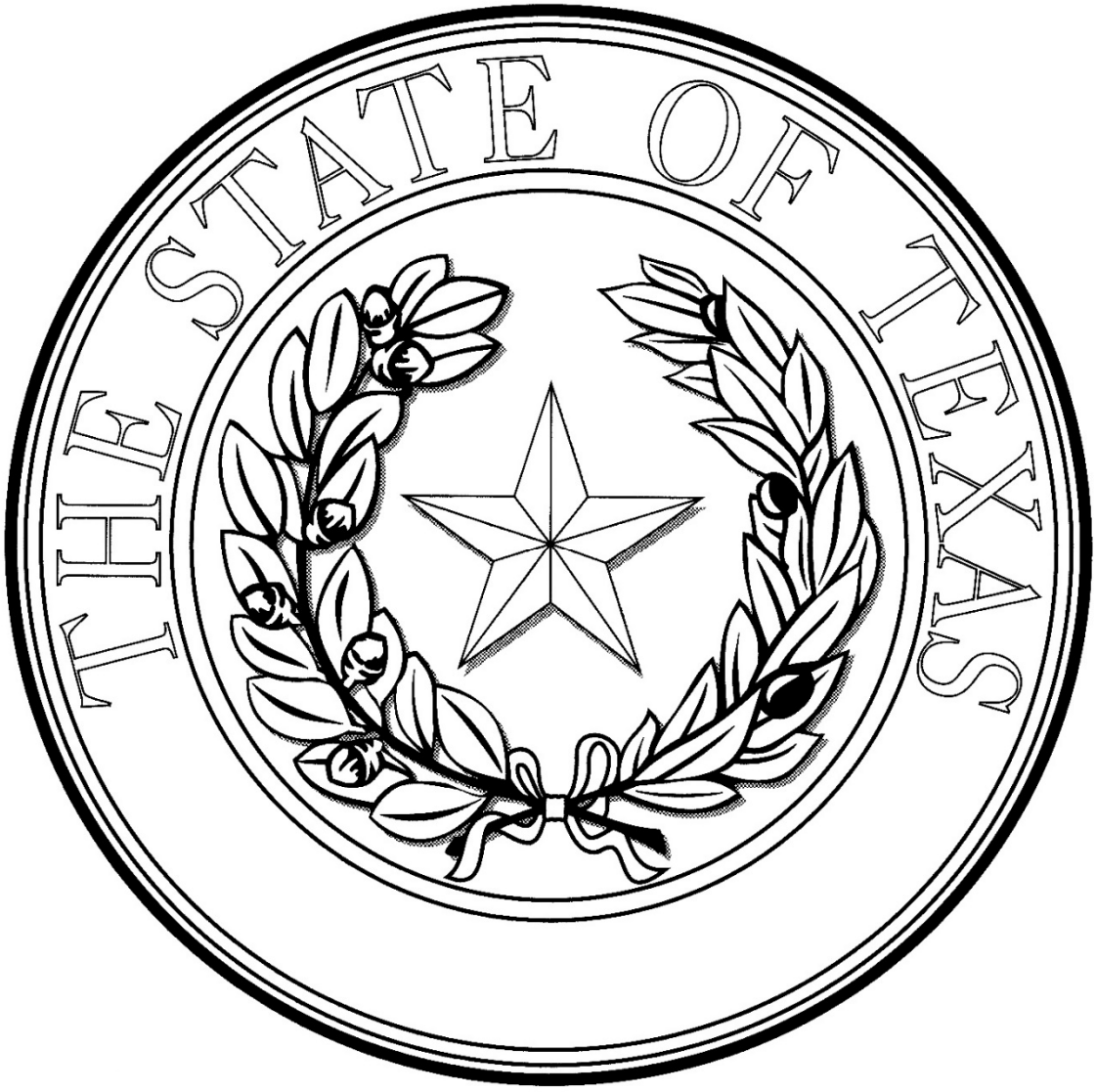
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Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons 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 7. BANKING AND SECURITIES

PART 6. CREDIT UNION DEPARTMENT

CHAPTER 91. CHARTERING, OPERATIONS, MERGERS, LIQUIDATIONS

SUBCHAPTER A. GENERAL RULES

7 TAC §91.101

The Credit Union Commission proposes amendments to §91.101, Definitions.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES. The proposed amendments would delete defined terms that are not used in Chapter 91, add definitions used in multiple sections of Chapter 91 instead of defining them within each rule in which they appear, and update certain provisions in accordance with recommendations from the Texas Regulatory Efficiency Office, which aims to reduce word count and improve efficiency of agency rules.

COST TO REGULATED PERSONS. This rule proposal is not subject to Texas Government Code §2001.0045 concerning increasing costs to regulated persons because this agency is a self-directed semi-independent (SDSI) agency under Finance Code Chapter 16 and is therefore exempt under §2001.0045(c)(8).

GOVERNMENT GROWTH IMPACT STATEMENT. In compliance with Texas Government Code §2001.0221, the Department has prepared a government growth impact statement.

For each year of the first five years that the rules as amended will be in effect, the 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 Department;

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

--create new regulations;

--expand, limit, or repeal existing regulations;

--increase or decrease the number of individuals subject to the rule's applicability;

--positively or adversely affect this state's economy.

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

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS. Robert Etheridge, Commissioner, has determined that for the first five-year period the proposed amendments are in effect, there are no reasonably foreseeable implications relating to cost or revenues of state or local governments under Government Code §2001.024(a)(4) as a result of enforcing or administering these amendments as proposed.

PUBLIC BENEFIT/COST NOTE. Mr. Etheridge has determined, pursuant to Government Code §2001.024(a)(5), that for the first five-year period the amended rules are in effect, the public benefit of the amendments is conciseness and clarity of the rules. He has further determined there will be no probable economic cost to the credit union system or to persons required to comply with the rules.

IMPACT ON LOCAL EMPLOYMENT OR ECONOMY. There is no reasonably anticipated effect on a local economy for the first five years that the proposed amendments are in effect. Therefore, no economic impact statement, local employment impact statement, or regulatory flexibility analysis is required under Texas Government Code §§2001.022 or 2001.024(a)(6).

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES. Mr. Etheridge has also determined that for each year of the first five years the proposed amendments are in effect, there will be no reasonably forecasted adverse economic effect on small businesses, micro-businesses, or rural communities as a result of implementing these amendments, and, therefore, no regulatory flexibility analysis, as specified in Texas Government Code §2006.002, is required.

TAKINGS IMPACT ASSESSMENT. No private real property interests are affected by this proposal, and 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. Therefore, the amendments do not constitute a taking under Texas Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. The Department is requesting public comments on the proposed amendments and information related to the cost, benefit, or effect of the proposed rules, including any applicable data, research, or analysis, from any person required to comply with the proposed rule or any other interested person. Please include an explanation of how and why the submitted information is specific to the proposed rules. Please do not submit copyrighted, confidential, or proprietary information. Written comments on the

proposed amendments may be submitted in writing to Devon Bijansky, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699 or by email to CUDMail@cud.texas.gov. To be considered, a written comment must be received within 30 days after publication of the proposal in the *Texas Register.*

STATUTORY AUTHORITY. The amendments are proposed pursuant to Texas Finance Code §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subtitle D (Chapters 121 through 149) of the Texas Finance Code.

STATUTORY SECTIONS AFFECTED. The specific section affected by the amendments is Texas Finance Code §§15.402.

§91.101. Definitions and Interpretations.

(a) Words and terms used in this title [~~chapter~~] that are defined in the Act [~~Finance Code §121.002,~~] have the same meanings as defined in the Act, unless the context clearly indicates otherwise [~~Finance Code~~]. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Act--the Texas Credit Union Act (Texas Finance Code, Subtitle D).

(2) Allowance for loan and lease losses (ALLL)--a general valuation allowance that has been established through charges against earnings to absorb losses on loans and lease financing receivables. An ALLL excludes the regular reserve and special reserves.

(3) Applicant--an individual or credit union that has submitted an application to the commissioner.

(4) Application--a written request filed by an applicant with the department seeking approval to engage in various credit union activities, transactions, and operations or to obtain other relief for which the commission is authorized by the act to issue a final decision or order subject to judicial review.

(5) Appraisal--a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion as to the market value of a specifically described asset as of a specific date, supported by the presentation and analysis of relevant market information.

(6) Automated teller machine (ATM)--an automated, unstaffed credit union facility owned by or operated exclusively for the credit union at which deposits are received, cash dispensed, or money lent.

(7) Community of interest--a unifying factor among persons that by virtue of its existence, facilitates the successful organization of a new credit union or promotes economic viability of an existing credit union. The types of community of interest currently recognized are:

(A) Occupational--based on an employment relationship that may be established by:

(i) employment (or a long-term) contractual relationship equivalent to employment) by a single employer, affiliated employers or employers under common ownership with at least a 10% ownership interest;

(ii) employment or attendance at a school; or

(iii) employment in the same trade, industry or profession (TIP) with a close nexus and narrow commonality of interest, which is geographically limited.

(B) Associational--based on groups consisting primarily of natural persons whose members participate in activities developing common loyalties, mutual benefits, or mutual interests. In determining whether a group has an associational community of interest, the commissioner shall consider the totality of the circumstances, which include:

(i) whether the members pay dues;

(ii) whether the members participate in furtherance of the goals of the association;

(iii) whether the members have voting rights;

(iv) whether there is a membership list;

(v) whether the association sponsors activities;

(vi) what the association's membership eligibility requirements are; and

(vii) the frequency of meetings. Associations formed primarily to qualify for credit union membership and associations based on client or customer relationships, do not have a sufficient associational community of interest.

(C) Geographic--based on a clearly defined and specific geographic area where persons have common interests and/or interact. More than one credit union may share the same geographic community of interest. There are currently four types of affinity on which a geographic community of interest can be based: persons, who:

(i) live in;

(ii) worship in;

(iii) attend school in; or

(iv) work in that community. The geographic community of interest requirements are met if the area to be served is in a recognized single political subdivision, as defined in this rule.

(D) Other--The commissioner may authorize other types of community of interest, if the commissioner determines that either a credit union or foreign credit union has sufficiently demonstrated that a proposed factor creates an identifiable affinity among the persons within the proposed group. Such a factor shall be well-defined, have a geographic definition, and may not circumvent any limitation or restriction imposed on one of the other enumerated types.

(8) Credit [~~A credit~~] union service organization (CUSO)--an organization authorized by §91.801 (relating to Investments in Credit Union Service Organizations). A consolidated CUSO is one where control or ownership by a credit union requires consolidation of the credit union and CUSO financial statements to comply with Generally Accepted Accounting Principles.

(9) Day--whenever periods of time are specified in this title in days, calendar days are intended. When the day, or the last day fixed by statute or under this title for taking any action falls on Saturday, Sunday, or a state holiday, the action may be taken on the next succeeding day which is not a Saturday, Sunday, or a state holiday.

(10) Department newsletter--the monthly publication that serves as an official notice of all applications, and by which procedures to protest applications are described.

(11) Extension of credit--a direct or indirect advance of funds to or on behalf of a member based on an obligation of the member to repay the funds or repayable from the application of the specific property pledged by or on behalf of the member. The terminology also includes the purchase of a member's loan or other obligation, a lease

financing transaction, a credit sale, a line of credit or loan commitment under which the credit union is contractually obligated to advance funds to or on behalf of a member, an advance of funds to honor a check or share draft drawn on the credit union by a member, or any other indebtedness not classified as an investment security.

(12) [~~(11)~~] Field of membership (FOM)--refers to the totality of persons a credit union may accept as members. The FOM may consist of one group, several groups with a related community of interest, or several unrelated groups with each having its own community of interest.

~~[(12) Finance Code or Texas Finance Code--the codification of the Texas statutes governing financial institutions, financial businesses, and related financial services, including the regulations and supervision of credit unions.]~~

(13) Immediate family member--a person's spouse or any other relative living in the same household.

~~[(13) Imminent danger of insolvency--a circumstance or condition in which a credit union is unable or lacks the means to meet its current obligations as they come due in the regular and ordinary course of business, even if the value of its assets exceeds its liabilities; or the credit union has a positive net worth ratio equal to two percent or less of its assets.]~~

~~[(14) Improved residential property--residential real estate containing on-site, offsite or other improvements sufficient to make the property ready for primarily residential construction, and real estate in the process of being improved by a building or buildings to be constructed or in the process of construction for primarily residential use.]~~

(14) [~~(15)~~] Interactive teller machine [~~(ITM)~~]--a video-based interactive technology which allows members to conduct transactions and credit union services driven by a centrally based teller, in a real time video or audio interaction.

(15) [~~(16)~~] Indirect financing--a program in which a credit union makes the credit decision in a transaction where the credit is extended by the vendor and assigned to the credit union or a loan transaction that generally involves substantial participation in and origination of the transaction by a vendor.

~~[(17) Loan and extension of credit --a direct or indirect advance of funds to or on behalf of a member based on an obligation of the member to repay the funds or repayable from the application of the specific property pledged by or on behalf of the member. The terminology also includes the purchase of a member's loan or other obligation, a lease financing transaction, a credit sale, a line of credit or loan commitment under which the credit union is contractually obligated to advance funds to or on behalf of a member, an advance of funds to honor a check or share draft drawn on the credit union by a member, or any other indebtedness not classified as an investment security.]~~

(16) [~~(18)~~] Loan-to-value ratio--the aggregate amount of all sums borrowed and secured by the collateral, including outstanding balances plus any unfunded commitment or line of credit from another lender that is senior to the credit union's lien divided by the current value of the collateral.

(17) [~~(19)~~] Manufactured home--a HUD-code manufactured home as defined by the Texas Manufactured Housing Standards Act. The terminology may also include a mobile home, house trailer, or similar recreational vehicle if the unit will be used as the member's residence and the loan is secured by a first lien on the unit, and the unit meets the requirements for the home mortgage interest deduction under the Internal Revenue Code (26 U.S.C. Section 163(a), (h)(2)(D)).

(18) [~~(20)~~] Market Value--the most probable price which an asset should bring in a competitive and open market under an arm's-length sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of ownership from seller to buyer where:

(A) Buyer and seller are typically motivated;

(B) Both parties are well informed or well advised, and acting in their own best interests;

(C) A reasonable time is allowed for exposure in the open market;

(D) Payment is made in cash in U.S. dollars or in terms of financial arrangements comparable thereto; and

(E) The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

(19) [~~(21)~~] Metropolitan Statistical Area (MSA)--a geographic area as defined by the director of the U.S. Office of Management and Budget.

(20) [~~(22)~~] Mobile office--a branch office that does not have a single, permanent site, including a vehicle that travels to various public locations to enable members to conduct their credit union business.

(21) [~~(23)~~] Office--includes any service facility or place of business established by a credit union at which deposits are received, checks or share drafts paid, or money lent. This definition includes a credit union owned branch, a mobile branch, an office operated on a regularly scheduled weekly basis, a credit union owned ATM, or a credit union owned interactive teller machine [~~ITM~~] or other electronic facility that meets, at a minimum, these requirements; however, it does not include the credit union's Internet website. This definition also includes a shared branch or a shared branch network if either:

(A) the credit union has an ownership interest in the service facility either directly or through a CUSO or similar organization; or

(B) the service facility is local to the credit union and the credit union is an authorized participant in the service center.

(22) [~~(24)~~] Overlap--the situation which exists when a group of persons is eligible for membership in two or more state, foreign, or federal credit unions doing business in this state. Notwithstanding this provision, no overlap exists if eligibility for credit union membership results solely from a family relationship.

~~[(25) Pecuniary interest--the opportunity, directly or indirectly, to make money on or share in any profit or benefit derived from a transaction.]~~

(23) [~~(26)~~] Person--an individual, partnership, corporation, association, government, governmental subdivision or agency, business trust, estate, trust, or any other public or private entity.

(24) [~~(27)~~] Political Subdivision--a county, municipality, special district, school district, junior college district, housing authority, or other political subdivision of this state or any other state.

(25) [~~(28)~~] Principal office--the home office of a credit union.

(26) [~~(29)~~] Protestant--a credit union that opposes or objects to the relief requested by an applicant.

(27) [~~(30)~~] Real estate or real property--an identified parcel or tract of land. The term includes improvements, easements, rights of way, undivided or future interest and similar rights in a tract of land, but does not include mineral rights, timber rights, growing crops, water rights and similar interests severable from the land when the transaction does not involve the associated parcel or tract of land.

[~~(31) Remote service facility--an automated, unstaffed credit union facility owned or operated by, or operated for, the credit union, such as an automated teller machine, cash dispensing machine, point-of-sale terminal, or other remote electronic facility, at which deposits are received, cash dispensed, or money lent.~~]

(28) [~~(32)~~] Reserves--allocations of retained earnings including regular and special reserves, except for any allowances for loan, lease or investment losses.

[~~(33) Resident of this state--a person physically located in, living in or employed in the state of Texas.~~]

(29) [~~(34)~~] Respondent--a credit union or other person against whom a disciplinary proceeding is directed by the department.

[~~(35) Secured credit--a loan made or extension of credit given upon an assignment of an interest in collateral pursuant to applicable state laws so as to make the enforcement or promise more certain than the mere personal obligation of the debtor or promisor. Any assignment may include an interest in personal property or real property or a combination thereof.~~]

(30) Secured creditor--a creditor that has made a loan or given an extension of credit upon an assignment of an interest in collateral pursuant to applicable state laws so as to make the enforcement or promise more certain than the mere personal obligation of the debtor or promisor. Any assignment may include an interest in personal property, real property, or a combination thereof.

(31) Senior management employee- the chief executive officer, any assistant chief executive officers (vice presidents and above), and the chief financial officer.

(32) [~~(36)~~] Shared service center--a facility which is connected electronically with two or more credit unions so as to permit the facility, through personnel at the facility and the electronic connection, to provide a credit union member at the facility the same credit union services that the credit union member could lawfully obtain at the principal office of the member's credit union.

(33) [~~(37)~~] TAC--an acronym for the Texas Administrative Code, a compilation of all state agency rules in Texas.

(34) [~~(38)~~] This title [~~Title or 7 TAC~~]--Title 7, Part 6 [~~VI~~] of the Texas Administrative Code [~~Banking and Securities~~], which contains all of the department's rules.

(35) [~~(39)~~] Underserved area--a geographic area, which could be described as one or more contiguous metropolitan statistical areas (MSA) or one or more contiguous political subdivisions, including counties, cities, and towns, that satisfy any one of the following criteria:

(A) A majority of the residents earn less than 80 percent of the average for all wage earners as established by the U. S. Bureau of Labor Statistics;

(B) The annual household income for a majority of the residents falls at or below 80 percent of the median household income for the State of Texas, or the nation, whichever is higher; or

(C) The commission makes a determination that the lack of available or adequate financial services has adversely affected economic development within the specified area.

(36) [~~(40)~~] Uninsured membership share--funds paid into a credit union by a member that constitute uninsured capital under conditions established by the credit union and agreed to by the member including possible reduction under §122.105 of the act, risk of loss through operations, or other forfeiture. Such funds shall be considered an interest in the capital of the credit union upon liquidation, merger, or conversion.

(37) [~~(41)~~] Unsecured [~~credit~~]--a loan or extension of credit is unsecured when it is based solely upon the general credit financial standing of the borrower. The term shall include loans or other extensions of credit supported by the signature of a co-maker, guarantor, or endorser.

(b) The same rules of construction that apply to interpretation of Texas statutes and codes, the definitions in the Act and in Government Code §2001.003, and the definitions in subsection (a) of this section govern the interpretation of this title. If any section of this title is found to conflict with an applicable and controlling provision of other state or federal law, the section involved shall be void to the extent of the conflict without affecting the validity of the rest of this title.

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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Robert Etheridge
Commissioner
Credit Union Department
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For further information, please call: (512) 837-9236

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SUBCHAPTER F. ACCOUNTS AND SERVICES

7 TAC §91.601

The Credit Union Commission proposes amendments to §91.601, Share and Deposit Accounts.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES. The proposed amendments were developed as a part of the Credit Union Department's quadrennial rule review process in response to a comment received from a member of the public that the requirement of a disclosure that nonmember deposits are not insured was inaccurate in many cases, as certain nonmember deposits are in fact insured.

COST TO REGULATED PERSONS. This rule proposal is not subject to Texas Government Code §2001.0045 concerning increasing costs to regulated persons because this agency is a self-directed semi-independent (SDSI) agency under Finance Code Chapter 16 and is therefore exempt under §2001.0045(c)(8).

GOVERNMENT GROWTH IMPACT STATEMENT. In compliance with Texas Government Code §2001.0221, the Department has prepared a government growth impact statement.

For each year of the first five years that the rules as amended will be in effect, the 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 Department;

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

--create new regulations;

--expand, limit, or repeal existing regulations;

--increase or decrease the number of individuals subject to the rule's applicability;

--positively or adversely affect this state's economy.

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

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS. Robert Etheridge, Commissioner, has determined that for the first five-year period the proposed amendments are in effect, there are no reasonably foreseeable implications relating to cost or revenues of state or local governments under Government Code §2001.024(a)(4) as a result of enforcing or administering these amendments as proposed.

PUBLIC BENEFIT/COST NOTE. Mr. Etheridge has determined, pursuant to Government Code §2001.024(a)(5), that for the first five-year period the amended rules are in effect, the public benefit of the amendments is accuracy of the rules and the ability of Texas-chartered credit unions to compete with other credit unions for nonmember deposits. He has further determined there will be no probable economic cost to the credit union system or to persons required to comply with the rules.

IMPACT ON LOCAL EMPLOYMENT OR ECONOMY. There is no reasonably anticipated effect on a local economy for the first five years that the proposed amendments are in effect. Therefore, no economic impact statement, local employment impact statement, or regulatory flexibility analysis is required under Texas Government Code §§2001.022 or 2001.024(a)(6).

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES. Mr. Etheridge has also determined that for each year of the first five years the proposed amendments are in effect, there will be no reasonably forecasted adverse economic effect on small businesses, micro-businesses, or rural communities as a result of implementing these amendments, and, therefore, no regulatory flexibility analysis, as specified in Texas Government Code §2006.002, is required.

TAKINGS IMPACT ASSESSMENT. No private real property interests are affected by this proposal, and 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. Therefore, the amendments do not constitute a taking under Texas Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. The Department is requesting public comments on the proposed amendments and information related to the cost, benefit, or effect of the proposed rules, including any applicable data, research, or analysis, from any person required to comply with the proposed rule or any other interested person. Please include an explanation of how and why the submitted information is specific to the proposed rules. Please do not submit copyrighted, confidential, or proprietary information. Written comments on the proposed amendments may be submitted in writing to Devon Bijansky, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699 or by email to CUDMail@cud.texas.gov. To be considered, a written comment must be received within 30 days after publication of the proposal in the *Texas Register.*

STATUTORY AUTHORITY. The amendments are proposed pursuant to Texas Finance Code §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subtitle D (Chapters 121 through 149) of the Texas Finance Code; particularly §123.201, which addresses credit unions' power to borrow or lend.

STATUTORY SECTIONS AFFECTED. The specific section affected by the amendments is Texas Finance Code §123.201.

§91.601. Share and Deposit Accounts.

(a) Accounts. A credit union may offer any type of share or deposit accounts and prescribe the terms and conditions relating to the accounts as established by written policies approved by the board of directors.

(b) Policies and procedures. Each credit union, before accepting any funds for any share or deposit accounts, shall adopt, implement and maintain appropriate policies and procedures which address, at a minimum, asset liability management and adequate liquidity levels.

(c) Nonmember deposits. A credit union may accept deposits from nonmembers as authorized by the Act. A deposit from a nonmember financial institution is subject to the limitations prescribed by §123.201(b) of the Act.

~~[(c) Limitation on deposit accounts. Acceptance of funds from a depositor authorized by the Act that is not within the credit union's field of membership is subject to the limitations prescribed by §123.201(b) of the Act. This restriction does not apply to a credit union accepting for deposit the money of:]~~

~~[(1) the United States or any agent or instrumentality of the United States;]~~

~~[(2) this or another state; or]~~

~~[(3) a political subdivision of this or another state.]~~

~~[(d) Nonmember deposit. The written documentation evidencing a deposit under subsection (c) of this section shall clearly and conspicuously disclose that the funds are not insured. This section does not apply to insured deposits from other credit unions or deposits received by a credit union with a low-income designation.]~~

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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Robert Etheridge
Commissioner
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SUBCHAPTER H. INVESTMENTS

7 TAC §§91.801 - 91.803, 91.805, 91.809

The Credit Union Commission proposes amendments to §91.801, Investments in Credit Union Service Organizations; §91.802, Other Investments; §91.803, Investment Limits and Prohibitions; §91.805, Loan Participation Investments; and §91.809, Purchase of Assets and Assumption of Liabilities.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES. The proposed amendments were identified as a part of the Credit Union Department's quadrennial rule review process. The amendments standardize references to federal law, conform certain terms to the definitions proposed to be incorporated into §91.101 elsewhere in this issue, and make other non-substantive changes for readability and consistency.

COST TO REGULATED PERSONS. This rule proposal is not subject to Texas Government Code §2001.0045 concerning increasing costs to regulated persons because this agency is a self-directed semi-independent (SDSI) agency under Finance Code Chapter 16 and is therefore exempt under §2001.0045(c)(8).

GOVERNMENT GROWTH IMPACT STATEMENT. In compliance with Texas Government Code §2001.0221, the Department has prepared a government growth impact statement.

For each year of the first five years that the rules as amended will be in effect, the 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 Department;

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

--create new regulations;

--expand, limit, or repeal existing regulations;

--increase or decrease the number of individuals subject to the rule's applicability;

--positively or adversely affect this state's economy.

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

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS. Robert Etheridge, Commissioner, has determined that for the first five-year period the proposed amendments are in effect, there are no reasonably foreseeable implications relating to cost or revenues of state or local governments under Government Code §2001.024(a)(4) as a result of enforcing or administering these amendments as proposed.

PUBLIC BENEFIT/COST NOTE. Mr. Etheridge has determined, pursuant to Government Code §2001.024(a)(5), that for the first five-year period the amended rules are in effect, the public benefit of the amendments is accuracy and consistency of the rules. He has further determined there will be no probable economic cost to the credit union system or to persons required to comply with the rules.

IMPACT ON LOCAL EMPLOYMENT OR ECONOMY. There is no reasonably anticipated effect on a local economy for the first five years that the proposed amendments are in effect. Therefore, no economic impact statement, local employment impact statement, or regulatory flexibility analysis is required under Texas Government Code §§2001.022 or 2001.024(a)(6).

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES. Mr. Etheridge has also determined that for each year of the first five years the proposed amendments are in effect, there will be no reasonably forecasted adverse economic effect on small businesses, micro-businesses, or rural communities as a result of implementing these amendments, and, therefore, no regulatory flexibility analysis, as specified in Texas Government Code §2006.002, is required.

TAKINGS IMPACT ASSESSMENT. No private real property interests are affected by this proposal, and 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. Therefore, the amendments do not constitute a taking under Texas Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. The Department is requesting public comments on the proposed amendments and information related to the cost, benefit, or effect of the proposed rules, including any applicable data, research, or analysis, from any person required to comply with the proposed rule or any other interested person. Please include an explanation of how and why the submitted information is specific to the proposed rules. Please do not submit copyrighted, confidential, or proprietary information. Written comments on the proposed amendments may be submitted in writing to Devon Bijansky, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699 or by email to CUDMail@cud.texas.gov. To be considered, a written comment must be received within 30 days after publication of the proposal in the *Texas Register*.

STATUTORY AUTHORITY. The amendments are proposed pursuant to Texas Finance Code §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subtitle D (Chapters 121 through 149) of the Texas Finance Code.

STATUTORY SECTIONS AFFECTED. The specific section affected by the amendments is Texas Finance Code §15.402.

§91.801. Investments in Credit Union Service Organizations.

(a) - (d) (No change.)

(e) Prohibitions. No credit union may invest in or make loans to a CUSO:

(1) if any officer, director, committee member, or employee of the credit union or any [~~member of the~~] immediate family member

of such persons owns or makes an investment in or has made or makes a loan to the CUSO;

(2) - (8) (No change.)

(f) (No change.)

(g) Compensation. A credit union director, senior management employee, or committee member or immediate family member of any such person may not receive any salary, commission, or other income or compensation, either directly or indirectly, from a CUSO affiliated with their credit union, unless received in accordance with a written agreement between the CUSO and the credit union. The agreement shall describe the services to be performed, the rate of compensation (or a description of the method of determining the amount of compensation) and any other provisions deemed desirable by the CUSO and the credit union. The agreement, and any amendments, must be approved by the board of directors of the credit union and the board of directors (or equivalent governing body) of the CUSO prior to any performance of service or payment and annually thereafter. [~~For purposes of this section, senior management employee shall include the chief executive officer, any assistant chief executive officers (vice presidents and above), and the chief financial officer.~~] Immediate family shall include a person's spouse or any other person living in the same household.

(h) - (j) (No change.)

§91.802. Other Investments.

(a) Definitions. Unless the context clearly indicates otherwise, these words and terms, when used in this section, shall have the following meanings. Any technical words, terms, or phrases that are not specifically defined in this section shall be construed in a manner consistent with the Texas Code [~~of~~] Construction Act (Tex. Govt. Code Chapter 311). [~~*(Tex. Govt. Code §311.001).*~~]

(1) - (11) (No change.)

(12) Mortgage related security--A security meeting [~~which meets~~] the definition of mortgage related security in 15 U.S.C. § 78c(a)(41). [~~United States Code Annotated, Title 15, §78c(a)(41).~~]

(13) Nationally recognized statistical rating organization (NRSRO)--A rating organization such as Standard and Poor's, Moody's, or Fitch which is recognized by the Securities and Exchange Commission.

(14) - (16) (No change.)

(17) Small business-related security [~~securities~~]--[~~Is~~] a security as defined in [~~Section 3(a)(53) of the Securities Exchange Act of 1934 (~~]15 U.S.C. 78c(a)(53). This definition does not include Small Business Administration securities permissible under 12 U.S.C. 1757 [~~section 107(7) of the Federal Credit Union Act~~].

(18) - (19) (No change.)

(b) (No change.)

(c) Authorized activities.

(1) - (16) (No change.)

(17) Derivative authority. A credit union may enter into certain derivative transactions exclusively for the purpose of decreasing interest rate risk. The transaction is used to manage risk arising from otherwise permissible credit union activities and not entered into for speculative purposes. Permissible derivatives include interest rate swaps, options on swaps, interest rate caps, interest rate floors, and Treasury futures. Derivative authority is restricted to the provisions outlined under 12 C.F.R. Part 703, Subpart B [~~of Part 703 of the National Credit Union Administration Rules and Regulations~~].

(d) - (j) (No change.)

§91.803. Investment Limits and Prohibitions.

(a) - (b) (No change.)

(c) Prohibited Activities.

(1) Definitions.

(A) (No change.)

(B) CMO--collateralized mortgage obligation, [~~Collateralized mortgage obligation (CMO)--~~] a multi-class bond issue collateralized by mortgages or mortgage-backed securities.

(C) - (D) (No change.)

(E) REMIC--real estate mortgage investment conduit, [~~Real estate mortgage investment conduit (REMIC)--~~] a nontaxable entity formed for the sole purpose of holding a fixed pool of mortgages secured by an interest in real property and issuing multiple classes of interests in the underlying mortgages.

(F) - (J) (No change.)

(2) A credit union may not:

(A) - (J) (No change.)

(K) Purchase exchangeable mortgage backed securities, unless they are fully compliant with the provisions outlined in 12 C.F.R. Part 703 [~~of the National Credit Union Administration Rules and Regulations~~]; or

(L) (No change.)

(d) (No change.)

§91.805. Loan Participation Investments.

(a) A credit union may purchase a participation interest in a loan, where the borrower is neither a member of the credit union or a member of another participating credit union, as permitted by §124.351(a)(8) of the Texas Finance Code, provided the following conditions are satisfied:

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

(3) the purchase complies with the credit union's investment policy, which, at a minimum, must:

(A) establish the same degree of independent credit and collateral analysis as if the credit union was the originator; and

(B) establish commitment limits for aggregate purchased participations, out-of-area participations, and loans originated by individual lead institutions; and [~~.~~]

(4) the written loan participation agreement fully describes the lead institution's responsibilities, establishes requirements for obtaining timely borrower credit information, addresses remedies upon default, and outlines dispute resolution procedures.

(b) (No change.)

(c) Other Requirements. A credit union purchasing a loan participation investment must also comply with applicable requirements contained within 12 C.F.R Part 741 [~~of the National Credit Union Administration Rules and Regulations~~].

§91.809. Purchase of Assets and Assumption of Liabilities.

(a) - (b) (No change.)

(c) A credit union seeking approval under subsection (a) of this section must submit a letter application to the commissioner stating the nature of the transaction and describing the proposed program. The application must include:

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

(4) Proposed policies under which the program will operate, and which must comply with the requirements outlined in §§91.802(b), 91.803 and 91.808 (relating to Other Investments; Investment Limits and Prohibitions; and Reporting Investment Activities to the Board of Directors [~~Loan Participation Investments~~]);

(5) (No change.)

(6) Evidence of requested approval by NCUA under [~~NCUA regulations~~] 12 C.F.R. §741.8, if federally insured, or bond covenants from American Share Insurance if necessary;

(7) - (8) (No change.)

(d) A federally insured credit union purchasing assets or assuming liabilities of another entity must also comply with applicable requirements contained within [~~the NCUA regulations~~] 12 C.F.R. Part 741.

(e) (No change.)

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

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Commissioner
Credit Union Department
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SUBCHAPTER I. RESERVES AND DIVIDENDS

7 TAC §91.902

The Credit Union Commission proposes amendments to §91.902, Dividends.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES. The proposed amendments, identified as part of the Department's four-year rule review process, would separate subsection (b)(1) into two parts and clarify the requirements of subsection (b)(3) (to be renumbered as (b)(4)).

COST TO REGULATED PERSONS. This rule proposal is not subject to Texas Government Code §2001.0045 concerning increasing costs to regulated persons because this agency is a self-directed semi-independent (SDSI) agency under Finance Code Chapter 16 and is therefore exempt under §2001.0045(c)(8).

GOVERNMENT GROWTH IMPACT STATEMENT. In compliance with Texas Government Code §2001.0221, the Department has prepared a government growth impact statement.

For each year of the first five years that the rule as amended will be in effect, the 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 Department;

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

--create new regulations;

--expand, limit, or repeal existing regulations;

--increase or decrease the number of individuals subject to the rule's applicability;

--positively or adversely affect this state's economy.

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

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS. Robert Etheridge, Commissioner, has determined that for the first five-year period the proposed amendments are in effect, there are no reasonably foreseeable implications relating to cost or revenues of state or local governments under Government Code §2001.024(a)(4) as a result of enforcing or administering these amendments as proposed.

PUBLIC BENEFIT/COST NOTE. Mr. Etheridge has determined, pursuant to Government Code §2001.024(a)(5), that for the first five-year period the amended rule is in effect, the public benefit of the amendments is clarity of the rule. He has further determined there will be no probable economic cost to the credit union system or to persons required to comply with the rule.

IMPACT ON LOCAL EMPLOYMENT OR ECONOMY. There is no reasonably anticipated effect on a local economy for the first five years that the proposed amendments are in effect. Therefore, no economic impact statement, local employment impact statement, or regulatory flexibility analysis is required under Texas Government Code §§2001.022 or 2001.024(a)(6).

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES. Mr. Etheridge has also determined that for each year of the first five years the proposed amendments are in effect, there will be no reasonably forecasted adverse economic effect on small businesses, micro-businesses, or rural communities as a result of implementing these amendments, and, therefore, no regulatory flexibility analysis, as specified in Texas Government Code §2006.002, is required.

TAKINGS IMPACT ASSESSMENT. No private real property interests are affected by this proposal, and 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. Therefore, the amendments do not constitute a taking under Texas Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. The Department is requesting public comments on the proposed amendments and information related to the cost, benefit, or effect of the proposed rule, including any applicable data, research, or analysis, from any person required to comply with the proposed rule or any other interested person. Please include an explanation of how and why the submitted information is specific to the proposed rules. Please do not submit copyrighted, confidential, or proprietary information. Written comments on the

proposed amendments may be submitted in writing to Devon Bijansky, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699 or by email to CUDMail@cud.texas.gov. To be considered, a written comment must be received within 30 days after publication of the proposal in the *Texas Register*.

STATUTORY AUTHORITY. The amendments are proposed pursuant to Texas Finance Code §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subtitle D (Chapters 121 through 149) of the Texas Finance Code.

STATUTORY SECTIONS AFFECTED. The specific section affected by the amendments is Texas Finance Code §§15.402.

§91.902. Dividends.

(a) Dividend eligibility shall be prescribed by written board policy.

(b) When a credit union is subject to a cease and desist order or is otherwise notified that it is deemed to be in a troubled condition or engaged in an unsafe practice, the credit union must obtain prior written approval of the commissioner before it declares or pays any dividend or interest refund. A request for approval to pay a dividend or interest refund under this section must be in writing and must include the following supporting information:

(1) the proposed dividend and/or interest refund rate; [~~and~~]

(2) the estimated total dollar amount of payment;

(3) [~~(2)~~] an analysis of the credit union's ability to make the payment from current earnings without incurring an operating loss for the period; and

(4) [~~(3)~~] an explanation of the progress in resolving the areas of concern detailed in the cease and desist order or the examination findings detailed in [~~examiner's findings schedule of~~] the most recent report of examination.

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

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TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 2. ENFORCEMENT
SUBCHAPTER D. DEBARMENT FROM PARTICIPATION IN PROGRAMS ADMINISTERED BY THE DEPARTMENT

10 TAC §2.401

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC Chapter 2, Enforcement, Subchapter D, Debarment from Participation in Programs Administered by the Department, §2.401 General

The purpose of the proposed rule action is to eliminate the current rule while replacing it with a more current version of the rule.

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

a. ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT

Tex. Gov't Code §2001.0045(b) does not apply to the rule proposed for action because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

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

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the repeal would be in effect:

1. The repeal does not create or eliminate a government program but relates to changes to an existing activity, the enforcement of the Department's program rules.

2. The repeal does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce workload to a degree that eliminates any existing employee positions.

3. The repeal does not require additional future legislative appropriations or a reduction in future legislative appropriations.

4. The repeal will not result in an increase or decrease in fees paid to the Department.

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

6. The repeal is not considered to expand, limit or repeal an existing regulation.

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

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

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

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

d. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The Department has determined that no private real property interests are affected by the proposed action and the proposed action does not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. Therefore, the rule does not constitute a taking by the Department and no Takings Impact Assessment is required.

e. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.022 and §2001.024(a)(6).

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

f. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the rule action would be a consolidated and simplified rule. There will not be economic costs to individuals required to comply with the repealed section.

g. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Robert Wilkinson has determined that for each year of the first five years the repeal is in effect, there are no estimated additional costs or reductions in costs, or increases in revenue or losses of revenue, to state or local government as a result of enforcing or administering the rule.

REQUEST FOR PUBLIC COMMENT AND INFORMATION RELATED TO COST, BENEFIT OR EFFECT. The Department requests public comment on the rule action and also requests information related to the cost, benefit, or effect of the rule, including any applicable data, research, or analysis from any person required to comply with the rule action or any other interested person. Any information that is submitted must include an explanation of how and why the submitted information is specific to the proposed action. The public comment period will be held November 20, 2026, through December 20, 2026, to receive input on the proposed action. Comments may be submitted to the Texas Department of Housing and Community Affairs, Ysella Kaseman, ATTN: Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or by email to ysella.kaseman@tdhca.texas.gov. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, December 20, 2026.

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

Except as described herein the proposed action affects no other code, article, or statute.

§2.401. General.

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 November 5, 2026.

TRD-202604696
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: December 20, 2026
For further information, please call: (512) 475-3959

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10 TAC §2.401

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC Chapter 2, Enforcement, Subchapter D, Debarment from Participation in Programs Administered by the Department, §2.401 General.

The purpose of the proposed rule action is to eliminate the current rule while replacing it with a more current version of the rule. The Texas Regulatory Efficiency Office has assessed the rule and recommends changes to consolidate and simplify the 30 discretionary referral grounds, group related grounds under descriptive subheadings, and eliminate redundancy. The proposed replacement rule incorporates the majority of their recommended changes. All substantive grounds are preserved, and a new discretionary category was added to align language with the legislature's intended broad debarment authority under the statute.

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

a. ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT

Tex. Gov't Code §2001.0045(b) does not apply to the rule proposed for action because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

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

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the new rule would be in effect:

1. The new rule does not create or eliminate a government program but relates to changes to an existing activity, the enforcement of the Department's program rules.

2. The new rule does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce workload to a degree that eliminates any existing employee positions.

3. The new rule does not require additional future legislative appropriations or a reduction in future legislative appropriations.

4. The new rule will not result in an increase or decrease in fees paid to the Department.

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

6. The new rule is not considered to expand, limit or repeal an existing regulation.

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

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

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

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

d. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The Department has determined that no private real property interests are affected by the proposed

action and the proposed action does not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. Therefore, the rule does not constitute a taking by the Department and no Takings Impact Assessment is required.

e. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.022 and §2001.024(a)(6).

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

f. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the new rule is in effect, the public benefit anticipated as a result of the rule action would be a consolidated and more simplified rule. There will not be economic costs to individuals required to comply with the repealed section because no new debarment categories are added.

g. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Robert Wilkinson has determined that for each year of the first five years the new rule is in effect, there are no estimated additional costs or reductions in costs, or increases in revenue or losses of revenue, to state or local government as a result of enforcing or administering the rule.

REQUEST FOR PUBLIC COMMENT AND INFORMATION RELATED TO COST, BENEFIT OR EFFECT. The Department requests public comment on the rule action and also requests information related to the cost, benefit, or effect of the rule, including any applicable data, research, or analysis from any person required to comply with the rule action or any other interested person. Any information that is submitted must include an explanation of how and why the submitted information is specific to the proposed action. The public comment period will be held November 20, 2026, through December 20, 2026, to receive input on the proposed action. Comments may be submitted to the Texas Department of Housing and Community Affairs, Ysella Kaseman, ATTN: Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or by email to ysella.kaseman@tdhca.texas.gov. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, December 20, 2026.

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

Except as described herein the proposed action affects no other code, article, or statute.

§2.401. General.

(a) The Department may debar a Responsible Party, Consultant, and/or Vendor who has exhibited past failure to comply with any condition imposed by the Department in the administration of its programs. Any of the following discretionary debarment criteria must be past the provided corrective action deadline, if applicable. A Responsible Party, Consultant, or Vendor may be referred to the Committee for Debarment for any of the following:

(1) Refusal to Comply or Cooperate

(A) Refusing to provide an acceptable corrective action plan after being placed on Modified Cost Reimbursement, refusing to repay or enter into a plan to repay disallowed costs, or violating an agreed repayment plan (in a more than de minimis manner);

(B) Refusing to comply with award conditions approved by the Board that were recommended by the Executive Award Review Advisory Committee or Executive Director after April 1, 2021;

(C) Refusing to provide an amenity required by the LURA after April 1, 2021;

(D) Refusing to timely respond to reports or provide required correspondence; or

(E) Refusing to submit a required Audit Certification Form, Single Audit, or other programmatic audit.

(2) Fraud, Misrepresentation, and Conflicts of Interest

(A) Providing fraudulent information, knowingly falsified documentation, or other intentional or negligent material misrepresentation or omission in any documentation, certification, or other representation made to the Department;

(B) Participating in activities constituting or giving the appearance of a conflict of interest, as applicable under TXGMS, 2 CFR Part 200, 24 CFR §93.353, §92.356, §570.489, §576.404, 10 TAC §20.9 (or a previous version of federal or state rules), or as defined by Program Rule; or

(C) Submitting a written certification that noncompliance has been corrected when the Event of Noncompliance was not in fact corrected.

(3) Noncompliance and Enforcement

(A) Meeting any of the ineligibility criteria referenced in §11.202 of this title (relating to Ineligible Applicants and Applications) or other ineligibility criteria outlined in a Program Rule, with the exception of: ineligibility related to conflicts of interest disclosed to the Department for review, and ineligibility identified in a previous participation review in conjunction with an application for funds or resources (unless otherwise eligible for Debarment under this Subchapter D);

(B) Failing to correct Events of Noncompliance as required by an order that became effective after April 1, 2021, and/or failing to pay an administrative penalty as required by such order, within six months of a demand being issued by the Department. In this circumstance, if the Debarment process is initiated but the Responsible Party, Consultant, and/or Vendor fully corrects the findings of noncompliance to the satisfaction of the Department and pays the administrative penalty as required before the Debarment is finalized by the Board, the Debarment recommendation may be cancelled or withdrawn by Committee recommendation and Executive Director concurrence. This type of referral would be initiated by the Secretary;

(C) Controlling a multifamily Development and failing to correct Events of Noncompliance before the expiration of a Land Use Restriction Agreement after February 4, 2026;

(D) Having any Event of Noncompliance occurring after April 1, 2021, that causes the Department to be required to repay federal funds to any federal agency including, but not limited to the U.S. Department of Housing and Urban Development; or

(E) A Monitoring Event determines that 50% or more of the client or household files reviewed do not contain required documentation to support income eligibility or indicate that the client or household is not income eligible.

(4) Certain Violations for Property under a TDHCA LURA

(A) Controlling a property that was foreclosed after April 1, 2021, where the foreclosure or deed in lieu of foreclosure terminates a TDHCA LURA. After January 1, 2026, this also applies if a TDHCA LURA is terminated because of bankruptcy;

(B) Controlling a property where there is no operable elevator in an elevator-serviced building after January 1, 2026, unless the Owner can provide evidence that necessary repairs were under contract and scheduled for repair with a licensed repair company within the corrective action period; or

(C) Controlling a property under a LURA and allowing a change in ownership after April 1, 2021, without Department approval.

(5) Multifamily Development Operations

(A) Transferring a multifamily Development, after April 1, 2021, without regard for a Right of First Refusal requirement; or

(B) Being involuntarily removed, or replaced due to a default by the General Partner under the Limited Partnership Agreement, after April 1, 2021.

(6) Section 811 PRA

(A) Failing to reserve units for Section 811 PRA participants after April 1, 2021; or

(B) Failing to notify the Department of the availability of 811 PRA units after April 1, 2021.

(7) Federal Program and Match Requirements

(A) Taking "choice limiting" actions prior to receiving HUD environmental clearance (24 CFR §58.22);

(B) Substandard construction, as defined by the Program, and repeated failure to conduct required inspections; or

(C) Repeated failure to provide eligible match as required under 24 CFR §92.220, 24 CFR §576.201, or as required by NOFA or Request for Application.

(8) Financial System and Audit Deficiencies

(A) Repeated material financial system deficiencies as applicable under 2 CFR Part 200, 24 CFR §§92.205, 92.206, 92.350, 92.505, and 92.508, 10 TAC §20.9, and Texas Grant Management Standards (or prior versions of federal or state requirements), or as defined by Program Rule;

(B) Repeated violations of Single Audit or other programmatic audit requirements;

(C) Commingling or misapplication of funds; or

(D) Repeated failure to report program income as applicable under 24 CFR §§200.80, 570.500, 576.407(c), 92.503 93.304, and 10 TAC §20.9, or as defined by Program Rule.

(9) Other Grounds

(A) Failure to remain and operate as a CHDO, as outlined in the Contract or LURA for the Department's HOME funds, or as approved by the Department as a result of a ROFR requirement;

(B) Failure to timely expend funds; or

(C) Any other ground constituting past failure to comply with a condition imposed by the Department in the administration of its programs.

(b) Federal debarments

(1) The Department shall debar any Responsible Party, Consultant, and/or Vendor who is debarred from participation in in federal housing programs by HUD.

(2) A Responsible Party, Consultant, and/or Vendor that is excluded or disqualified under 2 CFR Part 180, as adopted by the applicable federal agency, is ineligible to participate in any federally funded covered transaction administered by the Department for the term of the exclusion.

(3) The Department may debar a Responsible Party, Consultant, and/or Vendor debarred by any other federal agency from participation in Department programs. Any such debarment may not exceed the remaining term of the federal debarment.

(c) Debarment for violations of the Department's Multifamily Programs or other programs with a land use restriction agreement (LURA). The Department shall debar any Responsible Party, Consultant, and/or Vendor who has materially or repeatedly violated any condition imposed by the Department in connection with the administration of a Department program, including but not limited to a material or repeated violation of a LURA. Subsection (d) of this section provides the criteria the Department will use to determine if there has been a material violation of a LURA. Subsection (e)(1) and (2) of this section provide the criteria the Department shall use to determine if there have been repeated violations of a LURA. Any of the following mandatory debarment criteria must be past the corrective action deadline, if applicable.

(d) Material violations of a LURA. A Responsible Party, Consultant, and/or Vendor will be considered to have materially violated a LURA, Program Agreement, or condition imposed by the Department and shall be referred to the committee for mandatory Debarment if they:

(1) Control a Development that has, on more than one occasion scored 50 or less on a UPCS inspection or has, on more than one occasion scored 50 or less on a NSPIRE inspection, or any combination thereof. The Compliance Division or Enforcement Committee may temporarily decrease this NSPIRE score referral threshold for a Development, with approval by the Executive Director, for a period of time not longer than one year, so long as the referral score threshold is applied evenly to all Developments with similar types of violations;

(2) Refuse to allow a monitoring visit when proper notice was provided or failed to notify residents, resulting in inspection cancellation, or otherwise fails to make units and records available;

(3) Refuse to reduce rents to less than the highest allowed under the LURA;

(4) Refuse to correct a UPCS, NSPIRE, or final construction inspection deficiency after February 4, 2026;

(5) Fail to meet minimum set aside by the end of the first year of the credit period (HTC Developments only) after April 1, 2021; or

(6) Excluding an individual or family from admission to the Development solely because the household participates in the HOME Tenant Based Rental Assistance Program, the housing choice voucher program under Section 8, United States Housing Act of 1937 (42 U.S.C. §1-437), or other federal, state, or local government rental assistance program after April 1, 2021.

(e) Repeated Violations of a LURA that shall be referred to the Committee for Debarment.

(1) A Responsible Party, Consultant, and/or Vendor shall be referred to the Committee for mandatory Debarment if they Control

a Development that, during two Monitoring Events in a row is found to be out of compliance with the following Events of Noncompliance:

(A) No evidence of, or failure to certify to, material participation of a non-profit or HUB, if required by the Land Use Restriction Agreement;

(B) Any Uniform Physical Condition Standards Violations that result in a score of 70 or below in sequential UPCS inspections after April 1, 2021 or NSPIRE violations that result in a score of 50 or below in sequential inspections after February 4, 2026, or any combination thereof. The Compliance Division or Enforcement Committee may temporally decrease this NSPIRE score referral threshold with approval by the Executive Director, for a period not to exceed one year, so long as the referral score threshold is applied evenly to all Developments with similar types of violations;

(C) Refuse to submit all or parts of the Annual Owner's Compliance Report for two consecutive years after April 1, 2021; or

(D) Gross rents exceed the highest rent allowed under the LURA or other deed restriction.

(2) Repeated violations in a portfolio. Responsible Party who control five or more Actively Monitored Developments will be considered for Debarment based on repeated violations in a portfolio. A Person shall be referred to be committee if an inspection or referral, after April 1, 2021, indicates the following:

(A) 50% or more of the Actively Monitored Developments in the portfolio that are Controlled by the Responsible Party, whether acting alone or in concert with others, have been referred to the Enforcement Committee within the last three years. The Enforcement Committee may increase this threshold at its discretion. For example, if three properties in a five-property portfolio are monitored in the same month, and then referred to the Enforcement Committee at the same time, it may be appropriate to increase the 50% threshold; or,

(B) 50% or more of the Actively Monitored Developments in the portfolio score a 70 or less during a Uniform Physical Conditions Standards inspection or score 50 or less during a NSPIRE inspection, or any combination thereof. The Compliance Division may decrease this NSPIRE score threshold with approval by the Executive Director, for a period not to exceed one year, so long as the score threshold is applied evenly to all properties.

(f) Debarment for violations of Department Programs, with the exception of the Non-Discretionary funds in the Community Services Block Grant program. Material or repeated violations of conditions imposed in connection with the administration of Programs administered by the Department. Administrators, Subrecipients, Responsible Parties, contractors, Owners, and related parties shall be referred to the Committee for consideration for Debarment for violations including but not limited to:

(1) 50% or more loan defaults in the first 12 months of the loan agreement after April 1, 2021;

(2) The following Davis Bacon Act Violations:

(A) Refusing to pay restitution (underpayment of wages). 29 CFR §5.31.

(B) Refusing to pay liquidated damages (overtime violations). 29 CFR §5.8.

(C) Repeated failure to pay full prevailing wage, including fringe benefits, for all hours worked. 29 CFR §5.31.

(3) The following violations of the Uniform Relocation Act and requirements of §104(d):

(A) Repeated failure to provide the General Information Notice to tenants prior to application. 49 CFR §24.203, 24 CFR §92.353, 24 CFR §93.352 and HUD Handbook 1378.

(B) Repeated failure to provide all required information in the General Information Notice. 49 CFR §24.203, 24 CFR §570.606, 24 CFR §92.353, 24 CFR §93.352, or HUD Handbook 1378.

(C) Repeated failure to provide the Notice of Eligibility and/or Notice of Non-displacement on or before the Initiation of Negotiations date. 49 CFR §24.203, 24 CFR §92.353, 24 CFR §93.352, or 24 CFR §570.606.

(D) Repeated failure to provide all required information in the Notice of Eligibility and/or Notice of Non-displacement. 49 CFR §24.203, 24 CFR §92.353, 24 CFR §93.352, or 24 CFR §570.606.

(E) Repeated failure to provide 90 Day Notices to all "displaced" tenants and/or repeated failure to provide 30 Day Notices to all "non-displaced" tenants. 49 CFR §24.203, 24 CFR §92.353, 24 CFR §93.352, or 24 CFR §570.606.

(F) Repeated failure to perform and document "decent, safe and sanitary" inspections of replacement housing. 49 CFR §24.203, 24 CFR §92.353, 24 CFR §93.352, or 24 CFR §570.606.

(G) Refusing to properly provide Uniform Relocation Act or §104(d) assistance. 49 CFR §24.203, 24 CFR §92.353, 24 CFR §570.606 and §104(d) of the Housing & Community Development Act of 1974 - 24 CFR Part 42.

(4) Failure to correct Build America Buy America violations after the corrective action period.

(5) Repeated noncompliance with the provisions of Chapter 1, Subchapter B, of this title concerning Accessibility and Reasonable Accommodations, including but not limited to the failure to grant, deny, or actively engage in the interactive process concerning reasonable accommodations within a reasonable time period, not to exceed fourteen (14) calendar days.

(6) Failure to sign any PRWORA Agreement or Contract Amendment (as applicable), or repeated noncompliance with the PRWORA provisions as reflected in this title or as reflected in a PRWORA Agreement or Contract Amendment after the corrective action period (if applicable), except when the Owner has followed the procedures under 10 TAC §10.802(l)(1) relating to verification at renewal for an existing person signing a lease with an original occupancy date prior to October 1, 2026.

(7) Refusing to reimburse excess cash on hand.

(8) Using Department funds to demolish a homeowner's dwelling and then refusing to rebuild.

(9) Drawing down Department funds for an eligible use and then refusing to pay a properly submitted request for payment to a subgrantee or vendor with the drawn down funds.

(g) The referring division shall provide the Responsible Party, Consultant, and/or Vendor with written notice of the referral to the Committee, setting forth the facts and circumstances that justify the referral for Debarment consideration. That notice shall require the Responsible Party to provide a current organizational chart showing ownership to the level of natural persons who are in Control of the Development, and must indicate which entities and natural persons have the ability to Control the Development.

(h) The Secretary shall then offer the Responsible Party, Consultant, and/or Vendor the opportunity to attend an Informal Conference with the Committee to discuss resolution of the matter. In the

event that the Debarment referral was the result of a violated agreed order or a determination that 50% or more of the Actively Monitored Developments in their portfolio have been referred to the Enforcement Committee, the above written notice of the referral to the Committee and the informal conference notice shall be combined into a single notice issued by the Secretary.

(i) A Debarment Informal Conference may result in the following, which shall be reported to the Executive Director:

(1) A determination that the Department did not have sufficient information and/or that the Responsible Party, Consultant, and/or Vendor does not meet any of the criteria for Debarment;

(2) An agreed Debarment, with a proposed agreed order to be prepared and presented to the Board for approval;

(3) A recommendation by the Committee to the Executive Director for Debarment;

(4) A request for further information, to be considered during a future meeting; or,

(5) If Debarment is not mandatory, one of the following results, which will then be reported to the Executive Director:

(A) An agreement to dismiss the matter with no further action;

(B) A recommendation for a voluntary non-participation agreement, with an alternative recommendation for Debarment to the Executive Director, with said Debarment recommendation to be made only in the event that the Responsible Party, Consultant, and/or Vendor refuses to enter into a voluntary non-participation agreement;

(C) An agreement to dismiss the matter with corrective action being taken; or

(D) Any other action as the Committee deems appropriate.

(j) The Committee's recommendation to the Executive Director regarding a voluntary non-participation agreement shall include a recommended period during which the Responsible Party, Consultant, and/or Vendor will not participate in any new Department financing, assistance opportunity, or programs in any manner. Recommended periods of non-participation will be based on material factors such as repeated occurrences, seriousness of underlying issues, presence or absence of corrective action taken or planned, including corrective action to install new responsible persons and ensure they are qualified and properly trained. If the Department determines that this type of agreement is appropriate and the Responsible Party, Consultant, and/or Vendor agrees to the terms proposed by the Department, the Enforcement Committee will not recommend Debarment. This agreement will be placed on the Department website for the duration of its term. The Department will provide a quarterly report to the Board regarding any voluntary non-participation agreements that have been entered into during the previous quarter. The terms of a voluntary non-participation agreement are not appealable to the Board.

(k) The Committee's recommendation to the Executive Director regarding Debarment shall include a recommended period of Debarment. Recommended periods of Debarment will be based on material factors such as repeated occurrences, seriousness of underlying issues, presence or absence of corrective action taken or planned, including corrective action to install new responsible persons and ensure they are qualified and properly trained. Recommended periods of Debarment if based upon HUD Debarment, shall be for the period of the remaining HUD Debarment; or, if based upon criminal conviction, shall be up to ten (10) years or until fulfillment of all conditions of incarceration and/or probation, whichever is greater.

(l) The Executive Director shall accept, reject, or modify the Debarment recommendation by the Committee and shall provide written notice to the Responsible Party, Consultant, and/or Vendor of the determination, and an explanation of the determination if different than the Committee's recommendation, including the period of Debarment, if any. The Responsible Party, Consultant, and/or Vendor may appeal the Debarment determination in writing to the Board as described in §1.7 of this title (relating to Appeals Process).

(m) The Debarment recommendation will be brought to the next Board meeting for which the matter can be properly posted. The Board reserves discretion to impose longer or shorter Debarment periods than those recommended by staff based on its finding that such longer or shorter periods are appropriate when considering all factors and/or for the purposes of equity or other good cause. An action on a proposed Debarment of an Eligible Entity under the CSBG Act will not become final until and unless proceedings to terminate Eligible Entity status have occurred, resulting in such termination and all rights of appeal or review have run or Eligible Entity status has been voluntarily relinquished.

(n) Until the Responsible Party, Consultant, and/or Vendor's Debarment referral is fully resolved, the Responsible Party, Consultant, and/or Vendor may not participate in new Department financing and assistance opportunities.

(o) Any person who has been debarred is prohibited from participation as set forth in the final order of Debarment for the term of their Debarment. Unless specifically stated in the order of Debarment, Debarment does not relieve a Responsible Party, Consultant, and/or Vendor from its current obligations, or prohibit it from continuing its participation in any existing engagements funded through the Department, nor limit its responsibilities and duties thereunder. The Board will not consider modifying the terms of the Debarment after the issuance of a final order of Debarment.

(p) If an Eligible Entity under the CSBG Act meets any of the criteria for Debarment in this rule, the Department may recommend the Eligible Entity for Debarment. However, that referral or recommendation shall not proceed until the termination of the Eligible Entity's status under the CSBG Act has concluded, and no right of appeal or review remains.

(q) All correspondence under this rule shall be delivered electronically.

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 November 5, 2026.

TRD-202604697
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: December 20, 2026
For further information, please call: (512) 475-3959

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CHAPTER 12. MULTIFAMILY HOUSING REVENUE BOND RULES

10 TAC §§12.4 - 12.6

The Texas Department of Housing and Community Affairs (the Department) proposes the amendment to 10 TAC Chapter 12, §§12.4 - 12.6.

The purpose of the proposed amendments is to ensure consistency with proposed changes to the Department's 2027 Qualified Allocation Plan.

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

a. ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT

Tex. Gov't Code §2001.0045(b) does not apply to the amendments proposed for action because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

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

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the amendment would be in effect:

1. The amendment does not create or eliminate a government program.

2. The amendment does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce workload to a degree that eliminates any existing employee positions.

3. The amendment does not require additional future legislative appropriations or a reduction in future legislative appropriations.

4. The amendment will not result in an increase or decrease in fees paid to the Department.

5. The amendment is not creating a new regulation, except that it is being amended to provide consistency with other Department rules.

6. The amendment will not expand, limit or repeal an existing regulation.

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

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

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

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

d. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The Department has determined that no private real property interests are affected by the proposed action and the proposed action does not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. Therefore, the proposed amended rule does not constitute a taking by the Department and no Takings Impact Assessment is required.

e. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.022 and §2001.024(a)(6).

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

f. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the amendment is in effect, the public benefit anticipated as a result of the rule action would be consistency with the proposed 2027 Qualified Allocation Plan. There will not be economic costs to individuals required to comply with the amended section because the amendments reflect minor changes to the rule in order to align with the proposed 2027 Qualified Allocation Plan.

g. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Robert Wilkinson has determined that for each year of the first five years the repeal is in effect, there are no estimated additional costs or reductions in costs, or increases in revenue or losses of revenue, to state or local government as a result of enforcing or administering the rule.

REQUEST FOR PUBLIC COMMENT AND INFORMATION RELATED TO COST, BENEFIT OR EFFECT. The Department requests public comment on the proposed rule action and also requests information related to the cost, benefit, or effect of the amendment, including any applicable data, research, or analysis from any person required to comply with the rule action or any other interested person. Any information that is submitted must include an explanation of how and why the submitted information is specific to the proposed action. The public comment period will be held November 20, 2026, through December 18, 2026, to receive input on the proposed action. Comments may be submitted to the Texas Department of Housing and Community Affairs, Liz Cline, ATTN: Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or by email to liz.cline@tdhca.texas.gov. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, December 18, 2026.

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

Except as described herein the proposed action affects no other code, article, or statute.

§12.4. Pre-Application Process and Evaluation.

(a) Pre-Inducement Questionnaire. Prior to the filing of a pre-application, including an application for Qualified 501(c)(3) Bonds, the Applicant shall submit the Pre-Inducement Questionnaire, in the form prescribed by the Department, so the Department can have a preliminary understanding of the proposed Development plan before a pre-application and corresponding fees are submitted. After reviewing the pre-inducement questionnaire, Department staff will follow-up with the Applicant to discuss the next steps in the process and may schedule a pre-inducement conference call. Prior to the submission of a pre-application, it is essential that the Department and Applicant communicate regarding the Department's objectives and policies in the development of affordable housing throughout the State using Bond financing. The acceptance of the questionnaire by the Department does not constitute a pre-application or Application and does not bind the Department to any formal action regarding an inducement resolution.

(b) Neighborhood Risk Factors. If the Development Site has any of the characteristics described in §11.101(a)(3)(C) [~~(D)~~] of this title (relating to Neighborhood Risk Factors), the Applicant must disclose the presence of such characteristics to the Department. Disclosure may be done at time of pre-application and handled in connection with the inducement or it can be addressed at the time of Application submission. The Applicant understands that any determination made by staff or the Board at the time of bond inducement regarding Site eligibility based on the documentation presented, is preliminary in nature. Should additional information related to any of the Neighborhood Risk Factors become available while the Tax-Exempt Bond Development Application is under review, or the information by which the original determination was made changes in a way that could affect eligibility, then such information will be re-evaluated and presented to the Board.

(c) Pre-Application Process. An Applicant who intends to pursue Bond financing from the Department, including Qualified 501(c)(3) Bonds, shall submit a pre-application by the corresponding pre-application submission deadline, as set forth by the Department. The required pre-application fee as described in §12.10 of this chapter (relating to Fees) or §12.11 of this chapter (relating to Qualified 501(c)(3) Bonds), as applicable, must be submitted with the pre-application in order for the pre-application to be considered accepted by the Department. Department review at the time of the pre-application is limited and not all issues of eligibility, fulfillment of threshold requirements in connection with the full Application, and documentation submission requirements pursuant to Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan) are reviewed. The Department is not responsible for notifying an Applicant of potential areas of ineligibility or other deficiencies at the time of pre-application. If the Development meets the criteria as described in §12.5 of this chapter (relating to Pre-Application Threshold Requirements), the pre-application will be scored and ranked according to the applicable selection criteria as described in §12.6 of this chapter (relating to Pre-Application Scoring Criteria), recognizing that pre-applications for Qualified 501(c)(3) Bond financing will be scored and ranked separately from bond pre-applications associated with Housing Tax Credits. The selection criteria, as further described in §12.6 of this chapter, reflects a structure that gives priority consideration to specific criteria as outlined in Tex. Gov't Code, §2306.359, as well as other important criteria. To the extent applicable, should two or more pre-applications receive the same score, the Department will utilize the tie breaker factors in this paragraph, which will be considered in the order they are presented herein, to determine which pre-application will receive preference in consideration of a Certificate of Reservation:

(1) To the pre-application that was on the waiting list with the TBRB but did not have an active Certificate of Reservation at the time of the TBRB lottery and achieved the maximum number of points under §12.6(12) of this chapter; and

(2) To the pre-application with the highest number of positive points achieved under §12.6(9) of this chapter.

(d) Inducement Resolution. After the pre-applications have been scored and ranked, the pre-application will be presented to the Board for consideration of an inducement resolution declaring the Department's initial intent to issue Bonds with respect to the Development. Approval of the inducement resolution does not guarantee final Board approval of the Bond Application. Department staff may recommend that the Board not approve an inducement resolution for a pre-application. Notwithstanding the foregoing, Department staff may, but is not required to, recommend that an inducement resolution be approved despite the presence of neighborhood risk factors, undesirable site features, or requirements that may necessitate a waiver, that have not fully been evaluated by staff at pre-application. The Applicant recognizes the risk involved in moving forward should this be the case and the Department assumes no responsibility or liability in that regard. Each Development is unique, and therefore, making the final determination to issue Bonds is often dependent on the issues presented at the time the full Application is considered by the Board.

§12.5. Pre-Application Threshold Requirements.

The threshold requirements of a pre-application include the criteria listed in paragraphs (1) - (7) of this section. As the Department reviews the pre-application the assumptions as reflected in Chapter 11, Subchapter D of this title (relating to Underwriting and Loan Policy) will be utilized, as applicable, even if not reflected by the Applicant in the pre-application. The threshold requirements of a pre-application include:

(1) Submission of the Multifamily Bond Pre-application as prescribed by the Department in the Multifamily Bond Pre-Application Procedures Manual;

(2) Completed Bond Review Board Residential Rental Attachment for the current program year; provided this paragraph shall not be required for Qualified 501(c)(3) Bonds;

(3) Site Control, evidenced by the documentation required under §11.204(9)[~~(1)~~] of this title (relating to Required Documentation for Application Submission). The Site Control must be valid through the date of both the Board meeting at which the inducement resolution is considered and, if applicable, subsequent submission of the application to the TBRB. For Lottery applications, Site Control must meet the requirements of 34 TAC §190.3(b)(13) (relating to Filing Requirements for Applications for Reservation);

(4) Boundary survey or plat clearly identifying the location and boundaries of the subject Property;

(5) Organizational Chart showing the structure of the Development Owner and of any Developer and Guarantor, providing the names and ownership percentages of all Persons having an ownership interest in the Development Owner, Developer and Guarantor, as applicable, and completed List of Organizations form, as provided in the pre-application. The List of Organizations form must include all Persons identified on the organizational charts, and further identify which of those Persons listed exercise Control of the Development;

(6) Evidence of Entity Registration or Reservation with the Texas Office of the Secretary of State; and

(7) A certification, as provided in the pre-application, that the Applicant met the requirements and deadlines for public notifications as identified in §11.203 of this title (relating to Public Notifications (§2306.6705(9)). In general, notifications should not be older than three months prior to the date of Application submission. In addition, should the jurisdiction of the official holding any position or role described in §11.203 of this title change between the submission of a pre-application and the submission of an Application in a manner that results in the Development being within a new jurisdiction, Applicants are required to notify the new entity no later than the Full Application Delivery Date.

§12.6. Pre-Application Scoring Criteria.

This section identifies the scoring criteria used in evaluating and ranking pre-applications, including pre-applications requesting Qualified 501(c)(3) Bonds to the extent applicable. Any scoring items that require supplemental information to substantiate points must be submitted in the pre-application, as further outlined in the Multifamily Bond Pre-Application Procedures Manual. Applicants proposing multiple sites will be required to submit a separate pre-application for each Development Site, unless staff determines that one pre-application is more

appropriate based on the specifics of the transaction. Each individual pre-application will be scored on its own merits and the final score will be determined based on an average of all of the individual scores. Ongoing requirements, as selected in the pre-application, will be reflected in the Bond Regulatory and Land Use Restriction Agreement and must be maintained throughout the State Restrictive Period, unless otherwise stated or required in such Agreement.

(1) Income and Rent Levels of the Tenants. Pre-applications may qualify for up to ten (10 points) for this item.

(A) Priority 1 designation includes one of clauses (i) - (iii) of this subparagraph. (10 points)

(i) set aside 50% of Units rent capped at 50% AMGI and the remaining 50% of Units rent capped at 60% AMGI; or

(ii) set aside 15% of Units rent capped at 30% AMGI and the remaining 85% of Units rent capped at 60% AMGI; or

(iii) set aside 100% of Units rent capped at 60% AMGI for Developments located in a census tract with a median income that is higher than the median income of the county, MSA, or PMSA in which the census tract is located.

(B) Priority 2 designation requires the set aside of at least 80% of the Units rent capped at 60% AMGI (7 points).

(C) Priority 3 designation. Includes any qualified residential rental development. Market rate Units can be included under this priority (5 points).

(2) Cost of Development per Square Foot. (1 point) For this item, costs shall be defined as the Building Cost as represented in the Development Cost Schedule, as originally provided in the pre-application. This calculation does not include indirect construction costs or site work. Pre-applications that do not exceed $160 per square foot of Net Rentable Area will receive one (1) point. Rehabilitation Developments will automatically receive this point.

(3) Unit Sizes. (6 points) The Development must meet the minimum requirements identified in this subparagraph to qualify for points. Points for this item will be automatically granted for Applications involving Rehabilitation (excluding Reconstruction).

(A) Five-hundred (500) square feet for an Efficiency Unit;

(B) Six-hundred (600) square feet for a one Bedroom Unit;

(C) Eight-hundred-fifty (850) square feet for a two Bedroom Unit;

(D) One-thousand-fifty (1,050) square feet for a three Bedroom Unit; and

(E) One-thousand, two-hundred-fifty (1,250) square feet for a four Bedroom Unit.

(4) Extended Affordability. A pre-application may qualify for up to three (3) points under this item.

(A) Development Owners that agree to extend the State Restrictive Period for a Development to a total of 40 years (3 points).

(B) Development Owners that agree to extend the State Restrictive Period for a Development to a total of 35 years (2 points).

(5) Unit and Development Construction Features. A pre-application may qualify for nine (9) points, as certified in the pre-application, for providing specific amenity and quality features in every Unit at no extra charge to the tenant. The amenities and corresponding point structure is provided in §11.101(b)(6)(B) of this title (relating to Unit, Development Construction, and Energy and Water Efficiency Features), which includes a minimum number of points that must come from Energy and Water Efficiency Features. Applications involving scattered site Developments must have a specific amenity located within each Unit to count for points. Rehabilitation Developments will start with a base score of (5 points).

(6) Common Amenities. All Developments must provide at least the minimum threshold of points for common amenities based on the total number of Units in the Development as provided in subparagraphs (A) - (F) of this paragraph. An Applicant may choose to exceed the minimum number of points necessary based on Development size; however, the maximum number of points under this item which a Development may be awarded shall not exceed 22 points. The common amenities include those listed in §11.101(b)(5) of this title and must meet the requirements as stated therein.

(A) Developments with 16 to 40 Units must qualify for (2 points);

(B) Developments with 41 to 76 Units must qualify for (4 points);

(C) Developments with 77 to 99 Units must qualify for (7 points);

(D) Developments with 100 to 149 Units must qualify for (10 points);

(E) Developments with 150 to 199 Units must qualify for (14 points); or

(F) Developments with 200 or more Units must qualify for (18 points).

(7) Resident Supportive Services. A pre-application may qualify for up to ten (10) points for this item. By electing points, the Applicant certifies that the Development will provide supportive services, which are listed in §11.101(b)(7) of this title[, ~~appropriate for the residents and that there will be adequate space for the intended services~~]. The Owner may change[, ~~from time to time,~~] the services offered if [; ~~however,~~] the overall points as selected at pre-application [~~must~~] remain the same; however, a 45-day notice must be provided to tenants of the change. Should the QAP in subsequent years provide different services than those listed in §11.101(b)(7)(A) - (E) of this title, the [~~Development~~] Owner may be allowed to select services as listed therein upon written consent from the Department and any services selected must be of similar value to the service it is intending to replace. [~~The Development Owner will be required to substantiate such service(s) at the time of compliance monitoring, if requested by staff. The services provided should be those that will directly benefit the Target Population of the Development and be accessible to all. No fees may be charged to the residents for any of the services. Unless otherwise specified, services must be provided on-site or transportation to those off-site services identified on the list must be provided. The same service may not be used for more than one scoring item. These services are intended to be provided by a qualified and reputable provider in the specified industry such that the experience and background of the provider demonstrates sufficient knowledge to be providing the service. In general, on-site leasing staff or property maintenance staff would not be considered a qualified provider. Where applicable, the services must be documented by a written agreement with the provider. Unless otherwise noted in a particular clause, courses and services must be offered by an onsite instructor(s).~~]

(A) The Development Owner shall provide resident services sufficient to substantiate ten (10) points; or

(B) The Development Owner shall provide resident services sufficient to substantiate eight (8) points.

(8) Underserved Area. An Application may qualify to receive up to four (4) points if the Development Site meets the criteria described in §11.9(c)(6)(A) - (E), or (H) of this title. The pre-application must include evidence that the Development Site meets this requirement. Regardless of the varying point options listed under §11.9(c)(6) of this title, the number of points attributed to this scoring item shall be four (4) points.

(9) Development Support/Opposition. (Maximum +24 to -24 points) Each letter will receive a maximum of +3 to -3 points and shall be received 10 business days prior to the Board's consideration of the pre-application. Letters must clearly state support or opposition to the specific Development. State Representatives or Senators as well as local elected officials must be in office when the pre-application is submitted and represent the district containing the proposed Development Site. Letters of support from State or local elected officials that do not represent the district containing the proposed Development Site will not qualify for points. Neutral letters that do not specifically refer to the Development or do not explicitly state support will receive (zero points). A letter that does not directly express support but expresses it indirectly by inference (i.e., "the local jurisdiction supports the Development and I support the local jurisdiction") counts as a neutral letter except in the case of State elected officials. A letter from a State elected official that does not directly indicate support by the official, but expresses support on behalf of the official's constituents or community (i.e., "My constituents support the Development and I am relaying their support") counts as a support letter. A resolution specifically expressing support that is adopted by the applicable Governing Body will count as support under this scoring item for a maximum of 3 points.

(A) State Senator and State Representative of the districts whose boundaries include the proposed Development Site;

(B) Mayor of the municipality (if the Development is within a municipality or its extraterritorial jurisdiction);

(C) Elected member of the Governing Body of the municipality (if the Development is within a municipality or its extraterritorial jurisdiction) who represents the district in which the Development Site is located;

(D) Presiding officer of the Governing Body of the county in which the Development Site is located;

(E) Elected member of the Governing Body of the county who represents the district in which the Development Site is located;

(F) Superintendent of the school district in which the Development Site is located; and

(G) Presiding officer of the board of trustees of the school district in which the Development Site is located.

(10) Preservation Initiative. (2 points) Preservation Developments, including Rehabilitation proposals on Properties which are nearing expiration of an existing affordability requirement within the next two years or for which there has been a rent restriction requirement in the past 10 years may qualify for points under this item. Evidence must be submitted in the pre-application.

(11) Declared Disaster Areas. (7 points) A pre-application may receive points if the Development Site is located in an area declared a disaster area under Tex. Gov't Code §418.014 at the time of submission, or at any time within the two-year period preceding the date of submission.

(12) Waiting List. (5 points) A pre-application that is on the Department's waiting list with the TBRB and does not have an active Certificate of Reservation at the time of the Private Activity Bond Lottery may receive points under this item if participating in the Lottery for the upcoming program year. These points will be added by staff once all of the scores for Lottery applications have been finalized. A pre-application for Qualified 501(c)(3) Bonds is not eligible for these points.

(A) For pre-applications that participated in the prior year Private Activity Bond Lottery (5 points); or

(B) For pre-applications that had an Inducement Resolution adoption date of November of the prior calendar year through March of the current calendar year (3 points); or

(C) For pre-applications that had an Inducement Resolution adoption date of April through July of the current calendar year (1 point).

