TAC §§76.91 -76.97, 76.99 - 76.103, 76.105 - 76.110
Statutory Authority
The adopted rules are adopted under the authority of Finance Code §11.302(a), which authorizes the commission to adopt rules applicable to state savings banks. The adopted rules are also adopted under the authority of Finance Code §96.002(a), which authorizes the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks. 7 TAC §§76.91 - 76.97, 76.99 - 76.103, 76.105 - 76.110 are adopted under the authority of, and to implement, Finance Code: §96.002(a), for those specific subject matters outlined in paragraph (2) of that subsection; §91.007; and 16.003(c). 7 TAC §76.91 is further adopted under the authority of, and to implement, Finance Code §92.051(a)(2). 7 TAC §76.92 is further adopted under the authority of, and to implement, Finance Code §92.063. 7 TAC §76.97 is further adopted under the authority of, and to implement, Finance Code §93.004(b). 7 TAC §76.107 is further adopted under the authority of, and to implement, Finance Code §97.001.

The adopted rules affect the statutes contained in Finance Code Subtitle C, the Texas State Savings Bank Act.

§76.94. Fee for Change of Name or of Location.
Applicants for change of name or change of location of any branch office, approved or existing, must pay a fee of $500. In addition, the applicants must pay any cost incurred by the Department in connection with the hearing, investigation and travel expenses.

§76.109. Fee for Protest Filing.
A person or entity filing a protest to an application must pay a fee of $2,500 simultaneously with such protest filing. The purpose of this fee is to partially offset the Department's increased cost of processing an application and reduce costs incurred by the applicant that result solely from the protest.

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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Iain A. Berry
Associate General Counsel
Department of Savings and Mortgage Lending
Effective date: March 16, 2021
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For further information, please call: (512) 475-1535

SUBCHAPTER G. STATEMENTS OF POLICY
7 TAC §76.121
Statutory Authority
The adopted rules are adopted under the authority of Finance Code §11.302(a), which authorizes the commission to adopt rules applicable to state savings banks. The adopted rules are also adopted under the authority of Finance Code §96.002(a), which authorizes the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks. The adopted rules affect the statutes contained in Finance Code Subtitle C, the Texas State Savings Bank 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.

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Iain A. Berry
Associate General Counsel
Department of Savings and Mortgage Lending
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For further information, please call: (512) 475-1535

CHAPTER 77. LOANS, INVESTMENTS, SAVINGS, AND DEPOSITS
SUBCHAPTER A. AUTHORIZED LOANS AND INVESTMENTS
7 TAC §77.10

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), adopts amendments to existing 7 TAC §77.10, without changes to the text as published in the January 8, 2021, issue of the Texas Register (46 TexReg 251). The rule will not be republished.

Explanation of and Justification for the Rule

Existing 7 TAC §77.10 partially implements Finance Code Subtitle C, the Texas Savings Bank Act, and specifically §94.002 of such act. The adopted rule was identified during the department's periodic review of 7 TAC Chapter 77, conducted pursuant to Government Code, §2001.039.

Existing §77.10, concerning Non-Real Estate Commercial Loans, determines the circumstances under which a savings bank may engage in commercial real estate loans, and the requirements for such loans. The amended rule clarifies within the text of the rule that the rule pertains only to commercial loans.

Summary of Public Comments

Publication of the commission's proposal for the rule amendments recited a deadline of 30 days to receive public comments, or February 7, 2021. A public hearing in accordance with Government Code §2001.029 was not required. No comments were received.

Statutory Authority

The adopted rule is adopted under the authority of Finance Code §11.302(a), which authorizes the commission to adopt rules applicable to state savings banks. The adopted rule is also adopted under the authority of Finance Code §96.002(a), which authorizes the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks. 7 TAC §77.10 is also adopted under the authority of, and to implement Finance Code §94.002.

The adopted rule affects the statutes contained in Finance Code Subtitle C, the Texas State Savings Bank 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 February 23, 2021.
TRD-202100757
Iain A. Berry
Associate General Counsel
Department of Savings and Mortgage Lending
Effective date: March 15, 2021
Proposal publication date: January 8, 2021
For further information, please call: (512) 475-1535

TITLE 13. CULTURAL RESOURCES
PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION
CHAPTER 1. LIBRARY DEVELOPMENT

SUBCHAPTER C. MINIMUM STANDARDS FOR ACCREDITATION OF LIBRARIES IN THE STATE LIBRARY SYSTEM

13 TAC §1.87

The Texas State Library and Archives Commission (Commission) adopts new 13 TAC §1.87, Emergency Waiver of Accreditation Criteria, with no changes to the proposed text as published in the November 27, 2020, issue of the Texas Register (45 TexReg 8443). The rule will not be republished.

EXPLANATION OF ADOPTED NEW SECTION. The new rule is necessary to provide a means by which an accredited library may retain accreditation if the library is unable to meet minimum accreditation criteria through no fault of their own, but due to circumstances caused by a disaster, public health emergency, or other extraordinary hardship. The rule authorizes Commission staff to waive one or more criteria for library accreditation in an accreditation year, thereby preventing loss of accreditation, if a library shows it was unable to meet that criteria for good cause.

The rule defines "good cause" as a public health emergency, including a pandemic or epidemic; a natural or man-made disaster, including a tornado, hurricane, flood, wildfire, explosion, or chemical spill; or other extraordinary hardship which is beyond the control of the library as determined by the agency.

If a library requests a waiver of one or more accreditation criteria under the rule but Commission staff does not waive the criteria, the library may appeal the potential loss of accreditation to the Library Systems Act Advisory Board, which will make a recommendation to the Director and Librarian for decision. A decision of the Director and Librarian may be appealed to the Commission under 13 TAC §2.55.

EMERGENCY RULEMAKING. On November 9, 2020, the Commission adopted this rule on an emergency basis under Government Code, §2001.034, which authorizes adoption of an emergency rule without prior notice or hearing upon finding that an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice. Emergency rules adopted under Government Code, §2001.034 may be effective for not longer than 120 days and may be renewed for not longer than 60 days. When this rule is effective, it will replace the rule adopted on an emergency basis. The language of this rule is identical to the rule that was adopted on an emergency basis.

SUMMARY OF COMMENTS. The commission did not receive any comments on the proposed new rule.

STATUTORY AUTHORITY. This new rule is adopted under Government Code, §441.006(a)(2), which authorizes the Commission to adopt policies and rules to aid and encourage the development of and cooperation among all types of libraries, including public, academic, special, and other types of libraries; and Government Code, §441.127, which authorizes the Commission to set accreditation standards for libraries.

CROSS REFERENCE TO STATUTE. Government Code, Chapter 441, Subchapter I.

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

Filed with the Office of the Secretary of State on February 24, 2021.
TRD-202100777
Sarah Swanson
General Counsel
Texas State Library and Archives Commission
Effective date: March 16, 2021
Proposal publication date: November 27, 2020
For further information, please call: (512) 463-5591

TITLE 22. EXAMINING BOARDS
PART 6. TEXAS BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS
CHAPTER 133. LICENSING
SUBCHAPTER G. EXAMINATIONS
22 TAC §133.67
The Texas Board of Professional Engineers and Land Surveyors (Board) adopts an amendment to 22 Texas Administrative Code, Subchapter G, Chapter 133, §133.67, regarding examinations on the Principles and Practice of Engineering without changes to the proposed text as published in the January 1, 2021, issue of the Texas Register (46 TexReg 50). The rule will not be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULE
The rules under 22 Texas Administrative Code Chapter 133 implement Texas Occupations Code, Chapter 1001, the Texas Engineering Practice Act.

Board rule §133.67 (Related to Examination on the Principles and Practice of Engineering) has a requirement that examinees taking the Principles and Practice of Engineering examination must complete the exam in a specified number of years. The adopted rule extends the examination deadline by one year for applicants for licensure as a professional engineer in Texas who have been unable to take the Principles and Practice of Engineering examination as a result of examination cancellations due to the COVID-19 pandemic.

PUBLIC COMMENT
Pursuant to §2001.029 of the Texas Government Code, the Board gave all interested persons a reasonable opportunity to provide oral and/or written commentary concerning the adoption of the rule. The 30-day public comment period began on January 1, 2021, and ended January 31, 2021. The Board received no comments from the public.

STATUTORY AUTHORITY
The rule is adopted pursuant to Texas Occupations Code §§1001.101 and 1001.202, which authorize the Board to regulate engineering and land surveying and make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practices of engineering and land surveying in this state. This rule is also adopted under Texas Occupations Code §1001.2721, which authorizes the Board to adopt, recognize, develop, or contract for an examination.

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

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

Filed with the Office of the Secretary of State on March 1, 2021.
TRD-202100833
Lance Kinney, Ph.D., P.E.
Executive Director
Texas Board of Professional Engineers and Land Surveyors
Effective date: March 21, 2021
Proposal publication date: January 1, 2021
For further information, please call: (512) 440-3080

CHAPTER 138. COMPLIANCE AND PROFESSIONALISM FOR SURVEYORS
SUBCHAPTER E. PROFESSIONAL AND TECHNICAL STANDARDS
22 TAC §138.81
The Texas Board of Professional Engineers and Land Surveyors (Board) adopts a new rule to 22 Texas Administrative Code, Chapter 138, specifically §138.81, regarding professional practice requirements for professional land surveyors in Texas without changes to the proposed rules as published in the December 11, 2020, issue of the Texas Register (45 TexReg 8819). The rule will not be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES
The rules under 22 Texas Administrative Code Chapter 138 implement Texas Occupations Code, Chapter 1001, the Texas Engineering Practice Act, and Occupations Code, Chapter 1071, the Professional Land Surveying Practices Act.

The adopted rule implements necessary changes as required by House Bill (HB) 1523, 86th Legislature, Regular Session (2019), related to the merger of operations of the Texas Board of Professional Engineers and the Texas Board of Professional Land Surveying into the Texas Board of Professional Engineers and Land Surveyors (TBPELS).

As required by HB 1523, the operations of the two agencies have been merged into one, including compliance and enforcement and professional practice requirements for Registered Professional Land Surveyors (RPLS) and Licensed State Land Surveyors (LSLS). The Texas Board of Professional Land Surveying’s rules (22 Texas Administrative Code, Chapter 663), relating to standards of professional responsibility and rules of conduct for land surveyors, have been merged into Chapter 138 per the guidance of the Secretary of State. These rules have been formatted to be similar to the compliance and professionalism rules for engineers (Chapter 137), and edited for formatting and clarity.

PUBLIC COMMENT
Pursuant to §2001.029 of the Texas Government Code, the Board gave all interested persons a reasonable opportunity to provide oral and/or written commentary concerning the adoption of the rules. The 30-day public comment period began on December 11, 2020, and ended January 10, 2021. The Board received no comments from the public.

STATUTORY AUTHORITY

ADOPTED RULES March 12, 2021 46 TexReg 1639
The rule is adopted pursuant to Texas Occupations Code §§1001.201 and 1001.202, which authorize the Board to regulate engineering and land surveying and make and enforce all rules and regulations and bylaws consistent with the Act and Texas Occupations Code §1071, as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practices of engineering and land surveying in this state.

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

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

Filed with the Office of the Secretary of State on March 1, 2021.
TRD-202100832
Lance Kinney, Ph.D., P.E.
Executive Director
Texas Board of Professional Engineers and Land Surveyors
Effective date: March 21, 2021
Proposal publication date: December 11, 2020
For further information, please call: (512) 440-3080

PART 8. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

CHAPTER 153. RULES RELATING TO PROVISIONS OF THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT

22 TAC §153.15

The Texas Appraiser Licensing and Certification Board (TALCB) adopts amendments to 22 TAC §153.15, Experience Required for Licensing, without changes to the proposed text, as published in the November 27, 2020, issue of the Texas Register (45 TexReg 8447). The rule will not be republished.

The amendments clarify the type of supporting documentation that must be submitted to TALCB to verify an applicant’s experience and the circumstances when additional documentation may be requested by TALCB.

The amendments also allow TALCB staff to inform supervisory appraisers of its communications with supervisory appraisers’ respective trainee, and to provide supervisory appraisers a better understanding of a trainee’s progress in the licensure process and professional development.

No comments were received on the amendments as published.

The amendments are adopted under Occupations Code §1103.151, which allows TALCB to adopt rules for certifying an appraiser or appraiser trainee and §1103.154, which authorizes TALCB to adopt rules relating to professional conduct.

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

Filed with the Office of the Secretary of State on February 26, 2021.
TRD-202100820
Kathleen Santos
General Counsel
Texas Appraiser Licensing and Certification Board
Effective date: March 18, 2021
Proposal publication date: November 27, 2020
For further information, please call: (512) 936-3652

22 TAC §153.24

The Texas Appraiser Licensing and Certification Board (TALCB) adopts amendments to §153.24, Complaint Processing, without changes to the proposed text as published in the November 27, 2020, issue of the Texas Register (45 TexReg 8448). The rule will not be republished.

The amendments clarify the process in which complaints or allegations that staff determines are not within the TALCB’s jurisdiction; found not to exist; or are inappropriate or without merit are investigated and dismissed in accordance with Texas Occupations Code §1103.452.

No comments were received on the amendments as published.

The amendments are adopted under Occupations Code §1103.151, which allows TALCB to adopt rules for certifying an appraiser or appraiser trainee and §1103.154, which authorizes TALCB to adopt rules relating to professional conduct.

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

Filed with the Office of the Secretary of State on February 26, 2021.
TRD-202100821
Kathleen Santos
General Counsel
Texas Appraiser Licensing and Certification Board
Effective date: March 18, 2021
Proposal publication date: November 27, 2020
For further information, please call: (512) 936-3652

22 TAC §153.28

The Texas Appraiser Licensing and Certification Board (TALCB) adopts new rule §153.28, Peer Investigative Committee Review, without changes to the proposed text, as published in the November 27, 2020, issue of the Texas Register (45 TexReg 8453). The rule will not be republished.

The new rule outlines the complaint review process of the Peer Investigative Committee pursuant to Texas Occupations Code §1103.453. The new rule identifies who may serve on the committee, terms of appointment, delineates functions of the committee members and TALCB staff in the review process, and establishes process deadlines. The rule also specifies the types of complaints that are subject or not subject to the review of the
Peer Investigative Committee, and the manner committee members and staff may communicate during the review process.

The new rule is intended to more clearly establish the agency’s Peer Investigative Committee Review process and identify the roles of both committee members and TALCB staff. This rule also allows the Peer Investigative Committee members to provide TALCB Enforcement Division recommendations on complaints where adverse action is sought.

No comments were received on the new rule as published.

The new rule is adopted under Texas Occupations Code §1103.151, which authorizes TALCB to adopt rules for certifying or licensing an appraiser or appraiser trainee and §1103.154, which authorizes TALCB to adopt rules relating to professional conduct.

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

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TRD-202100822
Kathleen Santos
General Counsel
Texas Appraiser Licensing and Certification Board
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Proposal publication date: November 27, 2020
For further information, please call: (512) 936-3652

PART 15. TEXAS STATE BOARD OF PHARMACY

CHAPTER 295. PHARMACISTS

22 TAC §295.13

The Texas State Board of Pharmacy adopts amendments to §295.13, concerning Drug Therapy Management by a Pharmacist under Written Protocol of a Physician. These amendments are adopted without changes to the proposed text as published in the December 11, 2020, issue of the Texas Register (45 TexReg 8822). The rule will not be republished.

The amendments update the notification requirements for a pharmacist who signs a prescription for a dangerous drug pursuant to a written protocol and corrects grammatical errors.

The Board received a comment from Jeenu Phillip with Walgreen Co. expressing concern about requiring a pharmacy to submit a copy of the initial written protocol and any updates to the Board, and suggested that the Board remove these requirements, or alternatively, require a copy of the initial written protocol and any updates to be retained by the pharmacy and made available to the Board upon request. The Board declines to make these changes as §157.101(b-1)(2)(E) of the Texas Occupations Code requires that the pharmacist submit a copy of the protocol to the Board.

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

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

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

Filed with the Office of the Secretary of State on February 22, 2021.

TRD-202100717
Allison Vordenbaumen Benz, R.Ph., M.S.
Executive Director
Texas State Board of Pharmacy
Effective date: March 14, 2021
Proposal publication date: December 11, 2020
For further information, please call: (512) 305-8010

CHAPTER 315. CONTROLLED SUBSTANCES

22 TAC §315.15

The Texas State Board of Pharmacy adopts amendments to 22 TAC §315.15, concerning Access Requirements. These amendments are adopted without changes to the proposed text as published in the December 11, 2020, issue of the Texas Register (45 TexReg 8825). The rule will not be republished.

The amendments clarify that the duty to consult the Prescription Monitoring Program database before dispensing an opioid, benzodiazepine, barbiturate, or carisoprodol is limited to outpatient prescriptions.

No comments were received.

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

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

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

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TRD-202100718
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Executive Director
Texas State Board of Pharmacy
Effective date: March 14, 2021
Proposal publication date: December 11, 2020
For further information, please call: (512) 305-8010
PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 534. GENERAL ADMINISTRATION

22 TAC §534.7

The Texas Real Estate Commission (TREC) adopts the repeal of 22 TAC §534.7, Vendor Protest Procedures, in Chapter 534, General Administration, without changes to the text, as published in the November 27, 2020, issue of the Texas Register (45 TexReg 8470). The rule will not be republished.

The repeal of §534.7 eliminates the agency's use of vendor protest procedures adopted by the Texas Facilities Commission. TREC will replace these vendor protest procedures in rule with a new set of vendor protest procedures that better meet the agency's needs and provide greater transparency to both members of the public and parties seeking to protest.

No comments were received on the repeal as published.

The repeal is adopted under Texas Occupations Code §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102.

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

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TRD-202100798
Vanessa Burgess
General Counsel
Texas Real Estate Commission
Effective date: March 16, 2021
Proposal publication date: November 27, 2020
For further information, please call: (512) 936-3284

22 TAC §534.7

The Texas Real Estate Commission (TREC) adopts new 22 TAC §534.7, Vendor Protest Procedures, in Chapter 534, General Administration, without changes to the proposed text as published in the November 27, 2020, issue of the Texas Register (45 TexReg 8470). The rule will not be republished.

The adopted new §534.7 creates new vendor protest procedures that better meet the agency's needs than the previous version. This new rule also more clearly establishes the agency's protest review and appeal process and identifies the roles and requirements of both TREC staff and the protesting party.

No comments were received on the amendments as published.

The new rule is adopted under Texas Occupations Code §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102.

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

Filed with the Office of the Secretary of State on February 24, 2021.

TRD-202100799
Vanessa Burgess
General Counsel
Texas Real Estate Commission
Effective date: March 16, 2021
Proposal publication date: November 27, 2020
For further information, please call: (512) 936-3284

CHAPTER 535. GENERAL PROVISIONS

SUBCHAPTER I. LICENSE RENEWAL

22 TAC §535.91

The Texas Real Estate Commission (TREC) adopts an amendment to 22 TAC §535.91, Renewal of a Real Estate License, in Chapter 535, General Provisions, with non-substantive changes to the proposed text, as published in the November 27, 2020, issue of the Texas Register (45 TexReg 8472). The rule will be republished. The non-substantive changes update "of this chapter" to "of this title" throughout the section to conform to Texas Register referencing preferences.

The amendment to §535.91 corrects a reference within the rule to include the appropriate subsection.

No comments were received on the amendment as published.

The amendment is adopted under Texas Occupations Code §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102.

§535.91. Renewal of a Real Estate License.

(a) Renewal application.

(1) A real estate license expires on the date shown on the face of the license issued to the license holder.

(2) If a license holder intends to renew an unexpired license, the license holder must, on or before the expiration date of the current license:

(A) file a renewal application through the online process on the Commission's website or on the applicable form approved by the Commission;

(B) submit the appropriate fee required by §535.101 of this title (relating to Fees);

(C) comply with the fingerprinting requirements under the Act; and

(D) except as provided for in subsection (g) of this section, satisfy the continuing education requirements applicable to that license.

(3) The Commission may request additional information be provided to the Commission in connection with a renewal application.
(4) A license holder is required to provide information requested by the Commission not later than the 30th day after the date the commission requests the information. Failure to provide information is grounds for disciplinary action.

(b) Renewal Notice.

(1) The Commission will deliver a license renewal notice to a license holder three months before the expiration of the license holder's current license.

(2) If a license holder intends to renew a license, failure to receive a license renewal notice from the Commission does not relieve a license holder from the requirements of this subsection.

(3) The Commission has no obligation to notify any license holder who has failed to provide the Commission with the person's mailing address and email address or a corporation, limited liability company, or partnership that has failed to designate an officer, manager, or partner who meets the requirements of the Act.

(c) Timely renewal of a license.

(1) A renewal application for an individual broker or sales agent is filed timely if it is received by the Commission, or postmarked, on or before the license expiration date.

(2) A renewal application for a business entity broker is filed timely if the application and all required supporting documentation is received by the Commission, or postmarked, not later than the 10th business day before the license expiration date.

(3) If the license expires on a Saturday, Sunday or any other day on which the Commission is not open for business, a renewal application is considered to be filed timely if the application is received or postmarked no later than the first business day after the expiration date of the license.

(d) Initial renewal of sales agent license. A sales agent applying for the first renewal of a sales agent license must:

(1) submit documentation to the Commission showing successful completion of the additional educational requirements of §535.55 of this title (relating to Education and Sponsorship Requirements for a Sales Agent License) no later than 10 business days before the day the sales agent files the renewal application; and

(2) fulfill the continuing education requirements of §535.92(a)(1), (a)(2), and (a)(4) of this title (relating to Continuing Education Requirements), if applicable.

(e) Renewal of license issued to a business entity. The Commission will not renew a license issued to a business entity unless the business entity:

(1) has designated a corporate officer, an LLC manager, an LLC member with managing authority, or a general partner who:

(A) is a licensed broker in active status and good standing with the Commission; and

(B) completes any applicable continuing education required under §535.92 of this title;

(2) maintains errors and omissions insurance with a minimum annual limit of $1 million per occurrence if the designated broker owns less than 10 percent of the business entity; and

(3) is currently eligible to transact business in Texas.

(f) Renewal and pending complaints.

(1) The Commission may renew the current license of a license holder that has a complaint pending with the Commission, pro-

vided the license holder meets all other applicable requirements of this section.

(2) Upon completion of the investigation of the pending complaint, the Commission may suspend or revoke the license, after notice and hearing in accordance with the Administrative Procedure Act, Texas Government Code, Chapter 2001.

(g) Renewal with deferred continuing education.

(1) A license holder may renew an active license without completion of required continuing education and may defer completion of any outstanding continuing education requirements for an additional 60 days from the expiration date of the current license if the license holder:

(A) meets all other applicable requirements of this section; and

(B) pays the continuing education deferral fee required by §535.101 of this title at the time the license holder files the renewal application with the Commission.

(2) If after expiration of the 60 day period set out in paragraph (1) of this subsection, the Commission has not been provided with evidence that the license holder has completed all outstanding continuing education requirements, the license holder's license will be placed on inactive status.

(3) To activate an inactive license, the license holder must meet the requirements of Subchapter L of this Chapter.

(4) Credit for continuing education courses for a subsequent licensing period does not accrue until after all deferred continuing education has been completed for the current licensing period.

(h) Denial of Renewal. The Commission may deny an application for renewal of a license if the license holder is in violation of the terms of a Commission order.

(i) Renewal of license for military service member. A license holder on active duty in the United States armed forces is entitled to two years of additional time to renew an expired license without being subject to any increase in fee, any education or experience requirements or examination if the license holder:

(1) provides a copy of official orders or other official documentation acceptable to the Commission showing that the license holder was on active duty during the license holder's last renewal period; and

(2) pays the renewal application fee in effect when the previous license expired.