(13) Assisting Households with Children. (42(m)(1)(C)(vii)) A pre-application may receive one point under this item if at least 15% of the Units in the Development contain three or more bedrooms. The specific number of three or more bedrooms may change from pre-application to full Application, but the minimum percentage must still be met. Applications proposing Rehabilitation (excluding Reconstruction) and Elderly Developments will automatically receive this point.

(14) Sponsor Contribution. This scoring item is only applicable to pre-applications requesting an issuance of Qualified 501(c)(3) Bonds. A pre-application may qualify for up to ten (10) points for this item based on the amount of sponsor contribution as reflected in the pre-application. The contribution shall be in the form of cash or land contribution or other contribution acceptable to the Department. A contribution in the form of deferred developer fee will not qualify for points.

(A) A contribution of at least 10% will qualify for 10 points; or

(B) A contribution of at least 5% will qualify for 7 points.

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 November 5, 2026.

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Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
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For further information, please call: (512) 475-3959

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 97. PLANNING AND ACCOUNTABILITY

SUBCHAPTER AA. ACCOUNTABILITY AND PERFORMANCE MONITORING

19 TAC §97.1001

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure in 19 TAC §97.1001(b) is not included in the print version of the Texas Register. The figure is available in the on-line version of the November 20, 2026, issue of the Texas Register.)

The Texas Education Agency (TEA) proposes an amendment to §97.1001, concerning the accountability rating system. The proposed amendment would adopt in rule applicable excerpts of the *2028 Accountability Manual*, which include provisions to implement House Bill (HB) 8, 89th Texas Legislature, 2nd Called Session, 2025. Earlier versions of the manuals will remain in effect with respect to the school years for which they were developed.

BACKGROUND INFORMATION AND JUSTIFICATION: TEA has adopted its academic accountability manual in rule since 2000 under §97.1001. The accountability system evolves from year to year, so the criteria and standards for rating and acknowledging schools in the most current year differ to some degree from those applied in the prior year.

The proposed amendment to §97.1001 would adopt excerpts of the *2028 Accountability Manual* into rule as a figure. The excerpts, Chapters 1-12 of the *2028 Accountability Manual*, specify the indicators, standards, and procedures used by the commissioner to determine accountability ratings for districts, campuses, and charter schools. These chapters also specify indicators, standards, and procedures used to determine distinction designations on additional indicators for Texas public school campuses and districts. Ratings may be revised as a result of investigative activities by the commissioner as authorized under Texas Education Code (TEC), §39.056 and §39.003.

Following is a chapter-by-chapter summary of the changes for this year's manual. In every chapter, dates and years for which data are considered would be updated to align with 2028 accountability. Certain updates to the excerpts of the *2028 Accountability Manual* would reflect the implementation of HB 8, 89th Texas Legislature, 2nd Called Session, 2025, and ensure alignment with statutory requirements. Some updates would apply broadly across multiple chapters, including the removal of references to the State of Texas Assessment of Academic Readiness (STAAR®) and their replacement with a new instructionally supportive assessment tool called the Student Success Tool (SST) and the elimination of the English II end-of-course (EOC) assessment, where applicable. Other changes would be chapter-specific to clarify and implement particular provisions. Edits for clarity regarding consistent language and terminology throughout each chapter would be embedded within the proposed *2028 Accountability Manual*.

Chapter 1 gives an overview of the entire accountability system. Language would be updated to clarify the availability and access of accountability reports through the TEA Login accountability application, with cross-references to Appendix F. Language would be updated to align with TEC, §39.0534, as added by HB 8, clarifying the statutory composition of the Texas Accountability Advisory Group, including representation from legislative offices and stakeholder groups. The description of Closing the Gaps would be updated to reflect the integration of Results Driven Accountability (RDA) through the creation of Closing the Gaps, Part B: Special Populations Program Outcomes. The "Districts" section would be revised to reflect the calculation of the District Overall rating using the Closing the Gaps, Part A: Student Group Performance district domain score in combination with Part B: Special Populations Program Outcomes score. The "Districts" section would be updated to reflect that the district overall rating is calculated using a district domain score that combines Closing the Gaps, Part A: Student Group Performance and Part B: Special Populations Program Outcomes. Language would be included to address the transition from STAAR® to SST, a new instructionally supportive assessment tool, beginning in the 2027-2028 school year and to clarify that the new instructionally supportive assessment tool references encompass the statewide assessment program administered during that year. Language would be updated to revise the "Accountability Subset Rule" section to highlight the subset of assessment results used for each accountability domain in light of the inclusion of Closing the Gaps, Part B. Language would be updated to clarify that corrections for prior-year College, Career, and Military (CCMR) Public Education Information Management System (PEIMS)-based indicators made during Texas Student Data System (TSDS) PEIMS Working Submission windows are limited to data from the two prior school years and may be subject to data-related compliance reviews, including requests for documentation to validate reported data. The list of TSDS PEIMS data used for accountability indicators would be updated to reflect the addition of military readiness indicator. The list of data used for CCMR indicators would be updated to include Occupational Skills Awards (OSAs) designated as Credentials of Value (COVs) and would be incorporated as a CCMR indicator upon publication of the approved COV list and the availability of student-level data.

Chapter 2 describes the "Student Achievement" domain. Consistent with HB 8, language would be added to reflect the elimination of the English II EOC assessment beginning in the 2027-2028 school year; updates would be made to accelerated tester eligibility based on English I or English II performance, as applicable; and corresponding adjustment would be made to the definition of an accelerated tester. The calculation methodology would be revised to incorporate the awarding of bonus points for accelerated pathway assessments taken prior to Grade 9 and to reflect the inclusion of those bonus points into the calculation of the SST component score. Language would be updated to clarify that a graduate must earn credit in the final course of an approved college preparatory course sequence aligned between the district and partnering institution(s) of higher education in Grade 12. Language would be updated to align with an amendment to 19 TAC §74.1003, Industry-Based Certifications for Public School Accountability, effective June 2025, which revised the criteria used to identify industry-based certifications (IBCs) for public school accountability and established three IBC tiers based on labor market demand, wage earning potential, and skill levels. Language would be updated to clarify that Tier 3 IBCs are capped at 5 graduates or 5%, as applicable. Language would be added to clarify the definition of a completer in an aligned program of study, including course, credit, and level requirements within a single program of study. Language would be added to specify that only associate degrees designated by the Texas Higher Education Coordinating Board (THECB) as COVs will satisfy the CCMR indicator upon availability of the approved COV list and the necessary student data. Language would be updated to clarify the requirements for students identified as receiving special education services to demonstrate college, ca-

reer, or military readiness when graduating under a specific graduation plan. Language would be added to specify that only Level I and Level II certificates designated by THECB as COVs will satisfy the CCMR indicator once the approved COV list and corresponding student data become available. Language would be added to reflect the addition of a military readiness indicator enacted by HB 8, under which students may demonstrate military readiness through qualifying performance on the Armed Services Vocational Aptitude Battery and completion of a Junior Reserve Officer Training Corps program, including the National Defense Cadet Corps. Language would be updated to reflect HB 8 provisions governing the phase-out of IBCs, including notice requirements, limited use of prior IBC lists for students already in progress, and restrictions on awarding CCMR credit to new students once a new list is published. Language would be added to address changes in IBC tier designations and the effect of those changes on eligibility for CCMR credit. Language would be added to describe the implementation of COVs within the CCMR component, including designation criteria established by THECB, the publication of approved COV lists, and phase-in timelines for associate degrees, Level I and Level II certificates, and OSAs. Language would be added regarding the methodology and schedule for determining dual credit and OnRamps coursework eligible for inclusion in the CCMR indicator, including provisions for the review of course eligibility and advance notice of changes affecting accountability calculations. Additional language would be included to clarify that the Tier 3 IBC cap is applied to annual graduate data before small numbers analysis calculations. The methodology for the SST component for alternative education accountability (AEA) campuses would be revised to include accelerated pathway bonus points. Language would be added to specify that CCMR methodology outlined in the manual applies to the 2028 through 2030 accountability cycles and that the CCMR Postsecondary Readiness methodology described in Chapter 12 that applies differential weighting to CCMR indicators will be implemented with the 2031 accountability cycle. Additional language would be added to reflect that the CCMR rate calculation is modified to credit AEA campuses for previous dropouts who earn CCMR and will apply for 2028 through 2030 accountability.

Chapter 3 describes the "School Progress" domain. In alignment with HB 8, language would be added to clarify that SST performance levels are set using methodologies consistent with prior years to ensure continuity of student performance and academic growth during the transition from STAAR® to the SST. Language would be included to clarify the administration of both STAAR® and the SST during the 2027-2028 school year and to specify that references to the SST encompass the statewide assessment program as a whole, regardless of administration period. Language would be updated to clarify the inclusion of English II growth results limited to the 2028 accountability cycle and to reflect the discontinuation of English II EOC administrations beginning in December 2027. Language would be added to clarify the Relative Performance methodology, including how campuses are assigned to economically disadvantaged bands and how SST and CCMR results are scaled using historical performance ranges. The "Alternative Education Accountability-Part B: Retest Growth" language would be revised to clarify the purpose and evaluation of alternative education campuses under AEA provisions, including the use of School Progress, Part B: Retest Growth to measure student growth on retest assessments in support of dropout prevention and recovery.

Chapter 4 describes the "Closing the Gaps, Part A: Student Group Performance" domain. Content that previously addressed the federally required identification of schools for improvement in Chapter 10 in the *2027 Accountability Manual* would be relocated to this chapter of the *2028 Accountability Manual*. Language would be updated to revise the student groups evaluated by removing "Former special education" and "Continuously enrolled" to align with changes resulting from the HB 8. Language would be added to describe the evaluation of new campuses and campuses in their first year of SST testing for Closing the Gaps, Part A, including definitions of new campuses, the use of the state's two lowest-performing racial/ethnic groups from the prior year, and the application of minimum size requirements. Language would be updated to specify that Closing the Gaps, Part A student group performance targets meet federal requirements, are approved through the Texas Consolidated State Every Student Succeeds Act Plan, and are set using a federally approved target setting methodology. Language would be added to establish a two-point Safe Harbor provision for campuses that do not meet an interim target but demonstrate sufficient progress to remain on track to achieve the target. Language would be added to specify the expected growth denominators used for 2-point scoring and to establish how alternative prior year or proxy data are used when prior year data are unavailable for Closing the Gaps, Part A growth calculations. The added language would address the use of prior year small numbers analysis results, as applicable, and would implement HB 8 provisions for newly established campuses requiring the use of appropriate proxy prior year data. Language would be added to specify that prior to 2033 *A-F* Accountability, Texas will transition to an updated assessment to determine progress in achieving English language proficiency. Language would be added to clarify that CCMR methodology applies to the 2028 through 2030 accountability cycles. Language would also be added that, for the 2031 accountability cycle, the CCMR postsecondary readiness methodology that applies differential weighting to CCMR indicators will be implemented. Language would be added to include OSAs designated as COVs by THECB as a qualifying CCMR indicator, contingent upon publication of the applicable COV list and the availability of the necessary student data.

New Chapter 5 would introduce the "District Closing the Gaps Domain, Part B: Special Populations Program Outcomes" domain, which evaluates district-level outcomes for students served in special populations programs. This chapter would integrate program effectiveness measures with academic outcomes and assess district-level progress toward interim and long-term targets for special populations. In addition, the chapter would clarify the relationship between accountability and program monitoring requirements: (a) Significant Disproportionality (SD) determinations required under 34 CFR §300.647 remain separate from *A-F* accountability and continue to be reported for federal compliance and transparency; (b) annually determination levels (DLs) for special education monitoring activities and interventions will incorporate performance data from Closing the Gaps, Part B in its overall calculation method; and (c) bilingual education, foster care, and homeless program areas remain subject to program monitoring processes separate from *A-F* accountability. Key sections would describe the special populations program areas and student groups evaluated, the assessments and outcome measures used, and the scoring and weighting structure applied to determine the Part B domain score. Language would include that Part B is used in combination with Closing the Gaps, Part A to determine a dis-

trict's overall Closing the Gaps domain rating, while campuses continue to be evaluated using Part A only.

New Chapter 6 would contain information found in Chapter 5 in the *2027 Accountability Manual* and would describe how the overall ratings are calculated. Language would be added to clarify that inclusion of CCMR and graduation rate components in accountability calculations is determined by current-year campus type and to describe the treatment of campuses that transition to a non-high school campus type. Language would be updated to clarify that district domain scaled scores for Student Achievement, School Progress (Parts A and B), and Closing the Gaps, Part A are derived from proportionally weighted campus domain scaled scores using the district proportionality methodology. Additional language would explain how the Closing the Gaps, Part B domain scaled score, derived from a district accountability subset across all campuses, would be incorporated into the calculation of the district overall rating. This would include revising the steps for district overall rating calculation with the incorporation of Closing the Gaps, Part B domain. Further revisions would include examples illustrating district proportionality, district accountability subsets, and the incorporation of Closing the Gaps, Part B into district domain and overall rating calculations, including impacts on single-campus districts. Scaling tables would be updated to reflect 2028 cut scores and scaling.

Chapter 7 describes the pairing process and AEA provisions. Language would be added to clarify the use of paired Closing the Gaps data for federal school improvement identification and the treatment of consecutive years of unacceptable performance for paired campuses. Updates would specify that paired campuses assume consecutive unacceptable counts earned by the paired campus and that these counts are retained when a pairing relationship no longer exists, consistent with responsibilities and consequences provisions.

Chapter 8 describes the process for appealing ratings. Language would be added to clarify that required interventions begin upon release of preliminary ratings and, if an appeal is granted, may be adjusted only prospectively. Language would be added to specify that appeals are denied if districts or charter schools miss required TSDS PEIMS resubmission windows, assessment rescore request windows, or CCMR data submission opportunities required under TEC, §39.053(c-8). Language would be added to identify additional circumstances under which appeals are unfavorably considered. The "Special Circumstances Appeals" section would be revised to clarify that documentation requirements for special program campuses include campuses serving students with medical needs in homebound, hospital, or partner agency settings. Language would be added to provide an example illustrating how a granted campus appeal may affect certain domain and overall ratings without changing underlying data or component scores.

Chapter 9 describes the responsibilities of TEA, the responsibilities of school districts and open-enrollment charter schools, and the consequences to school districts and open-enrollment charter schools related to accountability and interventions. Language would be added to specify that, consistent with 19 TAC §97.1066, Campus Repurposing and Closure, rating history may be linked across campus numbers when a campus closes, including the transfer of consecutive unacceptable performance ratings to a receiving campus under certain circumstances.

New Chapter 10 would contain information found in Chapter 6 in the *2027 Accountability Manual* describing distinction designations. Language would be removed to eliminate attendance rate as an indicator used for the Academic Achievement Distinction Designation (AADD). Language would be updated to clarify which campuses are not eligible for distinction designations, including specifying that AEA and dropout recovery school campuses that are high schools are eligible to be evaluated for the Postsecondary Readiness Distinction Designation. New language would indicate the addition of four postsecondary indicators. Additional language would specify that high school AEA eligibility applies only at the campus level and would describe the methodology for postsecondary readiness indicators for AEA high schools. New language would add OnRamps dual enrollment courses for advanced/dual credit course completion for AADD.

Chapter 11 describes local accountability systems. No changes from the *2027 Accountability Manual* would be made to this chapter.

New Chapter 12 would describe the CCMR postsecondary readiness methodology that applies differential weighting to CCMR indicators. This would replace Chapter 12 of the *2027 Accountability Manual* that described the RDA system. New Chapter 12 would establish the differential weighting of CCMR framework to be implemented beginning with the 2031 accountability cycle. New language would outline postsecondary readiness performance levels, indicators, and calculation methodologies. This would include minimum size criteria, small numbers analysis, and provisions for AEA campuses. Additional language would specify the application of HB 8 requirements related to IBC phase-out timelines and the use of proxy data where applicable. This includes language that would address changes in IBC tier designations and the effect of those changes on eligibility for CCMR credit.

FISCAL IMPACT: Iris Tian, deputy commissioner of analytics, assessment and reporting, has determined that for the first five years the proposal is in effect, there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

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

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

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

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

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would limit an existing regulation due to its effect on school accountability for 2028.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative

appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not expand or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Ms. Tian has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be to continue to inform the public of the existence of annual manuals specifying rating procedures for public schools by including this rule in the *Texas Administrative Code*. There is no anticipated economic cost to persons who are required to comply with the proposal.

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

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

PUBLIC COMMENTS: TEA requests public comments on the proposal, including, per Texas Government Code, §2001.024(a)(8), information related to the cost, benefit, or effect of the proposed rule and any applicable data, research, or analysis, from any person required to comply with the proposed rule or any other interested person. The public comment period on the proposal begins November 20, 2026, and ends December 21, 2026. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on November 20, 2026. A form for submitting public comments is available on the TEA website at https://tea.texas.gov/laws-and-rules/commissioner-rules-tac/proposed-commissioner-education-rules.

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §7.021(b)(1), which authorizes the Texas Education Agency (TEA) to administer and monitor compliance with education programs required by federal or state law, including federal funding and state funding for those programs; TEC, §7.028, which authorizes TEA to monitor as necessary to ensure school district and charter school compliance with federal law and regulations, financial integrity, and data integrity and authorizes the agency to monitor school district and charter schools through its investigative process. TEC, §7.028(a), authorizes TEA to monitor special education programs for compliance with state and federal laws; TEC, §12.056, which requires that a campus or program for which a charter is granted under TEC, Chapter 12, Subchapter C, is subject to any prohibition relating to the Public Education Information Management System (PEIMS) to the extent necessary to monitor compliance with TEC, Chapter 12, Subchapter C, as determined by the commissioner; high school graduation under TEC, §28.025; special education programs under TEC, Chapter 29, Subchapter A; bilingual education under TEC, Chapter 29, Subchapter B; and public school accountability under TEC, Chapter 39, Subchapters B, C, D, F, and J, and Chapter 39A; TEC, §12.104, which states that a charter granted under TEC, Chapter 12, Subchapter D, is subject to a prohibition, restriction, or requirement, as applicable, imposed by TEC, Title 2, or a rule adopted under TEC, Title 2, relating to PEIMS to the extent necessary to monitor compliance with TEC, Chapter 12, Subchapter D, as determined by the commissioner; high school graduation requirements under TEC, §28.025; special education programs under TEC, Chapter 29, Subchapter A; bilingual education under TEC, Chapter 29, Subchapter B; discipline management practices or behavior management techniques under TEC, §37.0021; public school accountability under TEC, Chapter 39, Subchapters B, C, D, F, G, and J, and Chapter 39A; and intensive programs of instruction under TEC, §28.0213; TEC, §29.001, which authorizes TEA to effectively monitor all local educational agencies (LEAs) to ensure that rules relating to the delivery of services to children with disabilities are applied in a consistent and uniform manner, to ensure that LEAs are complying with those rules, and to ensure that specific reports filed by LEAs are accurate and complete; TEC, §29.0011(b), which authorizes TEA to meet the requirements under (1) 20 U.S.C. §1418(d) and its implementing regulations to collect and examine data to determine whether significant disproportionality based on race or ethnicity is occurring in the state and in the school districts and open-enrollment charter schools in the state with respect to the (a) identification of children as children with disabilities, including the identification of children as children with particular impairments; (b) placement of children with disabilities in particular educational settings; and (c) incidence, duration, and type of disciplinary actions taken against children with disabilities, including suspensions or expulsions; or (2) 20 U.S.C. §1416(a)(3)(C) and its implementing regulations to address in the statewide plan the percentage of schools with disproportionate representation of racial and ethnic groups in special education and related services and in specific disability categories that results from inappropriate identification; TEC, §29.010(a), which authorizes TEA to adopt and implement a comprehensive system for monitoring LEA compliance with federal and state laws relating to special education, including ongoing analysis of LEA special education data; TEC, §29.062, which authorizes TEA to evaluate and monitor the effectiveness of LEA programs and apply sanctions concerning emergent bilingual students; TEC, §29.066, which authorizes PEIMS reporting requirements for school districts that are required to offer bilingual education or special language programs to include the following information in the district's PEIMS report: (1) demographic information, as determined by the commissioner, on students enrolled in district bilingual education or special language programs; (2) the number and percentage of students enrolled in each instructional model of a bilingual education or special language program offered by the district; and (3) the number and percentage of emergent bilingual students who do not receive specialized instruction; TEC, §29.081(e), (e-1), and (e-2), which define criteria for alternative education programs for students at risk of dropping out of school and subjects those campuses to the performance indicators and accountability standards adopted for alternative education programs; TEC, §29.201 and §29.202, which describe the Public Education Grant program and eligibility requirements; TEC, §39.003 and §39.004, which authorize the commissioner to adopt procedures relating to special investigations. TEC, §39.003(d), allows the commissioner to take appropriate action under Chapter 39A, to lower the district's accreditation status or the district's or campus's accountability rating based on the results of the special investigation; TEC, §39.051 and §39.052, which authorize the commissioner to determine criteria for accreditation statuses and to determine the accreditation status of each school district and open-enrollment charter school; TEC, §39.053, which authorizes the commissioner to adopt a set of indicators of the quality of learning and achievement and

requires the commissioner to periodically review the indicators for consideration of appropriate revisions; TEC, §39.0531, as added by House Bill (HB) 8, 89th Texas Legislature, 2nd Called Session, 2025, which requires TEA, in coordination with the Texas Higher Education Coordinating Board and the Texas Workforce Commission, to develop and maintain a list of eligible industry certifications for purposes of public school accountability and authorizes the use of those certifications as indicators under the College, Career, and Military Readiness component of the accountability system; TEC, §39.0534, as added by HB 8, 89th Texas Legislature, 2nd Called Session, 2025, which requires the commissioner to establish an accountability advisory committee to advise the agency on the adoption and modification of accountability indicators and performance standards and prescribes the composition and duties of the committee; TEC, §39.054, which requires the commissioner to adopt rules to evaluate school district and campus performance and to assign a performance rating; TEC, §39.0541, which authorizes the commissioner to adopt indicators and standards under TEC, Chapter 39, Subchapter C, at any time during a school year before the evaluation of a school district or campus; TEC, §39.0543, which describes acceptable and unacceptable performance as referenced in law; TEC, §39.0546, which requires the commissioner to assign a school district or campus a rating of "Not Rated" for the 2021-2022 school year, unless, after reviewing the district or campus under the methods and standards adopted under TEC, §39.054, the commissioner determines the district or campus should be assigned an overall performance rating of C or higher; TEC, §39.0548, which requires the commissioner to designate campuses that meet specific criteria as dropout recovery schools and to use specific indicators to evaluate them; TEC, §39.055, which prohibits the use of assessment results and other performance indicators of students in a residential facility in state accountability; TEC, §39.056, which authorizes the commissioner to adopt procedures relating to monitoring reviews and special investigations; TEC, §39.151, which provides a process for a school district or an open-enrollment charter school to challenge an academic or financial accountability rating; TEC, §39.201, which requires the commissioner to award distinction designations to a campus or district for outstanding performance; TEC, §39.2011, which makes open-enrollment charter schools and campuses that earn an acceptable rating eligible for distinction designations; TEC, §39.202 and §39.203, which authorize the commissioner to establish criteria for distinction designations for campuses and districts; TEC, §39A.001, which authorizes the commissioner to take any of the actions authorized by TEC, Chapter 39, Subchapter A, to the extent the commissioner determines necessary if a school does not satisfy the academic performance standards under TEC, §39.053 or §39.054, or based upon a special investigation; TEC, §39A.002, which authorizes the commissioner to take certain actions if a school district becomes subject to commissioner action under TEC, §39A.001; TEC, §39A.004, which authorizes the commissioner to appoint a board of managers to exercise the powers and duties of a school district's board of trustees if the district is subject to commissioner action under TEC, §39A.001, and has a current accreditation status of accredited-warned or accredited-probation; or fails to satisfy any standard under TEC, §39.054(e); or fails to satisfy any financial accountability standard; TEC, §39A.005, which authorizes the commissioner to revoke school accreditation if the district is subject to TEC, §39A.001, and for two consecutive school years has received an accreditation status of accredited-warned or accredited-probation, failed to satisfy any standard under TEC, §39.054(e), or failed to satisfy a financial performance standard; TEC, §39A.007, which authorizes the commissioner to impose a sanction designed to improve high school completion rates if the district has failed to satisfy any standard under TEC, §39.054(e), due to high school completion rates; TEC, §39A.051, which authorizes the commissioner to take action based on campus performance that is below any standard under TEC, §39.054(e); and TEC, §39A.063, which authorizes the commissioner to accept substantially similar intervention measures as required by federal accountability measures in compliance with TEC, Chapter 39A.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §§7.021(b)(1); 7.028; 12.056; 12.104; 29.001; 29.0011(b); 29.010(a); 29.062; 29.066; 29.081(e), (e-1), and (e-2); 29.201; 29.202; 39.003; 39.004; 39.051; 39.052; 39.053; 39.0531, as added by House Bill (HB) 8, 89th Texas Legislature, 2nd Called Session, 2025; 39.0534, as added by HB 8, 89th Texas Legislature, 2nd Called Session, 2025; 39.054; 39.0541; 39.0543; 39.0546; 39.0548; 39.055; 39.056; 39.151; 39.201; 39.2011; 39.202; 39.203; 39A.001; 39A.002; 39A.004; 39A.005; 39A.007; 39A.051; and 39A.063.

§97.1001. Accountability Rating System.

(a) The rating standards established by the commissioner of education under Texas Education Code (TEC), §§39.052(a) and (b)(1)(A); 39.053; 39.0531; 39.0534; 39.054; 39.0541; 39.0548; 39.055; 39.151; 39.201; 39.2011; 39.202; 39.203; 29.081(e), (e-1), and (e-2); and 12.104(b)(2)(L), as enacted or amended, shall be used to evaluate the performance of districts, campuses, and charter schools. The indicators, standards, and procedures used to determine ratings will be annually published in official Texas Education Agency publications. These publications will be widely disseminated and cover the following:

(1) indicators, standards, and procedures used to determine district ratings;

(2) indicators, standards, and procedures used to determine campus ratings;

(3) indicators, standards, and procedures used to determine distinction designations; and

(4) procedures for submitting a rating appeal.

(b) The procedures by which districts, campuses, and charter schools are rated and acknowledged for 2028 [~~2027~~] are based upon specific criteria and calculations, which are described in excerpted sections of the *2028* [~~*2027*~~] *Accountability Manual* provided in this subsection.

Figure: 19 TAC §97.1001(b)

[~~Figure: 19 TAC §97.1001(b)~~]

(c) Ratings may be revised as a result of investigative activities by the commissioner as authorized under TEC, §39.003.

(d) The specific criteria and calculations used in the accountability manual are established annually by the commissioner and communicated to all school districts and charter schools.

(e) The specific criteria and calculations used in the annual accountability manual adopted for prior school years remain in effect for all purposes, including accountability, data standards, and audits, with respect to those school years.

~~[(f) In accordance with TEC, §7.028(a), the purpose of the Results Driven Accountability (RDA) framework is to evaluate and report annually on the performance of school districts and charter schools for certain populations of students included in selected program areas. The~~

~~performance of a school district or charter school is included in the RDA report through indicators of student performance and program effectiveness and corresponding performance levels established by the commissioner.~~]

[~~(g) The assignment of performance levels for school districts and charter schools in the 2027 RDA report is based on specific criteria and calculations, which are described in the *2027 Accountability Manual* provided in subsection (b) of this section.~~]

[~~(h) The specific criteria and calculations used in the RDA framework are established annually by the commissioner and communicated to all school districts and charter schools.~~]

[~~(i) The specific criteria and calculations used in the annual RDA manual adopted for prior school years remain in effect for all purposes, including accountability and performance monitoring, data standards, and audits, with respect to those school years.~~]

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

Filed with the Office of the Secretary of State on November 9, 2026.

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Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: December 20, 2026
For further information, please call: (512) 475-1497

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19 TAC §97.1005

The Texas Education Agency (TEA) proposes new §97.1005, concerning the treatment of former participants in the education savings account program in accountability calculations. The proposed new rule would reflect statutory requirements enacted by Senate Bill (SB) 2, 89th Texas Legislature, Regular Session, 2025, regarding accountability for students who cease participation in the Education Savings Account (ESA) program.

BACKGROUND INFORMATION AND JUSTIFICATION: New §97.1005 would implement Texas Education Code (TEC), §29.3611(2), as added by SB 2, 89th Texas Legislature, Regular Session, 2025. Under the new section, students who cease participation in the ESA program would not be considered in the public school accountability system performance evaluation of a school district or open-enrollment charter school for the school year in which the student ceases participation. The new section would specify that the commissioner would implement this requirement through the accountability system adopted under 19 TAC §97.1001.

FISCAL IMPACT: Iris Tian, deputy commissioner of analytics, assessment and reporting, has determined that for the first five-year period the proposal is in effect, there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

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

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

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

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

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would create a new regulation by implementing the accountability requirements of TEC, §29.3611(2).

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

PUBLIC BENEFIT AND COST TO PERSONS: Ms. Tian has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be providing clarity regarding the treatment of former participants in the ESA program in public school accountability calculations and supporting consistent implementation of the statutory exclusion for qualifying students.

DATA AND REPORTING IMPACT: The proposal would have a data and reporting impact. Proposed new §97.1005 would require school districts and open-enrollment charter schools to report former ESA program participants through Texas Student Data System Public Education Information Management System (TSDS PEIMS). The reporting would support implementation of TEC, §29.3611(2), which excludes qualifying former ESA students from accountability evaluations during the first school year after participation in the ESA program ends. The "former education savings account student" TSDS PEIMS data element was approved for implementation beginning with the 2026-2027 school year.

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

PUBLIC COMMENTS: TEA requests public comments on the proposal, including, per Texas Government Code, §2001.024(a)(8), information related to the cost, benefit, or effect of the proposed rule and any applicable data, research, or analysis, from any person required to comply with the proposed rule or any other interested person. The public comment period on the proposal begins November 20, 2026, and ends December 21, 2026. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on November 20, 2026. A form for submitting public comments is available on the

TEA website at https://tea.texas.gov/laws-and-rules/commissioner-rules-tac/proposed-commissioner-education-rules.

STATUTORY AUTHORITY. The new section is proposed under TEC, §29.3611(2), as added by SB 2, 89th Texas Legislature, Regular Session, 2025, which establishes requirements for the treatment under the public school accountability system of students who cease participation in the ESA program; and TEC, §39.054, as amended by House Bill (HB) 8, 89th Texas Legislature, 2nd Called Session, 2025, which requires the commissioner to adopt rules to evaluate school district and campus performance and to assign a performance rating.

CROSS REFERENCE TO STATUTE. The new section implements TEC, §29.3611(2), as added by SB 2, 89th Texas Legislature, Regular Session, 2025, and §39.054, as amended by HB 8, 89th Texas Legislature, 2nd Called Session, 2025.

§97.1005. Treatment of Former Participants in the Education Savings Account Program in Accountability Calculations.

(a) This section applies to students who cease participation in the Education Savings Account (ESA) program under Texas Education Code (TEC), Chapter 29, Subchapter J.

(b) Each school district and open-enrollment charter school shall report former ESA students annually through the Texas Student Data System Public Education Information Management System.

(c) In accordance with TEC, §29.3611(2), a student described by subsection (a) of this section who ceased participating in the program during a school year shall be excluded from the performance evaluations of a school district or open-enrollment charter school under the public accountability system prescribed by TEC, Chapters 39 and 39A, for the first school year after the student ceases participation in the program.

(d) The exclusion described in subsection (c) of this section shall be applied through the Accountability Subset Rule in the manner provided by the Texas Education Agency in the annual accountability manual adopted under §97.1001 of this subchapter (relating to Accountability Rating System).

(e) For the purposes of this section, "first school year after" means the school year that is occurring at the date the student ceases participation.

(f) This section applies only to the evaluation of the performance under TEC, Chapters 39 and 39A, and does not affect student enrollment reporting, funding, or other statutory reporting requirements.

(g) A student previously participating in the program who enrolls in a public school at the beginning of a school year:

(1) is not considered to have ceased to participate in the program during a school year under subsection (c) of this section; and

(2) shall be included in the performance evaluations of a school district or an open-enrollment charter school unless other exclusions apply.

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

Filed with the Office of the Secretary of State on November 9, 2026.

TRD-202604738

Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: December 20, 2026
For further information, please call: (512) 475-1497

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PART 8. WINDHAM SCHOOL DISTRICT

CHAPTER 300. GENERAL PROVISIONS

19 TAC §300.1

The Texas Board of Criminal Justice (board), proposes amendments to §300.1, regarding Public Presentations and Comments to Windham School District Board of Trustees. The proposed amendments clarify that matters regarding specific Windham employees should be directed through existing Windham processes, and update formatting, terminology, and style.

Robert O'Banion, Chief Financial Officer for the Windham School District (Windham), has determined that for each year of the first five years the proposed amendments will be in effect, enforcing or administering the proposed amendments will not have foreseeable implications related to costs or revenues for state or local government because the proposed amendments merely clarify existing procedures.

Mr. O'Banion has also determined that for each year of the first five-year period, there will not be an economic impact on persons required to comply with the rules because the proposed amendments merely clarify existing procedures. There will be no adverse economic impact on small or micro businesses or on rural communities. Therefore, no regulatory flexibility analysis is required. The anticipated public benefit, as a result of enforcing the proposed amendments, will be to enhance clarity and public understanding. No cost will be imposed on regulated persons.

The proposed amendments will have no impact on government growth; no impact on local employment; no creation or elimination of a government program; no creation or elimination of employee positions; no increase or decrease in future legislative appropriations to Windham; no increase or decrease in fees paid to Windham; no new regulation and no effect on an existing regulation; no increase or decrease in the number of individuals subject to the rule; and no effect upon the economy. The proposed amendments will not constitute a taking.

Comments related the proposed amendments should be directed to Erik Brown, General Counsel, Windham School District, P.O. Box 40, Huntsville, Texas 77342, or erik.brown@wsdtx.org, and must be received within 31 days after publication of this notice in the *Texas Register*.

Statutory Authority: Texas Government Code § 492.013(a-1), which authorizes the board to adopt rules for its procedures; Texas Government Code § 492.007, which requires the board to provide the provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the board's jurisdiction; Texas Government Code § 551.007 which allows governmental bodies to adopt rules regarding public address in open meetings.

Cross Reference to Statutes: Texas Government Code § 492; Texas Government Code, Chapter 551

§300.1. Public Presentations and Comments to the Windham School District Board of Trustees.

(a) Policy. The Windham School District ("Windham" [~~WSD~~]) Board of Trustees (the "Board" [~~board~~]) is committed to providing access and opportunity for public presentations and comments as provided by [~~for in~~] this rule [~~section~~]. Persons not employed by or under contract with Windham [~~the WSD~~] who wish to have topics [~~items~~] placed on a meeting [~~the board 's posted~~] agenda must[~~, shall~~] follow the procedures in [~~set forth~~] subsection (h) of this section. Public presentations and comments must [~~shall~~] be:

[~~(1) subject to the requirements and restrictions of subsections (b), (c), (d), (e), and (f), of this section;~~]

(1) [~~(2)~~] pertinent to issues under the jurisdiction of the Board [~~board~~], as determined by the Board [~~board~~] chairman and the Windham [~~WSD~~] superintendent; and

(2) [~~(3)~~] pertinent to policies, procedures, [~~standards,~~] and rules of Windham [~~the WSD~~]. Matters [~~Disputes~~] that are [~~appropriately~~] the subject of the appeals process for contract non-renewal or employee termination, the employee grievance system, the employee disciplinary system, or related [~~comments regarding pending~~] litigation must [~~shall~~] be addressed through those processes. As the Board does not engage in the day-to-day operations of Windham, matters or comments from members of the public concerning actions or performance of individual Windham employees should be directed through the applicable Windham processes rather than to the Board at a Board meeting.

(b) Definitions.

(1) Public presentations are presentations made by the public to the Board at a Board meeting [~~board~~] regarding topics posted on the Board [~~board~~] meeting agenda [~~that has been filed with and~~] published by the *Texas Register* and as provided for in subsection (c) of this section.

(2) Public comments are comments made by the public on topics not included on a Board meeting [~~non-posted board~~] agenda [~~topics~~] and as provided for in subsection (d) of this section.

(c) Public presentations. Persons who wish [~~desire~~] to make public presentations to the Board [~~board~~] on posted agenda topics must either: [~~shall provide,~~]

(1) register on the date of the meeting by completing a[~~, a completed~~] registration card available at the entrance to the room where the meeting is held and provide the card to Board [~~onsite board~~] office staff at least 10 minutes prior to the meeting's posted start time; or[~~. Registration cards shall be made available at the entry to the room where the board's scheduled meeting is held.~~]

[~~(1) Pre-registration is available for public presentations through first class mail at P.O. Box 13084, Austin, Texas 78711 or email at tbcj@tdcj.texas.gov. Pre-registration shall be received by the board office staff no later than four calendar days prior to the posted meeting date of the presentation. In addition to the information required in subsection (c)(2) of this section, pre-registration submissions shall include appropriate contact information, such as a daytime phone number or email address, for the individual who is registering to speak.~~]

(2) pre-register by notifying the Board office no later than four calendar days prior to the posted meeting date. Notice must be sent by first class mail to P.O. Box 13084, Austin, Texas 78711 or email at tbcj@tdcj.texas.gov.

(3) [~~(2)~~] Registration cards and pre-registration notices require [~~submissions shall disclose~~]:

(A) the name, phone number, and email address of the person who will make the presentation;

(B) a statement indicating [~~as to~~] whether the person is being remunerated for the presentation and, if so, by whom; and, if applicable, the name of the person or entity on whose behalf the presentation will be made;

(C) a statement indicating [~~as to~~] whether the presenter has registered as a lobbyist in relation to the agenda topic being addressed;

(D) the topic about which the person will speak and indication whether the person is for or against the topic; [~~a reference to the agenda topic on which the person wants to present;~~]

[~~(E) an indication as to whether the presenter will speak for or against the proposed agenda topic; and~~]

(E) [~~(F)~~] a statement verifying that all information to [~~that will~~] be presented is factual, true, and correct to the best of the speaker's knowledge.

[~~(3) The board chairman shall have discretion in setting reasonable limits on the time allocated for public presentations on posted agenda topics. If several persons have registered to address the board on the same agenda topic, it shall be within the discretion of the board chairman to request that those persons select a representative amongst themselves to express such remarks or limit their presentations to an expression of support for views previously articulated.~~]

(4) The Board [~~board~~] chairman will [~~shall~~] provide an opportunity for public presentations [~~to occur~~] prior to Board [~~the board taking~~] action on the topic identified on a [~~denoted on the presenter's~~] registration card. A [~~If a~~] person [~~who is~~] registered to speak who [~~on a posted agenda item~~] is not present when called upon forfeits the[~~, that person's~~] opportunity to participate in public presentations during that Board meeting. [~~speak prior to action being taken on that topic shall be forfeited.~~]

[~~(5) A presenter may submit documentation pertaining to the public presentation to the board office staff. Documents shall be submitted no later than three calendar days prior to the posted meeting date when the presentation is to occur. Such documentation shall then be distributed to the board. Any documentation submitted after the above-referenced date will not be distributed to the board until after the presentation. A minimum of 12 copies of any such documentation shall be submitted to the board office staff or distribution may not occur.~~]

(d) Public comments.

(1) Twice a year, during [~~at~~] the second and fourth regular called meetings of the Board [~~board~~], the [~~an opportunity shall be provided for~~] public may comment on any issue under the Board's jurisdiction [~~issues that are not part of the board's posted agenda but are within the board's jurisdiction~~]. Public comments are not heard during special [~~Special~~] called meetings [~~are not counted toward the requirement of this subsection~~].

(2) Persons who wish [~~desire~~] to make public comments [~~to the board~~] at these meetings must either: [~~shall provide, on the date of the meeting, a completed~~]

(A) complete a registration card available at the entrance to the room where the meeting is held and provide the card to Board [~~onsite board~~] office staff at least 10 minutes prior to the meeting's posted start time; or[~~. Registration cards shall be made available at the entry to the room where the board's scheduled meeting is held.~~]

(B) [~~(3)~~] pre-register by notifying the Board office no earlier than the first day of the month preceding the Board meeting for which the registration is intended and no later than four calendar days prior to the posted meeting date. Notice must be sent by [~~Pre-registration is available for public comments through~~] first class mail to [~~at~~] P.O. Box 13084, Austin, Texas 78711 or email at tbcj@tdcj.texas.gov. [~~Pre-registration shall be received by the board office staff no earlier than the first day of the month preceding the board meeting for which the registration is intended and no later than four calendar days prior to the posted meeting date when the comments are to occur. In addition to the information required in subsection (d)(4) of this section, pre-registration submissions shall include appropriate contact information, such as a daytime phone number or email address, for the individual who is registering to speak.~~]

(3) [~~(4)~~] Registration cards and pre-registration submissions require [~~shall disclose~~]:

(A) the name, phone number, and email address of the person who will provide [~~make the~~] comments;

(B) a statement indicating [~~as to~~] whether the person is being remunerated for the comments and if so, by whom; and, if applicable, the name of the person or entity on whose behalf the comments will be made;

(C) a statement indicating [~~as to~~] whether the presenter has registered as a lobbyist in relation to the topic being addressed;

(D) the topic on which the person will [~~shall~~] speak and indication of whether the person is [~~will speak~~] for or against the topic; and

(E) a statement verifying that all information to [~~that will~~] be presented is factual, true, and correct to the best of the speaker's knowledge.

[~~(5) The board chairman shall have discretion in setting reasonable limits on the time allocated for public comments. If several persons have registered to address the board on the same topic, it shall be within the discretion of the board chairman to request that those persons select a representative amongst themselves to express such comments, or limit their comments to an expression of support for views previously articulated.~~]

(4) [~~(6)~~] Public comments are [~~shall be~~] heard during the meeting as determined by the Board [~~just prior to the conclusion of the board meeting, with deviation from this practice within the discretion of the board~~] chairman. A person registered to speak who is not present when called upon forfeits the opportunity to participate in public comments during that Board meeting. [~~If a person who is registered to speak on a non-posted topic is not present when called upon, that person shall be called once more following all other registered speakers. If that person is not present at that time, their opportunity to speak at that meeting shall be forfeited.~~]

[~~(7) A presenter may submit documentation pertaining to the public comments to the board office staff. Documentation shall be submitted no later than three calendar days prior to the posted meeting date when the comments are to occur. Such documentation shall then be distributed to the board. Any documentation submitted after the above-referenced date will not be distributed to the board until after the comments. A minimum of 12 copies of any such documentation shall be submitted to the board office staff or distribution may not occur.~~]

(e) Supplemental material related to public presentations or comments may be submitted to the Board office no later than three calendar days prior to the posted Board meeting during which the person will participate.

(f) Time Limits. The Board chairman or the chairman's designee may set reasonable limits on the time allocated for public presentations and comments. If several persons register to address the same topic, the Board chairman or the chairman's designee may request that those persons select a representative amongst themselves to speak, or limit their comments to an expression of support for views previously articulated.

(g) [~~(e)~~] Disability accommodations. Persons [~~with disabilities~~] who have special communication or accommodation needs and who plan to attend a meeting may contact the Board [~~board~~] office [~~at 512-475-3250. Requests for accommodations shall be made~~] at least two calendar days prior to a posted meeting. The Board will [~~board shall~~] make every reasonable effort to accommodate these needs.

(h) [~~(f)~~] Conduct and decorum. The Board receives [~~board shall receive~~] public presentations and comments as authorized by this section, subject to the following additional guidelines:

(1) To ensure compliance with [~~Due to requirements of~~] the *Open Meetings Act*, discussions between Board members and the public are restricted to posted agenda topics during [~~questions shall only occur on~~] public presentations as defined in subsection (b) of this section. [~~as they are associated with posted agenda topics. Questions shall be reserved for board members and staff recognized by the board chairman.~~]

(2) Presentations and comments must [~~shall~~] remain pertinent to the issues identified [~~denoted~~] on the registration cards.

(3) A presenter who is determined by the Board [~~board~~] chairman or the chairman's designee to be engaging in conduct that is disruptive to [~~disrupting~~] a meeting must [~~shall~~] immediately cease the disruptive activity or leave the meeting room if ordered to do so by the Board [~~board~~] chairman.

(4) A presenter may not assign a portion of his or her allotted presentation time to another speaker.

(5) Signs, [~~and~~] placards, and spot or flashing lights may [~~shall~~] not be carried or displayed in the meeting room.

(i) [~~(g)~~] Requests to place [~~for~~] issues [~~to be placed~~] on [~~an~~] agenda. Persons not employed by Windham [~~or under contract with the WSD~~] who wish to propose an agenda item for discussion at a Board [~~board~~] meeting must submit [~~shall address~~] the request in writing to: Chairman [~~the chairman~~], Windham School District Board of Trustees, P.O. Box 13084, Austin, Texas 78711. Requests should [~~Such requests shall~~] be titled, "Proposed Agenda Topic" and must [~~shall~~] be received [~~submitted~~] no later than the first day of the month preceding the month of the Board [~~board~~] meeting for which the request is made [~~intended~~]. Requests must include all information required under [~~Such requests are subject to the requirements of the registration card in~~] subsection (c)(3) of this section. The Board chairman, at the chairman's discretion, may [~~decision as to whether to~~] calendar a matter for discussion before the Board [~~board~~], a Board [~~board~~] committee, a Board [~~board~~] liaison, or with a designated staff member [~~shall be within the discretion of the board chairman. Public presentations on topics placed on a board agenda, at the request of an individual, shall be in accordance with subsection (c) 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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TRD-202604758

Erik Brown
General Counsel
Windham School District
Earliest possible date of adoption: December 20, 2026
For further information, please call: (936) 291-5153

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19 TAC §300.2

The Texas Board of Criminal Justice, acting as the Windham School District Board of Trustees (board), proposes amendments to §300.2, regarding Windham School District Board of Trustees Operating Procedures. The proposed amendments update formatting, terminology, and style.

Robert O'Banion, Chief Financial Officer for the Windham School District (Windham), has determined that for each year of the first five years the proposed amendments will be in effect, enforcing or administering the proposed amendments will not have foreseeable implications related to costs or revenues for state or local government because the proposed amendments merely clarify existing procedures.

Mr. O'Banion has also determined that for each year of the first five-year period, there will not be an economic impact on persons required to comply with the rules because the proposed amendments merely clarify existing procedures. There will be no adverse economic impact on small or micro businesses or on rural communities. Therefore, no regulatory flexibility analysis is required. The anticipated public benefit, as a result of enforcing the proposed amendments, will be to enhance clarity and public understanding. No cost will be imposed on regulated persons.

The proposed amendments will have no impact on government growth; no impact on local employment; no creation or elimination of a government program; no creation or elimination of employee positions; no increase or decrease in future legislative appropriations to Windham; no increase or decrease in fees paid to Windham; no new regulation and no effect on an existing regulation; no increase or decrease in the number of individuals subject to the rule; and no effect upon the economy. The proposed amendments will not constitute a taking.

Comments related the proposed amendments should be directed to Erik Brown, General Counsel, Windham School District, P.O. Box 40, Huntsville, Texas 77342, or erik.brown@wsdtx.org, and must be received within 31 days after publication of this notice in the *Texas Register*.

The amendments are proposed under Texas Government Code § 492.013(a-1), which authorizes the board to adopt rules for its procedures.

Cross Reference to Statutes: Texas Government Code § 492; Texas Education Code, Chapter 19.

§300.2. Windham School District Board of Trustees Operating Procedures.

(a) General. This section establishes operating procedures for the Windham School District (("Windham" [~~WSD~~]) Board of Trustees (the "Board [~~board~~]") to conduct business.

(b) Organization.

(1) The members of the Texas Board of Criminal Justice ("TBCJ") serve as the Board [~~WSD board~~], pursuant to Chapter 19, Texas Education Code. The TBCJ is a [~~nine~~] nine-member body appointed by the Governor of Texas [~~governor to oversee the Texas Department of Criminal Justice (TDCJ)~~]. The TBCJ chairman, who serves as the Board [~~board~~] chairman, is designated by and serves at the request of the Governor [~~governor~~] pursuant to Texas Government Code § 492.005.

(2) The Board [~~board~~] operates with [~~utilizing~~] the same officers and structure established by the TBCJ.

(3) The Board chairman, on behalf of the Board [~~board~~], may [~~is empowered to~~] appoint Board members [~~of the board~~] to be members or chairs of standing or limited-purpose committees, or to serve as liaisons to Windham [~~the WSD~~] on particular subject areas within Windham's [~~the WSD's~~] jurisdiction. [~~The purpose of a committee, if appointed, is to have certain members become particularly familiar with various issues and to facilitate discussion and recommend potential strategies as appropriate.~~]

(c) Meetings.

(1) The Board holds [~~board shall hold~~] its regular meetings in conjunction with those of the TBCJ.

(2) [~~The TBCJ and the board shall will attempt to hold a regular meeting at least every other month of the year, but shall must meet at least once each quarter of the calendar year, pursuant to Texas Government Code § 492.006.~~] Special called meetings may [~~can~~] be held at the discretion of the Board [~~board~~] chairman.

(3) [~~Meetings shall be held in Austin or Huntsville, Texas.~~] If the Board or a Board committee [~~board~~] uses video conference technology to convene a meeting, the meeting will be held in accordance with Texas Government Code section 551.127. [~~at least one conference site must be located in Huntsville or Austin. To convene a video conference meeting, a quorum of the board must be present at one of the video conference sites. The other members may convene using the technology from remote sites.~~]

(4) The agenda [~~and date~~] for Board [~~the board~~] meetings is determined [~~shall be set~~] by the Board [~~board~~] chairman in consultation with the Windham [~~WSD~~] superintendent.

(5) The agenda for committee meetings is determined [~~shall be set~~] by the Board [~~board~~] chairman in consultation with the committee's chairman and Windham [~~the WSD~~] superintendent. [~~If the board committee uses video conference technology to convene a meeting, at least one conference site must be located in Huntsville or Austin. To convene a video conference meeting, a quorum of the committee must be present at one of the video conference sites. The other member(s) may convene using the technology from remote sites.~~]

(6) A majority of the Board [~~board,~~] or [~~of~~] a Board committee [~~of the board,~~] constitutes a quorum for [~~the~~] convening a meeting [~~of~~] and transacting [~~transaction of~~] business at [~~any meeting~~]. A quorum of a committee with two members consists of both members.

[~~(7) Meetings of the board and its committees shall be conducted according to standard parliamentary procedures.~~]

(7) [~~(8)~~] Board meetings are governed by Texas Government Code, Chapter 551, the Texas Open Meetings Act, and conducted according to standard parliamentary procedures [~~Texas Government Code §§551.001 - .146,~~].

(8) [~~(9)~~] The Windham [~~WSD~~] superintendent ensures[~~, in coordination with appropriate TDCJ staff, shall ensure~~] members are provided the materials necessary to conduct the business of the Board [~~board~~] and its committees [~~well~~] in advance of [~~the~~] meetings.

(9) [~~(10)~~] The Windham [~~WSD~~] superintendent ensures[~~, in coordination with appropriate TDCJ staff, shall ensure~~] the minutes of each meeting are prepared, retained, and filed with the Legisla-

tive Reference Library, and made available to the public. The minutes include [~~shall state~~] the subject matter of each deliberation and [~~shall~~] indicate each vote, order, decision, or other action taken by the Board [~~board~~].

(10) [~~(11) Requests by the public to make~~] Public presentations or comments to the Board [~~board~~] are governed by 19 Texas Administrative Code §300.1 (relating to Public Presentations and Comments to the Windham School District Board of Trustees).[~~, pursuant to Texas Government Code § 492.007 and § 551.042.~~]

[~~(12) The board shall approve meeting minutes for any committees deleted, renamed, or for which their limited-purpose has concluded.~~]

(11) [~~(13)~~] Prior to each regularly scheduled meeting, the Board offers [~~board shall offer~~] the opportunity for:

(A) the Windham [~~The WSD~~] superintendent to present any item relating to Windham [~~the WSD~~] as determined by the Windham superintendent or Board [~~the board~~] chairman.

(B) the Board [~~The board~~] chairman to present any item relating to the Board [~~board~~] or Windham [~~the WSD~~] as determined by the Board [~~board~~] chairman in consultation with the Windham [~~WSD~~] superintendent.

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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Erik Brown
General Counsel
Windham School District
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For further information, please call: (936) 291-5153

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TITLE 22. EXAMINING BOARDS

PART 8. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

CHAPTER 153. RULES RELATING TO PROVISIONS OF THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT

22 TAC §153.40, §153.42

The Texas Appraiser Licensing and Certification Board (TALCB) proposes amendments to 22 TAC §153.40, Approval of Continuing Education Providers and Courses, and §153.42, Approval of Practicum Providers and Courses.

The proposed amendments to §153.40 clarify circumstances when a continuing education provider is subject to a background check, require providers to establish written policies governing refunds. Further, the proposed amendments to §153.40 clarify certain data fields that are included in course completion records required to be submitted to the Board to facilitate an automated verification process in the Board's online licensing database. Finally, the amendments permit qualifying education providers who are also approved continuing education providers to submit course completion records in a similar manner as continuing education records.

The proposed amendments to §153.42 clarify circumstances when practicum providers are subject to a background check and require providers to establish written policies governing refunds.

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 for units of local government as a result of enforcing or administering the sections. 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. Santos 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 section will be greater accuracy and clarity in the rules.

Except as otherwise provided, for each year of the first five years the proposed new rule is in effect, the 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;

-positively or adversely affect the state's economy.

The Board requests comments on the proposal, including information related to the cost, benefit, or effect of the proposal, including any applicable data, research, or analysis, from any person required to comply with the proposal or any other interested person, which may be submitted through the online comment submission form at https://www.talcb.texas.gov/agency-information/rules-and-laws/comment-on-proposed-rules, to Kathleen Santos, General Counsel, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188 or via email 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 §1103.151, which authorizes TALCB to adopt rules related certifying or licensing an appraiser or appraiser trainee and qualifying education and experience required for certifying or licensing an appraiser or appraiser trainee that are consistent with applicable federal law and guidelines recognized by the Appraiser Qualifications Board (AQB); §1103.152, which authorizes TALCB to prescribe qualifications for appraisers that are consistent with the qualifications established by the AQB, and §1103.153, which authorizes TALCB to adopt rules relating to the requirements for approval of a provider or course for qualifying or continuing education.

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

§153.40. Approval of Continuing Education Providers and Courses.

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

(1) Applicant--A person seeking accreditation or approval to be an appraiser continuing education (ACE) provider.

(2) ACE course--Any education course for which continuing education credit may be granted by the Board to a license holder.

(3) ACE provider--Any person approved by the Board; or specifically exempt by the Act, Chapter 1103, Texas Occupation Code, or Board rule; that offers a course for which continuing education credit may be granted by the Board to a license holder.

(4) Distance education course--A course offered in accordance with AQB criteria in which the instructor and students are geographically separated as defined by the AQB. Distance education includes synchronous delivery, when the instructor and student interact simultaneously online; asynchronous delivery, when the instructor and student interaction is non-simultaneous; and hybrid or blended course delivery that allows for both in-person and online interaction, either synchronous or asynchronous.

(5) Severe weather--Weather conditions, including but not limited to severe thunderstorms, tornados, hurricanes, snow and ice, that pose risks to life or property and require intervention by government authorities and office or school closures.

(b) Approval of ACE Providers.

(1) A person seeking to offer ACE courses must:

(A) file an application using a process acceptable to the Board, with all required documentation;

(B) pay the required fees under §153.5 of this title; and

(C) maintain a fixed office in the state of Texas or designate a resident of this state as attorney-in-fact to accept service of process and act as custodian of any records in Texas which the continuing education provider is required to maintain by this subchapter.

(2) The Board may:

(A) request additional information be provided to the Board relating to an application; and

(B) terminate an application without further notice if the applicant fails to provide the additional information within 60 days from the Board's request.

(3) Exempt Providers. A unit of federal, state or local government may submit ACE course approvals without becoming an approved ACE provider.

(4) Standards for approval. To be approved by the Board to offer ACE courses, an applicant, including each person who owns at least 10% interest in the applicant, must satisfy the Board as to the applicant's ability to administer courses with competency, honesty, trustworthiness and integrity. If an applicant proposes to employ another person to manage the operation of the applicant, that person must meet this standard as if that person were the applicant.

(5) Approval notice. An applicant shall not act as or represent itself to be an approved ACE provider until the applicant has received written notice of the approval from the Board.

(6) Period of initial approval. The initial approval of a CE provider is valid for two years.

(7) Disapproval.

(A) If the Board determines that an applicant does not meet the standards for approval, the Board will provide written notice of disapproval to the applicant.

(B) The disapproval notice, applicant's request for a hearing on the disapproval, and any hearing are governed by the Administrative Procedure Act, Chapter 2001, Government Code, and Chapter 157 of this title. Venue for any hearing conducted under this section shall be in Travis County.

(8) Renewal.

(A) Not earlier than 90 days before the expiration of its current approval, an approved provider may apply for renewal for another two year period.

(B) Approval or disapproval of a renewal application shall be subject to the standards for initial applications for approval set out in this section.

(C) The Board may deny an application for renewal if the provider is in violation of a Board order.

(c) Application for approval of ACE courses. This subsection applies to appraiser education providers seeking to offer ACE courses.

(1) An applicant under this subsection must be approved by the Board as an ACE Provider.

(2) For each ACE course an applicant intends to offer, the applicant must:

(A) file an application using a process acceptable to the Board, with all required documentation; and

(B) pay the fees required by §153.5 of this title.

(3) An ACE provider may file a single application for an ACE course offered through multiple delivery methods.

(4) An ACE provider who seeks approval of a new delivery method for a currently approved ACE course must submit a new application and pay all required fees.

(5) The Board may:

(A) request additional information be provided to the Board relating to an application; and

(B) terminate an application without further notice if the applicant fails to provide the additional information within 60 days from the Board's request.

(6) Standards for ACE course approval.

(A) To be approved as an ACE course by the Board, the course must:

(i) cover subject matter appropriate for appraiser continuing education as defined by the AQB;

(ii) submit a statement describing the objective of the course and the acceptable AQB topics covered;

(iii) be current and accurate; and

(iv) be at least two hours long.

(B) The course must be presented in full hourly units.

(C) The course must be delivered by one of the following delivery methods:

(i) classroom delivery; or

(ii) distance education.

(D) The course design and delivery mechanism for asynchronous distance education courses, including the asynchronous portion of hybrid courses must be approved by an AQB approved organization.

(7) Approval notice. An ACE provider cannot offer or advertise that an ACE course is approved until the provider has received written notice of the approval from the Board.

(8) Period of Approval. Subject to subsection (c)(9) and (e)(3), an ACE course expires two years from the date of approval. ACE providers must reapply and meet all current requirements of this section to offer the course for another two years.

(9) ACE course approval is automatically rescinded upon expiration of the ACE provider's approval.

(d) Approval of currently approved ACE course for a secondary provider.

(1) If an ACE provider wants to offer an ACE course currently approved for another provider, the secondary provider must:

(A) file an application using a process acceptable to the Board, with all required documentation;

(B) submit written authorization to the Board from the author or provider for whom the course was initially approved granting permission for the secondary provider to offer the course; and

(C) pay the fees required by §153.5 of this title.

(2) If approved to offer the currently approved course, the secondary provider must:

(A) offer the course as originally approved;

(B) assume the original expiration date;

(C) include any approved revisions;

(D) use all materials required for the course; and

(E) meet the requirements of subsection (j) of this section.

(e) Approval of ACE courses currently approved by the AQB or another state appraiser regulatory agency.

(1) To obtain Board approval of an ACE course currently approved by the AQB or another state appraiser regulatory agency, an ACE provider must:

(A) be currently approved by the Board as an ACE provider;

(B) file an application using a process acceptable to the Board, with all required documentation; and

(C) pay the course approval fee required by §153.5 of this title.

(2) If approved to offer the ACE course, the ACE provider must offer the course as approved by the AQB or other state appraiser regulatory agency, using all materials required for the course.

(3) Any course approval issued under this subsection expires the earlier of two years from the date of Board approval or the remaining term of approval granted by the AQB or other state appraiser regulatory agency.

(f) Approval of ACE courses for an in-person one-time offering.

(1) To obtain Board approval of an ACE course for an in-person one-time offering, an ACE provider must:

(A) be currently approved by the Board as an ACE provider;

(B) file an application using a process acceptable to the Board, with all required documentation; and

(C) pay the course approval fee required by §153.5 of this title.

(2) Any course approved under this subsection is limited to the scheduled presentation date stated on the written notice of course approval issued by the Board.

(3) If a course approved under this subsection must be rescheduled due to circumstances beyond the provider's control, including severe weather or instructor illness, the Board may approve the revised course date if the provider:

(A) submits a request for revised course date using a process acceptable to the Board; and

(B) offers the course on the revised date in the same manner as it was originally approved.

(g) Application for approval to offer a 7-Hour National USPAP Update course or 7-Hour National USPAP Continuing Education course.

(1) To obtain approval to offer a 7-Hour National USPAP Update course or 7-Hour National USPAP Continuing Education course, the provider must:

(A) be approved by the Board as an ACE provider;

(B) file an application using a process acceptable to the Board, with all required documentation;

(C) submit written documentation to the Board demonstrating that the course and instructor are currently approved by the AQB;

(D) pay the course approval fee required by §153.5 of this title;

(E) use the current version of the USPAP; and

(F) ensure each student has access to his or her own electronic or paper copy of the current version of USPAP.

(2) Approved ACE providers of the 7-Hour National USPAP Update course or 7-Hour National USPAP Continuing Education course may include up to one additional classroom credit hour of supplemental Texas specific information. This may include topics such as the Act, Board rules, processes and procedures, enforcement issues or other topics deemed appropriate by the Board.

(h) Application for ACE course approval for a presentation by current Board members or staff. As authorized by law, current members of the Board and Board staff may teach or guest lecture as part of an approved ACE course. To obtain ACE course approval for a presentation by a Board member or staff, the provider must:

(1) file an application using a process acceptable to the Board, with all required documentation; and

(2) pay the fees required by §153.5 of this title.

(i) Responsibilities and Operations of ACE providers.

(1) ACE course examinations or course mechanism to demonstrate knowledge of the subject matter:

(A) are required for ACE distance education courses; and

(B) must comply with AQB requirements.

(2) Course evaluations. A provider shall provide each student enrolled in an ACE course a course evaluation form approved by the Board and a link to an online version of the evaluation form that a student may complete and submit to the provider after course completion.

(3) Course completion records [~~rosters~~].

(A) Classroom courses. Upon [~~successful~~] completion of an ACE classroom course, a provider shall submit course completion records to the Board using a process acceptable to [~~a course completion roster in a format approved by~~] the Board no later than the 10th day after the date a course is completed. The course completion record [~~roster~~] shall include:

(i) the provider's name and approval [~~license~~] number;

(ii) the student's name and license number [~~the instructor's name~~];

(iii) the course title;

(iv) the course approval number;

(v) the number of credit hours;

(vi) the course delivery method [~~the date of issuance~~]; and

(vii) the date the student started and completed the course.

(B) Distance education courses. A provider shall maintain a Distance Education Reporting Form and submit information contained in that form using a process acceptable to the Board for each student completing the course not earlier than the number of hours for course credit after a student starts the course and not later than the 10th day after the student completes the course.

(4) An ACE provider may withhold any official course completion documentation required by this subsection from a student until the student has fulfilled all financial obligations to the provider.

(5) Security and Maintenance of Records.

(A) An ACE provider shall maintain:

(i) adequate security against forgery for official completion documentation required by this subsection;

(ii) records of each student enrolled in a course for a minimum of four years following completion of the course, including course and instructor evaluations and student enrollment agreements; and

(iii) any comments made by the provider's management relevant to instructor or course evaluations with the provider's records.

(B) All records may be maintained electronically but must be in a common format that is legible and easily printed or viewed without additional manipulation or special software.

(C) Upon request, an ACE provider shall produce instructor and course evaluation forms for inspection by Board staff.

(6) Changes in Ownership or Operation of an approved ACE provider.

(A) An approved ACE provider shall notify the Board within 30 days of any material change in the operation of the provider, including but not limited to changes in:

(i) ownership;

(ii) management; and

(iii) the location of main office and any other locations where courses are offered.

(B) An approved provider shall submit notice of a change in ownership using a process acceptable to the Board for each new owner who would holds at least a 10% interest in the provider.

(7) Refund Policies of ACE Providers. Aprovider shall establish written policies governing refunds.

(8) ACE Providers that are Qualifying Education Providers. ACE Providers that are also qualifying real estate appraisal course providers may submit course completion records to the Board. The course completion records shall include:

(A) the provider's name and approval number;

(B) the student's name

(C) the student's license number, or if no license number has been issued by the Board, the student's Pre-Licensing Education Application Number;

(D) the course title;

(E) the course approval number;

(F) the number of credit hours;

(G) the course delivery method; and

(H) the date the student started and completed the course.

(j) Non-compliance.

(1) If the Board determines that an ACE course or provider no longer complies with the requirements for approval, the Board may suspend or revoke approval for the ACE course or provider.

(2) Proceedings to suspend or revoke approval of an ACE course or provider shall be conducted in accordance with §153.41 of this title.

§153.42. Approval of Practicum Providers and Courses.

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

(1) Applicant--A person seeking approval to be a Practicum Course provider.

(2) Practicum Course provider- Any person approved by the Board or the AQB that offers a Practicum course for which experience credit may be granted by the Board to a license holder.

(b) Approval of Practicum Course Providers.

(1) A person seeking to offer a Practicum Course must:

(A) file an application using a process acceptable to the Board, with all required documentation; and

(B) maintain a fixed office in the state of Texas or designate a resident of this state as attorney-in-fact to accept service

of process and act as custodian of any records in Texas which the Practicum Course provider is required to maintain by this subchapter.

(2) The Board may:

(A) request additional information be provided to the Board relating to an application; and

(B) terminate an application without further notice if the applicant fails to provide the additional information within 60 days from the Board's request.

(3) Standards for approval. To be approved by the Board to offer a Practicum course, an applicant, including each person who owns at least 10% interest in the applicant, must satisfy the Board as to the applicant's ability to administer courses with competency, honesty, trustworthiness and integrity. If an applicant proposes to employ another person to manage the operation of the applicant, that person must meet this standard as if that person were the applicant.

(4) Approval notice. An applicant shall not act as or represent itself to be an approved Practicum Course provider until the applicant has received written notice of the approval from the Board.

(5) Period of initial approval. The initial approval of a Practicum Course provider is valid for two years.

(6) Disapproval.

(A) If the Board determines that an applicant does not meet the standards for approval, the Board will provide written notice of disapproval to the applicant.

(B) The disapproval notice, applicant's request for a hearing on the disapproval, and any hearing are governed by the Administrative Procedure Act, Chapter 2001, Government Code, and Chapter 157 of this title. Venue for any hearing conducted under this section shall be in Travis County.

(7) Renewal.

(A) Not earlier than 90 days before the expiration of its current approval, an approved provider may apply for renewal for another two-year period.

(B) Approval or disapproval of a renewal application shall be subject to the standards for initial applications for approval set out in this section.

(C) The Board may deny an application for renewal if the provider is in violation of a Board order.

(c) Application for approval of Practicum courses. This subsection applies to appraiser education providers seeking to offer Practicum courses.

(1) For each Practicum course an applicant intends to offer, the applicant must file an application using a process acceptable to the Board, with all required documentation; and

(2) A provider may file a single application for a Practicum course offered through multiple delivery methods.

(3) A provider who seeks approval of a new delivery method for a currently approved Practicum course must submit a new application and pay all required fees.

(4) The Board may:

(A) request additional information be provided to the Board relating to an application; and

(B) terminate an application without further notice if the applicant fails to provide the additional information within 60 days from the Board's request.

(5) Standards for Practicum Course approval.

(A) To be approved by the Board, the Practicum Course must:

(i) include all design and content requirements of the AQB for Practicum Courses as outlined in the Criteria;

(ii) include the generally applicable methods of appraisal practice for the credential category; and

(iii) require participants to possess all qualifying education for the credential category for which the practicum course is intended to satisfy the experience requirement prior to commencement of the practicum course.

(B) The applicant must demonstrate:

(i) how the course includes generally applicable methods of appraisal practice for the credential category;

(ii) the course content includes time spent on the appraisal process;

(iii) the hours of instruction and documented research and analysis are sufficient to meet the experience requirements of the credential category;

(iv) the practicum course is reproduceable and replicable; and

(v) the course content is current and accurate.

(C) The course must be delivered by one of the following delivery methods:

(i) classroom delivery; or

(ii) distance education.

(D) The course design and delivery mechanism for asynchronous content, including the asynchronous portion of hybrid courses must be approved by an AQB approved organization.

(6) Approval notice.

(A) A provider cannot offer a Practicum course until the provider has received written notice of the approval from the Board.

(B) A Practicum course expires two years from the date of approval. Providers must reapply and meet all current requirements of this section to offer the course for another two years.

(d) Approval of a Practicum course currently approved by the AQB.

(1) To obtain Board approval of a Practicum Course currently approved by the AQB, the applicant must:

(A) be currently approved by the Board as a Practicum provider;

(B) file an application using a process acceptable to the Board, with all required documentation; and

(2) If approved to offer the Practicum course, the provider must offer the course as approved by the AQB, using all materials required for the course.

(3) Any course approval issued under this subsection expires the earlier of two years from the date of Board approval or the remaining term of approval granted by the AQB.

(e) Responsibilities and Operations of Practicum Providers.

(1) Security and Maintenance of Records.

(A) A Practicum course provider shall maintain:

(i) adequate security against forgery for official completion documentation required by this subsection;

(ii) a records retention policy requiring that all records are kept for a minimum of five (5) years from the date a student completes, withdraws from, or is removed from the course;

(B) All records may be maintained electronically but must be in a common format that is legible and easily printed or viewed without additional manipulation or special software.

(2) Changes in Ownership or Operation of an approved Practicum provider.

(A) An approved Practicum provider shall obtain approval of the Board at least 30 days in advance of any material change in the operation of the provider, including but not limited to changes in:

(i) ownership;

(ii) management; and

(iii) the location of main office and any other locations where courses are offered.

(B) An approved provider requesting approval of a change in ownership shall submit a request using a process acceptable to the Board for each proposed new owner who would hold at least a 10% interest in the provider.

(3) Refund Policy of Practicum Providers. A provider shall establish written policies governing refunds.

(f) Non-compliance.

(1) If the Board determines that a Practicum course or provider no longer complies with the requirements for approval, the Board may suspend or revoke approval for the course or provider.

(2) Proceedings to suspend or revoke approval of a Practicum course or provider shall be conducted in accordance with §153.43 of this title.

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 November 6, 2026.

TRD-202604732
Kathleen Santos
General Counsel
Texas Appraiser Licensing and Certification Board
Earliest possible date of adoption: December 20, 2026
For further information, please call: (512) 936-3088

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PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 501. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §501.52

The Texas State Board of Public Accountancy (Board) proposes an amendment to §501.52 concerning Definitions.

Background, Justification and Summary

The proposed revision recognizes the ability of out of state licensees practicing in Texas under the practice privilege provision of the Texas Public Accountancy Act. An individual licensed in another state is not required to practice in Texas with a Texas license but may practice under what is referred to as a practice privilege.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

A better understanding of the practice privilege in Texas by out of state licensees practicing in Texas.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on December 21, 2026.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§501.52. Definitions.

The following words and terms, when used in title 22, part 22 of the Texas Administrative Code relating to the Texas State Board of Public Accountancy, shall have the following meanings, unless the context clearly indicates otherwise. The masculine shall be construed to include the feminine or neuter and vice versa, and the singular shall be construed to include the plural and vice versa.

(1) "Act" means the Public Accountancy Act, Chapter 901, Occupations Code;

(2) "Advertisement" means a message which is transmitted to persons by, or at the direction of, a person and which has reference to the availability of the person to perform Professional Accounting Services;

(3) "Affiliated entity" means an entity controlling or being controlled by or under common control with another entity, directly or indirectly, through one or more intermediaries;

(4) "Attest Service" means:

(A) an audit or other engagement required by the board to be performed in accordance with the auditing standards adopted by the AICPA, PCAOB, or another national or international accountancy organization recognized by the board;

(B) a review or compilation required by the board to be performed in accordance with standards for accounting and review services adopted by the AICPA or another national or international accountancy organization recognized by the board;

(C) an engagement required by the board to be performed in accordance with standards for attestation engagements adopted by the AICPA or another national or international accountancy organization recognized by the board; or

(D) any other assurance service required by the board to be performed in accordance with professional standards adopted by the AICPA or another national or international accountancy organization recognized by the board;

(5) "Board" means the Texas State Board of Public Accountancy;

(6) "Charitable Organization" means an organization which has been granted tax-exempt status under the Internal Revenue Code of 1986, §501(c), as amended;

(7) "Client" means a party who enters into an agreement with a license holder or a license holder's employer to receive a professional accounting service or professional accounting work;

(8) "Client Practice of Public Accountancy" is the offer to perform or the performance by a person for a client or a potential client of professional accounting services or professional accounting work, and also includes:

(A) the advice or recommendations in connection with the sale or offer for sale of products (including the design and implementation of computer software), when the advice or recommendations routinely require or imply the possession of accounting or auditing skills or expert knowledge in auditing or accounting; and

(B) the performance of litigation support services;

(9) "Commission" means compensation for recommending or referring any product or service to be supplied by another party;

(10) "Contingent fee" means a fee for any service where no fee will be charged unless a specified finding or result is attained, or in which the amount of the fee is otherwise dependent upon the finding or result of such service. However, a person's non-Contingent fees may vary depending, for example, on the complexity of the services rendered. Fees are not contingent if they are fixed by courts or governmental entities acting in a judicial or regulatory capacity, or in tax matters if determined based on the results of judicial proceedings or the findings of governmental agencies acting in a judicial or regulatory capacity, or if there is a reasonable expectation of substantive review by a taxing authority;

(11) "Financial Statements" means a presentation of financial data, including accompanying notes, derived from accounting records and intended to communicate an entity's economic resources or obligations at a point in time, or the changes therein for a period of time, in accordance with generally accepted accounting principles or other comprehensive basis of accounting. Incidental financial data to support recommendations to a client or in documents for which the reporting is governed by Statements on Standards for Attestation Engagements and tax returns and supporting schedules do not constitute financial statements for the purposes of this definition;

(12) "Firm" means a sole proprietorship, partnership, limited liability partnership, limited liability company, corporation or other legally recognized business entity engaged in the practice of public accountancy;

(13) "Good standing" means compliance by a licensee with the board's licensing rules, including the mandatory continuing education requirements, Peer Review, and payment of the annual license fee, and any penalties and other costs attached thereto. In the case of board-imposed disciplinary or administrative sanctions, the person must be in compliance with all the provisions of the board order to be considered in good standing;

(14) "Licensee" means the holder of a license issued by the board to a person pursuant to the Act, or pursuant to provisions of a prior Act;

(15) "Out of state practitioner and out of state firm" means a person licensed in another jurisdiction practicing in Texas pursuant to a practice privilege as provided for in §901.461 and §901.462 of the Act (relating to Practice by Certain Out-of-State Firms and Practice by Out-of-State Practitioner with Substantially Equivalent Qualifications);

(16) "Peer Review," "Quality Review" or "Compliance Assurance" means the study, appraisal, or review of the professional accounting work of a public accountancy firm that performs attest services by a certificate holder who is not affiliated with the firm;

(17) "Person" means an individual, sole proprietorship, partnership, limited liability partnership, limited liability company, corporation or other legally recognized business entity that provides or offers to provide professional accounting services or professional accounting work as defined in paragraph (22) of this section;

(18) "Principal place of business and home office" means the office location designated by the out of state licensee or firm for purpose of a practice privilege in this state; [~~location specified by the client as the address to which a client practice of public accounting service is directed and is synonymous with Home Office where it appears in the Act;~~]

(19) "Practice unit" means an office of a firm required to be licensed with the board for the purpose of the client practice of public accountancy;

(20) "Practice privilege" means the privilege for an out-of-state person to provide certain Professional Accounting Services or Professional Accounting Work in Texas to the extent permitted under Chapter 517 of this title (relating to Practice by Certain Out of State Firms and Individuals);

(21) "Preparation engagement" means the preparation of financial statements that do not include an audit, review or a compilation report on those financial statements in accordance with Standards for Accounting and Review Services adopted by the AICPA;

(22) "Professional Accounting Services" or "professional accounting work" means services or work that requires the specialized knowledge or skills associated with certified public accountants, including but not limited to:

(A) issuing reports on financial statement(s);

(B) preparation engagements pursuant to SSARS;

(C) providing management or financial advisory or consulting services;

(D) preparing tax returns;

(E) providing advice in tax matters;

(F) providing forensic accounting services;

(G) providing internal auditing services;

(H) accounting, auditing and other assurance services;

(I) providing litigation support services; and

(J) recommending the sale of a product if the recommendation requires or implies accounting or auditing skills.

(23) "Report" means an opinion, report, or other document, prepared in connection with an attest service that states or implies assurance as to the reliability of financial statement(s); and includes or is accompanied by a statement or implication that the person issuing the opinion, report, or other document has special knowledge or competence in accounting or auditing. A statement or implication of assurance as to the reliability of a financial statement or as to the special knowledge or competence of the person issuing the opinion, report, or other document includes any form of language that is conventionally understood to constitute such a statement or implication. A statement or implication of special knowledge or competence in accounting or auditing may arise from the use by the issuer of the opinion, report, or other document of a name or title indicating that the person is an accountant or auditor; or the language of the opinion, report, or other document itself.

(24) Interpretive Comment: The practice of public accountancy is defined in §901.003 of the Act (relating to the Practice of Public Accountancy).

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 November 5, 2026.