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

Filed with the Office of the Secretary of State on February 24, 2021.
TRD-202100800
Vanessa Burgess
General Counsel
Texas Real Estate Commission
Effective date: March 16, 2021
Proposal publication date: November 27, 2020
For further information, please call: (512) 936-3284

ADOPTED RULES March 12, 2021 46 TexReg 1643
SUBCHAPTER Q. ADMINISTRATIVE PENALTIES

22 TAC §535.191

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §535.191, Schedule of Administrative Penalties, in Chapter 535, General Provisions, without changes to the proposed text as published in the November 27, 2020, issue of the Texas Register (45 TexReg 8474). The rule will not be republished.

The amendment corrects a reference within the agency’s schedule of administrative penalties that corresponds to statutory changes enacted by the 86th Legislature in SB 624.

No comments were received on the amendments as published.

The amendments are adopted under Texas Occupations Code §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102.

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

Filed with the Office of the Secretary of State on February 24, 2021.

TRD-202100797
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General Counsel
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Effective date: March 16, 2021
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For further information, please call: (512) 936-3284

SUBCHAPTER R. REAL ESTATEinspectors

22 TAC §535.216

The Texas Real Estate Commission (TREC) adopts amendments to §535.216, Renewal of License, in Subchapter R of Chapter 535, General Provisions, without changes to the proposed text, as published in the November 27, 2020, issue of the Texas Register (45 TexReg 8475). The rule will not be republished.

The amendments implement statutory changes enacted by the 83rd Legislature in HB 2911 stating that applicants for reinstatement of license under Chapter 1102 of the Texas Occupations Code who previously held the same license within the two years preceding the application date are eligible for reinstatement so long as they have completed the required continuing education hours for renewal and satisfy the agency’s requirements for honesty, trustworthiness, and integrity. Applicants meeting those criteria are not required to retake the exam for licensure. Additionally, applicants for a real estate inspector license reinstatement must submit evidence of sponsorship by a professional inspector.

The amendments were recommended by the Texas Real Estate Inspector Committee.

No comments were received on the amendments as published.

The amendments are adopted under Texas Occupations Code §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102.

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

Filed with the Office of the Secretary of State on February 24, 2021.

TRD-202100797
Vanessa Burgess
General Counsel
Texas Real Estate Commission
Effective date: March 16, 2021
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For further information, please call: (512) 936-3284

CHAPTER 537. PROFESSIONAL AGREEMENTS AND STANDARD CONTRACTS

22 TAC §537.45, §537.52

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §537.45, Standard Contract Form TREC No. 38-6 and §537.52, Standard Contract Form TREC No. 45-1 and the forms adopted by reference in Chapter 537, Professional Agreements and Standard Contracts, without changes to the proposed text or forms adopted by reference, as published in the December 11, 2020, issue of the Texas Register (45 TexReg 8825). The rules will not be republished.

Texas real estate license holders are generally required to use forms promulgated by TREC when negotiating contacts for the sale of real property. These forms are drafted and recommended for proposal by the Texas Real Estate Broker-Lawyer Committee, an advisory body consisting of six attorneys appointed by the President of the State Bar of Texas, six brokers appointed by TREC, and one public member appointed by the governor.

The Broker-Lawyer Committee previously recommended revisions to the contract forms adopted by reference under Chapter 537 to address issues that have arisen since the last contract revisions. Changes to those contract forms were adopted at the November 10, 2020, Commission meeting. These amendments are for two contract forms which were inadvertently omitted during the previous round of revisions. The amendments correct a paragraph reference to align with those changes.

The Notice of Buyer’s Termination of Contract adopted by reference in §537.45 is amended to correct a reference in Paragraph 1. The reference to Paragraph 23 is replaced with a reference to Paragraph 5 to align with the previous changes made to the contract forms.

The Short Sale Addendum adopted by reference in §537.52 is amended to correct a reference in paragraph F. The reference

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to Paragraph 23 is replaced with a reference to Paragraph 5 to align with the previous changes made to the contract forms.

No comments were received on the amendments as published.

The amendments are adopted under Texas Occupations Code §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102.

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

Filed with the Office of the Secretary of State on February 24, 2021.

TRD-202100795
Abby Lee
Deputy General Counsel
Texas Real Estate Commission
Effective date: April 1, 2021
Proposal publication date: December 11, 2020
For further information, please call: (512) 936-3057

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TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 280. PEDIATRIC TELECONNECTIVITY RESOURCE PROGRAM FOR RURAL TEXAS

26 TAC §§280.1, 280.3, 280.5

The Texas Health and Human Services Commission (HHSC) adopts new §280.1, concerning Purpose; §280.3, concerning Definitions; and §280.5, concerning Grant Program Administration. New §§280.1, 280.3, and 280.5 are adopted without changes to the proposed text as published in the December 18, 2020, issue of the Texas Register (45 TexReg 8998), and therefore will not be republished.

BACKGROUND AND JUSTIFICATION

The new sections implement Texas Government Code, Chapter 541, added by House Bill (H.B.) 1697, 85th Legislature, Regular Session, 2017. Chapter 541 directs HHSC to establish a pediatric tele-connectivity resource program for rural Texas to award grants to nonurban health care facilities to connect the facilities with pediatric specialists and pediatric subspecialists who provide telemedicine services. Rider 94 of the 2020-21 General Appropriations Act (H.B. 1, 86th Legislature, Regular Session, 2019, Article II, Special Provisions) appropriates funds to HHSC to implement Chapter 541.

The Pediatric Tele-Connectivity Resource Program for Rural Texas allows HHSC to provide financial assistance to enable eligible, nonurban health care facilities to connect with pediatric specialists and pediatric subspecialists who provide telemedicine services and to cover related expenses, including necessary equipment.

COMMENTS

The 31-day comment period ended January 19, 2021. During this period, HHSC did not receive any comments regarding the proposed rules.

STATUTORY AUTHORITY

The new sections are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, Texas Government Code §531.0055, which directs the Executive Commissioner to adopt rules and policies for the operation of and provision of health and human services; and Texas Government Code §541.008, which provides that the Executive Commissioner may adopt rules necessary to help implement the pediatric tele-connectivity resource program for rural Texas.

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

Filed with the Office of the Secretary of State on February 23, 2021.

TRD-202100732
Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: March 15, 2021
Proposal publication date: December 18, 2020
For further information, please call: (512) 239-8300

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER A. AUTOMOBILE INSURANCE

DIVISION 3. MISCELLANEOUS INTERPRETATIONS

28 TAC §5.205

The Commissioner of Insurance adopts amended 28 TAC §5.205, relating to the Motor Vehicle Crime Prevention Authority pass-through fee. The amendments are necessary to implement Senate Bill 604, 86th Legislature, 2019, and House Bill 2048, 86th Legislature, 2019. The amendments are adopted with changes to the proposed text published in the September 25, 2020, issue of the Texas Register (45 TexReg 6686). The Texas Department of Insurance (TDI) revised §5.205 in response to public comments and made additional nonsubstantive changes to the proposed text. The rule will be republished.

REASONED JUSTIFICATION. Amendments to §5.205 are necessary to ensure that the rule and the notice it requires reflect changes in law made by SB 604 and HB 2048. Before 2019,
the Automobile Burglary and Theft Prevention Authority (ABTPA) was governed by Tex. Rev. Civ. Stat. Ann. art. 4413(37). SB 604 renamed the ABTPA as the Motor Vehicle Crime Prevention Authority (MVCAPA). SB 604 also codified art. 4413(37) as Transportation Code Chapter 1006. Additionally, HB 2048 increased the fee amount that insurers must pay from $2.00 to $4.00, as that requirement was adopted in Transportation Code §1006.153. SB 604 and HB 2048 were both effective on September 1, 2019.

Section 5.205. Motor Vehicle Crime Prevention Authority Pass-Through Fee. Throughout §5.205, the name of the entity is changed from ABTPA to MVCAPA.

Amendments to subsection (a) update the statutory reference to the Transportation Code and the fee to $4.00. The last sentence of subsection (a) as adopted is changed from the text as proposed to clarify that the insurer may recoup some or all of the fee from an insurer.

Subsection (b) requires a notice to help policyholders understand the charge. For clarity, subsection (b) distinctly enumerates the notice requirements for an insurer that recoups a fee from a policyholder. Insurers must use notice language that is the same or similar to the language in new subsection (b)(1). In response to comments, TDI changed the notice requirement in subsection (b)(1) as proposed to allow an insurer to use language similar to suggested text rather than requiring specific language.

Amendments to subsection (b) include revised notice language, written in plain language. TDI previously issued Commissioner's Bulletin B-0006-19, alerting insurers of the statutory changes. The amended rule includes language that tracks the notice language suggested in the bulletin, except for removing the acronym "MVCAPA." This acronym is not included in the language adopted by the rule because it is not necessary.

The new notice does not expressly include a $4.00 fee amount. Rather, it includes brackets to allow an insurer to insert the dollar amount the insurer charges the policyholder. This is because insurers are not required to recoup the entire $4.00 fee; they may charge a policyholder for all, part, or none of the fee. The brackets also allow flexibility if the legislature later changes the fee amount.

New subsections (b)(2) and (b)(3) give insurers flexibility in how they provide the notice. Insurers must include the notice on or with each motor vehicle insurance policy that is delivered, issued for delivery, or renewed in Texas. Insurers may, but are not required to, include the notice in a policy. However, an insurer must at least mention the charge on the declarations page, renewal certificate, or billing, if there is a charge but the full notice is not given in one of those places.

For flexibility, subsection (c) allows an insurer to comply with the notice requirements by using a notice previously filed with TDI if the notice contains the correct fee amount, has the name "Automobile Burglary and Theft Prevention Authority" replaced with "Motor Vehicle Crime Prevention Authority," and has outdated statutory references updated or removed. In response to comment, TDI has changed the proposed text of subsection (c) to remove a requirement that the notice become a part of the insurer's policy and replace it with this option regarding notice language previously filed with TDI.

Subsection (d) clarifies that a notice that complies with subsection (c) is considered similar to the notice language required by subsection (b). Subsection (d) has been added to the proposed text of the section to coordinate the changes made to subsection (b) and (c) in response to comments.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Commenters: TDI received five comments. Commenters in support of the proposal with changes were American Specialty Auto, Inc.; Cox Insurance Group; Home State Insurance Group, Inc.; National Association of Mutual Insurance Companies; and Old American County Mutual Fire Insurance Company.

Comment on Specific Notice Language in §5.205

Comment: All commenters request flexibility in the language required by the notice to avoid additional costs due to changes to forms or a need to refile policy forms to include mandatory notice language, because many companies already revised their notice forms in response to guidance in Commissioner's Bulletin B-0006-19.

Agency response: TDI has changed the notice language requirements as adopted to allow insurers to use language similar to the language in new paragraph (b)(1). Subsections (c) and (d) allow insurers to continue providing a notice used on or before the effective date of the rule if the notice contains the correct fee amount, refers to the MVCAPA, and updates or removes the statutory reference in the notice.

Comment on the Location of Notice Language in §5.205

Comment: Many commenters requested more flexibility in the placement of the notice.

Agency response: As adopted, TDI has changed the requirement in subsection (c) so that it does not mandate the notice become part of the policy.

STATUTORY AUTHORITY. The Commissioner adopts the amendments to 28 TAC §5.205 under Transportation Code §1006.153 and Insurance Code §36.001.

Transportation Code §1006.153 provides that the fee amount that insurers must pay to the Motor Vehicle Crime Prevention Authority is $4.00 per motor vehicle years of insurance, as defined by that section.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.


(a) Each insurer must pay a fee of $4.00 per "motor vehicle year of insurance" to the Motor Vehicle Crime Prevention Authority, as required by Transportation Code §1006.153. The insurer is authorized to recoup some or all of this fee from the policyholder.

(b) If an insurer recoups the fee from the policyholder under subsection (a) of this section, the insurer must:

(1) provide the policyholder with a notice using the following or similar language, in at least 10-point type: "Your payment includes a $[_____] fee per vehicle each year. This fee helps fund (1) auto burglary, theft, and fraud prevention, (2) criminal justice efforts, and (3) trauma care and emergency medical services for victims of accidents due to traffic offenses. By law, this fee funds the Motor Vehicle Crime Prevention Authority;"

(2) include the notice on or with each motor vehicle insurance policy, as defined in 43 TAC §57.48 (relating to Motor Vehicle
Years of Insurance Calculations), that is delivered, issued for delivery, or renewed in this state, including those policies issued through the Texas Automobile Insurance Plan Association; and

(3) if the notice language required by paragraph (1) of this subsection is provided somewhere other than the declarations page, renewal certificate, or billing, also include the following or similar language on the declarations page of the policy, renewal certificate, or billing: "Motor Vehicle Crime Prevention Authority Fee $[_____] (See enclosed explanation)."

(c) An insurer may continue providing a notice used on or before the effective date of this section if the notice:

(1) contains the correct fee amount;

(2) includes "Motor Vehicle Crime Prevention Authority" in place of "Automobile Burglary and Theft Prevention Authority;" and

(3) has any statutory references removed or updated to change Tex. Rev. Civ. Stat. Ann. art. 4413(37) to Transportation Code Chapter 1006.

(d) A notice that complies with subsection (c) of this section is considered similar to the notice language required by subsection (b) of this section.

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

Filed with the Office of the Secretary of State on February 24, 2021.

TRD-202100779
James Person
General Counsel
Texas Department of Insurance
Effective date: March 16, 2021
Proposal publication date: September 25, 2020
For further information, please call: (512) 676-6587

CHAPTER 19. LICENSING AND REGULATION OF INSURANCE PROFESSIONALS
SUBCHAPTER R. UTILIZATION REVIEWS FOR HEALTH CARE PROVIDED UNDER A HEALTH BENEFIT PLAN OR HEALTH INSURANCE POLICY


The Commissioner of Insurance adopts amendments to 28 TAC §§19.1702, 19.1705, 19.1709 - 19.1711, 19.1716 - 19.1718, relating to utilization reviews for health care that are provided under a health benefit plan or a health insurance policy. The amendments are adopted with changes to the proposed text published in the October 23, 2020, issue of the Texas Register (45 TexReg 7525). TDI adopts §§19.1702, 19.1705, 19.1709 - 19.1711, 19.1716, and 19.1717 without changes to the proposed text. The rules will not be republished. TDI adopts §19.1718 with nonsubstantive changes to the proposed text. TDI revised §19.1718(j)(6) in response to public comment. In addition, TDI revised §19.1718(k)(2) by removing the quotation marks around the word "predetermination" to mirror the statutory language of Insurance Code §1451.208. The rule will be republished.

REASONED JUSTIFICATION. The amendments are necessary to implement House Bill 1584, HB 2486, HB 3041, and Senate Bill 1742, all enacted by the 86th Legislature, 2019, or to align the rules with one another.

HB 1584 prohibits a health benefit plan that provides coverage for stage-four, advanced metastatic cancer and associated conditions (stage-IV cancer) from requiring the enrollee to fail to successfully respond to a different drug or prove history of failure of a different drug before providing coverage of a prescription drug that is consistent with best practices; supported by peer-reviewed, evidence-based literature; and approved by the United States Food and Drug Administration.

HB 2486 specifies preauthorization requirements for employee benefit plans or health policies that provide dental benefits.

HB 3041 requires health benefit plan issuers that are subject to Insurance Code Chapter 1222 and that require preauthorization as a condition of payment to provide a preauthorization renewal process that allows a provider to request renewal of an existing preauthorization at least 60 days before it expires. It also requires insurers receiving a request to renew an existing preauthorization to review the request and issue a determination before the existing preauthorization expires, if practicable.

SB 1742 includes provisions requiring the following:

- a shorter response time for a health maintenance organization (HMO) to provide certain information concerning the preauthorization process to a participating physician or provider who requests it,
- a shorter response time for a preferred or exclusive provider health benefit plan issuer to provide certain information concerning the preauthorization process to a preferred provider who requests it,
- requirements for HMOs and preferred or exclusive provider health benefit plan issuers (collectively, health benefit plan issuers) to post certain preauthorization information on their websites, and
- new requirements that utilization review agents (URAs) must meet.

Section 19.1702. Applicability. An amendment to §19.1702(b) adds Insurance Code Chapter 1222 and Chapter 1451, Subchapter E, to the list of Insurance Code provisions that apply to the rules in 28 TAC Chapter 19, Subchapter R.

In addition, nonsubstantive punctuation and grammatical changes that reflect updates to statutory language are made to §19.1702(a)(1) to change existing rule text to "the medical necessity, the appropriateness, or the experimental or investigational nature."

Section 19.1705. General Standards of Utilization Review. Adopted §19.1705(a) includes a requirement that the physician who reviews and approves a URA's utilization review plan be licensed to practice medicine in Texas.

Adopted §19.1705(b) includes three paragraphs. The text of the previously existing section is now in paragraph (1). New paragraphs (2) and (3) prohibit a health benefit plan that provides coverage for stage-IV cancer from requiring that an enrollee with stage-IV cancer fail to successfully respond to a different drug or
prove history of failure of a different drug before the plan provides coverage for certain prescription drugs.

In addition, nonsubstantive punctuation and grammatical changes that reflect updates to statutory language are adopted to §19.1705(d) to change previous rule text to "the medical necessity, the appropriateness, or the experimental or investigational nature."

Section 19.1709. Notice of Determinations Made in Utilization Review. Adopted §19.1709 includes time frames for requesting renewal of an existing preauthorization and issuing the determination on the request.

Adopted §19.1709 includes new subsection (b), which provides that health benefit plan issuers that require preauthorization as a condition for payment must provide a renewal process that allows for the renewal of a preauthorization to be requested at least 60 days before the existing preauthorization expires. The subsections that follow new subsection (b) have been redesignated as appropriate to reflect the addition of the new subsection.

The amendments also add new paragraph (4) to redesignated subsection (e). Adopted §19.1709(e)(4) requires that a URA review a request to renew a preauthorization and make and issue a determination before the existing preauthorization expires, if practicable.

Section 19.1710. Requirements Prior to Issuing an Adverse Determination. The adopted amendments to §19.1710 are nonsubstantive punctuation and grammatical changes that reflect updates to statutory language in the first paragraph of §19.1710 to change existing rule text to "the medical necessity, the appropriateness, or the experimental or investigational nature."

Section 19.1711. Written Procedures for Appeal of Adverse Determinations. The adopted amendments to §19.1711(a)(6) add text to clarify that the requirements of the paragraph concerning review by a particular type of specialty provider are available to the health care provider either when appealing an adverse determination or after an adverse determination appeal has been denied. The adopted amendments to paragraph (6) also revise text to clarify that a health care provider merely needs to request a particular type of specialty provider review the case and is no longer required to provide good cause in writing for the request.

The amendments to §19.1711(a)(7) revise text to clarify that the requirement to have a method for expedited appeals applies in regard to denial of another service if the requesting health care provider includes a written statement with supporting documentation that the service is necessary to treat a life-threatening condition or prevent serious harm to the patient.

In addition, nonsubstantive punctuation and grammatical changes that reflect updates to statutory language are made to §19.1711(a)(5) to change existing rule text to "the medical necessity, the appropriateness, or the experimental or investigational nature." Another nonsubstantive grammatical change was made to §19.1711(a)(7) to move the placement of existing rule text "is available" to improve the rule's clarity.

Section 19.1716. Specialty URA. The adopted amendments to §19.1716 revise subsections (b) and (d) to specify that utilization review of specialty health care services must be conducted by a health care provider licensed or authorized in Texas to provide the specialty health care service being reviewed.

In addition, nonsubstantive punctuation and grammatical changes that reflect updates to statutory language are made to §19.1716(f), changing existing rule text to "the medical necessity, the appropriateness, or the experimental or investigational nature."

Section 19.1717. Independent Review of Adverse Determinations. Adopted §19.1717 includes an amendment to §19.1717(a) to revise a reference to §19.1709(d)(3), changing it to §19.1709(e)(3) to reflect the redesignation of subsection (d) as (e) in that section. In addition, a nonsubstantive punctuation change is adopted to §19.1717(c) to reflect TDI's current rule drafting style that "internet" not be capitalized.

Section 19.1718. Preauthorization for Health Maintenance Organizations and Preferred Provider Benefit Plans. The amendments to §19.1718(c) revise the deadline for health benefit plan issuers that use a preauthorization process to provide a list of the medical care and health care services that require preauthorization as well as information about the preauthorization process to preferred providers who request this information; changing the deadline from the 10th to the fifth working day after the date a request is made, for consistency with SB 1742. In addition, the amendments replace the "and" in existing text with "or" to reflect a change in statutory language so that the subsection applies to health benefit plan issuers that use a preauthorization process for "medical care or health care services."

The amendments add new subsection (j) to address the posting of preauthorization requirements for medical and health care services. This subsection requires an HMO or a preferred provider benefit plan that uses a preauthorization process for medical care or health care services to make the requirements and information about the preauthorization process readily accessible to enrollees, physicians, health care providers, and the general public by posting the requirements and information on the HMO's or the preferred provider benefit plan's public internet website. The subsection describes requirements applicable to the preauthorization requirements and information; it addresses how an HMO or preferred provider benefit plan should handle licensed, proprietary, or copyrighted material; it addresses changes to preauthorization requirements; it provides a remedy for noncompliance with the subsection; and it specifies that the provisions of the subsection may not be waived, voided, or nullified by contract. The proposed text in §19.1718(j)(6) was changed in the adoption order in response to a comment that the underlying statutes provide that the relief specified in that paragraph is not limited to subsection (j). The adoption order clarifies that §19.1718(j)(6) applies to §19.1718 except for subsections (f), (k), and (l).

The amendments add new subsection (k) to address preauthorizations for employee benefit plans or health policies that provide dental benefits. The subsection addresses applicability of relevant definitions to prior authorization for dental care services under an employee benefit plan or health insurance policy. The subsection also addresses what an employee benefit plan or health insurance policy provider or issuer must provide to a dentist in a written prior authorization of benefits for a dental care service. The subsection also addresses what an employee benefit plan or health insurance policy provider or issuer must provide in a denial of a dental care service. In addition, TDI revised §19.1718(k)(2) by removing the quotation marks around the word "predetermination" to mirror the statutory language of Insurance Code §1451.208.

The amendments add new subsection (l), to address preauthorization requests to renew existing preauthorizations. The subsection specifies requirements that apply if preauthorization is
required as a condition of payment for a medical or health care service, stating that a preauthorization renewal process must be provided that allows the renewal of an existing preauthorization to be requested by a physician or health care provider at least 60 days before the date the preauthorization expires. The subsection also states that if a request from a physician or health care provider to renew an existing preauthorization is received before an existing preauthorization expires, the request must be reviewed and a determination indicating whether the medical or health care service is preauthorized issued before the existing preauthorization expires, if practicable.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Commenters: Commenters in support of the proposal with changes were Superior Health Plan, the Texas Association of Health Plans, and the Texas Medical Association.

Comment on §19.1702
Comment: One commenter asks TDI to clarify that Subchapter R applies to exclusive provider benefit plans in addition to preferred provider benefit plans and HMOs. The commenter notes that under Insurance Code Chapter 1301, health plan preauthorization and verification requirements apply equally to preferred provider benefit plans and exclusive provider benefit plans. The commenter suggests adding a new subsection to §19.1702 to clarify that provisions of Subchapter R that apply to either a preferred provider benefit plan or an HMO also apply to an exclusive provider benefit plan.

Agency Response: TDI agrees with the commenter that Subchapter R applies to exclusive provider benefit plans; however, it disagrees that the requested change is necessary. As the commenter notes, Insurance Code Chapter 1301 provides that health plan preauthorization and verification requirements applying to a preferred provider benefit plan also apply to an exclusive provider benefit plan. Because this is clearly addressed in the statute, it is not necessary that TDI address it in the rule.

Comment on §19.1705(a)
Comment: One commenter asks TDI to confirm that a Texas physician license is required only for review and approval of the utilization review plan and not requests for prior authorization.

Agency Response: TDI agrees that the Texas physician license is required only for review and approval of the utilization review plan. However, TDI disagrees with the commenter that a Texas physician license is required only for the review and approval of the utilization plan. Under Insurance Code §4201.152, a URA must also conduct utilization review under the direction of a physician licensed in Texas. In addition, not all utilization plans require the review of and approval by a Texas-licensed physician. Utilization plans for Specialty URAs, which are not subject to §19.1705(a), must be reviewed and approved by a health care provider of the appropriate specialty who is licensed or otherwise authorized to provide the specialty health care service in Texas.

Comment on §19.1718(j)(2)(A)(iii)
Comment: One commenter opposes specifying that HMOs and health insurers must post preauthorization requirements in a format that uses design and accessibility standards defined in §508 of the U.S. Rehabilitation Act. The commenter notes that while SB 1742 requires posting of preauthorization requirements in a format that is easily searchable and accessible, it does not specify the accessibility standards. The commenter objects to specifying that the format meet the federal standards, "particularly in the context of required disclosures to physicians and other licensed providers." The commenter requests that TDI clarify that this standard applies only to information posted for the general public.

Agency Response: TDI disagrees with the commenter and declines to make this change. Under Insurance Code §843.3481 and §1301.1351, the posted information is for the general public, in addition to physicians and other licensed providers. In this context, "accessible" refers to whether a webpage that does not rely on a single sense or ability and can be used in a variety of ways so that all individuals visiting the website can efficiently use it and locate information they seek. In addition--even if the information was only for physicians and other licensed providers—physicians, health providers, or their employees may have accessibility challenges.

Section 843.3481 and §1301.1351 require that the information be posted on the company's internet website "in a format that is easily searchable and accessible." Section 508 of the U.S. Rehabilitation Act addresses electronic and information technology accessibility. It is a standard that most website information technology specialists will be familiar with. Specifying §508 ensures that the posted preauthorization requirements are easily searchable and accessible as required by SB 1742.

Comment on §19.1718(j)(2)(D)(iv)
Comment: One commenter asks whether an HMO or insurer may report the approval and denial statistics for all pharmacy requests together, rather than having to provide the information separately for each medication, indication, provider, and type. The commenter also asks whether the approval and denial statistics for all clinician-administered drug requests can also be reported together. The commenter also asks whether the approval and denial statistics for "all pharmacy requests (pharmacy benefits and clinician-administered drugs/bio-pharmacy)" can be reported as one service rather than providing the information separately for each medication, indication, provider, and type. The commenter recommends allowing for the required information for all pharmacy benefits to be posted as one group.

Agency Response: TDI disagrees with the commenter's suggested change because it is inconsistent with Insurance Code §§843.3481(b)(4)(D) and §1301.1351(b)(4)(D), which §19.1718(j)(2)(D)(iv) implements.

Section 843.3481 and §1301.1351 require HMOs or health insurers that use a preauthorization process for health care services or medical care to make the requirements and information about their preauthorization process readily accessible to enrollees (for HMOs) or insureds (for health insurers), physicians, health care providers, and the general public on their internet website. The information must include a current and accurate list of the health care services (for HMOs) or health care services and medical care (for health insurers) that require preauthorization.

For each service that requires preauthorization, the posted information must include information about supporting documents required, applicable screening criteria, and statistics for the approval and denial rates for the service in the preceding calendar year. Except for the screening criteria, the information must be written in plain language that is easily understandable by insureds, physicians, health care providers, and the general public.
Under Insurance Code §§843.3481(b)(4)(D) and §1301.1351(b)(4)(D), each service's approval and denial statistics must include the following categories:

- physician or provider type and specialty, if any;
- indication offered;
- reasons for request denial;
- denials overturned on internal appeal;
- denials overturned by an independent review organization; and
- total annual preauthorization requests, approvals, and denials for the service.

If the statistics for all pharmacy requests that require preauthorization are bundled into the category "pharmacy benefits," the approval and denial statistics provided would neither meet the statutory requirement to provide information specific to each service requiring preauthorization nor provide meaningful information for all the various categories.

Comment on §19.1718(j)(5)

Comment: One commenter believes that the provisions relating to posting changes in preauthorization requirements should not apply to pharmacy and clinician-administered drugs and recommends removing changes to preauthorization requirements for pharmacy and clinician-administered drugs from the applicability of this paragraph.

Agency Response: TDI disagrees with the commenter because the suggested change is inconsistent with Insurance Code §§843.3482 and §1301.1352, which §19.1718(j)(5) implements.

Section 843.3482 requires an HMO to provide notice before a change to the preauthorization requirements for "health care services" becomes effective. Insurance Code §843.002(13), which is applicable to Insurance Code §843.3482, defines "health care services" as "...services provided to an individual to prevent, alleviate, cure, or heal human illness or injury. The term includes: (A) pharmaceutical services; ...and (D) care or services incidental to the health care services described by Paragraphs (A) - (C) ...".

Similarly, Insurance Code §1301.1352 requires that a health insurer provide notice before changing the preauthorization requirements for "medical care or health care services" becomes effective. Although Chapter 1301 does not define "health care services," §1301.001(1-a) defines "health care provider" as "...a practitioner, institutional provider, or other person or organization that furnishes health care services and is licensed or otherwise authorized to practice in this state. The term includes a pharmacist and a pharmacy..." (emphasis added.)

Section 843.3482 and §1300.1352 do not exclude any changes in preauthorization requirements for medical services or health care services from the posting requirement. The required amount of notice is reduced for a preauthorization requirement that is either being removed or changed in a way that is less burdensome—but even then, the HMO or health insurer must post the change at least five days before the change is effective.

Comment on §19.1718(j)(6)

Comment: One commenter expresses concern that §19.1718(j)(6) narrows the applicability of the statutory noncompliance remedy provided to a violation of subsection (j) only when the underlying statutes provide broader applicability. The commenter suggests replacing "subsection" with "section" and adding a sentence that the paragraph does not apply to subsections (f), (k), or (l).

Agency Response: TDI agrees that the Insurance Code provides that the noncompliance remedy described in §19.1718(j)(6) also applies to violations of other subsections of §19.1718. For clarity, the adopted language has been changed from the proposed language to address the commenter's concern. The adopted language clarifies that the remedy also applies to the other subsections of §19.1718 except for subsections (f), (k), and (l).


Insurance Code §843.151 provides that the Commissioner may adopt reasonable rules as necessary and proper to implement Insurance Code Chapter 843, addressing HMOs.

Insurance Code §1301.007 provides that the Commissioner adopt rules as necessary to implement Chapter 1301 addressing preferred provider plans.

Insurance Code §4201.003 provides that the Commissioner may adopt rules to implement Chapter 4201 addressing URAs.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.


(a) The words and terms defined in Insurance Code Chapter 1301 and Chapter 843 have the same meaning when used in this section, except as otherwise provided by this subchapter, unless the context clearly indicates otherwise.

(b) An HMO or preferred provider benefit plan that requires preauthorization as a condition of payment to a preferred provider must comply with the procedures of this section for determinations of medical necessity, appropriateness, or the experimental or investigational nature of care for those services the HMO or preferred provider benefit plan identifies under subsection (c) of this section.

(c) An HMO or preferred provider benefit plan that uses a preauthorization process for medical care or health care services must provide to each contracted preferred provider, not later than the fifth working day after the date a request is made, a list of medical care and health care services that allows a preferred provider to determine which services require preauthorization and information concerning the preauthorization process.

(d) An HMO or preferred provider benefit plan must issue and transmit a determination indicating whether the proposed medical or health care services are preauthorized. This determination must be issued and transmitted once a preauthorization request for proposed services that require preauthorization is received from a preferred provider. The HMO or preferred provider benefit plan must respond to a request for preauthorization within the following time periods:

1 For services not included under paragraphs (2) and (3) of this subsection, a determination must be issued and transmitted not later than the third calendar day after the date the request is received by the HMO or preferred provider benefit plan. If the request is received outside of the period requiring the availability of appropriate personnel as required in subsections (e) and (f) of this section, the determination must be issued and transmitted within three calendar days from the beginning of the next time period requiring appropriate personnel.
(2) If the proposed medical or health care services are for concurrent hospitalization care, the HMO or preferred provider benefit plan must issue and transmit a determination indicating whether proposed services are preauthorized within 24 hours of receipt of the request, followed within three working days after the transmittal of the determination by a letter notifying the enrollee or the individual acting on behalf of the enrollee and the provider of record of an adverse determination. If the request for medical or health care services for concurrent hospitalization care is received outside of the period requiring the availability of appropriate personnel as required in subsections (e) and (f) of this section, the determination must be issued and transmitted within 24 hours from the beginning of the next time period requiring appropriate personnel.

(3) If the proposed medical care or health care services involve post-stabilization treatment, or a life-threatening condition as defined in §19.1703 of this title (relating to Definitions), the HMO or preferred provider benefit plan must issue and transmit a determination indicating whether proposed services are preauthorized within the time appropriate to the circumstances relating to the delivery of the services and the condition of the enrollee, but in no case to exceed one hour from receipt of the request. If the request is received outside of the period requiring the availability of appropriate personnel as required in subsections (e) and (f) of this section, the determination must be issued and transmitted within one hour from the beginning of the next time period requiring appropriate personnel. The determination must be provided to the provider of record. If the HMO or preferred provider benefit plan issues an adverse determination in response to a request for post-stabilization treatment or a request for treatment involving a life-threatening condition, the HMO or preferred provider benefit plan must provide to the enrollee or individual acting on behalf of the enrollee, and the enrollee's provider of record, the notification required by §19.1717(a) and (b) of this title (relating to Independent Review of Adverse Determinations).

(e) A preferred provider may request a preauthorization determination via telephone from the HMO or preferred provider benefit plan. An HMO or preferred provider benefit plan must have appropriate personnel as described in §19.1706 of this title (relating to Requirements and Prohibitions Relating to Personnel) reasonably available at a toll-free telephone number to provide the determination between 6:00 a.m. and 6:00 p.m., Central Time, Monday through Friday on each day that is not a legal holiday and between 9:00 a.m. and noon, Central Time, on Saturday, Sunday, and legal holidays. An HMO or preferred provider benefit plan must have a telephone system capable of accepting or recording incoming requests after 6:00 p.m., Central Time, Monday through Friday and after noon, Central Time, on Saturday, Sunday, and legal holidays and must acknowledge each of those calls not later than 24 hours after the call is received. An HMO or preferred provider benefit plan providing a preauthorization determination under subsection (d) of this section must, within three calendar days of receipt of the request, provide a written notification to the preferred provider.

(f) An HMO providing routine vision services or dental health care services as a single health care service plan is not required to comply with subsection (e) of this section with respect to those services. An HMO providing routine vision services or dental health care services as a single health care service plan must:

1. have appropriate personnel as described in §19.1706 of this title reasonably available at a toll-free telephone number to provide the preauthorization determination between 8:00 a.m. and 5:00 p.m., Central Time, Monday through Friday on each day that is not a legal holiday;

2. have a telephone system capable of accepting or recording incoming requests after 5:00 p.m., Central Time, Monday through Friday and all day on Saturday, Sunday, and legal holidays, and must acknowledge each of those calls not later than the next working day after the call is received; and

3. when providing a preauthorization determination under subsection (d) of this section, within three calendar days of receipt of the request, provide a written notification to the preferred provider.

(g) If an HMO or preferred provider benefit plan has preauthorized medical care or health care services, the HMO or preferred provider benefit plan may not deny or reduce payment to the physician or provider for those services based on medical necessity, appropriateness, or the experimental or investigational nature of care unless the physician or provider has materially misrepresented the proposed medical or health care services or has substantially failed to perform the preauthorized medical or health care services.

(h) If an HMO or preferred provider benefit plan issues an adverse determination in response to a request made under subsection (d) of this section, a notice consistent with the provisions of §19.1709 of this title (relating to Notice of Determinations Made in Utilization Review) and §19.1710 of this title (relating to Requirements Prior to Issuing Adverse Determination) must be provided to the enrollee or an individual acting on behalf of the enrollee, and the enrollee's provider of record. An enrollee, an individual acting on behalf of the enrollee, or the enrollee's provider of record may appeal any adverse determination under §19.1711 of this title (relating to Written Procedures for Appeal of Adverse Determination).

(i) This section applies to an agent or other person with whom an HMO or preferred provider benefit plan contracts to perform utilization review, or to whom the HMO or preferred provider benefit plan delegates the performance of preauthorization of proposed medical or health care services. Delegation of preauthorization services does not limit in any way the HMO or preferred provider benefit plan's responsibility to comply with all statutory and regulatory requirements.

(j) The provisions in this subsection apply to an HMO or a preferred provider benefit plan that uses a preauthorization process for medical or health care services.

1. An HMO or a preferred provider benefit plan must make the requirements and information about the preauthorization process readily accessible to enrollees, physicians, health care providers, and the general public by posting the requirements and information on the HMO's or the preferred provider benefit plan's public internet website.

2. The preauthorization requirements and information described by paragraph (1) of this section must:

1. be posted:

   i. conspicuously in a location on the public internet website that does not require the user to login or input personal information to view the information; except as provided by paragraph (3) or (4) of this subsection;

   ii. in a format that is easily searchable; and

   iii. in a format that uses design and accessibility standards defined in Section 508 of the U.S. Rehabilitation Act;

2. except for the screening criteria under subparagraph (D)(iii) of this paragraph, be written:

   i. using plain language standards, such as the Federal Plain Language Guidelines found on www.PlainLanguage.gov; and

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(ii) in language that aims to reach a 6th to 8th grade reading level, if the information is for enrollees and the public;
(C) include a detailed description of the preauthorization process and procedure; and
(D) include an accurate and current list of medical or health care services for which the HMO or the preferred provider benefit plan requires preauthorization that includes the following information specific to each service:

(i) the effective date of the preauthorization requirement;
(ii) a list or description of any supporting documentation that the HMO or the preferred provider benefit plan requires from the physician or health care provider ordering or requesting the service to approve a request for that service;
(iii) the applicable screening criteria, which may include Current Procedural Terminology codes and International Classification of Diseases codes; and
(iv) statistics regarding the HMO's or the preferred provider benefit plan's preauthorization approval and denial rates for the service in the preceding calendar year, including statistics in the following categories:

(I) physician or health care provider type and specialty, if any;
(II) indication offered;
(III) reasons for request denial;
(IV) denials overturned on internal appeal;
(V) denials overturned by an independent review organization; and
(VI) total annual preauthorization requests, approvals, and denials for the service.

(3) This subsection may not be construed to require an HMO or a preferred provider benefit plan to provide specific information that would violate any applicable copyright law or licensing agreement. To comply with a posting requirement described by paragraph (2) of this subsection, an HMO or a preferred provider benefit plan may, instead of making that information publicly available on the HMO's or the preferred provider benefit plan's public internet website, supply a summary of the withheld information sufficient to allow a licensed physician or other health care provider, as applicable for the specific service, who has sufficient training and experience related to the service to understand the basis for the HMO's or the preferred provider benefit plan's medical necessity or appropriateness determinations.

(4) If a requirement or information described by paragraph (1) of this subsection is licensed, proprietary, or copyrighted material that the HMO or the preferred provider benefit plan has received from a third party with which the HMO or the preferred provider benefit plan has contracted, to comply with a posting requirement described by paragraph (2) of this subsection, the HMO or the preferred provider benefit plan may, instead of making that information publicly available on the HMO's or the preferred provider benefit plan's public internet website, provide the material to a physician or health care provider who submits a preauthorization request using a nonpublic secured internet website link or other protected, nonpublic electronic means.

(5) The provisions in this paragraph apply when an HMO or a preferred provider benefit plan makes changes to preauthorization requirements.

(A) Except as provided by subparagraph (B) of this paragraph, not later than the 60th day before the date a new or amended preauthorization requirement takes effect, an HMO or a preferred provider benefit plan must provide notice of the new or amended preauthorization requirement and disclose the new or amended requirement in the HMO's or the preferred provider benefit plan's newsletter or network bulletin, if any, and on the HMO's or the preferred provider benefit plan's public internet website.

(B) For a change in a preauthorization requirement or process that removes a service from the list of medical and health care services requiring preauthorization or amends a preauthorization requirement in a way that is less burdensome to enrollees or participating physicians or health care providers, an HMO or a preferred provider benefit plan must provide notice of the change in the preauthorization requirement and disclose the change in the HMO's or the preferred provider benefit plan's newsletter or network bulletin, if any, and on the HMO's or the preferred provider benefit plan's public internet website not later than the fifth day before the date the change takes effect.

(C) Not later than the fifth day before the date a new or amended preauthorization requirement takes effect, an HMO or a preferred provider benefit plan must update its public internet website to disclose the change to the HMO's or the preferred provider benefit plan's preauthorization requirements or process and the date and time the change is effective.

(6) In addition to any other penalty or remedy provided by law, an HMO or a preferred provider benefit plan that uses a preauthorization process for medical or health care services that violates this section with respect to a required publication, notice, or response regarding its preauthorization requirements, including by failing to comply with any applicable deadline for the publication, notice, or response, must provide an expedited appeal under Insurance Code §4201.357 for any health care service affected by the violation. This paragraph does not apply to subsections (f), (g), and (l) of this section.

(7) The provisions of this subsection may not be waived, voided, or nullified by contract.

(k) The provisions of this subsection apply to dental care services under an employee benefit plan or health insurance policy that require prior authorization.

(1) In this subsection, the definitions in Texas Insurance Code §1451.201 for "dental care service," "employee benefit plan," and "health insurance policy" apply.

(2) In this subsection, "prior authorization" means a written and verifiable determination that one or more specific dental care services are covered under the patient's employee benefit plan or health insurance policy and are payable and reimbursable in a specific stated amount, subject to applicable coinsurance and deductible amounts. The term includes preauthorization and similar authorization. The term does not include predetermination as that term is defined by Insurance Code §1451.207(c).

(3) For services for which a prior authorization is required, on request of a patient or treating dentist, an employee benefit plan or health insurance policy provider or issuer must provide to the dentist a written prior authorization of benefits for a dental care service for the patient. The prior authorization must include a specific benefit payment or reimbursement amount. Except as provided by paragraph (4) of this subsection, the plan or policy provider or issuer may not pay or reimburse the dentist in an amount that is less than the amount stated in the prior authorization.

(4) An employee benefit plan or health insurance policy provider or issuer that preauthorizes a dental care service under para-
The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts new §35.202 without changes to the proposed text as published in the October 16, 2020, issue of the Texas Register (45 TexReg 7393). The rule will not be republished.

Background and Summary of the Factual Basis for the Adopted Rule

The rulemaking adoption implements statutory changes made by House Bill (HB) 3542 and Senate Bill (SB) 700 of the 86th Texas Legislature, 2019.

SB 700 amends Texas Water Code (TWC), Chapters 5 and 13 to authorize the TCEQ to issue emergency orders with or without a hearing to compel a retail public utility to provide water and/or sewer service to ensure safe drinking water or environmental protection. Additionally, TCEQ can issue an emergency order to compel a retail public utility to provide an emergency interconnection for not more than 90 days if necessary to ensure safe drinking water or environmental protection. The legislation also amends TWC, Chapter 5 to allow the commission by order or rule to delegate to the executive director of the TCEQ the authority to receive applications, issue emergency orders under TWC, §13.041(h), and authorize in writing a representative or representatives to act on the executive director's behalf. SB 700 took effect on September 1, 2019.

Corresponding rulemaking is published in this issue of the Texas Register concerning 30 Texas Administrative Code (TAC) Chapter 291, Utility Regulations.

Section Discussion

In addition to the adopted revisions associated with this rulemaking, the rulemaking adoption also includes various stylistic, non-substantive changes to update rule language to current Texas Register style and format requirements. Such changes include appropriate and consistent use of acronyms, section references, rule structure, and certain terminology. Where the proposal of additional subsections, paragraphs, subparagraphs, etc. are adopted, subsequent re-lettering or renumbering are modified accordingly. These changes are non-substantive and are not specifically discussed in this preamble.

§35.202, Emergency Order to Compel Utility to Provide Service or Interconnection

The commission adopts new §35.202 to allow the commission or executive director to issue emergency orders to compel a retail public utility to provide water and/or sewer service to ensure

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safe drinking water or environmental protection, or provide an emergency interconnection for not more than 90 days.

Final Regulatory Impact Determination

The rulemaking adoption is intended to implement statutory changes made by HB 3542 and SB 700 of the 86th Texas Legislature, 2019, to add a new section to reflect changes to TWC, Chapters 5 and 13. New §35.202 adds authority to allow the executive director to issue emergency orders to compel a retail public utility to provide water and/or sewer service to ensure safe drinking water or environmental protection, or provide an emergency interconnection for not more than 90 days.

The commission reviewed the rulemaking adoption in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to Texas Government Code, §2001.0225. Texas Government Code, §2001.0225 applies to a major environmental rule which is defined in Texas Government Code, §2001.0225(g)(3) as a rule with a specific intent "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."

First, the rulemaking adoption does not meet the statutory definition of a major environmental rule. The specific intent is to protect the environment or reduce risks to human health from environmental exposure. However, the adopted rule will not 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. It is not anticipated that the cost of complying with the adopted rule will be significant with respect to the economy as a whole or with respect to a sector of the economy; therefore, the adopted rule will not adversely affect in a material way the economy, a sector of the economy, competition, or jobs.

Second, the rulemaking adoption does not meet any of the four applicability requirements for a major environmental rule listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking adoption does not meet any of the four preceding applicability requirements because this rulemaking: 1) does not exceed any standard set by federal law; 2) does not exceed any express requirement of TWC, Chapter 5 or 13, which relates to orders issued by the commission, orders issued by the executive director, and emergency orders; 3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and 4) is not proposed solely under the general powers of the agency.

Since this rulemaking adoption does not meet the statutory definition of a major environmental rule" nor does it meet any of the four applicability requirements for a major environmental rule this rulemaking is not subject to Texas Government Code, §2001.0225.

Takings Impact Assessment

The commission prepared a takings impact assessment for the adopted rule pursuant to Texas Government Code, §2007.043. The specific purpose of the adopted rule is to ensure consistency between the rules and their applicable statutes as amended by recent legislation and grant the commission and executive director authority to compel a retail public utility with a certificate of public convenience and necessity to provide water and/or sewer service that complies with statutory and regulatory requirements of the commission and to compel a retail public utility to provide an emergency interconnection with a neighboring retail public utility for the provision of temporary water and/or sewer service for up to 90 days.

The adopted regulations will not affect a landowner’s rights in private real property because this rulemaking adoption will not burden, restrict, or limit the owner’s right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. The adopted rule does not constitute a taking because it will not burden private real property.

Consistency with the Coastal Management Program

The commission reviewed the adopted rules and found that they are neither identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(a)(6). Therefore, the adopted rules are not subject to the Texas Coastal Management Program (CMP).

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding the CMP.

Public Comments

The commission held a public hearing on November 10, 2020. The comment period closed on November 17, 2020. The commission received an oral comment from the Assistant Director of Public Works with the City of Belton. Although the City of Belton expressed concerns that the rulemaking lacks necessary details and considerations, it did not provide any suggested revisions to the proposed rule language.