TRD-202604656
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: December 20, 2026
For further information, please call: (512) 305-7848



SUBCHAPTER C. RESPONSIBILITIES TO CLIENTS

22 TAC §501.75

The Texas State Board of Public Accountancy (Board) proposes an amendment to §501.75 concerning Confidential Client Communications.

Background, Justification and Summary

The Texas Public Accountancy Act requires licensees to maintain the confidentiality of communication between them and their client. The proposed new language helps to understand when communications may be disclosed and provides specific examples of confidential communications.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

Provides clarity of the responsibility of the licensee to protect a client's communications from exposure to the public.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on December 21, 2026.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§501.75. Confidential Client Communications.

(a) A licensee or any partner, member, officer, shareholder or employee of the licensee must receive voluntary written permission from a client or a client's authorized representative before disclosing confidential information to a third party. Confidential information includes any information communicated by a client in relation to professional accounting services rendered to the client.

(1) Examples of authorized representatives include but are not limited to: the authorized representative of a successor entity becomes the authorized representative of the predecessor entity when the predecessor entity ceases to exist; and an executor/administrator of the estate of a deceased client possessing an order signed by a judge.

(2) Examples of third parties include but are not limited to contractors, subcontractors, subsidiaries, and/or affiliates, within or outside the United States of America engaged in connection with the provision of professional services and/or services for internal, administrative and/or regulatory compliance purposes.

~~[(a) Except by written permission of the client or the authorized representatives of the client, a person or any partner, member, officer, shareholder, or employee of a person shall not voluntarily disclose to a third party, including contractors, subcontractors, subsidiaries, and/or affiliates, within or outside the United States of America engaged in connection with the provision of professional services and/or services for internal, administrative and/or regulatory compliance purposes, information communicated by the client relating to, and in connection with, professional accounting services or professional accounting work rendered to the client. Such information shall be deemed confidential. The following includes, but is not limited to, examples of authorized representatives:]~~

~~[(1) the authorized representative of a successor entity becomes the authorized representative of the predecessor entity when the predecessor entity ceases to exist and no one exists to give permission on behalf of the predecessor entity; and]~~

~~[(2) an executor/administrator of the estate of a deceased client possessing an order signed by a judge is an authorized representative of the estate.]~~

(b) The provisions contained in subsection (a) of this section do not prohibit the disclosure of information required to be disclosed:

(1) by the professional standards for reporting on the examination of a financial statement and identified in Chapter 501, Subchapter B of this title (relating to Professional Standards);

(2) by applicable federal laws, federal government regulations, including requirements of the PCAOB;

(3) under a summons or subpoena under the provisions of the Internal Revenue Code of 1986 and its subsequent amendments, a summons under the provisions of the Securities Act of 1933 (15 U.S.C. Section 77a et seq.) and its subsequent amendments, or a summons under the provisions of the Securities Exchange Act of 1934 (15 U.S.C. Section 78a et seq.) and its subsequent amendments, the Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes), Texas Revised Civil Statutes Annotated;

(4) under a court order signed by a judge if the court order:

(A) is addressed to the license holder;

(B) mentions the client by name; and

(C) requests specific information concerning the client.

(5) by the public accounting profession in reporting on the examination of financial statements;

(6) by a congressional or grand jury subpoena;

(7) in investigations or proceedings conducted by the board;

(8) in ethical investigations conducted by a private professional organization of certified public accountants;

(9) in a peer review; or

(10) in the course of a practice review by another CPA or CPA firm for a potential acquisition in conjunction with a prospective purchase, sale, or merger of all or part of a member's practice if both firms enter into a written nondisclosure agreement with regard to all client information shared between the firms.

(c) The provisions contained in subsection (a) of this section do not prohibit the disclosure of information already made public, including information disclosed to others not having a confidential communications relationship with the client or authorized representative of the client.

(d) A person in the client practice of public accountancy shall take all reasonable measures to maintain the confidentiality of the client records and shall immediately upon becoming aware of the loss of, or loss of control over, the confidentiality of those records notify the client affected in writing of the date and time of the loss if known. Loss includes a cybersecurity breach or other incident exposing the records to a third party or parties, without the client's consent or the loss of the client records or the loss of control over the client records. Persons have a responsibility to maintain a back-up system in order to be able to immediately identify and notify clients of a loss.

(e) Interpretive comment. The definition of a successor entity as referenced in subsection (a)(1) of this section does not include the purchaser of all assets of an entity.

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 November 5, 2026.

TRD-202604657
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: December 20, 2026
For further information, please call: (512) 305-7848

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SUBCHAPTER D. RESPONSIBILITIES TO THE PUBLIC

22 TAC §501.82

The Texas State Board of Public Accountancy (Board) proposes an amendment to §501.82 concerning Advertising.

Background, Justification and Summary

Unlike emails and letters, a hard copy of television and radio broadcasts are not easily obtained. The proposed rule revision is intended to require a time period for the CPA to retain a recording of the broadcast for the board to review in the event there becomes a question as to whether the broadcast was done in accordance with board rules.

The broadcasts must be retained for at least 36 months following the last transmission.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

Provides greater clarity to the responsibility of the licensee to retain advertising.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on December 21, 2026.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods

of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§501.82. Advertising.

(a) A person shall not use or participate in the use of:

(1) any communication having reference to the person's professional services that contains a false, fraudulent, misleading or deceptive statement or claim;

(2) any communication that refers to the person's professional services that is accomplished or accompanied by coercion, duress, compulsion, intimidation, threats, overreaching, or vexatious or harassing conduct; nor

(3) a name that is misleading as to the identity of the individual practicing under such name.

(b) Definitions:

(1) A "false, fraudulent, misleading or deceptive statement or claim" includes, but is not limited to, a statement or claim which:

(A) contain a misrepresentation of fact;

(B) is likely to mislead or deceive because it fails to make full disclosure of relevant facts;

(C) is intended or likely to create false or unjustified expectations of favorable results;

(D) implies educational or professional attainments or licensing recognition not supported in fact;

(E) represents that professional accounting services can or will be completely performed for a stated fee when this is not the case, or makes representations with respect to fees for professional accounting services that do not disclose all variables that may reasonably be expected to affect the fees that will in fact be charged;

(F) contains other representations or implications that in reasonable probability will cause a reasonably prudent person to misunderstand or be deceived;

(G) implies the ability to improperly influence any court, tribunal, regulatory agency or similar body or official due to some special relations;

(H) consists of self-laudatory statements that are not based on verifiable facts;

(I) makes untrue comparisons with other accountants; or

(J) contains testimonials or endorsements that are not based upon verifiable facts.

(2) Broadcast--Any transmission over the airwaves or over a cable, wireline, Internet, cellular, e-mail system or any other electronic means.

(3) Coercion--Compelling by force or threat of force so that one is constrained to do what his free will would otherwise refuse.

(4) Compulsion--Driving or urging by force or by physical or mental constraint to perform or forbear from performing an act.

(5) Direct personal communication--Either a face-to-face meeting or a conversation by telephone.

(6) Duress--Any conduct which overpowers the will of another.

(7) Harassing--Any word, gesture, or action which tends to alarm and verbally abuse another person.

(8) Intimidation--Willfully to take, or attempt to take, by putting in fear of bodily harm.

(9) Overreaching--Tricking, outwitting, or cheating anyone into doing an act which he would not otherwise do.

(10) Threats--Any menace of such a nature and extent as to unsettle the mind of anyone on whom it operates, and to take away from his acts that free and voluntary action which alone constitutes consent.

(11) Vexatious--Irritating or annoying.

(c) It is a violation of these rules for a person to persist in contacting a prospective client when the prospective client has made known to the person, or the person should have known the prospective client's desire not to be contacted by the person.

(d) The [~~In the case of an electronic or direct mail communication, the~~] person shall retain a copy of the actual written communication along with a list or other description of parties to whom the communication was distributed. Such copy shall be retained by the person for a period of at least 36 months from the date of its last distribution. In the case of broadcasting, the broadcast shall be recorded and the person shall retain a recording of the actual transmission for at least 36 months.

(e) Subsection (d) of this section does not apply to anyone when:

(1) the communication is made to anyone who is at that time a client of the person;

(2) the communication is invited by anyone to whom it was made; or

(3) the communication is made to anyone seeking to secure the performance of professional accounting services.

~~[(f) In the case of broadcasting, the broadcast shall be recorded and the person shall retain a recording of the actual transmission for at least 36 months.]~~

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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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
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22 TAC §501.83

The Texas State Board of Public Accountancy (Board) proposes an amendment to §501.83 concerning Firm Names.

Background, Justification and Summary

The rule is being revised and abbreviated to make it clear that there are names and initials that may not be used in a CPA firm's name which could be misleading to the public. This rule revision provides examples of misleading firm names and the revision clarifies the intent of the rules.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The public will have a clearer understanding of acceptable firm names.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on December 21, 2026.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§501.83. Firm Names.

(a) General rules applicable to all firms:

(1) A firm name may not contain words, abbreviations or other language that are misleading to the public. [~~, or that may cause confusion to the public as to the legal form or ownership of the firm.~~]

(2) A firm licensed by the board may not conduct business [~~, perform or offer to perform services for or provide products to a client~~] under a name other than the name in which the firm is licensed by the board.

(3) The firm name must include:

(A) the surname of the individual if the license holder is a sole proprietor;

(B) the surname or initials of at least one current or former partner, shareholder or owner of the firm or the predecessor firm if the firm is a partnership or a corporation;

(C) language or abbreviations indicating legal form of ownership of the firm.

(4) The name may not include:

(A) A misleading trade name or assumed name language regarding the quality of services offered, special expertise, expectation as to outcomes or favorable results, or geographic area of service;

(B) The name of a non-owner or non-CPA except as provided for in paragraph (3)(B) of this subsection;

(C) Language implying educational or professional attainment not supported in fact;

(D) A designation such as "company," "and company," "associates," "and associates," "group" or similar designations implying that the firm has more than one employed licensee unless there are at least two employed licensees involved in the practice, excluding independent contractors.

(5) A firm name may state or imply limitations on the type of service offered such as tax, audit, or advisory services provided the services of the firm are limited to those in the name.

[(3) A word, abbreviation or other language is presumed to be misleading if it:]

[(A) is a trade name or assumed name that does not comply with paragraph (4)(A) or (B) of this subsection;]

[(B) states or implies the quality of services offered, special expertise, expectation as to outcomes or favorable results, or geographic area of service;]

[(C) includes the name of a non-owner of the firm;]

[(D) includes the name of a non-CPA, except as provided in paragraph (4)(B) of this subsection;]

[(E) states or implies educational or professional attainment not supported in fact;]

[(F) states or implies licensing recognition for the firm or any of its owners not supported in fact;]

[(G) includes a designation such as "and company," "associates," "and associates," "group" or abbreviations thereof or similar designations implying that the firm has more than one employed licensee unless there are at least two employed licensees involved in the practice. Independent contractors are not considered employees under this subsection; or]

[(H) includes the designation "company" when it is a one licensee sole proprietorship.]

[(4) A word, abbreviation or other language is presumed not misleading if it:]

[(A) is the licensee's full name, the licensee's surname, or full or last initials of one or more current or former CPA owners of the firm, its predecessor firm or successor firm;]

[(B) is the name, surname, or initials of one or more current or former foreign practitioner owners of the firm, its predecessor firm or successor firm who are or would have been eligible to practice public accountancy in this state pursuant to §901.355 of the Act (relating to Registration for Certain Foreign Applicants);]

[(C) indicates the legal organization of the firm; or]

[(D) states or implies a limitation on the type of service offered by the firm, such as "tax," "audit" or "investment advisory services," provided the firm in fact principally limits its practice to the type of service indicated in the name.]

[(5) The board may place conditions on the licensing of a firm in order to ensure compliance with the provisions of this section.]

[(b) Additional Requirements Based on Legal Form or Ownership.]

[(1) The names of a corporation, professional corporation, limited liability partnership, professional limited liability company or other similar legal forms of ownership must contain the form of ownership or an abbreviation thereof, such as "Inc.," "P.C.," "L.L.P." or "P.L.L.C."; except that a limited liability partnership organized before September 1, 1993 is not required to utilize the words "limited liability partnership" or any abbreviation thereof.]

[(2) Sole Proprietorships:]

[(A) The name of a firm that is a sole proprietor must contain the surname of the sole proprietor as it appears on the individual license issued to the sole proprietor by the board.]

(b) [(B)] A partner surviving the death of all other partners may continue to practice under the partnership name for up to two years after becoming a sole proprietor, notwithstanding subsection (d) of this section.

(c) The name of any current or former owner may not be used in a firm name during any period when such owner is prohibited from practicing public accountancy and prohibited from using the title "certified public accountant," "public accountant" or any abbreviation thereof, unless specifically permitted by the board.

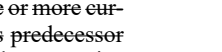
(d) A firm licensed by the board is required to report to the board any change in the legal organization of the firm and amend the firm name to comply with this section regarding firm names for the new organization within thirty days of the effective date of such change.

[(e) This section regarding firm names does not affect firms licensed by the board prior to the effective date of this section, but does apply to any change in legal organization or name that occurs after the effective date of this section. Nothing in this subsection prohibits the board from placing conditions on the licensing of a firm pursuant to subsection (a)(5) of this section at the time of renewal of the firm license.]

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 519. PRACTICE AND PROCEDURE
SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §519.6

The Texas State Board of Public Accountancy (Board) proposes an amendment to §519.6 concerning Subpoenas.

Background, Justification and Summary

Section 901.166 of the Texas Public Accountancy Act authorizes the Board to issue subpoenas to compel the attendance of a witness or the production of documents and records. Spelling out the Texas Public Accountancy Act clarifies what Act is being referenced in the rule.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in

effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The public will understand the source of authority of a board subpoena.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on December 21, 2026.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§519.6. Subpoenas.

(a) The executive director or his designated representative is delegated authority, pursuant to §901.166 of the Public Accountancy Act (relating to Authority to Issue Subpoena, Administer Oath, and Receive Evidence) to issue subpoenas to compel the attendance of a candidate, applicant, licensee or any other relevant witness or to compel the production of relevant documents, records and other materials, maintained by electronic or other means in the furtherance of the investigation of any matter within the jurisdiction of the board. The executive director or his designated representative may administer oaths and take testimony and other evidence from any person who is the subject of a subpoena issued under this section in the furtherance of the investigation of any matter within the jurisdiction of the board.

~~[(b) The executive director or his designated representative is delegated authority to issue subpoenas authorized by the APA in contested cases and the Act.]~~

(b) ~~[(c)]~~ A candidate, applicant, licensee or any other relevant witness may be deposed at the board's offices in Austin, Texas. If the deponent is not a party to a contested case, the board will reimburse the deponent for reasonable expenses incurred to attend the deposition in accordance with §2001.103 of the Texas Government Code. Any deponent may seek a protective order concerning the place of deposition on grounds stated in Texas Rule of Civil Procedure §192.6.

(c) ~~[(d)]~~ Interpretive Comment. This section should be read in conjunction with §501.93 of this title (relating to 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.

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J. Randel (Jerry) Hill
General Counsel
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22 TAC §519.7

The Texas State Board of Public Accountancy (Board) proposes an amendment to §519.7 concerning Criminal Offenses that May Subject a Licensee or Certificate Holder to Discipline or Disqualify a Person from Receiving a License.

Background, Justification and Summary

A licensee's one-time misdemeanor criminal offense by itself may not rise to the level of evidence of a lack of integrity. A licensee who is repeatedly convicted of the same or similar offense may evidence a person unwilling or unable to follow the laws of this state. The public expects a CPA to possess integrity and an individual with a pattern of criminal offenses may demonstrate an unwillingness or inability to follow the law.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The public will have more confidence in the integrity of the state's licensees and will be aware of their expected behavior.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on December 21, 2026.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§519.7. Criminal Offenses that May Subject a Licensee or Certificate Holder to Discipline or Disqualify a Person from Receiving a License.

(a) Final conviction or placement on deferred adjudication for a felony, or final conviction or placement on deferred adjudication for the following misdemeanors, may subject a licensee or certificate holder to disciplinary action pursuant to §501.90 of this title (relating to Discreditable Acts) or disqualify a person from receiving a license or certificate, or deny a person the opportunity to take the UCPAE pursuant to §511.70 of this title (relating to Grounds for Disciplinary Action of Applicants). Licensees and certificate holders are often placed in a position of trust with respect to client funds and assets. The public including the business community relies on the integrity of licensees and certificate holders in providing professional accounting services or professional accounting work. The board considers a conviction or placement on deferred adjudication for a felony or conviction or placement on deferred adjudication for the following misdemeanor offenses to be evidence of an individual lacking the integrity necessary to be trusted with client funds and assets. [~~The repeated failure to follow state and federal criminal laws directly relates to the integrity required to practice public accountancy.~~] The board has determined that the following list of misdemeanor offenses evidence violations of law that involve integrity and directly relate to the duties and responsibilities involved in providing professional accounting services or professional accounting work, pursuant to the provisions of Chapter 53 of the Occupations Code:

(1) dishonesty or fraud:

(A) Unlawful Use of Criminal Instrument;

(B) Unlawful Access to Stored Communications;

(C) Illegal Divulgence of Public Communications;

(D) Burglary of Coin-Operated or Coin Collection Machines;

(E) Burglary of Vehicles;

(F) Theft;

(G) Theft of Service;

(H) Tampering with Identification Numbers;

(I) Theft of or Tampering with Multichannel Video or Information Services;

(J) Manufacture, Distribution, or Advertisement of Multichannel Video or Information Services Device;

(K) Sale or Lease of Multichannel Video or Information Services Device;

(L) Possession, Manufacture, or Distribution of Certain Instruments Used to Commit Retail Theft;

(M) Forgery;

(N) Criminal Simulation;

(O) Trademark Counterfeiting;

(P) Stealing or Receiving Stolen Check or Similar Sight Order;

(Q) False Statement to Obtain Property or Credit or in the Provision of Certain Services;

(R) Hindering Secured Creditors;

(S) Fraudulent Transfer of a Motor Vehicle;

(T) Credit Card Transaction Record Laundering;

(U) Issuance of a Bad Check;

(V) Deceptive Business Practices;

(W) Rigging Publicly Exhibited Contest;

(X) Misapplication of Fiduciary Property or Property of Financial Institution;

(Y) Securing Execution of Document by Deception;

(Z) Fraudulent Destruction, Removal, or Concealment of Writing;

(AA) Simulating Legal Process;

(BB) Refusal to Execute Release of Fraudulent Lien or Claim;

(CC) Fraudulent, Substandard, or Fictitious Degree;

(DD) Breach of Computer Security;

(EE) Unauthorized Use of Telecommunications Service;

(FF) Theft of Telecommunications Service;

(GG) Publication of Telecommunications Access Device;

(HH) Insurance Fraud;

(II) Medicaid Fraud;

(JJ) Coercion of Public Servant or Voter;

(KK) Improper Influence;

(LL) Acceptance of Honorarium (by restricted government employees);

(MM) Gift to Public Servant by Person Subject to his Jurisdiction;

(NN) Offering Gift to Public Servant;

(OO) Perjury;

(PP) False Report to Police Officer or Law Enforcement Employee;

(QQ) Tampering with or Fabricating Physical Evidence;

(RR) Tampering with Governmental Record;

(SS) Fraudulent Filing of Financial Statement;

(TT) False Identification as Peace Officer;

(UU) Misrepresentation of Property;

(VV) Record of a Fraudulent Court;

(WW) Bail Jumping and Failure to Appear;

(XX) False Alarm or Report;

(YY) Engaging in Organized Criminal Activity;

(ZZ) Violation of Court Order Enjoining Organized Criminal Activity;

(AAA) Failing to file license holder's own tax return; and

(BBB) Evading arrest;

(2) moral turpitude:

(A) Public Lewdness;

(B) Indecent Exposure;

(C) Enticing a Child;

(D) Improper Contact with Victim;

(E) Abuse of Corpse;

(F) Prostitution;

(G) Promotion of Prostitution;

(H) Obscene Display or Distribution;

(I) Obscenity;

(J) Sale, Distribution, or Display of Harmful Material to Minor; and

(K) Employment Harmful to Children;

(3) alcohol abuse or controlled substances:

(A) Possession of Substance in Penalty Group 3 (less than 28 grams), under the Texas Health and Safety Code;

(B) Possession of Substance in Penalty Group 4 (less than 28 grams), under the Texas Health and Safety Code;

(C) Manufacture, Delivery, or Possession with Intent to Deliver Miscellaneous Substances, under the Texas Health and Safety Code;

(D) Manufacture, Delivery, or Possession of Miscellaneous Substances, under the Texas Health and Safety Code;

(E) Delivery of Marijuana, under the Texas Health and Safety Code;

(F) Possession of Marijuana, under the Texas Health and Safety Code;

(G) Possession or Transport of Certain Chemicals with Intent to Manufacture Controlled Substance (for substance listed in a Schedule but not in a Penalty Group), under the Texas Health and Safety Code;

(H) Possession or Delivery of Drug Paraphernalia, under the Texas Health and Safety Code;

(I) Obstructing Highway or Other Passageway; and

(J) Any misdemeanor involving intoxication under the influence of alcohol or a controlled substance.

(4) physical injury or threats of physical injury to a person:

(A) Assault;

(B) Deadly Conduct;

(C) Terroristic Threat; and

(D) Leaving a Child in a Vehicle.

(b) A licensee or certificate holder is often placed in a position of trust with respect to client funds; and the public, including the business community, relies on the integrity of licensees and certificate holders in preparing reports and providing professional accounting services or professional accounting work. The board considers repeated violations of criminal laws to relate directly to a licensee or certificate holder providing professional accounting services or professional accounting work.

(c) A conviction or placement on deferred adjudication for a violation of any state or federal law that is equivalent to an offense listed in subsection (a)(1) - (4) of this section is considered to directly relate to a licensee or certificate holder providing professional accounting services or professional accounting work and may subject a certificate or registration holder to discipline by the board.

(d) Misdemeanor convictions in another state will be analyzed by the general counsel to determine if such out of state misdemeanors have [~~misdemeanor has~~] an equivalency to Texas law prior to opening a complaint investigation.

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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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7848

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SUBCHAPTER B. COMPLAINTS AND INVESTIGATIONS

22 TAC §519.23

The Texas State Board of Public Accountancy (Board) proposes an amendment to §519.23 concerning Informal Conferences.

Background, Justification and Summary

An enforcement committee investigating a complaint against a CPA may invite the licensee and the complainant to a meeting with the committee when the committee believes it may be helpful to have a verbal exchange as opposed to only written communications.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The public is better protected with a thorough examination of the complainant's allegations and the licensee's response.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on December 21, 2026.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the

proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§519.23. Informal Conferences.

(a) The committee, at its sole discretion, may invite the respondent and/or the complainant to appear at a specified time and place for an informal conference [~~an informal conference~~]. The purpose of the conference is to assist the committee in the investigation. An informal conference is voluntary and is not a prerequisite to a hearing in a disciplinary action.

[~~(b) If the committee determines that the complainant's presence will aid in the investigation, then the committee will invite the complainant to appear at the informal conference. The committee will request the respondent to appear at a specified time and place for an informal conference.~~]

(b) [~~(c)~~] The notice of an informal conference will state the date, time and place. The notice will be mailed and emailed to a correct address on file with the board to the respondent and complainant at least 10 days prior to the informal conference.

(c) [~~(d)~~] At an informal conference, the respondent may appear with legal representation but the respondent must agree to be the person responding to the committee's questions.

(d) [~~(e)~~] During an informal conference, each party is given the opportunity to make a brief presentation to the committee. The committee may ask questions regarding the matter being investigated and any matter of interest to the committee related to the investigation. The committee chair may call upon board staff at any time for assistance during the informal conference.

(e) [~~(f)~~] The committee may invite a non-party who has relevant information to the investigation to participate in the informal conference but the committee will determine who may attend and the process of the informal conference.

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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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: December 20, 2026
For further information, please call: (512) 305-7848

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SUBCHAPTER C. PROCEEDINGS AT SOAH

22 TAC §519.42

The Texas State Board of Public Accountancy (Board) proposes an amendment to §519.42 concerning Administrative Hearing.

Background, Justification and Summary

When a complaint investigation results in an adjudicatory proceeding, the CPA responding to the complaint appears to the board's pleadings by filing a written response. The filing of the written pleadings constitutes an appearance without actually appearing in person. The proposed revision makes it clear that the written answer serves as an appearance.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

Eliminating unnecessary language provides greater clarity to the rule.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505

E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on December 21, 2026.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§519.42. Administrative Hearing.

(a) When a contested case has been docketed with SOAH, the board will provide the respondent and relevant parties with a Notice of Hearing and Complaint in accordance with §2001.052 of the Texas Government Code and applicable SOAH rules.

(b) The respondent and/or their relevant parties shall enter an appearance, by filing of a written answer or other responsive pleading with SOAH, with a copy to the board, within 20 days of the date on which the notice of hearing and complaint was served on the respondent and/or their relevant parties.

~~[(c) For purposes of this section, entering an appearance means the filing of a written answer or other responsive pleading with SOAH.]~~

(c) [~~(d)~~] The failure by the respondent to timely enter an appearance as provided in this section shall entitle the petitioner to motion the administrative court to dismiss the proceeding and permit the board to informally dispose of the case by default.

(d) [~~(e)~~] The notice of hearing and complaint shall include the following language in capital letters in at least 12-point boldface type: "YOU MUST ENTER AN APPEARANCE BY FILING A WRITTEN ANSWER OR RESPONSE TO THE ALLEGATIONS CONTAINED IN THIS NOTICE WITHIN 20 DAYS OF THE DATE THIS NOTICE WAS MAILED. YOUR FAILURE TO DO SO SHALL ENTITLE THE BOARD TO REQUEST THE DISMISSAL OF THE CASE AND TO INFORMALLY DISPOSE OF THIS CASE BY DEFAULT. THE ALLEGATIONS AGAINST YOU WILL BE DEEMED ADMITTED AND AN ORDER ENFORCING THE ACTION WILL BE ENTERED BY THE BOARD."

(e) [~~(f)~~] A motion to vacate a default judgment rendered by the ALJ must be filed within 10 days of the service of notice of the default judgment.

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 November 5, 2026.

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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
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SUBCHAPTER D. PROCEDURES AFTER HEARING

22 TAC §519.71

The Texas State Board of Public Accountancy (Board) proposes an amendment to §519.71 concerning Exceptions and Replies.

Background, Justification and Summary

Unnecessary verbiage is proposed to be eliminated.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

Clarity is provided with concise rule language.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on December 21, 2026.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§519.71. Exceptions and Replies.

(a) Exceptions to the PFD and any replies to exceptions must be in the form prescribed and filed within the time specified in SOAH's rules.

~~[(b) The form of exceptions and replies is governed by SOAH's rules.]~~

(b) ~~[(c)]~~ Each exception or reply to a finding of fact or conclusion of law shall be concisely stated and shall summarize the evidence in support thereof. Arguments shall be logical and citations to authorities shall be complete.

(c) ~~[(d)]~~ Any party may request oral argument before the board after service of the PFD and disposition of the exceptions, if any, and before the board's final determination of the matter. The written request for oral argument must be filed with the board's executive director no later than 5:00 p.m. on the twentieth day prior to the board meeting at which the matter is to be considered. The presiding officer may waive the twenty day notice requirement if such action would best serve the public interest. Oral argument is allowed only at the discretion of the board. In the event oral argument is granted by the board, each party will be notified of the time and place of the argument and the amount of time allotted for the presentation. Only one spokesman per party and position will be allowed to speak. At the conclusion of the presentation, board members may ask questions of the person who made the presentation. Under no circumstances may any party making oral argument to the board refer to or urge reliance on materials that are not part of the administrative record.

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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PART 24. TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

CHAPTER 571. LICENSING

The Texas Board of Veterinary Medical Examiners (TBVME or Board) proposes amendments to existing rules and the repeal of existing rules at Title 22, Part 24 Texas Administrative Code (TAC), Chapter 571, Subchapters A, B, C, and D, §§571.1, 571.3 - 571.7, 571.9, 571.11, 571.13, 571.15, 571.17, 571.21, 571.23, 571.25, 571.31, 571.51, 571.53 - 571.61, 571.63, and 571.65 regarding the Licensing Division. These proposed changes are referred to as the "proposed rules."

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under Title 22 Part 24 TAC, Chapter 571, implement Texas Occupations Chapter 801 (Veterinary Licensing Act).

TBVME proposes amendments to Chapter 571, concerning Licensing, to comprehensively update and modernize the Board's licensing rules. The proposed amendments are necessary to align the rules with current statutory requirements under Texas Occupations Code Chapter 801, reflect current licensing and examination processes, remove obsolete provisions, and improve the organization and consistency of the chapter. The proposed amendments update terminology, statutory references, examination provisions, and licensing procedures to accurately reflect the Board's current regulatory framework and practices.

The proposed amendments are intended to make the Board's licensing requirements clearer, more accessible, and easier to administer for applicants, licensees, and members of the public. The amendments clarify requirements relating to licensure, examinations, temporary and special licenses, military-related licensing provisions, license renewal and reinstatement, inactive and retired status, and expired and canceled licenses. The amendments also eliminate unnecessary procedural requirements and consolidate or reorganize provisions to improve the readability and understanding of the rules.

These changes are consistent with TREO recommendations to reduce unnecessary regulatory burdens on licensees and provide greater clarity to the public. Through these comprehensive revisions, the Board seeks to provide clear and current guidance regarding the requirements for obtaining and maintaining a license. The Board also believes that these revisions will ensure

that Chapter 571 accurately reflects governing statutes and protects the public health, safety, and welfare.

Advisory Board Recommendations

The proposed rules were presented to and discussed by the Rules Committee. The Rules Committee voted and recommended that the proposed rules with changes be proposed before the Board. The Board then voted at their meeting on July 21, 2026, to have the proposed rules with changes published in the *Texas Register* for public comment.

SECTION-BY-SECTION SUMMARY

The proposed rules amend §571.1 to define, in paragraph (3), Board-approved college of veterinary medicine. Currently, paragraph (3) refers to a practice that no longer occurs.

The proposed rules repeal paragraph (4). This will be made an internal standard operating procedure and does not need to be stated in rule.

The proposed rules repeal paragraph (5). This organization no longer exists.

The proposed rules repeal paragraph (10) as the definition of board approved college of veterinary medicine is already defined in the amended paragraph (3).

The proposed rules amend §571.3 to change references from "the agency" to "board" for consistency throughout all rules, clarify that only the potential applicant may request a criminal history evaluation for themselves, and clarify that the determination will be based on conviction or deferred adjudication of a felony or misdemeanor, rather than vague "criminal history". These changes will bring the rule in line with statute.

The proposed rules amend §571.4 to specify that the applicant must graduate from an American Veterinary Medical Association (AVMA)- accredited program as required in statute. The proposed rules repeal paragraph (4) of subsection (a) because there is no statutory requirement for the applicants to pass the Veterinary Technician National Examination (VTNE) before taking the jurisprudence examination.

The proposed rules amend §571.5 to clarify the age requirement to obtain a veterinary license, define the acceptable veterinary colleges allowed for licensure, and repeal subsections (c) and (d). Subsections (c) and (d) are defined more clearly in Special Veterinary Licenses (§571.9). It is also necessary because the North American Veterinary Licensing Examination (NAVLE) is an exam that is required by statute (see 801.401(3)) Texas Occupations Code) and this rule that allows an exemption to that requirement exceeds TBVME's authority.

The proposed rules amend §571.6 to include an additional Board approved provider of Equine Dental Provider (EDP) certification courses.

The proposed rules amend §571.7 to clarify that if an applicant is a graduate of a Board-approved school or college of veterinary medicine or has not graduated from a Board-approved or college of veterinary medicine but has obtained the proper certification, they are eligible to apply for the State Board Exam (SBE), as well as obtain a passing score on the NAVLE. The proposed rule repeal of subsections (b) - (e) are made to align with current licensure practices and to move subsection (f) to the new subsection (b). The proposed rules repeal paragraph (3) of current subsection (f) to better align with current licensure practices.

The proposed rules amend §571.9 to make clearer -- the narrow scope of eligibility for special licenses as laid out in statute, amend to use uniform designations for acceptable educational institutions and exams, and add a subsection to clarify the renewal process and the denial of special licenses if the conditions requisite for issuance of the license change.

The proposed rules repeal §571.11, a provisional license is a license type that is no longer needed.

The proposed rules amend §571.13 to conform stylistically with the rest of the chapter and added a requirement that the individual who is responding must be licensed in another state and in good standing with the state in which they are licensed.

The proposed rules amend §571.15 to conform to uniform language throughout the chapter and significantly decrease word count. The proposed rules add a subsection to outline what is needed to apply for a temporary veterinary license. The proposed rules extend the term of temporary license to 90 days from 60 days and specify that the days must run consecutively, this allows the agency to better monitor temporary licensee activity.

The proposed rules repeal §571.17 due to the process and procedures for military licensure being contained in a new and more statutorily compliant section of this rule chapter.

The proposed rules amend §571.21 to reflect the Board's current examination procedures.

The proposed rules amend §571.23 by repealing subsection (b) to better align with the Board's current testing practices.

The proposed rules repeal §571.25 because this rule no longer reflects the current on-demand examination process.

The proposed rules amend §571.27 to conform with other non-substantive changes to the chapter.

The proposed rules amend §571.31 to repeal previous language and replace it with current, proper definitions that are expressed in statute.

The proposed rules add §571.32 to allow for an expedited and alternative licensure procedure for Military - Previously Held Texas License.

The proposed rules add §571.33 to allow for an expedited and alternative licensure requirements - substantially equivalent license to a military service member, a military veteran, and a military spouse.

The proposed rules add §571.34 to allow for recognition of Out-of-State License of Military Service Members and Military Spouses.

The proposed rules add §571.35 to allow for a Military service fee waiver.

The proposed rules add §571.36 to allow for extensions of certain deadlines for military service members.

The proposed rules amend §571.51 to add a subsection that states applications will be kept on file for one year and if the applicant does not complete the application within one year, they will have to reapply. The proposed rules also add a subsection on criminal history background checks in order to make this statutory requirement easy to find in rule. Additionally, the proposed rules add a subsection for foreign graduates to list what versions of documents are acceptable for application. The proposed rules also add a subsection to clarify the procedures that govern a license denial.

The proposed rules add §571.52 to clarify instructions for renewal license applications.

The proposed rules repeal §571.53 because exemptions for licensure are clearly stated in Tex. Occ. Code §801.304.

The proposed rules amend §571.54 to concisely conform to non-substantive changes made throughout the amended rules.

The proposed rules repeal §571.55 so that the executive director's authority to send delinquency letters to non-renewed licensees is stated in agency procedures instead of rule.

The proposed rules repeal §571.56 because the process of fee waivers for military members, veterans, and spouses is set forth in a new version of proposed §571.31. The change will ensure that all provisions relating to military licensure are in one rule section.

The proposed rules repeal §571.58 because online applications and renewals makes the photograph requirement in an application for reinstatement impractical.

The proposed rules amend §571.59 to change the rule title so that it is comprehensive and more accurately reflects the substance of the rule. It is also made to repeal paragraphs (4) and (6) in subsection (d) and subsection (e).

The proposed rules amend §571.60 to repeal subsections (c) and (d) and make other non-substantive changes, to clarify when an individual's expired license is canceled, and to state the impact that a cancellation has on license renewal.

The proposed rules amend §571.61 to amend paragraph (1) of subsection (d) to be more concise, repeal paragraph (2) to simply requirements for re-activating a license and paragraph (3) because of the changes made to paragraph (1).

The proposed rules repeal §571.63 because the statutory basis for this rule has been repealed.

The proposed rules amend §571.65 to conform with Texas Family Code §232.011.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Brittany Sharkey, Executive Director, has determined that for each year of the first five years the proposed rules are in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed rules.

Ms. Sharkey has also determined that for each year of the first five years the proposed rules are in effect, there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed rules.

Ms. Sharkey has determined that for each year of the first five years the proposed rules are in effect, enforcing or administering the proposed rules does not have foreseeable implications relating to costs or revenues of state governments.

Ms. Sharkey has determined that for each year of the first five years the proposed rules are in effect, enforcing or administering the proposed rules does not have foreseeable implications relating to costs or revenues of local governments.

LOCAL EMPLOYMENT IMPACT STATEMENT

Because Ms. Sharkey has determined that the proposed rules will not affect a local economy, the agency is not required to prepare a local employment impact statement under Texas Government Code §2001.022.

PUBLIC BENEFITS

Ms. Sharkey also has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be a streamlined licensure application and clearer rules regarding licensure eligibility requirements.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Ms. Sharkey has determined that for each year of the first five-year period the proposed rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules.

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

There is no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed rules. Because the agency has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, is not required.

ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT

The proposed rules do not have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the agency is not required to take any further action under Texas Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

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

1. The proposed rules do not create or eliminate a government program.

2. Implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions.

3. Implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency.

4. The proposed rules do not require an increase or decrease in fees paid to the agency.

5. The proposed rules do not create a new regulation.

6. The proposed rules do not expand, limit, or repeal an existing regulation. The proposed rules that are repealed are due to those rules no longer reflecting current statutory regulations and have been repealed to be in line with current law. Additionally, they no longer reflect the current on-demand examination process.

7. The proposed rules do not increase or decrease the number of individuals subject to the rules' applicability.

8. The proposed rules do not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENTS AND INFORMATION RELATED TO THE COST, BENEFIT, OR EFFECT OF THE PROPOSED RULES

The Board is requesting public comments on the proposed rules and information related to the cost, benefit, or effect of the proposed rules, including any applicable data, research, or analysis. Any information that is submitted in response to this request must include an explanation of how and why the submitted information is specific to the proposed rules. Please do not submit copyrighted, confidential, or proprietary information.

Comments on the proposed rules and responses to the request for information may be submitted by email at comment@veterinary.texas.gov or by mail to Angela Martinez, Legal Secretary, Texas Board of Veterinary Medical Examiners, 1801 Congress Suite 8.800, Austin, Texas 78701. The deadline for comments is 30 days after publication in the *Texas Register*.

SUBCHAPTER A. GENERAL

22 TAC §§571.1, 571.3 - 571.7, 571.9, 571.13, 571.15

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 801, which authorize the Texas Board of Veterinary Medical Examiners, the Board's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Board.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapter 801.

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

§571.1. Definitions.

The following words and terms, when used in the Veterinary Licensing Act, "the Act" (Chapter 801, Texas Occupations Code) or the Rules of the Board (Texas Administrative Code, Title 22, Part 24, Chapters 571 - 577) shall have the following meaning, unless the context clearly indicates otherwise:

(1) Board--the Texas Board of Veterinary Medical Examiners or their designee.

(2) (No change.)

(3) Board-approved school or college of veterinary medicine--a school or college of veterinary medicine that is accredited by the Council on Education of the American Veterinary Medical Association (AVMA) or any Board-approved successor accrediting organization. Applicants who are graduates of a school or college of veterinary medicine not accredited by the Council on Education of the AVMA or any Board-approved successor accrediting organization are eligible provided that the applicant presents satisfactory proof to the Board that the applicant is a graduate of a school or college of veterinary medicine and possesses an Educational Commission for Foreign Veterinary Graduates (ECFVG) certificate or a Program for Assessment of Veterinary Education Equivalence (PAVE) certificate. [~~Locally derived scaled score--the equivalent of the criterion referenced passing point for the national examination or the NAVLE.~~]

[~~(4) Name on license--licenses will be issued to successful applicants in the name of the individual as it appears on the birth certificate, court order, marriage license, or documentation of naturalization.~~]

[~~(5) National Board of Veterinary Medical Examiners (NBVME)--the organization responsible for producing, administering and scoring the NAVLE.~~]

(4) [~~(6)~~] National examination--the examination in existence and effective prior to the inauguration date of the North American Veterinary Licensing Examination (NAVLE) [~~NAVLE~~] and which consists of the national board examination (NBE) and the clinical competency test (CCT).

(5) [~~(7)~~] North American Veterinary Licensing Examination (NAVLE)--the examination which replaced the national examination in the year 2000.

(6) [~~(8)~~] Passing Score--an examination score of at least 75 percent on the national examination or the [~~and~~] NAVLE, which is based on a locally derived scaled score; an examination score of at least 75 percent on the Veterinary Technician National Examination (VTNE) [~~VTNE~~], which is based on a locally derived scaled score; an examination score of at least 85 percent on the State Board Exam (SBE) [~~SBE~~], the Licensed Veterinary Technician Jurisprudence Examination (LVTE) [~~LVTE~~], or the Equine Dental Provider Jurisprudence Examination (EDPE) [~~EDPE~~]. The examination score on the SBE, LVTE, or the EDPE is valid for one year past the date of the examination.

(7) [~~(9)~~] SBE--Veterinarian Jurisprudence Examination (known as "State Board Examination" or "SBE") [~~State Board Examination~~].

[~~(10) School or college of veterinary medicine--a school or college of veterinary medicine that is approved by the Board and accredited by the Council on Education of the American Veterinary Medical Association (AVMA). Applicants who are graduates of a school or college of veterinary medicine not accredited by the Council on Education of the AVMA are eligible provided that the applicant presents satisfactory proof to the Board that the applicant is a graduate of a school or college of veterinary medicine and possesses an Educational Commission for Foreign Veterinary Graduates (ECFVG) certificate or a Program for Assessment of Veterinary Education Equivalence (PAVE) certificate.~~]

(8) [~~(11)~~] VTNE--Veterinary Technician National Examination.

(9) [~~(12)~~] LVTE--Licensed Veterinary Technician Jurisprudence Examination.

(10) [~~(13)~~] AVMA-accredited veterinary technician program--a program that is accredited by the American Veterinary Medical Association's (AVMA) Committee on Veterinary Technician Education and Activities (CVTEA). [~~Veterinary Technician Program--a program of education for veterinary technicians accredited by AVMA.~~]

(11) [~~(14)~~] Renewal year--the year between the first day of the month after a licensee's birth month and the last day of the licensee's birth month in the following year. The first regular license is valid from the date of issuance until the last day of the applicant's birth month, with a duration of at least one year.

§571.3. Criminal History Evaluation Letters.

(a) Pursuant [~~Purpose: The purpose of this section is to provide a process by which an individual may request a criminal his-~~

tory evaluation letter regarding the person's eligibility for a license issued by the Texas Board of Veterinary Medical Examiners, pursuant] to §53.102 of the Texas Occupations Code, a person may request the Board issue a criminal history evaluation letter regarding the person's eligibility for a license issued by the Board.[.]

(b) Prior to applying for licensure, a person [an individual] seeking licensure may request that the Board issue an evaluation letter regarding whether the person may be eligible for a license if the person has a conviction or deferred adjudication for a felony or misdemeanor offense. [agency staff review the person's criminal history to determine if the person is ineligible for licensure based solely on the person's criminal background.]

(c) (No change.)

(d) The Board [agency] may require additional documentation including fingerprints [fingerprint cards] before issuing a criminal history evaluation letter.

(e) The Board [agency] shall provide criminal history evaluation letters that include the basis for ineligibility if grounds for ineligibility exist to all requestors no later than the 90th day after the Board [agency] receives all required documentation to allow the Board [agency] to respond to a request.

(f) (No change.)

(g) All evaluation letters shall be based on existing law at the time of the request. All requestors remain subject to the requirements for licensure at the time of application and may be determined ineligible under existing law at the time of application. If a requestor fails to provide complete and accurate information to the Board [agency], the Board [agency] may invalidate the criminal history evaluation letter. Additional criminal history after the submission of the petition [Petition] for criminal history evaluation letter [Criminal History Evaluation Letter] to the Board may invalidate the criminal history evaluation letter [Criminal History Evaluation Letter].

(h) A person [an individual] shall be permitted to apply for licensure, regardless of the Board's [agency's] determination in a criminal history evaluation letter.

§571.4. Qualifications for Licensed Veterinary Technicians.

(a) To be eligible for licensure as a licensed veterinary technician, an applicant must present satisfactory proof to the Board that the applicant:

(1) is at least 18 years of age [old];

(2) has obtained at least a passing score on:

(A) the VTNE; and

(B) the LVTE; and

(3) has graduated from an AVMA-accredited veterinary technician program. [is a graduate of a Veterinary Technician Program.]

[(4) A person must first take and pass the VTNE in order to apply for the LVTE.]

(b) (No change.)

§571.5. Qualifications for Veterinary License.

(a) To be eligible for veterinary licensure, an applicant must present satisfactory proof to the Board that the applicant:

(1) is at least 18 years of age [the age of majority];

(2) has obtained at least a passing score on:

(A) the NAVLE [if an applicant sits for that examination subsequent to its inauguration date]; or

(B) the national examination, if an applicant sat for that examination prior to the inauguration date of the NAVLE; and

(C) the SBE; and

(3) is a graduate of a Board-approved school or college of veterinary medicine; or [that is approved by the Board.]

(4) is a graduate of a non-Board-approved school or college of veterinary medicine and has obtained certification from one of the following:

(A) the Educational Commission for Foreign Veterinary Graduates (ECFVG); or

(B) the Program for the Assessment of Veterinary Education Equivalence (PAVE).

(b) (No change.)

[(c) An applicant may petition the Board in writing for an exception to subsection (a)(2)(A) or (B) of this section. In deciding whether to grant the petition, the Board may consider:]

[(1) the availability of the national examination or NAVLE at the time the petitioner originally applied for licensure;]

[(2) the number of years the petitioner has been in active practice;]

[(3) petitioner's license status and standing in other jurisdictions;]

[(4) petitioner's status as a diplomate in an AVMA recognized veterinary specialty; and]

[(5) any other factors that may be related to petitioner's request for an exception.]

[(d) As a condition of granting an exception under subsection (c)(2) of this section, the Board may impose additional requirements that are reasonably necessary to assure that the petitioner is competent to practice veterinary medicine in Texas.]

§571.6. Qualifications for Equine Dental Provider License.

(a) To be eligible for licensure as an equine dental provider, an applicant must present satisfactory proof to the Board that the applicant:

(1) has obtained at least a passing score [of 85] on the EDPE; and

(2) is certified by the International Association of Equine Dentists, Equine Dental Providers of America, or other Board-approved entity.

(b) (No change.)

§571.7. Eligibility to Apply for the SBE [Veterinary Licensing Eligibility].

(a) An applicant for a veterinary license may apply for the SBE provided that:

(1) the applicant is a graduate of a Board-approved school or college of veterinary medicine or has graduated from a non-Board-approved school or college of veterinary medicine and obtained certification from either the Educational Commission for Foreign Veterinary Graduates (ECFVG) or the Program for the Assessment of Veterinary Education Equivalence (PAVE); and [an approved and accredited]

(2) the applicant has obtained a passing score on the NAVLE. [veterinary medical school or college, as defined in §571.1(10) of this title (relating to Definitions).]

[(b) An applicant for a veterinary license may sit for the NAVLE provided that the applicant is a graduate of:]

[(1) an approved and accredited veterinary medical school or college, as defined in §571.1(10) of this title; or]

[(2) a veterinary medical school or college not approved and accredited, but who is enrolled in the ECFVG or PAVE certification program, and meets the requirements of subsection (c) of this section, if applicable.]

[(c) When applying for the NAVLE through NBVME, an applicant who is a graduate of a veterinary medical school or college not approved and accredited, and is enrolled in the ECFVG or PAVE certification program, shall submit proof that the applicant passed all English language proficiency tests required by the certification program of choice and must have completed all other requirements of each program to be considered eligible to apply for the NAVLE.]

[(d) A person must first take and pass the national examination or the NAVLE in order to apply for the SBE.]

[(e) A candidate for the NAVLE must take the examination within the testing window in which the candidate is authorized for testing. A candidate, who fails to take the examination within the appropriate testing window or fails to obtain a passing score on NAVLE, and desires to take the examination during a subsequent testing window must comply with NBVME application requirements.]

(b) [(f)] Eligibility Prior to Graduation. An applicant for a veterinary license who has not yet received their Doctor of Veterinary Medicine degree [graduated] from veterinary medical school may apply for the SBE if [provided the following conditions have been met]:

(1) the [An] applicant is [must be] enrolled at a Board-approved school or college of veterinary medicine [in an approved and accredited veterinary medical school or college as defined in §571.1(10) of this title] and obtains [must obtain] a document from the dean of the school or college from which the applicant expects to graduate certifying that the applicant is within 120 days of completion of a veterinary college program and is expected to graduate; or[.]

(2) the [An] applicant is enrolled in a joint or combined degree program and [who] has completed their [the applicant's] veterinary medical education but has not received a diploma or transcript certifying the award of their [the applicant's DVM] doctorate of veterinary medicine degree and obtains[, must] a letter from the dean of the school or college of veterinary medicine stating that the applicant did in fact graduate [before the applicant is eligible to sit for the SBE].

[(3) To apply for the NAVLE through NBVME, a candidate shall, at the time an application is submitted, demonstrate that the candidate is:]

[(A) a student enrolled in an approved and accredited school or college of veterinary medicine as defined in §571.1 10) of this title, and who has submitted a document from the dean of the school or college from which the student expects to graduate, certifying that the applicant is within ten months of the student's expected graduation date and is expected to graduate, and has demonstrated compliance with all of the NBVME's testing requirements for the NAVLE; or]

[(B) a graduate of a school or college of veterinary medicine not approved and accredited, who is enrolled in the ECFVG or PAVE certification program and shall submit proof that the applicant passed all English language proficiency tests required by the certification program of choice and must have completed all other requirements of each program.]

§571.9. Special Veterinary Licenses.

(a) The Board may issue a special license to practice veterinary medicine to an applicant who: [General requirements for special veterinary licensure; examination scores; issuance and renewal.]

(1) is a member of the faculty or staff of a Board-approved school or college of veterinary medicine; [The Board shall schedule a jurisprudence examination at least once a year for applicants for special veterinary licenses.]

(2) is a veterinarian employee of the Texas Animal Health Commission; [An applicant for a special veterinary license under §801.256(a)(1) - (3), Texas Occupations Code, must:]

[(A) be at the age of majority;]

[(B) be a graduate of a Board approved veterinary program at an institution of higher education or possess an Educational Commission for Foreign Veterinary Graduates (ECFVG) Certificate or a Program for Assessment of Veterinary Education Equivalence (PAVE) Certificate; or]

[(C) provide to the Board a written affirmation by the dean of a Board approved veterinary program at an institution of higher education in this state or the executive director of the Texas Animal Health Commission or the executive director of the Texas Veterinary Medical Diagnostic Laboratory that the applicant:]

[(i) meets a critical need for staffing at the institution of higher education or the Texas Animal Health Commission or the Texas Veterinary Medical Diagnostic Laboratory; and]

[(ii) is certified by a nationally recognized veterinary specialty board or is eligible for that certification; and]

[(D) pass the Board's jurisprudence examination. The applicant must submit a completed application for examination to the Board by no later than forty-five (45) days prior to the examination date. The completed application includes payment of examination fees and certification from the applicant's employer attesting to the applicant's employment position.]

(3) is a veterinarian employee of the Texas Veterinary Medical Diagnostic Laboratory; or [For purposes of this section, a "Board approved veterinary program at an institution of higher education" means any program which is recognized and accredited by an appropriate body of the American Veterinary Medical Association (AVMA).]

(4) is a person licensed to practice veterinary medicine in another jurisdiction, if the board determines that the person's specialty practice is unrepresented or underrepresented in this state; and [The applicant must submit with his application a written statement from his employer describing the applicant's official duties that require the issuance of a special license under §801.256(a)(1) - (3), Texas Occupations Code. Upon completion of the jurisprudence examination, the Board shall notify the applicant by letter of his score. For candidates who attain a passing score of 85 percent, the letter shall constitute the special license for limited practice in the State of Texas.]

(5) is not subject to denial of license as provided in Texas Occupations Code §801.401 and §801.402. [A special veterinary license will be issued for the renewal year in which the requirements for licensure have been met.]

[(6) A special veterinary license is subject to the renewal requirements set out in §801.303, Texas Occupations Code.]

[(7) An applicant who fails the jurisprudence examination for a special veterinary license and wishes to be re-examined will be required to resubmit an application and fees for a later scheduled jurisprudence examination.]

(b) To be eligible for a special license to practice veterinary medicine pursuant to §801.256(a)(1) - (4), Texas Occupations Code an applicant must:

(1) be at least 21 years of age; and

(2) be a graduate of a Board-approved school or college of veterinary medicine or be a graduate of a non-Board-approved school or college of veterinary medicine and possess an Educational Commission for Foreign Veterinary Graduates (ECFVG) Certificate or a Program for Assessment of Veterinary Education Equivalence (PAVE) Certificate; or

(3) provide to the Board with written affirmation by the dean of a Board-approved veterinary program at an institution of higher education in this state or the executive director of the Texas Animal Health Commission or the executive director of the Texas Veterinary Medical Diagnostic Laboratory that the applicant:

(A) meets a critical need for staffing at the institution of higher education or the Texas Animal Health Commission or the Texas Veterinary Medical Diagnostic Laboratory; and

(B) is certified by a nationally recognized veterinary specialty board or is eligible for that certification; and

(4) pass the SBE.

[(b) Applicant requirements for unrepresented or under represented specialty practice, as further defined in subsection (c) of this section. An applicant for a special license to practice a veterinary medicine specialty in this state must:]

[(1) be a graduate of a board approved veterinary program at an institution of higher education as defined in §571.15(a)(3) of this title (relating to Temporary Veterinary License) or possess an ECFVG or PAVE Certificate;]

[(2) present proof of a current active license in good standing in another state or jurisdiction of the United States that has licensing requirements substantially equivalent to the requirements of the Veterinary Licensing Act, Texas Occupations Code Chapter 801;]

[(3) not currently be holding a special veterinary license under this section; and]

[(4) have a certification from an employing sponsor or controlling authority approved by the board that the need for a special veterinary license exists.]

(c) Special license issuance and renewal

(1) Upon completion of the SBE, the Board shall notify the applicant by letter of their score. For applicants who attain a passing score, the letter shall constitute as the special license to practice veterinary medicine in the State of Texas.

(2) A special veterinary license will be issued for the renewal year in which the requirements for licensure have been met.

(3) A special veterinary license is subject to the renewal requirements set out in §801.303, Texas Occupations Code.

[(c) The board may issue a special veterinary license to an applicant for an unrepresented or under represented specialty practice if the board finds that:]

[(1) there is a need, shortage, or demand for the specialty practice in the State of Texas;]

[(2) the applicant is competent to practice veterinary medicine in the particular specialty; and]

[(3) the applicant has taken and passed the jurisprudence examination for special veterinary license.]

(d) In order to determine if an applicant's specialty practice is unrepresented or underrepresented in this state pursuant to §801.256(a)(4) and subsection (a)(4) of this rule, the Board may consider:

(1) If there is a need, shortage, or demand for the specialty practice in the State of Texas; and

(2) If the applicant has demonstrated competency to practice veterinary medicine in the specialty; and

(3) If the applicant has presented proof of a current, active veterinary license in good standing in another state or jurisdiction that has licensing requirements substantially equivalent to the Veterinary Licensing Act, Texas Occupations Code, Chapter 801.

[(d) Change of special veterinary license status. A request by the holder of a special veterinary license to change the license from one category to another must be submitted to the Board for approval.]

(e) A special license is valid only for the performance of duties within the scope of the special license holder's employment or practice.

(f) The Board may suspend or revoke a special license if:

(1) the special license holder's employment is terminated; or

(2) the special license holder practices outside the scope of the license.

§571.13. Temporary Veterinary Licensure During Declared State of Disaster.

(a) A person [An individual] who is licensed to practice veterinary medicine in any of the United States may be issued a temporary veterinary license during a state of disaster declared by the Governor of the State of Texas if [under the following circumstances]:

(1) The applicant completes [must complete] an application for temporary emergency license [Application for Temporary Emergency License].

(2) The Board can [will] verify that the veterinarian is licensed and in good standing in the state(s) [states] indicated by the applicant in the application [Application and will confirm good standing].

[(3) An application fee and the SBE are waived.]

(b) A veterinarian granted a temporary emergency license under this rule [section] shall abide by the Texas Veterinary Licensing Act and the Board's rules. Violations of the Act, Board rules, or the scope of the temporary emergency license will subject the temporary licensee to disciplinary action by the Board.

(c) (No change.)

§571.15. Temporary Veterinary License.

(a) Eligibility [and Application] Requirements. The Board may issue a temporary license to practice veterinary medicine to an applicant who [An application for a temporary veterinary license shall be submitted to the Board on the form provided by the Board. To be complete, an application must include at least the following items]:

(1) is licensed in good standing as a veterinarian in another state or foreign country [~~a letter of good standing issued within the previous six months from another state or jurisdiction of the United States or foreign country with substantially similar licensing requirements in which the applicant is currently actively licensed~~];

(2) is at least 18 years of age; and [~~an attestation that the applicant is a graduate of a school or college of veterinary medicine that is approved by the Board and accredited by the Council on Education of the American Veterinary Medical Association (AVMA), or that possesses an Educational Commission for Foreign Veterinary Graduates (ECFVG) Certificate or a Program for Assessment of Veterinary Education Equivalence (PAVE) Certificate;~~]

(3) is a graduate of a Board-approved school or college of veterinary medicine [~~a copy of the applicant's driver's license, passport, or other government-issued photo identification~~]; or [~~and~~]

(4) has graduated from a non-Board-approved school or college of veterinary medicine and obtained certification from either the Educational Commission for Foreign Veterinary Graduates (ECFVG) or the Program for the Assessment of Veterinary Education Equivalence (PAVE) [~~the license number and signature of the Texas veterinarian who agrees to provide general supervision of the applicant's practice of veterinary medicine for the duration of the temporary veterinary license~~].

(b) Application Requirements. To be complete, an application for a temporary veterinary license must include at least the following items:

(1) a letter of good standing issued within the previous six months from another state or jurisdiction of the United States or foreign country with substantially similar licensing requirements in which the applicant is currently actively licensed;

(2) proof that the applicant is a graduate of a Board-approved school or college of veterinary medicine or is a graduate of a non-Board-approved school or college of veterinary medicine and possesses an Educational Commission for Foreign Veterinary Graduates (ECFVG) Certificate or a Program for Assessment of Veterinary Education Equivalence (PAVE) Certificate;

(3) a copy of the applicant's driver's license, passport, or other government-issued photo identification; and

(4) the license number and signature of a licensed Texas veterinarian who agrees to provide general supervision of the applicant's practice of veterinary medicine for the duration of the temporary veterinary license.

(b) [~~(c)~~] Scope and Duration.

(1) A temporary veterinary license is valid only for a specific patient, client, continuing education course, or task.

(2) A temporary veterinary license is valid for 90 consecutive [~~60~~] days starting from the first date of practice [~~from issuance~~]. [~~The 60-day period does not have to run consecutively.~~] A temporary veterinary license may not be renewed or reissued. A person may not be issued more than two temporary veterinary licenses in a calendar year.

(c) [~~(d)~~] Penalties.

(1) A person who exceeds the scope or duration of a temporary veterinary license, or who violates the Act or Board Rules while practicing under a temporary veterinary license, is subject to:

(A) disciplinary action under Texas Occupations Code §801.401;

(B) a cease-and-desist order pursuant to Texas Occupations Code §801.508;

(C) future denial of any type of license issued by the Board for which the person may otherwise be eligible;

(D) reporting [~~referral~~] to any jurisdiction in which the person is currently licensed; and

(E) reporting [~~referral~~] to an appropriate law enforcement agency.

(2) A Texas veterinarian who signs an application for a temporary veterinary license and agrees [~~agreeing~~] to provide general supervision of the applicant's practice of veterinary medicine for the duration of the temporary veterinary license is subject to discipline if the Texas veterinarian fails to provide such supervision.

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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Kelly Phelps
General Counsel
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For further information, please call: (512) 305-7555

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22 TAC §571.11, §571.17

STATUTORY AUTHORITY

The proposed repeals are proposed under Texas Occupations Code, Chapter 801, which authorize the Texas Board of Veterinary Medical Examiners, the Board's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Board.

The statutory provisions affected by the proposed repeals are those set forth in Texas Occupations Code, Chapter 801.

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

§571.11. Provisional Veterinary Licensure.

§571.17. Expedited and Alternative License Procedure for Military.

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

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SUBCHAPTER B. EXAMINATIONS

22 TAC §§571.21, 571.23, 571.27

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 801, which authorize the Texas Board of Veterinary Medical Examiners, the Board's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Board.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapter 801.

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

§571.21. [~~Application for the~~] SBE, LVTE, and EDPE.

(a) To apply [~~The applicant~~] for either the SBE, LVTE, or the EDPE the applicant must submit all required information, documents, and fees in a form and manner prescribed [~~shall apply on the appropriate form furnished~~] by the Board. [~~The completed application, including the completion of any terms and conditions as set forth by a Board order and the payment of appropriate fees, must be received at the Board offices no later than 45 days prior to the date of the examination for which the applicant desires to sit.~~]

(b) Once the application is approved by the Board, the applicant will receive a candidate ID which the applicant must use to purchase and register for the exam.

(c) The exam must be completed in one sitting and within ten days of purchase.

(d) If an applicant does not receive a passing score on an exam after three attempts, they must pay the application fee again in order to re-register for the exam.

§571.23. National Licensing Examination.

Results of National Board Examinations. The Board will accept certified scores issued by the:

(1) American Association of Veterinary State Boards (AAVSB) for the national examination or the VTNE; and

(2) the official reporting service for the NAVLE.

[~~(a) Results of National Board Examinations. The Board will accept certified scores issued by the:~~]

[~~(1) American Association of Veterinary State Boards (AAVSB), or its successor, for the national examination or the VTNE; and~~]

[~~(2) the official reporting service for the NAVLE.~~]

[~~(b) Score Information. All requests for information on examination scores shall be processed as follows:~~]

[~~(1) All requests from other state licensing boards for an applicant's raw scores on the VTNE, the national examination or NAVLE will be referred to the official reporting service for those examinations.~~]

[~~(2) All requests from other state licensing boards for an applicant's locally derived scale scores on the VTNE, the national examination or NAVLE will be based upon national data submitted by the official reporting service for those examinations.~~]

[~~(3) Upon written request of an applicant, the Board will certify the score of the SBE or LVTE to another state licensing board. Upon written request of an applicant, the Board will make LVTE, national examination or NAVLE scores available for informational purposes only to another state licensing board but will not certify the scores.~~]

[~~(4) The Board will not disclose any actual examination documents or materials.~~]

§571.27. Disability Accommodations.

(a) The Board will evaluate all requests for examination protocol modifications to determine whether the applicant:

(1) (No change.)

(2) is qualified for protection under Title II of the ADA. Such modifications must maintain the security of the examination. Exam modifications that fundamentally alter the nature or security of the exam are not permitted. Qualified individuals with disabilities are required to request reasonable accommodation every time they apply to take an examination[~~, by the deadline for submission of disability accommodation requests as set out in the schedule on the Board website~~].

(b) To request a modification of examination protocol on the basis of a disability, an applicant shall complete the ADA Accommodations Request Form available on the Board website, and submit documentation providing evidence of a substantial current limitation to physical or academic functioning. A prior history of accommodations, without demonstration of a current need, will not necessarily warrant approval of testing modifications.

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

(3) Documentation must state the specific accommodation requested. "Extended time" or "unlimited time" is not sufficient. Documentation shall indicate why the specific accommodation is needed and how the effects of the specific disability are mediated by the recommended accommodation.

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

(c) [~~The entity giving the examination (i.e., TBVME or NBVME) shall be responsible for reviewing and determining whether to grant disability accommodation requests.~~] Once accommodations have been granted, they may not be altered during the examination unless prior approval of the executive director [~~Executive Director~~] is obtained.

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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22 TAC §571.25

STATUTORY AUTHORITY

The proposed repeal is proposed under Texas Occupations Code, Chapter 801, which authorize the Texas Board of Veterinary Medical Examiners, the Board's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Board.

The statutory provisions affected by the proposed repeal are those set forth in Texas Occupations Code, Chapter 801.

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

§571.25. Reapplication for SBE, LVTE, and EDPE.

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

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SUBCHAPTER C. RECIPROCAL LICENSING AGREEMENTS

22 TAC §§571.31 - 571.36

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 801, which authorize the Texas Board of Veterinary Medical Examiners, the Board's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Board.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapter 801.

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

§571.31. Military Definitions [~~Reciprocal Licensing Agreements~~].

The following words and terms, when used in this subchapter, have the following meanings as defined in Chapter 55, §55.001, of the Texas Occupations Code: [~~The Board shall not accept applications for licensure under any former reciprocal licensing agreements with any state, nor shall the Board license by endorsement.~~]

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

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

(3) Military service member--a person who is on active duty.

(4) Military spouse--a person who is married to a military service member.

(5) Military veteran--a person who has served on active duty and who was discharged or released from active duty.

§571.32. Expedited and Alternative Licensure Procedure for Military--Previously Held Texas License.

(a) This section implements Texas Occupations Code §§55.004, 55.005, and 55.006, as they relate to an applicant who previously held a license issued by the Board within the last five years.

(b) This section applies to a military service member, a military veteran, and a military spouse, as defined under §571.31.

(c) An applicant under this section is eligible to obtain a license issued by the Board if the applicant within the five years preceding the application date held the same license in Texas and:

(1) is not subject to denial of the license as provided in Texas Occupations Code §§801.401 and 801.402; and

(2) has not surrendered a license issued by the Board in lieu of disciplinary action in the last five years.

(d) The following documentation must be submitted to apply for a license under this section:

(1) completed license application and any required supporting documents for the license type; and

(2) supporting documents related to military service including:

(A) copy of the military orders showing proof of active-duty status (for service member and spouse);

(B) copy of the military orders or documents showing proof of veteran status (for veteran); and

(C) copy of document showing proof of status as a spouse (for military spouses).

(e) An applicant who qualifies for a license under this section is not required to take any applicable examination required for obtaining that specific license.

(f) An applicant under this section must pass a criminal history background check.

(g) An application under this section shall be expedited in accordance with Texas Occupations Code §55.005.

(h) Pursuant to Texas Occupations Code §55.004(b), the executive director may waive any prerequisite to obtaining a license for an applicant under this section after reviewing the applicant's credentials.

(i) A service member, veteran, or spouse who obtains a license under this section must comply with all license renewal requirements, including fees for the specific license obtained.

(j) A license issued under this section is valid for 12 months from the date the license is issued.

§571.33. Expedited Alternative Licensing Requirements--Substantially Equivalent License.

(a) This section implements Texas Occupations Code §§55.004, 55.005, 55.006, and 55.009, as they relate to an applicant who holds a "substantially equivalent" license.

(b) This section applies to a military service member, a military veteran, and a military spouse, as defined under §571.31.

(c) An applicant under this section is eligible to obtain a license issued by the Board if the applicant holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the Texas licensing requirements and:

(1) is not subject to denial of the license as provided in Texas Occupations Code §§801.401 and 801.402; and

(2) has not surrendered a license issued by the Board in lieu of disciplinary action in the last five years.

(d) Licensing requirements of another jurisdiction are substantially equivalent to the Texas requirements if they include the following minimum requirements:

(1) for veterinary licensure:

(A) At least a passing score on either the NAVLE or the national examination if an applicant sat for that examination prior to the inauguration date of the NAVLE; and

(B) graduation from a Board-approved school or college of veterinary medicine; or

(C) graduation from a non-Board-approved school or college of veterinary medicine and certification from either the Educational Commission for Foreign Veterinary Graduates (ECFVG) or the Program for the Assessment of Veterinary Education Equivalence (PAVE).

(2) For equine dental provider licensure:

(A) Certification by the International Association of Equine Dentists, the Association of Equine Dentists, or other Board approved entity; and

(B) equine dental providers work only under the direct supervision of a veterinarian licensed in the jurisdiction.

(3) For licensed veterinary technician licensure:

(A) Graduation from an AVMA-accredited veterinary technician program; and

(B) at least a passing score on the VTNE.

(e) The Board retains the exclusive authority to determine whether or not the licensing requirements for a license issued by another jurisdiction are substantially equivalent to the requirements for the Texas license sought.

(f) For purposes of this section, "another jurisdiction" or "other jurisdiction" means a U.S. state, the District of Columbia, or a U.S. territory.

(g) The following documentation must be submitted to apply for a license under this section:

(1) completed license application and any required supporting documents for the license type; and

(2) supporting documents related to military service including:

(A) copy of the military orders or documents showing proof of active-duty status (for military service member and spouse);

(B) copy of the military orders or documents showing proof of veteran status (for military veteran); and

(C) copy of document showing proof of status as a spouse (for military spouses); and

(3) copy of the applicant's current occupational license from another jurisdiction.

(h) An applicant who qualifies for a license under this section is not required to take and pass any applicable examination required for obtaining that specific license.

(i) An applicant under this section must pass a criminal history background check.

(j) An application under this section shall be expedited in accordance with Texas Occupations Code §55.005.

(k) Pursuant to Texas Occupations Code §55.004(b), the executive director may waive any prerequisite to obtaining a license for an applicant under this section after reviewing the applicant's credentials.

(l) A service member, veteran, or spouse who obtains a license under this section must comply with all the license renewal requirements including fees for the specific license obtained.

(m) A license issued under this section is valid for 12 months from the date the license is issued.

§571.34. Recognition of Out-of-State License of Military Service Members and Military Spouses.

(a) This section implements Texas Occupations Code §55.0041 and the license portability provisions of the federal Servicemembers' Civil Relief Act found at 50 U.S.C. §4025a.

(b) This section applies to a military service member or military spouse, as defined under §571.31, and to a member or the spouse of a member of the commissioned corps of the National Oceanic and Atmospheric Administration or Public Health Service.

(c) A person described in subsection (b) may engage in a business or occupation for which a license is required without obtaining the applicable Texas license if the Board recognizes the out-of-state license.

(d) In order for an out-of-state license to be recognized under this section, a person described in subsection (b) must provide, in a manner determined by the Board:

(1) notice of the person's or spouse's intent to practice in this state;

(2) a copy of the person's military identification card;

(3) a copy of the person's or spouse's military orders showing relocation to Texas;

(4) a copy of the out-of-state license, or if unavailable, other identifying information required by the Board;

(5) proof that the person remains in good standing with any licensing authority that issued to the service member or their spouse a license valid at a similar scope of practice and in the discipline applied in such jurisdiction of the licensing authority, and has no restrictions, pending enforcement actions, or unpaid fees or penalties relating to the license; and

(6) an acknowledgment that the person submits to the Board's authority over the standards of practice regarding the license, discipline, and fulfillment of continuing education requirements.

(e) If the requirements of subsection (d) have been met, the Board will provide written confirmation that the license is recognized by the Board.

(f) A person who is issued the confirmation described in subsection (e):

(1) may engage in the authorized business or occupation for the duration of the person's military orders; and

(2) must immediately notify the Board if the person is no longer in good standing with the licensing authority that issued the license recognized by the Board.

(g) The Board shall withdraw its recognition of a person's out-of-state license if it determines that the person is no longer in good standing with the licensing authority that issued the license.

(h) In the event of a divorce or similar event that affects a person's status as a spouse, a former spouse whose out-of-state license has

been recognized pursuant to this section may continue to engage in the business or occupation until the third anniversary of the date the former spouse received the confirmation described by subsection (e).

(i) A person who engages in a business or occupation under the authority or license established by this section is subject to the enforcement authority granted under Texas Occupations Code, Chapter 801, this chapter, and the laws and regulations applicable to the occupation in Texas.

(j) An application under this section shall be expedited in accordance with Texas Occupations Code §55.005.

§571.35. Military Service Fee Waiver.

(a) The license fees are waived for an applicant that can prove that they are:

(1) a military service member or military veteran whose military service, training, or education substantially meets all the requirements for a license from the Board; or

(2) a military service member, military veteran, or military spouse who holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for a license from the Board.

(b) No late fee is assessed for failing to renew a license timely if the licensee provides the Board with satisfactory documentation that the failure to renew timely was due to the licensee serving as a military service member during the license renewal period.

§571.36. Extension of Certain Deadlines.

Pursuant to Texas Occupations Code, §55.003, a military service member whose license expired while on active duty is entitled to two years of additional time from the date of discharge to complete:

(1) any continuing education requirements; and

(2) any other requirement related to the renewal of the service member's license.

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

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SUBCHAPTER D. LICENSE RENEWALS

22 TAC §§571.51, 571.52, 571.54, 571.59 - 571.61, 571.65

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 801, which authorize the Texas Board of Veterinary Medical Examiners, the Board's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Board.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapter 801.

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

§571.51. Initial License Applications [~~Application~~].

(a) An applicant for an initial license must submit all required information, documents, and fees in a form and manner prescribed by the Board. The Board may request additional information as part of the application process, if necessary. [~~Application for license renewals shall be on forms furnished by the board. Failure to complete the application in its entirety will be grounds to reject the application which will be returned to the applicant.~~]

(b) Incomplete Initial Application. An applicant who submits an incomplete application has one year from the date the application is received by the department to submit any missing information, documents, and/or fees.

(1) If the applicant contends that the application is complete and meets the legal requirements for licensure, and the Board disagrees, the Board will provide the applicant with an opportunity to request a license determination based on the information and documents that have been submitted. If the Board denies the application, the Board will send a denial letter under subsection (f) of this section, and the applicant may request a hearing.

(2) After one year, an incomplete application shall expire. The applicant must start the license application process over and submit a new application with all required information, documents, and fees as prescribed under subsection (a) of this section.

(c) Insufficient or Not Qualified Initial Application. If an applicant provides a complete application that is determined insufficient in meeting the license requirements or if the applicant is determined not qualified to obtain the license, the Board will notify the applicant of their ineligibility for licensure, and the applicant may request a hearing pursuant to subsection (f).

(d) Criminal History Background Checks

(1) An applicant is subject to a criminal history background check pursuant to Texas Occupations Code, Chapters 53 and 801. An applicant must submit fingerprints for a background check on a form prescribed by the Board.

(2) Failure to pass a criminal history background check may result in denial and/or revocation of the license.

(e) Applicants with Foreign Transcripts or Foreign Degrees. An applicant with a transcript in a language other than English (foreign transcript) must submit a transcript and a certified translation when applying for licensure.

(1) The foreign transcript must be translated to English to determine if it meets the requirements for licensure for the particular license sought.

(2) The transcript must be translated by the issuing institution or a translator that is certified by the American Translators Association.

(3) The applicant must bear all expenses incurred during the translation process.

(f) Denial of Initial License Application or Examination. If the Board proposes to deny an initial license application or proposes to deny an applicant the opportunity to take an examination, the denial is considered to be a contested case, and the rules under Chapter 575 of this title shall apply.

§571.52. Renewal License Applications.

(a) License Renewal Notices

(1) The Board will send a license renewal notice to the license holder at least 30 days before the license expiration date.

(2) Non-receipt of a license renewal notice does not exempt a person from any requirements of this chapter or the statute or rules governing the specific program. It is the responsibility of the license holder to timely renew the license.

(b) A license holder renewing a license must submit all required information, documentation, and fees in a form and manner prescribed by the Board. The Board may request additional information as part of the renewal process, if necessary.

(c) The window for renewal opens 90 days prior to license expiration. To renew and maintain continuous licensure, the license holder must complete the following requirements prior to license expiration:

(1) complete all the renewal requirements for the particular license, including any continuing education requirements; and

(2) pay the required renewal fee as prescribed by §577.15 of this title (relating to Fee Schedule) for the particular license.

(d) If a license holder completes all the renewal requirements for the particular license and pays the required renewal fee as prescribed under §577.15, the license will not expire, and there will not be a gap in licensure.

(e) If a license holder does not complete all renewal requirements for their particular license and pay the renewal fee as prescribed under subsection §577.15, the license will expire. A person with an expired license may not perform any act that requires a license pursuant to Chapter 801, Texas Occupations Code.

(f) Late Renewals

(1) A person whose license has expired may late renew the license within the time periods set out in Texas Occupations Code §801.303.

(2) A person who late renews a license, except as provided in §571.35 and §571.36, must:

(A) complete all the renewal requirements for the particular license, including any required continuing education; and

(B) pay the required late renewal fee as prescribed under §577.15.

(3) A late renewal means the person will be unlicensed from the expiration date of the expired license to the issuance date of the renewed license. During the unlicensed period, a person may not perform any act that requires a license pursuant to Chapter 801, Texas Occupations Code.

(4) A license expiration date does not change when a person late renews a license.

(h) Expired License Beyond Late Renewal Deadlines. Refer to Board Rule §571.59.

§571.54. Retired Veterinary License Status.

(a) (No change.)

(b) A veterinarian may not retire their [~~his~~] license if they are [~~he is~~] currently the subject of an open complaint investigation or a contested case.

(c) If a veterinary licensee retiring for the first time requests reinstatement of their [~~his~~] license in the same renewal year in which they [~~he~~] retired, the licensee must:

(1) pay the annual renewal fee [~~plus a $25 administrative processing fee to reinstate the license~~]; and

(2) provide the Board with proof of completion of the annual required hours of approved continuing education for a veterinary license pursuant to Board Rules §573.64 and §573.65 for the current renewal year. [~~comply with the following continuing education requirements:~~]

[~~(A) If a retired veterinary licensee has maintained an annual average of 17 hours of approved continuing education, no additional continuing education hours will be required.~~]

[~~(B) If a retired veterinary licensee has maintained an annual average of less than 17 hours of approved continuing education, the retired licensee must complete 34 hours of continuing education in the twelve months immediately following reinstatement.~~]

(d) (No change.)

(e) By no later than 30 days before the end of the current renewal year in which a licensee's veterinary license is retired for the first time, the Board shall inform the retired veterinary licensee that they [~~he or she~~] may:

(1) apply to reinstate the license in accordance with subsection (c) [~~(d)~~] of this section; or

(2) (No change.)