Response to Comments

Comment

The City of Belton commented that the rule language does not require public notice, the ability to deny a commission ordered interconnection, correct billing issues, provide protection from poor water quality issues, address the inability to provide water or sewer service, specify any indicators for when an emergency order will be issued for an interconnection, address that the order issuance may cause capacity and overflow problems, and expressed concerns that the regulation lacks these necessary details and considerations. The City of Belton did not provide any suggested revisions to the proposed rule language.

Response

The adopted rules implement the exact language contained in HB 3542 and SB 700. TWC, §§5.501, 5.502, and 5.504 and 30 TAC Chapter 35, Subchapter C include notice and opportunity for hearing requirements for emergency orders. These notice and hearing requirements apply to emergency interconnection. Prior to the transfer of the Utility program to the Public Utility Com-
mission of Texas (PUC) on September 1, 2014, TCEQ had the authority in 30 TAC §291.14(a)(2) to compel a retail public utility to provide an emergency interconnection with a neighboring retail public utility for the provision of temporary water or sewer service, or both, for not more than 90 days. Currently the TCEQ has the authority after notice and hearing in 30 TAC §291.114(2) to order two or more public utilities or water supply or sewer service corporations to establish specified facilities for interconnecting service. The proposed rulemaking expands the TCEQ’s authority to issue emergency orders to include retail public utilities. In the context of an emergency order, a specific trigger is not feasible, because TCEQ must be able to respond to diverse and unpredictable conditions. In any case, TCEQ staff will work with both entities prior to issuing any emergency order to ensure that issuing such an order is the best course of action given the circumstances. Additionally, TCEQ and PUC have agreed to coordinate per the Memo of Understanding signed January 2020, to address situations that may require the issuance of an emergency order pursuant to TWC, §13.041. No changes were made to the rules in response to this comment.

Statutory Authority

The new rule is adopted under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §§5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state; and TWC, §13.041(b), concerning General Powers of Utility Commission and Commission; Rules; Hearings, which provides the commission with the authority to adopt any rules reasonably required in the exercise of its powers and jurisdiction.

The adopted new rule implements Senate Bill 700 passed by the 86th Texas Legislature, 2019.

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

Filed with the Office of the Secretary of State on February 26, 2021.

TRD-202100813
Charmain Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Effective date: March 18, 2021
Proposal publication date: October 16, 2020
For further information, please call: (512) 239-2678

CHAPTER 291. UTILITY REGULATIONS

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts amendments to §291.14 and §291.142.

The amendments to §291.14 and §291.142 are adopted without changes to the proposal as published in the October 16, 2020, issue of the Texas Register (45 TexReg 7396) and, therefore, will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

The rulemaking adoption implements statutory changes made by House Bill (HB) 3542 and Senate Bill (SB) 700 of the 86th Texas Legislature, 2019.

HB 3542 amends Texas Water Code (TWC), Chapter 13 and adds additional criteria that allow the TCEQ to appoint a person to temporarily manage a utility. Specifically, TWC, §13.4132(a)(3) authorizes the appointment of a temporary manager if a utility provides retail water or sewer utility service through fewer than 10,000 taps or connections and violates a final order of the commission by failing to provide system capacity that is greater than the required raw water or groundwater production rate or the anticipated daily demand of the system; provide a minimum pressure of 35 pounds per square inch (psi) throughout the distribution system under normal operating conditions; or maintain accurate or properly calibrated testing equipment or other means of monitoring the effectiveness of a chemical treatment or pathogen inactivation or removal process. HB 3542 took effect on September 1, 2019.

SB 700 amended TWC, Chapters 5 and 13 to authorize the TCEQ to issue emergency orders with or without a hearing to compel a retail public utility to provide water and/or sewer service to ensure safe drinking water or environmental protection. Additionally, TCEQ can issue an emergency order to compel a retail public utility to provide an emergency interconnection for not more than 90 days if necessary to ensure safe drinking water or environmental protection. The legislation also amends TWC, Chapter 5 to allow the commission by order or rule to delegate to the executive director of the TCEQ the authority to receive applications, issue emergency orders under TWC, §13.041(h), and authorize in writing a representative or representatives to act on the executive director’s behalf. SB 700 took effect on September 1, 2019.

Corresponding rulemaking is published in this issue of the Texas Register concerning 30 Texas Administrative Code (TAC) Chapter 35, Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions.

Section by Section Discussion

In addition to the adopted revisions associated with this rulemaking, the rulemaking adoption also includes various stylistic, non-substantive changes to update rule language to current Texas Register style and format requirements. Such changes included appropriate and consistent use of acronyms, section references, rule structure, and certain terminology. Where the proposal of additional subsections, paragraphs, subparagraphs, etc. are adopted, subsequent re-lettering or renumbering are modified accordingly. These changes are non-substantive and are not specifically discussed in this preamble.

§291.14, Emergency Orders

The commission adopts amended §291.14(a) by moving portions of the existing criteria into adopted subsection (a)(1) and to include two additional criteria as adopted subsection (a)(2) and (3) that will allow the commission or the executive director to issue emergency orders.

§291.142, Operation of Utility That Discontinues Operation or Is Referred for Appointment of a Receiver

The commission adopts to add §291.142(a)(3) to include additional criteria that will allow the commission or the executive director to appoint a person to temporarily manage a utility.

Final Regulatory Impact Determination
The rulemaking adoption is intended to implement statutory changes made by HB 3542 and SB 700 to amend sections to reflect changes to TWC, Chapters 5 and 13. The intent of the changes to §291.14 is to add criteria to allow the executive director to issue emergency orders to compel a retail public utility to provide water and/or sewer service to ensure safe drinking water or environmental protection, or provide an emergency interconnection for not more than 90 days. The intent on the changes to §291.142 is to add additional criteria that will allow the commission or executive director to appoint a person to temporarily manage a utility.

The commission reviewed the rulemaking adoption in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to Texas Government Code, §2001.0225. Texas Government Code, §2001.0225 applies to a major environmental rule which is defined in Texas Government Code, §2001.0225(g)(3) as a rule with a specific intent “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.”

First, the rulemaking adoption does not meet the statutory definition of a major environmental rule. The specific intent is to protect the environment or reduce risks to human health from environmental exposure. However, the adopted rules will not 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. It is not anticipated that the cost of complying with the adopted rules will be significant with respect to the economy as a whole or with respect to a sector of the economy; therefore, the adopted rules will not adversely affect in a material way the economy, a sector of the economy, competition, or jobs.

Second, the rulemaking adoption does not meet any of the four applicability requirements for a major environmental rule listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking adoption does not meet any of the four preceding applicability requirements because this rulemaking: 1) does not exceed any standard set by federal law; 2) does not exceed any express requirements of TWC, Chapter 5 or 13, which relate to orders issued by the commission, orders issued by the executive director, and emergency orders; 3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and 4) is not proposed solely under the general powers of the agency.

Since this rulemaking adoption does not meet the statutory definition of a major environmental rule nor does it meet any of the four applicability requirements for a major environmental rule, this rulemaking is not subject to Texas Government Code, §2001.0225.

The commission prepared a takings impact assessment for the adopted rules pursuant to Texas Government Code, §2007.043. The specific purpose of these adopted rules is to ensure consistency between the rules and their applicable statutes as amended by recent legislation; to grant the commission and executive director authority, with or without a hearing; to compel a retail public utility with a certificate of public convenience and necessity to provide water and/or sewer service that complies with statutory and regulatory requirements of the commission; to compel a retail public utility to provide an emergency interconnection with a neighboring retail public utility for the provision of temporary water and/or sewer service for up to 90 days; to establish what qualifies as adequate notice to a retail public utility if an emergency order is issued without a hearing; and to add criteria which will allow the commission or the executive director to appoint a person to temporarily manage a utility.

The adopted regulations will not affect a landowner’s rights in private real property because this rulemaking adoption will not burden, restrict, or limit the owner’s right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. The adopted rules do not constitute a taking because they will not burden private real property.

Consistency with the Coastal Management Program

The commission reviewed the adopted rules and found that they are neither identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(a)(6). Therefore, the adopted rules are not subject to the Texas Coastal Management Program (CMP).

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding the CMP.

Public Comments

The comment period closed on November 17, 2020. The commission received an oral comment from the Assistant Director of Public Works with the City of Belton. Although the City of Belton expressed concerns that the rulemaking lacks necessary details and considerations, it did not provide any suggested revisions to the proposed rule language.

Response to Comments

Comment

The City of Belton commented that the rule language does not require public notice, the ability to deny a commission ordered interconnection, correct billing issues, provide protection from poor water quality issues, address the inability to provide water or sewer service, specify any indicators for when an emergency order will be issued for an interconnection, address that the order issuance may cause capacity and overflow problems, and expressed concerns that the regulation lacks these necessary details and considerations. The City of Belton did not provide any suggested revisions to the proposed rule language.

Response

The adopted rules implement the exact language contained in HB 3542 and SB 700. TWC, §§5.501, 5.502, 5.504 and 30 TAC Chapter 35, Subchapter C include notice and opportunity for hearing requirements for emergency orders. These notice and
hearing requirements apply to emergency interconnection. Prior to the transfer of the Utility program to the Public Utility Commission of Texas (PUC) on September 1, 2014, TCEQ had the authority in 30 TAC §291.14(a)(2) to compel a retail public utility to provide an emergency interconnection with a neighboring retail public utility for the provision of temporary water or sewer service, or both, for not more than 90 days. Currently the TCEQ has the authority after notice and hearing in 30 TAC §291.114(2) to order two or more public utilities or water supply or sewer service corporations to establish specified facilities for interconnecting service. The proposed rulemaking expands the TCEQ’s authority to issue emergency orders to include retail public utilities. In the context of an emergency order, a specific trigger is not feasible, because TCEQ must be able to respond to diverse and unpredictable conditions. In any case, TCEQ staff will work with both entities prior to issuing any emergency order to ensure that issuing such an order is the best course of action given the circumstances. Additionally, TCEQ and PUC have agreed to coordinate per the Memo of Understanding signed January 2020, to address situations that may require the issuance of an emergency order pursuant to TWC, §13.041. No changes were made to the rules in response to this comment.

SUBCHAPTER A. GENERAL PROVISIONS

30 TAC §291.14

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state; and TWC, §13.041(b), concerning General Powers of Utility Commission and Commission; Rules; Hearings, which provides the commission with the authority to adopt any rules reasonably required in the exercise of its powers and jurisdiction.

The adopted amendment implements Senate Bill 700 passed by the 86th Texas Legislature, 2019.

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

Filed with the Office of the Secretary of State on February 26, 2021.

TRD-202100814
Charmaun Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Effective date: March 18, 2021
Proposal publication date: October 16, 2020
For further information, please call: (512) 239-2678

TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 53. FINANCE

SUBCHAPTER A. FEES

DIVISION 3. TRAINING AND CERTIFICATION FEES

31 TAC §53.50

The Texas Parks and Wildlife Commission in a duly noticed meeting on November 10, 2020, adopted an amendment to 31 TAC §53.50, concerning Training and Certification Fees, without changes to the proposed text as published in the September 25, 2020, issue of the Texas Register (45 TexReg 6708). The rule will not be republished.

The amendment establishes a fee of $10 for online marine safety enforcement officer instruction by a department-approved third-party provider and allows for the provider to charge and retain a service fee in addition to the $10 fee forwarded to the department. An adopted rulemaking published elsewhere in this issue implements an online option for marine safety enforcement officer instruction.

The amendment is a result of the department’s review of its regulations under the provisions of Government Code, §2001.039, which requires each state agency to review each of its regulations no less frequently than every four years and to re-adopt, adopt with changes, or repeal each rule as a result of the review.
The department received no comments concerning adoption of the rules as proposed.

The amendment is adopted under the authority of Parks and Wildlife Code, §31.121, which requires the commission to promulgate rules to establish and collect a fee to recover the administrative costs associated with the certification of marine safety enforcement officers.

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

Filed with the Office of the Secretary of State on February 23, 2021.

TRD-202100737
James Murphy
General Counsel
Texas Parks and Wildlife Department
Effective date: March 15, 2021
Proposal publication date: September 25, 2020
For further information, please call: (512) 389-4775

SUBCHAPTER G. BOAT SPEED LIMIT AND BUOY STANDARDS

31 TAC §55.302, §55.303

The Texas Parks and Wildlife Commission in a duly noticed meeting on November 10, 2020, adopted amendments to 31 TAC §55.303, concerning Boat Speed Limit and Buoy Standards, without changes to the proposed text as published in the November 25, 2020, issue of the Texas Register (45 TexReg 6709). The rules will not be republished. Section 55.302 is adopted with changes and will be republished.

The amendments modify language regarding certain areas of public water regulated by political subdivisions. Parks and Wildlife Code, §31.092, provides authority to various types of local governments to designate areas of public water within their jurisdictions as bathing, fishing, swimming, or otherwise restricted areas and to make rules and regulations relating to the operation and equipment of boats deemed necessary for the public safety. Current rules make specific reference to “Slow, No Wake” zones, which the department has learned has caused some local entities to interpret the regulatory authority at their disposal too narrowly. By removing references to “Slow, No Wake” designations, the department hopes to make clear that a governing board has greater latitude than the authority to establish “Slow, No Wake” zones.

The amendments are a result of the department’s review of its regulations under the provisions of Government Code, §2001.039, which requires each state agency to review each of its regulations no less frequently than every four years and to re-adopt, adopt with changes, or repeal each rule as a result of the review.

The department received no comments concerning adoption of the rules as proposed.

The amendments are adopted under the authority of Parks and Wildlife Code, §31.142, which authorizes the department to provide for a standard buoy-marking program for the inland water of the state; §31.002, which establishes the duty of the state to promote recreational water safety and the uniformity of laws relating to water safety; and §31.091, which reserves the basic authority to regulate boating to the state.

§55.302. Definitions.

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

(1) Department--Texas Parks and Wildlife Department.

(2) Governing board--The governing board of an incorporated city or town, a commissioners court of a county, or the governing board of a political subdivision of the state created pursuant to the Texas Constitution, Article XVI, §59, as identified in the Parks and Wildlife Code, §31.092(c).

(3) Headway speed--Slow, idle speed, or speed only fast enough to maintain steerage on course.

(4) Regulated area--Any area on public water designated and posted as a regulated area by a governing board as provided in Parks and Wildlife Code, §31.092.

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

Filed with the Office of the Secretary of State on February 23, 2021.

TRD-202100741
James Murphy
General Counsel
Texas Parks and Wildlife Department
Effective date: March 15, 2021
Proposal publication date: September 25, 2020
For further information, please call: (512) 389-4775

SUBCHAPTER H. PARTY BOATS

31 TAC §55.401, §55.402

The Texas Parks and Wildlife Commission in a duly noticed meeting on November 10, 2020, adopted amendments to 31 TAC §55.401 and §55.402, concerning Party Boats, without changes to the proposed text as published in the September 25, 2020, issue of the Texas Register (45 TexReg 6711). The rules will not be republished.

Under Parks and Wildlife Code, Chapter 31, Subchapter G, the department is required to license and regulate party boats, which are defined by statute as boats operated by the owner of the vessel or an employee of the owner and rented or leased by the owner for a group recreational event for more than six passengers. The department has encountered instances in which persons who own and operate party boats have erroneously interpreted the provisions in the rules that exempt livery vessels (a rented vessel for which operation and provisioning are the responsibility of the renter rather than the owner of the vessel) from the applicability of the rules to also exempt party boats from the statutory requirements of Parks and Wildlife Code, §31.040, which prescribes the licensing and titling requirements for livery vessels. To remedy the misunderstanding, the amendment removes the definition of “livery vessel” from §55.401, concerning Definitions, and amends §55.402, concerning Applicability and Exceptions, by adding a generic description in of the types of
The amendments are a result of the department's review of its regulations under the provisions of Government Code, §2001.039, which requires each state agency to review each of its regulations no less frequently than every four years and to re-adopt, adopt with changes, or repeal each rule as a result of the review. The department received no comments concerning adoption of the rules as proposed.

The amendments are adopted under the authority of Parks and Wildlife Code, §31.176, which requires the commission to promulgate rules regarding the requirements and procedures for the issuance and renewal of a party boat operator license to protect the public health and safety and §31.180, which requires the commission to adopt and enforce rules necessary to implement Parks and Wildlife Code, Chapter 31, Subchapter G.

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

Filed with the Office of the Secretary of State on February 23, 2021.

TRD-202100743
James Murphy
General Counsel
Texas Parks and Wildlife Department
Effective date: March 15, 2021
Proposal publication date: September 25, 2020
For further information, please call: (512) 389-4775

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SUBCHAPTER L. MARINE SAFETY ENFORCEMENT--TRAINING AND CERTIFICATION STANDARDS

The Texas Parks and Wildlife Commission, in a duly noticed meeting on November 10, 2020, adopted the repeal of 31 TAC §§55.805 and amendments to §§55.802 - 55.804 and 55.807, concerning Marine Safety Enforcement - Training and Certification Standards. The amendments and repeal were adopted without changes to the proposed text as published in the September 25, 2020, issue of the Texas Register (45 TexReg 6712), and will not be republished.

The amendments eliminate requirements for the training of instructors from outside agencies, provide for online instruction for certification as a marine safety enforcement officer (MSEO), and modernize terminology. The department has steadily increased the availability, where possible, of online options for learning applications (for instance, boater education and hunter education requirements can now be satisfied online). Law Enforcement Division staff have determined that the Marine Safety Enforcement Officer Course can be offered online to better serve the department's sister agencies as well as allow for more efficient resource allocation by the department. It is not uncommon for agency marine units to host MSEO course complements of only one or two officers, which consumes department resources and diverts personnel availability for other duties. Offering an online option will mitigate if not eliminate these situations. In another adopted rulemaking published elsewhere in this issue, the department establishes a fee of $10 for online marine safety enforcement officer instruction.

Additionally, demand for the department's MSEO instructor course is non-existent, primarily because outside law enforcement entities find it convenient to obtain MSEO training directly from department law enforcement personnel. Additionally, the Texas Commission on Law Enforcement (TCOLE) has implemented administrative processes that make recordkeeping and reporting functions problematic with respect to outside instructors. Therefore, the department proposes to cease offering the MSEO instructor training course, which necessitates the proposed repeal of §§55.805, concerning Marine Safety Enforcement Officer Instructor Course Standards.

The amendments also update references to the Texas Commission on Law Enforcement Officer Standards, which is the former name of TCOLE.

The repeal and amendments are a result of the department's review of its regulations under the provisions of Government Code, §2001.039, which requires each state agency to review each of its regulations no less frequently than every four years and to re-adopt, adopt with changes, or repeal each rule as a result of the review. The department received no comments concerning adoption of the rules as proposed.

31 TAC §§55.802 - 55.804, 55.807

The amendments are adopted under the authority of Parks and Wildlife Code, §31.121, which requires the commission by rule to establish standards for training and certifying marine safety enforcement officers and instructors.

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

Filed with the Office of the Secretary of State on February 23, 2021.

TRD-202100738
James Murphy
General Counsel
Texas Parks and Wildlife Department
Effective date: March 15, 2021
Proposal publication date: September 25, 2020
For further information, please call: (512) 389-4775

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31 TAC §55.805

The repeal is adopted under the authority of Parks and Wildlife Code, §31.121, which requires the commission by rule to establish standards for training and certifying marine safety enforcement officers and instructors.

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

Filed with the Office of the Secretary of State on February 23, 2021.

TRD-202100740
TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 1. MANAGEMENT

SUBCHAPTER F. ADVISORY COMMITTEES

43 TAC §1.85

The Texas Department of Transportation (department) adopts amendments to §1.85, concerning Department Advisory Committees. The amendments to §1.85 are adopted without changes to the proposed text as published in the December 25, 2020 issue of the Texas Register (45 TexReg 9400). The rule will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

The Texas Transportation Commission (commission) charged the TxDOT Bicycle Advisory Committee (BAC) with reviewing and making recommendations on "...expanding the charge of the committee to address a wider range of related transportation service options, including pedestrian options and personal mobility devices..." through Minute Order 115565 - August 29, 2019.

The BAC discussed both the complementary elements and unique differences between the bicycle, pedestrian, and personal mobility modes including their function, funding, use of infrastructure, and representation. After careful deliberation, the BAC determined that including representatives of and discussion on these additional modes during committee efforts would lead to a better understanding of issues and more balanced, inclusive recommendations for all modes.

The commission is amending §1.85, Department Advisory Committees, to expand the scope of the BAC to include pedestrian issues and the consideration of personal mobility devices, which are also referred to as micromobility devices, as they relate to bicycle and pedestrian issues. Currently, no TxDOT advisory committee is specifically charged with considering pedestrians or personal mobility devices. Additionally, revisions to the BAC’s duties are proposed to provide committee input on the current federal bicycle and pedestrian infrastructure funding program.

Amendments to §1.85(a)(3), Bicycle Advisory Committee, make various changes to the paragraph.

Subparagraph (A), Purpose, is amended to change the committee’s name to Bicycle and Pedestrian Advisory Committee, to add pedestrians’ issues as part of the committee’s purpose, and to change the name of the funding program to reflect the current federal bicycle and pedestrian infrastructure funding source.

Amendments to subparagraph (B), Duties, make various changes to organization and content of the current subparagraph. Clauses (i) and (iii) are interleaved. The content of former clause (iii), which is now clause (i), is amended to include pedestrians’ issues. Clause (ii) is amended to reflect the current federal bicycle and pedestrian infrastructure funding program.

Clause (iii) is former clause (i) with no change to its substance. Clause (iv) is new and adds the duty to review and consider how personal mobility devices relate to bicycling and pedestrian issues and to other road users.

A new subparagraph (C), Committee membership composition, is added to provide guidelines for the composition of the committee’s membership reflecting a diverse mix of bicycle and pedestrian stakeholders, including stakeholders representing the interest of persons with disabilities, and people knowledgeable about personal mobility device issues.

Current subparagraph (C), Manner of reporting, is redesignated as subparagraph (D) and amended to reflect the current federal bicycle and pedestrian infrastructure funding program.

COMMENTS

No comments on the proposed amendments were received.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §201.117, which provides the commission with the authority to establish advisory committees.

CROSS REFERENCE TO STATUTES IMPLEMENTED BY THIS RULEMAKING

Transportation Code, §201.117.

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

Filed with the Office of the Secretary of State on February 25, 2021.

TRD-202100809

Becky Blewett

Deputy General Counsel

Texas Department of Transportation

Effective date: March 17, 2021

Proposal publication date: December 25, 2020

For further information, please call: (512) 463-8630

CHAPTER 9. CONTRACT AND GRANT MANAGEMENT

SUBCHAPTER H. REMEDIES FOR NONCOMPLIANCE

The Texas Department of Transportation (department) adopts amendments to §9.130, Purpose, and §9.131, Definitions, the repeal of §§9.132 - 9.139, and new §§9.132 - 9.135, all concerning the remedies for failure to comply with applicable federal or state law, conditions, or contractual agreements related to grants. The amendments to §9.130 and §9.131, the repeal of §§9.132 - 9.139, and new §§9.132 - 9.135 are adopted without changes to the proposed text as published in the December 25, 2020, issue of the Texas Register (45 TexReg 9403). The rules will not be republished.
EXPLANATION OF ADOPTED AMENDMENTS, REPEAL, AND NEW SECTIONS

The department is required by federal and state law to monitor grantee compliance. For example, Title 2, Code of Federal Regulations, Part 200 states that non-federal entities that provide grants to carry out part of a federal program must monitor the activities of the grantee to ensure the grant is used for authorized purposes, in compliance with federal statutes and regulations and the terms and conditions grant. The non-federal entity must also consider taking enforcement action against noncompliant grantees as described in Title 2, Code of Federal Regulations, §200.339, Remedies for noncompliance.