[~~(f) The retired veterinary licensee shall notify the Board of his or her decision by no later than the end of the current renewal year in which the licensee's veterinary license is retired for the first time.~~]

(f) [~~(g)~~] If the retired veterinary licensee decides to remain in retired status, they [~~he or she~~] will no longer receive license renewal notices and will not be required to renew their [~~his or her~~] retired veterinary license.

§571.59. Expired and Cancelled Veterinary Licenses.

(a) A veterinarian's license expires on the first day of the month following their [~~his/her~~] birth month [~~and is considered delinquent~~]. A license which has been expired for a period of one year or more shall be cancelled. [~~Within 90 days of the last day of the month of a licensee's birth month, a licensee must renew an unexpired license, in writing, by paying the required fee and furnishing all information required by the Board for renewal.~~]

(b) A veterinary licensee whose license has been cancelled may not renew the license. The veterinary licensee may obtain a new license by complying with the requirements and procedures for obtaining an original license. A veterinary licensee whose license has been cancelled [~~who has failed to renew his or her license for a period of one year or more~~] and wishes to reinstate the license may be required to appear before the Board to explain why the licensee allowed the license to become cancelled [~~expire~~] and the licensee's reasons for wanting it reinstated. Subject to subsection [~~subsections~~] (c) [~~and (d)~~] of this section and Subchapter C of this chapter (relating to Reciprocal Licensing Agreements, the licensee must take and pass the SBE [~~and comply with §571.3 of this title (relating to Criminal History Evaluation Letters)~~].

[~~(c) A military spouse, military veteran, or military service member, as defined by Chapter 55, §55.001, of the Texas Occupations Code, who has failed to renew his or her Texas license for a period of one year or more may receive a license in accordance with §571.17 of this title (relating to Expedited and Alternative Licensure Procedure for Military) if the military spouse, military veteran, or military service member meets the requirements of §571.17.~~]

(c) [~~(d)~~] A veterinary licensee whose license has been cancelled [~~who has failed to renew his or her license for a period of one~~

year or more] may reinstate the [licensee's expired] license without taking and passing the SBE if the licensee:

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

(3) has been practicing in the other state during the past two years preceding application for reinstatement in Texas; and

[(4) intends to return to and practice in Texas;]

(4) [(5)] furnishes a letter of good standing from all states where the licensee is currently licensed.[; and]

[(6) submits a complete application for license reinstatement within two years of the date the license expired and could not be renewed.]

[(c) A veterinary licensee who has failed to renew his or her license for a period of one year or more, shall have his or her license cancelled.]

§571.60. Expired and Cancelled Licenses for Licensed Veterinary Technicians and Equine Dental Providers.

(a) Licensed veterinary technician and equine dental provider licenses expire on the first day of the month after the licensee's [his/her] birth month [and are considered delinquent. Within 90 days of the last day of a licensee's birth month, a licensee must renew an unexpired license, in writing, by paying the required fee and furnishing all information required by the Board for renewal.] A license which has been expired for a period of one year or more shall be cancelled.

(b) A licensed veterinary technician or an equine dental provider licensee whose license has been cancelled may not renew the license. The licensed veterinary technician or an equine dental provider licensee may obtain a new license by complying with the requirements and procedures for obtaining an original license. A licensed veterinary technician or an equine dental provider licensee, whose license has been cancelled [who failed to renew his or her license for a period of one year or more] and wishes to reinstate the license, may be required to appear before the Board to explain why the licensee allowed the license to become cancelled [expire] and the licensee's reasons for wanting it reinstated. Subject to subchapter C of this chapter, the [The] licensee must take and pass the LVTE or the EDPE, as appropriate for their [his or her] license.

[(c) A military spouse, military veteran, or military service member, as defined by Chapter 55, §55.001, of the Texas Occupations Code, who has failed to renew his or her license for a period of one year or more may receive a license in accordance with §571.17 of this title (relating to Expedited and Alternative Licensure Procedure for Military) if the military spouse, military veteran, or military service member meets the requirements of §571.17.]

[(d) A licensed veterinary technician or equine dental provider licensee, who had failed to renew his or her license for a period of one year or more, shall have his or her license cancelled.]

§571.61. Inactive License Status.

(a) Application. A licensee may request their [his/her] license be placed on inactive status, whether or not they are [he/she is] practicing within the State of Texas, provided:

(1) their [his or her] current license is active and is in good standing; and

(2) they submit a request in writing[, on the form prescribed by the Board, [is made] for their [his or her] license to be placed on official inactive status.

(b) Restrictions. The following restrictions shall apply to veterinary licensees whose licenses are in [on] inactive status:

(1) (No change.)

(2) If the licensee possesses or obtains a federal Drug Enforcement Administration (DEA) controlled substances registration for a Texas location, the licensee must comply with §573.43 and §573.50 of this title (relating to Controlled Substances Registration and Controlled Substances Records Keeping [for Drugs on Hand], respectively).

(c) Return to Active Status. A licensee on inactive status wishing to practice within the State of Texas must receive written approval from the Board prior to returning to active status. In addition to other information which may be requested or required by the Board, the following conditions apply to licensees applying to return to active status.

(1) A licensee who is licensed and practicing in another state or jurisdiction must prove they are [he or she is] in good standing in that state or jurisdiction.

(2) A licensee on inactive status must pay the reactivation fee set by the Board in §577.15 of this title (relating to Fee Schedule). The regular annual renewal fee shall not be prorated for applications to return to active status made after the annual renewal period.

(d) Continuing Education Requirements.

(1) In order to reactivate an inactive licensee, the licensee must provide the Board with proof of completion of the annual required hours of approved continuing education for the license type pursuant to Board Rules §573.64 and §573.65 of this title for the current renewal year. [If a licensee on inactive status requesting a return to regular license status has maintained an annual average equal to the number of continuing education hours required annually for renewal of the license, not including any portion of the reactivation year, the licensee will be placed on regular license status without any additional requirements. If the average annual continuing education is less than the number of hours required annually for renewal of the license, the licensee will be placed on regular license status but must complete twice as many continuing education hours as is required to renew the license in the twelve months immediately following the licensee's attaining of regular license status.]

[(2) For the year of reactivation, proof of continuing education shall not be required for an active license renewal in the year following reactivation.]

[(3) For purposes of this subsection, the terms "year" and "annual" mean the renewal year.]

(e) (No change.)

§571.65. Default on Child Support.

(a) Effect of Child Support Payment Default on Licensure Status [The Board shall suspend and/or deny a renewal of a license upon receipt of a final order suspending a license under Chapter 232 of Texas Family Code for failure to pay child support and/or where the Office of the Attorney General has notified the Board to suspend and/or not renew a license for failure to pay child support.]

(1) The licensure status of a licensee is subject to the course of action established by the Texas Family Code, §232.011.

(2) On receipt of a final order suspending a license issued by the Board, the Board shall immediately record the suspension of the licensee in the Board's records.

(3) The Board shall implement the terms of the final order suspending license without additional review or hearing. The Board may provide notice as appropriate to the license holder.

(4) The Board may not modify, remand, reverse, vacate, or stay an order suspending license and may not review, vacate, or reconsider the terms of a final order suspending license.

(5) A person who is the subject of a final order suspending license is not entitled to a refund for any fee or paid to the Board.

(6) A person who continues to engage in the practice of veterinary medicine or any activity that requires licensure pursuant to Chapter 801, Texas Occupations Code after the implementation of the order suspending license by the Board is liable for the same civil and criminal penalties provided for engaging in the licensed activity without a license or while a license is suspended that apply to any other license holder of the Board.

(7) The Board is exempt from liability to a license holder for any act authorized under Family Code, Chapter 232 performed by the Board.

(8) Except as provided by Family Code, Chapter 232, an order suspending license or dismissing a petition for the suspension of a license does not affect the power of the Board to grant, deny, suspend, revoke, terminate, or renew a license otherwise.

(9) An order issued under this chapter to suspend a license applies to each license issued by the licensing authority subject to the order for which the obligor is eligible. The licensing authority may not issue or renew any other license for the obligor until an order vacating or staying an order suspending license is rendered.

(b) Effect of Child Support Payment Default on Licensure Application and Renewal

(1) Initial applications and applications for renewal of licenses issued by the board are subject to the course of action established by the Texas Family Code, §232.0135.

(2) Upon notice from another agency that an obligor has failed to pay child support for six months or more, the Board shall refuse to grant initial licensure or renewal of an existing license to an obligor until the Board is notified by the other agency that the obligor has:

(A) paid all child support arrearages;

(B) made an immediate payment of not less than $200 toward child support arrearages owed and established with the other agency a satisfactory repayment schedule for the remainder or is in compliance with a court order for payment of the arrearages;

(C) been granted an exemption from this subsection as part of a court-supervised plan to improve the obligor's earnings and child support payments; or

(D) successfully contested the denial before the child support agency in accordance with Texas Family Code, §232.0135(d).

(c) The Board may charge a fee to a licensee who is the subject of an order suspending license or of an action of another agency under Texas Family Code, §232.0135 to deny issuance or renewal of license in an amount sufficient to recover the administrative costs incurred 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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22 TAC §§571.53, 571.55, 571.56, 571.58, 571.63

STATUTORY AUTHORITY

The proposed repeals are proposed under Texas Occupations Code, Chapter 801, which authorize the Texas Board of Veterinary Medical Examiners, the Board's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Board.

The statutory provisions affected by the proposed repeals are those set forth in Texas Occupations Code, Chapter 801.

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

§571.53. Exemptions.

§571.55. Delinquent Letters.

§571.56. Military Service Fee Waiver.

§571.58. Application Form and Photograph.

§571.63. Default on Student Loan.

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 573. RULES OF PROFESSIONAL CONDUCT

The Texas Board of Veterinary Medical Examiners (TBVME or Board) proposes amendments to existing rules and the repeal of existing rules at Title 22, Part 24 Texas Administrative Code (TAC), Chapter 573, Subchapters A, B, C, D, E, F, and G, §§573.1 - 573.3, 573.5 - 573.21, 573.23 - 573.25, 573.28, 573.29, 573.32 - 573.35, 573.37, 573.41 - 573.45, 573.50 - 573.55, 573.61 - 573.67, 573.69 - 573.74 and 573.76 - 573.83 regarding the Rules of Professional Conduct for TBVME. These proposed changes are referred to as the "proposed rules."

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under Title 22, Part 24 of the TAC, Chapter 573, implement Texas Occupations Chapter 801 (Veterinary Licensing Act).

The proposed rules amend, repeal, and reorganize provisions in 22 TAC Chapter 573, Rules of Professional Conduct, to clarify existing requirements, eliminate duplicative or unenforceable provisions, conform the rules to current statutory and federal requirements, and update the rules to reflect current veterinary practice and Board procedures.

The proposed amendments to §§573.1 - 573.14 primarily clarify professional conduct requirements, supervision and delegation standards, reporting obligations, loss of credentials, anesthesia and euthanasia requirements, and requirements applicable to licensed employees. Several provisions are also revised to improve clarity and consistency, including provisions concerning professional judgment, retaliation, harassment, documentation, and electronic signatures. Sections 573.3 and 573.5 are repealed because their requirements are either unenforceable or duplicative of other proposed provisions, and §573.9 is repealed because non-resident consultants are exempt from the Veterinary Licensing Act.

The proposed amendments to §§573.15 - 573.25 update and clarify requirements concerning alternate therapies, laser therapy, veterinary-client-patient relationships, informed consent, the professional standard of care, referrals, and herd health. The amendments consolidate provisions concerning alternate therapies, clarify when a Veterinarian Client Patient Relationship (VCPR) is established, maintained, and terminated, and provide additional guidance concerning client communication and informed consent. Several provisions are repealed or consolidated because they are outdated, duplicative, or more appropriately addressed elsewhere in the chapter.

The proposed amendments to §§573.28 - 573.37 primarily address client consent, complaints, veterinary credentials, licenses, and professional titles. The amendments update complaint-filing procedures, clarify disclosure requirements concerning specialty practice, modernize requirements concerning the display of licenses and credentials, and remove provisions that are duplicative of statute or are no longer enforceable.

The proposed amendments to §§573.41 - 573.55 update requirements concerning prescriptions, controlled substances, performance-enhancing substances, compounded medications, extra-label drug use, veterinary records, recordkeeping, and release of records. The amendments incorporate applicable federal requirements, including requirements concerning controlled substances and extra-label drug use, and establish clearer standards for the creation, maintenance, modification, and release of veterinary records.

The proposed amendments to §§573.61 - 573.79 update inspection, continuing education, disciplinary, reporting, temporary clinic, mobile practice, identification, and medical waste requirements. The amendments incorporate recent statutory changes, update Board procedures to reflect electronic submissions and virtual inspections, clarify continuing education requirements and sanctions, and remove provisions that are duplicative of statute or other Board rules. The amendments also update requirements applicable to mobile veterinarians and provide for the safe and sanitary disposition of medical waste.

The proposed amendments to §573.80 and §573.83 add and clarify definitions and establish additional requirements concerning client consent and responsibility for emergency veterinary care. The amendments are intended to provide greater consistency in the application of Chapter 573 and clearer guidance to licensees and the public.

These changes are consistent with TREO recommendations to reduce unnecessary regulatory burdens on licensees and provide greater clarity to the public. Several provisions throughout Chapter 573 are also amended through non-substantive, conforming, and grammatical changes to improve organization, readability, and consistency. The proposed repeals and consolidations are intended to eliminate unnecessary duplication and ensure that Chapter 573 contains clear, enforceable, and current standards governing the professional conduct of veterinarians.

Advisory Board Recommendations

The proposed rules were presented to and discussed by the Texas Board of Veterinary Medical Examiners (TBVME) Rules Committee. The TBVME Rules Committee voted and recommended that the proposed rules with changes be proposed to the full TBVME Board. The TBVME Board (Board) then voted at their meeting on July 21, 2026, to have the proposed rules with changes published in the *Texas Register* for public comment.

SECTION-BY-SECTION SUMMARY

The proposed rules amend §573.1 to delete certain sentences from the rule to make the rule more broadly applicable as well as add a section to explicitly state a veterinarian's medical expertise should not be unduly influenced by any financial sources.

The proposed rules amend §573.2 to change the title to "Prohibition of Harassment and Retaliation" to make the rule clearer and adds a provision prohibiting retaliation against another licensee who acts as witness or provides a second opinion in a complaint. The proposed rules amend a provision that also prohibits verbal abuse or harassment of clients or agents or representatives of the Board.

The proposed rules repeal §573.3 due to the provision being unenforceable. TBVME proposes this repeal and instead will add a pared down similar provision in a later rule section.

The proposed rules repeal §573.5 due to the provisions around harassment and retaliation already being covered in the proposed section 537.2.

The proposed rules amend §573.6 to condense existing language for clarity as well as add a provision further outlining requirements of Tex. Occ. Code 801.360 that is otherwise not currently mentioned in the rules.

The proposed rules amend §573.7 by changing "may not" to "shall not" in each of the three sections of the rule.

The proposed rules amend §573.8 by changing the title to "Loss of Credentials," and amend to clarify that the loss of a professional license from any organization or jurisdiction is required to be reported to the Board.

The proposed rules repeal §573.9 because despite the rule being intended to regulate the use of non-resident consultants; non-resident consultants are exempted from Tex. Occ. Code 801 specifically in 801.004(9). Accordingly, there is no reason for this rule to remain.

The proposed rules amend §573.10 to clarify that anesthesia performed by a non-veterinarian must be done in accordance and specifies that this also applies to local anesthesia and nerve blocks with a protocol established by a licensed veterinarian. Additionally, a satellite office or mobile facility may not be operated without a supervising veterinarian physically on the premises. The proposed rule also makes grammar and other non-substantive changes.

The proposed rules amend §573.11 to add the requirement that the veterinarian either knew or reasonably knew to find a violation of this rule.

The proposed rules amend §573.12 to include clarifying language that the supervised employee is both licensed and authorized to practice in this state.

The proposed rules amend §573.13 by deleting most of section (a) to make the rule section more concise and provide more clarity. The proposed rules amend section (b) to clarify that an electronic signature is allowed. The proposed rules amend section (c) by adding language stating that the possession of pre-signed documents is a violation of rules and deleting section (d) to make the rule more concise and clearer.

The proposed rules amend §573.14 to clarify that the rule requires care provided under this rule meets the requirements of rule 573.22 relating to the professional standard of care. The proposed amendment also clarifies that an independent contractor serving as a chiropractor can only work within the scope of orders granted by the veterinarian, akin to physical therapy referrals in human medicine.

The proposed rules amend §573.15 to delete section (a) due to both definitions being out of date and unnecessary. It also deletes section (d) because it is repetitive and unnecessary.

The proposed rules amend §573.16 by amending the title to include all other forms of alternate therapies and to combine rules 573.16, 573.17 and 573.18. The proposed rules amend the definitions of homeopathy and holistic medicine in section (a). Additionally, the proposed rules are amended by adding a new section (c) to explicitly state that these therapies may only be performed by veterinarians. The proposed rules are also amended by deleting section (d) and (e).

The proposed rules amend §573.17 by changing the title to reference laser therapy as an alternate therapy. The proposed rule is amended by adding in a definition for laser therapy and specifying who may perform this procedure.

The proposed rules repeal §573.18 because this rule can be combined and incorporated into an amended version of §573.16.

The proposed rules amend §573.19 by deleting section (d), which is addressed in §573.10.

The proposed rules amend §573.20 by rewriting section (a) to elaborate on when a VCPR is established. The proposed rules are amended by rewriting section (b) to elaborate on how to maintain an active VCPR. The proposed rules are amended by adding additional provisions to section (d) to give more acceptable methods of the termination of the VCPR. The proposed rules are amended by amending section (e) to prohibit the establishment of a VCPR through electronic means. The proposed rules are amended by creating section (f) to separate out a provision stating that the acceptance of the care of a patient is at the sole discretion of the veterinarian. This amendment clarifies the provision and its applicability

The proposed rules amend §573.21 by making conforming style changes throughout the rule.

The proposed rules are amended by adding section (e), to require adequate communication to the client during the veterinarian's care of the animal, while the veterinarian has an active veterinarian-client-patient relationship with the client and the client's animal, and to specify the client possesses or has informed consent regarding their animal's treatment.

The proposed rules amend §573.23 by deleting section (b), which requires the Board to use an expert in the same specialty when reviewing complaints against veterinary specialists. While TBVME has veterinarians on staff, it wants to give the Board discretion to determine if a specialist should review a particular case as part of its review.

The proposed rules amend §573.24 with only minor conforming style changes with clarification on when a veterinarian needs to refer a case.

The proposed rules amend §573.25 by adding the word "herd," it makes it clear that the requirement applies to the herd as a whole rather than requiring each individual animal to be examined. The proposed rules are amended by making each paragraph its own enumerated subsection.

The proposed rules repeal and amend §573.28 partially restates Texas Occupations Code 801.207. TBVME replaces it with a rule regarding client consent and re-titles the section to "Client Consent Required".

The proposed rules amend §573.29 to include updated addresses and other updated means to file complaints.

The proposed rules amend §573.32 by deleting most of the section (a) and rewriting for clarity.

The proposed rules are amended by adding section (c) to require that licensees inform clients when a treating veterinarian is not a specialist.

The proposed rules amend §573.33 by changing the rule from restrictive to permissive, and eliminating the provision that the degree, certificate, or title must originate from a board approved entity.

The proposed rules amend §573.34 by changing from a restrictive to permissive stance when it comes to displaying any certificate, college degree, or title.

The proposed rules amend §573.35 by clarifying the location where a license must be displayed and by adding a provision requiring mobile veterinarians can produce their license upon request.

The proposed rules repeal §573.37 because the rule is duplicative of Texas Occupations Code 801.402(11).

The proposed rules amend §573.41 by moving a provision regarding medication refills from rule §5573.20 to this rule. The amendment also changes the formatting of the rule from permissive to restrictive and adds a reference to Texas Controlled Substances Act.

The proposed rules amend §573.42 by changing the title to add "for performance enhancement." The amendment also adds performance enhancement to section (a) to clarify the intent behind the rule.

The proposed rules amend §573.43 by adding the word "the" before United States Code to improve the sentence structure of the rule.

The proposed rules amend §573.44 to allow licensees to purchase office stock amounts of compounded medications in amounts that they can reasonably expect to use by the medication's expiration date.

The proposed rules amend §573.45 by changing the word "title" to "chapter" for clarification and adding in section (6) information from Food Animal Residue Avoidance Databank ("FARAD") and

requirements of the Animal Medical Drug Use Clarification Act ("AMDUCA") when discussing what a veterinarian should consider in the use of off label drugs in animals.

The proposed rules amend §573.50 by adding provisions for record keeping, inventory, transfers, authorized persons, invoices and orders, loss and theft, destruction, authorized access and authorized dispensers to bring the rule in line with current federal law. The amendment also ensures that licensees possess easy access to these legal requirements.

The proposed rules amend §573.51 by updating references to the Department of State Health Services (DSHS) code for rabies. The amendment also mandates that updates must include electronic signatures and certificate.

The proposed rules amend §573.52 by deleting current subsection (d) and adding additional provisions for information contained in records to include: anesthesia monitoring, surgical records, and reasons for failure to obtain specific information about an animal. The proposed rules are also amended to add that a veterinarian may not intentionally create a false record or statement and cannot modify records except as allowed by subsection (e) of the amended the rule.

The proposed rules amend §573.53 by adding a provision requiring contemporaneous record keeping. The amendment defines contemporaneous record keeping and requires that contact information for a supervising veterinarian is documented.

The proposed rules amend §573.54 by changing the records release timeline from 15 business days to 14 calendar days to make calculations of deadlines easier for all parties to compute, as well as remove sections (e) and (f) for redundancy.

The proposed rules amend §573.55 to include a provision that the transfer and disposal of patient records is only necessary in cases when the practice will not be continued by a subsequent veterinarian.

The proposed rules amend §573.61 by breaking out the last sentence of section 5(c) to create a new section 6 to create a separate requirement.

The proposed rules amend §573.62 by making edits to clarify its provisions.

The proposed rules amend §573.63 by adding provisions for virtual inspections and clarifying that the inspections must occur during regular business hours.

The proposed rules amend §573.64 by adding provisions of 801.307(a-1) to the rule and removing all references to military exemptions, as they are addressed in a proposed addition in Chapter 571. Additionally, the amendments delete current subsection (c) and replace it with a section outlining the disciplinary sanctions for failure to obtain the requisite continuing education.

The proposed rules amend §573.65 by removing the requirement that online continuing education be two-way or interactive in line with other licensing boards. The amendments also include Equine Dental Providers of America (EDPA) as an acceptable source of CE for EDPs and specifies that licensees must upload CE certificates when renewing their license.

The proposed rules repeal §573.66 because the substance of this rule is incorporated into §573.64.

The proposed rules repeal §573.67 because the substance of this rule is incorporated in Chapter 575's schedule of sanctions.

The proposed rules amend §573.69 by making grammatical changes to improve the sentence structure, as well as state that if there is evidence to support an allegation, the licensee will be subject to further disciplinary action and/or referral for criminal prosecution.

The proposed rules amend §573.70 by including the Board's website as the form to report criminal activity. It also clarifies that the reporting must be for any criminal activity above a Class C misdemeanor or a Class C misdemeanor related to the practice of veterinary medicine.

The proposed rules amend §573.71 by updating the rule to reflect that the form to register a temporary service clinic is available on the Board's website.

The proposed rules amend §573.72 by adding language stating that employment by, or contractual service to, a nonprofit or municipal corporation does not exempt the veterinarian from any requirements found in law or rule.

The proposed rules amend §573.73 by adding verbiage to clarify the rule.

The proposed rules amend §573.74 by the word title to chapter and by deleting part of subsection (f)(1)(A) and subsection (f)(3) to make the rule succinct and clearer.

The proposed rules amend §573.76 by including the provision of email address to help facilitate new statutory provisions added by the 89th Legislature. The amendment also adds instructions for mobile veterinarians.

The proposed rules amend §573.77 by changing the required symbol to just a line tattooed on the abdomen rather than the more involved symbol required under current rule.

The proposed rules repeal §573.78 due to the statutory authority having been repealed.

The proposed rules amend §573.79 by adding a provision requiring the safe and sanitary disposition of medical waste.

The proposed rules amend §573.80 by adding definitions for Equine Animal, Licensee, Board, Client, Client Consent, Veterinarian, Temporary Limited Services Clinic, and the practice of veterinary medicine.

The proposed rules amend §573.81 by adding mental health issues to the list of issues that should be reported to the Board.

The proposed rules repeal §573.82 because the substance of the rule is covered in a proposed amendment of rule 573.15.

The proposed rules amend §573.83 by adding a requirement stating that prior to initiating medical treatment, a veterinarian may presume that the person presenting an animal for emergency care and treatment is the presumed owner or caretaker of that animal and that the person is financially responsible for the care and treatment provided.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Brittany Sharkey, Executive Director, has determined that for each year of the first five years the proposed rules are in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed rules.

Ms. Sharkey has also determined that for each year of the first five years the proposed rules are in effect, there is no estimated

increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed rules.

Ms. Sharkey has determined that for each year of the first five years the proposed rules are in effect, enforcing or administering the proposed rules does not have foreseeable implications relating to costs or revenues of state governments.

Ms. Sharkey has determined that for each year of the first five years the proposed rules are in effect, enforcing or administering the proposed rules does not have foreseeable implications relating to costs or revenues of local governments.

LOCAL EMPLOYMENT IMPACT STATEMENT

Because Ms. Sharkey has determined that the proposed rules will not affect a local economy, the agency is not required to prepare a local employment impact statement under Texas Government Code §2001.022.

PUBLIC BENEFITS

Ms. Sharkey also has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be that the public will be able to better understand the rules regarding veterinary professional conduct in the state of Texas due to the rules becoming clearer and more concise.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Ms. Sharkey has determined that for each year of the first five-year period the proposed rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules.

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

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed rules. Because the agency has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, is not required.

ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT

The proposed rules do not have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the agency is not required to take any further action under Texas Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

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

1. The proposed rules do not create or eliminate a government program.

2. Implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions.

3. Implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency.

4. The proposed rules do not require an increase or decrease in fees paid to the agency.

5. The proposed rules do not create a new regulation.

6. The proposed rules do expand, limit, or repeal an existing regulation. The proposed rules that are repealed are because those rules no longer reflect current statutory regulations or are redundant to statute. Additionally, the proposed rules have been repealed in order to be in line with current law.

7. The proposed rules do not increase or decrease the number of individuals subject to the rules' applicability.

8. The proposed rules do not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENTS AND INFORMATION RELATED TO THE COST, BENEFIT, OR EFFECT OF THE PROPOSED RULES

The Board is requesting public comments on the proposed rules and information related to the cost, benefit, or effect of the proposed rules, including any applicable data, research, or analysis. Any information that is submitted in response to this request must include an explanation of how and why the submitted information is specific to the proposed rules. Please do not submit copyrighted, confidential, or proprietary information.

Comments on the proposed rules and responses to the request for information may be submitted by email at comment@veterinary.texas.gov or by mail to Angela Martinez, Legal Secretary, Texas Board of Veterinary Medical Examiners, 1801 Congress Suite 8.800, Austin, Texas 78701. The deadline for comments is 30 days after publication in the *Texas Register*.

SUBCHAPTER A. GENERAL PROFESSIONAL ETHICS

22 TAC §§573.1, 573.2, 573.6 - 573.8

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 801, which authorize the Texas Board of Veterinary Medical Examiners, the Board's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Board.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapter 801. No other statutes, articles, or codes are affected by the proposed rules.

§573.1. Avoidance of Conflicting Interest.

(a) A licensee [~~veterinarian~~] shall not represent conflicting interests, except by express consent of all parties, [~~concerned~~] given after a full disclosure of the facts. [~~A veterinarian represents conflicting interests if, when employed by a buyer to inspect an animal for sound-~~

ness, the veterinarian accepts a fee from the seller. Acceptance of a fee from both the buyer and seller is prima facie evidence of fraud.]

(b) A licensee shall not allow a financial, personal, employment, or other interest to materially interfere with the licensee's independent professional judgment or duties to a client or patient.

§573.2. Prohibition of Harassment and Retaliation. [Avoidance of Encroachment on Another's Practice.]

(a) [A licensee may not make any effort, direct or indirect, which in any manner is calculated to influence the sound professional judgment of another licensee.] It is the right of any licensee[, without fear or favor,] to give proper advice to those seeking relief against substandard or neglectful veterinary or equine dentistry services, to make a complaint to the Board, or to act as a witness in a Board investigation or a contested hearing.

(b) A licensee shall not harass, discriminate against, or otherwise retaliate against a complainant or witness to a complaint, including but not limited to another licensee who provides information or an opinion in the matter.

(c) A licensee shall not file [who makes] a complaint against another licensee that the licensee knows, or reasonably should know, is baseless [groundless] and made [brought] in bad faith, including for purposes [the purpose] of harassment, retaliation, or [for] any other improper purpose [shall be in violation of this rule].

(d) A licensee shall not verbally abuse or harass, nor physically threaten or assault a client or agent or representative of the Board.

§573.6. Restriction of Legal Entities [Partnerships] to Members of Veterinary Profession.

(a) A legal entity may not engage in [In the formation of partnerships for] the practice of veterinary medicine unless[, no person shall be admitted as a partner who is not a member of] the entity is owned exclusively by one or more persons licensed to practice veterinary medicine by the Board, except as otherwise provided by law. [veterinary profession, duly authorized to practice, and amenable to professional discipline. No person shall be held out as a practitioner of veterinary medicine or a member of the firm who is not so admitted. In the selection and use of a firm name, no false or misleading name shall be used. Partnerships between veterinarians and members of other professions or nonprofessional persons shall not be formed or permitted if a part of the partnership employment consists of the practice of veterinary medicine.]

(b) If, upon the death of a veterinarian, a person who is not a licensed veterinarian acquires an ownership interest in a legal entity that engages in the practice of veterinary medicine, the person must dispose of the ownership interest not later than the second anniversary of the date of the veterinarian's death.

§573.7. No Abuse of Position or Trust.

(a) A [Any] licensee shall not use [who uses] present or past position, or office of trust, deliberately to create an individual professional advantage, or to coerce, or to deceive the public [shall be in violation of the rules of professional conduct].

(b) A licensee shall [may] not influence, or attempt to influence, the statement, response, or opinion of any person, licensed or unlicensed, to the Board [if the Board has requested the statement or opinion].

(c) A licensee shall [may] not request or require a client or any other [another] person to waive their [his or her] right to file a complaint with the Board.

§573.8. Loss of Credentials [Accreditation].

A licensee whose accreditation or professional license has been revoked or suspended by any other [a] state or federal authority is subject to disciplinary action by the Board. A licensee must report any accreditation, licensure, certification, or registration revocation or suspension to the Board within 30 [business] days.

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 November 5, 2026.

TRD-202604675
Kelly Phelps
General Counsel
Texas Board of Veterinary Medical Examiners
Earliest possible date of adoption: December 20, 2026
For further information, please call: (512) 305-7555

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22 TAC §§573.3, 573.5, 573.9

STATUTORY AUTHORITY

The proposed repeals are proposed under Texas Occupations Code, Chapter 801, which authorize the Texas Board of Veterinary Medical Examiners, the Board's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Board.

The statutory provisions affected by the proposed repeals are those set forth in Texas Occupations Code, Chapter 801. No other statutes, articles, or codes are affected by the proposed rules.

§573.3. Exposure of Corrupt or Dishonest Conduct.
§573.5. Avoidance of Corruption of Others.
§573.9. Nonresident Consultants.

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 November 5, 2026.

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Kelly Phelps
General Counsel
Texas Board of Veterinary Medical Examiners
Earliest possible date of adoption: December 20, 2026
For further information, please call: (512) 305-7555

♦ ♦ ♦

SUBCHAPTER B. SUPERVISION OF PERSONNEL

22 TAC §§573.10 - 573.17, 573.19

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 801, which authorize the Texas Board of Veterinary Medical Examiners, the Board's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Board.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapter 801. No other statutes, articles, or codes are affected by the proposed rules.

§573.10. Supervision of Non-Veterinarians.

(a) With appropriate supervision and after establishing a veterinarian-client-patient relationship, a veterinarian may delegate veterinary care and treatment duties to non-veterinarian employees, or to the following independent contractors:

(1) licensed equine dental providers, in accordance with §573.19 of this chapter [~~title~~] (relating to Dentistry); or

(2) individuals performing any form of musculoskeletal manipulation, [~~including but not limited to animal chiropractic,~~] in accordance with §573.14 of this chapter [~~title~~] (relating to Alternate Therapies--Chiropractic and Other Forms of Musculoskeletal Manipulation).

(b) A veterinarian shall determine when general, direct, or immediate supervision of a non-veterinarian's actions is appropriate, except where the level of supervision required for a given act is [~~such actions of the non-veterinarian may~~] otherwise specified [~~be prohibited~~] by law. A veterinarian shall consider whether the individual is licensed by the Board, as well as the level of training and experience of the non-veterinarian, when determining the level of supervision and duties of non-veterinarians.

(c) A veterinarian is subject to discipline if they [~~he or she~~] improperly delegate [~~delegates~~] care and/or treatment duties to a non-veterinarian or fail [~~fails~~] to properly supervise the non-veterinarian performing delegated duties.

(d) When feasible, a veterinarian may delegate greater responsibility to a licensed veterinary technician than to an unlicensed person.

(1) [~~(A)~~] Veterinary supervision of licensed veterinary technicians.[~~:~~] Under the direct or immediate supervision of a veterinarian, a licensed veterinary technician may:

(A) [~~(i)~~] suture to close existing surgical skin incisions and skin lacerations;

(B) [~~(ii)~~] induce anesthesia, including local anesthesia/nerve blocks, under a protocol established by the supervising veterinarian for the specific patient; and

(C) [~~(iii)~~] in dogs and cats, extract loose teeth or dental fragments with minimal periodontal attachments by hand and without the use of an elevator.

[~~(B) Except where otherwise prohibited by law, under general veterinary supervision, a licensed veterinary technician may:~~]

[~~*(i)* draw blood; and~~]

[~~*(ii)* take samples for purposes of testing and diagnosis.~~]

(2) Veterinary supervision of unlicensed employees:

(A) Under the immediate supervision of a veterinarian, an unlicensed employee of a veterinarian may:

(i) suture to close existing surgical skin incisions and skin lacerations; and

(ii) induce anesthesia, including local anesthesia/nerve blocks, under a protocol established by the supervising veterinarian for the specific patient.

(B) (No change.)

[~~(C) An unlicensed employee may not, under any level of veterinary supervision, extract loose teeth or dental fragments from a dog or cat.~~]

(e) Under the immediate supervision of a licensed veterinary technician, an unlicensed employee of a veterinarian may:

(1) (No change.)

(2) induce anesthesia under a protocol established by the supervising veterinarian for the specific patient; and

[~~(3) draw blood;~~]

[~~(4) take samples for the purpose of testing and diagnosis and;~~]

(3) [~~(5)~~] perform other tasks in veterinary medicine, not otherwise prohibited by other subsections of this section or other laws, as assigned by the supervising veterinarian and according to a protocol established by the supervising veterinarian.

(f) A non-veterinarian shall not perform the following health care services:

(1) (No change.)

(2) invasive dental procedures except as allowed for licensed equine dental providers under §573.19 of this chapter [~~title~~], and as allowed for licensed veterinary technicians under subsection (d)(1) of this rule [~~section~~];

(3) render diagnosis and prognosis of animal diseases and/or conditions;

(4) prescribe [~~prescribing~~] drugs and appliances; or

(5) initiate [~~initiation of~~] treatment without prior instruction by a veterinarian, except in an emergency or disaster and without expectation of compensation pursuant to Texas Occupations Code §801.004(8).

(g) A [~~Euthanasia may be performed by a~~] non-veterinarian shall not perform euthanasia unless [~~only~~] under the immediate supervision of a veterinarian.

(h) A non-veterinarian may administer a rabies vaccine only under the direct supervision of a veterinarian, and only after the veterinarian has properly established a veterinarian-client-patient relationship as described in §573.20 of this chapter (relating to Veterinarian-Client-Patient-Relationship), except as permitted pursuant to Texas Health & Safety Code §826.018.

(i) The use of a veterinarian's signature stamp or electronic signature pad on an official health document by a non-veterinarian shall be authorized only under the direct supervision of the treating [~~vaccinating~~] veterinarian.

(j) Exception for Emergency Care. In an emergency situation where prompt treatment is essential for the prevention of death or alleviation of extreme suffering, a veterinarian may, after determining the nature of the emergency and the condition of the animal, issue treatment directions to a non-veterinarian by [~~means of~~] telephone or electronic means[~~, electronic mail or messaging, radio, or facsimile communication and not be in violation of §801.351 of the Act. However, the Board may take action against a veterinarian if, in the Board's sole discretion, the veterinarian uses this authorization to circumvent this rule~~]. The veterinarian assumes full responsibility for such treatment. A [~~However, nothing in this rule requires a~~] veterinarian has no obligation to accept an animal [~~treated under this rule~~] as a patient under these circumstances.

(k) Exception for Care of Hospitalized Animals. A non-veterinarian may, in the absence of direct supervision, follow the oral or written treatment orders of a veterinarian who is caring for a hospitalized animal, so long as the veterinarian has examined the animal [~~animal(s)~~] and a valid veterinarian-client-patient relationship exists.

(l) A satellite office or mobile facility may not be operated without a supervising veterinarian physically on the premises.

§573.11. Responsibility for Unlicensed Employees.

(a) A supervising veterinarian is [~~shall be~~] responsible for any acts a non-veterinarian employee commits within the scope of the employee's employment which relates to the practice of veterinary medicine and of which the supervising veterinarian has knowledge of or reasonably should have knowledge of.

(b) A licensed veterinary technician supervising an unlicensed employee of a veterinarian shall be responsible for any acts committed by that unlicensed employee of a veterinarian which relates [~~related~~] to the practice of veterinary medicine and of which the supervising licensed veterinary technician has knowledge of or reasonably should have knowledge of.

(c) If a licensed veterinary technician acting under supervision of a veterinarian violates a law, regulation, and/or Board [~~board~~] rule which relates to the practice of veterinary medicine, both the veterinarian and the licensed veterinary technician are subject to discipline by the Board.

§573.12. Responsibility for Licensure of Licensed Persons.

(a) A veterinarian who employs and/or supervises another veterinarian practicing veterinary medicine shall assure that the veterinarian being supervised [~~person is~~]:

(1) is actively licensed and authorized to practice in this State; and

(2) meets the requirements of §573.43 of this chapter [~~title~~] (relating to Controlled Substances Registration) for registration with the federal Drug Enforcement Administration (DEA) if the veterinarian being supervised holds an active DEA registration.

(b) A veterinarian who employs and/or supervises an equine dental provider or a licensed veterinary technician shall ensure that each licensee is actively licensed and authorized to practice in this State.

§573.13. Delegation and Supervision Relating to Official Health Documents.

(a) Official [~~A veterinarian must personally sign any official~~] health documents issued by a [~~the~~] veterinarian must[~~, and/or any official health documents for which the veterinarian has received compensation, regardless of whether said compensation is ultimately refunded, provided, however, that rabies certificates may~~] be authenticated by either:

(1) the veterinarian's personal or electronic signature; or

(2) (No change.)

(b) The possession or issuance of any pre-signed or pre-stamped official health documents by a veterinarian is prohibited.

(c) Unless otherwise prohibited by law, and except as provided in subsection (d) of this rule [~~section~~], a veterinarian may permit a non-licensed employee under the veterinarian's direct supervision, or under the immediate supervision of a licensed veterinary technician, to collect samples from animals for official tests. If a non-veterinarian employee collects a sample for testing for an official health document, it must be notated in the animal's medical record.

[~~(d) A person approved by the Texas Animal Health Commission (TAHC) and under the general supervision of a TAHC approved veterinarian may perform testing for brucellosis at a livestock market or collect blood samples on animals to be consigned directly from the ranch to slaughter and submit them to the state/federal laboratory for brucellosis testing.~~]

§573.14. Alternate Therapies--Chiropractic and Other Forms of Musculoskeletal Manipulation.

(a) Definition. For the purpose of this rule, animal chiropractic and other forms of musculoskeletal manipulation (MSM) are systems of therapeutic application of any and all [~~mechanical~~] forces applied [~~manually through the hands or any mechanical device~~] to treat and/or alleviate impaired or altered function of related components of the musculoskeletal system of nonhuman animals. Animal chiropractic and other forms of MSM in nonhuman animals are considered to be alternate therapies in the practice of veterinary medicine pursuant to Texas Occupations Code 801.151(c)(2).

(b) Treatment using animal chiropractic and other forms of MSM. Animal chiropractic and other forms of MSM may only be performed by the following:[~~.~~]

(1) A licensed veterinarian. Animal chiropractic and MSM may be performed by a licensed veterinarian under the following conditions:

(A) a valid veterinarian-client-patient-relationship [~~veterinarian-client-patient relationship~~] has been established as defined in the Act;

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

(2) A non-veterinarian employee or an independent contractor. A non-veterinarian employee or an independent contractor may perform these procedures on an animal under the direct or general supervision of the veterinarian if the conditions in paragraph (1)(A) - (C) of this subsection have been met and the supervising veterinarian has provided the diagnosis and specific region(s) of the body to be treated by the independent contractor.

(3) A person [~~An individual~~] to whom the exceptions of Texas Occupations Code [~~the Act,~~] §801.004, apply.

(c) Responsibility. Whether the animal chiropractic/MSM is performed by a veterinarian, [~~or~~] a non-veterinarian employee, or an independent contractor working under the supervision of a licensee, the Board will hold the veterinarian to the same standard of care as required under §573.22 of this chapter (relating to Professional Standard of Care) [~~a level of professional judgment as would be exercised by the average Texas veterinarian who performs or recommends chiropractic/MSM treatments in his/her practice~~].

§573.15. Use of Ultrasound in Diagnosis or Therapy.

[~~(a) Definitions.~~]

[~~(1) Ultrasound--Mechanical radiant energy with a frequency greater than 20 kilocycles per second.~~]

[~~(2) Ultrasonics--That part of the science of acoustics dealing with the frequency range beyond the upper limit of perception by the human ear, but usually restricted to frequencies above 500 kilocycles per second.~~]

[~~(3) Ultrasonic radiation--The effect of ultrasound which is injurious to tissues because of its thermal effects when absorbed by living matter.~~]

[~~(4) Ultrasound therapy--Controlled doses of ultrasound used therapeutically to selectively break down pathologic tissues, as in treatment of arthritis and lesions of the nervous system.~~]

[(5) Diagnostic ultrasound--Ultrasound images used as a diagnostic aid by visually displaying echoes received from irradiated tissues.]

[(6) Ultrasonography--The visualization of deep structures of the body by recording the reflections of pulses of ultrasonic waves directed into the tissues.]

(a) [(b)] Use of ultrasound for diagnosis or therapy of animals. The use of ultrasound in animals to diagnose any condition or for any therapeutic purpose is the practice of veterinary medicine and shall only be performed by a licensed veterinarian or under the general supervision of a licensed veterinarian.

(b) [(c)] Use of ultrasound by persons who are not licensed veterinarians.

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

[(d) Prohibited acts. Any person who uses ultrasound on animals in a manner inconsistent with this rule shall be in violation of this rule and the Texas Veterinary Licensing Act.]

§573.16. Alternate Therapies--Acupuncture, Holistic Medicine and Homeopathy.

(a) Definitions [Definition]. For the purpose of this rule the following terms have the following meanings[, acupuncture is]:

(1) Acupuncture--

(A) the insertion of an acupuncture needle and/or the application of moxibustion to specific areas of a non-human animal's body to relieve the discomfort associated with painful disorders, to induce surgical anesthesia, and for therapeutic purposes; and

(B) [(2)] the administration of thermal or electrical treatments or the recommendation of [dietary guidelines,] energy flow exercise[,] or dietary or herbal supplements in conjunction with the treatment described by paragraph (1) of this subsection. [Acupuncture in non-human animals is considered to be an alternate therapy in the practice of veterinary medicine.]

(2) Holistic Medicine--the practice of veterinary medicine that believes in a blend of alternative and, if need be, conventional approaches of treatment in an effort to develop a system of complementary medicine to treat the whole patient. In practice, it incorporates less conventional methods including, but not limited to, herbal medicine, acupuncture, chiropractic, and homeopathy with more conventional methods, such as modern drugs, surgery and diagnostics.

(3) Homeopathy--a system of therapeutics in which diseases are treated by substances which in full strength are capable of producing in healthy animals, symptoms like those of the disease to be treated. In homeopathy, the substance is administered in minute doses.

(b) Use of acupuncture, holistic medicine, and homeopathy [Acupuncture] in the treatment of animals are considered to be alternative therapies in the practice of veterinary medicine pursuant to Texas Occupations Code 801.151(c)(2). [Only licensed veterinarians may use acupuncture in the care and medical treatment of animals. No veterinarian may allow a non-veterinarian employee or other agent to perform acupuncture in the treatment of an animal patient.]

(c) Only licensed veterinarians may use acupuncture, holistic medicine or homeopathy in the medical treatment of animals except as provided in Texas Occupations Code §801.004. No veterinarian may allow their non-veterinarian employee or other agent to perform acupuncture, holistic medicine, or homeopathy in the treatment of an animal patient.

(d) [(c)] Client Consent Required. Before acupuncture, holistic medicine or homeopathy may be used in the treatment of an animal, the veterinarian must obtain a signed statement from the animal's owner or caretaker acknowledging that these are alternative therapies [acupuncture is an alternate therapy] in veterinary medicine and approving the [its] use in the treatment of the animal. Before signing the statement, the veterinarian shall inform the client of the conventional treatments available and their probable ability to cure the problem. The statement shall become a permanent part of the patient's record.

[(d) Standard Used in Determining Appropriate Use of Acupuncture. If the Board receives a complaint against a licensee about treatment involving the use of acupuncture, investigation of the complaint may include opinions from other licensees who use acupuncture in their treatment of animals. However, veterinarians who practice acupuncture shall exercise the same degree of humane care, skill, and diligence in treating patients as are ordinarily used in the same or similar circumstances by average members of the veterinary medical profession in good standing in the locality or community, or in similar locations or communities, in which they practice.]

[(e) Other Board Rules Not Preempted. Nothing in this rule shall remove or limit in any way the applicability of other rules of the Board as they apply to the practice of veterinary medicine.]

§573.17. Laser Therapy [Alternate Therapies--Holistic Medicine].

(a) Definition. For the purpose of this rule, Laser Therapy is an acceptable therapy through the use of laser or IPL device radiation for the purpose of diagnosis, therapy, or treatment in the practice of veterinary medicine.

[(a) Definition. For the purpose of this rule, holistic medicine means: the practice of veterinary medicine that believes in a blend of alternative and, if need be, conventional approaches of treatment in an effort to develop a system of complementary medicine to treat the whole patient. In practice, it incorporates less conventional methods such as herbal medicine, acupuncture, chiropractic, homeopathy, and applied kinesiology, with more conventional methods, such as modern drugs, surgery and diagnostics. Use of holistic medicine in non-human animals is considered to be an alternate therapy in the practice of veterinary medicine.]

(b) Use of Laser Therapy in the treatment of animals. A licensed veterinarian may perform or prescribe Laser Therapy after a valid veterinarian-client-patient relationship has been created in accordance with the Act and Board Rules. An LVT or non-veterinarian employee of a veterinarian may perform Laser Therapy under the general supervision of the veterinarian if the other conditions within this subsection (b) have been met. The veterinarian and his or her employees performing Laser Therapy must be in compliance with all other relevant federal and Texas laws and rules. The veterinarian and his or her employee(s) performing Laser Therapy must comply with the accepted safety standards for use of lasers in health care for animals.

[(b) Use of holistic medicine in the treatment of animals. Only licensed veterinarians may use holistic medicine in the medical treatment of animals. No veterinarian may allow a non-veterinarian employee or other agent to perform holistic medicine in the treatment of an animal patient.]

[(c) Client Consent Required. Before holistic medicine may be used in the treatment of an animal, the veterinarian must obtain a signed statement from the animal's owner or caretaker acknowledging that holistic medicine is an alternate therapy in veterinary medicine and approving its use in the treatment of the animal. Before signing the statement, the veterinarian shall inform the client of the conventional treatments available and their probable ability to cure the problem. The signed statement shall become a permanent part of the patient's record.]

[(d) Standard Used in Determining Appropriate Use of Holistic Medicine. If the Board receives a complaint against a licensee about treatment involving the use of holistic medicine, investigation of the complaint may include opinions from other licensees who use holistic medicine in their treatment of animals. However, veterinarians who practice holistic medicine shall exercise the same degree of humane care, skill, and diligence in treating patients as are ordinarily used in the same or similar circumstances by average members of the veterinary medical profession in good standing in the locality or community, or in similar localities or communities, in which they practice.]

[(e) Other Board Rules Not Preempted. Nothing in this rule shall remove or limit in any way the applicability of other rules of the Board as they apply to the practice of veterinary medicine.]

§573.19. Dentistry.

(a) Dentistry, a subset of the practice of veterinary medicine, is:

[(1)] the [The] application or use of any instrument, [or]device, including, but not limited to, dental scalers, probes, and elevators, to any portion of an animal's tooth, gum or any related tissue for the prevention, cure or relief of any wound, fracture, injury or disease of an animal's tooth, gum or related tissue.[; and]

(b) [(2)] Preventive dental procedures include [including], but are not limited to, the removal of calculus, soft deposits, plaque, stains or the smoothing, filing, scaling or polishing of tooth surfaces.

(c) [(b)] A non-licensed person may not perform any invasive dental procedure, as defined in §573.80 of this chapter [title] (relating to Definitions), except [and] as allowed [limited] by subsection (e) of this rule and §573.10(d) of this chapter [section].

(d) [(c)] This rule does not [Nothing in this regulation shall] prohibit any person from utilizing cotton swabs, gauze, dental floss, dentifrice, or toothbrushes to clean an animal's teeth.

[(d) In dogs and cats, a licensed veterinary technician under direct or immediate supervision of a veterinarian may extract loose teeth or dental fragments with minimal periodontal attachments by hand and without the use of an elevator.]

(e) The following treatments may be performed on [to] an equine animal [equid] by [a] licensed equine dental providers [provider] under the general supervision of [by] a veterinarian, and by a non-veterinarian employees [employee] under the direct supervision of a [by the] veterinarian:

(1) - (8) (No change.)

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

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22 TAC §573.18

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 801, which authorize the Texas Board of Veterinary Medical Examiners, the Board's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Board.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapter 801. No other statutes, articles, or codes are affected by the proposed rules.

§573.18. Alternate Therapies--Homeopathy.

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

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SUBCHAPTER C. RESPONSIBILITIES TO CLIENTS

22 TAC §§573.20, 573.21, 573.23 - 573.25, 573.28, 573.29

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 801, which authorize the Texas Board of Veterinary Medical Examiners, the Board's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Board.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapter 801. No other statutes, articles, or codes are affected by the proposed rules.

§573.20. Veterinarian-Client-Patient Relationship. [Responsibility for Acceptance of Medical Care.]

(a) A veterinarian may not practice veterinary medicine unless a veterinarian-client-patient relationship exists except as allowed by Texas Occupations Code §801.004 and rules 573.10(j) (relating to Supervision of Non-Veterinarians) and 573.41(d) (relating to Use of Prescription Drugs) of this chapter. A veterinarian-client-patient relationship exists if the veterinarian:

(1) assumes responsibility for medical judgments regarding the health of an animal and a client, who is the owner or other caretaker of the animal, agrees to follow the veterinarian's instructions;

(2) possesses sufficient knowledge of the animal to initiate at least a general or preliminary diagnosis of the animal's medical condition; and

(3) is readily available to provide, or has provided, follow-up medical care in the event of an adverse reaction to, or a failure of, the regimen of therapy provided by the veterinarian.

(b) A veterinarian possesses sufficient knowledge of the animal for purposes of subsection (a)(2) of this rule if the veterinarian has recently seen, or is personally acquainted with, the keeping and care of the animal by:

(1) examining the animal; or

(2) making medically appropriate and timely visits to the premises on which the animal is kept, if the animal is a member of a herd.

[(a) The decision to accept an animal as a patient is at the sole discretion of a veterinarian. The veterinarian is responsible for determining the diagnosis and course of treatment for an animal that has been accepted as a patient and for advising the client as to the diagnosis and treatment to be provided.]

[(b) For purposes of establishing a veterinarian-client-patient relationship under §801.351 of the Veterinary Licensing Act, Texas Occupations Code, a veterinarian can obtain sufficient knowledge of an animal by making medically appropriate and timely visits to the premises on which the animal is kept only if the animal is a member of a herd.]

(c) (No change.)

(d) Once a veterinarian-client-patient relationship has been established, a veterinarian may discontinue the relationship [treatment]:

(1) at the request of the client;

(2) after the veterinarian substantially completes the treatment or diagnostics prescribed;

(3) upon referral to another veterinarian; [or]

(4) after notice to the client providing a reasonable period for the client to secure the services of another veterinarian;[.]

(5) if the veterinarian lacks the resources needed to provide safe and competent care for the patient;

(6) if the client declines the treatment options provided by the veterinarian or declines to assume responsibility for the cost of treatment;

(7) if the client is abusive towards or threatens the veterinarian or staff;

(8) if the veterinarian reasonably believes the client or patient threatens the safety of themselves or their staff; or

(9) if the client has indicated that they have lost trust or confidence in the veterinarian to the degree that the veterinarian no longer feels comfortable providing care.

(e) A veterinarian-client-patient-relationship may not be established solely by telephone or electronic means. [Once a veterinarian establishes a veterinarian-client-patient relationship and prescribes medication(s), another Texas licensed veterinarian within the same clinic or hospital who has access to the patient's current medical records may refill that same prescription(s) without a veterinary-client-patient relationship.]

(f) The decision to accept an animal as a patient is at the sole discretion of a veterinarian.

§573.21. Direct Responsibility to Client.

(a) The professional services of a veterinarian [licensee] shall not be controlled or exploited by any person or entity who: [lay agency, personal or corporate, which intervenes between the client and the licensee.]

(1) is not a veterinarian; and

(2) intervenes between the veterinarian and the veterinarian's client.

(b) A veterinarian [licensee] shall not:

(1) allow a [non-licensed] person or entity who does not hold a license to practice veterinary medicine in this State to interfere or intervene with the veterinarian's [licensee's] practice of veterinary medicine;

(2) [nor shall the licensee] submit to [such] interference or intervention by a [non-licensed] person or entity who does not hold a license to practice veterinary medicine in this State.

(c) A veterinarian [licensee] shall avoid all relationships which could result in interference or intervention in the veterinarian's [licensee's] practice by a [non-licensed] person or entity who does not hold a license to practice veterinary medicine in this State.

(d) A veterinarian [licensee] shall be responsible for their [his or her] own actions and is directly responsible to the client and for the care and treatment of the patient.

(e) A veterinarian shall be responsible for communicating with their clients regarding the client's animal while the veterinarian has an active veterinarian-client-patient relationship with the client and the client's animal. This communication must be sufficient to enable the client to make informed decisions regarding the animal's care. If any non veterinarian employees are involved in the communication process, it is the veterinarian's responsibility to ensure that the non-veterinarian employees communicate effectively with the client.

§573.23. Board Certified Specialists.

(a) Standard of Care for Specialist. Specialists are held to a higher standard of care than non-specialist veterinarians, notwithstanding §573.22 of this chapter [title] (relating to Professional Standard of Care).

[(b) Complaints against Specialists. Board investigations of complaints alleging substandard care by a Specialist in his/her area of specialty will include consultations with one or more Specialists licensed by the Board practicing the same specialty on the species involved in the complaint. The Board, at its sole discretion, may consult with Specialists from outside of Texas. If the Board determines an informal conference is warranted, both complainant and respondent may, at their own expense, present oral or written commentary by a Specialist practicing the same specialty on the species involved in the complaint.]

(b) [(c)] Verification of Specialist Status. Specialists must make information verifying their certification or recognition as a specialist available to the Board[, Board staff,] and the public. This information must be available upon request.

§573.24. Responsibility of Veterinarian to Refer a Case.

(a) A veterinarian has [shall have] a duty to refer or offer a referral to a client [to suggest a referral] to a specialist, or otherwise more qualified veterinarian, in any case where the veterinarian does not treat a diagnosed condition, or where care and treatment of the animal is beyond the veterinarian's capabilities. A veterinarian's decision on whether to accept or continue care and treatment of an animal, which may require expertise beyond the veterinarian's capabilities, shall be based on the exercise of sound judgment within the prevailing standard of care for a veterinarian faced with the same or similar circumstances.

(b) Complaints Regarding Failure to Make Proper Referral. Board investigations of complaints which allege or indicate [alleging] failure to properly make or offer referrals will include evaluation of the training and experience of the veterinarian, the availability of a specialist or more qualified veterinarian, the timeliness and adequacy of information provided to the client regarding the possible need for a referral, the requests of the client, and the likelihood that an adverse result could have been prevented by a timely referral.

§573.25. Issuance of Official Health Documents Through Direct Knowledge Only.

(a) Licensed veterinarians in this state shall not issue any official health documents for an animal without first having personally examined the individual animal or herd and know of their own knowledge, by actual inspection and appropriate tests, that said animal or herd meets the requirements for the issuance of the official health document.

(b) A veterinarian is deemed to have issued and to have knowledge of any official health documents issued in the veterinarian's name, written by veterinarian's employee and[/or] maintained in veterinarian's patient [or client] files.

(c) A veterinarian shall be responsible for the security and proper use of all official certificates, forms, records and reports, and shall take reasonable care to prevent the misuse thereof.

(d) A veterinarian shall immediately report to the TBVME the loss, theft or deliberate or accidental misuse of any such certificate, form, record or report.

§573.28. Client Consent Required. [Observance of Confidentiality.]

(a) A veterinarian shall obtain client consent prior to performing diagnostics, treatment or surgery, except in emergency situations [not violate the confidential relationship between the veterinarian and a client]. Client consent may reasonably be implied under some circumstances.

(b) Client consent may be provided orally or in writing and must be documented in the patient's medical record.

[(b) Except as provided in subsection (c) of this section, a veterinarian shall not disclose any information concerning the relationship between the veterinarian and the client or the veterinarian's care for an animal except:]

[(1) on written or oral authorization or other form of waiver executed by the client;]

[(2) for law enforcement purposes or on receipt by the veterinarian of an appropriate court order or subpoena;]

[(3) as necessary to substantiate and collect on a debt incurred by a client for veterinary services; or]

[(4) as part of a good faith effort to determine ownership of the animal.]

[(c) A veterinarian may, without authorization by the client, disclose information contained in a rabies certificate or any information regarding reportable communicable diseases to a governmental entity only for purposes related to the protection of public health and safety.]

§573.29. Complaint Information and Notice to Clients.

(a) Licensees [A licensed veterinarian or licensed equine dental provider] shall provide an effective way to inform clients and other visitors to the premises, clinic or hospital of how to file complaints with the Board. Licensees [The licensee] must provide:

(1) the Board's [following specific] address: Texas State Board of Veterinary Medical Examiners, 1801 North Congress Ave, Suite 8.800, Austin, Texas 78701 [333 Guadalupe, Suite 3-810, Austin, Texas 78701-3942];

(2) the Board's telephone number: (512) 305-7555 and[;] fax number: (512) 305-7556; [and]

(3) The Board's complaint email address: complaint@veterinary.texas.gov; and [a toll-free complaint information number: 1-800-821-3205.]

(4) the website address to file a complaint online: https://veterinary.texas.gov/enforcement/complaints.

(b) Acceptable forms of providing the information in subsection (a) of this section may include a:

(1) written notice form, with print size of at least 14 point, prominently displayed in the area of each clinic or hospital that is most frequented by the public;

(2) brochure available in the area of each clinic or hospital that is most frequented by the public; [or]

(3) statement on each written bill, invoice or receipt; and[.]

(4) for mobile practitioners, the information in subsection (a) of this section is only required to be provided upon request.

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SUBCHAPTER D. ADVERTISING, ENDORSEMENTS AND CERTIFICATES

22 TAC §§573.32 - 573.35

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 801, which authorize the Texas Board of Veterinary Medical Examiners, the Board's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Board.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapter 801. No other statutes, articles, or codes are affected by the proposed rules.

§573.32. Specialists [Specialty Listings].

(a) A veterinarian may not advertise or represent themself as a specialist unless they are a Board Certified Diplomate of a specialty organization recognized by the American Veterinary Medical Association or any Board-approved successor accrediting organization and is in good standing with that organization. [holding a current certificate of special competence in a particular field of veterinary medicine issued by the respective specialty boards in veterinary medicine, recognized by the American Veterinary Medical Association, may state in reputable veterinary directories, advertising or notices mailed to veterinarians, clients, former clients, personal friends, and relatives; the yellow pages of telephone directories distributed in the geographical area or areas in which the veterinarian resides or maintains offices or had his/her primary practice; and on professional cards or letterhead that he/she is certified in a particular field in the following words: "Board Certified (e.g., Veterinary Radiology)."]

(b) A veterinarian must indicate their [~~his or her~~] specialty whenever the veterinarian indicates that they are [~~he or she is~~] a specialist.

(c) A veterinarian practicing at a specialty veterinary medical facility must inform clients in writing if they are not a specialist.

§573.33. Display of Degree, Certificate, or Title from Approved Institutions Only.

A licensee may only [~~shall not~~] use or display a [~~any~~] college degree, certificate, or title pertaining to veterinary medicine or equine dentistry granted by an [~~any~~] institution [~~not~~] approved by the [~~Texas State~~] Board [~~of Veterinary Medical Examiners~~].

§573.34. Authorized Degrees, Certificates, or Titles Only.

A licensee may only [~~shall not~~] use or display a [~~any~~] certificate, college degree, or title to which they are [~~he or she is not~~] entitled.

§573.35. Display of License.

(a) Licensees [~~Each licensee~~], including [~~a~~] relief veterinarians [~~veterinarian~~], shall post or display a copy of their [~~at the licensee's practice location, whether mobile or fixed, his or her~~] Board-issued [~~Board~~] license at any location where they are practicing. This document must be displayed where it is easily visible to the public. [~~A legible photocopy of the original document is acceptable.~~]

(b) For mobile practitioners, a copy of their Board-issued license is not required to be displayed as described in subsection (a) of this section but must be made available immediately upon request.

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22 TAC §573.37

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 801, which authorize the Texas Board of Veterinary Medical Examiners, the Board's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Board.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapter 801. No other statutes, articles, or codes are affected by the proposed rules.

§573.37. Ban on Use of Solicitors.

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

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SUBCHAPTER E. PRESCRIBING AND/OR DISPENSING MEDICATION

22 TAC §§573.41 - 573.45

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 801, which authorize the Texas Board of Veterinary Medical Examiners, the Board's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Board.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapter 801. No other statutes, articles, or codes are affected by the proposed rules.

§573.41. Use of Prescription Drugs.

(a) A [~~It is unprofessional conduct for a~~] licensed veterinarian shall not [~~to~~] prescribe, administer, dispense, deliver, or order delivered any prescription drug without first having established a veterinarian-client-patient relationship and determining [~~determined~~] that such prescription drug is therapeutically indicated for the health and/or well-being of the animal(s). Prescription drugs include all controlled substances in Schedules I - V and legend drugs which bear the federal legends, recognized as such by any law of the State of Texas or of the United States.

(b) A [~~It shall be unprofessional conduct and a violation of the rules of professional conduct for a~~] licensed veterinarian shall not [~~to~~] prescribe, provide, obtain, order, administer, possess, dispense, give, or deliver to or for any person prescription drugs that are not necessary or required for the medical care or well-being of animals[~~, or where the use or possession of such drugs would promote addiction thereto~~]. Prescription drugs are defined in subsection (a) of this section.

(c) A licensed veterinarian prescribing, administering, dispensing, delivering, or ordering delivered any prescription drug must comply with the laws, including all rules, of both the United States and the State of Texas, including but not limited to Chapters 481 and [~~Chapter~~] 483 of the Texas Health and Safety Code.

(d) Once a veterinarian establishes a veterinarian-client-patient relationship and prescribes medication(s), another Texas licensed veterinarian within the same clinic or hospital who has access to the patient's current medical records may refill that same prescription(s) without a veterinarian-client-patient relationship.

§573.42. Use of Scheduled Drugs for Performance Enhancement. [~~in Training and/or Racing.~~]

A [~~Any~~] licensed veterinarian shall not prescribe, provide, obtain, order, administer, possess, dispense, give or deliver [~~who prescribes, provides, obtains, orders, administers, possesses, dispenses, gives or delivers~~] scheduled drugs to or for any animal solely for performance enhancement for competitive advantage [~~training or racing purposes and not for a medically sound reason has violated the Veterinary Licensing Act~~].

§573.43. Controlled Substances Registration.

(a) (No change.)

(b) A licensed veterinarian registered with the DEA must comply with all relevant state and federal statutes and rules, including but not limited to Chapter 481 of the Texas Health and Safety Code, Chapter 13 of Part 1 of Title 37 of the Texas Administrative Code, and Chapter 13 of Title 21 of the United States Code.

§573.44. Compounding Drugs.

(a) The quantity of compounded drugs ordered by a [~~A~~] veterinarian must not exceed the quantity reasonably needed by [~~may only compound drugs for a specific animal or herd with which~~] the veterinarian to treat their patients within the period of time that the compounded drug will be effective and safe for use [~~has established and maintained a valid veterinarian-client-patient relationship~~].

(b) A veterinarian may only prescribe, administer, or dispense compounded drugs to treat a specific occurrence of a disease or condition or for the well-being of the animal.[~~, which threatens the health of the animal or will cause suffering or death if left untreated, that the veterinarian has observed and diagnosed in the particular patient for whom the compounded drugs are intended. The amount of a drug that a veterinarian compounds or orders compounded for dispensing or office use must not exceed the established need for specific compounded drugs for patients with which the veterinarian has established and maintained a valid veterinarian-client-patient relationship.~~]

(c) Labeling Requirements.

(1) (No change.)

(2) In addition to the information listed in paragraph (1) of this subsection, compounded drugs dispensed to the client must also state a date dispensed and an expiration date[~~, which should not exceed the length of the prescribed treatment~~].

(d) Limitations on Compounded Products.

(1) A veterinarian shall not compound or order a [~~drug~~] compounded drug if there is an FDA approved, commercially available animal or human drug that, when used as labeled or in an extra-label fashion in its available dosage, form and concentration, will appropriately treat the patient.

(2) - (4) (No change.)

(e) Compounding for Food-Producing Animals.

(1) (No change.)

(2) A veterinarian shall not compound or order a [~~drug~~] compounded drug if the compounded drug results in violative food residue, or any residue that may present a risk to public health.

(3) - (4) (No change.)

(5) If an individual identification is not available, then the withdrawal period will apply to every animal in the herd.

(f) Limitations on Promotion and Sale of Compounded Drugs.

(1) (No change.)

(2) A veterinarian shall not advertise, promote, display, [~~resell,~~] or in any other way market prepared compounded drugs.

(3) (No change.)

§573.45. Extra-Label or Off-Label Use of Drugs.

(a) (No change.)

(b) A veterinarian must use his or her discretion in the off-label use of drugs for animals. In exercising such discretion, a veterinarian shall consider, to the extent possible:

(1) whether the off-label use of a drug meets the community standard of humane care and treatment set out in §573.22 of this chapter [~~title~~] (relating to Professional Standard of Care);

(2) the established safety of the off-label usage;

(3) the inclusion of a drug in a standard veterinary formulary;

(4) analyses of off-label usage in the veterinary medical literature and in articles and commentaries written by the veterinarian's peers in the veterinary medical profession;

(5) information provided by the drug's manufacturer, vendor or the FDA as to whether off-label usage of a drug may present a risk to public health; [~~and~~]

(6) information from Food Animal Residue Avoidance Databank ("FARAD") or requirements of the Animal Medical Drug Use Clarification Act ("AMDUCA"); and

(7) [~~(6)~~] any other sources of pertinent information.

(c) - (d) (No change.)

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SUBCHAPTER F. RECORDS KEEPING

22 TAC §§573.50 - 573.55

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The proposed rules are proposed under Texas Occupations Code, Chapter 801, which authorize the Texas Board of Veterinary Medical Examiners, the Board's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Board.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapter 801. No other statutes, articles, or codes are affected by the proposed rules.

§573.50. Controlled Substances Record [~~Records~~] Keeping [~~for Drugs on Hand~~].

(a) Texas veterinarians shall maintain at their place of practice [~~business~~] records of all scheduled drugs [~~listed in the Texas Controlled Substances Act~~] in their possession. Records can be kept electronically or handwritten. All [~~These~~] records required by this rule must [~~shall~~] be [~~maintained for a minimum of five years. A record shall be kept for each scheduled drug. The records shall be complete, contemporaneous, and legible. The record shall contain the following information in addition to the name of the drug~~]:

(1) complete, accurate and legible [~~date of acquisition~~] ;

(2) maintained for a minimum of five years [~~quantity purchased~~] ; and

(3) be readily retrievable for Board inspection. [~~date administered or dispensed;~~]

[~~(4) quantity administered or dispensed;~~]

[~~(5) name of client and patient receiving the drug(s); and~~]

[~~(6) total balance on hand of the scheduled drug.~~]

(b) A record shall be kept separately for each scheduled drug administered and dispensed to include:

(1) date of acquisition;

(2) quantity purchased;

(3) schedule, strength, and form;

(4) date administered or dispensed;

(5) quantity administered or dispensed (recorded by physical number for tablets, patches, etc. and by milliliters for liquids);

(6) name of client;

(7) address of client;

(8) name of patient;

(9) name of the dispensing veterinarian;

(10) name of the dispenser; and

(11) total balance on hand (recorded by physical number for tablets, patches, etc. and by milliliters for liquids)

(b) Inventory required. An inventory of all stocks of scheduled drugs on hand shall be taken at least every 2 years. Each inventory shall contain a record of all scheduled drugs on hand on the date the inventory is taken. Inventory shall be recorded by physical number for tablets, patches, etc. and by milliliters for liquids.

(1) Inventory records of schedule II controlled substances must be kept separate from all other records.

(2) Inventory records of schedule III-V controlled substances must kept separate from all other records.

(c) Invoices and Purchase Orders. Veterinarians shall maintain all DEA 222 forms and invoices for scheduled drugs.

(d) Thefts or Significant Loss. Veterinarians shall maintain all DEA 104 forms for thefts and significant losses of scheduled drugs.

(e) Records of Destruction. Any veterinarian that destroys a scheduled drug or causes the destruction of a scheduled drug shall maintain a record of destruction on a DEA 41 form. The records shall include the names and signatures of the two employees who witnessed the destruction.

(f) Transfer of Scheduled Drugs to Other DEA Registrants. A DEA registrant may transfer controlled substances to another DEA registrant, provided specific documentation requirements and limitations are followed based on the drug's schedule as indicated below.

(1) Requirements for transferring controlled substances.

(A) Valid registrations. Both the transferor (supplier) and the transferee (recipient) must have valid DEA registrations that authorize them to handle the specific controlled substances being transferred.

(B) Quantity limit (5% rule). The total quantity of controlled substances distributed (transferred) to other registrants within a calendar year must not exceed 5% of the total annual quantity of controlled substances dispensed by the transferor. If a registrant exceeds this limit, they must register as a distributor.

(C) Inventory. A complete inventory of all controlled substances being transferred must be completed on the date of transfer. This inventory serves as the final inventory for the transferor and the initial inventory for the transferee, and a copy must be included in the records of each person.

(2) Specific forms for transfers.

(A) Schedule I and II controlled substances. A DEA Form 222 (or an electronic equivalent via the Controlled Substance Ordering System, "CSOS") is required for the transfer of all Schedule I and II controlled substances. The recipient (purchaser) is responsible for initiating the form and providing copies to the supplier (transferor) and the DEA.

(B) Schedule III, IV, and V controlled substances. The transfer must be documented in writing using a sales invoice, a purchase order, or an internal transfer form. This documentation must include:

(i) the name, dosage form, strength, and quantity of the controlled substance; and

(ii) the date of the transfer; and

(iii) the name, address, and DEA registration number of both the transferor and the recipient.

(g) Records of Access. A veterinarian shall maintain a written list of all individuals with access to the veterinarian's scheduled drugs, including the dates on which individuals are added or removed from the list.

(h) Records of Authorized Dispensers. A veterinarian shall maintain a written list of all veterinarians at their practice who are authorized to administer or dispense controlled substances under the veterinarian's DEA registration, including the dates on which individuals are added or removed from the list.

§573.51. Rabies Control.

(a) Only the vaccinating veterinarian shall issue official rabies vaccination certificates. Each certificate shall contain the information required by Texas Administrative Code, Title 25, Part 1, Chapter 169, [~~TAC~~] §169.29 (relating to Vaccination Requirement) [~~adopted by the Department of State Health Services~~], including:

(1) custodian's [~~owner's~~] name, address and telephone number;

(2) animal identification species, sex (including neutered if applicable), approximate age [~~(three months to 12 months, 12 months or older)~~], size (pounds), predominant breed, and colors;

(3) - (6) (No change.)

(7) veterinarian's signature, [~~or electronic signature, or~~] signature stamp, or computerized signature, plus address and license number, in accordance with §573.10 of this chapter [~~title~~] (relating to Supervision of Non-Veterinarians [~~Non-Licensed Persons~~]).

(b) (No change.)

(c) A veterinarian having knowledge of an animal bite to a human shall immediately report the incident to the local health authority. A veterinarian preparing an animal's body for rabies diagnosis shall comply with all requirements of Texas Administrative Code, Title 25, Part 1, Chapter 169, [~~TAC~~] §169.33 (relating to Submission of Specimens for Laboratory Examination) [~~adopted by the Department of State Health Services~~].

(d) A veterinarian who ceases the practice of veterinary medicine shall deliver to the local health authority all duplicate rabies

vaccination certificates issued by the veterinarian within the preceding five-year period. This does not apply to the sale or lease of a practice, when the records of the practice are transferred to a new owner [~~A veterinarian who sells or leases his or her practice to another veterinarian may transfer duplicate rabies certificates with the records of the practice which are transferred to a new owner~~].

(e) The use of a veterinarian's signature stamp or electronic signature pad on an official health document by a non-veterinarian shall be authorized only under the direct supervision of the vaccinating veterinarian.

§573.52. Veterinary Medical Record Requirements [~~Veterinarian Patient Record Keeping~~].

(a) licensed [~~A~~] veterinarian [~~performing a physical examination, diagnosis, treatment or surgery on an animal or group of animals~~] shall prepare and maintain a legible [~~written record or computer~~] record concerning any animal or group of animals the veterinarian has practiced veterinary medicine upon, as defined by Texas Occupations Code §801.002(5)(A). Records shall be maintained in a manner that will permit any authorized veterinarian to proceed with the care and treatment of the animal or group of animals by reading the medical record. Records must contain clinical information sufficient to justify the diagnosis and treatment rendered and must [~~the animals containing~~], at a minimum, contain the following information:

(1) name, address, and telephone number of the owner;

(2) identity of the species, animal, herd, or flock;

(3) except for herds or flocks, the name, age, sex, color, and breed;

(4) dates of examination, treatment, consultation, hospitalization and boarding [~~surgery~~];

(5) brief history of the condition of each animal, litter, herd, or flock and presenting complaint, if applicable;

(6) examination findings, if required for diagnosis or treatment and [~~is~~] not difficult to obtain:

(A) - (C) (No change.)

(D) respiration rate; and

[~~(E) any additional findings needed for diagnosis;~~]

(E) any additional findings needed for diagnosis or treatment.

(F) if any of these findings cannot be obtained due to the patient's temperament or other legitimate reason, it must be notated in the record.

(7) laboratory tests and diagnostic imaging [~~radiographic tests~~] performed, including results, [~~and~~] reports and interpretation, when necessary;

(8) diagnostic images or a summary of the results if unable to save the actual images [~~differential diagnosis; referrals/consultations; to/with specialists and the client's response~~] ;

(9) vaccination history, if available [~~procedures performed/treatment given and results~~];

(10) drugs [~~(and their dosages)~~] administered, dispensed, or prescribed, including strength, concentration, dosage, quantity, frequency, and route of administration;

(11) the name or initials of the person responsible for entries in the record [~~surgical procedures shall include a description of the procedure, the name of the surgeon, the type of sedative/anesthetic agent used, the route of administration and the dosage~~]; [~~and~~]

(12) the name of the treating veterinarian(s); [~~anesthesia monitoring performed during surgical procedures.~~]

(13) diagnosis or differential diagnoses and overall prognosis, if applicable;

(14) treatment and diagnostic options offered, including a notation of the options the client consented to and/or declined;

(15) referrals to and/or consultations with specialists or other veterinarians;

(16) procedures performed and treatment given, including preventative care;

(17) progress and disposition of the case, if applicable;

(18) any authorizations, acknowledgements, releases, waivers, consent forms, and discharge instructions, including signed acknowledgements required by rules 573.14 and 573.16 of this chapter;

(19) surgical procedures performed, including, at a minimum:

(A) a description of the procedure(s);

(B) name of the surgeon(s);

(C) types of sedative(s) and/or anesthetic agent(s) used (including dosage and route of administration);

(D) documentation of recovery;

(E) any complications or abnormalities noted; and

(F) a record of appropriate, species-specific anesthesia monitoring during the procedure; and

(20) any other details necessary to substantiate or document the examination, diagnosis, treatment provided, and/or surgical procedure performed.

(b) Individual records must be maintained on each patient, herds, flocks, [~~except that records on livestock~~] or litters of animals may be maintained on a per-client basis. [~~Records pertaining to these animals may be kept in a daily log or billing records, provided that the treatment information is substantial enough to identify these animals and the medical care provided.~~]

(c) Medical records and radiographs are the physical property of the veterinary medical facility [~~hospital~~] or the proprietor of the facility [~~practice~~] that prepared them. Records, including radiographs and other diagnostic imaging, must be maintained for a minimum of five [~~three~~] years after the last visit except as otherwise provided by law.

[~~(d) Medical records shall be released upon request from a treating veterinarian with a legitimate interest, and shall be returned to the originating practice within a reasonable time if requested. Copies of records must be made available upon request from the owner of an animal at a reasonable cost to the owner and within a reasonable time. A veterinarian may not withhold the release of veterinary medical records for nonpayment of a professional fee.~~]

(d) [~~(e)~~] All regulated substances shall be recorded as required by federal and/or state regulations.

(e) [~~(f)~~] Medical records shall be made contemporaneously with the act or observation noted. For the purposes of this rule, "contemporaneously" means within 14 days of the act or observa-

tion being recorded. Any amendment, supplementation, change, or correction in a patient record not made contemporaneously with the act or observation must be clearly identified by noting: [~~Any signed acknowledgement required by §§573.14 and 573.16 - 573.18 (relating to all complementary therapies).~~]

(1) the time and date of the amendment, supplementation, change or correction;

(2) the identity of the person making the amendment, supplementation, change or correction; and

(3) the reason for the amendment, supplementation, change or correction.

(f) A licensee shall not:

(1) intentionally create a false record;

(2) make a false statement in a medical record; or

(3) alter or modify any medical record, except as allowed by subsection (e) of this rule.

(g) failure to include an act or observation in the medical record creates a rebuttable presumption that the act or observation did not occur.

(h) Records must be readily retrievable for Board inspection.

§573.53. Equine Dental Provider Patient Record Keeping.

(a) (No change.)

(1) - (5) (No change.)

(6) the name, address, and phone number of the supervising veterinarian [~~any amendment, supplementation, change, or correction in a patient record not made contemporaneously with the act or observation noted by indicating the time and date of the amendment, supplementation, change or correction, and clearly indicating that there has been an amendment, supplementation, change, or correction~~].

(b) Maintenance of Patient Records.

(1) (No change.)

(2) Patient records are the responsibility and property of the equine dental provider, provided however, that equine dental providers shall give copies of records to the owner or caretaker authorizing treatment of the patient at the time of treatment, and shall provide copies of records to the supervising veterinarian on request, within 14 [~~15 business~~] days of the request.

[~~(3) An equine dental provider may destroy medical records that relate to any civil, criminal or administrative proceeding only if the equine dental provider knows the proceeding has been finally resolved.~~]

(c) Medical records shall be made contemporaneously with the act or observation noted. For the purposes of this rule, "contemporaneously" means within 14 days of the act or observation being recorded. Any amendment, supplementation, change, or correction in a patient record not made contemporaneously with the act or observation must be clearly identified by noting:

(1) the time and date of the amendment, supplementation, change or correction;

(2) the identity of the person making the amendment, supplementation, change or correction; and

(3) the reason for the amendment, supplementation, change or correction.

§573.54. Patient Records Release and Charges.

(a) Release of records pursuant to request. Upon the request of the client or their authorized representative, the veterinarian shall furnish a copy of the patient records, including a copy of any radiographs requested, within 14 [~~15 business~~] days of the request or in accordance with subsection (f) of this section, unless a longer period is reasonably required to duplicate the records. If a longer period is necessary and prior to the 14 [~~15 business~~] day deadline, the veterinarian must inform the client in writing how long it will take to furnish the records and why production of the records is delayed. The records must be provided no later than 30 calendar days after the request. If the records are requested for acute/emergency care, the veterinarian must provide the records as soon as possible [~~immediately~~] and no later than 1 [~~one~~] business day.

(b) Contents of records. For purposes of this section, "patient records" shall include those records as defined in §573.52 of this chapter [~~title~~] (relating to Veterinary Medical [~~Veterinian Patient~~] Record Requirements [~~Keeping~~]).

(c) (No change.)

(d) (No change.)

[~~(e) The veterinarian shall be entitled to the reasonable fee prior to the release of the records unless the information is requested by another veterinarian or his or her agent for purposes of emergency or acute medical care.~~]

[~~(f) The veterinarian must notify the requestor of records the amount of the reasonable fee within five (5) business days of the request. Once the veterinarian receives written or verbal notice from the requestor that the requestor accepts the reasonable fee and will pick up the records, the veterinarian must have the records copied and ready for delivery within ten (10) business days of receiving such notice.~~]

§573.55. Transfer and Disposal of Patient Records.

(a) (No change.)

(b) Method of Notification.

(1) (No change.)

(2) Notification shall be accomplished by:

(A) placing written notice in the veterinarian's office; and

(B) sending written notification to clients seen in the last year [~~three years~~] notifying them of discontinuance of practice[~~, or placing a notice in the local newspaper~~].

(c) Voluntary Surrender or Revocation of Veterinarian's License.

(1) (No change.)

(2) Veterinarians who have voluntarily surrendered their licenses in lieu of disciplinary action or have had their licenses revoked by the Board must obtain a custodian for their records to be approved by the Board within 30 days of the effective date of the voluntary surrender or revocation if their practice will not be continued by a different veterinarian.

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

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SUBCHAPTER G. OTHER PROVISIONS

22 TAC §§573.60 - 573.66, 573.69 - 573.74, 573.76, 573.77, 573.79 - 573.81, 573.83

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 801, which authorize the Texas Board of Veterinary Medical Examiners, the Board's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Board.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapter 801. No other statutes, articles, or codes are affected by the proposed rules.

§573.60. Prohibition Against Treatment of Humans.

A veterinarian shall not provide care and treatment of humans including prescribing and/or dispensing prescription medication for personal use by the veterinarian [~~and/~~]or another human. A veterinarian may render first aid or emergency care to a human if such action is without expectation of compensation in response to an emergency or disaster situation.

§573.61. Minimum Security for Controlled Substances.

Veterinarians shall adhere to the following to ensure security of controlled substances:

(1) - (4) (No change.)

(5) The term "substantially constructed cabinet" means the following:

(A) (No change.)

(B) A security cabinet or safe equivalent in construction to a Class 6 Mosler Government [~~Sales~~] Security Filing Cabinet or a Class 5 Mosler Government Safe.

(C) A cabinet less substantially constructed may meet security requirements provided the cabinet is located in a room or area entrance to which has been so constructed that hinge mountings inhibit removal and a limited number of employees have keys or combinations to locking device. If combination locks are utilized, the combination can be changed upon termination of employees having knowledge of the combination.

(6) A veterinarian must maintain a written list of all persons that have access to the controlled substances storage areas, including the dates on which individuals are added or deleted from the list.

§573.62. Violation of Board Orders/Negotiated Settlements.

(a) All persons that are subject of a Board order shall abide by the terms of the order. The Board may open a complaint against a person who violates a Board order and/or refer the person to the Attorney General for prosecution under the Veterinary Licensing Act, Texas Occupations Code, Chapter 801, and the Administrative Procedure Act, Texas Government Code[~~,~~] §2001.202.

(b) The Board may deny a licensee's [~~person's~~] request to renew a license [~~issued under Title 4, Chapter 801 of the Texas Occupations Code~~] if the licensee [~~person~~] has not paid an administrative penalty imposed under [~~Title 4,~~] Chapter 801 of the Texas Occupations Code. This section does not apply if:

(1) the person's time to pay or request a hearing has not expired under [~~Title 4,~~] Chapter 801 of the Texas Occupations Code;

(2) the person has requested a hearing under [~~Title 4,~~] Chapter 801 of the Texas Occupations Code, but the person's time to pay has not expired under the same statute or Board rules; or

(3) the penalty is stayed.

§573.63. Inspection of Facilities and Records.

(a) The Board may conduct unannounced inspections of licensees to include veterinary practices, temporary limited-services clinics and mobile practices.

(b) When conducting risk-based inspections on licensees pursuant to Texas Occupations Code §801.164, other licensees operating within the same practice may also be inspected.

(c) Inspections may be conducted onsite or virtually as the Board deems appropriate.

(1) Onsite inspections.

(A) Licensees shall admit [~~a representative of~~] the Board to perform an onsite inspection, during the [~~regular business~~] hours in which the licensee regularly practices and/or the licensee's practice is open to the public [~~to inspect equipment and business premises; examine and/or copy client and patient records, drug records, including, but not limited to, invoices, receipts, transfer documents, inventory logs, surgery logs; and all other associated records relating to the practice of veterinary medicine or equine dentistry~~].

(B) During an onsite inspection, the Board may inspect equipment and the practice premises; examine and/or copy client and patient records and drug records, including, but not limited to, invoices, receipts, transfer documents, inventory logs, surgery logs; and all other associated records relating to the practice of veterinary medicine or equine dentistry.

(C) The Board may take photographs and/or videos of their findings during an onsite inspection.

(2) Virtual Inspections. Virtual inspections may be performed either:

(A) As an unannounced, contemporaneous inspection whereby the licensee or their authorized representative, once contacted by the Board to start the virtual inspection, utilizes an electronic device with audio and visual capability such as a smartphone, laptop, or tablet, to show the Board in real time their equipment and practice premises and any other items or records requested for inspection; or

(B) As a non-contemporaneous inspection, whereby upon notification of the virtual inspection by Board, the licensee shall provide the Board with requested records, photographs, videos, or other information within 10 days of the request.

§573.64. Continuing Education Requirements.

(a) Required Continuing Education Hours.

(1) Licensed Veterinarians. Seventeen (17) hours of acceptable continuing education shall be required annually for renewal of all types of Texas veterinary licenses, except as provided in subsection (b) of this section.

(A) Veterinary licensees who successfully complete the Texas State Board Licensing Examination shall receive credit for 17 continuing education hours for their first renewal year following licensure.

(B) Pursuant to Texas Occupations Code §801.307(a-1), a veterinarian must complete two (2) hours of Board-approved continuing education related to opioid abuse and controlled substance diversion, inventory, and security every two years in order to renew their license. These continuing education hours will be counted towards the veterinarian's annual continuing education hours requirement.

(2) Licensed Equine Dental Providers. Six (6) hours of acceptable continuing education shall be required annually for renewal of Texas equine dental provider licenses. Equine dental provider licensees who receive certification from the International Association of Equine Dentists, Equine Dental Providers of America, or other Board-approved entity shall receive credit for 6 continuing education hours for their first renewal year following licensure.

(3) Licensed Veterinary Technicians. Ten (10) hours of acceptable continuing education shall be required annually for renewal of Texas veterinary technician licenses. Licensed veterinary technician licensees who successfully complete the Veterinary Technician National Exam shall receive credit for 10 continuing education hours for their first renewal year following licensure.

(4) (No change.)

(5) Hardship extensions may be granted by appeal to the Executive Director of the Board. The executive director shall only consider requests for a hardship extension from licensees who were prevented from completing the required continuing education hours due to circumstances beyond the licensee's control. A hardship extension generally will not be allowed due to financial hardship or lack of time due to a busy professional or personal schedule. Requests for a hardship extension must be received in writing [~~and in the Board offices~~] by no later than thirty (30) days [~~the 15th day of the month three (3) months~~] prior to the last day of the licensee's birth month. Should such extension be granted, [~~twice~~] the number of hours of continuing education required for a standard annual license renewal shall be obtained in the two-year period of time that includes the year of insufficiency and the year of extension. Licensees receiving a hardship extension shall maintain records of the continuing education obtained and shall submit [~~file~~] copies of these records with their [~~the Board by attaching the records to the~~] license renewal application submitted following the extension year[~~, or by sending them to the Board separately if the licensee submits his or her renewal application electronically (on-line)~~].

(6) Exception for military service members. Refer to §571.36 of this title (relating to Extension of Certain Deadlines). [~~A military service member, as defined in Chapter 55, §55.001, of the Texas Occupations Code, has up to two years to complete the required continuing education requirements for each renewal year.~~]

(7) Except as provided in subsection (a)(1) of this rule [~~section~~], continuing education hours obtained prior to licensure in Texas may not be applied toward the required number of continuing education hours.

(b) Exemption from Continuing Education Requirements for Veterinary Licensees. A veterinary licensee is not required to obtain or report continuing education hours, provided that the veterinary licensee submits to the Board sufficient proof that during the preceding year the veterinary licensee was:

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

(3) out-of-country on charitable, military, or special government assignments for at least nine (9) months of the [~~in a~~] year; or

(4) on inactive status. [~~Veterinary licensees on inactive status may voluntarily acquire continuing education for purposes of reinstating his/her license to regular status.~~]

(c) Disciplinary Action for Non-Compliance with Continuing Education Requirements. Failure to complete the required continuing education hours without obtaining a hardship extension from the executive director, failure to maintain required records, falsifying records, or intentionally misrepresenting programs for continuing education credit shall be grounds for disciplinary action by the Board. [~~Make up Hours.~~] The Board may require a licensee who does not complete the required hours of continuing education to make up the missed hours in later years as disciplinary action. Hours required to be made up in a later year are in addition to the continuing education hours required to be completed in that year.

§573.65. Proof of Acceptable Continuing Education.

(a) Acceptable Continuing Education.

(1) Continuing Education hours shall be acceptable if they relate to clinical matters. For veterinary licensees, continuing education hours shall also be acceptable if they relate to practice management.

(2) Acceptable continuing education hours shall be earned by:

(A) (No change.)

(B) equine dental provider licensees attending meetings sponsored or co-sponsored by the International Association of Equine Dentistry, the Equine Dental Providers of America, or other Board-approved entity;

[~~(C) veterinary licensees taking correspondence courses that require the licensee to take a test at the conclusion of the course and yield a certificate of completion;~~]

(C) [~~(D)~~] all licensees participating in online [~~verifiable, monitored on-line~~] and video programs or other telecommunication discussions that yield a certificate of completion. [~~and meet the following minimum standards:~~]

[~~*(i)* Inclusion of the following interactive experiences:~~]

[~~*(I)* direct, two-way verbal communication between attendees and the instructor at all times;~~]

[~~*(II)* direct, two-way verbal communication between attendees at all times; and~~]

[~~*(III)* visual communication with the instructor;~~]

[~~*(ii)* The ability to document active participation by attendees through:~~]

[~~*(I)* verbal interaction and software documentation; and~~]

[~~*(II)* the use of real time on-line surveys that promote audience interaction and document the attendance and engagement of the participants;~~]

(D) [~~(E)~~] all licensees' self-study, through any form of continuing education from which the licensee does not receive a certificate of completion, including reading articles in professional journals or periodicals, listening to audio [~~tapes or CD's~~] or viewing videos [~~video tapes or similar devices that transmit a video image~~]; [~~or~~]

(E) [~~(F)~~] (No change.)

(b) Distribution of Continuing Education Hours.

(1) Veterinary Licensees.

(A) Of the required seventeen (17) hours of continuing education for veterinary licensees, no more than five (5) hours may be derived from [~~either:~~]

[~~(i)~~ ~~correspondence courses; or~~]

[~~(ii)~~] practice management courses.

(B) (No change.)

(2) Equine Dental Provider Licensees.

(A) None of the required six (6) hours of continuing education required for equine dental provider licensees may be derived from [~~either correspondence courses or~~] practice management courses.

(B) Hours claimed from self-study shall not exceed one (1) hour.

(3) Licensed Veterinary Technicians.

(A) [~~Licensed veterinary technicians are required to complete ten (10) hours of continuing education annually.~~] Of the required ten (10) hours of continuing education for veterinary technician licensees, no more than two (2) hours of continuing education for licensed veterinary technicians may be derived from practice management.

[~~(B) No more than four (4) hours of continuing education for licensed veterinary technicians may be derived from correspondence courses.~~]

(B) [~~(C)~~] Hours claimed from self-study shall not exceed two (2) hours.

(c) Proof of Continuing Education.

(1) Licensees [~~The licensee~~] shall submit proof of completion of [~~sign a statement on the licensee's annual license renewal form attesting to the fact that~~] the annual required continuing education hours when renewing their license. [~~have been obtained. If the licensee renews his license electronically (on-line), the licensee shall input an affirmation that the required continuing education hours have been obtained.~~]

(2) The licensee shall maintain proof of completion of the annual required continuing education hours for the last five (5) renewal cycles [~~records which support the signed statement or affirmation~~]. These documents must be readily [~~maintained for the last four (4) calendar years and shall be~~] available [~~at the practice location~~] for inspection by the [~~to~~] Board [~~investigators~~] upon request.

(3) (No change.)

(4) For proof of online [~~on-line interactive~~] courses, the licensee must provide a certificate from the provider showing the nature of the course, date taken, and the hours earned [~~given~~].

(5) (No change.)

§573.66. Continuing Education for Board Service. [~~Disciplinary Action for Non-Compliance with Continuing Education Requirements.~~]

Veterinarian Board members may earn up to eight (8) hours of continuing education for service to the Board which relates to clinical matters, such as reviewing cases which require medical expertise prior to informal conferences and completing medical reviews of cases. [~~Failure to complete the required hours without obtaining a hardship extension from the executive director, failure to maintain required records, falsifying records, or intentionally misrepresenting programs for continuing education credit shall be grounds for disciplinary action by the Board.~~]

§573.69. Conditions Relative to License Suspension.

If a Board disciplinary action is taken against a licensee that results in the suspension of a license for a specified period of time, the Board shall identify specific conditions (or prohibitions) relative to the suspension. The conditions (or prohibitions) should be clearly stated as part of the negotiated settlement or Board order. The following guidelines will be utilized when specifying the conditions of a license suspension.

(1) - (4) (No change.)

(5) A sole practitioner's clinic or facilities may be used by the disciplined licensee for administrative purposes only. Examples are opening mail, referring patients, accepting payments on accounts, and general office tasks. In these instances, the licensee [~~he/she~~] must exercise extreme caution to not be persuaded, coerced, or otherwise drawn by anyone to practicing or even giving the appearance of practicing veterinary medicine or equine dentistry. The licensee may lease the clinic/practice to, or employ, another licensee to continue the clinic business during their suspension.

(6) - (7) (No change.)

(8) If the Board receives information alleging that the licensee is practicing during the period of suspension (downtime), Board staff will initiate an investigation. If there is evidence to support the allegation, the licensee will be subject to further disciplinary action and/or referral for criminal prosecution.

§573.70. Mandatory Reporting of Criminal Activity.

(a) A licensee or an applicant for a license shall report to the Board within 30 days of being arrested for, charged with, or indicted for any criminal offense above the grade of a Class C misdemeanor, or for any Class C misdemeanor in or connected with the practice of veterinary medicine or equine dentistry.

(b) A licensee or an applicant for a license shall report the final disposition of a [~~the~~] matter described in subsection (a) of this rule to the Board within 30 days of the disposition.

(c) All reports made pursuant to this rule shall be made on the form provided by the Board, available on the Board's website at https://veterinary.texas.gov/report-of-criminal-activity/.

§573.71. [~~Operation of~~] Temporary Limited-Services [~~Limited-Service~~] Veterinary Providers. [~~Services.~~]

(a) Requirements for operation. Veterinarians operating temporary limited service clinics shall:

(1) - (4) (No change.)

[~~(5) perform and complete blood and fecal examinations before dispensing relevant federal legend medications;~~]

(5) [~~(6)~~] maintain rabies vaccination records and treatment records for five years, indexed alphabetically by the client's last name and by vaccination tag numbers, if issued; and

(6) [~~(7)~~] provide clients with a printed form that contains the identity of the administering veterinarian and the location [~~address of the places~~] where the records are to be maintained.

(b) Required notification to the Board prior to operation. Before any temporary limited-service clinic may be operated, the veterinarian is required to provide notification to the Board [~~office~~] at least 48 hours before the clinic begins operation. Notification shall be made by completing the form provided by the Board, available on the Board's website at https://veterinary.texas.gov/register-a-temporary-clinic/. Notice may be provided no more than 90 days prior to the clinic operating for a particular day and any cancellations of operation must be provided to the Board within 48 hours before the clinic was

to operate, if practicable. Notice must include the veterinarian's full name, license number, and daytime phone number; the date the clinic will be held, the specific location of where the clinic will be held, and times of operation; and the permanent address where records for the clinic will be kept. Notice may be by electronic transmission or mail. Mailed notice will be considered to have met the notification requirement if the written notice is postmarked at least five days prior to the operation of the clinic.

§573.72. Employment by Nonprofit or Municipal Corporations.

(a) (No change.)

(b) Employment by or contractual service to a nonprofit or municipal corporation does not alone exempt the veterinarian from any of the provisions of the Veterinary Licensing Act, Texas Occupations Code, Chapter 801 or the Board's rules.

(c) Veterinarians employed by, or contracted to, nonprofit or municipal corporations shall be liable for any violations of the Act or rules occurring as a result of the practice of veterinary medicine or any veterinary services provided by the nonprofit or municipal corporation, including those occurring due to the acts or omissions of non-licensed employees of, or volunteers for, the nonprofit or municipal corporation, unless otherwise exempt from the Veterinary Licensing Act pursuant to Texas Occupations Code [~~under~~] §801.004.

§573.73. Animal Reproduction.

(a) (No change.)

(b) The activities described in this section do not affect those activities exempted from coverage of the Veterinary Licensing Act pursuant to[~~,~~] Texas Occupations Code[~~,~~] §801.004.

§573.74. Management Services Organizations in Veterinary Practice.

(a) - (d) (No change.)

(e) Permitted Management Services. Permitted activities by a management services organization include but are not limited to:

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

(7) providing advertising, marketing and public relations services in compliance with §§573.30 - 573.37 of this chapter [~~title~~] (relating to Advertising, Endorsements and Certificates) pertaining to the practice of veterinary medicine;

(8) - (9) (No change.)

(10) obtaining all licenses and permits necessary to operate a practice of veterinary medicine that may be obtained by a non-veterinarian, and assisting veterinarians in obtaining licenses and permits necessary to operate a practice of veterinary medicine that may be obtained only by a veterinarian[~~, provided that the Executive Director of the Board approves the method of payment for veterinary license renewals paid by the management services organization~~];

(11) - (16) (No change.)

(f) Disclosure of Contracts.

(1) A veterinarian or a group of veterinarians that contract with a management services organization shall:

(A) make available for inspection by the Board [~~at the main office of the veterinarian or group of veterinarians, pursuant to §573.66 of this title (relating to Disciplinary Action for Non-Compliance with Continuing Education Requirements),~~] copies of the contracts with the management services organizations; and

(B) (No change.)

(2) (No change.)

[~~(3) Copies of contracts produced under this subsection shall be governed by the Veterinary Licensing Act, Texas Occupations Code, §801.207.~~]

§573.76. Notification of Licensee Addresses.

(a) Each licensee shall report to the Board the licensee's:

(1) name [~~and license number~~];

(2) primary clinic or practice name;

(3) primary physical business address;

(4) - (5) (No change.)

(6) business telephone number; [~~and~~]

(7) personal [~~residence and/or cellular~~] telephone number(s); and [~~number.~~]

(8) email address.

(b) A mailing address may be a post office box number. A physical business address shall be a physical location and shall not be a post office box number. [~~If a remote practice location does not have a physical business address, the licensee must provide as the physical business address sufficient directions as to how the practice location may be found.~~]

(c) A relief veterinarian's physical business address shall be the physical business address where the relief veterinarian regularly conducts the largest percentage of his or her relief work at one clinic. If the relief veterinarian does not have one clinic where they conduct [~~he or she conducts~~] the largest percentage of their [~~his or her~~] work, then the relief veterinarian shall use the physical address of one of the locations where they work [~~he or she works~~]. If the relief veterinarian is not actively working, then the relief veterinarian may use their [~~his or her~~] physical residence address as their physical business address[~~, which shall not be a post office box number~~].

(d) A mobile veterinarian's physical business address shall be the physical location where the mobile veterinarian's controlled substances and associated records are stored. If a mobile veterinarian does not possess any controlled substances, the mobile veterinarian's physical business address shall be their physical residence address.

(e) [~~(d)~~] A licensee shall notify the Board of any change of items required under subsection (a) of this section not later than the 30th [~~60th~~] day after the change takes place.

§573.77. Sterilization of Animals from Releasing Agencies.

(a) (No change.)

(b) Sterilization required. A new owner of an animal released from a releasing agency must have the animal sterilized in accordance with Chapter 828, Texas Health and Safety Code.

(c) Identification markers. An animal sterilized under this section must be identified by a microchip and/or a tattoo indicating that it has been sterilized.

(1) (No change.)

(2) A tattoo must:

(A) consist of a line [~~be~~] placed on the inside of the animal's thigh near the abdomen or on the caudal-ventral abdomen;

(B) be imprinted with ink that is manufactured in the United States;

(C) meet the standards of the federal Food and Drug Administration for tattooing;

(D) be of a contrasting color to the predominant color of the skin in which it is tattooed.[; and]

[(E) consist of the universal symbol for male or female overlain by a slash through the circle to indicate sterilization.]

§573.79. Maintenance of Sanitary Premises.

Licensees must maintain their offices/clinics/hospitals and the offices/clinics/hospitals in which they work, including mobile and temporary facilities, in a clean and sanitary condition without any accumulation of trash, debris, or filth. Licensees must dispose of medical waste and contaminated supplies in a safe and sanitary manner. Such premises shall be maintained in full compliance with all health requirements of the city or county in which they are located and in conformity with the health laws of the State of Texas; further, they shall use properly sterilized instruments and clean supplies.

§573.80. Definitions.

The following words and terms, when used in the Veterinary Licensing Act, "the Act" (Chapter 801, Texas Occupations Code) or the Rules of the Board (Texas Administrative Code, Title 22, Part 24, Chapters 571, 573, 575, and 577) shall have the following meanings, unless the context clearly indicates otherwise:

(1) - (5) (No change.)

(6) Consultation--the act of rendering professional advice [(diagnosis and prognosis)] about a specific veterinary medical case, but does not include treatment or surgery.

(7) - (11) (No change.)

(12) Non-veterinarian employee--an individual paid directly by a veterinarian for work involving the practice of veterinary medicine, as defined in the [Veterinary Licensing Act,] Texas Occupations Code[,] §801.002(5), regardless of the defined status of the employment relationship between the individual and the veterinarian under Internal Revenue Service regulations.

(13) (No change.)

(14) Equine animal--an animal belonging to the family Equidae.

(15) Licensee--a person who holds a license issued by the Board.

(16) Board--The Texas Board of Veterinary Medical Examiners or their designee.

(17) Client--the patient's owner, owner's designee, or other person responsible for the patient.

(18) Client Consent--consent given after the veterinarian has informed the client or the client's authorized representative of the reasonable and usual diagnostic and treatment options available, risk assessment, and prognosis.

(19) Veterinarian--a person licensed by the Board to practice veterinary medicine.

(20) Temporary Limited Services Clinic--any veterinary clinic that does not have a fixed, permanent location or operates on an intermittent basis, including clinics that have regularly scheduled sites of operation. It does not include mobile clinics that travel to an owner's premises to treat that owner's animals.

(21) Practice of veterinary medicine--

(A) the diagnosis, treatment, correction, change, manipulation, relief, or prevention of animal disease, deformity, defect, injury, or other physical condition, including the prescription or administration of a drug, biologic, anesthetic, apparatus, or other therapeutic or diagnostic substance or technique;

(B) the representation of an ability and willingness to perform an act listed in subparagraph (A) of this paragraph; the use of a title, a word, or letters to induce the belief that a person is legally authorized and qualified to perform an act listed in subparagraph (A) of this paragraph;

(C) the use of a title, a word, or letters to induce the belief that a person is legally authorized and qualified to perform an act listed in subparagraph (A) of this paragraph; or

(D) the receipt of compensation for performing an act listed in subparagraph (A) of this paragraph.

§573.81. Mandatory Report by Licensee.

(a) A licensee shall report to the Board in the manner prescribed under subsection (b) of this section if the licensee has reasonable cause to suspect that:

(1) the ability of another licensee to provide veterinary, LVT, or EDP services safely and reasonably is impaired by chemical dependency or a mental health issue; or

(2) (No change.)

(b) A report by a licensee under subsection (a) of this section must:

(1) Be in writing [and signed]; and

(2) (No change.)

(c) (No change.)

[(d) A licensee satisfies his or her duty to report in accordance with subsection (a)(1) of this section by reporting the other licensee to the Board's approved Peer Assistance Program.]

§573.83. Price Transparency for Emergency Care.

(a) - (d) (No change.)

(e) Prior to initiating medical treatment, a veterinarian may require the [The] person presenting an animal to the veterinarian for emergency care and treatment to affirm in writing that they are [is presumed to be] the owner or caretaker of that animal and they are financially responsible for the care and treatment provided.

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 November 5, 2026.

TRD-202604684
Kelly Phelps
General Counsel
Texas Board of Veterinary Medical Examiners
Earliest possible date of adoption: December 20, 2026
For further information, please call: (512) 305-7555

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22 TAC §§573.67, 573.78, 573.82

STATUTORY AUTHORITY

The proposed repeals are proposed under Texas Occupations Code, Chapter 801, which authorize the Texas Board of Veterinary Medical Examiners, the Board's governing body, to adopt

rules as necessary to implement these chapters and any other law establishing a program regulated by the Board.

The statutory provisions affected by the proposed repeals are those set forth in Texas Occupations Code, Chapter 801. No other statutes, articles, or codes are affected by the proposed rules.

§573.67. Continuing Education as Disciplinary Action.

§573.78. Default on Student Loan/Child Support Payments.

§573.82. Laser Therapy.

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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Kelly Phelps
General Counsel
Texas Board of Veterinary Medical Examiners
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For further information, please call: (512) 305-7555

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 3. ADVISORY COMMITTEES, COUNCILS, AND BOARDS

25 TAC §3.4

The executive commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of State Health Services (DSHS), proposes new §3.4, concerning the Sickle Cell Task Force (Task Force).

BACKGROUND AND PURPOSE

The purpose of the proposal is to improve public access to DSHS advisory committee, council, task force, and board rules by moving all advisory committee, council, task force, and board rules into a single chapter. The current Task Force rule is repealed from Texas Administrative Code (TAC), Title 25, Part 1, Chapter 37 and a new, updated rule is proposed in 25 TAC Chapter 3. The new Task Force rule is updated to align with the Health and Human Services advisory committee rule template. The rule language improves clarity and understanding. The repeal is published elsewhere in this issue of the *Texas Register*.

Additionally, the new rule complies with House Bill (HB) 1488, 88th Legislature, Regular Session, 2023, which amended Texas Health and Safety Code §52.0003, §52.0007, and §52.0008 by updating the Task Force's membership composition; directing the Task Force, in collaboration with HHSC, to include recommendations in the Task Force annual report for improving sickle cell disease education for health care providers; and extending the date of abolishment.

SECTION-BY-SECTION SUMMARY

Proposed new §3.4(a), (b), and (c) provide the applicable statutes governing the Task Force, its purpose, and tasks the Task Force performs.

Proposed new §3.4(d) provides the requirements for submitting an annual written report. This report must include recommendations for improving sickle cell disease education for health care providers.

Proposed new §3.4(e) provides the meeting, frequency, and quorum requirements.

Proposed new §3.4(f) describes the Task Force's required membership. The Task Force's membership is increased from seven to 13 members appointed by the executive commissioner, and the new rule has updated categories. Additionally, the new rule extends membership terms from two years to six years to improve continuity for Task Force members.

Proposed new §3.4(g) describes how the officers are selected and terms of office.

Proposed new §3.4(h) describes the required training for members.

Proposed new §3.4(i) describes the travel reimbursement policy.

Proposed new §3.4(j) extends the Task Force abolishment to August 31, 2035, in alignment with HB 1488.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

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

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

(5) the proposed rule will not create a new regulation;

(6) the proposed rule will not expand, limit, or repeal existing regulation;

(7) the proposed rule will increase the number of individuals subject to the rule; and

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

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

Christy Havel Burton, Chief Financial Officer, has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because the rule does not apply to small or micro-businesses, or rural communities.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule does not impose a cost on regulated persons and is necessary to implement legislation that does not specifically state that §2001.0045 applies to the rule.

PUBLIC BENEFIT AND COSTS

Kelly Fegan-Bohm, M.D., Interim Deputy Commissioner, Community Health Improvement Division has determined that for each year of the first five years the rule is in effect, the public benefit will be improved access to uniformly formatted DSHS advisory committee, council, task force, and board rules located in a single chapter. Also, the new rule will provide updated information that aligns with current state law.

Christy Havel Burton, Chief Financial Officer, has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because the rule change should not incur costs.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal, including information related to the cost, benefit, or effect of the proposed rule, as well as any applicable data, research, or analysis, may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 4601 West Guadalupe Street, Austin, Texas 78751; or emailed to *HHSRulesCoordinationOffice@hhs.texas.gov*.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 26R052" in the subject line.

STATUTORY AUTHORITY

The new rule is authorized by Texas Government Code §524.0151 and Texas Health and Safety Code §1001.075 which authorize the executive commissioner of HHSC to adopt rules and policies for the operation and provision of services by DSHS and for the administration of Texas Health and Safety Code Chapter 1001.

The new rule affects Texas Government Code §524.0151, Texas Health and Safety Code §1001.075, and Chapter 52.

§3.4. Sickle Cell Task Force.

(a) Statutory authority. The Sickle Cell Task Force (Task Force) is established under Texas Health and Safety Code (HSC) §52.0001. The Task Force is subject to HSC Chapter 52. Texas Government Code §2110.008 does not apply to the Task Force.

(b) Purpose. The Task Force advises the commissioner and Texas Department of State Health Services (DSHS) on raising awareness of sickle cell disease (SCD) and sickle cell trait (SCT).

(c) Tasks. The Task Force performs the following tasks:

(1) carries out duties outlined in HSC §52.0002 and HSC §52A.003(b); and

(2) adopts bylaws to guide Task Force operations.

(d) Reporting requirements. The Task Force must file an annual written report to the Governor and legislature no later than December 1 of each year. The report includes:

(1) a brief description of actions taken by the Task Force;

(2) recommendations for actions or policy changes endorsed by the Task Force; and

(3) recommendations for improving sickle cell disease education for health care providers.

(e) Meetings.

(1) Open meetings. Meetings must be announced and conducted in accordance with the Open Meetings Act, Texas Government Code Chapter 551. Meetings are called by the presiding officer. The chair serves as the presiding officer; if the chair is unable to attend, the vice chair or another member may serve as presiding officer. DSHS must make meeting arrangements and must contact Task Force members to determine availability for a meeting date and place. Each member of the Task Force must be informed of a meeting at least ten business days before the meeting. The agenda for each Task Force meeting must include an agenda item for public comment allowing any person to address the Task Force on matters relating to Task Force business. The presiding officer may establish procedures for public comment, including a time limit on each comment.

(2) Frequency. The Task Force must meet at the call of the presiding officer.

(3) Quorum. A majority of members constitutes a quorum for the purpose of transacting official business.

(f) Membership.

(1) The Task Force is composed of 13 members appointed by the executive commissioner. In selecting members to serve on the Task Force, HHSC considers the applicants' qualifications, background, interest in serving, and geographic location.

(A) Thirteen voting members represent the following categories:

(i) two members from community-based organizations with experience addressing the needs of individuals with SCD;

(ii) two physicians specializing in hematology;

(iii) three members of the public, one of whom has SCD or SCT and two of whom either have SCD or are a parent of a person with SCD or SCT;

(iv) one representative of a health-related institution;

(v) one representative of the Texas Education Agency;

(vi) one representative of HHSC;

(vii) one physician with experience addressing the needs of individuals who have SCD or SCT;

(viii) one researcher from a public health-related or academic institution with experience addressing SCD and SCT; and

(ix) one health care professional with experience addressing the needs of individuals who have SCD or SCT.

(2) Members are appointed for staggered terms so the terms of an equal or almost equal number of members expire on December 31 of each year. Regardless of the term limit, a member serves until a replacement is appointed.

(A) The term of each member is six years unless a shorter or longer term is needed to stagger member terms.

(B) A member may apply to serve one additional term for a total of two terms.

(C) This paragraph does not apply to ex officio members, who serve at the pleasure of the executive commissioner and do not have the authority to vote on items before the full committee.

(g) Officers. The Task Force elects a chair and vice chair from current members.

(1) The chair serves until June 1 of each even-numbered year. The vice chair serves until June 1 of each odd-numbered year.

(2) A member may serve as chair or vice chair up to two terms in a row.

(h) Required training. Each member must complete training on relevant laws and rules, including this section and TGC Chapters 551, 552, and 2110; the Texas Health and Human Services (HHS) Ethics Policy; the Advisory Committee Member Code of Conduct; and other relevant HHS policies. HHSC and DSHS will provide training.

(i) Travel reimbursement. To the extent allowed by the current General Appropriations Act, a Task Force member may be reimbursed for travel to and from meetings if funds are appropriated, available, and follow the DSHS Travel Policy.

(j) Abolishment date. Per HSC §52.0008, the Task Force is abolished, and this section expires, on August 31, 2035.

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 November 6, 2026.

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Cynthia Hernandez
General Counsel
Department of State Health Services
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For further information, please call: (512) 776-3957

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CHAPTER 37. MATERNAL AND INFANT HEALTH SERVICES

SUBCHAPTER R. ADVISORY COMMITTEES

25 TAC §37.420

The executive commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of State Health Services (DSHS), proposes the repeal of §37.420, concerning Sickle Cell Task Force (Task Force).

BACKGROUND AND PURPOSE

The purpose of the proposal is to improve public access to DSHS advisory committee, council, task force, and board rules by moving all advisory committee, council, task forces, and board rules into a single chapter. The current Task Force rule is repealed from Texas Administrative Code (TAC), Title 25, Part 1, Chapter 37 and a new, updated rule is proposed in 25 TAC Chapter 3. The new rule is published elsewhere in this issue of the *Texas Register*.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

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

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

(5) the proposed rule will not create a new regulation;

(6) the proposed rule will not expand, limit, or repeal existing regulation;

(7) the proposed rule will increase the number of individuals subject to the rule; and

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

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

Christy Havel Burton, Chief Financial Officer, has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because the rule does not apply to small or micro-businesses, or rural communities.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule does not impose a cost on regulated persons and is necessary to implement legislation that does not specifically state that §2001.0045 applies to the rule.

PUBLIC BENEFIT AND COSTS

Kelly Fegan-Bohm, M.D., Interim Deputy Commissioner, Community Health Improvement Division has determined that for each year of the first five years the rule is in effect, the public benefit will be improved access to uniformly formatted DSHS advisory committee, council, task force, and board rules located in a single chapter.

Christy Havel Burton, Chief Financial Officer, has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because the rule change should not incur costs.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal, including information related to the cost, benefit, or effect of the proposed rule, as well as any applicable data, research, or analysis, may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 4601 West Guadalupe Street, Austin, Texas 78751; or emailed to *HHSRulesCoordinationOffice@hhs.texas.gov*.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 26R052" in the subject line.

STATUTORY AUTHORITY

The repeal is authorized by Texas Government Code §524.0151 and Texas Health and Safety Code §1001.075 which authorize the executive commissioner of HHSC to adopt rules and policies for the operation and provision of services by DSHS and for the administration of Texas Health and Safety Code Chapter 1001.

The repeal affects Texas Government Code §524.0151 and Texas Health and Safety Code §1001.075, and Chapter 52.

§37.420. Sickle Cell Task Force.

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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Cynthia Hernandez
General Counsel
Department of State Health Services
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TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 565. HOME AND COMMUNITY-BASED (HCS) PROGRAM AND COMMUNITY FIRST CHOICE (CFC) CERTIFICATION STANDARDS

The executive commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §565.2, concerning Purpose; §565.3, concerning Definitions; §565.15, concerning Individuals under the age of 22; §565.25, concerning Programmatic Requirements; §565.31, concerning Requirements Related to Abuse, Neglect, and Exploitation; and §565.45, concerning Administrative Penalties; and proposes new §565.32, concerning HHSC Prioritization, Notification, and Report Provisions of Abuse, Neglect, and Exploitation Investigations.

BACKGROUND AND PURPOSE

The purpose of the proposal is to implement House Bill (HB) 4696, 88th Legislature, Regular Session, 2023, which amended Texas Human Resources Code Chapter 48, Texas Family Code Chapter 261, and Texas Health and Safety Code Chapter 253. HB 4696 reassigned responsibility for investigations of abuse, neglect, and exploitation from the Texas Department of Family Protective Services (DFPS) to HHSC. The rule proposal updates language and terminology to reflect the move from DFPS to HHSC. The rule proposal also requires program providers to create policies and procedures related to abuse, neglect, and exploitation of an individual, and to report suspected abuse, neglect, and exploitation of an individual to HHSC Complaint and Incident Intake.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §565.2 redefines the purpose of this chapter to include implementation of statutory requirements for abuse, neglect, and exploitation investigations.

The proposed amendment to §565.3 adds definitions for terms to assist in abuse, neglect, and exploitation investigations. The proposed amendment also updates cross references, clarifies definitions, and renumbers the section accordingly.

The proposed amendment to §565.15 updates a cross reference.

The proposed amendment to §565.25 removes requirements related to reporting the death of an individual and retaliation because the content has been added to proposed amended §565.31. Examples of critical incidents have been moved from §565.3 to this section. The proposed amendment also updates cross references and makes non-substantive changes for clarity.

The proposed amendment to §565.31 updates the section name to Reporting Abuse, Neglect, and Exploitation. The proposed amendment requires program providers to create policies and procedures to report abuse, neglect, and exploitation to HHSC Complaint and Incident Intake (CII). The proposed amendment requires program providers, under specified circumstances, to conduct abuse, neglect, and exploitation investigations and send a written investigation report to HHSC CII. The proposed amendment also requires program providers to report abuse, neglect, and exploitation and deaths of an individual to HHSC CII and to submit Form 3613A, Provider Investigation Report, to HHSC upon completing an internal investigation. The proposed amendment also adds language regarding retaliation.

Proposed new §565.32 describes HHSC prioritization, notification, and report provisions of abuse, neglect, and exploitation investigations required to be implemented under Texas Human Resources Code Chapter 48, Subchapter F, and Texas Family Code §261.404. The proposed amendment also sets forth the procedures for appealing the final finding of HHSC's abuse, neglect, and exploitation investigation.

The proposed amendment to §565.45 updates terminology and replaces "and" with "or", indicating HHSC may impose and collect administrative penalties against a provider for violations indicated in either paragraph. The proposed amendment also updates the location of the chart figure to 26 TAC §565.45(b).

FISCAL NOTE

Victoria Grady, Deputy Chief, Finance, 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 regulations;

(6) the proposed rules will expand existing regulations;

(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

Victoria Grady has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because the proposed rules are updating HHSC processes and do not impose any additional costs on small businesses, micro-businesses, or rural communities.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

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

PUBLIC BENEFIT AND COSTS

Michelle Dionne-Vahalik, Deputy Executive Commissioner, Long-Term Care Regulation, has determined that for each year of the first five years the rules are in effect, the public will benefit from strengthened oversight of Home and Community-based Services program providers, a single point of entry for submitting abuse, neglect, and exploitation and incident reports to HHSC, and clearer rules for both the public and providers.

Victoria Grady has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because the proposed rules update HHSC processes without imposing any additional costs on those required to comply with the proposed rules.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal, including information related to the cost, benefit, or effect of the proposed rule, as well as any applicable data, research, or analysis, may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 4601 West Guadalupe Street, Austin, TX 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 25R047" in the subject line.

SUBCHAPTER B. OVERVIEW

26 TAC §565.2, §565.3

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §524.0151, 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 Human Resources Code Chapter 48, which provides authority to investigate the abuse, neglect, or exploitation of an elderly person or person with a disability and to provide protective services to that person; and Texas Family Code Chapter 261, which provides authority to investigate the abuse, neglect, or exploitation of children and to provide protective services to children.

The amendments implement Texas Government Code §524.0151, Texas Human Resources Code Chapter 48, and Texas Family Code Chapter 261.

§565.2. Purpose.

(a) The purpose of this chapter is to:

(1) establish minimum [~~promote the~~] health and[,] safety standards[,] and responsibilities for a [~~welfare of the individuals in the~~] Home and Community-based Services (HCS) program provider to promote the [~~by establishing the minimum~~] health, [~~and~~] safety, and welfare of the individuals in the [~~expectations and responsibilities of a~~] HCS program; [~~provider.~~]

(2) implement Texas Human Resources Code Chapter 48, Subchapter F, and Texas Family Code §261.404; and

(3) describe the investigation by the Texas Health and Human Services Commission (HHSC) of allegations of abuse, neglect, and exploitation of individuals in the HCS program.

(b) This chapter applies to program providers.

(c) HHSC uses [~~The Texas Health and Human Services Commission will use~~] the rules in this chapter to determine [~~establish~~] regulatory compliance by a program provider.

§565.3. Definitions.

The following [~~words and~~] terms in this subchapter[~~, when used in this subchapter,~~] have the following meanings, unless the context clearly indicates otherwise.[~~:~~]

(1) Abuse--Physical, sexual, emotional, verbal, or psychological abuse, as defined in this section. [~~Considered to be:~~]

[~~(A) physical abuse;~~]

[~~(B) sexual abuse; or~~]

[~~(C) verbal or emotional abuse.~~]

(2) Actively involved--Significant, ongoing, and supportive involvement with an applicant or individual by a person, as determined by the applicant's or individual's service planning team or program provider, based on the person's:

(A) interactions with the applicant or individual;

(B) availability to the applicant or individual for assistance or support when needed; and

(C) knowledge of, sensitivity to, and advocacy for the applicant's or individual's needs, preferences, values, and beliefs.

(3) Activities of daily living (ADLs) [~~(ADL)~~]--Basic personal everyday activities, including tasks such as eating, toileting, grooming, dressing, bathing, and transferring.

(4) Actual harm--A negative outcome that compromises an individual's physical, mental, or emotional well-being but does not constitute an immediate threat.

(5) Alarm call--A signal transmitted from an individual's Community First Choice (CFC) emergency response services (ERS) equipment to the CFC ERS response center indicating that the individual needs immediate assistance.

(6) Allegation-- A report that an individual receiving services has been or is in a state of abuse, neglect, or exploitation as defined by this subchapter.

(7) [~~(6)~~] Alleged perpetrator--A person alleged to have committed an act of abuse, neglect, or exploitation involving an individual.

(8) Alleged victim--An individual receiving services who is alleged to have been abused, neglected, or exploited.

(9) ANE--Abuse, neglect, and exploitation as defined in this section.

(10) [~~(7)~~] Applicant--A Texas resident seeking services in the Home and Community-based Services (HCS) Program.

(11) [~~(8)~~] Behavioral emergency--A situation in which an individual's severely aggressive, destructive, violent, or self-injurious behavior:

(A) poses a substantial risk of imminent probable death of, or substantial bodily harm to, the individual or others;

(B) has not abated in response to preventive de-escalatory or redirection techniques;

(C) is not addressed in a written behavior support plan; and

(D) does not occur during a medical or dental procedure.

(12) [~~(9)~~] Business day--Any day except a Saturday, Sunday, or national or state holiday listed in Texas Government Code §662.003(a) or (b).

(13) [~~(10)~~] Calendar day--Any day, including weekends and holidays.

(14) [~~(11)~~] Centers for Medicare & [~~and~~] Medicaid Services (CMS)--The federal agency within the United States Department of Health and Human Services that administers the Medicare and Medicaid programs.

(15) [~~(12)~~] Certification standard--A minimum standard for a program provider used by the Texas Health and Human Services Commission (HHSC) during a survey to ensure health and safety of an individual. Violations of a certification [~~principle or~~] standard are subject to administrative penalties.

(16) [~~(13)~~] CFC--Community First Choice.

(17) [~~(14)~~] CFC emergency response services (CFC ERS)--Backup systems and supports used to ensure continuity of services and supports. CFC ERS includes electronic devices and an array of available technology, personal emergency response systems, and other mobile communication devices.

(18) [~~(15)~~] CFC ERS provider--The entity directly providing CFC ERS to an individual, which may be the program provider or a contractor of the program provider.

(19) [~~(16)~~] CFC Financial management services (CFC FMS)--The term used for FMS on the individual plan of care (IPC) of an applicant or individual if the applicant or individual receives only CFC personal assistance services/habilitation (PAS/HAB) through the CDS option.

(20) [~~(17)~~] CFC personal assistance services/habilitation (CFC PAS/HAB). A service that:

(A) consists of:

(i) personal assistance services that aid an individual in performing ADLs and instrumental activities of daily living (IADLs) based on the individual's person-centered service plan, including:

(I) non-skilled assistance with the performance of the ADLs and IADLs;

(II) household chores necessary to maintain the home as a clean, sanitary, and safe environment;

(III) escort services, which consist of accompanying and assisting an individual to access services or activities in the community, but do not include transporting an individual; and

(IV) assistance with health-related tasks; and

(ii) habilitation that aids an individual in acquiring, retaining, and improving self-help, socialization, and daily living skills and training the individual on ADLs, IADLs, and health-related tasks, such as:

(I) self-care;

(II) personal hygiene;

(III) household tasks;

(IV) mobility;

(V) money management;

(VI) community integration, including how to get around in the community;

(VII) use of adaptive equipment;

(VIII) personal decision making;

(IX) reduction of challenging behaviors to allow individuals to accomplish ADLs, IADLs, and health-related tasks; and

(X) self-administration of medication; and

(B) does not include transporting the individual, which means driving the individual from one location to another.

(21) [~~(18)~~] CFC support consultation--The term used for support consultation on the IPC of an applicant or individual if the applicant or individual receives only CFC PAS/HAB through the CDS option.

(22) [~~(19)~~] CFC support management--Training regarding how to select, manage, and dismiss an unlicensed service provider of CFC PAS/HAB, as described in the HCS Handbook.

(23) [~~(20)~~] Chemical restraint--A medication used to control an individual's behavior or to restrict the individual's freedom of movement that is not a standard treatment for the individual's medical or psychological condition.

(24) [~~(21)~~] Cognitive rehabilitation therapy--A service that:

(A) assists an individual in learning or relearning cognitive skills that have been lost or altered because of damage to brain cells or brain chemistry in order to enable the individual to compensate for lost cognitive functions; and

(B) includes reinforcing, strengthening, or reestablishing previously learned patterns of behavior, or establishing new patterns of cognitive activity or compensatory mechanisms for impaired neurological systems.

(25) Community-based residential care services--Services provided in a group home or other residential facility licensed by or operated under the authority of HHSC.

(26) [~~(22)~~] Community resource coordination group (CRCG)--A local interagency group composed of public and private agencies that develops service plans for individuals whose needs can be met only through interagency coordination and cooperation. The group's role and responsibilities are described in the Memorandum of Understanding on Coordinated Services to Persons Needing Services from More Than One Agency, which is available on the HHSC website.

(27) [~~(23)~~] Competitive employment--Employment that pays an individual at least minimum wage if the individual is not self-employed.

(28) Complaint--An allegation against a program provider, staff member, service provider, volunteer, or controlling person that involves ANE, or a failure to comply with the Texas Administrative Code (TAC). This does not include an incident that is self-reported by a program provider.

(29) Complaint and Incident Intake (CII)--A part of HHSC that reviews and assigns priority to complaints and incidents reported to HHSC.

(30) [~~(24)~~] Consumer directed services option (CDS option)--A service delivery option in which an individual or legally authorized representative employs and retains service providers and directs the delivery of program services.

(31) [~~(25)~~] Contract--A provisional contract or a standard contract.

(32) [~~(26)~~] Controlling person--A person who:

(A) has an ownership interest in a program provider;

(B) is an officer or director of a corporation that is a program provider;

(C) is a partner in a partnership that is a program provider;

(D) is a member or manager in a limited liability company that is a program provider;

(E) is a trustee or trust manager of a trust that is a program provider; or

(F) because of a personal, familial, or other relationship with a program provider, is in a position of actual control or authority with respect to the program provider, regardless of the person's title.

(33) [~~(27)~~] Critical incidents--Incidents that the program provider must report to the HHSC Critical Incident Management System (CIMS) for review and follow-up action by HHSC no later than the last calendar day of the month that follows the month being reported. [~~incident--An event listed in the *HCS Provider User Guide* found on the HHSC website.~~]

(34) [~~(28)~~] Critical violation--A violation for which HHSC may assess an administrative penalty before giving a program provider an opportunity to correct the violation. A critical violation:

(A) is an immediate threat, as defined in this section;

(B) has resulted in actual harm, as defined in this section, and is widespread;

(C) has resulted in actual harm and is a pattern; or

(D) has the potential to result in actual harm and is widespread.

[~~(29) DADS--Formerly the Texas Department of Aging and Disability Services. Its functions have been transferred to the Texas Health and Human Services Commission.~~]

(35) [~~(30)~~] DFPS--The Texas Department of Family and Protective Services.

(36) [~~(31)~~] Emergency--An unexpected situation in which the absence of an immediate response could reasonably be expected to result in risk to the health and safety of an individual or another person.

(37) [~~(32)~~] Emergency Plan--A written plan that describes the actions that will be taken to protect individuals, including evacuation or sheltering-in-place, in the event of an emergency such as a fire or natural disaster.

(38) [~~(33)~~] Emergency situation--An unexpected situation involving an individual's health, safety, or welfare, of which a person of ordinary prudence would determine that the legally authorized representative (LAR) should be informed, such as:

(A) an individual needing emergency medical care;

(B) an individual being removed from his or her residence by law enforcement;

(C) an individual leaving his or her residence without notifying a staff member or service provider and not being located; and

(D) an individual being moved from his or her residence to protect the individual (for example, because of a hurricane, fire, or flood).

(39) Emotional, verbal, or psychological abuse--Any act or communication, including oral, written, gestured language, directed towards and in the presence of the individual that is of such a serious nature that a reasonable person would find the act or communication to be physically or emotionally threatening, intimidating, humiliating, or harassing. For the definition of emotional, verbal, or psychological abuse to be met, the act or communication must:

(A) result in an individual experiencing:

(i) a significant negative impact to the individual's physical, mental, or emotional health; or

(ii) substantial physical, mental, or emotional distress, as identified by an appropriate medical professional;

(B) be of such a serious nature that a reasonable person would consider it likely to have a significant negative impact on the physical, mental, emotional health of the individual; or

(C) be of such a serious nature that it caused, or was likely to cause, an individual to experience a negative impact or regression in the individual's therapeutic intervention, or support plan progress.

(40) [~~(34)~~] Enclosed bed--A protective device that:

(A) is commercially produced;

(B) includes a 360-degree side enclosure, inclusive of a top cover or canopy; and

(C) must be appropriate for the size and weight of the individual.

(41) [~~(35)~~] Exploitation--The illegal or improper act or process of using[~~, or attempting to use,~~] an individual or the resources of an individual for monetary or personal benefit, profit, or gain, excluding:[~~.~~]

(A) theft, as defined in Texas Penal Code Chapter 31; and

(B) allegations of exploitation less than $25.

(42) [~~(36)~~] Family-based alternative--A family setting in which the family provider or providers are specially trained to provide support and in-home care for children with disabilities or children who are medically fragile.

(43) [~~(37)~~] Financial management services (FMS)--A service that is provided to an individual participating in the CDS option, as defined in §264.103 of this title [~~40 TAC §41.103~~] (relating to Definitions).

(44) [~~(38)~~] Financial management services agency (FMSA)--An entity that provides financial management services to an individual participating in the CDS option, as defined in §264.103 of this title. [~~40 TAC §41.103.~~]

(45) [~~(39)~~] Follow-up survey--A review by HHSC of a program provider to determine if the program provider has completed corrective action.

(46) [~~(40)~~] Former military member--A person who served in the United States Army, Navy, Air Force, Marine Corps, Coast Guard, or Space Force:

(A) who declared and maintained Texas as the person's state of legal residence in the manner provided by the applicable military branch while on active duty; and

(B) who was killed in action or died while in service, or whose active duty otherwise ended.

(47) [~~(41)~~] Four-person residence--A residence:

(A) that a program provider leases or owns;

(B) in which at least one person but no more than four persons receive:

(i) residential support;

(ii) supervised living;

(iii) a non-HCS Program service like residential support or supervised living (for example, services funded by DFPS or by a person's own resources); or

(iv) respite;

(C) that, if it is the residence of four persons, at least one of those persons receives residential support;

(D) that is not the residence of any persons other than a service provider, the service provider's spouse, or person with whom the service provider has a spousal relationship, or a person described in subparagraph (B) of this paragraph; and

(E) that is not a dwelling described in §263.101(a)(5) of this title (relating to Eligibility Criteria for HCS Program Services and CFC Services).

(48) [~~(42)~~] General residential operation (GRO)--The term has the meaning set forth in Texas Human Resources Code §42.002.

(49) [~~(43)~~] Good cause--A [~~As used in §565.19(10) of this chapter (relating to Community First Choice (CFC) Emergency Response Systems (ERS) Services),~~ a] reason outside the control of the program [~~CFC ERS~~] provider, as determined by HHSC.

(50) [~~(44)~~] Health-related tasks--Specific tasks related to the needs of an individual, which can be delegated or assigned by licensed health care professionals under state law to be performed by a service provider of CFC PAS/HAB. These include tasks delegated by a registered nurse (RN); health maintenance activities as defined in 22 TAC §225.4 (relating to Definitions), that may not require delegation; and activities assigned to a service provider of CFC PAS/HAB by a licensed physical therapist, occupational therapist, or speech-language pathologist.

(51) HHSC--The Texas Health and Human Services Commission.

(52) [~~(45)~~] Home and Community-based Services Program (HCS Program)--The program operated by HHSC as authorized by CMS in accordance with §1915(c) of the Social Security Act.

(53) IADLs--Instrumental activities of daily living. Activities related to living independently in the community. IADLs include meal planning and preparation; managing finances; shopping for food, clothing, and other essential items; performing essential household chores; communicating by phone or other media; and traveling around and participating in the community.

[~~(46) HHSC--The Texas Health and Human Services Commission.~~]

[(47) Instrumental activities of daily living (IADLs)--Activities related to living independently in the community, including meal planning and preparation; managing finances; shopping for food, clothing, and other essential items; performing essential household chores; communicating by phone or other media; and traveling around and participating in the community.]

(54) [(48)] ICAP--Inventory for Client and Agency Planning.

(55) [(49)] ICF/IID--Intermediate care facility for individuals with an intellectual disability or related conditions. An ICF/IID is a facility in which the ICF/IID program is:

(A) licensed in accordance with Texas Health and Safety Code Chapter 252; or

(B) certified by HHSC, including a state supported living center.

(56) [(50)] ICF/IID program--The Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions Program, which provides Medicaid-funded residential services to individuals with an intellectual disability or related conditions.

(57) [(51)] Immediate threat--A situation that causes, or is likely to cause, serious injury, harm, impairment to, or the death of an individual.

(58) [(52)] Implementation plan--A written document developed by the program provider that, for each HCS Program service, except for transportation provided as a supported home living activity, and CFC service, except for CFC support management, on the individual's IPC to be provided by the program provider, includes:

(A) a list of outcomes identified in the person-directed plan (PDP) that will be addressed using HCS Program and CFC services;

(B) specific objectives to address the outcomes required by subparagraph (A) of this paragraph that are:

(i) observable, measurable, and outcome-oriented; and

(ii) derived from assessments of the individual's strengths, personal goals, and needs;

(C) a target date for completion of each objective;

(D) the number of units of HCS Program and CFC services needed to complete each objective;

(E) the frequency and duration of HCS Program and CFC services needed to complete each objective; and

(F) the signature and date of the individual, LAR, and program provider.

(59) Incident--Any actual, alleged, suspected, or observed unusual, abnormal event or occurrence involving or affecting an individual in the HCS program. An incident must be reported by a program provider, staff member, service provider, volunteer, or controlling person to HHSC CII.

[(53) Individual--A person enrolled in the HCS Program.]

(60) [(54)] Individual plan of care (IPC)--A written plan that:

(A) states:

(i) the type and amount of each HCS Program service and each CFC service, except for CFC support management, to be provided to the individual during an IPC year;

(ii) the services and supports to be provided to the individual through resources other than HCS Program services or CFC services, including natural supports, medical services, and educational services; and

(iii) if an individual will receive CFC support management; and

(B) is authorized by HHSC.

(61) Individual receiving services--A person enrolled in the HCS Program, also called an individual.

(62) [(55)] Initial certification survey--A review by HHSC of a program provider with a provisional contract to determine if the program provider complies with TAC [the certification standards].

(63) [(56)] Initial IPC--The first IPC for an individual developed before the individual's enrollment into the HCS Program.

(64) [(57)] Intellectual disability--Significant sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.

(65) [(58)] Intellectual Disability/Related Conditions Assessment (ID/RC Assessment)--A form used by HHSC for level of care (LOC) determination and level of need (LON) assignment.

(66) [(59)] Intermittent survey--A review conducted by HHSC of a program provider that may result from an allegation of ANE. An intermittent survey[, which may originate from a complaint, that] is not an initial certification survey, a recertification survey, or a follow-up survey. The purpose of an intermittent survey is[,] to determine if the program provider complied with this chapter or to determine if ANE or an incident occurred [complies with the certification standards].

(67) [(60)] IPC cost--Estimated annual cost of HCS Program services included on an IPC.

(68) [(61)] IPC year--A 12-month time period starting on the date an initial or renewal IPC begins. A revised IPC does not change the begin or end date of an IPC year.

(69) [(62)] Isolated--The scope of a violation that has affected a very limited number of individuals or that has occurred only occasionally.

(70) [(63)] Legally authorized representative (LAR)--A person allowed [authorized] by law to act for an individual [on behalf of a person] in matters covered by [a matter described in] this chapter. A LAR [subchapter, and] may be [include] a parent, guardian, or managing conservator of a minor, or a [the] guardian of an adult.

(71) [(64)] Level of care (LOC)--A determination given to an individual as part of the eligibility determination process based on data submitted on the ID/RC Assessment.

(72) [(65)] Level of need (LON)--An assignment given by HHSC to an individual upon which reimbursement for host home/companion care, supervised living, residential support, and individualized skills and socialization is based.

(73) Licensed nurse--A licensed vocational nurse or registered nurse.

(74) [(66)] Licensed vocational nurse (LVN)--A person licensed to practice vocational nursing in accordance with Texas Occupations Code Chapter 301.

(75) [~~(67)~~] Local intellectual and developmental disability authority (LIDDA)--An entity designated by the HHSC Executive Commissioner, in accordance with Texas Health and Safety Code §533A.035.

(76) [~~(68)~~] Managed care organization--This term has the meaning set forth in Texas Government Code §543A.0001 [~~§536.001~~].

(77) [~~(69)~~] Means of escape--A continuous and unobstructed path of travel from an occupied portion of a building to an outside area.

(78) [~~(70)~~] Mechanical restraint--A mechanical device, material, or equipment used to control an individual's behavior by restricting the ability of the individual to freely move part or all of the individual's body.

(79) [~~(71)~~] Medical Assistance Only Medicaid (MAO Medicaid)--A type of Medicaid for which an applicant or individual qualifies financially for Medicaid assistance but does not receive Supplemental Security Income benefits.

(80) [~~(72)~~] Microboard--A program provider:

(A) that is a non-profit corporation:

(i) that is created and operated by no more than 10 persons, including an individual;

(ii) the purpose of which is to address the needs of the individual and directly manage the provision of HCS Program services or CFC services; and

(iii) in which each person operating the corporation participates in addressing the needs of the individual and directly managing the provision of HCS Program services or CFC services; and

(B) that has a service capacity designated in the HHSC data system of no more than three individuals.

(81) [~~(73)~~] Military family member--A person who is the spouse or child (regardless of age) of:

(A) a military member; or

(B) a former military member.

(82) [~~(74)~~] Military member--A member of the United States military serving in the Army, Navy, Air Force, Marine Corps, Coast Guard, or Space Force on active duty who has declared and maintains Texas as the member's state of legal residence in the manner provided by the applicable military branch.

(83) [~~(75)~~] Natural supports--Unpaid persons, including family members, volunteers, neighbors, and friends, who assist and sustain an individual.

(84) [~~(76)~~] Neglect--A negligent act or omission that caused or may have caused physical or emotional injury or death to an individual, or which placed an individual at risk of physical or emotional injury or death.

(85) [~~(77)~~] Nursing facility--A facility licensed in accordance with Texas Health and Safety Code Chapter 242.

(86) Online portal--Texas Unified Licensure Information Portal (TULIP).

(87) [~~(78)~~] Pattern--The scope of a violation that is not widespread but represents repeated failures by the program provider to comply with certification standards and the failures:

(A) are found throughout the services provided by the program provider; or

(B) involve or affect the same individuals, service providers, or volunteers.

(88) [~~(79)~~] Permanency planning--A philosophy and planning process that focuses on the outcome of family support for an applicant or individual under 22 years of age by facilitating a permanent living arrangement in which the primary feature is an enduring and nurturing parental relationship.

(89) [~~(80)~~] Permanency Planning Review Screen--A screen in the HHSC data system, completed by a LIDDA, that identifies community supports needed to achieve an applicant's or individual's permanency planning outcomes and provides information necessary for approval to provide supervised living or residential support to the applicant or individual.

(90) [~~(81)~~] Person-directed plan (PDP)--A written plan, based on person-directed planning and developed with an applicant or individual in accordance with the HHSC Person-Directed Plan form and discovery tool found on the HHSC website, that describes the supports and services necessary to achieve the desired outcomes identified by the applicant or individual (and LAR on the applicant's or individual's behalf) and ensure the applicant's or individual's health and safety.

(91) [~~(82)~~] Person-directed planning--An ongoing process that empowers the applicant or individual (and the LAR on the applicant's or individual's behalf) to direct the development of a PDP. The process:

(A) identifies supports and services necessary to achieve the applicant's or individual's outcomes;

(B) identifies existing supports, including natural supports and other supports available to the applicant or individual and negotiates needed services system supports;

(C) occurs with the support of a group of people chosen by the applicant or individual (and the LAR on the applicant's or individual's behalf); and

(D) accommodates the applicant's or individual's style of interaction and preferences.

(92) [~~(83)~~] Physical abuse--[~~Any of the following:~~]

(A) an act or failure to act performed knowingly, recklessly, or intentionally, including incitement to act, that caused or may have caused physical injury or death to an individual [~~or placed an individual at risk of physical injury or death~~];

(B) an act of inappropriate or excessive force or corporal punishment, regardless of whether the act results in a physical injury to an individual; or

(C) the use of chemical, mechanical, or physical restraints or seclusion [~~a restraint~~] on an individual [~~in a manner that is~~] not in compliance with federal and state laws[~~, rules,~~] and regulations.[~~; or~~]

[~~(D) seclusion.~~]

(93) [~~(84)~~] Physical restraint--Any manual method used to control an individual's behavior, except for physical guidance or prompting of brief duration that an individual does not resist, that restricts:

(A) the free movement or normal functioning of all or a part of the individual's body; or

(B) normal access by an individual to a portion of the individual's body.

(94) [~~(85)~~] Plan of correction--A plan documented on the HHSC Plan of Correction form that includes the corrective action that a program provider will take for each violation identified on a final survey report.

(95) [~~(86)~~] Plan of removal--A written plan that describes the action a program provider will take to remove an immediate threat that HHSC identifies.

(96) [~~(87)~~] Post 45-day follow-up survey--A follow-up survey conducted at least 46 calendar days after the exit conference of the survey in which the violation requiring corrective action was identified.

(97) [~~(88)~~] Post-move monitoring visit--As described in §303.702 of this title (relating to Post-transition Responsibilities), a [~~A~~] visit conducted by the service coordinator in the individual's residence and any other location determined appropriate by the service planning team for an individual who has enrolled in the HCS Program from a nursing facility or as a diversion from admission to a nursing facility. The purpose of the visit is to review the individual's residence and other applicable locations to: [~~accordance with the *Intellectual and Developmental Disability Preadmission Screening and Resident Review (IDD-PASRR) Handbook*.~~]

(A) assess whether the essential supports identified in the transition plan are in place;

(B) identify any gaps in care; and

(C) address identified gaps to reduce the risk of crisis, re-admission to a nursing facility, or other negative outcome.

(98) Potential for minimal harm--A violation that has the potential to cause no more than a minor negative impact on an individual.

(99) Potential for more than minimal harm--A violation that results in more than minimal physical, mental, or psychological discomfort to the individual or has the potential to compromise the individual's ability to reach and maintain the highest practicable physical, mental, and psychosocial well-being as defined for the individual.

(100) [~~(89)~~] Pre-enrollment minor home modifications--Minor home modifications, as described in the *HCS Program Billing Requirements*, completed before an applicant is discharged from a nursing facility, an ICF/IID, or a GRO and before the effective date of the applicant's enrollment in the HCS Program.

(101) [~~(90)~~] Pre-enrollment minor home modifications assessment--An assessment performed by a licensed professional as required by the *HCS Program Billing Requirements* to determine the need for pre-enrollment minor home modifications.

(102) [~~(91)~~] Pre-move site review--As described in §303.701 of this title (relating to Transition Planning for a Designated Resident), a review conducted by the service coordinator in the planned residence and any other location determined appropriate by the service planning team for an applicant transitioning from a nursing facility to the HCS Program. The purpose of the review is to ensure that the essential services and supports identified in the applicant's transition plan are in place before the applicant moves to the residence or receives services in other locations. [~~A review conducted by the service coordinator in accordance with *HHSC's IDD-PASRR Handbook*.~~]

(103) [~~(92)~~] Program provider--A person [~~"person"~~] as defined in §52.3 of this title [~~40 TAC §49.102~~] (relating to Definitions) who [~~that~~] has a contract with HHSC to deliver [~~provide~~] HCS Program services.[~~, excluding an~~] FMSA is excluded from this definition.

(104) [~~(93)~~] Protective Device--An item or device, such as a safety vest, lap belt, bed rail, safety padding, adaptation to furniture, or helmet, used only to protect an individual from injury, or for body positioning of the individual to ensure health and safety, and not used to modify or control behavior. The device or item is considered a protective device only when used in accordance with §565.37 of this chapter (relating to Protective Devices).

(105) [~~(94)~~] Provisional contract--A contract that HHSC enters into with a program provider under §52.39 of this title [~~in accordance with 40 TAC §49.208~~] (relating to Provisional Contract Application Approval). The contract [~~that has a~~] term is [~~of~~] no longer [~~more~~] than three years, except for [~~not including~~] any extension allowed by §52.39(e) of this title. [~~agreed to in accordance with §49.208(e).~~]

(106) [~~(95)~~] Public emergency personnel--Personnel of a sheriff's department, police department, emergency medical service, or fire department.

(107) [~~(96)~~] Recertification survey--A review by HHSC of a program provider with a standard contract to determine if the program provider complies with this chapter [~~the certification standards~~] and will be certified for a new certification period.

(108) [~~(97)~~] Registered nurse (RN)--A person licensed to practice professional nursing in accordance with Texas Occupations Code Chapter 301.

(109) [~~(98)~~] Related condition--A severe and chronic disability that:

(A) is attributed to:

(i) cerebral palsy or epilepsy; or

(ii) any other condition, other than mental illness, found to be closely related to an intellectual disability because the condition results in impairment of general intellectual functioning or adaptive behavior, similar to that of individuals with an intellectual disability, and requires treatment or services similar to those required for individuals with an intellectual disability;

(B) is manifested before the individual reaches age 22;

(C) is likely to continue indefinitely; and

(D) results in substantial functional limitation in at least three of the following areas of major life activity:

(i) self-care;

(ii) understanding and use of language;

(iii) learning;

(iv) mobility;

(v) self-direction; and

(vi) capacity for independent living.

(110) [~~(99)~~] Relative--A person related to another person within the fourth degree of consanguinity or within the second degree of affinity. A more detailed explanation of this term is included in the *HCS Program Billing Requirements.*

(111) [~~(100)~~] Renewal IPC--An IPC developed for an individual in accordance with §263.302(a) of this title (relating to Renewal and Revision of an IPC).

(112) [~~(101)~~] Repeated violation--A violation that is:

(A) based on the same certification standard; and

(B) involves the same HCS Program service or CFC service as a previous violation.

(113) Reportable conduct--includes:

(A) abuse or neglect that causes or may cause death or harm to an individual;

(B) sexual abuse of an individual;

(C) financial exploitation of an individual in an amount of $25 or more; and

(D) emotional, verbal, or psychological abuse that causes harm to an individual.

(114) Reporter--The person, who may be anonymous, making an allegation to HHSC CII.

(115) [~~(102)~~] Residence--A host home/companion care, three-person, or four-person residence, as defined by the *HCS Program Billing Requirements*.

(116) Residential caregiver--A person who provides community-based residential care services.

(117) [~~(103)~~] Residential survey--A review of a residence by HHSC to determine if the program provider complies with §565.23 of this chapter (relating to Residential Requirements).

(118) [~~(104)~~] Responder--A person designated to respond to an alarm call activated by an individual.

(119) [~~(105)~~] Restraint--A manual method or a physical or mechanical device, material, or equipment that is attached to or placed next to the body, which cannot be removed easily and restricts freedom of movement or normal access to the body. Restraint includes a personal hold. [~~Any of the following:~~]

[~~(A) a physical restraint;~~]

[~~(B) a mechanical restraint; or~~]

[~~(C) a chemical restraint.~~]

(120) [~~(106)~~] Revised IPC--An initial IPC or a renewal IPC that is revised during an IPC year, in accordance with §263.302(b) or (d) of this title, to add a new HCS Program service or CFC service or change the amount of an existing service.

(121) [~~(107)~~] Seclusion--The involuntary placement of an individual alone in an area from which the individual is prevented from leaving.

(122) Serious physical injury--Any injury determined to be serious by the appropriate medical personnel. Examples of serious physical injury include:

(A) fracture;

(B) dislocation of any joint;

(C) internal injury;

(D) contusion larger than two and one-half inches in diameter;

(E) concussion;

(F) second- or third-degree burn; or

(G) any laceration requiring sutures or wound closure.

(123) [~~(108)~~] Service backup plan--A plan that ensures continuity of critical program services if service delivery is interrupted.

(124) [~~(109)~~] Service coordination--A service as defined in Chapter 331 of this title (relating to LIDDA Service Coordination).

(125) [~~(110)~~] Service coordinator--An employee of a LIDDA who provides service coordination to an individual.

(126) [~~(111)~~] Service planning team--One of the following:

(A) for an applicant or individual other than one described in subparagraphs (B) or (C) of this paragraph, a planning team consisting of:

(i) an applicant or[,] individual, and LAR;

(ii) service coordinator; and

(iii) other persons chosen by the applicant, individual, or LAR, for example, a staff member of the program provider, a family member, a friend, or a teacher;

(B) for an applicant 21 years of age or older who is residing in a nursing facility and enrolling in the HCS Program, a planning team consisting of:

(i) the applicant and LAR;

(ii) a service coordinator;

(iii) a staff member of the program provider;

(iv) providers of specialized services;

(v) a nursing facility staff person who is familiar with the applicant's needs;

(vi) other persons chosen by the applicant or LAR, for example, a family member, friend, or teacher; and

(vii) at the discretion of the LIDDA, and with the approval of the individual or LAR, other persons who are directly involved in the delivery of services to persons with an intellectual or developmental disability; or

(C) for an individual 21 years of age or older who has enrolled in the HCS Program from a nursing facility or has enrolled in the HCS Program as a diversion from admission to a nursing facility, for 365 calendar days after enrollment, a planning team consisting of:

(i) the individual and LAR;

(ii) a service coordinator;

(iii) a staff member of the program provider;

(iv) other persons chosen by the individual or LAR, for example, a family member, a friend, or a teacher; and

(v) with the approval of the individual or LAR, other persons who are directly involved in the delivery of services to persons with an intellectual or developmental disability.

(127) [~~(112)~~] Service provider--A person, who may be a staff member, who directly provides an HCS Program service or CFC service to an individual.

(128) [~~(113)~~] Sexual abuse--Any sexual activity, including: [~~Any of the following:~~]

(A) kissing an individual with sexual intent; [~~sexual exploitation of an individual;~~]

(B) hugging an individual with sexual intent; [~~non-consensual or unwelcomed sexual activity with an individual; or~~]

(C) stroking an individual with sexual intent; [~~consensual sexual activity between an individual and a service provider, staff member, volunteer, or controlling person, unless a consensual sexual relationship with an adult individual existed before the service provider, staff member, volunteer, or controlling person became a service provider, staff member, volunteer, or controlling person.~~]

(D) fondling an individual with sexual intent;

(E) engaging with an individual in:

(i) sexual conduct, as defined in Texas Penal Code §43.01; or

(ii) any activity that is obscene, as defined in the Texas Penal Code §43.21;

(F) requesting, soliciting, or compelling an individual to engage in:

(i) sexual conduct, as defined in Texas Penal Code §43.01; or

(ii) any activity that is obscene, as defined in the Texas Penal Code §43.21;

(G) in the presence of an individual:

(i) engaging in or displaying any activity that is obscene, as defined in Texas Penal Code §43.21; or

(ii) requesting, soliciting, compelling another person to engage in any activity that is obscene, as defined in Texas Penal Code §43.21;

(H) committing sexual exploitation is defined as a pattern, practice, or scheme of conduct against an individual, which may include sexual contact, that can reasonably be construed as being for the purposes of sexual arousal or gratification or sexual abuse of any person and does not include obtaining information about a patient's sexual history within standard accepted clinical practice;

(I) committing sexual assault, as defined in Texas Penal Code §22.011, against an individual;

(J) committing aggravated sexual assault, as defined in Texas Penal Code §22.021, against an individual; or

(K) causing, permitting, encouraging, engaging in, or allowing the photographing, filming, videotaping, or depicting of an individual if the direct provider knew or should have known that the resulting photograph, film, videotape, or depiction of the individual is obscene, as defined in Texas Penal Code §43.21, or is pornographic.