Amendments to §9.130, Purpose, and §9.131, Definitions, replace language regarding grant sanctions with remedies for noncompliance to align with federal regulations and other department rules. Proposed rules repeal current §§9.132 - 9.139 regarding grant sanctions and replace them with new §§9.132 - 9.135 regarding department remedies for grantee noncompliance. The new proposed sections align with updated federal regulations on additional award conditions and remedies that may be imposed for noncompliance with grant requirements. The proposed rules apply to all grants issued by the department and are needed to ensure accountability for the expenditure of public funds.

New §9.132, Additional Award Conditions, outlines additional award conditions the department may impose to ensure compliance with applicable laws and standard grant conditions and requirements. Under §9.132, if the department imposes one or more additional award conditions, the department will provide the grantee notice of the condition, the reason for the additional condition, time allowed for completing the additional condition, if applicable, and the action, if any, the grantee may take to end the application of the additional condition.

New §9.133, Remedies for Noncompliance, lists the remedies for noncompliance the department may impose if the department determines the grantee failed to comply with federal or state law, a grant condition, or the grant agreement. The list of remedies for noncompliance align with the remedies available to the department under federal grant regulations.

New §9.134, Notice of Remedies, states that if the department takes an action under §9.133, the department will notify the grantee in writing of the action being taken, a summary of the facts and circumstances underlying the action being taken, and an explanation of how the action was selected.

New §9.135, Appeal of Decision on Remedies, outlines the process by which a grantee may appeal a determination under §9.133 to the executive director of the department. The executive director may delegate the powers and duties assigned under §9.135. A decision on the appeal is final.

The title of Subchapter H is changed to Remedies for Noncompliance to reflect the content of the subchapter, as changed by this rulemaking.

COMMENTS

No comments on the proposed amendments, repeal, and new sections were received.

43 TAC §§9.130 - 9.135

STATUTORY AUTHORITY

The amendments, repeal, and new sections are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

None.

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

Filed with the Office of the Secretary of State on February 25, 2021.

TRD-202100810
Becky Blewett
Deputy General Counsel
Texas Department of Transportation
Effective date: March 17, 2021
Proposal publication date: December 25, 2020
For further information, please call: (512) 463-8630

43 TAC §§9.132 - 9.139

STATUTORY AUTHORITY

The amendments, repeal, and new sections are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

None.

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

Filed with the Office of the Secretary of State on February 25, 2021.

TRD-202100811
Becky Blewett
Deputy General Counsel
Texas Department of Transportation
Effective date: March 17, 2021
Proposal publication date: December 25, 2020
For further information, please call: (512) 463-8630

ADOPTED RULES March 12, 2021 46 TexReg 1661
**Proposed Rule Reviews**

**Texas State Library and Archives Commission**

**Title 13, Part 1**

In accordance with Government Code, §2001.039, the Texas State Library and Archives Commission (commission) files this notice of intention to review and consider for readoption, readoption with amendments, or repeal Title 13 Texas Administrative Code, Part 1, Chapter 6, State Records.

The commission will accept comments regarding whether the reasons for adopting these rules continue to exist. Comments regarding this rule review may be submitted to Sarah Swanson, General Counsel, Texas State Library and Archives Commission, 1201 Brazos Street, P.O. Box 12927, Austin, Texas 78711-2927 or to rules@tsl.texas.gov with the subject line “Rule Review.” The deadline for receipt of comments is 30 days after publication of this notice in the Texas Register.

TRD-202100784
Sarah Swanson
General Counsel
Texas State Library and Archives Commission
Filed: February 24, 2021

**Texas Education Agency**

**Title 19, Part 2**

The Texas Education Agency (TEA) proposes the review of 19 TAC Chapter 70, Technology-Based Instruction, pursuant to the Texas Government Code, §2001.039. The rules being reviewed by TEA in 19 TAC Chapter 70 are organized under Subchapter AA, Commissioner’s Rules Concerning the Texas Virtual School Network (TxVSN).

As required by the Texas Government Code, §2001.039, TEA will accept comments as to whether the reasons for adopting 19 TAC Chapter 70, Subchapter AA, continue to exist.


TRD-202100888
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: March 3, 2021

**State Board for Educator Certification**

**Title 19, Part 7**

The State Board for Educator Certification (SBEC) proposes the review of Title 19, Texas Administrative Code (TAC), Chapter 231, Requirements for Public School Personnel Assignments, pursuant to the Texas Government Code (TGC), §2001.039.

As required by the TGC, §2001.039, the SBEC will accept comments as to whether the reasons for adopting 19 TAC Chapter 231 continue to exist.

The comment period on the review of 19 TAC Chapter 231 begins March 12, 2021, and ends April 12, 2021. A form for submitting public comments on the proposed rule review is available on the TEA website at https://tea.texas.gov/About_TEA/Laws_and_Rules/SBEC_Rules-(TAC)/State_Board_for_Educator_Certification_Rule_Review/. The SBEC will take registered oral and written comments on the review of 19 TAC Chapter 231 at the April 30, 2021 meeting in accordance with the SBEC board operating policies and procedures.

TRD-202100872
Cristina De La Fuente-Valadez
Director, Rulemaking
State Board for Educator Certification
Filed: March 3, 2021

The State Board for Educator Certification (SBEC) proposes the review of Title 19, Texas Administrative Code (TAC), Chapter 245, Certification of Educators from Other Countries, pursuant to the Texas Government Code (TGC), §2001.039.

As required by the TGC, §2001.039, the SBEC will accept comments as to whether the reasons for adopting 19 TAC Chapter 245 continue to exist.

The comment period on the review of 19 TAC Chapter 245 begins March 12, 2021, and ends April 12, 2021. A form for submitting public comments on the proposed rule review is available on the TEA website at https://tea.texas.gov/About_TEA/Laws_and_Rules/SBEC_Rules-(TAC)/State_Board_for_Educator_Certification_Rule_Review/. The SBEC will take registered oral and written comments on the review of 19 TAC Chapter 245 at the April 30, 2021 meeting in accordance with the SBEC board operating policies and procedures.

TRD-202100873
Adopted Rule Reviews
Office of the Attorney General

Title 1, Part 3
Chapter 55

The Office of the Attorney General (OAG) has completed its rule review of 1 TAC Chapter 55, concerning Child Support Enforcement, pursuant to Government Code §2001.039. The OAG published its Notice of Intent to Review these rules in the December 11, 2020, issue of the Texas Register (45 TexReg 8885).

The review assessed whether the reasons for adopting the rules continue to exist. No comments were received regarding this review.

As a result of the review, the OAG finds that the reasons for adopting the rules in Chapter 55 continue to exist and readopts this chapter without changes in accordance with the requirements of Government Code §2001.039. Rules considered during this review may be subsequently revised in accordance with the Texas Administrative Procedure Act.

Chapter 66

The Office of the Attorney General (OAG) has completed its rule review of Texas Administrative Code, 1 TAC Chapter 66, concerning Family Trust Fund Disbursement Procedures, pursuant to Government Code §2001.039. The OAG published its Notice of Intent to Review these rules in the December 11, 2020, issue of the Texas Register (45 TexReg 8885).

The review assessed whether the reasons for adopting the rules continue to exist. No comments were received regarding this review.

As a result of the review, the OAG finds that the reasons for adopting the rules in Chapter 66 continue to exist and readopts this chapter without changes in accordance with the requirements of Government Code §2001.039. Rules considered during this review may be subsequently revised in accordance with the Texas Administrative Procedure Act.

TRD-202100817
Austin Kinghorn
General Counsel
Office of the Attorney General
Filed: February 26, 2021

Texas Board of Professional Engineers and Land Surveyors

Title 22, Part 6

The Texas Board of Professional Engineers and Land Surveyors (board) has completed its review of Texas Administrative Code, Title 22, Part 6, Chapter 131, Organization and Administration. The review was conducted in accordance with Government Code §2001.039. Notice of the review was published in the September 4, 2020, issue of the Texas Register (45 TexReg 6249). No comments were received in response to the notice. The board finds that the reasons for initially adopting the rules reviewed continue to exist and readopts 22 TAC Chapter 131.

TRD-202100826

Lance Kinney, Ph.D., P.E.
Executive Director
Texas Board of Professional Engineers and Land Surveyors
Filed: March 1, 2021

The Texas Board of Professional Engineers and Land Surveyors (board) has completed its review of Texas Administrative Code, Title 22, Part 6, Chapter 133, Licensing. The review was conducted in accordance with Government Code §2001.039. Notice of the review was published in the September 4, 2020, issue of the Texas Register (45 TexReg 6249). No comments were received in response to the notice. The board finds that the reasons for initially adopting the rules reviewed continue to exist and readopts 22 TAC Chapter 133.

TRD-202100827
Lance Kinney, Ph.D., P.E.
Executive Director
Texas Board of Professional Engineers and Land Surveyors
Filed: March 1, 2021

The Texas Board of Professional Engineers and Land Surveyors (board) has completed its review of Texas Administrative Code, Title 22, Part 6, Chapter 135, Firm Registration. The review was conducted in accordance with Government Code §2001.039. Notice of the review was published in the September 4, 2020, issue of the Texas Register (45 TexReg 6249). No comments were received in response to the notice. The board finds that the reasons for initially adopting the rules reviewed continue to exist and readopts 22 TAC Chapter 135.

TRD-202100828
Lance Kinney, Ph.D., P.E.
Executive Director
Texas Board of Professional Engineers and Land Surveyors
Filed: March 1, 2021

The Texas Board of Professional Engineers and Land Surveyors (board) has completed its review of Texas Administrative Code, Title 22, Part 6, Chapter 137, Compliance and Professionalism. The review was conducted in accordance with Government Code §2001.039. Notice of the review was published in the September 4, 2020, issue of the Texas Register (45 TexReg 6250). No comments were received in response to the notice. The board finds that the reasons for initially adopting the rules reviewed continue to exist and readopts 22 TAC Chapter 137.

TRD-202100829
Lance Kinney, Ph.D., P.E.
Executive Director
Texas Board of Professional Engineers and Land Surveyors
Filed: March 1, 2021

The Texas Board of Professional Engineers and Land Surveyors (board) has completed its review of Texas Administrative Code, Title 22, Part 6, Chapter 139, Enforcement. The review was conducted in accordance with Government Code §2001.039. Notice of the review was published in the September 4, 2020, issue of the Texas Register (45 TexReg 6250). No comments were received in response to the notice. The board finds that the reasons for initially adopting the rules reviewed continue to exist and readopts 22 TAC Chapter 139.

TRD-202100830
Coastal Bend Workforce Development Board

Request for Proposals (RFP) for Direct Child Care Services Management

Using the Request for Proposals (RFP) method of procurement, the Coastal Bend Workforce Development Board, d.b.a. Workforce Solutions of the Coastal Bend (WFSCB) is soliciting responses from qualified proposers for the Direct Child Care Services Management for Fiscal Year 2021. The service delivery area for the Coastal Bend region consists of the following eleven counties: Aransas, Bee, Brooks, Duval, Jim Wells, Kenedy, Kleberg, Live Oak, Nueces, Refugio, and San Patricio.

The Direct Child Care Services Management provides child care services to eligible families in need of child care for their children. The provision of child care services will be delivered by the sub-recipient co-located at the WFSCB career centers. Management of services will include, at a minimum, management of funds, intake, eligibility and management of services for parents and self-arranged providers; and assessment and referral to other related services to families and children. This procurement may include provider management functions.

Interested parties may obtain a copy of the RFP by going to our website at: www.workforcesolutionscb.org or by contacting Robert Ramirez via e-mail at: robert.ramirez@workforcesolutionscb.org.

The RFP process consists of the submission of an application and a proposal. The deadline for receipt of applications is March 16, 2021, 4:00 p.m. (CST) and proposals are April 19, 2021, 4:00 p.m. (CST).

Workforce Solutions of the Coastal Bend is an Equal Opportunity Employer/Program. Auxiliary aid and services are available upon request to individuals with disabilities. Deaf, hard-of-hearing or speech impaired customers may contact Relay Texas: (800) 735-2989 (TDD) and (800) 735-2988 or 7-1-1 (voice). Historically Underutilized Businesses (HUBs) are encouraged to apply.

TRD-202100860
Amy Kiddy Villarreal
Chief Operating Officer
Coastal Bend Workforce Development Board
Filed: March 2, 2021

Texas Education Agency

Request for Applications Concerning the 2021-2022 Texas Education for Homeless Children and Youth Grant

Filing Authority. The availability of grant funds under Request for Applications (RFA) #701-21-114 is authorized by Public Law 107-110, Title X, Part C, Homeless Education; and the McKinney-Vento Homeless Act, Title VII, Subtitle B (42 U.S.C. 11431 et seq.).

Eligible Applicants. Texas Education Agency (TEA) is requesting applications under RFA #701-21-114 from eligible applicants, which include all local educational agencies (LEAs) and education service centers.

Description. 2021-2022 Texas Education for Homeless Children and Youth Grant applicants must establish rigorous goals and innovative activities to promote equitable access by removing barriers to enrollment and identification, increase levels of support services, and utilize academic, program, and outcome data to foster the overall success of students experiencing homelessness. Applicants must demonstrate how they will utilize data to develop early warning support systems to identify interventions, measure progress, and ensure that appropriate academic and overall supports are in place so that students experiencing homelessness achieve grade level standards, achieve on state mandated assessments, promote on grade-level, and graduate on time with their peers and persist to post-secondary. Applicants will accomplish these goals and activities in a variety of ways, based on the unique individual needs provided in the application. Applicants are expected to ensure that their campus and LEA staff are equipped to enroll, identify, and place students experiencing homelessness in the most rigorous and appropriate academic setting. Student academic and assessment progress should be addressed in collaboration with Title I, Part A, and other special programs (e.g., special education, English learners, gifted and talented, career and technical education, etc.) to assist in the review, evaluation, and implementation of a data-driven plan to accomplish targeted performance measures during the grant period. Applicants are required to describe how their project collaborates with community partners, social service providers, and federal and academic programs within their LEA to identify students and remove barriers.

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005 and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 03/08/21 - 03/14/21 is 18% for Consumer/Agricultural/Commercial credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 03/08/21 - 03/14/21 is 18% for Commercial over $250,000.
Dates of Project. The 2021-2022 Texas Education for Homeless Children and Youth Grant will be implemented during the 2021-2022 school year. Applicants should plan for a starting date of no earlier than September 1, 2021, and an ending date of no later than August 31, 2022.

Project Amount. Approximately $7.7 million is available for funding the 2021-2022 Texas Education for Homeless Children and Youth Grant. It is anticipated that approximately 80 grants will be awarded up to $375,000. This project is funded 100% with federal funds.

Selection Criteria. Applications will be selected based on the ability of each applicant to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed grant programs and the extent to which the applications address the primary objectives and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding. TEA reserves the right to select from the highest-ranking applications those that address all requirements in the RFA.

TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Applicants’ Conference. A webinar will be held on April 7, 2021, from 10:00 a.m. to 12:00 p.m. Questions relevant to the RFA may be emailed to HomelessEducation@tea.texas.gov prior to 5:00 p.m. CST on March 26, 2021. These questions, along with other information, will be addressed during the webinar. The applicants’ webinar will be open to all potential applicants and will provide general and clarifying information about the grant program and the RFA.

Requesting the Application. The complete RFA will be posted on the TEA Grant Opportunities web page at https://tea4avalonzo.tea.state.tx.us/GrantOpportunities/forms/GrantProgram-Search.aspx for viewing and downloading. In the “Search Options” box, select the name of the RFA from the drop-down list. Scroll down to the “Application and Support Information” section to view and download all documents that pertain to this RFA.

Further Information. In order to make sure that no prospective applicant obtains a competitive advantage because of acquisition unknown to other prospective applicants, any and all questions must be submitted in writing to HomelessEducation@tea.texas.gov, the TEA email address identified in the Program Guidelines of the RFA, no later than April 14, 2021. All questions and the written answers thereto will be posted on the TEA Grant Opportunities web page in the format of Frequently Asked Questions (FAQs) by April 27, 2021. In the “Search Options” box, select the name of the RFA from the drop-down list. Scroll down to the “Application and Support Information” section to view all documents that pertain to this RFA.

Deadline for Receipt of Applications. Applications must be submitted to the following email address: competitivegrants@tea.texas.gov. Applications must be received no later than 11:59 p.m. (Central Time), May 11, 2021, to be considered eligible for funding.

Issued in Austin, Texas, on March 3, 2021.

TRD-202100863
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: March 3, 2021

46 TexReg 1668 March 12, 2021 Texas Register

Request for Applications Concerning the 2021-2023 Charter School Program Grant (Subchapter C and D)

Filing Authority. The availability of grant funds under Request for Applications (RFA) #701-21-116 is authorized by Public Law 114-95, Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act of 2015 (ESSA), Title IV, Part C, Expanding Opportunity Through Quality Charter Schools; Texas Education Code (TEC), Chapter 12; and 19 Texas Administrative Code (TAC) Chapter 100, Subchapter AA.

Eligible Applicants. Texas Education Agency (TEA) is requesting applications under RFA #701-21-116 from eligible applicants, which include open-enrollment charter schools that meet the federal definition of a charter school, have never received funds under this grant program, and are one of the following: (1) an open-enrollment charter school campus designated by the commissioner of education for the 2021-2022 or 2022-2023 school year as a high-quality campus pursuant to 19 TAC §100.1033(b) and (13); or (2) a campus charter school authorized by the local board of trustees pursuant to TEC, Chapter 12, Subchapter C, on or before March 31, 2021, as a new charter school or as a charter school that is designed to replicate a new charter school campus based on the educational model of an existing high-quality charter school and that submits all required documentation as stated in RFA #701-21-116.

Open-enrollment charter schools submitting an expansion amendment request and corresponding application for high-quality campus designation for the 2021-2022 or 2022-2023 school year by March 26, 2021, are considered eligible to apply for the grant. However, the commissioner must approve the expansion amendment request and designate the campus as a high-quality campus prior to the charter receiving grant funding, if awarded.

A campus charter school must apply through its public school district, and the application must be signed by the district’s superintendent or the appropriate designee.

An open-enrollment charter school that submits multiple applications for high-quality campus designation for the 2021-2022 or 2022-2023 school year by March 26, 2021, may apply for the grant on behalf of more than one charter school campus that is replicating a high-quality charter school model. A separate application must be submitted for each replicating charter school campus.

A school district whose local board of trustees authorizes more than one campus charter pursuant to TEC, Chapter 12, Subchapter C, on or before March 31, 2021, may apply for the grant on behalf of more than one charter school campus. A separate application must be submitted for each charter school campus.

Any charter school that does not open prior to Wednesday, September 7, 2022, after having been awarded grant funds may be required to forfeit any remaining grant funds and may be required to reimburse any expended amounts to TEA.

Description. The purpose of the Texas Quality Charter Schools Program Grant is to support the growth of high-quality charter schools in Texas, especially those focused on improving academic outcomes for educationally disadvantaged students. This will be achieved through administering the 2021-2023 Charter School Program Grant (Subchapter C and D) to assist eligible applicants in opening and preparing for the operation of newly-authorized charter schools and replicated high-quality schools.

Dates of Project. The 2021-2023 Charter School Program Grant (Subchapter C and D) will be implemented during the 2021-2022 school year through the 2022-2023 school year. Applicants should plan for a
starting date of no earlier than June 1, 2021, and an ending date of no later than July 31, 2023.

Project Amount. Approximately $9.9 million is available for funding the 2021-2023 Charter School Program Grant (Subchapter C and D). It is anticipated that approximately 11-13 grants will be awarded up to $900,000. This project is funded 100% with federal funds.

Selection Criteria. Applications will be selected based on the ability of each applicant to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed grant programs and the extent to which the applications address the primary objectives and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding. TEA reserves the right to select from the highest-ranking applications those that address all requirements in the RFA.

TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Applicants’ Conference. A webinar will be held on Wednesday, March 24, 2021, from 10:00 a.m. to 12:00 p.m. Register for the webinar at https://us02web.zoom.us/webinar/register/WN_6FVP-WeIvTEKT5Viz258Q6Q. Questions relevant to the RFA may be emailed to Arnold Alanz at CharterSchools@tea.texas.gov prior to 5:00 p.m. CST on Friday, March 19, 2021. These questions, along with other information, will be addressed during the webinar. The applicants’ conference webinar will be open to all potential applicants and will provide general and clarifying information about the grant program and the RFA.

Requesting the Application. The complete RFA will be posted on the TEA Grant Opportunities web page at https://tea4avalonzo.tea.state.tx.us/GrantOpportunities/forms/GrantProgram-Search.aspx for viewing and downloading. In the “Search Options” box, select the name of the RFA from the drop-down list. Scroll down to the “Application and Support Information” section to view and download all documents that pertain to this RFA.

Further Information. In order to make sure that no prospective applicant obtains a competitive advantage because of acquisition of information unknown to other prospective applicants, any and all questions must be submitted in writing to CharterSchools@tea.texas.gov, the TEA email address identified in the Program Guidelines of the RFA, no later than April 7, 2021. All questions and the written answers thereto will be posted on the TEA Grant Opportunities web page in the format of Frequently Asked Questions (FAQs) by April 13, 2021. In the “Search Options” box, select the name of the RFA from the drop-down list. Scroll down to the “Application and Support Information” section to view all documents that pertain to this RFA.

Deadline for Receipt of Applications. Applications must be submitted to the following email address: competitivegrants@tea.texas.gov. Applications must be received no later than 11:59 p.m. (Central Time), April 20, 2021, to be considered eligible for funding.

Issued in Austin, Texas, on March 3, 2021.

TRD-202100864
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: March 3, 2021

Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code, (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the proposed orders and the opportunity to comment must be published in the Texas Register no later than the 30th day before the date on which the public comment period closes, which in this case is April 12, 2021. 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 commissions central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission’s central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on April 12, 2021. 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: Albmearle Corporation; DOCKET NUMBER: 2020-1016-AIR-E; IDENTIFIER: RN010218247; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: chemical processing plant; RULES VIOLATED: 30 TAC §116.115(c) and §122.143(4), New Source Review Permit Number 2101, Special Conditions Number 1, Federal Operating Permit Number O2310, General Terms and Conditions and Special Terms and Conditions Number 12, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $4,988; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $1,995; ENFORCEMENT COORDINATOR: Amanda Diaz, (512) 239-2601; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: Arimak Water Supply Corporation (Arimak); DOCKET NUMBER: 2020-1031-PWS-E; IDENTIFIER: RN101264380; LOCATION: Kerrville, Kerr County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.108(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level (MCL) of 5 picoCuries per liter (pCi/L) for combined radium-226 and radium-228, and failing to comply with the MCL of 15 pCi/L for gross alpha particle activity based on the running annual average; PENALTY: $1,950; ENFORCEMENT COORDINATOR: Monica Rodriguez, (361) 825-3425; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(3) COMPANY: ARO ENTERPRISES LLC dba Lucky Star Grocery; DOCKET NUMBER: 2020-1186-PST-E; IDENTIFIER:
(7) COMPANY: Carl Burris dba Super C West; DOCKET NUMBER: 2020-1198-PST-E; IDENTIFIER: RN101432318; LOCATION: Henderson, Rusk County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.10(b)(2), by failing to assure that all underground storage tank (UST) record-keeping requirements are met; and 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the UST system; PENALTY: $2,601; ENFORCEMENT COORDINATOR: Alain Elegebe, (512) 239-6924; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(8) COMPANY: City of Hico; DOCKET NUMBER: 2020-0379-MWD-E; IDENTIFIER: RN102184066; LOCATION: Hico, Hamilton County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010188001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: $4,875; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $3,900; ENFORCEMENT COORDINATOR: Stephanie Frederick, (512) 239-1001; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(9) COMPANY: City of Paint Rock; DOCKET NUMBER: 2020-0653-HW-E; IDENTIFIER: RN101451730; LOCATION: Paint Rock, Concho County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §325.2(b)(2) and 40 Code of Federal Regulations §370.45(a), by failing to submit an annual form and pay the appropriate filing fee no later than March 1st of each year; PENALTY: $437; ENFORCEMENT COORDINATOR: Berenice Munoz, (915) 834-4976; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(10) COMPANY: City of Wilmer; DOCKET NUMBER: 2020-0299-PWS-E; IDENTIFIER: RN101414332; LOCATION: Wilmer, Dallas County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §209.45(b)(1)(D)(iii) and Texas Health and Safety Code, §341.0315(c), by failing to provide two or more service pumps that have a total capacity of 0.6 gallons per minute per connection; 30 TAC §209.46(i), by failing to adopt an adequate plumbing ordinance, regulations, or service agreement with provisions for proper end use to ensure that neither cross-connections nor other unacceptable plumbing practices are permitted; 30 TAC §209.46(j), by failing to complete a Customer Service Inspection certificate prior to providing continuous water service to new construction or any existing service when the water purveyor has reason to believe cross-connections or other potential hazards exist; 30 TAC §209.46(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 §209.46(m)(1)(A), by failing to inspect the facility's ground storage tank and elevated storage tank annually; 30 TAC §209.46(m)(2), by failing to make available an accurate and up-to-date map of the distribution system so that valves and mains can be easily located during emergencies; 30 TAC §209.46(e), by failing to operate the system to maintain a minimum pressure of 35 pounds per square inch (psi) throughout the distribution system under normal operating conditions and a minimum pressure of 20 psi during emergencies such as firefighting; 30 TAC §209.46(u), by failing to plug an abandoned public water supply well with cement in accordance with 16 TAC Chapter 76 or submit test results proving that the well is in a non-deteriorated condition; and 30 TAC §209.46(z), by failing to create a nitrification action plan for all systems distributing chloraminated water; PENALTY: $7,428; ENFORCEMENT COORDINATOR: Ryan Byer, (512) 239-2571; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.
(11) COMPANY: Gulf South Pipeline Company, LLC f/k/a Gulf South Pipeline Company, LP; DOCKET NUMBER: 2020-1177-AIR-E; IDENTIFIER: RN108443706; LOCATION: Boling-ILAGO, Wharton County; TYPE OF FACILITY: natural gas compressor station; RULES VIOLATED: 30 TAC §122.143(4) and §122.146(2), Federal Operating Permit Number O3808/General Operating Permit Number 514, Site-wide Requirements Number (b)(3), and Texas Health and Safety Code, §382.085(b), by failing to submit a permit compliance certification within 30 days of any permit certification period; PENALTY: $5,250; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(12) COMPANY: JUICY FOOD MART INC dba Lake Kiowa Express; DOCKET NUMBER: 2020-1188-PST-E; IDENTIFIER: RN102028859; LOCATION: Lake Kiowa, Cooke County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tank (UST) for releases at a frequency of at least once every 30 days, and failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: $3,375; ENFORCEMENT COORDINATOR: Carlos Molina, (512) 239-2575; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(13) COMPANY: LCY Elastomers LP; DOCKET NUMBER: 2020-1091-AIR-E; IDENTIFIER: RN102325974; LOCATION: Baytown, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §§116.115(c), 117.8010, and 122.143(4), New Source Review Permit Number 20311, Special Conditions Number 12.E, Federal Operating Permit Number O1756, General Terms and Conditions and Special Terms and Special Conditions Number 10, and Texas Health and Safety Code, §382.085(b), by failing to submit a compliance stack test report that included the minimum contents; PENALTY: $462; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(14) COMPANY: LyondellBasell Advanced Polymers Incorporated; DOCKET NUMBER: 2020-0865-IWD-E; IDENTIFIER: RN101613370; LOCATION: La Porte, Harris County; TYPE OF FACILITY: plastic polymer production facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0003608000, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: $11,500; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(15) COMPANY: NAAZ Trading Incorporated dba Shell Coldspring; DOCKET NUMBER: 2020-0915-PST-E; IDENTIFIER: RN102028016; LOCATION: Coldspring, San Jacinto County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every 30 days; PENALTY: $9,030; ENFORCEMENT COORDINATOR: Tyler Richardson, (512) 239-4872; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(16) COMPANY: Navarro Midstream Services, LLC; DOCKET NUMBER: 2020-1124-AIR-E; IDENTIFIER: RN107132326; LOCATION: Botines, Webb County; TYPE OF FACILITY: natural gas processing plant; RULES VIOLATED: 30 TAC §122.143(4) and §122.146(2), Federal Operating Permit Number O3828/General Operating Permit Number 514, Site-wide Requirements Number (b)(3), and Texas Health and Safety Code, §382.085(b), by failing to certify compliance with the terms and conditions of the permit for at least each 12-month period following initial permit issuance and failing to submit a permit compliance certification within 30 days of any certification period; PENALTY: $4,125; ENFORCEMENT COORDINATOR: Rebecca Johnson, (361) 825-3424; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(17) COMPANY: NESZ Enterprises LLC dba Tiger Express; DOCKET NUMBER: 2020-1132-PST-E; IDENTIFIER: RN101829463; LOCATION: Longview, Gregg County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every 30 days; PENALTY: $3,375; ENFORCEMENT COORDINATOR: Carlos Molina, (512) 239-2577; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(18) COMPANY: Owens Corning Insulating Systems, LLC; DOCKET NUMBER: 2020-1168-IWD-E; IDENTIFIER: RN100223585; LOCATION: Fauxahachie, Ellis County; TYPE OF FACILITY: fiberglass insulation manufacturing facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0001178000, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: $17,500; ENFORCEMENT COORDINATOR: Katelyn Tubbs, (512) 239-2512; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(19) COMPANY: Sandra R. Barbey dba Shelby Water; DOCKET NUMBER: 2020-1199-PWS-E; IDENTIFIER: RN105878870; LOCATION: Center, Shelby County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.45(b)(1)(A)(ii) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to provide a well capacity of 1.5 gallons per minute per connection; 30 TAC §290.45(b)(1)(A)(ii) and THSC, §341.0315(c), by failing to provide a pressure tank capacity of 50 gallons per connection; 30 TAC §290.46(5)(2) and (3)(A)(iv), by failing to maintain water works operation and maintenance records and make them readily available for review by the executive director upon request; 30 TAC §290.46(n)(2), by failing to make available an accurate and up-to-date map of the distribution system so that valves and mains can be easily located during emergencies; 30 TAC §290.46(s)(1), by failing to pay annual Public Health Service fees and/or any associated late fees for TCEQ Financial Administration Account Number 92100038 for Fiscal Years 2019 and 2020; and 30 TAC §290.121(a) and (b), by failing to maintain an 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; PENALTY: $600; ENFORCEMENT COORDINATOR: Ryan Byer, (512) 239-2571; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(20) COMPANY: Suva Sahit Investment LLC dba Mt. Pleasant Meat Co.; DOCKET NUMBER: 2020-1195-PST-E; IDENTIFIER: RN104192406; LOCATION: Mount Pleasant, Franklin County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank system; PENALTY: $2,562; ENFORCEMENT COORDINATOR: Stephanie Frederick,
APPLICATION AND PRELIMINARY DECISION. Victory Rock Texas, LLC, 215 Rocky Coast Drive, Austin, Texas 78738-1778, has applied to the Texas Commission on Environmental Quality (TCEQ) for issuance of Proposed Air Quality Permit Number 161554, which would authorize construction of a Rock Crushing Facility. The applicant has provided the following driving directions from Interstate Highway 35 frontage and Williams Road, drive 2.17 miles north to Solana Ranch Road, turn left for 0.3 miles, the plant entrance in on the right, Prairie Dell, Bell County, Texas 76571. This application was submitted to the TCEQ on June 3, 2020. The proposed facility will emit the following contaminants: carbon monoxide, nitrogen oxides, organic compounds, particulate matter including particulate matter with diameters of 10 microns or less and 2.5 microns or less and sulfur dioxide.

The executive director has completed the technical review of the application and prepared a draft permit which, if approved, would establish the conditions under which the facility must operate. The executive director has made a preliminary decision to issue the permit because it meets all rules and regulations. The permission application, executive director's preliminary decision, and draft permit will be available for viewing and copying at the TCEQ central office, the TCEQ Waco regional office, and the Salado Public Library at 1151 North Main Street, Salado, Bell County, Texas, beginning the first day of publication of this notice. The facility's compliance file, if any exists, is available for public review at the TCEQ Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas.

PUBLIC COMMENT/PUBLIC MEETING. You may submit public comments about this application. The TCEQ will hold a public meeting on this application because it was requested by a local legislator. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. A public meeting is not a contested case hearing. The TCEQ will consider all public comments in developing a final decision on the application. The public meeting 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. However, informal comments made during the Informal Discussion Period will not be considered by the TCEQ Commissioners 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 formal comments into the official record. A written response to all formal comments will be prepared by the Executive Director and considered by the Commissioners before they reach a decision on the permit. A copy of the response will be sent to each person who submits a formal comment or who requested to be on the mailing list for this application and who provides a mailing address.

The Public Meeting is to be held:
Monday, March 29, 2021 at 7:00 p.m.

Members of the public who would like to ask questions or provide comments during the meeting may access the meeting via webcast by following this link: https://www.gotomeeting.com/webinar/join-webinar and entering Webinar ID 734-760-043. It is recommended that you join the webinar and register for the public meeting at least 15 minutes before the meeting begins. You will be given the option to use your computer audio or to use your phone for participating in the webinar.

Those without internet access may call (512) 239-1201 at least one day prior to the meeting for assistance in accessing the meeting and participating telephonically. Members of the public who wish to only listen to the meeting may call, toll free, (415) 655-0052 and enter access code 111-855-625. Additional information will be available on the agency calendar of events at the following link:

Persons with disabilities who need special accommodations at the public meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least five business days prior to the meeting.

You may submit additional written public comments within 30 days of the date of newspaper publication of this notice in the manner set forth in the AGENCY CONTACTS AND INFORMATION paragraph below, or by the date of the public meeting, whichever is later. After the deadline for public comment, the executive director will consider the comments and prepare a response to all public comment. The response to comments, along with the executive director's decision on the application will be mailed to everyone who submitted public comments or is on a mailing list for this application.

RESPONSE TO COMMENTS AND EXECUTIVE DIRECTOR ACTION. After the deadline for public comments, the executive director will consider the comments and prepare a response to all relevant and material or significant public comments. Because no timely hearing requests have been received, after preparing the response to comments, the executive director may then issue final approval of the application. The response to comments, along with the executive director's decision on the application will be mailed to everyone who submitted public comments or is on a mailing list for this application, and will be posted electronically to the Commissioners' Integrated Database (CID).

INFORMATION AVAILABLE ONLINE. When they become available, the executive director's response to comments and the final decision on this application will be accessible through the Commission's Web site at www.tceq.texas.gov/goto/cid. Once you have access to the CID using the above link, enter the permit number for this application which is provided at the top of this notice. 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. http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=30.876666&lng=-97.613888&zoom=13&type=r.

MAILING LIST. You may ask to be placed on a mailing list to obtain additional information on this application by sending a request to the Office of the Chief Clerk at the address below.

AGENCY CONTACTS AND INFORMATION. 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 permit application or the permitting process, please call the Public Education

(512) 239-1001; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.
TRD-202100852
Charmaine Backens
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: March 2, 2021

Combining Notice of Public Meeting and Notice of Application and Preliminary Decision for an Air Quality Permit: Proposed Permit Number: 161554

46 TexReg 1672 March 12, 2021 Texas Register
Further information may also be obtained from VICTORY ROCK TEXAS, LLC at the address stated above or by calling Mr. Jay Lindholm, Project Manager at (512) 258-8500.

Notice Issuance Date: February 24, 2021

TRD-202100843

Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 1, 2021

Enforcement Orders

An agreed order was adopted regarding TCHMALL Sports, LLC, Docket No. 2018-0834-EAQ-E on March 2, 2021, assessing $2,813 in administrative penalties with $562 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Liberty Materials, Inc., Docket No. 2019-1584-WQ-E on March 2, 2021, assessing $2,813 in administrative penalties with $562 deferred. Information concerning any aspect of this order may be obtained by contacting Katelyn Tubbs, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Aqua Utilities, Inc., Docket No. 2019-1696-PWS-E on March 2, 2021, assessing $157 in administrative penalties with $31 deferred. Information concerning any aspect of this order may be obtained by contacting Ronica Rodriguez, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Tic Toc Food Store Inc., Docket No. 2020-0229-PST-E on March 2, 2021, assessing $3,580 in administrative penalties with $716 deferred. Information concerning any aspect of this order may be obtained by contacting Karolyn Kent, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding ERB Enterprises, Inc. dba Mr. Zip #5, Docket No. 2020-0293-PST-E on March 2, 2021, assessing $6,750 in administrative penalties with $1,350 deferred. Information concerning any aspect of this order may be obtained by contacting Ken Moller, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Harris County Fresh Water Supply District 45, Docket No. 2020-0404-PWS-E on March 2, 2021, assessing $200 in administrative penalties with $40 deferred. Information concerning any aspect of this order may be obtained by contacting Samantha Duncan, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding SNG, INC. dba Bell Express, Docket No. 2020-0539-PST-E on March 2, 2021, assessing $4,999 in administrative penalties with $999 deferred. Information concerning any aspect of this order may be obtained by contacting John Fennell, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Aqua Utilities, Inc., Docket No. 2020-0557-PWS-E on March 2, 2021, assessing $3,000 in administrative penalties with $600 deferred. Information concerning any aspect of this order may be obtained by contacting Miles Wehner, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding NANDAN CORPORATION dba Scotties Forney, Docket No. 2020-0706-PST-E on March 2, 2021, assessing $4,997 in administrative penalties with $999 deferred. Information concerning any aspect of this order may be obtained by contacting Ken Moller, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Buckholts, Docket No. 2020-0775-PWS-E on March 2, 2021, assessing $225 in administrative penalties with $44 deferred. Information concerning any aspect of this order may be obtained by contacting Toni Red, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Baker Petroleum LLC, Docket No. 2020-0908-AIR-E on March 2, 2021, assessing $3,538 in administrative penalties with $707 deferred. Information concerning any aspect of this order may be obtained by contacting Johnnie Wu, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Great Western Drilling Ltd., Docket No. 2020-0929-AIR-E on March 2, 2021, assessing $1,125 in administrative penalties with $225 deferred. Information concerning any aspect of this order may be obtained by contacting Johnnie Wu, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding EXPLORER PIPELINE COMPANY, Docket No. 2020-0959-IWD-E on March 2, 2021, assessing $4,776 in administrative penalties with $955 deferred. Information concerning any aspect of this order may be obtained by contacting Alyssa Loveday, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Arkema Inc., Docket No. 2020-0961-AIR-E on March 2, 2021, assessing $2,963 in administrative penalties with $592 deferred. Information concerning any aspect of this order may be obtained by contacting Amanda Diaz, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Shaukat Nazarali dba Amys Wheel In, Docket No. 2020-0995-PST-E on March 2, 2021, assessing $3,000 in administrative penalties with $600 deferred. Information concerning any aspect of this order may be obtained by contacting Terrany Binford, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Mertzon, Docket No. 2020-1032-PWS-E on March 2, 2021, assessing $635 in administrative penalties with $127 deferred. Information concerning any aspect of this
order may be obtained by contacting Amanda Conner, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding KELLY PROPANE & FUEL, LLC dba Reed Oil, Docket No. 2020-1104-PST-E on March 2, 2021, assessing $3,000 in administrative penalties with $600 deferred. Information concerning any aspect of this order may be obtained by contacting Courtney Atkins, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202100877
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 3, 2021

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 163864

APPLICATION. Platas Concrete Inc, 411 E Jones Street, Lewisville, Texas 75057-2613 has applied to the Texas Commission on Environmental Quality (TCEQ) for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls Registration Number 163864 to authorize the operation of a concrete batch plant. The facility is proposed to be located at the following location: from the Intersection of Farm-to-Market 428 and Wildcat Road go west on Farm-to-Market 428 for approximately 0.37 miles. The site entrance will be on the left. The facility will be located in Aubrey, Denton County, Texas 76227. 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. http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=33.304628&lng=-97.034778&zoom=13&type=r. This application was submitted to the TCEQ on January 20, 2021. 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 February 4, 2021.

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:
Wednesday, April 7, 2021, at 6:00 p.m.

Members of the public who would like to ask questions or provide comments during the meeting may access the meeting via webcast by following this link: https://www.gotomeeting.com/webinar/join-webinar and entering Webinar ID 924-788-035. It is recommended that you join the webinar and register for the public meeting at least 15 minutes before the meeting begins. You will be given the option to use your computer audio or to use your phone for participating in the webinar.

Those without internet access may call (512) 239-1201 at least one day prior to the meeting for assistance in accessing the meeting and participating telephonically. Members of the public who wish to only listen to the meeting may call, toll free, (213) 929-4212 and enter access code 745-015-898.

Additional information will be available on the agency calendar of events at the following link:

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 Dallas/Fort Worth Regional Office, located at 2309 Gravel Drive, Fort Worth, Texas 76118-6951, 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 Platas Concrete Inc, 411 East Jones Street, Lewisville, Texas 75057-2613, or by calling Mrs. Lacretia White, Project Manager at (972) 768-9093.

Notice Issuance Date: February 11, 2021
TRD-202100806
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: February 25, 2021

Notice of District Petition
Notice issued February 10, 2021
TCEQ Internal Control No. D-12222020-034; WESLEY WEST CATTLE L.P., a Texas limited partnership, and Wesley West Descendants Trust (Petitioners) filed a petition for creation of Galveston County Municipal Utility District No. 82 (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 no lienholders on the property to be included in the proposed District; (3) the proposed District will contain approximately 621.89 acres located within Galveston County, Texas; and (4) the land within the proposed District is wholly within the corporate limits of the City of League City. By Resolution No. 2020-161, passed and adopted on October 27, 2020, the City of League City, Texas, gave its consent to the creation of the proposed District, pursuant to Texas Water Code §54.016. The petition further states that the proposed District will: (1) purchase, construct, acquire, maintain and operate a waterworks and sanitary sewer system, park and recreational facilities, and road facilities for residential and commercial purposes; (2) construct, acquire, improve, extend, maintain and operate works, improvements, facilities, plants, equipment and appliances helpful or necessary to provide more adequate drainage for the District; (3) control, abate, and amend local storm waters or other harmful excesses of water; and (4) purchase, construct, acquire, improve, maintain and operate additional facilities, systems, plants and enterprises as shall be consonant with all of the purposes for which the proposed District is created.

According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioners that the cost of said project will be approximately $91,700,000 ($67,500,000 for water, wastewater, and drainage plus $13,700,000 for recreation plus $10,500,000 for roads).

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/agency/cc/pub_notice.html 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-202100867
Lauri Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 3, 2021

Notice of District Petition

TCEQ Internal Control No. D-12012020-002; OLEX, INC., a Delaware corporation, (Petitioner) filed a petition for creation of Denton County Municipal Utility District No. 16 (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 552.985 acres located within Denton County, Texas; and (4) the land within the proposed District is wholly within the extraterritorial jurisdiction of the City of Denton. By Ordinance No. 20-1496, passed and adopted on August 18, 2020, the City of Denton, Texas, gave its consent to the creation of the proposed District, pursuant to Texas Water Code §54.016. The petition further states that the proposed District will: (1) purchase, construct, acquire, improve or extend inside or outside of its boundaries any and all works, improvements, facilities, plants, equipment, and appliances necessary or helpful to supply and distribute water for municipal, domestic, and commercial purposes; (2) collect, transport, process, dispose of and control domestic, and commercial wastes; (3) gather, conduct, divert, abate, amend and control local storm water or other local harmful excesses of water in the District; (4) design, acquire, construct, finance, improve, operate, and maintain macadamized, gravelized, or paved roads and turnpikes, or improvements in aid of those roads; and (5) purchase, construct, acquire, improve, or extend inside or outside of its boundaries such additional facilities, systems, plants, and enterprises as shall be consonant with the purposes for which the proposed District is created.

According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioners that the cost of said project will be approximately $62,642,505. The financial analysis in the application was based on an estimated $53,075,000 ($34,995,000 for water, wastewater, and drainage plus $18,080,000 for roads) at the time of submission.

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.

IN ADDITION March 12, 2021 46 TexReg 1675
cution 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 website at www.tceq.texas.gov.

TRD-2021000869
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 3, 2021

Notice of District Petition

TCEQ Internal Control No. D-11042020-005; Finch FP, Ltd. ("Petitioner") filed a petition for creation of Lakeview Municipal Utility District No. 1 of Ellis County (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner holds title to the majority of the assessed 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 362.037 acres located within Ellis County, Texas; (4) the proposed District is within the extraterritorial jurisdiction of the City of Waxahachie, Texas; and (5) although the City of Waxahachie (City) has not consented to creation of the District, the Petitioner has satisfied the requirements of Texas Water Code Section 54.016(b) and (c) and Texas Local Government Code Section 42.042, so that the authorization for inclusion of the land in the proposed District may be assumed pursuant to the cited statutes. The petition also states that the proposed District will: (1) construct, purchase, acquire, improve, or extend, inside or outside of its boundaries, any and all works, improvements, facilities, plants, equipment, and appliances necessary or helpful to supply and distribute water for municipal, domestic, and commercial uses; (2) collect, transport, process, dispose of and control domestic and commercial wastes; (3) gather, conduct, divert, abate, amend and control local storm water or other local harmful excess of water in the District; (4) design, acquire, construct, finance, improve, maintain and operate macadamized, gravelled or paved roads, and turnpikes, or improvements in aid of those roads; (5) and purchase, construct, acquire, improve, or extend, inside or outside of its boundaries, such additional facilities, systems, plants, and enterprises as shall be consonant with the purposes for which the District is created. It further states that the planned residential and commercial development of the area and the present and future inhabitants of the area will be benefited by the above-referenced work, which will promote the protection of the purity and sanitary condition of the State's waters and the public health and welfare of the community, thereby constituting a public necessity. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioner, that the cost of said project will be approximately $56,925,000. The financial analysis in the application was based on an estimated $56,840,000 ($34,185,000 for water, wastewater and drainage and $22,655,000 for roads) at the time of submittal. In accordance with Texas Local Government Code Section 42.042 and Texas Water Code Section 54.016, the Petitioner submitted a petition to the City, requesting the City's consent to the creation of the District. After more than 90 days passed without receiving consent, the petitioner submitted a petition to the City to provide water or sewer services to the District. The 120-day period for reaching a mutually agreeable contract as established by the Texas Water Code Section 54.016(c) expired and the information provided indicates that the Petitioners and the City have not executed a mutually agreeable contract for service. Pursuant to Texas Water Code Section 54.016(d), failure to execute such an agreement constitutes authorization for the Petitioner to initiate proceedings to include the land within the district.

INFORMATION SECTION

To view the complete issued notice, view the notice on our website at www.tceq.texas.gov/agency/ec/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 website, 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 District's 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 website at www.tceq.texas.gov.