~~[(114) Sexual activity--An activity that is sexual in nature, including kissing, hugging, stroking, or fondling with sexual intent.]~~

~~[(115) Sexual exploitation--A pattern, practice, or scheme of conduct against an individual that can reasonably be construed as being for the purposes of sexual arousal or gratification of any person:]~~

~~[(A) which may include sexual contact; and]~~

~~[(B) does not include obtaining information about an individual's sexual history within standard accepted clinical practice.]~~

(129) [~~(116)~~] Specialized services--The services defined in §303.102 of this title (relating to Definitions).

(130) [~~(117)~~] SSI--Supplemental Security Income.

(131) SSLC--State-supported living center. A structured residential facility operated by HHSC that provides medical treatment, specialized therapy, and training in personal, social, and vocational skills to persons with an intellectual disability. An SSLC does not include a community-based facility owned by HHSC.

(132) [~~(118)~~] Staff member--An employee or contractor of an HCS Program provider.

(133) [~~(119)~~] Standard contract--A contract that HHSC enters into with a program provider in accordance with §52.41 of this title [~~40 TAC §49.209~~] (relating to Standard Contract) that has a term of no more than five years, not including any extension agreed to in accordance with §52.41(d) of this title [~~40 TAC §49.209(d)~~].

(134) [~~(120)~~] State Medicaid claims administrator--The entity contracting with the state as the Medicaid claims administrator and fiscal agent.

~~[(121) State supported living center--A state-supported and structured residential facility operated by HHSC to provide to persons with an intellectual disability a variety of services, including medical treatment, specialized therapy, and training in acquiring personal, social, and vocational skills, but does not include a community-based facility owned by HHSC.]~~

(135) Substantiated--A preponderance of evidence supports that the alleged incident happened.

(136) [~~(122)~~] Support consultation--A service, as defined in §264.103 of this title [~~40 TAC §41.103~~], that is provided to an individual participating in the CDS option at the request of the individual or LAR.

(137) [~~(123)~~] Survey--An initial certification survey, a recertification survey, a follow-up survey, residential survey, and an intermittent survey.

(138) [~~(124)~~] System check--A test of the CFC ERS equipment to determine if:

(A) the individual can successfully activate an alarm call; and

(B) the equipment is working properly.

(139) Theft--As defined in Texas Penal Code Chapter 31.

(140) [~~(125)~~] Three-person residence--A residence:

(A) that a program provider leases or owns;

(B) in which at least one person but no more than three persons receive:

(i) residential support;

(ii) supervised living;

(iii) a non-HCS Program service like residential support or supervised living (for example, services funded by DFPS or by a person's own resources); or

(iv) respite;

(C) that is not the residence of any person other than a service provider, the service provider's spouse, a person with whom the service provider has a spousal relationship, or a person described in subparagraph (B) of this paragraph; and

(D) that is not a dwelling described in §263.101(a)(5) of this title.

(141) Transition assistance services (TAS)--Services provided to assist an applicant in setting up a household in the community before being discharged from a nursing facility, an ICF/IID, or a GRO and before enrolling in the HCS Program. TAS consists of:

(A) for an applicant whose proposed initial IPC does not include residential support, supervised living, or host home/companion care:

(i) paying security deposits required to lease a home, including an apartment, or to establish utility services for a home;

(ii) purchasing essential furnishings for a home, including a table, a bed, chairs, window blinds, eating utensils, and food preparation items;

(iii) paying for expenses required to move personal items, including furniture and clothing, into a home;

(iv) paying for services to ensure the health and safety of the applicant in a home, including pest eradication, allergen control, or a one-time cleaning before occupancy; and

(v) purchasing essential supplies for a home, including toilet paper, towels, and bed linens; and

(B) for an applicant whose initial proposed IPC includes residential support, supervised living, or host home/companion care:

(i) purchasing bedroom furniture;

(ii) purchasing personal linens for the bedroom and bathroom; and

(iii) paying for allergen control.

(142) [~~(126)~~] Transition plan--As described in §303.102 of this title, a written plan developed by the service planning team for an applicant who is residing in a nursing facility and enrolling in the HCS Program. A transition plan includes essential and nonessential services and supports the applicant needs to transition from a nursing facility to a community setting.

~~[(127) Transition assistance services (TAS)--Services provided to assist an applicant in setting up a household in the community before being discharged from a nursing facility, an ICF/IID, or a GRO and before enrolling in the HCS Program. TAS consists of:]~~

~~[(A) for an applicant whose proposed initial IPC does not include residential support, supervised living, or host home/companion care:]~~

~~*(i)* paying security deposits required to lease a home, including an apartment, or to establish utility services for a home;]~~

~~*(ii)* purchasing essential furnishings for a home, including a table, a bed, chairs, window blinds, eating utensils, and food preparation items;]~~

~~*(iii)* paying for expenses required to move personal items, including furniture and clothing, into a home;]~~

~~*(iv)* paying for services to ensure the health and safety of the applicant in a home, including pest eradication, allergen control, or a one-time cleaning before occupancy; and]~~

~~*(v)* purchasing essential supplies for a home, including toilet paper, towels, and bed linens; and]~~

~~[(B) for an applicant whose initial proposed IPC includes residential support, supervised living, or host home/companion care:]~~

~~*(i)* purchasing bedroom furniture;]~~

~~*(ii)* purchasing personal linens for the bedroom and bathroom; and]~~

~~*(iii)* paying for allergen control.]~~

(143) [~~(128)~~] Transportation plan--A written plan based on person-directed planning and developed with an applicant or individual using the HHSC Individual Transportation Plan form found on the HHSC website. A transportation plan is used to document how transportation as a community support [~~supported home living~~] activity will be delivered to support an individual's desired outcomes and purposes for transportation as identified in the PDP.

(144) Unsubstantiated--A preponderance of evidence does not support that the alleged incident happened.

(145) [~~(129)~~] Vendor hold--A temporary suspension of payments that are due to a program provider under a contract.

(146) Victim--An individual receiving services who is confirmed to have been abused, neglected, or exploited.

~~[(130) Verbal or emotional abuse--Any act or use of verbal or other communication, including gestures:]~~

~~[(A) to:]~~

~~*(i)* harass, intimidate, humiliate, or degrade an individual; or]~~

~~*(ii)* threaten an individual with physical or emotional harm; and]~~

~~[(B) that:]~~

~~*(i)* results in observable distress or harm to the individual; or]~~

~~*(ii)* is of such a serious nature that a reasonable person would consider it harmful or a cause of distress.]~~

(147) [~~(131)~~] Violation--A finding by HHSC that a program provider is not or was not in compliance with a certification standard.

(148) [~~(132)~~] Volunteer--A person who works for a program provider without compensation, other than reimbursement for actual expenses.

(149) [~~(133)~~] Widespread--The scope of a violation that:

(A) is pervasive throughout the services provided by the program provider; or

(B) represents a systemic failure by the program provider that affects or has the potential to affect a large portion of, or all, individuals.

(150) [~~(134)~~] Willfully interfering--Acting or not acting to intentionally prevent, interfere with, or impede, or to attempt to intentionally prevent, interfere with, or impede.

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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Stephanie Tourk
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Health and Human Services Commission
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SUBCHAPTER E. CERTIFICATION STANDARDS: SERVICE DELIVERY

26 TAC §565.15

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §524.0151, 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 Human Resources Code Chapter 48, which provides authority to investigate the abuse, neglect, or exploitation of an elderly person or person with a disability and to provide protective services to that person; and Texas Family Code Chapter 261, which provides authority to investigate the abuse, neglect, or exploitation of children and to provide protective services to children.

The amendment implements Texas Government Code §524.0151, Texas Human Resources Code Chapter 48, and Texas Family Code Chapter 261.

§565.15. Individuals under the Age of 22.
The program provider must:

(1) request from and encourage the parent or legally authorized representative (LAR) of an individual under 22 years of age receiving supervised living or residential support to provide the program provider with the following information:

(A) the parent's or LAR's:

(i) name;

(ii) address;

(iii) telephone number;

(iv) driver license number and state of issuance or personal identification card number issued by the Department of Public Safety; and

(v) place of employment and the employer's address and telephone number;

(B) name, address, and telephone number of a relative of the individual or other person whom the Texas Health and Human Services Commission (HHSC) or the program provider may contact in an emergency situation, a statement indicating the relationship between that person and the individual, and at the parent's or LAR's option:

(i) that person's driver license number and state of issuance or personal identification card number issued by the Department of Public Safety; and

(ii) the name, address, and telephone number of that person's employer; and

(C) a signed acknowledgement of responsibility stating that the parent or LAR agrees to:

(i) notify the program provider of any changes to the contact information submitted; and

(ii) make reasonable efforts to participate in the individual's life and in planning activities for the individual;

(2) inform the parent or LAR that if the information described in paragraph (1) of this subsection is not provided or is not accurate and the service coordinator and HHSC are unable to locate the parent or LAR as described in §263.901(e)(33) [~~§263.902(e)(33)~~] of this title (relating to LIDDA Requirements for Providing Service Coordination in the HCS Program [~~Permanency Planning~~]) and §263.903 of this title (relating to Referral from HHSC to DFPS), HHSC refers the case to DFPS;

(3) for an individual under 22 years of age receiving supervised living or residential support:

(A) make reasonable accommodations to promote the participation of the LAR in all planning and decision-making regarding the individual's care, including participating in meetings conducted by the program provider;

(B) take the following actions to assist a local intellectual and developmental disability authority (LIDDA) in conducting permanency planning:

(i) cooperate with the LIDDA responsible for conducting permanency planning by:

(I) allowing access to an individual's records or providing other information in a timely manner, as requested by the local authority or HHSC;

(II) participating in meetings to review the individual's permanency plan; and

(III) identifying, in coordination with the individual's LIDDA, activities, supports, and services that can be provided by the family, LAR, program provider, or the LIDDA to prepare the individual for an alternative living arrangement;

(ii) encourage regular contact between the individual and the LAR and, if desired by the individual and LAR, between the individual and advocates and friends in the community to continue supportive and nurturing relationships;

(iii) keep a copy of the individual's current permanency plan in the individual's record; and

(iv) refrain from providing the LAR with inaccurate or misleading information regarding the risks of moving the individual to another institutional setting or to a community setting;

(C) if an emergency situation occurs, attempt to notify the parent or LAR and service coordinator as soon as the emergency situation allows and request a response from the parent or LAR; and

(D) if the program provider determines it is unable to locate the parent or LAR, notify the service coordinator of such determination.

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

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SUBCHAPTER F. CERTIFICATION STANDARDS: QUALITY ASSURANCE

26 TAC §§565.25, 565.31, 565.32

STATUTORY AUTHORITY

The amendments and new section are authorized by Texas Government Code §524.0151, 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 Human Resources Code Chapter 48, which provides authority to investigate the abuse, neglect, or exploitation of an elderly person or person with a disability and to provide protective services to that person; and Texas Family Code Chapter 261, which provides authority to investigate the abuse, neglect, or exploitation of children and to provide protective services to children.

The amendments and new section implement Texas Government Code §524.0151, Texas Human Resources Code Chapter 48, and Texas Family Code Chapter 261.

§565.25. Programmatic Requirements.

(a) Before providing services to an individual in a residence in which supervised living or residential support is provided, and annually thereafter, the program provider must:

(1) conduct an on-site inspection to ensure that, based on the individual's needs, the environment is safe, accessible and suited for the individual's abilities, and complies with applicable federal, state, and local regulations for the community in which the individual lives;

(2) complete any action identified in the on-site inspection for a residence in which supervised living or residential support will be provided:

(A) before an individual moves in; or

(B) within 30 calendar days if an individual is already in the residence; and

(C) document justification for any actions that cannot be completed before the individual moving in or within 30 calendar days with a plan for completion.

(b) Before providing services to an individual in a residence in which host home/companion care is provided and quarterly thereafter, the program provider must:

(1) conduct an on-site inspection to ensure that, based on the individual's needs, the environment is safe, accessible, and suited for the individual's abilities and needs, and complies with applicable federal, state, and local regulations for the community in which the individual lives; and

(2) require proof of completion of any action identified in the on-site inspection for a residence in which host home/companion care will be provided to ensure that the residence meets the needs of the individual:

(A) before an individual moves in; or

(B) within 30 calendar days if an individual is already in the residence; and

(C) document justification for any actions that cannot be completed before the individual moving in or within 30 calendar days and include a plan for completion.

(c) The program provider must establish an ongoing consumer/advocate advisory committee composed of individuals, legally authorized representatives (LARs), community representatives, and family members that meets at least quarterly. The committee:

(1) at least annually, reviews the information provided to the committee by the program provider in accordance with subsection (i)(6) [~~(l)(6)~~] of this section; and

(2) based on the information reviewed, makes recommendations to the program provider for improvements to the processes and operations of the program provider.

(d) The program provider must make available all records, reports, and other information related to the delivery of HCS Program and CFC services as requested by the Texas Health and Human Services Commission (HHSC), other authorized agencies, or the Centers for Medicare & [~~and~~] Medicaid Services and deliver such items, as requested, to a specified location or deliver [~~delivered~~] electronically if available.

(e) The program provider must establish a procedure to assess at least annually the satisfaction of all individuals and LARs in the program provider's services and act within 60 calendar days regarding any areas of dissatisfaction.

[~~(f) The program provider must comply with 40 Texas Administrative Code (TAC) §49.309 (relating to Complaint Process).~~]

(f) [~~(g)~~] In all respite facilities and all residences in which a service provider of residential assistance or the program provider hold a property interest, the program provider must post in a conspicuous location:

(1) the name, address, and telephone number of the program provider;

(2) the effective date of the contract; and

(3) the name of the legal entity named on the contract.

[~~(h) A program provider must report the death of an individual:~~]

[~~(1) to HHSC and the local intellectual and developmental disability authority by the end of the next business day after the program provider becomes aware of the death; and~~]

[~~(2) if the program provider reasonably believes that the LAR does not know of the individual's death, to the LAR as soon as possible, but not later than 24 hours after the program provider becomes aware of the death.~~]

[~~(i) A program provider must not retaliate against:~~]

[~~(1) a staff member, service provider, individual, or other person who files a complaint, presents a grievance, or otherwise provides good faith information relating to the possible abuse, neglect, or exploitation of an individual, including:~~]

[~~(A) use of seclusion; and~~]

[~~(B) use of a restraint not in compliance with federal and state laws, rules, and regulations; and~~]

[~~(2) an individual because a person on behalf of the individual files a complaint, presents a grievance, or otherwise provides good faith information relating to the possible abuse, neglect, or exploitation of an individual, including:~~]

[~~(A) use of seclusion; and~~]

[~~(B) use of a restraint not in compliance with federal and state laws, rules, and regulations.~~]

(g) [~~(j)~~] A program provider must enter critical incident data in the HHSC Critical Incident Management System (CIMS) by [~~data system no later than~~] the last calendar day of the month after [~~that follows~~] the month being reported. Entry must follow the HCS Provider User Guide. Critical incidents include: [~~in accordance with HHSC guidance found on the HHSC website~~]

(1) medication errors committed by provider agency staff or occurring under the supervision of provider agency staff;

(2) serious physical injuries;

(3) total number of deaths;

(4) unusual deaths;

(5) total number and types of restraints;

(6) number of 911 calls made by staff;

(7) number of emergency room and hospital admissions;

(8) number of allegations of ANE;

(9) number of substantiated allegations of ANE;

(10) number of unauthorized departures; and

(11) total number of arrests of individuals by law enforcement.

(h) [~~(k)~~] A program provider must ensure that:

(1) the name and phone number of an alternate to the Chief Executive Officer (CEO) of the program provider is entered in the HHSC online portal [~~data system~~]; and

(2) the alternate to the CEO:

(A) performs the duties of the CEO during the CEO's absence; and

(B) acts as the contact person in an HHSC investigation if the CEO is named as an alleged perpetrator of abuse, neglect, or exploitation of an individual, and complies with §565.31 [~~(d) - (f)~~] of this subchapter (relating to Reporting [~~Requirements Related to the~~] Abuse, Neglect, and Exploitation).

(i) [~~(l)~~] At least annually, the program provider must:

(1) evaluate information about the satisfaction of individuals and LARs with the program provider's services and identify program process improvements to increase the satisfaction;

(2) review complaints and critical incidents, as described in subsection (g) of this section [~~40 TAC §49.309~~], and identify program process improvements to reduce the need for filing complaints and occurrences of critical incidents;

(3) review all final investigative reports from HHSC and, based on the review, identify program process improvements that help prevent the occurrence of abuse, neglect, and exploitation and improve the delivery of services;

(4) review the reasons for terminating HCS Program or CFC services and identify any related need for program process improvements;

(5) evaluate critical incident data described in subsection (g) [~~subsection (j)~~] of this section, compare the program provider's use of restraint to aggregate data provided by HHSC on the HHSC website, and identify program process improvements that help prevent the reoccurrence of restraints and improve service delivery;

(6) provide all information the program provider reviewed, evaluated, and created as described in paragraphs (1) - (5) of this subsection to the consumer/advocate advisory committee required by subsection (c) of this section;

(7) implement any program process improvements identified by the program provider in accordance with this subsection; and

(8) review recommendations made by the consumer/advocate advisory committee as described in subsection (c)(2) of this section and implement the recommendations approved by the program provider.

(j) [~~(m)~~] The program provider must ensure that all personal information concerning an individual is kept confidential, such as lists of names, addresses, and records obtained by the program provider, and that the use or disclosure of such information and records is limited to purposes directly connected with the administration of the program provider's HCS Program or provision of CFC services and is otherwise neither directly nor indirectly used or disclosed unless the consent of the individual to whom the information applies or the individual's LAR is obtained beforehand.

(k) [~~(n)~~] The program provider must include the individual or LAR in planning the individual's residential relocation, except in cases of emergency.

§565.31. Reporting [~~Requirements Related to~~] Abuse, Neglect, and Exploitation.

(a) A program provider must:

(1) ensure that an individual and LAR [~~legally authorized representative(LAR)~~], at the time the individual begins receiving a [~~Home and Community-based Services (HCS)~~] Program or CFC [~~Community First Choice(CFC)~~] service and at least once each year after that [~~annually thereafter~~], are:

(A) informed of how to report allegations of ANE [~~abuse, neglect, or exploitation~~] to HHSC Complaint and Incident Intake (CII);[~~:~~]

[~~(i)~~ ~~the Texas Department of Family and Protective Services(DFPS)and given the toll-free telephone number, 1-800-647-7418, in writing; and~~]

[~~(ii)~~ ~~HHSC Complaint and Incident Intake (CII) by calling the toll-free telephone number, 1-800-458-9858; and~~]

(B) educated on how to protect [~~about protecting~~] the individual from ANE [~~abuse, neglect, and exploitation~~]; and

(C) informed about the individual's rights, including the right to be safe from ANE;

(2) ensure that each staff member, service provider, and volunteer are:

(A) trained and informed about [~~knowledgeable of~~]:

(i) how to report ANE, as described in subsection (b) of this section, to HHSC CII [~~acts that constitute abuse, neglect, and exploitation~~];

(ii) signs and symptoms of ANE; [~~abuse, neglect, and exploitation; and~~]

(iii) ways [~~methods~~] to prevent ANE [~~abuse, neglect, and exploitation~~]; and

(iv) if needed, how to help an individual or visitor report ANE to HHSC CII by reporting through the online portal or by calling 1-800-458-9858;

(B) provided written instructions described in subsection (b) of this section;

[~~(B) instructed to report to DFPS immediately, but not later than one hour after having knowledge or suspicion, that an individual has been or is being abused, neglected, or exploited, by:~~]

[(i) ~~calling the DFPS Abuse Hotline toll-free telephone number, 1-800-647-7418; or~~]

[(ii) ~~using the DFPS Abuse Hotline website; and~~]

[~~(C) given the instructions described in subparagraph (B) of this paragraph in writing;~~]

(3) ensure that each program provider, staff member, service provider, and volunteer signs a statement acknowledging [~~sign an acknowledgement~~] that [~~they understand~~] all individuals must live free from ANE [~~of abuse, neglect, and exploitation~~]; and

(4) carry out [~~conduct~~] the activities described in paragraphs [~~paragraph~~] (2) and (3) of this subsection before a staff member, service provider, or volunteer starts [~~assumes~~] job duties and at least once a year after that [~~annually thereafter~~].

(b) A program provider, staff member, service provider, volunteer, or controlling person that suspects or learns that an individual has been or is being subjected to ANE while in the care of a provider (by someone other than another individual receiving services), must report the ANE to HHSC CII. The report must be made immediately, and no later than one hour after suspecting or learning of alleged ANE. The following information must be reported to HHSC CII under this subsection:

(1) name, age, and address of the individual;

(2) name and address of the person responsible for the care of the individual, if available;

(3) nature and extent of the individual's condition, to include their physical, mental, and emotional status;

(4) basis of the reporter's knowledge; and

(5) any other relevant information.

[~~(b) Except as provided by §559.241(a) of this title (relating to Reporting Abuse, Neglect, Exploitation, or Incidents to HHSC), if a program provider, staff member, service provider, volunteer, or controlling person knows or suspects an individual is being or has been abused, neglected, or exploited, the program provider must report or ensure that the person with knowledge or suspicion reports the allegation of abuse, neglect, or exploitation to DFPS immediately, but not later than one hour after having knowledge or suspicion, by:~~]

[~~(1) calling the DFPS Abuse Hotline toll-free telephone number, 1-800-647-7418; or~~]

[~~(2) using the DFPS Abuse Hotline website.~~]

(c) A program provider must:

(1) report the death of an individual:

(A) to HHSC CII and the local intellectual and developmental disability authority (LIDDA) by the end of the next business day after the program provider becomes aware of the death; and

(B) to the LAR if the program provider reasonably believes that the LAR does not know of the individual's death. The program provider must make this report as soon as possible, but not later than 24 hours after the program provider becomes aware of the death; and

(2) ensure that a person who knows or suspects that an individual not receiving services from the program provider or another HHSC-regulated provider has experienced ANE reports the suspected ANE to DFPS immediately, but no later than one hour after acquiring the knowledge or suspicion by:

(A) calling the DFPS Abuse Hotline toll-free telephone number, 1-800-647-7418; or

(B) using the DFPS Abuse Hotline website.

[~~(c) If a report required by subsection (b) of this section alleges abuse, neglect, or exploitation by a person who is not a service provider, staff member, volunteer, or controlling person, a program provider must:~~]

[~~(1) assess the individual and allegation and as necessary:~~]

[~~(A) obtain appropriate medical or psychological services for the individual; and~~]

[~~(B) assist in obtaining ongoing medical or psychological services for the individual;~~]

[~~(2) discuss with the individual or LAR safety measures, including alternative residential settings or individualized skills and socialization providers that may help ensure the individual's safety;~~]

[~~(3) when taking the actions described in paragraphs (1) and (2) of this subsection, avoid compromising the investigation or further traumatizing the individual; and~~]

[~~(4) preserve and protect evidence related to the allegation.~~]

(d) The program provider must create and follow written policies and procedures for preventing, detecting, and reporting ANE.

(e) The program provider must coordinate services with the licensed individualized skills and socialization provider. Coordination of services must include information about ANE.

(f) A program provider must not retaliate against:

(1) a staff member, service provider, individual, or other person who reports an allegation of ANE, including reporting the use of:

(A) seclusion; and

(B) a restraint that does not follow federal and state laws, rules, and regulations; and

(2) an individual because a person acts for the individual to report an allegation of ANE, including reporting the use of:

(A) seclusion; and

(B) a restraint that does not follow federal and state laws, rules, and regulations.

(g) [~~(d)~~] If a report required by subsection (b) of this section alleges ANE [~~abuse, neglect, or exploitation~~] by a service provider, staff member, volunteer, or controlling person,[~~; or if a program provider is notified by HHSC of an allegation of abuse, neglect, or exploitation by a service provider, staff member, volunteer, or controlling person,~~] the program provider must follow these steps:

(1) within five business days after making a report described in subsection (b) of this section, investigate the alleged ANE and send a written investigation report on Form 3613A, Provider Investigation Report, to HHSC CII, or submit the form through the online portal;

(2) [~~(1)~~] assess the individual and allegation as needed [~~necessary~~]:

(A) obtain appropriate medical or psychological services for the individual; and

(B) obtain [assist in obtaining] ongoing medical or psychological services for the individual;

(3) [(2)] take actions to keep [secure] the [safety of the] individual safe;[, including]

(4) if necessary, make sure [ensuring that] the alleged perpetrator does not have contact with the individual or any other individual until HHSC finishes [completes] the investigation;

(5) [(3)] when taking the actions described in paragraphs (2) [(1)] and (3) [(2)] of this subsection, avoid interfering with [compromising] the investigation or causing further harm to [traumatizing] the individual;

(6) [(4)] keep [preserve] and protect evidence related to the allegation; and

(7) [(5)] notify[, as soon as possible, but no later than 24 hours after the program provider reports or is notified of the allegation,] the individual, the LAR, and the service coordinator of:

(A) the allegation report; and

(B) the actions the program provider has taken or will take based on the allegation, the condition of the individual, and the nature and severity of any harm to the individual, including the actions required by paragraph (3) [(2)] of this subsection.

(C) The notification must be as soon as possible, but no later than 24 hours after the program provider reports or learns about an allegation.

(h) [(e)] During an HHSC investigation [of an alleged perpetrator who is a service provider, staff member, volunteer, or controlling person], a program provider must:

(1) cooperate with the investigation as requested by HHSC, including providing documentation and participating in interviews [an interview];

(2) provide HHSC access to:

(A) sites owned, operated, or controlled by the program provider;

(B) individuals, service providers, staff members, volunteers, and controlling persons; and

(C) evidence pertinent to the investigation of the allegation; [and]

(3) ensure that staff members, service providers, volunteers, and controlling persons comply with paragraphs (1) and (2) of this subsection; and[.]

[(f)] [After a program provider receives a final investigative report from HHSC for an investigation described in subsection (e) of this section, the program provider must:]

[(1) if the allegation of abuse, neglect, or exploitation is confirmed by HHSC:]

[(A) review the report, including any concerns and recommendations by HHSC; and]

[(B) take action within the program provider's authority to prevent the reoccurrence of abuse, neglect or exploitation, including disciplinary action against the service provider, staff member, or volunteer confirmed to have committed abuse, neglect, or exploitation;]

[(2) if the allegation of abuse, neglect, or exploitation is unconfirmed, inconclusive, or unfounded:]

[(A) review the report, including any concerns and recommendations by HHSC; and]

[(B) take appropriate action within the program provider's authority, to ensure the individual's safety, as necessary;]

[(3) immediately, but not later than five calendar days after the date the program provider receives the HHSC final investigative report:]

[(A) notify the individual, the LAR, and the service coordinator of:]

[(i) the investigation finding; and]

[(ii) the action taken by the program provider in response to the HHSC investigation as required by paragraphs (1) and (2) of this subsection; and]

[(B) notify the individual or LAR of:]

[(i) the process to appeal the investigation finding as described in Chapter 711, Subchapter J of this title (relating to Appealing the Investigation Finding); and]

[(ii) the process for requesting a copy of the investigative report from the program provider;]

[(4) within 14 calendar days after the date the program provider receives the final investigative report, complete and send to HHSC the Form 8494, Notification Regarding an Investigation of Abuse, Neglect or Exploitation, located on the HHSC website; and]

(4) [(5)] upon request of the individual or LAR, provide to the individual or LAR a copy of the HHSC [final] investigative report after removing any information that would reveal the identity of the reporter or of any individual who is not the alleged victim.

[(g) The program provider must ensure the coordination of services with the licensed individualized skills and socialization provider, including information regarding abuse, neglect, and exploitation.]

§565.32. Texas Health and Human Services Commission Prioritization, Notification, and Report Provisions of Abuse, Neglect, and Exploitation Investigations.

(a) HHSC initiates an investigation for complaint or incident intakes as follows.

(1) Priority 1 (P1), which is an immediate threat to the health and safety of an individual. Investigation of alleged ANE must begin as soon as possible and no later than 24 hours after HHSC CII receives the intake.

(2) Priority 2 (P2), which is a non-immediate threat-high. Investigation of alleged ANE must begin no later than 18 calendar days after HHSC CII receives the intake. Priority 2 is assigned when the present and ongoing threat of continued ANE has been removed.

(3) Priority 3 (P3), which is a non-immediate threat-medium. Investigation of alleged ANE must begin no later than 45 calendar days after HHSC CII receives the intake. Priority 3 is assigned if alleged noncompliance with one or more requirements caused no actual physical or psychosocial harm but there is the potential for more than minimal harm to an individual.

(b) HHSC conducts an ANE investigation within the assigned intake priority periods described in subsection (a) of this section.

(c) Upon entrance, an HHSC surveyor or an HHSC team notifies the program provider of the alleged ANE and provides the program provider with:

(1) the type of investigation, complaint, or incident;

(2) the allegation category listed on the intake; and

(3) the names of the alleged perpetrator and alleged victim.

(d) During the investigation, the HHSC surveyor addresses with the program provider the provider's report of ANE, or lack thereof. If the facility has failed to report the ANE incident or complaint to CII, the facility is not in compliance with §565.31(b) of this subchapter.

(e) The HHSC surveyor makes face-to-face contact with the alleged victim within the time periods required by the priority assigned by HHSC CII.

(f) The HHSC surveyor documents the surveyor's findings using Form 3701-A. Form 3701-A includes:

(1) a separate finding for each allegation;

(2) the intake number;

(3) the name of the alleged perpetrator;

(4) whether the allegation is substantiated or unsubstantiated;

(5) whether the staff member is being referred to HHSC Regulatory Enforcement for reportable conduct; and

(6) whether the staff member is being referred to the Texas Board of Nursing.

(g) At the end of the investigation, the HHSC surveyor uses a preponderance of the evidence standard finding. The finding will be either substantiated or unsubstantiated.

(h) At the end of the investigation, the HHSC surveyor conducts an exit conference with the program provider. The purpose of the exit conference is to informally communicate preliminary findings. The HHSC surveyor gives a copy of HHSC Form 3701-A, Preliminary Findings Based on Survey, Inspection or Investigation, to the program provider.

(i) Within 10 business days of the exit conference, HHSC sends the program provider Form 3724, Statement of Violations, with the investigation findings for the visit.

(j) The program provider must promptly notify the alleged victim and the alleged victim's LAR in writing, of:

(1) a final finding made by HHSC;

(2) the process for appealing the final finding as described in subsection (m) of this section; and

(3) the right to request a copy of the final HHSC Form 3724, Statement of Violations, in accordance with the HHSC Open Records Request process.

(k) The program provider must ensure that a perpetrator or alleged perpetrator is notified of a final finding made by HHSC.

(l) HHSC notifies the reporter, in writing, of the following:

(1) a final finding of the investigation; and

(2) the process for appealing the final finding as described in subsection (m) of this section.

(m) If the alleged victim, LAR, or the reporter disagrees with an investigation finding, HHSC provides the opportunity to request an appeal of the investigation finding within 30 calendar days of receiving written notice of the final investigation findings, or with good cause, after 30 calendar days of receiving written notice of the final investigation findings by:

(1) completing the required HHSC form; and

(2) submitting the completed form by email or postal mail to the email address or the mailing address located on the HHSC form; or

(3) calling the HHSC designated phone number located on the HHSC form.

(n) An alleged perpetrator may not request an appeal from HHSC.

(o) An appeal may not challenge the determination that a substantiated finding rises to the level of reportable conduct for purposes of the Search Engine for Multi-Agency Reportable Conduct established under Texas Health and Safety Code Chapter 810.

(p) For each appeal request, HHSC conducts a review of the case. HHSC determines if a reinvestigation is needed to collect additional evidence. If a reinvestigation is carried out, HHSC notifies the alleged victim and LAR, the program provider, and the reporter, of the outcome of the appeal and any reinvestigation in writing.

(q) All reports, records, and working papers used or developed by HHSC in an ANE investigation are confidential and may be released only as provided by federal or state law or this section.

(r) HHSC gives all completed written investigation reports with a finding of substantiated ANE to the appropriate district attorney and law enforcement agency in accordance with applicable law. HHSC also may release these reports to any other governmental agency HHSC deems appropriate to the investigation.

(s) Upon request, the investigative report (with any information concealed that would reveal the identity of the reporter, complainant, informant, any individual receiving services who is not the victim or alleged victim, and any other person whose life or safety might be endangered by the disclosure) may be released by HHSC to the alleged victim or LAR.

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 November 9, 2026.

TRD-202604741
Stephanie Tourk
Deputy Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: December 20, 2026
For further information, please call: (512) 438-3161

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SUBCHAPTER G. HHSC ACTIONS

26 TAC §565.45

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §524.0151, 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 Human Resources Code Chapter 48, which provides authority to investigate the abuse, neglect, or exploitation of an elderly person or person with a disability and to provide protective services to that person; and Texas Family Code Chapter 261, which provides authority to investigate the abuse, neglect, or

exploitation of children and to provide protective services to children.

The amendment implements Texas Government Code §524.0151, Texas Human Resources Code Chapter 48, and Texas Family Code Chapter 261.

§565.45. Administrative Penalties.

(a) HHSC may impose and collect an administrative penalty against a program provider for:

(1) a violation of a certification standard [~~principle~~] that applies to a program provider; or [~~and~~]

(2) any of the following:

(A) willfully interfering with the work of a representative of HHSC or the enforcement of this subchapter, which may include:

(i) making a false statement of material fact that the program provider knows or should know is false with respect to a matter under investigation by HHSC; and

(ii) falsifying documentation, including documenting the provision of a service before the service has been provided; or

(B) failing to pay an administrative penalty within 10 calendar days after the date the assessment of the penalty becomes final.

(b) The range of the administrative penalty that may be imposed against a program provider each day for a violation described in subsection (a)(1) of this section is based on the scope and severity of the violation and whether it is an initial or repeated violation, as set forth in the following figure:
Figure: 26 TAC §565.45(b)
[~~Figure: 26 TAC §565.45(b)~~]

(c) In determining the amount of an administrative penalty within a range, HHSC considers:

(1) the seriousness of the violation, including:

(A) the nature, circumstances, extent, and gravity of the violation; and

(B) the hazard to the health or safety of individuals resulting from the violation;

(2) the program provider's history of previous violations;

(3) whether the program provider:

(A) had prior knowledge of the violation, including whether the program provider identified the violation through the program provider's internal quality assurance process; and

(B) made any efforts to mitigate or correct the identified violation;

(4) the penalty amount necessary to deter future violations; and

(5) any other matter that justice may require.

(d) If HHSC determines that a violation is not a critical violation, HHSC allows a program provider one opportunity to correct the violation to avoid the imposition of an administrative penalty. If HHSC determines that a violation is a critical violation, HHSC does not allow a program provider an opportunity to correct the violation before HHSC imposes an administrative penalty.

(e) If HHSC imposes an administrative penalty for a violation described in subsection (a)(1) of this section, the administrative penalty begins accruing:

(1) for a critical violation, on the date HHSC identifies the violation; or

(2) for a violation that is not critical, on the date of the exit conference of the post 45-day follow-up survey.

(f) An administrative penalty accrues each day until the earliest of the following:

(1) the program provider completes corrective action for that violation, as determined by HHSC;

(2) HHSC imposes a vendor hold for that violation; or

(3) HHSC withholds payments as the result of a proposed contract termination.

(g) If the program provider demonstrates that corrective action is complete on the same day an administrative penalty begins accruing, HHSC imposes an administrative penalty for one day.

(h) For an administrative penalty imposed in accordance with subsection (a)(2) of this section:

(1) HHSC imposes the penalty no more than once per survey;

(2) HHSC does not allow a program provider an opportunity to correct the action before imposing the penalty; and

(3) the amount of the penalty is $1000.

(i) If HHSC imposes an administrative penalty against a program provider in accordance with subsection (a) of this section, HHSC does not, at the same time, impose a vendor hold or otherwise withhold contract payments from the program provider for the same violation, action, or failure to 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 November 9, 2026.

TRD-202604742
Stephanie Tourk
Deputy Chief Counsel
Health and Human Services Commission
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For further information, please call: (512) 438-3161

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CHAPTER 566. TEXAS HOME LIVING (TXHML) PROGRAM AND COMMUNITY FIRST CHOICE (CFC) CERTIFICATION STANDARDS

The executive commissioner of the Texas Health and Human Services Commission (HHSC) proposes new §566.2, concerning Purpose; amendments to §566.3, concerning Definitions; §566.11, concerning Certification Principles: Quality Assurance; §566.15, concerning Certification Principles: Requirements Related to the Abuse, Neglect, and Exploitation of an Individual; and §566.17, concerning Other Program Provider Requirements; and repeal of §566.13, concerning Certification Principles: Prohibitions.

BACKGROUND AND PURPOSE

The purpose of the proposal is to implement House Bill (HB) 4696, 88th Legislature, Regular Session, 2023, which amended Texas Human Resources Code Chapter 48, Texas Family Code Chapter 261, and Texas Health and Safety Code Chapter 253. HB 4696 reassigned responsibility for investigations of abuse, neglect, and exploitation from the Texas Department of Family Protective Services (DFPS) to HHSC. The rule proposal updates language and terminology to reflect the move from DFPS to HHSC. The rule proposal also requires program providers to create policies and procedures related to abuse, neglect, and exploitation of an individual, and to report suspected abuse, neglect, and exploitation of an individual to HHSC Complaint and Incident Intake.

SECTION-BY-SECTION SUMMARY

Proposed new §566.2 defines the purpose of this chapter to include implementation of statutory requirements for abuse, neglect, and exploitation investigations.

The proposed amendment to §566.3 adds definitions for terms to assist in ANE investigations. The proposed amendment also updates cross references, clarifies definitions, and renumbers the section accordingly.

The proposed amendment to §566.11 updates the section title to Certification Standards: Quality Assurance. The amendment removes requirements related to abuse, neglect, and exploitation, death of a resident, and retaliation because the content has been added to proposed amended §566.15. Examples of critical incidents have been moved from §566.3 to this section. The proposed amendment also updates cross references, adds information about advance directives, and makes non-substantive changes for clarity.

The proposed repeal of §566.13 deletes the rule related to seclusion as no longer necessary, because the content of the rule has been added to proposed amended §566.15.

The proposed amendment to §566.15 updates the section title to Certification Standards: Reporting Abuse, Neglect, and Exploitation. The proposed amendment requires program providers to create policies and procedures to report abuse, neglect, and exploitation to HHSC Complaint and Incident Intake (CII). The proposed amendment also requires program providers, under specified circumstances, to conduct abuse, neglect, and exploitation investigations and send a written investigation report to HHSC CII. The proposed amendment also requires program providers to report abuse, neglect, and exploitation and deaths of an individual to HHSC CII and to submit Form 3613A, Provider Investigation Report, to HHSC upon completing an internal investigation. The proposed amendment also adds language regarding retaliation and seclusion.

The proposed amendment to §566.17 updates the section title to Texas Health and Human Services Commission Prioritization, Notification, and Report Provisions of Abuse, Neglect and Exploitation Investigations. The proposed amendment describes HHSC prioritization, notification, and report provisions of abuse, neglect, and exploitation investigations required to be implemented under Texas Human Resources Code Chapter 48, Subchapter F, and Texas Family Code §261.404. The proposed amendment also sets forth the procedures for appealing the final finding of HHSC's abuse, neglect, and exploitation investigation. The proposed amendment removes language related to advance directives because the content was added to proposed amended §566.11.

FISCAL NOTE

Victoria Grady, Deputy Chief, Finance, 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 regulations;

(6) the proposed rules will expand and repeal existing regulations;

(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

Victoria Grady has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because the proposed rules are updating HHSC processes and do not impose any additional costs on small businesses, micro-businesses, or rural communities.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

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

PUBLIC BENEFIT AND COSTS

Michelle Dionne-Vahalik, Deputy Executive Commissioner, Long-Term Care Regulation, has determined that for each year of the first five years the rules are in effect, the public will benefit from strengthened oversight of Texas Home Living program providers, a single point of entry for submitting abuse, neglect, and exploitation and incident reports to HHSC, and clearer rules for both the public and providers.

Victoria Grady has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because the proposed rules update HHDS processes without imposing any additional costs on those required to comply with the proposed rules.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal, including information related to the cost, benefit, or effect of the proposed rule, as well as any applicable data, research, or analysis, may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 4601 West Guadalupe Street, Austin, Texas 78751; or emailed to *HHSRulesCoordinationOffice@hhs.texas.gov*.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 25R047" in the subject line.

26 TAC §§566.2, 566.3, 566.11, 566.15, 566.17

STATUTORY AUTHORITY

The amendments and new section are authorized by Texas Government Code §524.0151, 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 Human Resources Code Chapter 48, which provides authority to investigate the abuse, neglect, or exploitation of an elderly person or person with a disability and to provide protective services to that person; and Texas Family Code Chapter 261, which provides authority to investigate the abuse, neglect, or exploitation of children and to provide protective services to children.

The amendments and new section implement Texas Government Code §524.0151, Texas Human Resources Code Chapter 48, and Texas Family Code Chapter 261.

§566.2. Purpose.

(a) The purpose of this chapter is to:

(1) establish minimum health and safety standards and responsibilities for a Texas Home Living (TxHmL) program provider to promote the health, safety, and welfare of individuals in the TxHmL Program;

(2) implement Texas Human Resources Code Chapter 48, Subchapter F, and Texas Family Code §261.404; and

(3) describe the investigation by HHSC of allegations of abuse, neglect, and exploitation of individuals in the TxHmL Program.

(b) This chapter applies to program providers.

(c) HHSC uses the rules in this chapter to determine regulatory compliance by a program provider.

§566.3. Definitions.

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

(1) Abuse--Physical, sexual, emotional, verbal, or psychological abuse, as defined in this section.

[~~(A) (A) physical abuse;~~]

[~~(B) (B) sexual abuse; or~~]

[~~(C) (C) verbal or emotional abuse.~~]

(2) Actual harm--A negative outcome that compromises an individual's physical, mental, or emotional well-being but does not constitute immediate threat.

(3) ADLs--Activities of daily living. Basic personal everyday activities, including tasks such as eating, toileting, grooming, dressing, bathing, and transferring.

(4) Alarm call--A signal transmitted from an individual's Community First Choice (CFC) emergency response services (ERS) [~~CFC ERS~~] equipment to the CFC ERS response center indicating that the individual needs immediate assistance.

(5) Allegation--A report that an individual receiving services has been or is in a state of abuse, neglect, or exploitation as defined by this subchapter.

(6) [~~(5)~~] Alleged perpetrator--A person alleged to have committed an act of abuse, neglect, [~~or~~] exploitation, involving an individual.

(7) Alleged victim--An individual receiving services who is alleged to have been abused, neglected, or exploited.

(8) ANE--Abuse, neglect, and exploitation as defined in this section.

(9) [~~(6)~~] Applicant--A Texas resident seeking services in the TxHmL Program.

(10) [~~(7)~~] Business day--Any day except a Saturday, a Sunday, or a national or state holiday listed in Texas Government Code §662.003(a) or (b).

(11) [~~(8)~~] Calendar day--Any day, including weekends and holidays.

(12) [~~(9)~~] CDS option--Consumer directed services option. A service delivery option as defined in §264.103 [~~§41.103~~] of this title (relating to Definitions).

(13) [~~(10)~~] CFC--Community First Choice.

(14) [~~(11)~~] CFC ERS--CFC emergency response services. Backup systems and supports used to ensure continuity of services and supports. CFC ERS includes electronic devices and an array of available technology, personal emergency response systems, and other mobile communication devices.

(15) [~~(12)~~] CFC ERS provider--The entity directly providing CFC ERS to an individual, which may be the program provider or a contractor of the program provider.

(16) [~~(13)~~] CFC FMS--The term used for FMS on the IPC of an applicant or individual if the applicant or individual receives only CFC PAS/HAB through the CDS option.

(17) [~~(14)~~] CFC PAS/HAB--CFC personal assistance services/habilitation. A service that:

(A) consists of:

(i) personal assistance services that provide assistance to an individual in performing ADLs and IADLs based on the individual's person-centered service plan, including:

(I) non-skilled assistance with the performance of the ADLs and IADLs;

(II) household chores necessary to maintain the home in a clean, sanitary, and safe environment;

(III) escort services, which consist of accompanying and assisting an individual to access services or activities in the community, but do not include transporting an individual; and

(IV) assistance with health-related tasks; and

(ii) habilitation that provides assistance to an individual in acquiring, retaining, and improving self-help, socialization, and daily living skills and training the individual on ADLs, IADLs, and health-related tasks, such as:

(I) self-care;

(II) personal hygiene;

(III) household tasks;

(IV) mobility;

(V) money management;

(VI) community integration, including how to get around in the community;

(VII) use of adaptive equipment;

(VIII) personal decision making;

(IX) reduction of challenging behaviors to allow individuals to accomplish ADLs, IADLs, and health-related tasks; and

(X) self-administration of medication; and

(B) does not include transporting the individual, which means driving the individual from one location to another.

(18) [~~(15)~~] CFC support consultation--The term used for support consultation on the IPC of an applicant or individual if the applicant or individual receives only CFC PAS/HAB through the CDS option.

(19) [~~(16)~~] CFC support management--Training regarding how to select, manage, and dismiss an unlicensed service provider of CFC PAS/HAB as described in the HCS Handbook.

(20) [~~(17)~~] Chemical restraint--A medication used to control an individual's behavior or to restrict the individual's freedom of movement that is not a standard treatment for the individual's medical or psychological condition.

(21) [~~(18)~~] CMS--Centers for Medicare & Medicaid Services. The federal agency within the United States Department of Health and Human Services that administers the Medicare and Medicaid programs.

(22) Community-based residential care services--Services provided in a group home or other residential facility licensed by or operated under the authority of HHSC.

(23) [~~(19)~~] Competitive employment--Employment that pays an individual at least minimum wage if the individual is not self-employed.

(24) Complaint--An allegation against a program provider, staff member, service provider, volunteer, or controlling person that involves ANE, or a failure to comply with the Texas Administrative Code (TAC). This does not include an incident that is self-reported by a program provider.

(25) Complaint and Incident Intake (CII)--A part of HHSC that reviews and assigns priority to complaints and incidents reported to HHSC.

(26) [~~(20)~~] Contract--A provisional contract or a standard contract.

(27) [~~(21)~~] Controlling person--A person who:

(A) has an ownership interest in a program provider;

(B) is an officer or director of a corporation that is a program provider;

(C) is a partner in a partnership that is a program provider;

(D) is a member or manager in a limited liability company that is a program provider;

(E) is a trustee or trust manager of a trust that is a program provider; or

(F) because of a personal, familial, or other relationship with a program provider, is in a position of actual control or authority with respect to the program provider, regardless of the person's title.

(28) [~~(22)~~] Critical incidents--Incidents that the program provider must report to the HHSC Critical Incident Management System (CIMS) for review and follow-up action by HHSC no later than the last calendar day of the month that follows the month being reported. [~~incident--An event listed in the TxHmL Provider User Guide found at www.hhsc.state.tx.us.~~]

(29) [~~(23)~~] Critical violation--A violation for which HHSC may assess an administrative penalty before giving a program provider an opportunity to correct the violation and that:

(A) is an immediate threat, as defined in this section;

(B) has resulted in actual harm, as defined in this section, and is widespread;

(C) has resulted in actual harm and is a pattern; or

(D) has the potential to result in actual harm and is widespread.

[~~(24) DADS--HHSC.~~]

[~~(25) Department of Assistive and Rehabilitative Services--The Texas Workforce Commission.~~]

(30) [~~(26)~~] DFPS--The Texas Department of Family and Protective Services.

(31) Emotional, verbal, or psychological abuse--Any act or communication, including oral, written, gestured language, directed towards and in the presence of the individual that is of such a serious nature that a reasonable person would find the act or communication to be physically or emotionally threatening, intimidating, humiliating, or harassing. For the definition of emotional, verbal, or psychological abuse to be met, the act or communication must:

(A) result in an individual experiencing:

(i) a significant negative impact to the individual's physical, mental, or emotional health; or

(ii) substantial physical, mental, or emotional distress as identified by an appropriate medical professional;

(B) be of such a serious nature that a reasonable person would consider it likely to have a significant negative impact on the physical, mental, emotional health of the individual; or

(C) be of such a serious nature that it caused, or was likely to cause, an individual to experience a negative impact or regression in the individual's therapeutic intervention, or support plan progress.

(32) [~~(27)~~] Exploitation--The illegal or improper act or process of using[~~, or attempting to use,~~] an individual or the resources of an individual for monetary or personal benefit, profit, or gain, excluding:[~~.~~]

(A) theft, as defined in Texas Penal Code Chapter 31; and

(B) allegations of exploitation less than $25.

(33) [~~(28)~~] FMS--Financial management services. A service, as defined in §264.103 [~~§41.103~~] of this title, that is provided to an individual participating in the CDS option.

(34) [~~(29)~~] FMSA--Financial management services agency. As defined in §264.103 [~~§41.103~~] of this title, an entity that provides financial management services to an individual participating in the CDS option.

(35) [~~(30)~~] Follow-up survey--A review by HHSC of a program provider to determine if the program provider has completed corrective action.

(36) [~~(31)~~] Former military member--A person who served in the United States Army, Navy, Air Force, Marine Corps, or Coast Guard:

(A) who declared and maintained Texas as the person's state of legal residence in the manner provided by the applicable military branch while on active duty; and

(B) who was killed in action or died while in service, or whose active duty otherwise ended.

(37) [~~(32)~~] Good cause--A [~~As used in §9.578 of this subchapter, (relating to Program Provider Certification Principles: Service Delivery), a~~] reason outside the control of the program [~~CFC ERS~~] provider, as determined by HHSC.

(38) [~~(33)~~] HCS Program--The Home and Community-based Services Program operated by HHSC as authorized by CMS in accordance with §1915(c) of the Social Security Act.

(39) [~~(34)~~] Health-related tasks--Specific tasks related to the needs of an individual, which can be delegated or assigned by licensed health care professionals under state law to be performed by a service provider of CFC PAS/HAB. These include tasks delegated by an RN; health maintenance activities as defined in 22 TAC §225.4 (relating to Definitions), that may not require delegation; and activities assigned to a service provider of CFC PAS/HAB by a licensed physical therapist, occupational therapist, or speech-language pathologist.

(40) [~~(35)~~] HHSC--The Texas Health and Human Services Commission.

(41) [~~(36)~~] IADLs--Instrumental activities of daily living. Activities related to living independently in the community. IADLs include[~~, including~~] meal planning and preparation; managing finances; shopping for food, clothing, and other essential items; performing essential household chores; communicating by phone or other media; and traveling around and participating in the community.

(42) [~~(37)~~] ICAP--Inventory for Client and Agency Planning.

(43) [~~(38)~~] ICF/IID--An Intermediate care facility for individuals with an intellectual disability or related conditions. An ICF/IID is a facility in which ICF/IID Program services are provided and that is:

(A) licensed in accordance with THSC[~~,~~] Chapter 252; or

(B) certified by HHSC, including a state supported living center.

(44) [~~(39)~~] ICF/IID Program--The Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions Program, which provides Medicaid-funded residential services to individuals with an intellectual disability or related conditions.

(45) [~~(40)~~] ID/RC Assessment--A form used by HHSC for LOC determination and LON assignment.

(46) [~~(41)~~] Immediate threat--A situation that caused, or is likely to cause, serious physical harm or serious emotional harm to an individual, or the death of an individual.

(47) [~~(42)~~] Implementation plan--A written document developed by a program provider for an individual that, for each TxHmL Program service, except for transportation provided as a community support activity, and CFC service, except for CFC support management, on the individual's IPC to be provided by the program provider, includes:

(A) a list of outcomes identified in the PDP that will be addressed using TxHmL Program services and CFC services;

(B) specific objectives to address the outcomes required by subparagraph (A) of this paragraph that are:

(i) observable, measurable, and outcome-oriented; and

(ii) derived from assessments of the individual's strengths, personal goals, and needs;

(C) a target date for completion of each objective;

(D) the number of units of TxHmL Program services and CFC services needed to complete each objective;

(E) the frequency and duration of TxHmL Program services and CFC services needed to complete each objective; and

(F) the signature and date of the individual, LAR, and the program provider.

(48) Incident--Any actual, alleged, suspected, or observed unusual, abnormal event or occurrence involving or affecting an individual in the TxHmL Program. An incident must be reported by a program provider, staff member, service provider, volunteer, or controlling person to HHSC CII.

(49) [~~(43)~~] Individual receiving services--A person enrolled in the TxHmL Program, also called an individual.

(50) [~~(44)~~] Initial certification survey--A review by HHSC of a program provider with a provisional contract to determine if the program provider is in compliance with TAC [~~the certification principles~~].

(51) [~~(45)~~] Intellectual disability--Significant sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.

(52) [~~(46)~~] Intermittent survey--A review conducted by HHSC of a program provider that may result from an allegation of ANE. An intermittent survey [~~that~~] is not an initial certification survey, a recertification survey, or a follow-up survey. The purpose of this survey is[~~,~~]to determine if the program provider complied [~~is~~

~~in compliance~~] with this chapter or to determine if ANE or a critical incident occurred. [~~the certification principles.~~]

(53) [~~(47)~~] IPC--Individual plan of care. A written plan that:

(A) states:

(i) the type and amount of each TxHmL Program service and each CFC service, except for CFC support management, to be provided to an individual during an IPC year;

(ii) the services and supports to be provided to the individual through resources other than TxHmL Program services or CFC services, including natural supports, medical services, and educational services; and

(iii) if an individual will receive CFC support management; and

(B) is authorized by HHSC.

(54) [~~(48)~~] IPC cost--Estimated annual cost of program services included on an IPC.

(55) [~~(49)~~] IPC year--A 12-month period of time starting on the date an authorized initial or renewal IPC begins.

(56) [~~(50)~~] Isolated--The scope of a violation that has affected a very limited number of individuals or that has occurred only occasionally.

(57) [~~(51)~~] LAR--Legally authorized representative. A person allowed [~~authorized~~] by law to act for an individual in matters covered by [~~on behalf of a person with regard to a matter described in~~] this chapter. A LAR [~~subchapter, and~~] may be [~~include~~] a parent, guardian, or managing conservator of a minor, or a [~~the~~] guardian of an adult.

(58) [~~(52)~~] LIDDA--Local intellectual and developmental disability authority. An entity designated by the executive commissioner of HHSC, in accordance with THSC §533A.035.

(59) [~~(53)~~] LOC--Level of care. A determination made by HHSC about an applicant or individual as part of the TxHmL Program eligibility determination process based on data electronically transmitted on the ID/RC Assessment.

(60) [~~(54)~~] LON--Level of need. An assignment given by HHSC for an applicant or individual that is derived from the service level score obtained from the administration of the ICAP to the individual and from selected items on the ID/RC Assessment.

(61) [~~(55)~~] LVN--Licensed vocational nurse. A person licensed to practice vocational nursing in accordance with Texas Occupations Code[~~,~~] Chapter 301.

(62) [~~(56)~~] Managed care organization--This term has the meaning set forth in Texas Government Code §543A.0001.

(63) [~~(57)~~] MAO Medicaid--Medical Assistance Only Medicaid. A type of Medicaid by which an applicant or individual qualifies financially for Medicaid assistance but does not receive Supplemental Security Income (SSI) benefits.

(64) [~~(58)~~] Mechanical restraint--A mechanical device, material, or equipment used to control an individual's behavior by restricting the ability of the individual to freely move part or all of the individual's body.

(65) [~~(59)~~] Microboard--A program provider:

(A) that is a non-profit corporation;

(i) that is created and operated by no more than 10 persons, including an individual;

(ii) the purpose of which is to address the needs of the individual and directly manage the provision of the TxHmL Program services or CFC services; and

(iii) in which each person operating the corporation participates in addressing the needs of the individual and directly managing the provision of TxHmL Program services or CFC services; and

(B) that has a service capacity designated in the HHSC data system of no more than three individuals.

(66) [~~(60)~~] Military family member--A person who is the spouse or child (regardless of age) of:

(A) a military member; or

(B) a former military member.

(67) [~~(61)~~] Military member--A member of the United States military serving in the Army, Navy, Air Force, Marine Corps, or Coast Guard on active duty who has declared and maintains Texas as the member's state of legal residence in the manner provided by the applicable military branch.

(68) [~~(62)~~] Natural supports--Unpaid persons, including family members, volunteers, neighbors, and friends, who assist and sustain an individual.

(69) [~~(63)~~] Neglect--A negligent act or omission that caused or may have caused physical or emotional injury or death to an individual, or which placed an individual at risk of physical or emotional injury or death.

(70) [~~(64)~~] Nursing facility--A facility licensed in accordance with THSC[~~,~~] Chapter 242.

(71) Online portal--Texas Unified Licensure Information Portal (TULIP).

(72) [~~(65)~~] Own home or family home--A residence that is not:

(A) an ICF/IID;

(B) a nursing facility;

(C) an assisted living facility licensed or subject to being licensed in accordance with THSC[~~,~~] Chapter 247;

(D) a residential child care [~~child care~~] operation licensed or subject to being licensed by DFPS unless it is a foster family home or a foster group home;

(E) a facility licensed or subject to being licensed by the Texas Department of State Health Services;

(F) a residential facility operated by the Texas Workforce Commission;

(G) a residential facility operated by the Texas Juvenile Justice Department, a jail, or a prison; or

(H) a setting in which two or more dwellings, including units in a duplex or apartment complex, single family homes, or facilities listed in subparagraphs (A) - (G) of this paragraph, but excluding supportive housing under Section 811 of the National Affordable Housing Act of 1990, meet all of the following criteria:

(i) the dwellings create a residential area distinguishable from other areas primarily occupied by persons who do not require routine support services because of a disability;

(ii) most of the residents of the dwellings are persons with an intellectual disability; and

(iii) the residents of the dwellings are provided routine support services through personnel, equipment, or service facilities shared with the residents of the other dwellings.

(73) [~~(66)~~] Pattern--The scope of a violation that is not widespread but represents repeated failures by the program provider to comply with certification standards [~~principles~~], and the failures:

(A) are found throughout the services provided by the program provider; or

(B) involve or affect the same individuals, service providers, or volunteers.

(74) [~~(67)~~] PDP--Person-directed plan. A written plan, based on person-directed planning and developed with an applicant or individual in accordance with the HHSC Person-Directed Plan form and discovery tool found on the HHSC website, that describes the supports and services necessary to achieve the desired outcomes identified by the applicant, individual, or LAR and ensure the applicant's or individual's health and safety.

(75) [~~(68)~~] Performance contract--A written agreement between HHSC and a LIDDA for the performance of delegated functions, including those described in THSC, §533A.035.

(76) [~~(69)~~] Physical abuse--[~~Any of the following:~~]

(A) an act or failure to act performed knowingly, recklessly, or intentionally, including incitement to act, that caused or may have caused physical injury or death to an individual [~~or placed an individual at risk of physical injury or death~~];

(B) an act of inappropriate or excessive force or corporal punishment, regardless of whether the act results in a physical injury to an individual; or

(C) the use of chemical, mechanical, or physical restraints or seclusion [~~a restraint~~] on an individual not in compliance with federal and state laws, [~~rules,~~] and regulations; [~~or~~]

[~~(D) seclusion.~~]

(77) [~~(70)~~] Physical restraint--Any manual method used to control an individual's behavior, except for physical guidance or prompting of brief duration that an individual does not resist, that restricts:

(A) the free movement or normal functioning of all or a part of the individual's body; or

(B) normal access by an individual to a portion of the individual's body.

(78) [~~(71)~~] Plan of correction--A plan documented on the HHSC Plan of Correction form that includes the corrective action that a program provider will take for each violation identified on a final survey report.

(79) [~~(72)~~] Plan of removal--A written plan that describes the action a program provider will take to remove an immediate threat that HHSC identifies.

(80) [~~(73)~~] Post 45-day follow-up survey--A follow-up survey conducted at least 46 calendar days after the exit conference of the survey in which the violation requiring corrective action was identified.

(81) [~~(74)~~] Post-move monitoring visit--As described in [~~26 TAC~~] §303.702 of this title (relating to Post-transition Responsibilities), a visit conducted by the service coordinator in the individual's residence and any other locations[~~, as~~] determined appropriate by the service planning team[~~,~~] for an individual who has enrolled in the TxHmL Program from a nursing facility or [~~enrolled in the TxHmL Program~~] as a diversion from admission to a nursing facility. The purpose of the visit is to review the individual's residence and other applicable locations to:

(A) assess whether the essential supports identified in the transition plan are in place;

(B) identify any gaps in care; and

(C) address identified gaps [~~such gaps, if any,~~] to reduce the risk of crisis, re-admission to a nursing facility, or other negative outcome.

(82) Potential for minimal harm--A violation that has the potential to cause no more than a minor negative impact on an individual.

(83) Potential for more than minimal harm--A violation that results in more than minimal physical, mental, or psychological discomfort to the individual or has the potential to compromise the individual's ability to reach and maintain the highest practicable physical, mental, and psychosocial well-being as defined for the individual.

(84) [~~(75)~~] Pre-move site review--As described in [~~26 TAC~~] §303.701 of this title (relating to Transition Planning for a Designated Resident), a review conducted by the service coordinator in the planned residence and any other locations[~~, as~~] determined appropriate by the service planning team[~~,~~] for an applicant transitioning from a nursing facility to the TxHmL Program. The purpose of the review is to ensure that the essential services and supports identified [~~described~~] in the applicant's transition plan are in place before the applicant moves to the residence or receives services in [~~the~~] other locations.

(85) [~~(76)~~] Program provider--A person, as defined in §52.3 [§~~49.102~~] of this title (relating to Definitions), who [~~that~~] has a contract with HHSC to deliver [~~provide~~] TxHmL Program services.[~~, excluding an~~] FMSA is excluded from this definition.

(86) [~~(77)~~] Provisional contract--A contract that HHSC enters into with a program provider under §52.39 [~~in accordance with §49.208~~] of this title (relating to Provisional Contract Application Approval). The contract [~~that has a~~] term is no longer [~~of no more~~] than three years, except for [~~not including~~] any extension allowed by §52.39(e) [~~agreed to in accordance with §49.208(e)~~] of this title [~~(relating to Standard Contract)~~].

(87) [~~(78)~~] Public emergency personnel--Personnel of a sheriff's department, police department, emergency medical service, or fire department.

(88) [~~(79)~~] Recertification survey--A review by HHSC of a program provider with a standard contract to determine if the program provider is in compliance with this chapter [~~the certification principles~~] and will be certified for a new certification period.

(89) [~~(80)~~] Related condition--A severe and chronic disability that:

(A) is attributed to:

(i) cerebral palsy or epilepsy; or

(ii) any other condition, other than mental illness, found to be closely related to an intellectual disability because the condition results in impairment of general intellectual functioning or adaptive behavior similar to that of individuals with an intellectual disability, and requires treatment or services similar to those required for individuals with an intellectual disability;

(B) is manifested before the individual reaches age 22;

(C) is likely to continue indefinitely; and

(D) results in substantial functional limitation in at least three of the following areas of major life activity:

(i) self-care;

(ii) understanding and use of language;

(iii) learning;

(iv) mobility;

(v) self-direction; and

(vi) capacity for independent living.

(90) [~~(81)~~] Repeated violation--A violation that is:

(A) based on the same certification standard [~~principle~~]; and

(B) involves the same TxHmL Program service.

(91) Reportable conduct--includes:

(A) abuse or neglect that causes or may cause death or harm to an individual;

(B) sexual abuse of an individual;

(C) financial exploitation of an individual in an amount of $25 or more; and

(D) emotional, verbal, or psychological abuse that causes harm to an individual.

(92) Reporter--The person, who may be anonymous, making an allegation to HHSC CII.

(93) Residential caregiver--A person who provides community-based residential care services.

(94) [~~(82)~~] Respite facility--A site that is not a residence and that is owned or leased by a program provider for the purpose of providing out-of-home respite to not more than six individuals receiving TxHmL Program services or other persons receiving similar services at any one time.

(95) [~~(83)~~] Responder--A person designated to respond to an alarm call activated by an individual.

(96) [~~(84)~~] Restraint--A manual method or a physical or mechanical device, material, or equipment, that is attached to or placed next to the individual's body, which cannot be removed easily and restricts freedom of movement or normal access to the body. Restraint includes a personal hold. [~~Any of the following:~~]

[~~(A) a physical restraint;~~]

[~~(B) a mechanical restraint; or~~]

[~~(C) a chemical restraint.~~]

(97) [~~(85)~~] RN--Registered nurse. A person licensed to practice professional nursing in accordance with Texas Occupations Code[~~,~~] Chapter 301.

(98) [~~(86)~~] Seclusion--The involuntary placement of an individual alone in an area from which the individual is prevented from leaving.

(99) Serious physical injury--Any injury determined to be serious by the appropriate medical personnel. Examples of serious physical injury include:

(A) fracture;

(B) dislocation of any joint;

(C) internal injury;

(D) contusion larger than two and one-half inches in diameter;

(E) concussion;

(F) second- or third-degree burn; or

(G) any laceration requiring sutures or wound closure.

(100) [~~(87)~~] Service backup plan--A plan that ensures continuity of [~~a service that is~~] critical program services [~~to an individual's health and safety~~] if service delivery is interrupted.

(101) [~~(88)~~] Service coordination--A service as defined in Chapter 331 [~~2, Subchapter L~~] of this title (relating to LIDDA Service Coordination [~~for Individuals with an Intellectual Disability~~]).

(102) [~~(89)~~] Service coordinator--An employee of a LIDDA who provides service coordination to an individual.

(103) [~~(90)~~] Service planning team--One of the following:

(A) for an applicant or individual other than one described in subparagraphs (B) or (C) of this paragraph, a planning team consisting of:

(i) an applicant or individual and LAR;

(ii) service coordinator; and

(iii) other persons chosen by the applicant, individual, or LAR, for example, a staff member of the program provider, a family member, a friend, or a teacher;

(B) for an applicant 21 years of age or older who is residing in a nursing facility and enrolling in the TxHmL Program, a planning team consisting of:

(i) the applicant and LAR;

(ii) service coordinator;

(iii) a staff member of the program provider;

(iv) providers of specialized services;

(v) a nursing facility staff person who is familiar with the applicant's needs;

(vi) other persons chosen by the applicant or LAR, for example, a family member, a friend, or a teacher; and

(vii) at the discretion of the LIDDA, other persons who are directly involved in the delivery of services to persons with an intellectual or developmental disability; or

(C) for an individual 21 years of age or older who has enrolled in the TxHmL Program [~~program~~] from a nursing facility or has enrolled in the TxHmL Program as a diversion from admission to a nursing facility, for 180 days after enrollment, a planning team consisting of:

(i) the individual and LAR;

(ii) service coordinator;

(iii) a staff member of the program provider;

(iv) other persons chosen by the individual or LAR, for example, a family member, a friend, or a teacher; and

(v) at the discretion of the LIDDA, other persons who are directly involved in the delivery of services to persons with an intellectual or developmental disability.

(104) [~~(91)~~] Service provider--A person, who may be a staff member, who directly provides a TxHmL Program service or CFC service to an individual.

(105) [~~(92)~~] Sexual abuse--Any sexual activity, including: [~~Any of the following:~~]

(A) kissing an individual with sexual intent;

(B) hugging an individual with sexual intent;

(C) stroking an individual with sexual intent;

(D) fondling an individual with sexual intent;

(E) engaging with an individual in:

(i) sexual conduct, as defined in Texas Penal Code §43.01; or

(ii) any activity that is obscene, as defined in the Texas Penal Code §43.21;

(F) requesting, soliciting, or compelling an individual to engage in:

(i) sexual conduct, as defined in Texas Penal Code §43.01; or

(ii) any activity that is obscene, as defined in the Texas Penal Code §43.21;

(G) in the presence of an individual:

(i) engaging in or displaying any activity that is obscene, as defined in Texas Penal Code §43.21; or

(ii) requesting, soliciting, compelling another person to engage in any activity that is obscene, as defined in Texas Penal Code §43.21;

(H) committing sexual exploitation is defined as a pattern, practice, or scheme of conduct against an individual, which may include sexual contact, that can reasonably be construed as being for the purposes of sexual arousal or gratification or sexual abuse of any person and does not include obtaining information about a patient's sexual history within standard accepted clinical practice;

(I) committing sexual assault, as defined in Texas Penal Code §22.011, against an individual;

(J) committing aggravated sexual assault, as defined in Texas Penal Code §22.021, against an individual; or

(K) causing, permitting, encouraging, engaging in, or allowing the photographing, filming, videotaping, or depicting of an individual if the direct provider knew or should have known that the resulting photograph, film, videotape, or depiction of the individual is obscene, as defined in Texas Penal Code §43.21, or is pornographic.

[~~(A) sexual exploitation of an individual;~~]

[~~(B) non-consensual or unwelcomed sexual activity with an individual; or~~]

[~~(C) consensual sexual activity between an individual and a service provider, staff member, volunteer, or controlling person, unless a consensual sexual relationship with an adult individual existed before the service provider, staff member, volunteer, or controlling person became a service provider, staff member, volunteer, or controlling person.~~]

[~~(93) Sexual activity--An activity that is sexual in nature, including kissing, hugging, stroking, or fondling with sexual intent.~~]

[~~(94) Sexual exploitation--A pattern, practice, or scheme of conduct against an individual that can reasonably be construed as being for the purposes of sexual arousal or gratification of any person:~~]

[~~(A) which may include sexual contact; and~~]

[~~(B) does not include obtaining information about an individual's sexual history within standard accepted clinical practice.~~]

(106) [~~(95)~~] Specialized services--The services defined in [~~26 TAC~~] §303.102 of this title (relating to Definitions).

(107) SSLC--State-supported living center. A structured residential facility operated by HHSC that provides medical treatment, specialized therapy, and training in personal, social, and vocational skills to persons with an intellectual disability. An SSLC does not include a community-based facility owned by HHSC.

(108) [~~(96)~~] Staff member--An employee or contractor of a TxHmL Program provider.

(109) [~~(97)~~] Standard contract--A contract that HHSC enters into with a program provider in accordance with §52.41 [~~§49.209~~] of this title (relating to Standard Contract) that has a term of no more than five years, not including any extension agreed to in accordance §52.41(d) [~~§49.209(d)~~] of this title.

[~~(98) State supported living center--A state-supported and structured residential facility operated by HHSC to provide to persons with an intellectual disability a variety of services, including medical treatment, specialized therapy, and training in the acquisition of personal, social, and vocational skills, but does not include a community-based facility owned by HHSC.~~]

(110) Substantiated--A preponderance of evidence supports that the alleged incident happened.

[~~(99) System check--A test of the CFC ERS equipment to determine if:~~]

[~~(A) the individual can successfully activate an alarm call; and~~]

[~~(B) the equipment is working properly.~~]

(111) [~~(100)~~] Support consultation--A service, as defined in §264.103 [~~§41.103~~] of this title, that is provided to an individual participating in the CDS option at the request of the individual or LAR.

(112) [~~(101)~~] Survey--An initial certification survey, a recertification survey, a follow-up survey, and an intermittent survey.

(113) System check--A test of the CFC ERS equipment to determine if:

(A) the individual can successfully activate an alarm call; and

(B) the equipment is working properly.

(114) [~~(102)~~] TAC--Texas Administrative Code. A compilation of state agency rules published by the Texas Secretary of State in accordance with Texas Government Code[~~,~~] Chapter 2002, Subchapter C.

(115) Theft--As defined in Texas Penal Code Chapter 31.

(116) [~~(103)~~] THSC--Texas Health and Safety Code. Texas statutes relating to health and safety.

(117) [~~(104)~~] Transition plan--As described in [~~26 TAC~~] §303.102 of this title, a written plan developed by the service plan-

ning team for an applicant residing in a nursing facility who is enrolling in the TxHmL Program. A transition plan includes [~~the~~] essential and nonessential services and supports the applicant needs to transition from a nursing facility to a community setting.

(118) [~~(105)~~] Transportation plan--A written plan, based on person-directed planning and developed with an applicant or individual using HHSC Individual Transportation Plan form found on the HHSC website. A transportation plan is used to document how transportation as a community support activity will be delivered to support an individual's desired outcomes and purposes for transportation as identified in the PDP.

(119) [~~(106)~~] TxHmL Program--The Texas Home Living Program, operated by HHSC and approved by CMS in accordance with §1915(c) of the Social Security Act, that provides community-based services and supports to eligible individuals who live in their own homes or in their family homes.

(120) Unsubstantiated--A preponderance of evidence does not support that the alleged incident happened.

(121) [~~(107)~~] Vendor hold--A temporary suspension of payments that are due to a program provider under a contract.

[~~(108) Verbal or emotional abuse--Any act or use of verbal or other communication, including gestures:~~]

[~~(A) to:~~]

[~~(i)~~ ~~harass, intimidate, humiliate, or degrade an individual; or~~]

[~~(ii)~~ ~~threaten an individual with physical or emotional harm; and~~]

[~~(B) that:~~]

[~~(i)~~ ~~results in observable distress or harm to the individual; or~~]

[~~(ii)~~ ~~is of such a serious nature that a reasonable person would consider it harmful or a cause of distress.~~]

(122) Victim--An individual receiving services who is confirmed to have been abused, neglected, or exploited.

(123) [~~(109)~~] Violation--A finding by HHSC that a program provider is not or was not [~~has not been~~] in compliance with a certification standard [~~principle~~].

(124) [~~(110)~~] Volunteer--A person who works for a program provider without compensation, other than reimbursement for actual expenses.

(125) [~~(111)~~] Widespread--The scope of a violation that:

(A) is pervasive throughout the services provided by the program provider; or

(B) represents a systemic failure by the program provider that affects or has the potential to affect a large portion of or all individuals.

(126) [~~(112)~~] Willfully interfering--Acting or not acting to intentionally prevent, interfere with, or impede, or to attempt to intentionally prevent, interfere with, or impede. [~~ot including any extension agreed to in accordance §49.209(d) of this title.~~]

§566.11. Certification Standards [~~Principles~~]: Quality Assurance.

(a) The program provider must:

(1) assist the individual or LAR in understanding the requirements for participation in the TxHmL Program and include the individual or LAR in planning service provision and any changes to the plan for service provision if changes become necessary;

(2) assist and cooperate with the individual's or LAR's request to transfer to another program provider;

(3) assist the individual to access public accommodations or services available to all citizens;

(4) assist the individual to manage the individual's financial affairs upon documentation of the individual's or LAR's written request for such assistance;

(5) ensure that any restriction affecting the individual is approved by the individual's service planning team before the imposition of the restriction;

(6) inform the individual or LAR about the individual's health, mental condition, and related progress;

(7) inform the individual or LAR of the name and qualifications of any person serving the individual and the option to choose among various available service providers;

(8) provide the individual or LAR access to TxHmL Program and CFC records, including, if applicable, financial records maintained on the individual's behalf, about the individual and the delivery of services by the program provider to the individual;

(9) assist the individual to communicate by phone or by mail during the provision of TxHmL Program services or CFC services unless the service planning team has agreed to limit the individual's access to communicating by phone or by mail;

(10) assist the individual, as specified in the individual's PDP, to attend religious activities as chosen by the individual or LAR;

(11) ensure the individual is free from unnecessary restraints during the provision of TxHmL Program services or CFC services;

(12) regularly inform the individual or LAR about the individual's or program provider's progress or lack of progress made in the implementation of the PDP;

(13) receive and act on complaints about the TxHmL Program services or CFC services provided by the program provider;

[~~(14) ensure that the individual is free from abuse, neglect, or exploitation by program provider staff members, service providers, and volunteers;~~]

(14) [~~(15)~~] provide active, individualized assistance to the individual or LAR in exercising the individual's rights and exercising self-advocacy, including:

(A) making complaints;

(B) registering to vote;

(C) obtaining citizenship information and education;

(D) obtaining advocacy services; and

(E) obtaining information regarding legal guardianship;

(15) [~~(16)~~] provide the individual privacy during treatment and care of personal needs;

(16) [~~(17)~~] include the individual's LAR in decisions involving the planning and provision of TxHmL Program services and CFC services;

[~~(18) inform the individual or LAR of the process for reporting a complaint to HHSC or the LIDDA when the program~~

~~provider's resolution of a complaint is unsatisfactory to the individual or LAR, including the HHSC Complaint and Incident Intake toll-free telephone number, 1-800-458-9858, to initiate complaints and the LIDDA telephone number to initiate complaints;]~~

~~[(19) ensure the individual is free from seclusion;]~~

(17) [~~(20)~~] inform the individual or LAR, orally and in writing, of the requirements described in paragraphs (1) - (16) [~~(1) - (19)~~] of this subsection:

(A) when the individual is enrolled in the program provider's program;

(B) if the requirements described in paragraphs (1) - (16) [~~(1) - (19)~~] of this subsection are revised;

(C) at the request of the individual or LAR; and

(D) if the legal status of the individual changes;

(18) [~~(21)~~] obtain an acknowledgement stating that the information described in paragraph (17) [~~(20)~~] of this subsection was provided to the individual or LAR and that is signed by:

(A) the individual or LAR;

(B) the program provider staff person providing such information; and

(C) a third-party witness; and

(19) [~~(22)~~] notify the individual's service coordinator of an individual's or LAR's expressed interest in the CDS option and document such notification.

(b) The program provider must make available all records, reports, and other information related to the delivery of TxHmL Program services and CFC services as requested by HHSC, other authorized agencies, or CMS and deliver such items, as requested, to a specified location.

(c) At least annually, the program provider must conduct a satisfaction survey of individuals, their families, and LARs, and take action regarding any areas of dissatisfaction.

(d) The program provider must comply with §52.117 [~~§49.309~~] of this title (relating to Complaint Process).