Notice issued February 26, 2021

TRD-2021000870
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 3, 2021
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 April 12, 2021. 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 applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on April 12, 2021. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. 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: Alice Duncan; DOCKET NUMBER: 2019-0433-PST-E; TCEQ ID NUMBER: RN101850352; LOCATION: 551 Northwest 1st Street, Cooper, Delta County; TYPE OF FACILITY: underground storage tank (UST) system; RULE VIOLATED: 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; PENALTY: $3,375; STAFF ATTORNEY: Jess Robinson, Litigation, MC 175, (512) 239-0455; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(2) COMPANY: ANAPURNA BUSINESS LLC dba Huntington Travel Center; DOCKET NUMBER: 2018-1001-PST-E; TCEQ ID NUMBER: RN102008703; LOCATION: 191 North Highway 69 and Main Street, Huntington, Angelina County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide release detection for the pressurized piping associated with the UST system; and 30 TAC §334.10(b)(2), by failing to assure that all UST recordkeeping requirements are met; PENALTY: $4,120; STAFF ATTORNEY: Jess Robinson, Litigation, MC 175, (512) 239-0455; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(3) COMPANY: Kickin' A Inc.; DOCKET NUMBER: 2019-0597-WQ-E; TCEQ ID NUMBER: RN107114142; LOCATION: 6151 Friendship Road, Tolar, Hood County; TYPE OF FACILITY: aggregate production operation (APO); RULES VIOLATED: 30 TAC §342.25(d), by failing to renew the APO registration annually as regulated activities continued; and TWC, §26.121, 30 TAC §281.25(a)(4), 40 Code of Federal Regulations §122.26(c), and TCEQ AO Docket Number 2016-0909-WQ-E, Ordering Provisions Numbers 2.a.i. and ii., by failing to obtain authorization to discharge stormwater associated with industrial activities under Texas Pollutant Discharge Elimination System General Permit Number TXR050000; PENALTY: $17,000; STAFF ATTORNEY: Jess Robinson, Litigation, MC 175, (512) 239-0455; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: Texas Turbine, LLC; DOCKET NUMBER: 2018-1027-IHW-E; TCEQ ID NUMBER: RN110394731; LOCATIONS: 1470 Industrial Drive, Slaton, Lubbock County (the Plant) and 0.1 miles northwest of the intersection of County Road 6520 and Lubbock and Western Railway line, Lubbock County (the Site); TYPE OF FACILITIES: a foundry (the Plant) and unauthorized Industrial Solid Waste (ISW) (the Site); RULE VIOLATED: 30 TAC §335.2(b), by causing, suffering, allowing, or permitting the unauthorized disposal of ISW; PENALTY: $78,750; STAFF ATTORNEY: Jess Robinson, Litigation, MC 175, (512) 239-0455; REGIONAL OFFICE: Lubbock Regional Office, 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

TRD-202100853
Charmaine Backens
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: March 2, 2021

Notice of Public Meeting Air Quality Standard Permit for Concrete Batch Plants: Proposed Registration No. 162529

APPLICATION. Lampasas Trucking and Redi-Mix, LLC has applied to the Texas Commission on Environmental Quality (TCEQ) for an Air Quality Standard Permit, Registration No. 162529, which would authorize construction of a permanent concrete batch plant located at 2605 Morris Sheppard Drive, Brownwood, Brown County, Texas 76801. 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://tceq.maps.arcgis.com/apps/webappviewer/index.html?id=dbh5ac744a8bcb68bbdd360j8168250&f=8199068%2C31.674262&level=12. The proposed facility will emit the following air contaminants: particulate matter including (but not limited to) aggregate, cement, road dust, and particulate matter with diameters of 10 microns or less and 2.5 microns or less.

The executive director has completed the administrative and technical reviews of the application and determined that the application meets all of the requirements of a standard permit authorized by 30 TAC §116.611, which would establish the conditions under which the plant must operate. The executive director has made a preliminary decision to issue the registration because it meets all applicable rules.

PUBLIC COMMENT/PUBLIC MEETING. You may submit public comments to the Office of the Chief Clerk at the address below. The TCEQ will consider all public comments in developing a final decision on the application. A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will

IN ADDITION March 12, 2021 46 TexReg 1677
not be considered before a decision is reached on the permit application, and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. At the conclusion of the comment period, all formal comments will be considered before a decision is reached on the permit application. A written response to all formal comments will be prepared by the executive director and will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

The Public Meeting is to be held:

Thursday, March 25, 2021 at 7:00 p.m.

Members of the public who would like to ask questions or provide comments during the meeting may access the meeting via webcast by following this link: https://www.gotomeeting.com/webinar/join-webinar and entering Webinar ID 872-038-811. It is recommended that you join the webinar and register for the public meeting at least 15 minutes before the meeting begins. You will be given the option to use your computer audio or to use your phone for participating in the webinar.

Those without internet access may call (512) 239-1201 at least one day prior to the meeting for assistance in accessing the meeting and participating telephonically. Members of the public who wish to only listen to the meeting may call, toll free, (562) 247-8321 and enter access code 711-496-902. Additional information will be available on the agency calendar of events at the following link:


INFORMATION. Citizens are encouraged to submit written comments anytime during the public meeting or by mail before the close of the public comment period to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at https://www14.tceq.texas.gov/epic/eComment/. If you need more information about the permit application or the permitting process, please call the TCEQ Public Education Program, toll free, at (800) 687-4040. General information can be found at our Website at www.tceq.texas.gov. Si desea información en español, puede llamar al (800) 687-4040.

The application, executive director's preliminary decision, and standard permit will be available for viewing and copying at the TCEQ central office, the TCEQ Abilene regional office, and at the Brownwood Public Library, 600 Carnegie Street, Brownwood, Texas 76801, Brown County. The facility's compliance file, if any exists, is available for public review at the TCEQ Abilene Regional Office, 1977 Industrial Blvd, Abilene, Texas. Visit www.tceq.texas.gov/goto/cbp to review the standard permit. Further information may also be obtained from Lampasas Trucking and Redi-Mix, LLC, 1550 North US Highway 281, Lampasas, Texas 76550-1174 or by calling Ms. Monique Wells, Environmental Consultant, CIC Environmental, LLC at (512) 292-4314.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least five business days prior to the meeting.

Notice Issuance Date: February 24, 2021

TRD-202100805

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Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: February 25, 2021

Notice of Virtual Public Meeting on April 22, 2021 Concerning the Wigginsville Road Groundwater Plume

The purpose of the meeting is to obtain public input and information concerning proposal of the Wigginsville Road Groundwater Plume (site) in Montgomery County, Texas to the Texas Superfund Registry, the identification of potentially responsible parties, and the proposal of residential land use.

The Texas Commission on Environmental Quality (TCEQ or commission) is required under the Texas Solid Waste Disposal Act, Texas Health and Safety Code (THSC), Chapter 361, as amended, to annually publish the Texas Superfund Registry which identifies facilities that may constitute an imminent and substantial endangerment to public health and safety or the environment due to a release or threatened release of hazardous substances into the environment. The most recent registry listing of these facilities was published in the October 23, 2020, issue of the Texas Register (45 TexReg 7633).

In accordance with THSC, §361.184(a), the commission must publish a notice of intent to list a site on the Texas Superfund Registry in the Texas Register and in a newspaper of general circulation in the county in which the site is located. The commission hereby gives notice that the executive director has determined that the site is eligible for listing and the executive director proposes to list the site on the Texas Superfund Registry. By this publication, the commission also gives notice that it proposes a land use of residential as appropriate for the site.

This publication also specifies below the general nature of the potential endangerment to public health and safety or the environment as determined by information currently available to the executive director. This notice of intent to list this site was also published on March 12, 2021, in The Courier of Montgomery County newspaper.

The site proposed for listing is located near the 13400 block of Wigginsville Road in Montgomery County, Texas. The geographic coordinates of the site are Latitude 30 degrees 15 minutes 45.3276 seconds North and Longitude 95 degrees 20 minutes 9.1104 seconds West. The description of the site is based on information available at the time the site was evaluated with the Hazard Ranking System (HRS). The HRS is the principal screening guide used by the commission to evaluate potential, relative risk to public health and the environment from releases or threatened releases of hazardous substances. The site description may change as additional information is gathered on the sources and extent of contamination.

The site is a mercury-contaminated groundwater plume in the Chicot Aquifer from an unknown source. The groundwater migration pathway is the pathway of concern for this site. Groundwater from the Chicot Aquifer is used primarily for drinking water in the site area. The Evangeline Aquifer is another essential groundwater resource in the site area, and it is beneath the Chicot Aquifer. There are 53 identified domestic water wells and four public water supply wells located within a one-mile radius of the site which draw water from the Chicot and Evangeline Aquifers. Based on the water well data maintained by the Texas Department of Licensing and Regulation, the deepest well is screened approximately 670 feet below ground surface.

Mercury contamination was initially discovered during routine monitoring of the well at a church (the indicator well) in October 2013. Samples collected through July 2015 indicated that the mercury level
in the well was above the allowable amount for drinking water referred to as the maximum contaminant level or MCL. The church plugged and abandoned the indicator well and installed a new well which had no mercury detections. The site was referred to the TCEQ's Superfund Site Discovery and Assessment Program in May 2015. The program assessed the site and detected mercury in eight groundwater wells in the site area. One of these eight wells is a residential well located approximately 0.3 miles west-northwest of the indicator well which has exceeded the mercury MCL since sampling began in 2017. TCEQ installed a filtration system on the residential well in June 2017 and is maintaining the system and monitoring water quality. None of the samples from other wells with mercury detections exceeded MCLs.

All identified wells with mercury detections withdraw groundwater from the Chicot Aquifer. Mercury has not been detected in samples from the deeper Evangeline Aquifer.

A virtual public meeting will be held on April 22, 2021, at 6:00 p.m. via Microsoft Teams live. Public meeting information and other site information will be available on the TCEQ's site webpage, prior to the meeting [https://www.tceq.texas.gov/remediation/superfund/sites/by-name.html]. The purpose of this meeting is to obtain additional information regarding the site relative to its eligibility for listing on the state registry and identify any additional potentially responsible parties. The public meeting is not a contested case hearing under the Texas Administrative Procedure Act (Texas Government Code, Chapter 2001).

All persons desiring to make comments may do so prior to or at the public meeting. All comments submitted prior to the public meeting must be received by 5:00 p.m. on April 21, 2021, and should be sent in writing to Parker Leglue, Project Manager, TCEQ, Remediation Division, MC 136, P.O. Box 13087, Austin, Texas 78771-3087 or facsimile at (512) 239-2450 or via email to Superfund@tceq.texas.gov. The public comment period for this action will end at the close of the public meeting on April 22, 2021.

A portion of the record for this site, including documents pertinent to the executive director's determination of eligibility for listing on the Texas Superfund Registry, is available for review during regular business hours at the Montgomery County Public Library, 104 I-45N, Conroe, Texas. During normal hours of operation, complete copies of the TCEQ's public records regarding the site may be obtained at the TCEQ's Central File Room, located at 12100 Park 35 Circle, Building E, Room 103, in Austin, Texas, 78753. The Central File Room may be reached at (512) 239-2900. At the time of this publication and due to current operating conditions related to the COVID-19 pandemic, the Central File Room is temporarily closed; however, information requests can be submitted through e-mail at cfreq@tceq.texas.gov or through the Central File R00m On-Line (https://www.tceq.texas.gov/agency/data/records-services). Additional files may be obtained by contacting the TCEQ project manager for the site, Parker Leglue at (512) 239-2992. Also, for additional assistance obtaining site documents, contact John Flores, Community Relations Coordinator at (800) 633-9363, or (512) 239-5674 or email superfund@tceq.texas.gov.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the public meeting should contact the agency at (800) 633-9363 or (512) 239-5906. Requests should be made at least 14 days prior to the meeting. Information is also available regarding the state Superfund program at [https://www.tceq.texas.gov/remediation/superfund/index.html].

For further information about the site or the public meeting, please call John Flores, TCEQ Community Relations Coordinator, at (512) 239-6574 or (800) 633-9363.

TRD-202100866
Charmaigne Backens
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: March 3, 2021

Notice of Water Rights Application
Notice Issued February 24, 2021

APPLICATION NO. 02-4953A; Linda Widner Merritt, Robert P. Merritt, Marissa Danielle Merritt, and Robert Jose Merritt, 416 County Road 3218, De Kalb, Texas 75559-2310, Owners/Applicants, request to amend Certificate of Adjudication No. 02-4953 to authorize four new diversion reaches on the Red River, Red River Basin for agricultural purposes in Bowie County. More information on the application and how to participate in the permitting process is given below. The application and fees were received on August 11, 2014. Additional information and fees were received on January 27, 2015, February 4, 2015 and April 7, 2017. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on May 19, 2017.

The Executive Director completed the technical review of the application and prepared a draft amendment to the Certificate. The draft Certificate, if granted, would contain special conditions including, but not limited to, installing a measuring device. The application, technical memoranda, and Executive Director's draft amendment are available for viewing on the TCEQ web page at: www.tceq.texas.gov/permitting/water_rights/wr-permitting/wr-apps-pub-notice. 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 by March 15, 2021. 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 by March 15, 2021. The Executive Director can consider an approval of the application unless a written request for a contested case hearing is filed by March 15, 2021.

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 for 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/Comment/ by entering ADJ 4953 in the search field. For information concerning the

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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 website 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-202100807
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: February 25, 2021

Texas Ethics Commission

List of Late Filers

Below is a list from the Texas Ethics Commission naming the filers who failed to pay the penalty fine for failure to file the report, or filing a late report, in reference to the specified filing deadline. If you have any questions, you may contact Scarlett Scalzo at (512) 463-5800.

Deadline: Personal Financial Statement due February 12, 2020
James L. Murphy III, 265 E. Oakview Pl., Alamo Heights, Texas 78209

Deadline: 8-Day Pre-Election Report due October 26, 2020
Michael D. Antalan, 9550 Spring Green Blvd. #123, Katy, Texas 77494
Bretley W. Bolton, 1533 Fireside Way, Irving, Texas 75060
Harold V. Dutton Jr., 4001 Jewett St., Houston, Texas 77026
Teresa Hudson, P.O. Box 987, Friendswood, Texas 77549
Jacorion X. Randle, 60 Ruth Rd., Beaumont, Texas 77707
Jason D. Rowe, 1720 Bissonnet, Houston, Texas 77005
Lee W. Sharp, 7802 Redding Rd., Houston, Texas 77036

Deadline: Lobby Activities Report due November 10, 2020
Bhatti Strategies, LLC, Attn: Ben Bhatti, 5101 Edgewater Ct., Parker, Texas 75095
Lorena I. Campos, 1005 Congress Ave., Ste. 152, Austin, Texas 78701
Adam P. Haynes, 2800 Silverleaf Cir., Austin, Texas 78757
Hunter H. Hughes, 5600 W. Lovers Lane, Ste. 116 #111, Dallas, Texas 75209
Karen Steakley, Telsa, 11410 Century Oaks Ter., Ste. A03A, Austin, Texas 78758
TRD-202100819
Anne Peters
Executive Director
Texas Ethics Commission
Filed: February 26, 2021

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 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of February 8, 2021 to February 26, 2021. 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 §§506.25, 506.32, and 506.41, the public comment period extends 30 days from the date published on the Texas General Land Office website. The notice was published on the website on Friday, March 5, 2021. The public comment period for this project will close at 5:00 p.m. on Sunday, April 4, 2021.

FEDERAL AGENCY ACTIONS:

Applicant: Sabine Pilot Service, Inc.
Location: The project site is located in Sabine Pass, at 7904 South 1st Avenue, in Port Arthur, Jefferson County, Texas.
Latitude & Longitude (NAD 83): 29.720444, -93.865346

Project Description: The applicant proposes to permanently discharge fill material into 0.023 acre of Wetland 1 and 2 during the placement of 2,427 cubic yards of backfill associated with the construction of a 464-linear-foot driven sheet pile bulkhead within Sabine Pass. The applicant proposes to remove the existing dock and construct a new (31.5-foot-wide by 400-foot-long) timber dock and associated wood pileing. The applicant proposes to drive a total of 24 twelve-inch-diameter steel piles within Sabine Pass in front of the sheet pile bulkhead. The applicant proposes to mechanically dredge a 0.57-acre area to a depth of ~8 feet mean low tide to remove 910 cubic yards of material. The applicant proposes to place this dredged material within the constructed upland dredged material placement area. The applicant also proposes to retain the existing 265-linear-foot wooden pier within Sabine Pass.

Type of Application: U.S. Army Corps of Engineers permit application # SWG-2020-00773. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.

CMP Project No: 21-1186-F1

Applicant: ExxonMobil Pipeline Company

Location: The project site is located near Clear Creek, approximately 1.2 miles south-southeast of Webster, in Harris County, Texas.
Latitude & Longitude (NAD 83): 29.518553, -95.107403

Project Description: The applicant is proposing to discharge fill material into 0.73 acre of open waters of the United States and 0.018 acre of palustrine emergent wetlands on the project site to facilitate the construction of a 0.63-mile (3,322 ft.) two-lane road, traversing an existing bulk liquids storage facility.

Type of Application: U.S. Army Corps of Engineers permit application # SWG-2020-00140. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.

CMP Project No: 21-1203-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,

46 TexReg 1680  March 12, 2021  Texas Register
Texas Higher Education Coordinating Board

Notice of Public Hearing: State of Texas College Student Loan Bonds and State of Texas College Student Loan Refunding Bonds

NOTICE IS HEREBY GIVEN of a public hearing to be held by the Texas Higher Education Coordinating Board (the "Issuer") on March 23, 2021, at 10:00 a.m., at the offices of the Issuer, 1200 East Anderson Lane, Room 1.170/Board Room, Austin, Texas, 78752, with respect to the issuance by the Issuer of one or more series of State of Texas College Student Loan Bonds ("Loan Bonds") and State of Texas College Student Loan Refunding Bonds ("Refunding Bonds") (collectively, the "Bonds") in an aggregate amount of not more than (i) $180,000,000 in Loan Bonds, the proceeds of which will be used by the Issuer to originate student loans to student borrowers at eligible institutions of higher education in the State of Texas under Chapter 52, Texas Education Code (the "Loan Program") and (ii) $96,000,000 in Refunding Bonds, the proceeds of which will be used by the Issuer to refund certain student loan bonds that were previously issued by the Issuer for the Loan Program to achieve a debt service savings. Descriptions of the Loan Program, the Bonds and the particular bonds to be refunded have been and will be kept on file at the office of the Issuer at the address set forth above. The Bonds will be general obligations of the State of Texas.

All interested persons are invited to attend such public hearing to express their views with respect to the Loan Program and the proposed issuance of the Bonds. Questions or requests for additional information may be directed to Ken Martin, Assistant Commissioner - Financial Services/Chief Financial Officer, 1200 East Anderson Lane, Austin, Texas, 78752.

Persons who plan to attend are encouraged, in advance of the public hearing, to inform the Issuer either in writing or by telephone at (512) 427-6173. Any interested persons unable to attend the hearing may submit their views in writing to the Issuer prior to the date scheduled for the hearing.

This notice is published and the above described hearing is to be held in satisfaction of the requirements of section 147(f) of the Internal Revenue Code of 1986, as amended, regarding the public hearing prerequisite to the exclusion from gross income for federal income tax purposes of the interest on the Bonds.

TRD-202100849
Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
Filed: March 1, 2021

Texas Department of Housing and Community Affairs

Announcement of the Public Hearing Schedule for Comment on the 2021 Competitive Housing Tax Credit Applications

The Texas Department of Housing and Community Affairs (TDHCA) will hold three virtual public hearings in order to receive public comment for any of the 2021 Competitive Housing Tax Credit Applications. The public hearings, to be held via GoToWebinar, will take place as follows:

Virtual public hearing to accept public comment on applications received in Texas State Services Regions 1, 2, 3, and 4 is scheduled for Tuesday, May 18, 2021, beginning at 6 p.m., Austin local time.

Virtual public hearing to accept public comment on applications received in Texas State Services Regions 7, 8, 9, 12, and 13 is scheduled for Wednesday, May 19, 2021, beginning at 6 p.m., Austin local time.

Virtual public hearing to accept public comment on applications received in Texas State Services Regions 5, 6, 10, and 11 is scheduled for Thursday, May 20, 2021, beginning at 6 p.m., Austin local time.

A map indicating the 13 Texas State Service Regions used by TDHCA can be found at https://www.tdhca.state.tx.us/asset-management/docs/AssignmentMap.pdf. Please note, the Asset Management Assignments indicated are not relevant to the 2021 Housing Tax Credit Applications or these public hearings. Application Log(s) and the individually imaged applications will also be posted on the Department’s website at https://www.tdhca.state.tx.us/multifamily/housing-tax-credits-9pct/index.htm.

Individuals who require auxiliary aids, services or sign language interpreters for this public hearing should contact Alena Morgan at (512) 936-7834 or Relay Texas at (800) 735-2989, at least three (3) days before the meeting so that appropriate arrangements can be made.

Non-English speaking individuals who require interpreters at the public hearings should contact Elena Peinado by phone at (512) 475-3814 or by email at elena.peinado@tdhca.state.tx.us at least three (3) days before the meeting so that appropriate arrangements can be made.

Los individuos que requieran asistencia a servicios de adaptación en las audiencias públicas deben contactar a la señora Alena Morgan, al (512) 936-7834 o al servicio de retransmisión de Texas al (800) 735-2989 por lo menos tres (3) días antes de la reunión para que se puedan hacer las adaptaciones apropiadas.

Los individuos que no hablen ingles y que requieran de interpretes en una audiencia publica, deben contactar a Elena Peinado por teléfono al (512) 475-3814 o por correo electronico a elena.peinado@tdhca.state.tx.us por lo menos tres (3) días antes de la reunion para que se puedan hacer las adaptaciones apropiadas.

Public Comment

In addition to providing comments during the public hearing(s), written comments concerning any application may be submitted in hard copy or electronic formats to:

Texas Department of Housing and Community Affairs
Attn: HTC Public Comment
P.O. Box 13941
Austin, Texas 78711-3941

IN ADDITION  March 12, 2021  46 TexReg 1681
Email: HTCPC@tdhca.state.tx.us

Please be aware that all comments submitted to the TDHCA will be considered public information.

Comments received after 5:00 p.m. Austin local time on Friday, June 18, 2021, will not be accepted.

TRD-202100875
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Filed: March 3, 2021

Texas Lottery Commission

Scratch Ticket Game Number 2300 "WINNING STREAK"

1.0 Name and Style of Scratch Ticket Game.
A. The name of Scratch Ticket Game No. 2300 is "WINNING STREAK". The play style is "key number match".

1.1 Price of Scratch Ticket Game.
A. The price for Scratch Ticket Game No. 2300 shall be $5.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2300.
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, COIN SYMBOL, STACK OF CASH SYMBOL, MONEY BAG SYMBOL, $5.00, $10.00, $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:

46 TexReg 1682 March 12, 2021 Texas Register
<table>
<thead>
<tr>
<th>PLAY SYMBOL</th>
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</thead>
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<tr>
<td>01</td>
<td>ONE</td>
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<tr>
<td>02</td>
<td>TWO</td>
</tr>
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<tr>
<td>26</td>
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<td>FFTY</td>
</tr>
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<td>COIN SYMBOL</td>
<td>WIN$</td>
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<tr>
<td>STACK OF CASH SYMBOL</td>
<td>DBL</td>
</tr>
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<td>MONEY BAG SYMBOL</td>
<td>WINX5</td>
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</table>
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<table>
<thead>
<tr>
<th>Amount</th>
<th>Symbol</th>
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</thead>
<tbody>
<tr>
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<tr>
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<td>TEN$</td>
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<td>FVHN</td>
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<td>$1,000</td>
<td>ONTH</td>
</tr>
<tr>
<td>$100,000</td>
<td>100TH</td>
</tr>
</tbody>
</table>

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 (2300), 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: 2300-0000001-001.