(e) In all respite facilities, the program provider must post in a conspicuous location:

(1) the name, address, and telephone number of the program provider;

(2) the effective date of the contract; and

(3) the name of the legal entity named on the contract.

(f) At least annually, the program provider must review:

(1) all final investigative reports from HHSC and, based on the review, identify program process improvements that help prevent the occurrence of abuse, neglect, and exploitation and improve the delivery of services;

(2) complaints, as described in §52.117 [~~§49.309~~] of this title, and identify program process improvements to reduce the filing of complaints;

(3) the reasons for suspensions, terminations, and transfers and identify any related need for program process improvements; and

(4) critical incident data reported in accordance with subsection (l) [~~(n)~~] of this section and identify program process improvements that help prevent the reoccurrence of critical incidents and improve the delivery of services.

(g) A program provider must ensure that all personal information maintained by the program provider or its contractors concerning an individual, such as lists of names, addresses, and records created or obtained by the program provider or its contractor, is kept confidential, that the use or disclosure of such information and records is limited to purposes directly connected with the administration of the TxHmL Program or provision of CFC services, and is otherwise neither directly nor indirectly used or disclosed unless the written permission of the individual to whom the information applies or the individual's LAR is obtained before the use or disclosure.

(h) The program provider must ensure that:

(1) the individual or LAR has agreed, in writing, to all charges assessed by the program provider against the individual's personal funds before the charges are assessed; and

(2) charges for items or services are reasonable and comparable to the costs of similar items and services generally available in the community.

(i) The program provider must not charge an individual or LAR for costs for items or services reimbursed through the TxHmL Program or through CFC.

(j) At the written request of an individual or LAR, the program provider:

(1) must manage the individual's personal funds entrusted to the program provider;

(2) must not commingle the individual's personal funds with the program provider's funds; and

(3) must maintain a separate, detailed record of all deposits and expenditures for the individual.

(k) When a behavioral support plan includes techniques that involve restriction of individual rights or intrusive techniques, the program provider must ensure that the implementation of such techniques includes:

(1) approval by the individual's service planning team;

(2) written consent of the individual or LAR;

(3) verbal and written notification to the individual or LAR of the right to discontinue participation in the behavioral support plan at any time;

(4) assessment of the individual's needs and current level/severity of the behavior targeted by the plan;

(5) use of techniques appropriate to the level/severity of the behavior targeted by the plan;

(6) a written behavioral support plan developed by a service provider of behavioral support with input from the individual, LAR, the individual's service planning team, and other professional personnel;

(7) collection and monitoring of behavioral data concerning the targeted behavior;

(8) allowance for the decrease in the use of intervention techniques based on behavioral data;

(9) allowance for revision of the behavioral support plan when the desired behavior is not displayed or techniques are not effective;

(10) consideration of the effects of the techniques in relation to the individual's physical and psychological well-being; and

(11) at least annual review by the individual's service planning team to determine the effectiveness of the program and the need to continue the techniques.

[(l) A program provider must report the death of an individual:]

[(1) to HHSC and the LIDDA by the end of the next business day after the program provider becomes aware of the death; and]

[(2) if the program provider reasonably believes that the LAR does not know of the individual's death, to the LAR as soon as possible, but not later than 24 hours after the program provider becomes aware of the death.]

[(m) A program provider must not retaliate against:]

[(1) a staff member, service provider, individual, or other person who files a complaint, presents a grievance, or otherwise provides good faith information relating to the possible abuse, neglect, or exploitation of an individual, including:]

[(A) the use of seclusion; and]

[(B) the use of a restraint not in compliance with federal and state laws, rules, and regulations; and]

[(2) an individual because a person on behalf of the individual files a complaint, presents a grievance, or otherwise provides good faith information relating to the possible abuse, neglect, or exploitation of an individual, including:]

[(A) the use of seclusion; and]

[(B) the use of a restraint not in compliance with federal and state laws, rules, and regulations.]

(l) [(n)] A program provider must enter critical incident data in the HHSC Critical Incident Management System (CIMS) by [data system no later than] the last calendar day of the month after [that follows] the month being reported. Entry must follow [in accordance with] the TxHmL Provider User Guide. Critical incidents include:

(1) medication errors committed by provider agency staff or occurring under the supervision of provider agency staff;

(2) serious physical injuries;

(3) total number of deaths;

(4) unusual deaths;

(5) total number and types of restraints;

(6) number of 911 calls made by staff;

(7) number of emergency room and hospital admissions;

(8) number of allegations of ANE;

(9) number of substantiated allegations of ANE;

(10) number of unauthorized departures; and

(11) total number of arrests of individuals by law enforcement.

(m) [(o)] A program provider must ensure that:

(1) the name and phone number of an alternate to the Chief Executive Officer (CEO) of the program provider is entered in the HHSC data system; and

(2) the alternate to the CEO:

(A) performs the duties of the CEO during the CEO's absence; and

(B) if the CEO is named as an alleged perpetrator of abuse, neglect, or exploitation of an individual, acts as the contact person in an HHSC investigation and complies with §566.15 [§9.585(d) - (f)] of this chapter [subchapter] (relating to Certification Standards: Reporting [Principles: Requirements Related to the] Abuse, Neglect, and Exploitation [of an Individual)].

(n) Program providers must follow all rules in United States Code, Title 42, §1396a(w), concerning advance directives.

§566.15. Certification Standards [Principles]: Reporting [Requirements Related to the] Abuse, Neglect, and Exploitation [of an Individual].

(a) A program provider must:

(1) ensure that an individual and LAR [are, before or] at the time the individual begins receiving a TxHmL Program service or a CFC service and at least once each year after that, are [annually thereafter]:

(A) informed of how to report allegations of ANE [abuse, neglect, or exploitation] to HHSC Complaint and Incident Intake (CII); [DFPS and are provided with the toll-free telephone number, 1-800-647-7418, in writing; and]

(B) educated on how to protect [about protecting] the individual from ANE; and [abuse, neglect, and exploitation;]

(C) informed about the individual's rights, including the right to be safe from ANE;

(2) ensure that each staff member, service provider, and volunteer are:

(A) trained and informed about [knowledgeable of]:

(i) how to report ANE as described in subsection (b) of this section to HHSC CII; [acts that constitute abuse, neglect, and exploitation;]

(ii) signs and symptoms of ANE; [abuse, neglect, and exploitation; and]

(iii) ways [methods] to prevent ANE; and [abuse, neglect, and exploitation;]

(iv) if needed, how to help an individual or visitor report ANE to HHSC CII by reporting through the online portal or by calling 1-800-458-9858;

(B) provided written instructions described in subsection (b) of this section; [instructed to report to DFPS immediately, but not later than one hour after having knowledge or suspicion, that an individual has been or is being abused, neglected, or exploited, by:]

[(i) calling the DFPS Abuse Hotline toll-free telephone number, 1-800-647-7418; or]

[(ii) using the DFPS Abuse Hotline website; and]

[(C) provided with the instructions described in subparagraph (B) of this paragraph in writing; and]

(3) ensure that each program provider, [conduct the activities described in paragraph (2)(A) - (C) of this subsection before a] staff member, service provider, and [or] volunteer signs a statement acknowledging that all individuals must live free from ANE; and [assumes job duties and at least annually thereafter.]

(4) carry out the activities described in paragraphs (2) and (3) of this subsection before a staff member, service provider, or volunteer starts job duties and at least once each year after that.

(b) A [If a] program provider, staff member, service provider, volunteer, or controlling person that [knows or] suspects that an individual [is being or] has been or is being subjected to ANE while in the care of a provider (by someone other than another individual receiving services) [abused, neglected, or exploited, the program provider] must report the ANE to HHSC CII. The report must be made through the online portal or by calling 1-800-458-9858. The report must be made immediately, and no later than one hour after suspecting or learning of the alleged ANE. The following information must be reported to HHSC CII under this subsection: [or ensure that the person with knowledge or suspicion reports the allegation of abuse, neglect, or exploitation to DFPS immediately, but not later than one hour after having knowledge or suspicion, by:]

(1) name, age, and address of the individual; [calling the DFPS Abuse Hotline toll-free telephone number, 1-800-647-7418; or]

(2) name and address of the person responsible for the care of the individual, if available; [using the DFPS Abuse Hotline website.]

(3) nature and extent of the individual's condition to include their physical, mental, and emotional status;

(4) basis of the reporter's knowledge; and

(5) any other relevant information.

(c) A [If a report required by subsection (b) of this section alleges abuse, neglect, or exploitation by a person who is not a service provider, staff member, volunteer, or controlling person, a] program provider must:

(1) report the death of an individual: [as necessary:]

(A) to HHSC CII and to the local intellectual and developmental disability authority (LIDDA) by the end of the next business day after the program provider becomes aware of the death [obtain immediate medical or psychological services for the individual]; and

(B) to the LAR if the program provider reasonably believes that the LAR does not know of the individual's death. The program provider must make this report as soon as possible, but not later than 24 hours after the program provider becomes aware of the death [assist in obtaining ongoing medical or psychological services for the individual]; and

(2) ensure that a person who knows or suspects that an individual not receiving services from the program provider or another HHSC-regulated provider has experienced ANE reports the suspected ANE to DFPS immediately, but no later than one hour after acquiring the knowledge or suspicion by: [discuss with the individual or LAR alternative residential settings and additional services that may help ensure the individual's safety;]

(A) calling the DFPS Abuse Hotline toll-free telephone number, 1-800-647-7418; or

(B) using the DFPS Abuse Hotline website.

[(3) when taking the actions described in paragraphs (1) and (2) of this subsection, avoid compromising the investigation or further traumatizing the individual; and]

[(4) preserve and protect evidence related to the allegation.]

(d) The program provider must create and use written policies and procedures for preventing, detecting, and reporting ANE. [If a report required by subsection (b) of this section alleges abuse, neglect, or exploitation by a service provider, staff member, volunteer, or controlling person; or if a program provider is notified by HHSC of an allegation of abuse, neglect, or exploitation by a service provider, staff member, volunteer, or controlling person, the program provider must:]

[(1) as necessary:]

[(A) obtain immediate medical or psychological services for the individual; and]

[(B) assist in obtaining ongoing medical or psychological services for the individual;]

[(2) take actions to secure the safety of the individual, including if necessary, ensuring that the alleged perpetrator does not have contact with the individual or any other individual until HHSC completes the investigation;]

[(3) when taking the actions described in paragraphs (1) and (2) of this subsection, avoid compromising the investigation or further traumatizing the individual;]

[(4) preserve and protect evidence related to the allegation; and]

[(5) notify, as soon as possible, but no later than 24 hours after the program provider reports or is notified of an allegation, the individual, the LAR, and the service coordinator of:]

[(A) the allegation report; and]

[(B) the actions the program provider has taken or will take based on the allegation, the condition of the individual, and the nature and severity of any harm to the individual, including the actions required by paragraph (2) of this subsection.]

(e) The program provider must ensure the individual is free from ANE by program provider staff members, service providers, and volunteers. [During an HHSC investigation of an alleged perpetrator who is a service provider, staff member, volunteer, or controlling person, a program provider must:]

[(1) cooperate with the investigation as requested by HHSC, including providing documentation and participating in an interview;]

[(2) provide HHSC access to:]

[(A) sites owned, operated, or controlled by the program provider;]

[(B) individuals, service providers, staff members, volunteers, and controlling persons; and]

[(C) records pertinent to the investigation of the allegation; and]

[(3) ensure that staff members, service providers, volunteers, and controlling persons comply with paragraphs (1) and (2) of this subsection.]

(f) The program provider must ensure the individual is free from seclusion. [After a program provider receives a final investigative report from HHSC for an investigation described in subsection (e) of this section, the program provider must:]

[(1) if the allegation of abuse, neglect, or exploitation is confirmed by HHSC:]

[(A) review the report, including any concerns and recommendations by HHSC; and]

[(B) take action within the program provider's authority to prevent the reoccurrence of abuse, neglect or exploitation, including disciplinary action against the service provider, staff member, or volunteer confirmed to have committed abuse, neglect, or exploitation;]

[(2) if the allegation of abuse, neglect, or exploitation is unconfirmed, inconclusive, or unfounded:]

[(A) review the report, including any concerns and recommendations by HHSC; and]

[(B) take appropriate action within the program provider's authority, as necessary;]

[(3) immediately, but not later than five calendar days after the date the program provider receives the HHSC final investigative report:]

[(A) notify the individual, the LAR, and the service coordinator of:]

[(i) the investigation finding; and]

[(ii) the action taken by the program provider in response to the HHSC investigation as required by paragraphs (1) and (2) of this subsection; and]

[(B) notify the individual or LAR of:]

[(i) the process to appeal the investigation finding as described in 26 TAC Chapter 711, Subchapter J (relating to Appealing the Investigation Finding); and]

[(ii) the process for requesting a copy of the investigative report from the program provider;]

[(4) within 14 calendar days after the date the program provider receives the final investigative report, complete and send to HHSC the HHSC Notification to Waiver Survey and Certification (WSC) Regarding an Investigation of Abuse, Neglect or Exploitation form; and]

[(5) upon request of the individual or LAR, provide to the individual or LAR a copy of the HHSC final investigative report after removing any information that would reveal the identity of the reporter or of any individual who is not the alleged victim.]

(g) The program provider must coordinate services with the licensed individualized skills and socialization provider. Coordination of services must include information about ANE.

(h) A program provider must not retaliate against:

(1) a staff member, service provider, individual, or other person who reports an allegation of ANE. This includes reporting the use of:

(A) seclusion; and

(B) a restraint that does not follow federal and state laws, rules, and regulations; and

(2) an individual because a person acts for the individual to report an allegation of ANE. This includes reporting the use of:

(A) seclusion; and

(B) a restraint that does not follow federal and state laws, rules, and regulations.

(i) If a report required by subsection (b) of this section alleges ANE by a service provider, staff member, volunteer, or controlling person, the program provider must follow these steps:

(1) within five business days after making a report described in subsection (b) of this section, investigate the alleged ANE and send a written investigation report on Form 3613A, Provider Investigation Report, to HHSC CII or submit the form through the online portal;

(2) assess the individual and allegation as needed:

(A) obtain appropriate medical or psychological services for the individual; and

(B) obtain ongoing medical or psychological services for the individual;

(3) take actions to keep the individual safe;

(4) if necessary, make sure the alleged perpetrator does not have contact with the individual or any other individual until HHSC finishes the investigation;

(5) when taking actions described in paragraphs (2) and (3) of this subsection, avoid interfering with the investigation or causing further harm to the individual;

(6) keep and protect evidence related to the allegation; and

(7) notify the LAR, and the service coordinator of:

(A) the allegation report; and

(B) the actions the program provider has taken or will take based on the allegation, the condition of the individual, and the nature and severity of any harm to the individual, including the actions required by paragraph (3) of this subsection.

(C) The notification must be as soon as possible, but no later than 24 hours after the program provider reports or learns about an allegation.

(j) During an HHSC investigation, a program provider must:

(1) cooperate with the investigation as requested by HHSC, including providing documentation and participating in interviews;

(2) provide HHSC access to:

(A) sites owned, operated, or controlled by the program provider;

(B) individuals, service providers, staff members, volunteers, and controlling persons; and

(C) evidence pertinent to the investigation of the allegation;

(3) ensure that staff members, service providers, volunteers, and controlling persons comply with paragraphs (1) and (2) of this subsection; and

(4) upon request of the individual or LAR, provide to the individual or LAR a copy of the HHSC investigative report after removing any information that would reveal the identity of the reporter or of any individual who is not the alleged victim.

§566.17. Texas Health and Human Services Commission Prioritization, Notification, and Report Provisions of Abuse, Neglect, and Exploitation Investigations. [Other Program Provider Requirements.]

(a) HHSC initiates an investigation for complaint or incident intakes as follows. [Program providers must comply with United States Code, Title 42, §1396a(w), regarding requirements about advance directives.]

(1) Priority 1 (P1), which is an immediate threat to the health and safety of an individual. Investigation of alleged ANE must

begin as soon as possible and no later than 24 hours after HHSC CII receives the intake.

(2) Priority 2 (P2), which is a non-immediate threat-high. Investigation of alleged ANE must begin no later than 18 calendar days after HHSC CII receives the intake. Priority 2 is assigned when the present and ongoing threat of continued ANE has been removed.

(3) Priority 3 (P3), which is a non-immediate threat-medium. Investigation of alleged ANE must begin no later than 45 calendar days after HHSC CII receives the intake. Priority 3 is assigned if alleged noncompliance with one or more requirements caused no actual physical or psychosocial harm but there is the potential for more than minimal harm to an individual.

(b) HHSC conducts an ANE investigation within the assigned intake priority periods described in subsection (a) of this section.

(c) Upon entrance, an HHSC surveyor or an HHSC team notifies the program provider of the alleged ANE and provides the program provider with:

(1) the type of investigation, complaint, or incident;

(2) the allegation category listed on the intake; and

(3) the names of the alleged perpetrator and alleged victim.

(d) During the investigation, the HHSC surveyor addresses with the program provider the provider's report of ANE, or lack thereof. If the facility has failed to report the ANE incident or complaint to CII, the facility is not in compliance with §566.15(b) of this chapter.

(e) The HHSC surveyor makes face-to-face contact with the alleged victim within the time periods required by the priority assigned by HHSC CII.

(f) The HHSC surveyor documents the surveyor's findings using Form 3701-A. Form 3701-A includes:

(1) a separate finding for each allegation;

(2) the intake number;

(3) the name of the alleged perpetrator;

(4) whether the allegation is substantiated or unsubstantiated;

(5) whether the staff member is being referred to HHSC Regulatory Enforcement for reportable conduct; and

(6) whether the staff member is being referred to the Texas Board of Nursing.

(g) At the end of the investigation, the HHSC surveyor uses a preponderance of the evidence standard to reach a finding. The finding will be either substantiated or unsubstantiated.

(h) At the end of the investigation, the HHSC surveyor conducts an exit conference with the program provider. The purpose of the exit conference is to informally communicate preliminary findings. The HHSC surveyor gives a copy of HHSC Form 3701-A, Preliminary Findings Based on Survey, Inspection or Investigation, to the program provider.

(i) Within 10 business days of the exit conference, HHSC sends the program provider the Form 3724, Statement of Violations, with the investigation findings for the visit.

(j) The program provider must promptly notify the alleged victim and the alleged victim's LAR in writing, of:

(1) a final finding made by HHSC;

(2) the process for appealing the final finding as described in subsection (m) of this section; and

(3) the right to request a copy of the final HHSC Form 3724, Statement of Violations, in accordance with the HHSC Open Records Request process.

(k) The program provider must ensure that a perpetrator or alleged perpetrator is notified of a final finding made by HHSC.

(l) HHSC notifies the reporter, in writing, of the following:

(1) a final finding of the investigation; and

(2) the process for appealing the final finding as described in subsection (m) of this section.

(m) If the alleged victim, LAR, or the reporter disagrees with an investigation finding, HHSC provides the opportunity to request an appeal of the investigation finding within 30 calendar days of receiving written notice of the final investigation findings, or with good cause, after 30 calendar days of receiving written notice of the final investigation findings by:

(1) completing the required HHSC form; and

(2) submitting the completed form by email or postal mail to the email address or the mailing address located on the HHSC form; or

(3) calling the HHSC designated phone number located on the HHSC form.

(n) An alleged perpetrator may not request an appeal from HHSC.

(o) An appeal may not challenge the determination of whether a substantiated finding rises to the level of reportable conduct for purposes of the Search Engine for Multi-Agency Reportable Conduct established under THSC Chapter 810.

(p) For each appeal request, HHSC conducts a review of the case. HHSC determines if a reinvestigation is needed to collect additional evidence. If a reinvestigation is carried out, HHSC notifies the alleged victim and LAR, the program provider, and the reporter, of the outcome of the appeal and any reinvestigation in writing.

(q) All reports, records, and working papers used or developed by HHSC in an ANE investigation are confidential and may be released only as provided by federal or state law or this subsection.

(r) HHSC gives all completed written investigation reports with a finding of substantiated ANE to the appropriate district attorney and law enforcement agency in accordance with applicable law. HHSC also may release these reports to any other governmental agency HHSC deems appropriate to the investigation.

(t) Upon request, the investigative report (with any information concealed that would reveal the identity of the reporter, complainant, informant, any individual receiving services who is not the victim or alleged victim, and any other person whose life or safety might be endangered by the disclosure) may be released by HHSC to the alleged victim or LAR.

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 November 9, 2026.

TRD-202604747

Stephanie Tourk
Deputy Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: December 20, 2026
For further information, please call: (512) 438-3161

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26 TAC §566.13

STATUTORY AUTHORITY

The repeal is authorized by Texas Government Code §524.0151, 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 Human Resources Code Chapter 48, which provides authority to investigate the abuse, neglect, or exploitation of an elderly person or person with a disability and to provide protective services to that person; and Texas Family Code Chapter 261, which provides authority to investigate the abuse, neglect, or exploitation of children and to provide protective services to children.

The repeal implements Texas Government Code §524.0151, Texas Human Resources Code Chapter 48, and Texas Family Code Chapter 261.

§566.13. Certification Principles: Prohibitions.

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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Stephanie Tourk
Deputy Chief Counsel
Health and Human Services Commission
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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER A. GENERAL RULES

34 TAC §3.12

The Comptroller of Public Accounts proposes the repeal of §3.12, concerning hotel projects, project financing zones, and qualified hotel projects. The comptroller repeals the existing §3.12 to adopt new §3.12 with updated and reorganized content. The repeal of §3.12 will be effective the date the new §3.12 takes effect.

Tetyana Melnyk, Chief Revenue Estimator, has determined that during the first five years that the proposed repeal is in effect, the repeal: 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 rule's applicability; and will not positively or adversely affect this state's economy.

Dr. Melnyk also has determined that the proposed rule repeal would have no fiscal impact on the state government, units of local government, or individuals. The proposed repeal would benefit the public by improving the administration of local hotel projects. There would be no anticipated significant economic cost to the public. The proposed repeal would have no significant fiscal impact on small businesses or rural communities.

You may submit comments on the proposal or information related to the cost, benefit, or effect of the proposal, including any applicable data, research or analysis, to Robin Robinson, Associate Deputy Comptroller for Tax, P.O. Box 13528 Austin, Texas 78711 or to the email address: Robin.Robinson@cpa.texas.gov. The comptroller must receive your comments or other information no later than 30 days from the date of publication of the proposal in the *Texas Register.*

This repeal is proposed under Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture), which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2, (State Taxation) as well as taxes, fees, and other charges that the comptroller administers under other law.

This repeal implements Tax Code, Chapter 351 (Municipal Hotel Occupancy Taxes).

§3.12. Hotel Projects, Project Financing Zones, and Qualified Hotel Projects.

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 November 9, 2026.

TRD-202604743
Chris Blackwell
General Counsel and Associate Deputy Comptroller
Comptroller of Public Accounts
Earliest possible date of adoption: December 20, 2026
For further information, please call: (512) 475-2220

♦ ♦ ♦

34 TAC §3.12

The Comptroller of Public Accounts proposes new §3.12, concerning hotel projects, project financing zones, qualified hotel projects, and municipal hotel and convention center projects. The proposal clarifies the process that municipalities must undertake to obtain rebates provided for in Tax Code, Chapter 351. It also provides guidance on project financing zones authorized by Tax Code, Chapter 351, Subchapters A and B.

The rule defines key statutory terms related to qualified projects, for example, "connected to," establishes distance requirements for the projects, where applicable, and sets up an application process that allows certainty for municipalities and developers in constructing qualified hotels, qualified convention centers, and related establishments.

The rule also contains appendices that illustrate distance requirements and the concept of connected to for hotel and convention center projects.

Tetyana Melnyk, Chief Revenue Estimator, has determined that during the first five years that the proposed new rule is in effect, the rule: 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 rule's applicability; and will not positively or adversely affect this state's economy.

Dr. Melnyk also has determined that the invalidation of the definitions of "convention center entertainment-related facility," "facility ancillary to the hotel," and "shop" and the new interpretations as provided by this rule would likely have an impact on state sales and use tax rebates for hotel projects. However, the amounts of any rebates that may be due because of the determination of the court and the provisions of new §3.12 must be determined by the facts provided to the comptroller with any such rebate requests on a case-by-case basis. Since these facts are not known at this time, the fiscal impact of the provisions of this rule cannot be estimated.

House Bill 4347, 86th Legislature (2019), provides that the businesses whose state sales tax collections a qualified hotel project is entitled to receive include each restaurant, bar, or retail establishment located in or connected to the qualified hotel or related convention center facility. The bill did not provide a definition of "connected to" nor has any subsequent enactment of amendments to Tax Code, Chapter 351, Subchapter C, Chapter 351. Consequently, the phrase must be interpreted and given meaning by rule.

The fiscal note for House Bill 4347 anticipated that the phrase "connected to" would be construed to only allow a connection of a business with a qualified hotel or convention center facility that would entail the sharing of an adjoining wall with direct passage provided through the wall between the business and the qualified hotel or convention center facility. The fiscal note anticipated that the phrase would have relatively minor fiscal implications.

The proposed new rule, providing a definition of "connected to" that is more expansive than anticipated in the fiscal note for House Bill 4347, may have significant negative fiscal implications for the state, in amounts that may hundreds of millions of dollars or more annually. However, these amounts cannot be estimated due to the unknown number, scope, and timing of projects that may be developed in the 66 municipalities with statutory authority to receive rebates of state tax under Tax Code, §351.156.

The provisions that a business sharing a roofline (of unlimited extent), or having location entirely within 1,000 feet of an exterior wall of a qualified hotel or convention center facility if joined by an enclosed or covered walkway or pedestrian bridge (of unlimited extent), are sufficient to allow for the state sales tax collections of the restaurants, bars, and retail establishments within a major shopping mall or retail complex, if developed as part of a qualified hotel project, to be subject to rebate to the project.

The annual amount of state sales taxes collected at a major retail project that could be developed within the physical parameters provided by the rule for connection of a business to a qualified hotel or convention center facility (e.g., a retail development of scale comparable to The Galleria in Houston) would approximate $100 million; the average scale of retail developments undertaken as hotel projects under the rule would likely be lesser, perhaps entailing annual state sales tax revenue of $25 million or less. By comparison, the total of state sales tax rebates paid to 16 active qualified hotel projects in 2026, developed under less expansive parameters for entitlement to state sales tax, was $23,287,668, with an average of $1,455,479 per project.

The clarification that the phrase "connected to" refers to a physical connection without a limitation on distance could increase the total rebates paid to qualified projects significantly beyond the average of approximately $1.5 million per project seen in 2026, with some projects receiving significantly larger rebates. Using the current number of entities eligible to receive a rebate and the average amount of sales tax rebated to a project, there is a potential for approximately $100 million in rebates paid annually.

Detrimental reliance relief will be provided for one project developed in view of an interpretation of "connected to" articulated in a private letter ruling issued May 11, 2023, that allowed that location of a business on a lot sharing any portion of a boundary line with a lot on which a qualified hotel or convention center facility is located would constitute connection of the business to the hotel or convention center facility. Estimated rebates of state sales tax to the project receiving detrimental reliance relief exceed $70 million annually after 2027, the year the project is anticipated to open and begin receiving rebates.

In addition to the project described above, there are potentially five other cities that could have projects of similar size and scope. Should all those cities receive rebates after developing qualified projects, total rebates could exceed $350 million annually. The proposed new rule would benefit the public by clarifying the process that municipalities must undertake to obtain rebates, providing guidance on project financing zones, and defining key statutory terms related to qualified projects. There would be no anticipated significant economic cost to the public. The proposed new rule would have no significant fiscal impact on small businesses or rural communities.

You may submit comments on the proposal or information related to the cost, benefit, or effect of the proposal, including any applicable data, research or analysis, to Robin Robinson, Associate Deputy Comptroller for Tax, P.O. Box 13528 Austin, Texas 78711 or to the email address: Robin.Robinson@cpa.texas.gov. The comptroller must receive your comments or other information no later than 30 days from the date of publication of the proposal in the *Texas Register*.

This section is proposed under Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture), which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2 (State Taxation), as well as taxes, fees, and other charges that the comptroller administers under other law. The section is also proposed under Section 10 of House Bill 4347, 86th Legislature, 2019, which provides that the comptroller may adopt rules as necessary to administer the Act.

The new section implements Tax Code, §§351.001, 351.101, 351.1015, 351.102, and 351.151-351.163, relating to municipal hotel projects, project financing zones, qualified hotel projects, and municipal hotel and convention center projects. The new section also relates to Tax Code, §§151.429 and 183.051, Chapters 156, 322, 323, and 352; Government Code, §2303.5055; Local Government Code, Chapters 334 and 380; and Transportation Code, Chapter 431.

§3.12. Hotel Projects, Project Financing Zones, Qualified Hotel Projects, and Municipal Hotel and Convention Center Projects.

(a) Hotel projects secured by a pledge or commitment of revenue before September 1, 2019, as authorized by Tax Code, Chapter

351, Subchapters A and B as those subchapters existed on August 31, 2019.

(1) Municipalities to which this subsection applies.

(A) This subsection applies to the municipalities of:

(i) Abilene, Amarillo, Austin, Corpus Christi, Dallas, Denton, Fort Worth, Garland, Grand Prairie, Houston, Katy, Kemah, Lewisville, League City, Lubbock, Midland, Nacogdoches, Odessa, Port Aransas, Prosper, Plano, Round Rock, Rowlett, San Antonio, and Tyler; and

(ii) Arlington, Carrollton, Cedar Hill, El Paso, Frisco, Irving, Pasadena, Roanoke, and Sugar Land, if the municipality adopts a capital improvement plan for the construction or expansion of a convention center facility.

(B) This subsection applies to a nonprofit corporation acting on behalf of a municipality when the following conditions are met:

(i) the municipalities of Arlington, Austin, Carrollton, Dallas, El Paso, Fort Worth, Frisco, Garland, Grand Prairie, Irving, Pasadena, Plano, and San Antonio may have a nonprofit corporation acting on behalf of the municipality if the municipality adopts a capital improvement plan to construct or expand a convention center facility;

(ii) the municipality of Corpus Christi may have a nonprofit corporation acting on behalf of the municipality if the municipality adopts a capital improvement plan to expand an existing convention center facility; and

(iii) the municipality of Nacogdoches may have a nonprofit corporation acting on its behalf.

(C) This subsection applies to the municipality of Laredo only for purposes of a hotel and convention center project as defined in paragraph (2)(G) of this subsection and the tax rebates described in paragraph (4)(E) of this subsection.

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

(A) Convention center entertainment-related facilities--Facilities owned by or located on land owned by the municipality or the nonprofit corporation acting on behalf of an eligible central municipality, and designed and primarily used for convention center events, activities, and performances. Examples of this term are a performance hall, permanent or temporary stage, amphitheater, and pavilion. Whether a facility is designed and primarily used for convention center events, activities, and performances is determined as of the date the facility is placed in service.

(B) Convention center facilities--Has the meaning assigned by Tax Code, §351.001(2).

(C) Eligible central municipality--Has the meaning assigned by Tax Code, §351.001(7).

(D) Eligible tax proceeds--Local ad valorem taxes, local sales and use taxes, local hotel occupancy taxes, local mixed beverage gross receipts taxes, and local mixed beverage sales taxes that are generated, paid, or collected by a hotel project or facilities ancillary to the hotel, and that may be rebated, refunded, or paid to the municipality or the owner of a qualified hotel project under an agreement with a municipality, county, or other governmental body.

(E) Facility ancillary to the hotel--A facility that provides support for the operation or function of the hotel. Each facility ancillary to the hotel must be:

(i) located within 1,000 feet of the convention center facility or hotel,

(ii) located in a hotel project, and

(iii) either owned by, or be located on land owned by, the municipality listed in paragraph (1)(A) of this subsection or a nonprofit corporation acting on behalf of a municipality listed in paragraph (1)(B) of this subsection.

(iv) The term includes convention center entertainment-related facilities, meeting spaces, restaurants, shops, street and water and sewer infrastructure necessary for the operation of the hotel or ancillary facilities, and parking facilities.

(v) A facility ancillary to the hotel may be completed in a phase of the hotel project later than the phase in which the hotel is completed.

(F) Governmental body--A local governmental body with the authority to impose taxes.

(G) Hotel and Convention Center Project--A project that is an existing hotel owned by the municipality or another person and a convention center facility to be acquired, constructed, equipped, or leased, that will be located within 1,000 feet of the hotel, and that will be owned by or located on land owned by the municipality. Only the City of Laredo is qualified to undertake a Hotel and Convention Center Project.

(H) Hotel Project--A hotel that is owned by or located on land owned by a municipality or, for an eligible central municipality, a nonprofit corporation acting on its behalf, and located within 1,000 feet of a convention center facility owned by the municipality. The term includes a facility ancillary to the hotel as defined in subparagraph (E) of this paragraph.

(I) Open for initial occupancy--The earliest date on which a member of the public obtains sleeping accommodation for consideration and the convention center is operational, as supported by records of the hotel and convention center.

(J) Shop--A retail store that primarily sells tangible personal property. A retail store does not cease to be a shop because it also sells services.

(K) Tangible personal property--Personal property that can be seen, weighed, measured, felt, or touched or that is perceptible to the senses in any other manner, and includes a computer program and a telephone prepaid calling card.

(3) Requests for refund, rebate, or payment of taxes. A request for a refund, rebate, or payment of taxes for a hotel project or a hotel and convention center project under this subsection is governed by subsection (f) of this section.

(4) Tax rebates for hotel projects.

(A) During the first 10 years after a hotel project is open for initial occupancy, a municipality described in paragraph (1)(A) of this subsection is entitled to receive the following from such hotel project:

(i) 100% of the state sales and use tax,

(ii) 100% of the state hotel occupancy tax paid or collected by the hotel project, and

(iii) eligible tax proceeds. The tax rebate period ends on the tenth anniversary of the date the hotel project opened for initial occupancy.

(B) Pursuant to Government Code, §2303.5055 (Refund, Rebate, or Payment of Tax Proceeds to Qualified Hotel Project), the comptroller may rebate only eligible tax proceeds that a governmental body has agreed to rebate. The agreement must be in writing and specify that the comptroller rebate the eligible tax proceeds directly to the municipality.

(C) The municipalities of Abilene, Cedar Hill, Katy, Kemah, League City, Lewisville, Lubbock, Midland, Port Aransas, Prosper, Roanoke, Rowlett, and Sugar Land are not entitled to receive funds from a hotel project unless the municipality has pledged the revenue derived from the hotel occupancy tax paid or collected from the hotel project for the payment of bonds or other obligations issued or incurred for the hotel project.

(D) A municipality may not receive or pledge revenue or funds for a hotel project or hotel and convention center project unless the municipality entered into an agreement with a person for the development of the hotel project before September 1, 2019.

(E) During the first 10 years after a hotel and convention center project is open for initial occupancy, the municipality of Laredo is entitled to receive from such hotel and convention center project:

(i) 100% of the state sales and use tax,

(ii) 100% of the state hotel occupancy tax paid or collected by the hotel and convention center project, and

(iii) eligible tax proceeds paid or collected by a hotel and convention center project. The tax rebate period ends on the tenth anniversary of the date the hotel and convention center project opened for initial occupancy.

(5) Multiple hotel projects.

(A) A municipality described in paragraph (1)(A) of this subsection may designate more than one hotel project.

(B) After a facility ancillary to the hotel has entered into a tax rebate agreement with a hotel project, the facility may not associate with another hotel project to extend the 10-year tax rebate period in paragraph (4)(A) of this subsection.

(b) Project financing zones authorized by Tax Code, Chapter 351, Subchapters A and B.

(1) Municipalities to which this subsection applies.

(A) This subsection applies to the municipalities eligible to establish project financing zones that are the cities of Austin, Corpus Christi, Dallas, Fort Worth, Houston, Lubbock, and San Antonio.

(B) This subsection also applies to a local government corporation acting on behalf of Austin, Corpus Christi, Fort Worth, Houston, Lubbock and San Antonio for purposes of developing a project financing zone.

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

(A) Base year amount--The amount of hotel-associated revenue collected in a project financing zone during the calendar year that includes the zone's date of designation.

(B) Commenced--The date on which a municipality first takes any of the following actions to secure a pledge or commitment of revenue under Tax Code, Chapter 351 directly related to the qualified project:

(i) authorizes the issuance of bonds or other obligations by ordinance or resolution;

(ii) executes an agreement under Local Government Code, Chapter 380; or

(iii) executes an interlocal agreement.

(C) Convention center facilities--Facilities that are primarily used to host conventions and meetings. The term means civic centers, civic center buildings, auditoriums, exhibition halls, and coliseums that are owned by the municipality or other governmental entity or are managed in whole or in part by the municipality. The term includes:

(i) parking areas or facilities that are for the parking or storage of conveyances and that are located at or in the vicinity of other convention center facilities; and

(ii) a hotel owned by or located on land owned by an eligible central municipality or a nonprofit corporation acting on behalf of an eligible central municipality and that is located within 1,000 feet of a convention center facility owned by the municipality.

(D) Date of designation--The date a municipality by ordinance or agreement under Local Government Code, Chapter 380 designates a project financing zone.

(E) Hotel-associated revenue--The amount of tax revenue that is the sum of the following:

(i) state tax revenue collected in a project financing zone from all hotels located in the zone that would be available to the owners of qualified hotel projects under Tax Code, §151.429(h) if the hotels were qualified hotel projects, excluding the amount of that revenue received by a municipality under:

(I) Tax Code, §351.156 or §351.157 in connection with a qualified hotel located in the zone that exists on the date the municipality designates the zone, except as provided by clause (ii) of this subparagraph; or

(II) Tax Code, §351.102(c) for a hotel project described by Tax Code, §351.102(b) and located in the zone that exists on the date the municipality designates the zone; and

(ii) the mixed beverage gross receipts tax and mixed beverage sales tax revenue collected from all mixed beverage permittees at hotels located in the project financing zone, excluding the local mixed beverage taxes disbursed to the municipality under Tax Code, §183.051 (Mixed Beverage Tax Clearance Fund).

(F) Incremental hotel-associated revenue--The amount of hotel-associated revenue received in any calendar year from hotels located within a project financing zone, including hotel-associated revenue from hotels built in the project financing zone after the year in which a municipality designates the zone, that exceeds the base year amount. After the hotel project's 10-year state tax rebate period expires, the hotel-associated revenue received from a hotel located in a hotel project that existed on the zone's date of designation is included in incremental hotel-associated revenue but not included in the base year amount.

(G) Project financing zone--An area within a municipality:

(i) that the municipality by ordinance or by agreement under Local Government Code, Chapter 380 designates as a project financing zone;

(ii) the boundaries of which are:

(I) within a three-mile radius of the center of a qualified project; or

(II) if designated by a municipality described by Tax Code, §351.001(7)(B) on or before December 31, 2024, a continuous geographic area that contains the qualified project, the total area of which is less than or equal to the maximum area allowed under subclause (I) of this clause;

(iii) the designation of which specifies:

(I) for a zone described by clause (ii)(I) of this subparagraph, the longitude and latitude of the center of the qualified project, or

(II) for a zone the boundaries of which are prescribed by clause (ii)(II) of this subparagraph, the exact boundaries of the zone; and

(iv) the designation of which expires not later than the 30th anniversary of the date of designation.

(H) Qualified project--

(i) a convention center facility;

(ii) a multipurpose arena or venue that includes a livestock facility and is located within or adjacent to a recognized cultural district, and any related infrastructure, that is:

(I) located on land owned by a municipality or by the owner of the venue;

(II) partially financed by private contributions that equal not less than 40% of the project costs; and

(III) related to the promotion of tourism and the convention and hotel industry; or

(iii) for the municipality of San Antonio, the term means a convention center facility or venue described by Local Government Code, §334.001(4)(A) (Sports and Community Venues) and any related infrastructure.

(I) Related infrastructure--The term includes any store, restaurant, on-site hotel, concession, automobile parking facility, area transportation facility, road, street, water or sewer facility, park, or other on-site or off-site improvement that relates to and enhances the use, value, or appeal of a venue, including areas adjacent to the venue, and any other expenditure reasonably necessary to construct, improve, renovate, or expand a venue, including an expenditure for environmental remediation.

(J) Venue--

(i) an arena, coliseum, stadium, or other type of area or facility:

(I) that is used or is planned for use for one or more professional or amateur sports events, community events, or other sports events, including rodeos, livestock shows, agricultural expositions, promotional events, and other civic or charitable events; and

(II) for which a fee for admission to the events is charged or is planned to be charged;

(ii) a convention center, convention center facility, or related improvement, such as a civic center hotel, theater, opera house, music hall, rehearsal hall, park, zoological park, museum, aquarium, or plaza, located in the vicinity of a convention center or convention center facility owned by a municipality or a county;

(iii) a tourist development area along an inland waterway;

(iv) a municipal parks and recreation system, or improvements or additions to a parks and recreation system, or an area or facility that is part of a municipal parks and recreation system;

(v) a project authorized by Section 4A or 4B, Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes), as that Act existed on September 1, 1997; and

(vi) a watershed protection and preservation project; a recharge, recharge area, or recharge feature protection project; a conservation easement; or an open-space preservation program intended to protect water.

(3) Requests for refund, rebate, or payment of taxes.

(A) A request for a refund, rebate, or payment of taxes for a qualified project located in a project financing zone is governed by subsection (f) of this section.

(B) If a municipality designates one project financing zone in which multiple qualified projects are located, the comptroller will consider the boundaries of the project financing zone to be within a three-mile radius of the center of each of the qualified projects.

(i) The hotel-associated revenue collected from all hotels located in the project financing zone shall be included in the zone's incremental hotel-associated revenue.

(ii) Payments to the municipality under clause (i) of this subparagraph will begin on the date the municipality notifies the comptroller in writing that the first qualified project has commenced.

(4) Tax rebates for qualified projects located in project financing zones.

(A) A municipality listed in paragraph (1) of this subsection may pledge incremental hotel-associated revenue received from hotels located in a project financing zone for the payment of bonds and obligations issued to acquire, lease, construct, improve, enlarge, and equip a qualified project.

(B) The municipality may designate a project financing zone. The municipality must notify the comptroller of the designation of the project financing zone not later than the 30th day after the date the municipality designates the project financing zone. Except as provided by paragraph (2)(G)(ii)(II) of this subsection:

(i) The boundaries of a project financing zone must be within a three-mile radius of the center of a qualified project and must be within the corporate limits of the municipality.

(ii) The designation of the project financing zone must include the longitude and latitude of the center of the qualified project.

(C) The municipality is entitled to receive the incremental hotel-associated revenue from hotels located in the project financing zone beginning the first day of the year after the year of the zone's date of designation.

(i) Payments of the incremental hotel-associated revenue end on the last day of the month during which the designation of a project financing zone expires.

(ii) The designation of a project financing zone expires not later than 30 years from the anniversary month in which the zone was designated.

(D) Beginning the first day of the year after the year of the zone's date of designation, the comptroller shall deposit in a separate trust account incremental hotel-associated revenue collected or received.

(i) Payments from the trust account to the municipality begin on the date a qualified project has commenced and the municipality has provided the comptroller with the documentation required under subsection (f) of this section.

(ii) If the qualified project has not commenced by the fifth anniversary of the first deposit to the account, the comptroller shall stop making deposits and transfer the money in the account to the general revenue fund.

(iii) The comptroller may estimate the amount of incremental hotel-associated revenue that will be deposited for the calendar year and deposit that amount to the trust account. The calculation of the estimated incremental hotel-associated revenue is based on the base year amount, less the previous year revenue amount for year one revenue estimates. The next year's incremental difference is based on the revenue from the previous year and the base year. The municipality may request disbursements on a monthly basis based on the estimate. The comptroller must adjust deposits and disbursements to reflect the amount of revenue actually deposited at the end of each calendar year.

(iv) A municipality must notify the comptroller if a qualified project is abandoned. The comptroller shall transfer to the general revenue fund the amount of money in the trust account that exceeds the amount needed for payment of bonds or other obligations issued or incurred under subparagraph (A) of this paragraph.

(c) Qualified hotel projects authorized by Tax Code, Chapter 351, Subchapters A and B.

(1) Municipalities to which this subsection applies. This subsection applies to a qualified hotel project located in the City of Houston.

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

(A) Convention center facilities--Facilities that are primarily used to host conventions and meetings. The term means civic centers, civic center buildings, auditoriums, exhibition halls, and coliseums that are owned by the municipality or other governmental entity or that are managed in whole or in part by the municipality. The term includes parking areas or facilities that are for the parking or storage of conveyances and that are located at or in the vicinity of other convention center facilities.

(B) Eligible tax proceeds--Local ad valorem taxes, local sales and use taxes, local hotel occupancy taxes, local mixed beverage gross receipts taxes, and local mixed beverage sales taxes that are generated, paid, or collected by a qualified hotel project, or facilities ancillary to the hotel, and that may be rebated, refunded, or paid to the owner of a qualified hotel project under an agreement with a municipality, county, or other governmental body.

(C) Facility ancillary to the hotel--A facility that is located within 1,000 feet of a convention center facility owned by a municipality, that is located in a qualified hotel project, and that provides support for the operation or function of the hotel. The term includes a facility ancillary to a hotel that is part of the qualified hotel project but that is completed in a different phase of the project.

(D) Governmental body--A local governmental body with the authority to impose taxes.

(E) Nonprofit municipally sponsored local government corporation--A corporation created under the Texas Transportation Code, Chapter 431 (Texas Transportation Corporation Act). This definition also applies to the term "municipally sponsored local government corporation."

(F) Open for initial occupancy--The earliest date on which a member of the public obtains sleeping accommodation for consideration and the convention center is operational, as supported by records of the hotel and convention center.

(G) Qualified hotel project--A hotel proposed to be constructed, or being constructed, by a municipality described in paragraph (1) of this subsection or by a nonprofit municipally sponsored local government corporation, including a privately owned or existing hotel selected by the municipality, that is located within 1,000 feet of a convention center facility owned by the municipality, including shops, parking facilities, and any other facilities ancillary to the hotel.

(H) Shop--A retail store that primarily sells tangible personal property. A retail store does not cease to be a shop because it also sells services.

(3) Requests for refund, rebate, or payment of taxes. A request for a refund, rebate, or payment of taxes for a qualified hotel project is governed by subsection (f) of this section.

(4) Tax rebates for qualified hotel projects.

(A) The owner of a qualified hotel project is entitled to receive 100% of the state sales and use tax and state hotel occupancy tax paid or collected by the qualified hotel project, and eligible tax proceeds, during the first 10 years after the qualified hotel project is open for initial occupancy. The tax rebate period ends on the tenth anniversary of the date the qualified hotel project opened for initial occupancy. The comptroller does not have the authority to issue tax rebates until the project is open for initial occupancy.

(B) Pursuant to Government Code, §2303.5055, the comptroller may rebate only eligible tax proceeds that a governmental body has agreed to rebate. The agreement must be in writing and specify that the comptroller rebate the eligible tax proceeds to the owner of the qualified hotel project.

(C) Multiple qualified hotel projects.

(i) A municipality described in paragraph (1) of this subsection may designate more than one qualified hotel project.

(ii) After a facility ancillary to the hotel has entered into a tax rebate agreement with a qualified hotel project, the ancillary facility may not associate with another qualified hotel project to extend the 10-year tax rebate period in subparagraph (A) of this paragraph.

(d) Municipal hotel and convention center projects authorized by Tax Code, Chapter 351, Subchapter C (Municipal Hotel and Convention Center Projects).

(1) Municipalities to which this subsection applies. This subsection applies to:

(A) Abilene, Allen, Alvin, Amarillo, Arlington, Austin, Bastrop, Baytown, Beaumont, Brownsville, Carthage, Cedar Park, Celina, Commerce, Conroe, Denton, Eagle Pass, Fredericksburg, Frisco, Grand Prairie, Grapevine, Hutto, Irving, Katy, Kaufman, Kemah, Kerrville, Kyle, League City, Leander, Lewisville, Little Elm, Lubbock, Mansfield, McKinney, Mesquite, Midland, Missouri City, Nacogdoches, Odessa, Pearland, Port Aransas, Presidio, Prosper, Richmond, Rio Grande City, Roanoke, Round Rock, Rosenberg, Rowlett, San Antonio, San Benito, Seabrook, Seguin, Temple, Terrell, The Colony, Tyler, Victoria, Waco, Weatherford, and Webster;

(B) Cedar Hill, El Paso, and Sugar Land, if the municipality has adopted a capital improvement plan to construct or expand a convention center facility; and

(C) Corpus Christi, if it has adopted a capital improvement plan to expand an existing convention center facility.

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

(A) Bar--An establishment that is primarily engaged in preparing and serving alcoholic beverages for immediate consumption on the premises.

(B) Commences--The date on which a municipality first takes any of the following actions to secure a pledge or commitment of revenue under Tax Code, Chapter 351 directly related to the qualified project:

(i) authorizes the issuance of bonds or other obligations by ordinance or resolution;

(ii) executes an agreement under Local Government Code, Chapter 380; or

(iii) executes an interlocal agreement.

(C) Connected to--A qualified hotel, qualified convention center facility, restaurant, bar, retail establishment, or spa is connected to a qualified hotel or qualified convention center facility for purposes of Tax Code, §351.156, if it satisfies clause (i), (ii), or (iv) of this subparagraph.

(i) It shares an adjoining wall or roofline with the qualified hotel or qualified convention center facility.

(ii) It is joined to the qualified hotel or qualified convention center facility, including by a covered walkway, pedestrian walkway, tunnel, skybridge that has a consistent and coordinated design, an intervening structure with walls or a ceiling that allows passage between buildings, or similar means. Examples of structures that connect to a qualified convention center facility or qualified hotel include the following. These examples are illustrative and not exclusive:

(I) an enclosed or roofed skybridge or elevated pedestrian bridge, including one crossing a public street;

(II) an underground tunnel or below-grade concourse;

(III) a roofed arcade, colonnade, gallery, or breezeway;

(IV) a covered promenade with a continuous overhead canopy;

(V) a shared lobby, atrium, concourse, or interior mall onto which both the establishment and the qualified hotel or qualified convention center facility open;

(VI) an elevator, escalator, stairway, or ramp that carries pedestrians directly between the establishment and the qualified hotel or qualified convention center facility; and

(VII) an intervening structure with architectural features demonstrating design and connectivity with the qualified project as certified by a Texas architect.

(iii) It has an exterior wall located within 1,000 feet of either a qualified hotel exterior wall or a qualified convention center exterior wall, provided that the lots on which the qualified hotel and qualified convention center facility are located share a common property boundary line.

(iv) The term has the same meaning wherever it appears in this subsection. No distance limitation applies to a facility or establishment that is connected under clause (i) or (ii) of this subparagraph. This clause is subject to the 1,000-foot limitation stated in that clause.

(D) Open for initial occupancy--The earliest date on which a member of the public obtains sleeping accommodations for consideration at the qualified hotel, as supported by the hotel's records.

(E) Qualified convention center facility--A facility that has been or will be constructed or remodeled, that is primarily used to host conventions or meetings, and that is configurable to simultaneously accommodate multiple conventions and meetings of different sizes and types. The facility must:

(i) have at least 10,000 square feet of continuous meeting space, which may include pre-function space;

(ii) be connected to a qualified hotel or have an exterior wall that is located not more than 1,000 feet from the nearest exterior wall of a qualified hotel;

(iii) be wholly owned by the municipality, none of which is or may be owned through an undivided common interest. This clause does not apply to the municipalities of Grand Prairie, Fredericksburg, McKinney, and San Antonio; and

(iv) not be located in a hotel, sports stadium, or other structure; provided that the facility may share common infrastructure or facilities with a hotel.

(F) Qualified establishment--A bar, restaurant, retail establishment, swimming pool, or swimming facility that is constructed on or after the date the municipality commences a qualified project, that is located on land owned by a municipality, and the nearest exterior wall of which is located not more than 1,000 feet from the nearest exterior wall of a qualified hotel or qualified convention center facility. A qualified establishment may not be a sports stadium. The term includes a spa for the municipality of San Antonio.

(i) A swimming pool or swimming facility must be owned or operated by the related qualified hotel.

(ii) The qualified establishment may be located on land owned by any person, and may be constructed at any time, if it is located in the municipality of El Paso.

(iii) The qualified establishment may be located on land owned by the federal government if it is located in the municipality of Grand Prairie.

(iv) The qualified establishment may be located on land owned by a nonprofit corporation, including a public facility corporation, that is acting as or on behalf of, or that is controlled by, a municipality, if it is located in the municipality of San Antonio.

(v) For purposes of this term, a qualified establishment is "constructed on or after the date the municipality commences a qualified project" if the construction, remodeling, or build-out necessary to place the establishment in service occurs on or after the date the municipality takes an action described in subparagraph (B) of this paragraph, without regard to when the building or structure in which it is located was constructed. A qualified establishment is placed in service on the date it first opens to the public for business.

(G) Qualified hotel--A hotel that is formally designated by the municipality as the hotel that is part of a qualified project and that is located on land owned by the designating municipality. The ownership requirement does not apply to the municipalities of Grand Prairie, Fredericksburg, McKinney, and San Antonio. The qualified hotel:

(i) must be connected to a qualified convention center facility or have an exterior wall that is located not more than 1,000 feet from the nearest exterior wall of the qualified convention center facility; and

(ii) may consist of two or more towers regardless of whether the towers are named differently, branded differently, report different addresses to the comptroller under the Tax Code, or report taxes separately to the comptroller under the Tax Code, if the towers:

(I) are constructed at the same time;

(II) are connected to each other or to a qualified convention center facility; and

(III) each meet the requirements of the first sentence and clause (i) of this subparagraph.

(H) Qualified project--A project to acquire, construct, repair, remodel, expand, or equip a qualified convention center facility, or to acquire, lease, construct, repair, remodel, expand, or equip a qualified hotel. A qualified project may be completed in different phases, and the project may include:

(i) acquiring, leasing, constructing, repairing, remodeling, expanding, or equipping a restaurant, bar, retail establishment, or spa located in, or connected to, a qualified convention center facility or qualified hotel, including by a covered walkway;

(ii) acquiring, leasing, constructing, repairing, remodeling, expanding, or equipping a parking area or structure, the nearest property line of which is located not more than 1,000 feet from the nearest property line of a qualified convention center facility or qualified hotel;

(iii) acquiring, constructing, repairing, remodeling, or expanding infrastructure that is directly related to and necessary for the qualified convention center facility or qualified hotel and that is located within the property lines of the facility or hotel, or not more than 1,000 feet from the nearest property line of the facility or hotel; or

(iv) acquiring a property right, including a fee simple interest, easement, or other interest, in connection with a purpose described by this subparagraph.

(I) Restaurant--An establishment that is primarily engaged in preparing and serving food and beverages for immediate consumption. The term includes an establishment that may also provide amusement or entertainment services or sell retail items.

(J) Retail establishment--An establishment engaged in activities described by 2017 North American Industry Classification System subsector code 442, 443, 445, 446, 448, 451, 452, or 453.

(3) Classification of establishments. An establishment is classified according to its primary business activity, and its classification determines the character of the establishment and of all of its receipts. A restaurant or bar that reports under a code within North American Industry Classification System subsector 722 (Food Services and Drinking Places), as in effect on the date the application is submitted under subsection (f) of this section, may be classified as a restaurant or bar. Alternatively, a restaurant or bar may establish its classification by other evidence of its primary business activity. An establishment does not lose its classification because it also provides amusement, entertainment, or other services, and no allocation of receipts between activities is required.

(4) Multiple qualified projects.

(A) Except as otherwise provided in this paragraph, a municipality listed in paragraph (1) of this subsection is entitled to one qualified project. After the municipality pledges or commits revenue for a qualified project, the municipality may not pledge or commit revenue for another qualified project.

(B) The municipality of Midland may pledge or commit revenue for two qualified projects.

(C) The municipalities of Amarillo, Arlington, Austin, Brownsville, Corpus Christi, El Paso, Frisco, Grand Prairie, Irving, Lubbock, McKinney, and San Antonio may pledge or commit revenue for multiple qualified projects.

(5) Tax refunds, rebates, or payments pursuant to Tax Code, §351.156 (Entitlement to Certain Tax Revenue).

(A) Each of the municipalities listed in paragraph (1) of this subsection is entitled to receive the revenue derived from the following taxes generated, paid, and collected by a qualified hotel, and by each restaurant, bar, and retail establishment located in or connected to the qualified hotel or the related qualified convention center facility that is located in the municipality:

(i) state sales and use taxes;

(ii) state hotel occupancy taxes; and

(iii) if a political subdivision that is entitled to receive the revenue from the tax agrees in writing to the municipality receiving that revenue, then also:

(I) the local sales and use tax imposed by the political subdivision under Tax Code, Chapter 322 (Sales and Use Taxes for a Special Purpose Taxing Authority) or Tax Code, Chapter 323 (County Sales and Use Tax Act);

(II) the county hotel occupancy tax imposed by the political subdivision under Tax Code, Chapter 352 (County Hotel Occupancy Taxes); and

(III) the mixed beverage tax imposed under Tax Code, §183.051 (Mixed Beverage Tax Clearance Fund).

(B) The tax refund, rebate, or payment period ends on the tenth anniversary of the date the qualified hotel is open for initial occupancy.

(C) A municipality is not entitled to receive revenue under this paragraph unless the municipality has pledged or committed a portion of the revenue derived from the tax imposed by Tax Code, Chapter 351 and collected by the qualified hotel for the payment of bonds, other obligations, a Local Government Code, Chapter 380 agreement, or other contractual obligations described in Tax Code, §351.155(a) and issued or incurred for the qualified project.

(D) For purposes of this paragraph related to entitlements under Tax Code, §351.156, the following apply:

(i) neither the date on which a restaurant, bar, or retail establishment was constructed nor the date on which the space it occupies came into existence affects the municipality's entitlement under this paragraph; and

(ii) each restaurant, bar, or retail establishment may be owned by any person and may be located on land owned by any person.

(6) Additional tax refunds, rebates, or payments pursuant to Tax Code, §351.157 (Additional Entitlement for Certain Municipalities).

(A) This paragraph applies to Allen, Brownsville, Cedar Hill, Celina, Denton, El Paso, Grand Prairie, Irving, Katy, Little Elm, Lubbock, Mansfield, McKinney, Mesquite, Midland,

Richmond, Round Rock, San Antonio, San Benito, Seabrook, The Colony, Victoria, and Weatherford.

(B) In addition to the revenue provided under paragraph (5) of this subsection, a municipality listed in subparagraph (A) of this paragraph is entitled to receive the revenue derived from the following taxes generated, paid, and collected from a qualified establishment located in the municipality:

(i) state sales and use tax; and

(ii) mixed beverage tax, if the political subdivision that is entitled to receive the revenue from the tax agrees in writing to the municipality receiving that revenue.

(C) The tax refund, rebate, or payment period ends on the tenth anniversary of the date the qualified hotel is open for initial occupancy.

(D) A municipality is not entitled to receive revenue under this paragraph unless the municipality has pledged or committed a portion of the revenue derived from the tax imposed by Tax Code, Chapter 351 and collected by the qualified hotel for the payment of bonds, other obligations, a Local Government Code, Chapter 380 agreement or other contractual obligations described in Tax Code, §351.155(a) and issued or incurred for the qualified project.

(E) A municipality is not entitled to receive revenue under this paragraph unless the municipality commences a qualified project before September 1, 2027.

(7) Nonprofit corporation as municipal agent. A municipality may authorize a nonprofit corporation to act on behalf of the municipality for any purpose under Tax Code, Chapter 351, Subchapter C.

(8) Reporting and substantiation of eligible receipts.

(A) Receipts of a business that is not a qualified hotel, restaurant, bar, retail establishment, or qualified establishment that is part of the qualified project must be reported under a taxpayer identification number or location number separate from those facilities.

(B) Receipts from the qualified hotel and from each restaurant, bar, retail establishment, and qualified establishment that is operated separately from the qualified hotel or the related qualified convention center facility must be reported under a separate taxpayer identification number or location number. A facility that is not separately operated is not required to obtain a separate number.

(9) Change in eligibility. It is the responsibility of the municipality to notify the comptroller in writing if any use for which the municipality receives a refund, rebate, or payment no longer meets the requirements of Tax Code, Chapter 351, Subchapter C. Notice must be given not later than the 90th day after the date of the change. If a municipality fails to give notice as required by this paragraph, the comptroller may take any action available under Tax Code, Chapter 111 (Collection Procedures), including cessation of refunds, rebates, or payments attributable to the use at issue as of the date of the change.

(e) General provisions applicable to all project types under Tax Code, Chapter 351.

(1) Ownership.

(A) For purposes of this section, ownership of land is established by:

(i) a recorded deed conveying the land to the municipality, nonprofit corporation, or other person whose ownership is required by this section; and

(ii) an owner's Texas policy of title insurance issued to the municipality, nonprofit corporation, or other person whose ownership is required by this section.

(B) Ownership of the building portion of a qualified convention center facility is established by any one of the following:

(i) a recorded deed conveying the land and improvements to the municipality, nonprofit corporation, or other person whose ownership is required by this section;

(ii) a certificate of occupancy issued in the name of the municipality, nonprofit corporation, or other person whose ownership is required by this section; or

(iii) an ordinance or resolution evidencing the municipality's acceptance of the facility.

(C) The comptroller will not consider municipal bonding requirements in determining ownership.

(2) Measurement.

(A) For purposes of this paragraph, the term "facility" includes a hotel, convention center facility, facility ancillary to the hotel, qualified convention center facility, qualified hotel, restaurant, parking facility, bar, retail establishment, spa, and qualified establishment, in each case meeting the requirements of Tax Code, Chapter 351.
Figure 1: 34 TAC §3.12(e)(2)(A)
Figure 2: 34 TAC §3.12(e)(2)(A)

(B) A distance under this section is the shortest horizontal straight-line distance, measured at grade, between the closest points of the two features identified, disregarding intervening streets, easements, and elevation.

(C) Except where this section refers to a property line, distances are measured from the nearest exterior wall of one facility to the nearest exterior wall of the other. A facility need not be located entirely within the distance specified so long as its nearest exterior wall is located within the distance specified.
Figure 1: 34 TAC §3.12(e)(2)(C)
Figure 2: 34 TAC §3.12(e)(2)(C)

(D) For purposes of this section, an exterior wall of a facility includes the outermost wall of any structure that is physically attached to and part of such facility, including a porte-cochère, canopy, covered walkway, attached parking structure, or attached pavilion except as limited under Tax Code, §351.157. Where a facility comprises more than one building, or is completed in phases, the exterior wall of any building comprising the facility may be used.

(E) Where a facility occupies a portion of a building, its exterior wall is the exterior wall of the building in which it is located. A demising wall or other interior partition of a facility is an exterior wall of that facility for purposes of this paragraph.
Figure: 34 TAC §3.12(e)(2)(E)

(F) Where this section refers to a property line, the distance is measured between the nearest property lines of the two properties identified as shown by the deed records or by a recorded plat.

(f) Application, eligibility determination, and payment of taxes for Tax Code, Chapter 351 projects.

(1) Application; scope; form.

(A) This subsection governs every request for a refund, rebate, or payment of taxes for a hotel project or hotel and convention center project under subsection (a) of this section, a qualified project located in a project financing zone under subsection (b) of this section, a qualified hotel project under subsection (c) of this section, and

a qualified project under subsection (d) of this section. In this subsection, "project" means any of the foregoing and "applicant" means the municipality, the nonprofit corporation acting on its behalf, a local government corporation, or the owner of the qualified hotel project, as applicable to the project type.

(B) An applicant must apply on the form prescribed by the comptroller for that purpose and made available on the comptroller's website.

(C) The application process has three stages. Stage One is a determination of application completeness, which an applicant may request at any time. Stage Two is a substantive review for project eligibility. Stage Three is a request for the initiation of the refund, rebate, or payment of taxes.

(D) An applicant may submit a Stage One application and a Stage Two request simultaneously. Each stage remains subject to its applicable requirements and response period under this subsection.

(E) An application may be submitted:

(i) by regular, certified, or registered mail to: Texas Comptroller of Public Accounts, Tax Counsel's Office, Attn: Hotel Projects, P.O. Box 13528, Austin, Texas 78711-3528;

(ii) by email to the address identified for that purpose on the comptroller's website; or

(iii) through any electronic filing system that the comptroller makes available for that purpose.

(2) Stage One: Administrative Completeness. This is a ministerial review to confirm that all application checklist items have been included, conditionally approved, or have been waived by the comptroller for good cause.

(3) Stage Two: Substantive Review.

(A) An applicant may request a written determination that a project, including each convention center facility, hotel, restaurant, bar, retail establishment, and qualified establishment, as applicable, identified in the application, satisfies the eligibility requirements of this section and of Tax Code, Chapter 351. The request must include the documents listed in paragraph (5) of this subsection that are designated as Stage One documents for the applicable project type.

(B) The comptroller will issue a written determination that states, for the project, including each convention center facility, hotel, restaurant, bar, retail establishment, and qualified establishment, as applicable, identified in the application, whether each facility satisfies the eligibility requirements, and if it does not, the specific requirement that is not satisfied and the factual basis for that conclusion.

(C) A determination under this paragraph is not a determination that any amount is due, and does not entitle an applicant to a refund, rebate, or payment before the conditions to payment are satisfied.

(4) Stage Three: Initiation of Refund, Rebate, or Payment.

(A) After the hotel or qualified hotel is open for initial occupancy, or, for a qualified project located in a project financing zone, after the qualified project has commenced, an applicant may request initiation of the refund, rebate, or payment of taxes. The request must include the documents listed in paragraph (5) of this subsection that are designated as Stage Three for the applicable project type. An applicant that has not received a determination under paragraph (3) of this subsection must also submit the documents designated as Stage One documents.

(B) An applicant that has received a Stage Two determination is not required to resubmit any document previously submitted and may instead certify that the document remains accurate and that no fact material to the determination has changed, and identify any changes.

(C) The comptroller will give the applicant written notice of the results of the request.

(D) An applicant must submit a supplemental request for any facility that opens for business within the project after submission of the Stage Three request or that has had a change in use or other condition requiring its removal from the application. A supplemental request must include the documents the comptroller needs to verify the request and is subject to the response period in paragraph (6) of this subsection.

(5) Documents. The following documents are required, as applicable to the project type and stage.

(A) All project types - Stage One:

(i) a copy of the certificate of formation of any nonprofit corporation acting on behalf of the municipality;

(ii) a copy of the municipality's capital improvement plan, if a capital improvement plan is a condition of eligibility;

(iii) a copy of the municipality's ordinance or resolution approving the refund, rebate, or payment agreement between the municipality and the owner of the project;

(iv) a copy of the concept plan for the project;

(v) a map showing the distances required by the applicable subsection of this section, and the location of each facility for which a refund, rebate, or payment will be sought. The municipal engineer or surveyor shall confirm the distances by certification or affidavit. The municipal planner shall certify or provide an affidavit that the application complies with the capital improvement plan, if required, and any master or similar plan if adopted by the municipality;

(vi) documentation of ownership meeting the standards in subsection (e)(1) of this section;

(vii) a copy of the designation of the qualified hotel by the municipality, where designation is a condition of eligibility;

(viii) the name, position, and telephone number of a contact person for the applicant; and

(ix) all municipal documentation submitted must be certified by the municipal clerk.

(B) All project types - Stage Three:

(i) applicable records of the hotel, the convention center facility, and the municipality, such as guest folios and press releases, that:

(I) show the date the hotel or qualified hotel facility was open for initial occupancy,

(II) for projects under subsections (a) and (c) of this section only, show the date the convention center facility became operational, and

(III) for a project financing zone, show that the qualified project has commenced;

(ii) the name and address of the hotel and the comptroller-issued taxpayer identification and location numbers the hotel uses or will use to report sales and use tax, hotel occupancy tax, mixed beverage gross receipts tax, and mixed beverage sales tax;

(iii) the name, address, comptroller-issued taxpayer identification and location numbers, and receipts of each facility that is part of the project and from which a refund, rebate, or payment will be sought;

(iv) a waiver of confidentiality signed by an authorized officer or director of the hotel and of each facility identified under clause (iii) of this subparagraph, allowing the comptroller to release that facility's hotel occupancy tax, sales and use tax, and mixed beverage sales tax information to the applicant. A waiver must be renewed annually unless it states a longer period, which may be a maximum of ten years. Any change to a waiver must be submitted to the comptroller in writing; and

(v) a completed direct deposit authorization form.

(C) Project financing zones - additional documents. For a qualified project located in a project financing zone, the applicant must also submit a copy of the municipality's approval of the zone designation; a map showing the boundaries of the zone and identifying all active hotels within those boundaries; the name and address of each hotel within the zone with its comptroller-issued taxpayer identification and location numbers; the names and comptroller-issued taxpayer identification and location numbers of all shops, parking facilities, and other facilities located in hotels within the zone; and, where fewer than four taxpayers hold active sales and use tax permits or mixed beverage permits within the zone, a waiver of confidentiality from each permittee located at a hotel in the zone.

(D) The comptroller may request additional documents reasonably necessary to verify eligibility or the amount of a refund, rebate, or payment. A request for additional documents must be made in writing, must identify the specific eligibility requirement or amount to which each requested document relates, and must be made not later than the 30th day after the date the application is received.

(6) Comptroller response.

(A) The comptroller will give written notice of application completeness under Stage One of this subsection not later than the 60th day after the date the Stage One application is submitted to the comptroller.

(B) The comptroller will give written notice of the results of a request under Stage Two of this subsection not later than the 120th day after the date the Stage Two request is submitted. An applicant may certify that documents previously submitted with a Stage One application remain accurate, or identify and submit any changes, instead of resubmitting those documents.

(C) The comptroller will give written notice of the results of a request under Stage Three of this subsection not later than the 60th day after the date the complete Stage Three request is submitted. An applicant may rely on the certification permitted by paragraph (4)(B) of this subsection for documents previously submitted.

(D) A period under this paragraph is tolled from the date the comptroller makes a written request for additional documents under paragraph (5)(D) of this subsection until the date the applicant provides the requested documents. An application is complete when the applicant has submitted the documents required by paragraph (5) of this subsection for the applicable project type and stage and any additional documents timely requested under paragraph (5)(D) of this subsection.

(E) The comptroller and the applicant may agree in writing to extend a period under this paragraph.

(F) Unless extended as described in subparagraph (E) of this paragraph, if the comptroller does not give written notice of application completeness for a Stage One application or the approval or disapproval of the substantive review for a Stage Two application or the initiation of a refund, rebate, or payment of taxes for a Stage Three request within the applicable period, then such failure to act is a denial. For a Stage Three application only the applicant may request a hearing as provided by Tax Code, §111.00455 (Contested Cases Conducted by State Office of Administrative Hearings). Nothing in this subsection limits any right to administrative or judicial review otherwise available under applicable law.

(7) Effect of a determination.

(A) A written determination issued under paragraph (3) of this subsection is binding on the comptroller with respect to the project and the facilities addressed in it, so long as the facts on which the determination was based remain materially unchanged, and there is no fraud, material misrepresentation, or change in law.

(B) A determination under Stage Two of this subsection constitutes written advice for purposes of §3.10 of this title (relating to Taxpayer Bill of Rights).

(C) The comptroller may revoke or modify a determination prospectively on written notice stating the factual or legal basis for the revocation or modification. A revocation or modification does not apply to a project for which construction has begun in reliance on the determination so long as the facts on which the determination was based remain materially unchanged, and there is no fraud, material misrepresentation, or change in law.

(D) An applicant may request a hearing under paragraph (8) of this subsection with respect to a revocation or modification under subparagraph (C) of this paragraph.

(8) Denial; notice; hearing.

(A) If the comptroller determines that a Stage One application is incomplete in whole or in part, denies a Stage Two request in whole or in part, or revokes or modifies a determination, the comptroller will state in writing the specific eligibility requirement or provision of law relied on and the factual basis for the decision.

(B) An applicant that disagrees with a decision described in subparagraph (A) of this paragraph may request a reconsideration. . Nothing in this subsection limits any right to administrative or judicial review otherwise available under applicable law.

(C) A hearing under this paragraph will be conducted in accordance with the relevant portions of §§1.1-1.14, 1.20-1.26, and 1.30-1.35 of this title (relating to Practice and Procedures).

(g) Savings, transition, and effect on prior guidance.

(1) A project for which a written request for a refund, rebate, or payment was submitted to the comptroller before the effective date of this section is governed by this section as it existed on the date the request was submitted, unless the applicant elects in writing to proceed under this section as amended.

(2) A municipality, a nonprofit corporation acting on behalf of a municipality, or an owner of a project that, before the effective date of this section, pledged or committed revenue, executed a development agreement or an agreement under Local Government Code, Chapter 380, issued bonds, or began construction in reliance on this section as it existed on the date of that action, or in reliance on written advice of the comptroller, may continue to rely on the rule or advice as it existed on that date for the duration of the applicable refund, rebate, or payment period.

(3) A private letter ruling issued by the comptroller before the effective date of this section remains in effect according to its terms

unless modified by mutual agreement. The comptroller will not apply this section to reduce or deny a refund, rebate, or payment that a private letter ruling issued before that date confirmed, and relief under §3.10 of this title remains available.

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 November 9, 2026.

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Chris Blackwell
General Counsel and Associate Deputy Comptroller
Comptroller of Public Accounts
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For further information, please call: (512) 475-2220

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SUBCHAPTER O. STATE AND LOCAL SALES AND USE TAXES

34 TAC §3.300

The Comptroller of Public Accounts proposes amendments to §3.300, concerning manufacturing; custom manufacturing; fabricating; processing. The amendment reflects a policy change for compressors used in the oil and natural gas industry. Historically, compressors used to increase gas stream pressure to a level necessary for processing (i.e., in field dehydrators, heater treaters, separators, and scrubbers) or to enter a sales line were considered processing equipment. *See* STAR Accession No. 9903271L (March 11, 1999).

In the last several years, a new policy was instituted by comptroller staff that required taxpayers with audits or refund requests involving compressors to go to a settlement process in which a settlement officer would offer only a percentage of compressor refunds due and would assess on a percentage of the exempt compressors. The policy was based on a theory that compressors also provided transportation functions and therefore the percentage of a compressor was taxable. The current comptroller finds this theory groundless.

The amendment reinstates the historical treatment of compressors. New subsection (l) clarifies that a compressor used in oil and gas operations that performs a function under Tax Code, §151.318(a)(2) or (a)(4), including compression necessary to deliver processed gas into a sales line, is exempt and does not require a divergent-use calculation or other fractional treatment. Taxpayers will no longer be forced into a settlement process for the comptroller to recover a percentage of an exempt compressor used by the oil and gas industry.

New subsection (m) clarifies that racking, mounting hardware, and tracker systems (including associated motors, drives, controllers, and torque tubes) that are installed as part of a solar electric generation facility are exempt under Tax Code, §151.318(a)(4) when used to support position, power, or control solar panels that generate electricity for ultimate sale. STAR Accession Nos. 201907005L (July 7, 2019) and 202601019H (January 21, 2026) that incorrectly find the exemption does not apply have been superseded.

Tetyana Melnyk, Chief Revenue Estimator, has determined that during the first five years that the proposed amendments are in effect, the amended rule: 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 rule's applicability; and will not have significant effect on this state's economy.

Dr. Melnyk also has determined that the proposed amendments would benefit the public by reducing costs and uncertainty for businesses. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses or rural communities. The analysis of proposed amendments assumes a full sales tax exemption of compressors used in oil and gas operations that are exempt under Tax Code, §151.318(a)(2), and of support equipment that is exempt under Tax Code, §151.318(a)(4). This analysis also includes the exemption of solar related equipment that would be exempt under the proposed amendments. The proposed amendments would result in losses to General Revenue Fund 0001 of $183,117,000 in fiscal year 2027; $193,353,000 in fiscal year 2028; $204,164,000 in fiscal year 2029; $215,582,000 in fiscal year 2030; $227,642,000 in fiscal year 2031; and $240,381,000 in fiscal year 2032. Losses to units of local governments, including municipalities, counties, and transit authorities would be $52,880,000 in fiscal year 2027; $55,830,000 in fiscal year 2028; $58,950,000 in fiscal year 2029; $62,240,000 in fiscal year 2030; $65,730,000 in fiscal year 2031; and $69,400,000 in fiscal year 2032.

You may submit comments on the proposal or information related to the cost, benefit, or effect of the proposal, including any applicable data, research or analysis, to Robin Robinson, Associate Deputy Comptroller for Tax, P.O. Box 13528, Austin, Texas 78711 or to the email address: Robin.Robinson@cpa.texas.gov. The comptroller must receive your comments or other information no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendments are proposed under Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture) which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code §151.318 (Property Used in Manufacturing).

§3.300. Manufacturing; Custom Manufacturing; Fabricating; Processing (Tax Code, §§151.005, 151.007, 151.318, and 151.3181).

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

(1) Accessory--A machine fixture that causes the machinery to operate in a specialized way.

(2) Custom manufacturing--Producing tangible personal property to the special order of the customer, e.g., tailor-made clothing, custom-made draperies or slip-covers, or furniture made-to-order. Custom manufacturers are manufacturers for the purpose of this section.

(3) Display item--A manufactured item that is identical in size and function to other items held for sale which it represents and

that is ultimately sold at retail. For example, manufacturer's apparel lines, furniture showroom pieces, light fixture displays.

(4) Equipment--Any apparatus, work clothing, device, or simple machines used directly in production.

(5) Fabrication--To make, build, create, produce, or assemble components of tangible personal property, or to make tangible personal property work in a new or different manner.

(6) Hand tool--An instrument that is to be used, managed, and powered by the hand (e.g., paint brush, trowel, hammer, screwdriver, files). Equipment that is controlled or operated by the hand, but is moved or powered by electricity, gas, steam, or other fuel, is not a hand tool (e.g., electric drill, chain saw, jack hammer).