H. **Pack** - A Pack of the "WINNING STREAK" 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 "WINNING STREAK" Scratch Ticket Game No. 2300.

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 "WINNING STREAK" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose forty-five (45) Play Symbols. If a player matches any of the YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the PRIZE for that number. If the player reveals a "COIN" Play Symbol, the player wins the PRIZE for that symbol instantly. If the player reveals a "STACK OF CASH" Play Symbol, the player wins DOUBLE the PRIZE for that symbol. If the player reveals a "MONEY BAG" Play Symbol, the player wins 5 TIMES the PRIZE for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 **Scratch Ticket Validation Requirements.**

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly forty-five (45) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Scratch Ticket shall be intact;
6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;
8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The Scratch Ticket must not be counterfeit in whole or in part;
10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;
11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

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**IN ADDITION**  March 12, 2021  46 TexReg 1685
12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;
13. The Scratch Ticket must be complete and not miscut, and have exactly forty-five (45) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;
14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;
15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the forty-five (45) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the forty-five (45) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.
B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.
C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.
2.2 Programmed Game Parameters.
A. Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.
B. A Ticket can win as indicated by the prize structure.
C. A Ticket can win up to twenty (20) times.
D. On winning and Non-Winning Tickets, the top cash prizes of $1,000 and $100,000 will each appear at least once, except on Tickets winning twenty (20) times, with respect to other parameters, play action or prize structure.
E. No matching non-winning YOUR NUMBERS Play Symbols will appear on a Ticket.
F. Tickets winning more than one (1) time will use as many WINNING NUMBERS Play Symbols as possible to create matches, unless restricted by other parameters, play action or prize structure.
G. No matching WINNING NUMBERS Play Symbols will appear on a Ticket.
H. All YOUR NUMBERS Play Symbols will never equal the corresponding Prize Symbol (i.e., $5 and 05, $10 and 10, $20 and 20 and $50 and 50).
I. 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.
J. On Non-Winning Tickets, a WINNING NUMBERS Play Symbol will never match a YOUR NUMBERS Play Symbol.
K. The "STACK OF CASH" (DBL) Play Symbol will never appear more than two (2) times on a Ticket.
L. The "STACK OF CASH" (DBL) Play Symbol will win DOUBLE the PRIZE for that Play Symbol and will win as per the prize structure.
M. The "STACK OF CASH" (DBL) Play Symbol will never appear on a Non-Winning Ticket.
N. The "STACK OF CASH" (DBL) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.
O. The "MONEY BAG" (WINX5) Play Symbol will never appear more than once on a Ticket.
P. The "MONEY BAG" (WINX5) Play Symbol will win 5 TIMES the PRIZE for that Play Symbol and will win as per the prize structure.
Q. The "MONEY BAG" (WINX5) Play Symbol will never appear on a Non-Winning Ticket.
R. The "MONEY BAG" (WINX5) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.
S. The "COIN" (WINS) Play Symbol will never appear more than once on a Ticket.
T. The "COIN" (WINS) Play Symbol will win the PRIZE for that Play Symbol.
U. The "COIN" (WINS) Play Symbol will never appear on a Non-Winning Ticket.
V. The "COIN" (WINS) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.
W. The "COIN" (WINS) Play Symbol will never appear on the same Ticket as the "STACK OF CASH" (DBL) or "MONEY BAG" (WINX5) Play Symbols.
2.3 Procedure for Claiming Prizes.
A. To claim a "WINNING STREAK" Scratch Ticket Game prize of $5.00, $10.00, $20.00, $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 $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 "WINNING STREAK" 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 "WINNING STREAK" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is $1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;
2. in default on a loan made under Chapter 52, Education Code;
3. in default on a loan guaranteed under Chapter 57, Education Code; or
4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
B. if there is any question regarding the identity of the claimant;
C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or
D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "WINNING STREAK" 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 "WINNING STREAK" 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. 2300. The approximate number and value of prizes in the game are as follows:
Figure 2: GAME NO. 2300 - 4.0

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<tr>
<th>Prize Amount</th>
<th>Approximate Number of Winners*</th>
<th>Approximate Odds are 1 in **</th>
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<td>$100,000</td>
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*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 4.09. 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. 2300 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. 2300, 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-202100839
Bob Biard
General Counsel
Texas Lottery Commission
Filed: March 1, 2021

Scratch Ticket Game Number 2319 "$500 FRENZY"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2319 is "$500 FRENZY". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2319 shall be $5.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2319.

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, STACK OF CASH SYMBOL, FRENZY SYMBOL, $5.00, $10.00, $15.00, $20.00, $25.00, $50.00, $100 and $500.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

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<table>
<thead>
<tr>
<th>PLAY SYMBOL</th>
<th>CAPTION</th>
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<tbody>
<tr>
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</table>

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 (2319), 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: 2319-0000001-001.

H. Pack - A Pack of the "$500 FRENZY" 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 "$500 FRENZY" Scratch Ticket Game No. 2319.

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 "$500 FRENZY" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose forty-five (45) Play Symbols. If a player matches any of the YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the PRIZE for that number. If the player reveals a "STACK OF CASH" Play Symbol, the player wins the PRIZE for that symbol instantly. If the player reveals a "FRENZY" Play Symbol, the player wins $500 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 forty-five (45) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Scratch Ticket shall be intact;
6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;
8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The Scratch Ticket must not be counterfeit in whole or in part;
10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;
11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;
13. The Scratch Ticket must be complete and not miscut, and have exactly forty-five (45) Play Symbols under the Latex Overprint on the
front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the forty-five (45) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the forty-five (45) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

B. A Ticket can win as indicated by the prize structure.

C. A Ticket can win up to twenty (20) times.

D. On winning and Non-Winning Tickets, the top cash prizes of $100 and $500 will each appear at least once, except on Tickets winning twenty (20) times and with respect to other parameters, play action or prize structure.

E. No matching non-winning YOUR NUMBERS Play Symbols will appear on a Ticket.

F. Tickets winning more than one (1) time will use as many WINNING NUMBERS Play Symbols as possible to create matches, unless restricted by other parameters, play action or prize structure.

G. No matching WINNING NUMBERS Play Symbols will appear on a Ticket.

H. All YOUR NUMBERS Play Symbols will never equal the corresponding Prize Symbol (i.e., $5 and 05, $10 and 10, $15 and 15, $20 and 20, $25 and 25 and $50 and 50).

I. On all Tickets, a Prize Symbol will not appear more than five (5) times, except as required by the prize structure to create multiple wins.

J. On Non-Winning Tickets, a WINNING NUMBERS Play Symbol will never match a YOUR NUMBERS Play Symbol.

K. The "STACK OF CASH" (WINS) Play Symbol will never appear more than once on a Ticket.

L. The "STACK OF CASH" (WINS) Play Symbol will win the PRIZE for that Play Symbol.

M. The "STACK OF CASH" (WINS) Play Symbol will never appear on a Non-Winning Ticket.

N. The "STACK OF CASH" (WINS) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

O. The "STACK OF CASH" (WINS) and "FRENZY" (WINS500) Play Symbols will never appear on the same Ticket.

P. The "FRENZY" (WINS500) Play Symbol will never appear more than once on a Ticket.

Q. The "FRENZY" (WINS500) Play Symbol will win $500 instantly and will only appear with the $500 Prize Symbol.

R. The "FRENZY" (WINS500) Play Symbol will never appear on a Non-Winning Ticket.

S. The "FRENZY" (WINS500) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

2.3 Procedure for Claiming Prizes.

A. To claim a "$500 FRENZY" Scratch Ticket Game prize of $5.00, $10.00, $15.00, $20.00, $25.00, $50.00, $100 or $500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $25.00, $50.00, $100 or $500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B of these Game Procedures.

B. As an alternative method of claiming a "$500 FRENZY" 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 shall 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 "$500 FRENZY" 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 "$500 FRENZY" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 9,000,000 Scratch Tickets in Scratch Ticket Game No. 2319. The approximate number and value of prizes in the game are as follows:
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. 2319 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. 2319, 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-202100840
Bob Biard
General Counsel
Texas Lottery Commission
Filed: March 1, 2021

Scratch Ticket Game Number 2346 "$500,000 EXTREME LUCK"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2346 is "$500,000 EXTREME LUCK". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2346 shall be $10.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2346.

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, 50, 51, 52, 53, 54, 55, 56, 58, 59, 60, 61, 62, 63, 64, 65, 66, 68, 69, 7 SYMBOL, 77 SYMBOL, $10.00, $15.00, $20.00, $25.00, $30.00, $100, $150, $200, $500, $1,000, $10,000, $50,000 and $500,000.

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:

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*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.90. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.
<table>
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<th>PLAY SYMBOL</th>
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<tr>
<td>29</td>
<td>TWNI</td>
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<tr>
<td>30</td>
<td>TRTY</td>
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<td>31</td>
<td>TRON</td>
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<td>32</td>
<td>TRTO</td>
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<td>TRFR</td>
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<td>35</td>
<td>TRFV</td>
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<td>36</td>
<td>TRSX</td>
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<td>38</td>
<td>TRET</td>
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<td>TRNI</td>
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<td>FFFV</td>
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<tr>
<td>56</td>
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<tr>
<td>58</td>
<td>FFET</td>
</tr>
<tr>
<td>59</td>
<td>FFNI</td>
</tr>
</tbody>
</table>
### 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.

<table>
<thead>
<tr>
<th>Serial Number</th>
<th>Bar Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>60</td>
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<tr>
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<tr>
<td>64</td>
<td>SXFR</td>
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<tr>
<td>65</td>
<td>SXFV</td>
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<td>66</td>
<td>SXSX</td>
</tr>
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<td>68</td>
<td>SXET</td>
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<td>69</td>
<td>SXNI</td>
</tr>
<tr>
<td>7 SYMBOL</td>
<td>WINX5</td>
</tr>
<tr>
<td>77 SYMBOL</td>
<td>WINALL</td>
</tr>
<tr>
<td>$10.00</td>
<td>TEN$</td>
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<tr>
<td>$50,000</td>
<td>50TH</td>
</tr>
<tr>
<td>$500,000</td>
<td>500TH</td>
</tr>
</tbody>
</table>

### 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 (2346), 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: 2346-0000001-001.

H. Pack - A Pack of the "$500,000 EXTREME LUCK" 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 "$500,000 EXTREME LUCK" Scratch Ticket Game No. 2346.

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 "$500,000 EXTREME LUCK" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose fifty-seven (57) Play Symbols. If a player matches any of the YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. If the player reveals a "77" Play Symbol, the player wins 5 TIMES the prize for that symbol. If the player reveals a "77" Play Symbol, the player WINS ALL 25 PRIZES 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-seven (57) 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-seven (57) 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-seven (57) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the fifty-seven (57) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.
A. A Ticket can win up to twenty-five (25) 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 seven (7) different WINNING NUMBERS Play Symbols.
E. Non-winning YOUR NUMBERS Play Symbols will all be different.
F. Non-winning Prize Symbols will never appear more than three (3) times.
G. The "7" (WINX5) and "77" (WINALL) Play Symbols will never appear in the WINNING NUMBERS Play Symbol spots.

H. The "7" (WINX5) and "77" (WINALL) Play Symbols will only appear on winning Tickets as dictated by the prize structure.

I. On Tickets that contain the "77" (WINALL) Play Symbol, none of the WINNING NUMBERS Play Symbols will match any of the YOUR NUMBERS Play Symbols and the "77" (WINX5) Play Symbol will not appear.

J. Non-winning Prize Symbols will never be the same as the winning Prize Symbol(s).

K. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 20 and $20).

2.3 Procedure for Claiming Prizes.

A. To claim a "$500,000 EXTREME LUCK" Scratch Ticket Game prize of $10.00, $15.00, $20.00, $25.00, $30.00, $75.00, $100, $200 or $500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $25.00, $30.00, $75.00, $100, $200 or $500 scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "$500,000 EXTREME LUCK" Scratch Ticket Game prize of $1,000, $10,000, $50,000 or $500,000, 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 "$500,000 EXTREME LUCK" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is $1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;
2. in default on a loan guaranteed under Chapter 52, Education Code;
3. in default on a loan guaranteed under Chapter 57, Education Code;
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 "$500,000 EXTREME LUCK" 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 "$500,000 EXTREME LUCK" 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 13,200,000 Scratch Tickets in Scratch Ticket Game No. 2346. The approximate number and value of prizes in the game are as follows:

**Figure 2: GAME NO. 2346 - 4.0**

<table>
<thead>
<tr>
<th>Prize Amount</th>
<th>Approximate Number of Winners*</th>
<th>Approximate Odds are 1 in **</th>
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<tbody>
<tr>
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<td>$500,000</td>
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<td>2,640,000.00</td>
</tr>
</tbody>
</table>

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.56. 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. 2346 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. 2346, 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-202100874
Bob Biard
General Counsel
Texas Lottery Commission
Filed: March 3, 2021

Texas Parks and Wildlife Department
Notice of a Public Comment Hearing on an Application for a Sand and Gravel Permit

46 TexReg 1700 March 12, 2021 Texas Register
The City of San Marcos Engineering Department has applied to the Texas Parks and Wildlife Department (TPWD) for an Individual Permit pursuant to Texas Parks and Wildlife Code, Chapter 86 to remove or disturb up to 1,710 cubic yards of sedimentary material within the San Marcos River in Hays County. The purpose of the disturbance is to repair instream structures at Rio Vista Falls. The location is approximately 0.5 miles downstream of Hopkins Road and 0.35 miles upstream of Interstate Highway 35. Notice is being published and mailed pursuant to Title 31 Texas Administrative Code §69.105(d).

TPWD will hold a public comment hearing regarding the application at 11:00 on April 9, 2021. Due to COVID-19 transmission concerns with travelling and person-to-person gatherings, remote participation is required for the public comment hearing. Potential attendees should contact Tom Heger at (512) 389-4583 or at tom.heger@tpwd.texas.gov for information on how to participate in the hearing remotely. The hearing is not a contested case hearing under the Texas Administrative Procedure Act. Oral and written public comment will be accepted during the hearing.

Written comments may be submitted directly to TPWD and must be received no later than 30 days after the date of publication of this notice in the Texas Register or a newspaper, whichever is later. A written request for a contested case hearing from an applicant or a person with a justiciable interest may also be submitted and must be received by TPWD prior to the close of the public comment period. Timely hearing requests shall be referred to the State Office of Administrative Hearings. Submit written comments, questions, requests to review the application, or requests for a contested case hearing to: Tom Heger, TPWD, by mail: 4200 Smith School Road, Austin, Texas 78744; fax (512) 389-4405; or e-mail tom.heger@tpwd.texas.gov.

TRD-202100831
James Murphy
General Counsel
Texas Parks and Wildlife Department
Filed: March 1, 2021

Public Utility Commission of Texas

Notice of Application for Designation as an Eligible Telecommunications Carrier

Notice is given to the public of an application filed with the Public Utility Commission of Texas on February 4, 2021, for designation as an eligible telecommunications carrier (ETC) in the State of Texas under 47 U.S.C. § 214(e) and 16 Texas Administrative Code §26.418.

Docket Title and Number: Application of Texoma Communications, LLC dba TekWav for Designation as an Eligible Telecommunications Carrier, Docket Number 51791.

The Application: TekWav seeks designation as an eligible telecommunications carrier (ETC) under 47 U.S.C. § 214(e) and 16 Texas Administrative Code §26.418.

TekWav seeks an ETC designation for the purpose of qualifying to receive federal support the deployment of broadband and related advanced services in unserved and underserved areas in the United States.

Persons wishing to file a motion to intervene or comments on the application should contact the commission no later than March 11, 2021, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 51791.

TRD-202100857
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Filed: March 2, 2021

Notice of Application for Designation as an Eligible Telecommunications Carrier

Notice is given to the public of an application filed with the Public Utility Commission of Texas on February 11, 2021, for designation as an eligible telecommunications carrier (ETC) in the State of Texas under 47 U.S.C. § 214(e) and 16 Texas Administrative Code §26.418.

Docket Title and Number: Application of Taylor Telephone Cooperative, Inc. dba Taylor Telecom for Designation as an Eligible Telecommunications Carrier, Docket Number 51807.

The Application: Taylor Telecom seeks designation as an eligible telecommunications carrier (ETC) under 47 U.S.C. §214(e) and 16 Texas Administrative Code §26.418.

Taylor Telecom seeks an ETC designation for the purpose of qualifying to receive federal support for the deployment of broadband and related advanced services in unserved and underserved areas in the United States.

Persons wishing to file a motion to intervene or comments on the application should contact the commission no later than March 22, 2021, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 51807.

TRD-202100861
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Filed: March 2, 2021

Notice of Application for Recovery of Universal Service Funding

Notice is given to the public of an application filed with the Public Utility Commission of Texas (Commission) on December 18, 2020, for recovery of universal service funding under Public Utility Regulatory Act (PURA) §56.025 and 16 Texas Administrative Code (TAC) §26.406.

Docket Style and Number: Application of Border to Border Communications, Inc. to Recover Funds from the Texas Universal Service Fund Under PURA §56.025 and 16 TAC §26.406 for Calendar Year 2020, Docket Number 51645.

The Application: Border to Border Communications, Inc. seeks recovery of funds from the Texas Universal Service Fund (TUSF) due to Federal Communications Commission actions resulting in a reduction in the Federal Universal Service Fund (FUSF) revenues available to Border to Border Communications for calendar year 2020. Border to Border Communications requests that the Commission allow recovery of funds from the TUSF in the amount of $1,201,823 for calendar year 2020 to replace the projected reduction in FUSF revenue.

Persons wishing to intervene or comment on the action sought should contact the Commission by mail at P.O. Box 13326, Austin, Texas

IN ADDITION  March 12, 2021  46 TexReg 1701
78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. A deadline for intervention in this proceeding will be established. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 51645.

TRD-202100883
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Filed: March 3, 2021

Notice of Application for True-Up of 2018 Federal Universal Service Fund Impacts to the Texas Universal Service Fund

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on March 1, 2021, for true-up of 2018 Federal Universal Service Fund (FUSF) Impacts to the Texas Universal Service Fund (TUSF).

Docket Style and Number: Application of Dell Telephone Cooperative, Inc. for True-Up of 2018 Federal Universal Service Fund Impacts to the Texas Universal Service Fund, Docket Number 51836.

The Application: Dell Telephone Cooperative, Inc. filed a true-up in accordance with findings of fact numbers 7, as described findings of fact nos. 6, 8, 9 and 10 of the final Order in Docket No. 47026. In that docket, the Commission determined that the Federal Communications Commission's actions were reasonably projected to reduce the amount that Dell Telephone received in Federal Universal Service Fund (FUSF) revenue by $562,162 for calendar year 2017. Dell subsequently recovered the entire $562,162 from the Texas Universal Service Fund (TUSF). Based on the data, calculations, supporting documentation and affidavits included with the application, Dell telephone asserts that it is due an additional $775,698 from the TUSF.

Persons wishing to intervene or comment on the action sought should contact the commission by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. A deadline for intervention in this proceeding will be established. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 51836.

TRD-202100851
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Filed: March 2, 2021

Texas Water Development Board

Applications Received for January and February 2021

Pursuant to Texas Water Code §6.195, the Texas Water Development Board provides notice of the following applications:

Project ID #62905, a request from the City of Arp, 109 West Longview, Arp, Texas 75750-0068, received on January 26, 2021, for $7,367,750 from the Drinking Water State Revolving Fund to replace AC pipe and old leaking pipe project.

Project ID #73857, a request from the Green Valley Special Utility District, 529 South Center Street, Marion, Texas 78124-0099, received on February 10, 2021, for $15,725,000 from the Texas Water Development Fund for the Santa Clara Creek wastewater gravity collection system project.

Project ID #73852, a request from the City of Ivanhoe, 870 Charmaine Drive East, Suite A, Woodville, Texas 75979, received on February 22, 2021, for $150,000, from the Clean Water State Revolving Fund for the Emergency Egress Enhancement Project sinkhole repair.

TRD-202100871
Ashley Harden
General Counsel
Texas Water Development Board
Filed: March 3, 2021

Request for Applications - Regional Water Planning

Pursuant to 31 Texas Administrative Code (TAC) 355, Subchapter C, the Texas Water Development Board (TWDB) requests submission of regional water planning grant applications leading to the possible award of contracts to develop a regional water plan as described in 31 TAC Chapter 357. In order to receive a grant, the applicant must be a political subdivision of the state and must have been authorized to apply for funding on behalf of a regional water planning group (RWPG) as set forth in 31 TAC §357.12(a)(4) and 31 TAC §355.90(b)(3).

Purpose and Objectives

Activities to be performed under this Request for Applications (RFA) will be based on a scope of work developed by TWDB that supports Regional Water Planning Group (RWPG) efforts to complete their 2026 Regional Water Plans in accordance with statute, rule, and contract guidance requirements.

Description of Funding Consideration

Total funding for activities related to the development or revision of a regional water plan must not exceed 100 percent of the total cost of the planning for that regional water planning area. Funds awarded for grants under this request for applications may total up to the amount of funds appropriated for such activities for the Fiscal Year 2021.

In the event that acceptable applications are not submitted or that insufficient funds are available to fund proposed activities, TWDB retains the right to not award and/or commit contract funds. Additional appropriated funds from future bienniums may be awarded to contracts resulting from this request for applications by Board authorization.

Review Criteria

Applications will be evaluated according to the criteria listed in 31 TAC §355.91(e):

1. Degree to which proposed water planning does not duplicate previous or ongoing flood or water planning;
2. Project organization and budget;
3. Scope of work;
4. Eligibility of tasks for funding;
5. The relative need of the Political Subdivision for the funding based upon an assessment of the necessary scope of work, amount of work, and cost to develop the regional water plan as compared to statewide needs for development of all regional water plans;
6. The degree to which the planning efforts to be performed by the RWPG will address the water supply needs in the regional water planning area; and
7. The legal authority of the Political Subdivision to participate in the development of a regional water plan.

Applicants should review and utilize the following documents found online at http://www.twdb.texas.gov/waterplanning/rwp/planning-docu/2026/rfa_docs.asp

1. Regional Water Planning Grant Application Instructions
2. Regional Water Planning Grant Application Checklist
3. Draft Initial Scope of Work for the Sixth Cycle of Regional Water Planning
4. Draft Contractor (RWPG Political Subdivision) Task Budget by Region
5. Draft Contractor (RWPG Political Subdivision) Expense Budget

Contact Person for Additional Information

Requests for information may be directed to Sarah Backhouse at RegionalWaterPlanning@twdb.texas.gov or by calling (512) 936-2387.

Deadline

One complete regional water planning grant application must be submitted electronically via email and in Portable Document Format (PDF) to TWDB no later than 12:00 p.m. (CST) on April 12, 2021. TWDB file limit is 100 MB.

Applications must be emailed to purchasing@twdb.texas.gov with a copy to Sarah Backhouse at RegionalWaterPlanning@twdb.texas.gov.

TRD-202100856
Ashley Harden
General Counsel
Texas Water Development Board
Filed: March 2, 2021

TRD-202100856
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General Counsel
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Filed: March 2, 2021

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Filed: March 2, 2021
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.


**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 43 (2018) is cited as follows: 43 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 “43 TexReg 2 issue date,” while on the opposite page, page 3, in the lower right-hand corner, would be written “issue date 43 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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