(7) Machinery--All power-operated machines.

(8) Manufacturer--A person who is engaged in manufacturing. The definition includes processors, fabricators, submanufacturers, and custom manufacturers.

(9) Manufacturing--Each operation beginning with the first stage in the production of tangible personal property and ending with the completion of tangible personal property. The first production stage means the first act of production, and it shall not include those acts in preparation for production. For example, a lumber company that cuts trees or a manufacturer that gathers, arranges, or sorts raw materials or inventory is preparing for production. The first production stage for the manufacturing of software is the design and writing of the code or program, and manufacturing includes the testing or demonstration of the software. Manufacturing includes the repair or rebuilding of tangible personal property that the manufacturer owns for the purpose of being sold, but does not include the repair or rebuilding of property that belongs to another.

(A) Completion of production means the tangible personal property has all the physical properties, including packaging, if any, that it has when transferred by the manufacturer to another. For example, a manufacturer of raw rubber has completed production when the raw rubber is ready to be transferred to a manufacturer of rubber goods.

(B) Processing and fabrication are two activities that are performed during manufacturing. For example, the person who takes raw steel and makes pipe is engaged in fabrication. The workers who coat or thread the pipe are engaged in processing.

(10) Processing--The physical application of the materials and labor necessary to modify or to change the characteristics of tangible personal property. The repair of tangible personal property, belonging to another, by restoring it to its original condition is not considered processing of that property. The mere packing, unpacking, or shelving of a product to be sold will not be considered to be processing of that property. Processing does not include remodeling.

(11) Remodeling--To make tangible personal property belonging to another over again, in a similar but different way, or to change the style, shape, or form, without causing a loss of its identity, or without causing the property to work in a new or different manner.

(12) Replacement part--Any repair part attached to the machinery, equipment, or accessory.

(13) Sample--A scale model or representative piece of a manufactured product held for sale. For example, cloth swatches and wallpaper books.

(14) Semiconductor fabrication and pharmaceutical biotechnology cleanrooms and equipment--All tangible personal property, without regard to whether the property is affixed to or incorporated into realty, that is used in connection with the manufacturing, processing, or fabrication in a cleanroom environment of a semiconductor product or a pharmaceutical biotechnology product, without regard to whether the property is actually contained in the cleanroom environment. The term includes integrated systems, fixtures, and piping; moveable cleanroom partitions and cleanroom lighting; all property necessary or adapted to reduce contamination or to control airflow, temperature, humidity, chemical purity, or other environmental conditions or manufacturing tolerances; production equipment and machinery; all tangible personal property that moves the product or other materials that are necessary and essential to the process, including piping that is used to move gas, liquids, deionized water, and hazardous waste material; silicon wafer moving, handling, and tracking systems; and electrical supply and control equipment, such as switches, wiring, and monitoring equipment that is incorporated into the realty. The term does not include the building or any permanent, nonremovable structural component part of the building, such as vibration-isolation platforms and vibration columns.

(15) Submanufacturer--A person who performs one or more of the manufacturing operations described in paragraph (9) of this subsection upon a product, or upon an intermediate or preliminary product, for a manufacturer.

(b) Manufacturer's responsibilities.

(1) Collection of tax. Persons who are engaged in the business of fabricating, manufacturing, processing, or custom manufacturing must collect sales tax on the total sales price of the manufactured item or accept a resale or exemption certificate in lieu of the tax. The sales price includes the cost of materials, labor or service costs, and all expenses that are connected with production. Persons who fabricate, custom manufacture, or process tangible personal property that the customer furnishes, either directly or indirectly, must collect tax on such fabricating, custom manufacturing, or processing charge. Manufacturers shall pay or accrue sales or use tax on all items used in the manufacturing process that do not qualify for exemption from tax. A manufacturer who purchases tangible personal property tax free by means of an exemption certificate or resale certificate and subsequently uses the item for a nonexempt purpose is responsible for tax as provided in subsection (k) of this section.

(2) Installed items. Generally, the charge for labor to install an item sold is taxable when the item sold is taxable. Persons who manufacture and install items that become improvements to residential realty or are incorporated into new real property structures are contractors and are subject to the provisions of §3.291 of this title (relating to Contractors). Example: cabinetmakers who also affix the cabinets as a part of a new-construction contract. Persons who manufacture and install items that become improvements to existing nonresidential realty are subject to the provisions of §3.357 of this title (relating to Nonresidential Real Property Repair, Remodeling, and Restoration; Real Property Maintenance). Persons who manufacture and install items as a part of a contract to repair tangible personal property are subject to the provisions of §3.292 of this title (relating to Repair, Remodeling, Maintenance, and Restoration of Tangible Personal Property). Example: fabricating a propeller shaft for a customer as a part of an outboard motor repair. Persons who manufacture and install items that do not become improvements to realty or that are not part of a repair must collect sales tax on the total charge. Example: a retailer who makes and installs draperies for a home owner.

(3) Molds, dies, patterns. The manufacturer's purchase of molds, dies, patterns, jigs, tooling, photo engraving, and other manufacturing aids, and their raw materials or component parts, may qualify for exemption under subsection (d) of this section.

(A) Written agreement - sale. A separate charge by the manufacturer for the aid will be considered a sale of the aid to the customer only if a written agreement exists between parties that clearly makes the customer the owner of the aid. As owner of the aid, the customer will owe tax on the amount that the manufacturer charged, unless the customer is also manufacturing a product for sale.

(B) No written agreement - no sale. When no written agreement exists between the manufacturer and the customer, and the manufacturer separates the charge for the aid from the charge for the items produced by means of the aid, a sale will not be considered to have occurred. The combined charges constitute the sales price of the manufactured item. (Charge for aid plus charge for items produced equals sales price of items.) The total charge shall be taxable or nontaxable depending on the taxability of the items produced.

(4) Samples. Since the sole use of such samples is to demonstrate not the sample but the other items that the sample represents, the purchase of the raw materials that are used to make the sample is subject to sales or use tax, regardless of the fact that the sample itself may be ultimately sold.

(c) Nonexempt manufacturing items. Certain items are specifically subject to tax:

(1) taxable items that are not otherwise exempted by this section;

(2) machinery, equipment, replacement parts, and accessories that are rented or leased for a term of less than one year;

(3) items that are merely useful or incidental to the operation, such as office machines, office supplies, transportation equipment, maintenance supplies, cleaning supplies, lubricants, and other items that are incidental to the manufacturing process and are not otherwise exempted by this section;

(4) hand tools;

(5) intraplant transportation equipment, unless exempted in subsections (d)(17) and (18) of this section, including equipment that is used to move a product or raw material in connection with the manufacturing process, and specifically including all piping, conveyor systems, and related pumps (unless otherwise exempted), meters, valves, or rollers. Intraplant transportation equipment is taxable even if manufacturing or processing activities (such as cooling, mixing, or pollution containment) occur during the transportation of product or component parts of the product;

(6) machinery and equipment or supplies that are not otherwise exempted in this section, but that are used to maintain or store tangible personal property (for example, refrigeration equipment that a restaurant uses);

(7) tangible personal property that is used in the transmission or distribution of electricity, including transformers, cable, switches, breakers, capacitor banks, regulators, relays, reclosers, fuses, interruptors, reactors, arrestors, resistors, insulators, instrument transformers, and telemetry units that are not otherwise exempted under this section, and lines, conduit, towers, and poles.

(d) The following items are exempted from the taxes imposed by Tax Code, Chapter 151, if purchased, leased, or rented by a manufacturer for storage, use, or consumption:

(1) tangible personal property that will become an ingredient or component part of tangible personal property that is manufactured, processed, or fabricated for ultimate sale;

(2) tangible personal property that is directly used or consumed in or during the actual manufacturing, processing, or fabrication of tangible personal property for ultimate sale, if the use or consumption of the property is necessary or essential to the manufacturing, processing, or fabrication operation and directly makes or causes a chemical or physical change to:

(A) the product that is being manufactured, processed, or fabricated for ultimate sale; or

(B) any intermediate or preliminary product that will become an ingredient or component part of the product that is being manufactured, processed, or fabricated for ultimate sale.

(3) services that are performed directly on the product that is being manufactured prior to the product's distribution for sale, and for the purpose of making the product more marketable;

(4) actuators, steam production equipment (including water purification equipment such as demineralizers and reverse osmosis units) and its fuel, in-process flow through tanks, cooling towers, generators, heat exchangers, transformers and the switches, breakers, capacitor banks, regulators, relays, reclosers, fuses, interruptors, reactors, arrestors, resistors, insulators, instrument transformers, and telemetry units that are related to the transformers, electronic control room equipment, computerized control units, pumps, compressors, hydraulic units, boilers (including economizers, superheaters, waterwalls, hoppers, feedwater heaters, condensers, pumps, air preheaters, draft fans, pulverizors, primary crushers, secondary crushers, oil or gas burning equipment that is related to the boilers), and related accessories that are used to power, supply, support, or control equipment that qualifies for exemption under paragraph (2) or (6) of this subsection or to generate electricity, chilled water, or steam for ultimate sale;

(5) transformers located at an electric generating facility that increase the voltage of electricity generated for ultimate sale, the electrical cable that carries the electricity from the electric generating equipment to the step-up transformers, and the switches, breakers, capacitor banks, regulators, relays, reclosers, fuses, interruptors, reactors, arrestors, resistors, insulators, instrument transformers, telemetry units, and related accessories that are associated with the step-up transformers; and transformers that decrease the voltage of electricity generated for ultimate sale and the switches, breakers, capacitor banks, regulators, relays, reclosers, fuses, interruptors, reactors, arrestors, resistors, insulators, instrument transformers, telemetry units, and related accessories that are associated with the step-down transformers;

(6) tangible personal property that is used or consumed in the actual manufacturing, processing, or fabrication of tangible personal property for ultimate sale, if the use or consumption of the property is necessary and essential to a pollution control process;

(7) lubricants, chemicals, chemical compounds, gases, or liquids that are used or consumed during the actual manufacturing, processing, or fabrication of tangible personal property for ultimate sale, if their use or consumption is necessary and essential to prevent the decline, failure, lapse, or deterioration of equipment that is exempted by this section;

(8) gases that are used on the premises of a manufacturing plant to prevent contamination of raw material or product, or to prevent a fire, explosion, or other hazardous or environmentally damaging situation at any stage in the manufacturing process or in loading or storage of the product or raw material on premises;

(9) tangible personal property that is used or consumed during the actual manufacturing, processing, or fabrication of tangible personal property for ultimate sale, if the use or consumption of the property is necessary and essential to a quality control process that tests tangible personal property that is being manufactured, processed, or fabricated for ultimate sale. For example, equipment that is used

to test the product after the item is produced, but prior to wrapping and packaging. Equipment that is used to test raw materials prior to processing does not qualify for this exemption;

(10) safety apparel or work clothing that is used during the actual manufacturing, processing, or fabrication of tangible personal property for ultimate sale, if the manufacturing process would not be possible without the use of the apparel or clothing and the apparel or clothing is not resold to the employee. Examples are specialized clothing, safety goggles, gloves, ear plugs, or hairnets that the law requires employees to wear during processing, or static wrist guards that manufacturing personnel wear in a manufacturing process that must be free of static electricity. A regulation that requires employees to wear clean clothing is not sufficient to qualify uniforms for exemption;

(11) tangible personal property that is used or consumed in the actual manufacturing, processing, or fabrication of tangible personal property for ultimate sale, if the use or consumption of the property is necessary and essential to comply with federal, state, or local laws or rules that establish requirements for public health purposes. For example, disinfectants that are used in a meat packing operation to sanitize work areas are exempt. Tangible personal property that is required to be on site, but used only in emergency situations, is not considered consumed in the actual manufacturing process (for example, fire extinguishers, eye baths, and safety signs are not exempt under this provision);

(12) tangible personal property that is specifically installed to:

(A) reduce water use and wastewater flow volumes from the manufacturing, processing, fabrication, or repair operation;

(B) reuse and recycle wastewater streams that are generated within the manufacturing, processing, fabrication, or repair operation; or

(C) treat wastewater from another industrial or municipal source for the purpose of replacing existing freshwater sources in the manufacturing, processing, fabrication, or repair operation.

(13) gas and electricity when used directly in manufacturing. See §3.295 of this title (relating to Natural Gas and Electricity).

(14) labor charges for repair, maintenance, remodeling, or restoration services to pollution control equipment or machinery that a law or regulation requires, and other tangible personal property that is exempt under this section.

(15) wrapping, packing, and packaging supplies that are used to further the sale of a product. See §3.314 of this title (relating to Wrapping, Packing, Packaging Supplies, Containers, Labels, Tags, Export Packers, and Stevedoring Materials and Supplies).

(16) display items and the raw materials that are used to make display items, so long as the item is used only to demonstrate itself and the same or similar items prior to its sale to an ultimate consumer. The item may not be used for any purpose other than demonstration or display. Any other use by the manufacturer is taxable as a divergent use.

(17) piping or conveyor systems that are a component part of a single item of manufacturing equipment or pollution control equipment that is eligible for the exemption. For example, a printing press contains rollers and pipes to transport or feed paper or ink during the manufacturing process. The purchase of the press would continue to qualify for exemption, and rollers, pipe, or other press repair parts would remain as qualifying accessories or repair parts, even when purchased separately. An integrated group of manufacturing and processing machines and ancillary equipment that operate together to create or produce the product, or an intermediate or preliminary product that will become an ingredient or component part of the product, is not a single item of manufacturing equipment.

(18) piping through which the product, or an intermediate or preliminary product that will become an ingredient or component part of the product, is recycled or circulated in a loop between the single item of manufacturing equipment and the ancillary equipment that supports only that single item of manufacturing equipment, if the single item of manufacturing equipment and the ancillary equipment operate together to perform a specific step in the manufacturing process; and piping through which the product, or an intermediate or preliminary product that will become an ingredient or component part of the product, is recycled back to another single item of manufacturing equipment and its ancillary equipment in the same manufacturing process.

(e) Rented or leased taxable items. The exemptions provided in this section do not apply to any taxable item rented or leased before October 1, 1995, under an operating lease to a person engaged in manufacturing. Taxable items used in a manner exempted under this section and leased on or after October 1, 1995, for a term of one year or more qualify for exemption.

(f) Semiconductor fabrication and pharmaceutical biotechnology cleanrooms and equipment. Semiconductor fabrication and pharmaceutical biotechnology cleanrooms and equipment as defined in subsection (a)(14) of this section and associated materials and other items that are necessary and essential to maintain the cleanroom environment are exempt. Semiconductor fabrication and pharmaceutical biotechnology cleanrooms and equipment are not intraplant transportation equipment or used incidentally in a manufacturing process or fabrication operation as those terms are used in subsections (c)(3) and (c)(5) of this section. Regarding pharmaceutical biotechnology cleanrooms and equipment, the exemption applies only to pharmaceutical biotechnology cleanrooms and equipment that are installed as part of the construction of a new facility with a value of at least $150 million and on which construction began after July 1, 2003, and before August 31, 2004.

(g) Overhaul, retrofit, or repair of jet turbine engines. A person who is engaged in the overhaul, retrofit, or repair of jet turbine aircraft engines and their component parts may claim an exemption from tax on the purchase of machinery, equipment, or replacement parts or accessories with a useful life in excess of six months, or supplies, including aluminum oxide, nitric acid, and sodium cyanide, used in electrochemical plating or a similar process, that are used or consumed in the overhauling, retrofitting, or repairing of jet turbine aircraft engines or their component parts.

(h) Persons engaged in printing tangible personal property. A person who is engaged in printing or imprinting tangible personal property for sale or production of a publication for the dissemination of news of a general character and of a general interest that is printed on newsprint and distributed to the general public daily, weekly, or at some other short interval, free of charge, may purchase tax free, in addition to other items that are exempted under this section, the following items that are necessary and essential to and used in connection with the printing process: pre-press machinery, equipment, and supplies, including computers, cameras, film, film developing chemicals, veloxes, plate-making machinery, plate metal, litho negatives, color separation negatives, proofs of color negatives, production art work, and typesetting or composition proofs.

(i) Separated and lump-sum contracts to improve realty. A contractor who incorporates into realty any equipment or materials that qualify for exemption under subsection (d) of this section may accept an exemption certificate in lieu of tax from the manufacturer for the sep-

arately stated exempt materials sold under a separated contract. Taxable materials, such as foundation materials and items that are noted under subsection (c) of this section must be separately stated from qualifying equipment, or a single charge for qualifying and nonqualifying materials will be presumed taxable. When nonresidential repair, remodeling, or restoration of realty is performed, qualifying equipment should be separately stated from both nonqualifying materials and taxable labor. A lump-sum charge to repair, remodel, or restore nonresidential realty is presumed taxable. The presumption may be overcome by the service provider at the time the transaction occurs by separately stating to the customer a reasonable charge for the taxable services. However, if the charge for the qualifying manufacturing equipment is not separately stated at the time of the transaction, the service provider or the purchaser may later establish for the comptroller, through documentary evidence, the percentage of the total charge that relates to exempt qualifying manufacturing equipment. Examples of acceptable documentation include purchase invoices, bid sheets, or schedules of values. See §3.357 of this title (relating to Nonresidential Real Property Repair, Remodeling, and Restoration; Real Property Maintenance). A lump-sum charge to perform new construction as covered in §3.291 of this title (relating to Contractors) is not taxable. The contractor is the consumer of all the goods that the contractor uses in the performance of a lump sum new construction contract, and neither the contractor nor the manufacturer may claim an exemption on otherwise qualifying manufacturing equipment.

(j) A taxpayer who claims an exemption under this section must prove that the exemption applies and that no exclusion under subsection (c) of this section applies.

(k) Divergent use.

(1) A manufacturer who issues a resale certificate to purchase tangible personal property tax free and subsequently uses the item for a nonexempt purpose must remit the tax to the comptroller based on the purchase price of the item or the fair market rental value of the item. See §3.285 of this title (relating to Resale Certificate; Sales for Resale) and §3.346 of this title (relating to Use Tax).

(2) A manufacturer who issues an exemption certificate to purchase tangible personal property tax free and subsequently uses the item for a nonexempt purpose is responsible for tax based on the divergent use. For divergent use that occurs prior to October 1, 2001, a manufacturer owes tax based on the purchase price or the fair market rental value of the equipment. See §3.287(e) of this title (relating to Exemption Certificates). For divergent use that occurs after September 30, 2001, a manufacturer owes tax based on the guidelines that are provided in paragraph (3) of this subsection.

(3) A manufacturer must remit tax in the following manner on divergent use that occurs after September 30, 2001.

(A) No tax is due if the divergent use occurs in any month after the fourth anniversary of the equipment purchase date. Equipment that is purchased before October 1, 1997, is not subject to tax on divergent use that occurs after October 1, 2001.

(B) Except as provided by subparagraph (C) of this paragraph, a manufacturer owes tax on an item if the divergent use occurs in the month of, or during any month before, the fourth anniversary of the date of purchase. The amount of the tax that is due for the month in which the divergent use occurs is equal to 1/48 of the purchase price multiplied by the percentage of divergent use during that month multiplied by the applicable tax rate when the divergent use occurs.

(i) The 48-month period that is used in calculating divergent use begins when the equipment is purchased.

(ii) The amount of divergent use for a month can be measured either in hours or by applicable output as follows:

(I) the divergent use percentage for a month is computed by taking the total divergent use hours of operation of the equipment in a month and dividing that amount by the total hours of operation of the equipment during the same month; or

(II) the divergent use percentage for a month is computed by taking the total output of the equipment during the period of divergent use in a month and dividing that amount by the total output of that equipment during the same month.

(C) A manufacturer who uses equipment in a divergent manner in the month of, or during any month before, the fourth anniversary of the date of purchase owes no tax on that use if the divergent use percentage in that month is 5.0% or less.

(D) A manufacturer who purchases non-capitalized equipment repair parts or consumables for equipment that is routinely used in both exempt and nonexempt manners may elect to pay tax on the repair parts or consumables by applying the divergent use percentage of the equipment as provided by paragraph (2)(B) of this subsection for the month during which the manufacturer purchased the repair parts or consumable items.

(E) A manufacturer who purchases repair labor for equipment may owe tax if the manufacturer uses the qualifying exempt equipment for both exempt and nonexempt purposes. If the manufacturer was using qualifying equipment in an exempt manner at the time when the repair was needed, then no tax is due on the repair. If the manufacturer was using the qualifying equipment in a nonexempt manner when the repair was needed, then tax is due on the purchase price of the repair. If a manufacturer cannot determine whether the equipment was being used in an exempt or nonexempt manner at the time of the repair, then the manufacturer may pay tax on the purchase price of the repair multiplied by the divergent use percentage as provided by paragraph (2)(B) of this subsection for the month in which the purchase of the repair service was made.

(F) The use of "pharmaceutical biotechnology cleanrooms and equipment," as those terms are used in subsection (a)(14) of this section, to manufacture, process, or fabricate a pharmaceutical biotechnology product that is not sold is not a divergent use if the use occurs during the certification process by the United States Food and Drug Administration.

(l) Compressors used in oil and gas operations that perform a function described in Tax Code, §151.318(a)(2) or Tax Code, §151.318(a)(4) do not require a divergent-use calculation or other fractional tax treatment and are exempt. Compression that is necessary for processed gas to have the pressure required to enter a sales line at the point where the gas is transferred to the purchaser is the final operation of manufacturing under Tax Code, §151.318(d). A compressor that performs that compression is exempt under this subsection. A compressor that is exempt under this subsection is not transportation equipment, intraplant transportation equipment, or equipment used in sales, distribution, or transportation activities for purposes of subsection (c) of this section or Tax Code, §151.318(c)

(m) Racking, mounting hardware, and tracker systems (including associated motors, drives, controllers, and torque tubes) that are installed as part of a solar electric generation facility are exempt under Tax Code, §151.318(a)(4) and (d)(4) when used with solar panels to generate electricity for ultimate sale.

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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Chris Blackwell
General Counsel and Associate Deputy Comptroller
Comptroller of Public Accounts
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For further information, please call: (512) 475-2220

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34 TAC §3.308

The Comptroller of Public Accounts proposes amendments to §3.308, concerning computers--hardware, computer programs, services, and sales to clarify the scope of a "data processing service" under Tax Code, §151.0035, and to confirm that Internet hosting and other hosted technology services are not data processing services and are not taxable under Tax Code, §151.0101(a).

Tax Code, §151.0101(a) imposes sales and use tax on certain listed services, including data processing services. Tax Code, §151.0035 describes data processing services by reference to work performed on a customer's information, such as word processing, data entry, data retrieval, data search, information compilation, and payroll and business accounting data production. The comptroller has reviewed the agency's prior interpretation of Tax Code, §151.0035 as it applied to computer-related transactions and concludes that the interpretation was too expansive. By treating Internet hosting, cloud computing, and other technology offerings as data processing because they involve computers storing or manipulating data, the prior interpretation shifted the focus from the service the Legislature chose to tax to the technology used to deliver a product. The legislature taxed a service performed on a customer's data. It did not tax technology. Nearly all modern digital products store or manipulate data in some way, and reading the statute to reach all of them would extend the tax well beyond the services the legislature identified.

Accordingly, amended subsection (a)(4) defines a data processing service as one in which the provider processes data supplied by the customer and returns that data to the customer in an organized and usable format requested by the customer. It clarifies that storage or manipulation of data, standing alone, and a customer's own use of a provider's software or computing resources, are not data processing services. New subsection (a)(5) defines hosted technology services, including cloud computing, artificial intelligence, and quantum computing. Amended subsection (a)(3) confirms that Internet hosting is a type of hosted technology service. Amended subsection (f) and new subsection (g) provide that Internet hosting and hosted technology services are not data processing services and are not subject to sales and use tax, and that a mixed charge is taxed on the identifiable portion attributable to a taxable item. Amended subsection (c)(1) clarifies that a customer's access to a hosted technology service is not the transfer, storage, use, or consumption of a computer program.

The amendments also address sales of a computer program and establish that an allocation of software to tax only the portion of the sale or use in Texas is required to comply with Tax Code, Chapter 151.

The comptroller adopts these amendments as its interpretation of Tax Code, §151.0101(a) under §151.0101(b) and intends them to apply prospectively from the date the adoption of this amendment is effective.

Tetyana Melnyk, Chief Revenue Estimator, has determined that during the first five years that the proposed amendments are in effect, the amended rule: 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 rule's applicability; and will have insignificant effect on this state's economy.

Dr. Melnyk also has determined that the proposed amendments would benefit the public by reducing costs and uncertainty for businesses regarding the tax treatment of computer hardware, computer programs, and related services and transactions. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses or rural communities. The proposed amendments would result in losses to General Revenue Fund 0001 of $1,947,310,000 in fiscal year 2027; $2,271,960,000 in fiscal year 2028; $2,655,080,000 in fiscal year 2029; $3,108,360,000 in fiscal year 2030; $3,646,140,000 in fiscal year 2031; and $4,286,040,000 in fiscal year 2032. Losses to units of local governments, including municipalities, counties, and transit authorities would be $507,450,000 in fiscal year 2027; $592,050,000 in fiscal year 2028; $691,890,000 in fiscal year 2029; $810,010,000 in fiscal year 2030; $950,140,000 in fiscal year 2031; and $1,116,890,000 in fiscal year 2032. The clarification that the sales price of a computer program is subject to tax only to the extent of the use in Texas would likely have a negative effect on sales tax remittances, however, that impact cannot be estimated.

You may submit comments on the proposal or information related to the cost, benefit, or effect of the proposal, including any applicable data, research or analysis, to Robin Robinson, Associate Deputy Comptroller for Tax, P.O. Box 13528, Austin, Texas 78711 or to the email address: Robin.Robinson@cpa.texas.gov. The comptroller must receive your comments or other information no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendments are proposed under Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture), which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2 (State Taxation), as well as Tax Code, §151.0101(b), which provides the comptroller with executive jurisdiction to interpret Tax Code, §151.0101(a), and Tax Code, §§151.051, 151.101, 151.004, 151.330, which provide that sales and use tax is applicable only to sales or use in this state.

The amendments implement Tax Code, §§151.0101, 151.051, 151.101, 151.004, 151.330, and 151.0035.

§3.308. Computers--Hardware, Computer Programs, Services, and Sales.

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

(1) Computer program--A series of instructions that are coded for acceptance or use by a computer system and that are designed to permit the computer system to process data and provide results and information. The series of instructions may be contained

in or on magnetic tapes, semiconductor chips, punched cards, printed instructions, or other tangible or electronic media.

(2) Contract programming--Services to create or develop a new computer program, or to repair, maintain, modify, or restore an existing computer program, when the person performing the services did not sell, and retains no rights in, the computer program being created, developed, repaired, maintained, modified, or restored.

(A) Examples of contract programming include:

(i) writing a new computer program to perform a particular function for the customer where all rights in the program are transferred to the customer;

(ii) customizing a computer program owned by the customer or licensed to the customer by a third party; or

(iii) modifying a computer program or performing repair, maintenance, or restoration on a computer program that the programmer wrote for the customer under a prior contract programming agreement.

(B) Contract programming only occurs when the person performing the programming services transfers all rights, including intellectual property rights such as those rights arising from copyrights, patents, and trade secret laws, to the computer program being created, developed, modified, maintained, repaired, or restored to the purchaser of the contract programming services. Notwithstanding other provisions of this paragraph, a person performing contract programming services may retain rights to property including materials, tools, methods, and processes used in the performance of the service. A person performing contract programming services may also retain rights to an incidental program or incidental component of a program included under an agreement to provide contract programming services. Examples of incidental programs and incidental components of a program are installers, drivers, macros, and subroutines.

(3) Internet hosting--Providing to an unrelated user access over the Internet to computer services using property that is owned or leased and managed by the provider and on which the user may store or process the user's own data or use software that is owned, licensed, or leased by the user or provider. The term does not include telecommunications services. Internet hosting is a type of hosted technology service.

(4) Data processing service--A service in which a provider, for consideration, processes data supplied by the customer and returns that data to the customer in an organized and usable format such as a report, chart, graph, form, or database. The provider collects, enters, retrieves, searches, compiles, translates, codes, organizes, reformats, standardizes, aggregates, calculates, analyzes, or manipulates data supplied by the customer to transform the customer's raw data into the customer requested format. Data provided by the customer's employee, vendor, agency, or other designee is treated as data provided by the customer. The provider returns the processed data to the customer according to the customer's instructions. A service is a data processing service only if it results in the customer receiving its own data back in a processed format. The storage or manipulation of data, standing alone, is not a data processing service. A service in which the customer, rather than the provider, performs the processing, including the customer's use of a provider's software, platform, or computing resources to process the customer's own data, is not a data processing service.

(5) Hosted technology service--Access, provided to a customer for consideration, to computing resources or other technological capability that the provider hosts and operates, including access through a web interface or an application programming interface, where no computer program is transferred to the customer. The term includes cloud computing, as described in National Institute of Standards and Technology Special Publication 800-145, *The NIST Definition of Cloud Computing* (September 2011), artificial intelligence, and quantum computing, regardless of the underlying technology. A provider's description of the customer's right to access or use the service as a license, subscription, or similar term, or the provider's use of a computer program to operate the service, does not by itself constitute a transfer of a computer program to the customer. A hosted technology service is not a data processing service. A service that meets the definition in paragraph (4) of this subsection is not a hosted technology service merely because the provider uses cloud computing or another technology to perform it.

(b) Hardware.

(1) The sale, lease, or rental of computer hardware, including central processing units and all peripheral equipment, parts, and supplies, is subject to the sales and use tax.

(2) A taxable rental or lease can occur without the right to move the hardware if the lessee has total operational control of the hardware. For example, a lessee may contract to use a computer on the owner's premises for an exact period of time weekly. The lessee provides the operator and all materials. During the time of use by the lessee, no one else may use the hardware. This transaction constitutes a transfer of the total operational control of the hardware, which is a lease or rental of tangible personal property. However, if the owner provides and directs the operator, operational control has not been transferred to the lessee. The transaction will not be considered the rental or lease of the hardware. Note: if the only supervision provided by the owner is for maintenance or training on proper use, this is not providing an operator. See §3.294 of this title (relating to Rental and Lease of Tangible Personal Property).

(3) Sales tax is due on charges for labor or services rendered in installing or applying computer hardware.

(4) Sales tax is due on charges for labor or services rendered in remodeling, repairing, maintaining, or restoring computer hardware. See §3.292 of this title (relating to Repair, Remodeling, Maintenance, and Restoration of Tangible Personal Property).

(5) Installation charges for remote terminals are taxable whether or not separately stated. Charges for telephone lines are taxable.

(c) Computer programs and related services.

(1) Computer programs.

(A) The sale, lease, or license of a computer program is a sale of tangible personal property. Except as provided in subparagraph (C) of this paragraph, tax is due when the computer program, or a license to use the computer program, is transferred for consideration in Texas, or stored, used, or consumed in Texas, in electronic form or on physical media. A customer's access to a hosted technology service is not a transfer, storage, use, or consumption of a computer program. [~~The sale, lease, or license of a computer program is a sale of tangible personal property. Tax is due when the computer program, or a license to use the computer program, is transferred for consideration in Texas, or stored, used, or consumed in Texas, in electronic form or on physical media.~~]

(B) Sales price. The sales price of a computer program includes all charges made in connection with the sale of the program, which may include charges for installation, modification, repair, maintenance, or restoration, whether or not separately stated, except as provided in subparagraph (C) of this paragraph.

(C) Allocation of multi-jurisdictional use. [~~The sales price of a computer program, or a single license for a computer program, that is sold or used in Texas may not be allocated to other states based on the purchaser making copies of the program for use in another state; installing the program on hardware located in another state; or accessing the program in another state.~~]

(i) If a customer is authorized to use a computer program, or a license to use a computer program, in Texas and in one or more other jurisdictions, the sales price is subject to tax only to the extent of the use in Texas.

(ii) The portion of the sales price allocated to Texas is determined by a reasonable method that reflects the extent of authorized use in Texas, such as the proportion of users, seats, devices, or other units of use located in Texas to the total.

(iii) This subparagraph applies without regard to whether the customer makes copies of the program, installs it on hardware located in another jurisdiction, or accesses it from another jurisdiction.

(2) Computer program repair, maintenance, and restoration. Charges for computer program repair, maintenance, or restoration by a person who sold the computer program are taxable. Computer program repair, maintenance, or restoration includes error correction, technical fixes, and technical support, whether provided over the Internet or over the phone.

(3) Instruction. Separately stated charges for instruction on the use of the computer program by a person who sold the computer program are not taxable.

(4) Contract programming services. Contract programming may result in the creation of tangible personal property, but it does not constitute the sale thereof. Charges for contract programming are charges for a service and are not taxable.

(d) Sales. The following are examples of transactions which involve the sale of taxable items and are taxable.

(1) A separate charge for additional copies of the result of services is taxable.

(2) The charge for processing, printing, or producing tangible personal property by a computer is taxable unless the processing, printing, or producing is performed as an incidental part of a nontaxable service. Examples of taxable processing, printing, or producing include standardized amortization or depreciation tables, newsletters, and advertising.

(e) Sales for resale.

(1) A resale certificate may be issued by a purchaser only if hardware or a computer program is purchased for the exclusive purpose of resale. If the purchaser makes a taxable use of the hardware or computer program while holding it for resale, the purchaser is liable for sales tax. See §3.285 of this title (relating to Resale Certificate; Sales for Resale).

(2) Internet hosting providers.

(A) A sale for resale includes the sale of a computer program to an Internet hosting provider in a transaction that meets all criteria in this subparagraph, regardless of whether care, custody, and control of the computer program is transferred to the user of the Internet hosting service.

(i) The Internet hosting provider acquires the program from an unrelated vendor for the purpose of selling the right to use the program to an unrelated user of the provider's Internet hosting services in the normal course of business and in the form or condition in which the provider acquired the program;

(ii) the Internet hosting provider offers the unrelated user a selection of computer programs that are available to the public for purchase directly from an unrelated vendor;

(iii) the Internet hosting provider executes a written contract with the unrelated user that specifies the name of the computer program sold to the unrelated user and includes a charge to the unrelated user for computing hardware;

(iv) the unrelated user purchases the right to use the computer program from the Internet hosting provider through the acquisition of a license; and

(v) the Internet hosting provider does not retain the right to use the computer program under that license.

(B) The performance by the Internet hosting provider of routine maintenance of the computer program that is recommended or required by the unrelated vendor of the computer program does not affect the application of subparagraph (A) of this paragraph.

(f) Internet hosting is not a data processing service, not a taxable service listed in Tax Code, §151.0101(a), and is not taxable.

(g) Hosted technology services.

(1) A hosted technology service is not a taxable service under Tax Code, §151.0101(a) unless the service is itself a service listed in that subsection, as the listed service is defined in Tax Code, Chapter 151.

(2) A hosted technology service is not a data processing service under Tax Code, §151.0035. Providing a customer with access to computing resources or technological capability, including storage, is not a data processing service.

(3) The provision of a hosted technology service is a service and is not a sale, lease, or rental of tangible personal property. A customer's access to or use of a hosted technology service is not a transfer, storage, use, or consumption of a computer program.

(4) Charges for a hosted technology service are not subject to sales or use tax.

(5) If a charge combines a hosted technology service with a taxable item, tax applies only to the portion of the charge attributable to the taxable item.

(6) This subsection is the comptroller's interpretation of Tax Code, §151.0101(a) under §151.0101(b).

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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Chris Blackwell
General Counsel and Associate Deputy Comptroller
Comptroller of Public Accounts
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For further information, please call: (512) 475-2220

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34 TAC §3.313

The Comptroller of Public Accounts proposes amendments to §3.313, concerning cable television service and bundled cable service. The amendments conform the definition of "cable television service" to Tax Code, §151.0033 and clarifies that video programming delivered to a purchaser over the Internet is not a cable television service and that a streaming service is not an amusement service under §3.298 of this title (relating to Amusement Services), unless a cable service provider delivers it as part of the programming that it delivers to that purchaser through the provider's cable system.

Tax Code, §151.0033 defines cable television service as the "distribution of video programming with or without use of wires to subscribing or paying customers." The comptroller has determined that the 2014 policy of taxing streaming services misinterprets Tax Code, §151.0033. The comptroller is correcting that error by excluding streaming services from the definition of cable television service. The statute's reference to distribution to subscribing or paying customers is best read as describing a provider delivering programming to its subscribers through a cable system that it owns, operates, controls, or leases (i.e., the type of cable television service that existed in 1984 when the tax was enacted).

The preamble to the 2014 amendment explained the change as streamlining collection of the tax; it did not analyze the text of Tax Code, §151.0033. Administrative convenience is not a basis for reading a taxing statute more broadly than its words support.

The reference to the Internet access in subsection (a)(1) is deleted because the service is no longer taxable. The remaining amendments establish what a cable television service is and that delivering video programming to purchasers over the Internet is not the taxable cable television service. New subsection (a)(8) defines "streaming service."

The application of this amendment is prospective only.

Tetyana Melnyk, Chief Revenue Estimator, has determined that during the first five years that the proposed amendments are in effect, the amended rule: 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 rule's applicability; and will not have significant effect on this state's economy.

Dr. Melnyk also has determined that the proposed amendments would benefit the public by reducing costs and uncertainty for businesses regarding the taxability of cable television and bundled cable services. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses or rural communities. The analysis of proposed amendments assumes streaming services delivered solely by Internet would not be subject to sales tax under Chapter 151 of the Tax Code. The proposed amendments would result in losses to General Revenue Fund 0001 of $290,438,000, in fiscal year 2027, $306,703,000 in fiscal year 2028, $324,185,000 in fiscal year 2029, $341,341,000 in fiscal year 2030, $358,459,000 in fiscal year 2031, and $375,928,000 in fiscal year 2032. Losses to units of local governments, including municipalities, counties, and transit authorities would be $83,850,000 in fiscal year 2027, $88,550,000 in fiscal year 2028, $93,600,000 in fiscal year 2029, $98,560,000 in fiscal year 2030, $103,500,000 in fiscal year 2031, and $108,550,000 in fiscal year 2032.

You may submit comments on the proposal or information related to the cost, benefit, or effect of the proposal, including any applicable data, research or analysis, to Robin Robinson, Associate Deputy Comptroller for Tax, P.O. Box 13528 Austin, Texas 78711 or to the email address: Robin.Robinson@cpa.texas.gov. The comptroller must receive your comments or other information no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendments are proposed under Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture), which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2 (State Taxation).

The amendments implement Tax Code, §151.0101 (Taxable Services).

§3.313. Cable Television Service and Bundled [~~Bundle~~] Cable Service.

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

(1) Bundled cable service--The provision of cable television service and at least one other taxable service by a cable service provider through a cable system for a single price. Other taxable services may include, but are not limited to, telecommunications services, as defined in §3.344 of this title (relating to Telecommunications Services); [~~Internet access services, as defined in §3.366 of this title (relating to Internet Access Services);~~] data processing services, as defined in §3.330 of this title (relating to Data Processing Services); information services, as defined in §3.342 of this title (relating to Information Services); and security services, as defined in §3.333 of this title (relating to Security Services). Services sold to a purchaser by a third party, rather than the cable service provider, are not bundled cable services even if they are provided by means of a cable system.

(2) Cable service provider--A person who owns, operates, controls, or leases all or part of a cable system that uses that system to distribute video programming to subscribing or paying customers. A person is not a cable service provider solely because it delivers video programming to purchasers over the Internet. [~~provides cable television service or bundled cable service through a cable system.~~]

(3) Cable system--The facilities and equipment that a person owns, operates, controls, or leases and uses to deliver video programming directly to the premises or devices of its subscribing or paying customers. A cable system may include tangible personal property, real property, and other media, such as radio waves, microwaves, or any other means of conveyance now in existence or that may be developed. [~~The system through which a cable service provider delivers cable television or bundled cable service. A cable system may comprise any or all of the following: tangible personal property; real property; and other media, such as radio waves, microwaves, or any other means of conveyance now in existence or that may be developed.~~]

(A) The transmission facilities used to deliver video programming as described in this paragraph, such as cable, fiber, satellite, microwave, and wireless facilities, are part of the cable system whether or not they also carry Internet access service or connect to the Internet.

(B) Other than the facilities described in subparagraph (A) of this paragraph, a cable system does not include the Internet,

servers, content delivery networks, or similar facilities that store or host content delivered to purchasers through the Internet.

(4) Cable television service--The [~~digital~~] distribution of video programming by a cable service provider through a cable system with or without use of wires, to subscribing or paying customers [~~to purchasers by any means now in existence or that may be developed~~]. The term includes[~~, but is not limited to,~~] direct broadcast satellite service (DBS); subscription television service (STV); satellite master antenna television service (SMATV); master antenna television service (MATV); multipoint distribution service (MDS); multichannel multipoint distribution service (MMDS); and [~~fixed programming;~~] any audio portion of a video program [~~streaming video programming provided via the Internet or other technology, regardless of the type of device used by the purchaser to receive the service; video on demand services or subscription services that allow purchasers to choose from a library of available content; and any other video programming provided in exchange for consideration.~~] The term does not include:

(A) the provision of tangible personal property, such as video content that has been downloaded by the purchaser or is stored on a compact disc or other physical media;[~~, or~~]

(B) the provision of telecommunications services, as defined in §3.344 of this title; or[~~.~~]

(C) A streaming service as defined in paragraph (8) of this subsection.

(5) Fixed physical connection--The place at a purchaser's residence or business where the cable service provider or its agent, or the purchaser, by agreement with the cable service provider, has installed any materials or equipment that connect the purchaser to the provider's cable system. For example, a coaxial cable connection at a distribution box or an outdoor antenna or dish that connects to a satellite receiver is a fixed physical connection. The connection of equipment, such as a personal computer, Internet-ready television, or other device that allows the purchaser to view content that is not provided directly by the cable service provider, does not create a fixed physical connection.

(6) Nomadic access--The ability to access cable television service or bundled cable service from multiple locations with or without the use of a fixed physical connection.

(7) Point of delivery--The physical address of the purchaser's fixed physical connection or, in the absence of such connection, the physical address of the purchaser at which the cable television or bundled cable service is considered to be received, as determined in subsection (g)(3) of this section.

(8) Streaming service--A service that delivers video programming to a purchaser over the Internet, whether live or on demand, regardless of the type of device the purchaser uses to receive it or how the purchaser pays for it. The term includes video on demand services and subscription services that allow purchasers to choose from a library of available content. A streaming service is not an amusement service as defined in §3.298 of this title (relating to Amusement Services).

(b) Imposition of tax. The sale of cable television or bundled cable service, and any services or expenses connected to the provision of the service, are subject to sales and use tax.

(1) Taxable charges include:

(A) service connection fees. The term "service connection fee" includes terms such as "installation," "connect," or "reconnect;"

(B) charges for video programming services that are part of the cable television service;

(C) charges for tangible personal property, such as converters, descramblers, and digital video recorders, transferred to the care, custody, and control of purchasers as an integral part of the services provided;

(D) amounts billed to purchasers for repairs or maintenance;

(E) municipal franchise fees; and

(F) any licensing fees for the right to receive or distribute a satellite signal.

(2) Unrelated services.

(A) A service will be considered as unrelated if:

(i) it is not a cable television service or bundled cable service, nor a service taxed under other provisions of Tax Code, Chapter 151;

(ii) it is of a type which is commonly provided on a stand-alone basis; and

(iii) the performance of the service is distinct and identifiable.

(B) Where nontaxable unrelated services and taxable services are sold or purchased for a single charge and the portion relating to taxable services represents more than 5.0% of the total charge, the total charge is presumed to be taxable. The presumption may be overcome by the taxable service provider at the time the transaction occurs by separately stating to the purchaser a reasonable charge for the taxable services. If the charge for the taxable portion of the services is not separately stated at the time of the transaction, the service provider or the purchaser may later establish for the comptroller, through documentary evidence, the percentage of the total charge that relates to nontaxable unrelated services. The service provider's books must support the apportionment between exempt and nonexempt activities based on the cost of providing the service or on a comparison to the normal charge for each service if provided alone. If the charge for exempt services is unreasonable when the overall transaction is reviewed considering the cost of providing the service or a comparable charge made in the industry for each service, the comptroller will adjust the charges and assess additional tax, penalty, and interest on the taxable services.

(c) Deposits. A deposit that represents future payment for cable television or bundled cable service is part of the sales price of the service and is taxable when the deposit is used to pay for the service. A deposit paid to receive equipment that is transferred to the care, custody, and control of the purchaser as an integral part of the service, such as a converter that is returned to the cable service provider when the service is terminated, is not taxable.

(d) Sales for resale.

(1) Taxable services. A cable service provider may issue a resale certificate to purchase a taxable service tax-free in the following circumstances:

(A) if the service will be transferred as an integral part of the cable television or bundled cable service. For example, if a cable service provider sells a bundled cable service that includes data storage, and the provider purchases data storage capacity from a third party, then the provider may issue a resale certificate to the provider of the data storage capacity; or

(B) if the service is performed on tangible personal property that the cable service provider will transfer to the care, custody, and control of the purchaser as an integral part of the cable television or bundled cable service. For example, if a cable service provider that provides digital video recorders or converters to purchasers hires a third party to repair a digital video recorder or converter, then the provider may issue a resale certificate to the repair service provider in lieu of paying tax on the repair service. See §3.285 of this title (relating to Resale Certificate; Sales for Resale).

(2) Tangible personal property. A resale certificate may be used to purchase tangible personal property tax free if care, custody, and control of the property are transferred to the purchaser of the cable television or bundled cable service as an integral part of the service. For example, a cable service provider may issue a resale certificate to the seller of remote controls that are provided to purchasers of the cable television service as part of the sale of the service. See §3.285 of this title.

(e) Taxable purchases.

(1) Taxable services. A cable service provider owes tax on its purchases of taxable services that are not transferred to purchasers as an integral part of a cable television or bundled cable service, but are instead used by the cable service provider in providing that service.

(2) Tangible personal property. A cable service provider owes tax on its purchases of equipment, supplies, and other items that are not transferred to the care, custody, and control of purchasers as an integral part of the cable television or bundled cable service, but are instead used by the cable service provider to provide that service. For example, a cable service provider owes tax on the satellite receiving and transmitting equipment, cables, and wiring that it uses to provide cable television service and that are not located on the purchaser's premises. Taxable items that a cable service provider purchases out of state and brings into Texas for use in providing a cable television or bundled cable service are subject to Texas use tax. See §3.346 of this title (relating to Use Tax). Credit will be allowed against the use tax for any sales or use tax legally imposed and paid to another state. See §3.338 of this title (relating to Multistate Tax Credits and Allowance of Credit for Tax Paid to Suppliers).

(3) A cable television service provider may seek an annual refund of Texas sales and use taxes paid on certain tangible personal property directly used or consumed in providing cable television services. See §3.345 of this title (relating to Annual Refund Program for Providers of Cable Television, Internet Access, and Telecommunications Services).

(f) Real property rental. An owner of real property, such as an apartment complex or hotel, that provides cable television or bundled cable service to its residents or guests must collect sales tax on any charge it imposes on residents or guests that is attributable to the cable television or bundled cable service. If the owner does not charge the residents or guests for the cable television or bundled cable service, the owner is the consumer of the service and must pay tax on that service and all services or expenses connected to the provision of that service, in accordance with subsection (b) of this section.

(g) Local tax.

(1) Cable service providers are required to collect all local tax due on the sale of cable television or bundled cable service, and on all services or expenses connected with the provision of that service, in accordance with subsection (b) of this section, based upon the point of delivery to the purchaser. For more information regarding the calculation of local tax, see Tax Code, Title 3, Subtitle C.

(2) Direct-to-home satellite. The sale of cable television or bundled cable service by means of direct-to-home satellite is exempt from local tax under the Telecommunications Act of 1996, §602. For purposes of this section, direct-to-home satellite refers to cable television or bundled cable service that is transmitted directly to a purchaser's premises, including a residence, hotel, or motel, without use of ground receiving or distribution equipment, except at the purchaser's premises or in the uplink process to the satellite. Tangible personal property transferred to the care, custody, and control of the purchaser as an integral part of the cable television or bundled cable service is considered to be part of the service and is also exempt from local tax. Equipment used by a cable service provider to provide direct-to-home satellite cable television or bundled cable service is subject to local sales and use taxes, unless otherwise exempt.

(3) Point of delivery.

(A) Service delivered through a fixed physical connection.

(i) If a cable service provider delivers, or under its contract with the purchaser is able to deliver, cable television or bundled cable service, or any portion or element thereof, to the purchaser by means of a fixed physical connection, then the address of that fixed physical connection is the point of delivery, even if the purchaser can access the service both through a fixed physical connection and by means of nomadic access.

(ii) Two or more fixed physical connections. If fixed physical connections at two or more locations are associated with a single account, then the service provider must collect local taxes for each separately stated charge for cable television or bundled cable service based upon the location of the fixed physical connection to which the charge is allocable. For example, if a purchaser's account is associated with coaxial cable connections in City A and in City B, and the purchaser incurs a separately stated charge for a pay-per-view movie that is provided through the coaxial cable connection in City B, then the service provider should collect local taxes on the pay-per-view charge using the City B location as the point of delivery. If the service provider cannot determine the location of the fixed physical connection to which a charge is allocable, then the point of delivery is the location of the fixed physical connection designated by the purchaser prior to or at the time of purchase. Information about a purchaser's designated point of delivery must be maintained in the seller's books and records. For example, if a purchaser's account is associated with fixed physical connections at two or more locations, and the purchaser incurs a separately stated charge for video programming that is provided by means of nomadic access, then the point of delivery is the location of the fixed physical connection designated by the purchaser prior to or at the time of purchase.

(B) Service delivered by mobile telecommunications service provider. If the purchaser's account does not have a fixed physical connection, and if the cable service provider is also a mobile telecommunications service provider, then the point of delivery to the purchaser is the purchaser's place of primary use of the mobile telecommunications service, as that term is defined in §3.344 of this title.

(C) Service delivered without a fixed physical connection. If the purchaser does not have a fixed physical connection, and the cable service provider is not a mobile telecommunications service provider, then the point of delivery shall be:

(i) the purchaser's mailing address in this state. For example, if there is no fixed physical connection, but the cable service provider sends invoices to the purchaser at a mailing address in this state, or has on file in its books and records for the purchaser a mailing

address in this state, then the purchaser's Texas mailing address is the point of delivery. A cable service provider acting in good faith may rely upon a statement from a purchaser regarding the purchaser's mailing address as provided in paragraph (4) of this subsection, in which case the provider will not be held liable for any additional tax, penalty, or interest if the comptroller subsequently determines that the statement is invalid; or

(ii) the address in this state that is associated with the payment instrument used by the purchaser to pay for the service, but only if the cable service provider cannot determine, or the purchaser has not provided, a mailing address in this state under clause (i) of this subparagraph.

(4) Purchaser's rights and remedies.

(A) Mailing address. If the point of delivery to the purchaser is not a fixed physical connection under paragraph (3)(A) of this subsection or the place of primary use under paragraph (3)(B) of this subsection, then the purchaser may contact the cable service provider to provide an accurate mailing address or to update the mailing address already in the provider's books and records. The cable service provider must then collect local tax on the sale of cable television and bundled cable service to the purchaser based upon the point of delivery determined in accordance with paragraph (3)(C)(i) of this subsection using the information provided by the purchaser.

(B) Refund. If a cable service provider collects local sales tax from a purchaser in error, then the purchaser may request a refund of that local sales tax from the comptroller in accordance with the procedures set forth in §3.325 of this title (relating to Refunds and Payments Under Protest).

(5) Nomadic access. If a purchaser has an account with nomadic access, the point of delivery is determined in accordance with paragraph (3) of this subsection.

(6) Tangible personal property. Tangible personal property that is transferred to the care, custody, and control of the purchaser as an integral part of a cable television or bundled cable service is regarded as a component of that service and is subject to local tax based upon the point of delivery to the purchaser in accordance with paragraph (3) of this subsection. A cable service provider is responsible for collecting local tax in accordance with Tax Code, Title 3, Subtitle C on any other sale, lease, or rental of tangible personal property. When a cable service provider charges a single price for the provision of both cable television or bundled cable service and tangible personal property that is not an integral part of that service, such as the rental of compact discs containing video programming, then the cable service provider must identify in its contracts, invoices, or books and records that portion of each charge that is attributable to the provision of tangible personal property and must collect local sales tax upon that amount in accordance with the provisions of the Tax Code governing the application of local tax to the sale of tangible personal property.

(7) Other taxable services.

(A) A cable service provider providing a service other than cable television or bundled cable service through a cable system is responsible for collecting local tax on the separately stated charges for that service in accordance with Tax Code, Title 3, Subtitle C, or, if applicable, the specific provisions of the section of the title that address the services provided. For example, a cable service provider who provides an information service for a separate charge must collect the local tax due on that charge in accordance with the provisions of Tax Code, §321.203 and §323.203.

(B) A service provider, other than a cable service provider, who provides services through a cable system is responsible for collecting local tax on those services in accordance with Tax Code, Title 3, Subtitle C, or, if applicable, the specific provisions of the section of the title that address the services provided.

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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Chris Blackwell
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Comptroller of Public Accounts
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CHAPTER 16. COMPTROLLER GRANT PROGRAMS

SUBCHAPTER D. RURAL LAW ENFORCEMENT SALARY ASSISTANCE PROGRAM

34 TAC §16.307

The Comptroller of Public Accounts proposes new §16.307, concerning mandatory grant agreement provisions. The new section will be located in Texas Administrative Code, Title 34, Part 1, Chapter 16, Subchapter D, Rural Law Enforcement Salary Assistance Program.

The comptroller administers the Rural Law Enforcement Salary Assistance Program under Local Government Code, §§130.911, 130.912, and 130.913, to provide salary assistance to qualified sheriff's offices, constable's offices, and prosecutor's offices in rural counties. Grant recipients under the program are counties, acting on behalf of qualified sheriff's offices, constable's offices, and prosecutor's offices. Sections 16.300 through 16.305 of this subchapter govern definitions, applications, comptroller review, awards and grant agreements, authorized uses of grant funds, and reporting and compliance for the program.

State and federal law condition a recipient's eligibility to receive state funds, and to continue receiving disbursements under a state-funded agreement, on a number of certifications concerning the recipient's conduct, policies, and compliance with law. These include the certification required by Government Code, §2155.0061, regarding convictions for human trafficking; the prohibition in Health and Safety Code, §161.0085, on state-funded grants to entities that require documentation of COVID-19 vaccination status; the state's requirement that recipients of state funds use the United States Department of Homeland Security's E-Verify system; the certification regarding knowing employment of undocumented workers under Government Code, Chapter 2264; restrictions on providing state funds to entities owned or controlled by, or identified in federal law as affiliated with, foreign adversaries; the requirement that recipients comply with state and federal anti-discrimination law; the duties of local entities under Government Code, Chapters 752 and 753, regarding cooperation with federal immigration enforcement; and the reporting of fraud, waste, and abuse of state resources. In addition, the new section conditions a grant on the grant recipi-

ent's agreement not to procure, or to extend or renew a contract to procure, automated license plate reader systems and similar vehicle-identification surveillance equipment or services during the term of the grant agreement.

These certifications presently appear in the grant agreement form that the comptroller provides to grant recipients under this subchapter. They are not codified in the comptroller's rules. The new section codifies the provisions, prescribes their text, requires that each applicant make the certifications at the time of application and that each grant agreement contain the provisions, establishes that each certification is a continuing obligation during the term of a grant agreement, and states the consequences of an inaccurate certification or noncompliance. Codification gives applicants advance notice of the conditions attached to a grant, ensures consistency across grant years and across the comptroller's grant programs, and provides the comptroller a clear basis for enforcement.

The new section is an exercise of the comptroller's authority to administer the program and to prescribe the terms of grant agreements. It does not add to or alter the statutory eligibility criteria in Local Government Code, §§130.911, 130.912, and 130.913. A county that satisfies the statutory criteria remains eligible for a grant; the new section governs the terms on which grant funds are disbursed and retained and the consequences of a recipient's inaccurate certification or noncompliance with the grant agreement.

Subsection (a) states the purpose of the section.

Subsection (b) establishes the applicability of the section. The section applies to applications submitted and grant agreements executed on or after the effective date, and to existing grant agreements upon their first amendment, renewal, or extension after that date. The section does not apply to the extent a statute, federal regulation, or federal award condition prohibits inclusion of a provision, and its requirements are cumulative of other legal requirements, including the Texas Grant Management Standards.

Subsection (c) adopts the definitions in §16.300 of this title and defines "mandatory provision."

Subsection (d) sets out the text of each of the nine mandatory provisions: human trafficking; vaccine passport; United States Department of Homeland Security's E-Verify system; immigration; foreign adversary; discriminatory diversity, equity, and inclusion activities prohibited; cooperation with United States Immigration and Customs Enforcement; fraud, waste, and abuse prohibited; and prohibited surveillance equipment or services.

Paragraph (9) differs from the other mandatory provisions in that it is a condition of the grant agreement rather than a certification of compliance with existing law. The provision prohibits a grant recipient, during the term of the grant agreement, from procuring or obtaining, or entering into, extending, or renewing a contract to procure or obtain, a system, software, or algorithm that converts license plate or other images into computer-readable data, including automated license plate reader cameras, sensors, software, subscriptions, and data platforms, regardless of the vendor or the name under which the product is marketed. The comptroller includes this condition to protect liberty, federal and Texas constitutional principles, and the integrity and public accountability of state-funded law enforcement operations in rural counties and to ensure that state salary assistance is not indirectly supporting the acquisition of surveillance systems that collect data on the public without statutory authorization. The provision does not require a grant recipient to terminate an existing contract before its stated term expires, and it does not restrict the use of equipment lawfully acquired before the effective date of the grant agreement. A county that does not wish to accept the condition may decline to apply for a grant.

Subsection (e) requires that each mandatory provision be included in the form set out in subsection (d), identifies the conforming changes that may be made to fit the provision to a particular document, prohibits any other alteration or omission, and authorizes the comptroller to publish model language.

Subsection (f) requires that the application form set out or incorporate the mandatory provisions and provides that submission of an application constitutes the applicant's certification; requires that each grant agreement set out or expressly incorporate the mandatory provisions; and makes each certification a continuing obligation with a duty to notify the comptroller within 10 business days if a certification becomes inaccurate.

Subsection (g) provides that an inaccurate certification or noncompliance is a material breach and identifies the available remedies, including denial of the application, withholding of undisbursed funds, termination, return of grant funds under §16.305 of this title and the grant agreement, and referral to the State Auditor's Office. The remedies are cumulative. The inclusion of a mandatory provision does not create a right of action in favor of any person other than the state.

Subsection (h) provides that the section does not authorize inclusion of a provision in violation of a statute, regulation, or court order, that in the event of conflict the statute, regulation, or order controls, and that the section does not alter the statutory eligibility criteria in Local Government Code, §§130.911, 130.912, and 130.913.

Subsection (i) is a severability provision.

Tetyana Melnyk, Chief Revenue Estimator, has determined that during the first five years that the proposed new rule is in effect, the rule: 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 rule's applicability; and will not positively or adversely affect this state's economy.

Dr. Melnyk also has determined that the proposed new rule would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed new rule would benefit the public by providing clarity and guidance in the section. There would be no anticipated economic cost to the public. The proposed new rule would have no significant fiscal impact on small businesses or rural communities.

You may submit comments on the proposal or information related to the cost, benefit, or effect of the proposal, including any applicable data, research or analysis, to Will Counihan, at P.O. Box 13528 Austin, Texas 78711-3528 or to the email address: Will.Counihan@cpa.texas.gov. The comptroller must receive your comments or other information no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The new section is proposed under Local Government Code, §§130.911, 130.912, and 130.913, which direct the comptroller to establish and administer the rural sheriff's office, rural constable's office, and rural prosecutor's office salary assistance

grant programs and authorize the comptroller to adopt rules to efficiently and effectively administer those programs; Government Code, §783.005, which directs the comptroller to establish uniform standards governing state grants to local governments; Government Code, §403.011, which grants the comptroller general authority to perform the duties of the office; and Government Code, §2001.004, which requires each state agency to adopt rules of practice stating the nature and requirements of its formal and informal procedures. The new section is also proposed under Government Code, §2155.0061, which conditions eligibility to receive state funds under an agreement with a state agency on the certification set out in that section; Health and Safety Code, §161.0085, which prohibits a governmental entity from providing a state-funded grant to an entity that requires documentation of COVID-19 vaccination status and authorizes the imposition of that requirement as a condition of the grant; Government Code, Chapter 2264, which conditions receipt of public subsidies on a recipient's certification that it does not knowingly employ undocumented workers; Government Code, §673.002, which require state agencies to use, and to require recipients of state funds to use, the E-Verify system; Government Code, Chapters 752 and 753, which govern local entities' cooperation with federal immigration enforcement and the consequences of noncompliance; and Government Code, §321.022, which requires that suspected fraud and unlawful conduct involving state funds be reported to the State Auditor's Office.

The new section implements Local Government Code, §§130.911, 130.912, and 130.913; Government Code, §§321.022, 403.011, 673.002, 783.005, and 2155.0061, and Chapters 752, 753, and 2264; Health and Safety Code, §161.0085; Labor Code, Chapter 21; Section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232); Section 1260H of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (Pub. L. 116-283); 15 C.F.R. §791.4; and 42 U.S.C. §2000d et seq. and §2000e et seq.

§16.307. Mandatory Grant Agreement Provisions.

(a) Purpose. This section identifies provisions that must be included in each grant agreement under this subchapter, and certifications that each applicant must make, to ensure that grant funds are awarded only to grant recipients eligible to receive state funds and that grant recipients comply with applicable state and federal law, and do not procure prohibited surveillance equipment or services, throughout the term of a grant agreement.

(b) Applicability.

(1) This section applies to each application submitted, and each grant agreement executed, under this subchapter on or after the effective date of this section, including each amendment, renewal, or extension of a grant agreement executed on or after that date.

(2) A grant agreement executed before the effective date of this section becomes subject to this section on the first amendment, renewal, or extension of the grant agreement that occurs on or after the effective date of this section.

(3) This section does not apply to the extent a state or federal statute, a federal regulation, or a condition of a federal award expressly prohibits inclusion of a provision required by this section. The grant file must document the basis for any omission under this paragraph.

(4) The requirements of this section are in addition to, and do not replace, any certification, assurance, or term required by other law, by the Texas Grant Management Standards adopted under Government Code, Chapter 783, or by another section of this subchapter.

(c) Definitions. Terms used in this section have the meanings assigned by §16.300 of this title (relating to Definitions). In addition, "mandatory provision" means a provision set out in subsection (d) of this section.

(d) Mandatory provisions. Each mandatory provision reads as follows:

(1) Human trafficking. "Grantee certifies that it is eligible to enter this Agreement under Government Code, §2155.0061, and acknowledges that the comptroller may withhold payment or terminate this Agreement immediately without further obligation to Grantee if this certification is inaccurate."

(2) Vaccine passport. "Grantee certifies it will comply with Health and Safety Code, §161.0085, for the term of this Agreement. Grantee certifies that it does not require its employees to provide any documentation certifying the customer's COVID-19 vaccination or post-transmission recovery on entry to, to gain access to, or to receive service from the Grantee. Grantee acknowledges that requiring such documentation would make Grantee ineligible for a state-funded grant."

(3) United States Department of Homeland Security's E-Verify system. "Grantee certifies that it utilizes and will continue to utilize for the term of this Agreement the U.S. Department of Homeland Security's E-Verify system to the full extent allowed by law to determine the eligibility of all persons employed to perform duties within Texas and all persons Grantee employs or assigns to perform work pursuant to this Agreement, within the United States of America."

(4) Immigration. "Grantee represents and warrants that it shall comply with all applicable U.S. immigration laws with respect to the employment of any individual who will perform labor or services in the U.S. under this Agreement. To the extent applicable, Grantee, including any branch, division, and department of Grantee, certifies that it does not and will not knowingly employ during the term of this Agreement an undocumented worker, as defined by Government Code, §2264.001(4)."

(5) Foreign adversary. "Grantee certifies that neither the Grantee nor any of its related entities are:

(A) listed in Section 889 of the 2019 National Defense Authorization Act (NDAA);

(B) listed in Section 1260H of the 2021 NDAA;

(C) owned by the government of a country on the U.S. Department of Commerce's foreign adversaries list under 15 C.F.R. § 791.4; or

(D) controlled by any governing or regulatory body located in a country on the U.S. Department of Commerce's foreign adversaries list under 15 C.F.R. § 791.4."

(6) Discriminatory diversity, equity, and inclusion activities prohibited. "Grantee certifies that no part of its performance under this Agreement will include engaging in any discriminatory diversity, equity, and inclusion activities, defined as disparate treatment based on race, color, ethnicity, religion, age, sex, and/or national origins in the recruitment, employment, contracting, program participation, or allocation or deployment of state resources. 'Program promoting diversity, equity, and inclusion' means a program that promotes preferences based on race, color, ethnicity, religion, sex, or national origins, such as in training or hiring. Grantee shall comply with all applicable state and

federal anti-discrimination laws. Grantee represents and warrants that it does not operate programs promoting diversity, equity, and inclusion that violate any applicable state and federal anti-discrimination laws."

(7) Cooperation with United States Immigration and Customs Enforcement. "To the extent applicable, Grantee certifies that Grantee will comply with all federal and state laws governing cooperation with U.S. Immigration and Customs Enforcement ('ICE') including Government Code, Chapters 752 and 753. Grantee also certifies that Grantee does not have and will not adopt any policy that prohibits or materially limits cooperation with ICE."

(8) Fraud, waste, and abuse prohibited. "Grantee acknowledges the Texas Comptroller of Public Accounts ('CPA') does not tolerate any type of fraud, waste, or abuse of state resources. The CPA's policy, available at https://Comptroller.texas.gov/about/policies/ethics.php, promotes consistent, legal, and ethical organizational behavior. CPA will investigate any violation of law, CPA's policies, or standards of ethical conduct, and will take appropriate actions. Grantee must immediately notify the CPA of any formal allegation or finding of fraud, waste, or misuse of state funds or resources. Grantee must also inform the CPA of the status of any ongoing investigation related to fraud, waste or misuse of state or federal funds or resources. Grantee must also comply with Government Code, §321.022, which requires that suspected fraud and unlawful conduct be reported to the State Auditor's Office."

(9) Prohibited surveillance equipment or services. "Grantee shall not procure or obtain Prohibited Surveillance Equipment or Services, extend or renew a contract to procure or obtain Prohibited Surveillance Equipment or Services, or enter into a contract (or extend or renew a contract) to procure or obtain Prohibited Surveillance Equipment or Services. 'Prohibited Surveillance Equipment or Services' shall mean a system, software, or computer algorithm, whether used independently or in combination with one or more mobile or fixed automated cameras, that is used to convert license plate or other images into computer-readable data, and includes without limitation any such camera, sensor, software, subscription, or data platform that any entity, or its successors, affiliates, or resellers, markets, sells, or operates, regardless of the name under which it is marketed, and any other automated license plate reader or vehicle-identification system that constitutes Prohibited Surveillance Equipment or Services as set out herein."

(e) Form of provisions; permitted conforming changes.

(1) A mandatory provision must be included in the form set out in subsection (d) of this section, except that the following conforming changes are permitted and do not constitute a modification of the provision:

(A) substituting the defined term used in the grant agreement for the comptroller ("CPA," "Comptroller," or "the state") for the term "CPA";

(B) substituting the defined term used in the grant agreement for the agreement ("Grant Agreement," "Agreement," or similar) for the term "Agreement";

(C) substituting the defined term used in the grant agreement for the grant recipient ("Grantee," "Grant Recipient," "County," or similar) for the term "Grantee"; and

(D) changes to capitalization, punctuation, numbering, or the use of quotation marks necessary to conform the provision to the format of the document in which it appears.

(2) No other change to a mandatory provision may be made, and a mandatory provision may not be omitted or negotiated, except as provided by subsection (b)(3) of this section.

(3) The comptroller may publish model application and grant agreement language incorporating the mandatory provisions. Use of the model language satisfies this subsection. Model language published under this paragraph may not alter the substance of a mandatory provision.

(f) Inclusion in applications and grant agreements.

(1) Applications. Each application form prescribed by the comptroller under §16.301 of this title (relating to Applications) must set out each mandatory provision or incorporate this section by specific reference to "34 TAC §16.307," and must state that submission of an application constitutes the applicant's certification of each statement in the mandatory provisions as of the date of submission. An applicant's submission of an application constitutes that certification.

(2) Grant agreements. Each grant agreement under §16.303 of this title (relating to Awards; Grant Agreement) must include each mandatory provision in the body of the grant agreement or in an attachment, exhibit, or set of terms and conditions that is expressly incorporated into the grant agreement. Incorporation of a mandatory provision solely by reference to this section is not sufficient for a grant agreement.

(3) Continuing obligation. Each certification in a mandatory provision is a continuing certification that the grant recipient must maintain throughout the term of the grant agreement, including any amendment, renewal, or extension. A grant recipient shall notify the comptroller in writing not later than the 10th business day after the date the grant recipient becomes aware that a certification is no longer accurate.

(g) Effect of inaccurate certification or noncompliance.

(1) An inaccurate certification in a mandatory provision, whether made at the time of application or arising during the term of a grant agreement, or a grant recipient's failure to comply with a mandatory provision, is a material breach of the grant agreement and may result in one or more of the following, as determined by the comptroller and as permitted by the grant agreement and applicable law:

(A) denial of the application;

(B) withholding of grant funds not yet disbursed;

(C) termination of the grant agreement, in whole or in part;

(D) return of grant funds under §16.305 of this title (relating to Reporting and Compliance) and the grant agreement; and

(E) referral to the State Auditor's Office or other appropriate authority.

(2) The remedies described in paragraph (1) of this subsection are cumulative of, and do not limit, any other remedy available to the state under the grant agreement, the Texas Grant Management Standards, or applicable law, including the remedies available under the statutes referenced in a mandatory provision.

(3) The inclusion of a mandatory provision in a grant agreement does not create a right of action in favor of any person other than the state.

(h) Relationship to other law. Nothing in this section authorizes the inclusion of a mandatory provision in a manner that violates a state or federal statute, federal regulation, or court order governing a particular grant. If a provision of a mandatory provision conflicts with

a statute, regulation, or order governing a particular grant, the statute, regulation, or order controls and the mandatory provision is deemed modified only to the extent necessary to eliminate the conflict. This section does not alter the eligibility criteria or the minimum salary requirements established by Local Government Code, §§130.911, 130.912, and 130.913.

(i) Severability. If any provision of this section, or any mandatory provision or any portion of a mandatory provision, is held invalid or unenforceable by a court of competent jurisdiction, the invalidity does not affect the other provisions of this section or the remaining mandatory provisions, which remain in effect and are to be given full force to the extent permitted by law.

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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Chris Blackwell
General Counsel and Associate Deputy Comptroller
Comptroller of Public Accounts
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SUBCHAPTER E. EDUCATION SAVINGS ACCOUNT PROGRAM

34 TAC §16.404

The Comptroller of Public Accounts proposes amendments to §16.404, concerning education service providers and vendors of educational products. The amendments add new subsection (a)(4)(I), which requires an education service provider participating in the education savings account program to agree and certify, as part of the certification the provider already makes under penalty of perjury under subsection (a)(4), that it complies with Health and Safety Code, §161.0085, and with the immunization provisions of Education Code, §38.001; re-letter existing subsection (a)(4)(I) as subsection (a)(4)(J); and add new subsection (l), which provides that the certification is continuing and renewed annually and states the limits of the new requirement.

The comptroller administers the education savings account program established by Education Code, Chapter 29, Subchapter J, as enacted by Senate Bill 2, 89th Legislature, R.S., 2025. Under the program, money from a participating child's account is paid from the program fund to preapproved education service providers and vendors of educational products. Section 16.404, adopted effective December 15, 2025 (50 TexReg 8046), sets out the requirements that education service providers and vendors must meet to be approved and, in subsection (a)(4), the agreements each provider and vendor must make and certify under penalty of perjury as a condition of participation. Under §16.401 of this title, an education service provider is an approved private school or an approved private provider of a prekindergarten or kindergarten program; tutors, therapists, employees of a teaching service, and other sellers of educational products and services are vendors.

Health and Safety Code, §161.0085(c), provides that a business in this state may not require a customer to provide any documentation certifying the customer's COVID-19 vaccination or post-transmission recovery on entry to, to gain access to, or to receive service from the business, and that a business that fails to comply is not eligible to receive a grant or enter into a contract payable with state funds. Health and Safety Code, §161.0085(d), directs each appropriate state agency to ensure that businesses in this state comply with that prohibition. Because payments to education service providers under the program are payable with state funds, the comptroller must ensure that providers receiving those payments comply with Health and Safety Code, §161.0085.

Education Code, §38.001, requires each student to be immunized against specified diseases as a condition of admission to an elementary or secondary school and, in subsection (c), excuses a person from that requirement upon submission of a medical exemption or an affidavit of conscientious objection. Rules of the Department of State Health Services in 25 TAC Chapter 97, Subchapter B, implement that section. These provisions apply to private as well as public schools. The amendments do not alter, expand, or diminish any immunization requirement or exemption established by that law.

New subsection (a)(4)(I) adds to the existing list of agreements and certifications a provider-specific item, using the same conditional structure the section already uses in subsections (a)(1) and (a)(2). An education service provider will agree and certify that it: complies with Health and Safety Code, §161.0085, and does not require a participating child, a parent, or any other person to provide COVID-19 vaccination or recovery documentation as a condition of admission, enrollment, attendance, or receipt of services; does not require a participating child, as a condition of admission, enrollment, attendance, or receipt of services, to receive or document any vaccination other than as required by Education Code, §38.001, and rules adopted under that section; and, to the extent Education Code, §38.001(c), applies to the provider, accepts exemptions claimed in the manner that subsection provides and does not deny admission, enrollment, attendance, or services to a participating child on the basis of such an exemption. The new subparagraph does not apply to a vendor of educational products or services, including a tutor, therapist, or employee of a teaching service, because vendors do not admit or enroll children and do not condition access to a school on immunization status.

Existing subsection (a)(4)(I), which requires a provider or vendor to abide by all other program requirements, is re-lettered as subsection (a)(4)(J) without change.

New subsection (l) provides that the certification under new subsection (a)(4)(I) is a continuing certification that a provider must maintain to remain in good standing and must renew annually in the manner the comptroller prescribes. Because existing subsection (a)(4)(H) already requires a provider to notify the comptroller or the designated certified educational assistance organization within 30 calendar days after it no longer meets a program requirement, no separate notice provision is needed. New subsection (l) also states that subsection (a)(4)(I) restates obligations imposed on the provider by other law and does not establish an additional criterion for approval under Education Code, §29.358(b), does not require a provider to admit, enroll, or serve any child, does not limit infection control or health screening protocols permitted by Health and Safety Code, §161.0085(e), and does not impose a requirement contrary to Education Code, §29.368.

The amendments are not an additional criterion for approval under Education Code, §29.358(b).

Subsection (a)(4) implements Education Code, §29.358(g), which requires a provider to agree to abide by all requirements of Subchapter J, and Education Code, §29.358(h)(2), which provides that a provider may participate only until the date the provider violates Subchapter J or other relevant law. Education Code, §29.3585(a)(2), requires the comptroller to suspend a provider that fails to remain in good standing by noncompliance with a program requirement. The certification implements these provisions by confirming, under penalty of perjury at approval and annually thereafter, that a provider receiving state funds is in compliance with other relevant law governing its eligibility to receive those funds. The amendments do not impose a requirement contrary to the religious or institutional values or practices of a provider, and do not limit a provider's freedom to determine its admissions and enrollment practices, policies, and standards, within the meaning of Education Code, §29.368, because the obligations certified are imposed on the provider by Health and Safety Code, §161.0085, and Education Code, §38.001, independently of the program, and Education Code, §29.368 does not exempt a provider from compliance with other law. A provider that fails to make or maintain the certification is subject to suspension and removal under §16.405 of this title and Education Code, §29.3585.

Tetyana Melnyk, Chief Revenue Estimator, has determined that during the first five years that the proposed amendments are in effect, the amended rule: 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 rule's applicability; and will not have significant effect on this state's economy.

Dr. Melnyk also has determined that the proposed amended rule would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed amendments would benefit the public by providing clarity regarding the application of existing law. There would be no anticipated significant economic cost to the public. The proposed amendments would have no significant fiscal impact on small businesses or rural communities.

You may submit comments on the proposal or information related to the cost, benefit, or effect of the proposal, including any applicable data, research or analysis, to Education Savings Account Program, Educational Opportunities and Investments Division, Comptroller of Public Accounts, 111 E. 17th Street, Austin, Texas 78774, or to the email address: Travis Pillow, Travis.Pillow@cpa.texas.gov. The comptroller must receive your comments or other information no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendments are proposed under Education Code, §29.358, which requires the comptroller to establish by rule a process for the preapproval of education service providers and vendors of educational products, requires a provider to agree to abide by all requirements of Education Code, Chapter 29, Subchapter J, and provides that a provider may participate only until the date the provider no longer meets the requirements of that section or violates that subchapter or other relevant law; Education Code, §29.3585, which requires the comptroller to suspend a provider that fails to remain in good standing by noncompliance with a program requirement; Education Code, §29.372, which authorizes the comptroller to adopt rules necessary to implement, administer, and enforce Education Code, Chapter 29, Subchapter J; Health and Safety Code, §161.0085(d), which directs each appropriate state agency to ensure that businesses in this state comply with Health and Safety Code, §161.0085(c), and authorizes the agency to require compliance as a condition of a state authorization; and Government Code, §403.011, which grants the comptroller general authority to perform the duties of the office.

The amendments implement Education Code, §§29.358, 29.3585, and 29.368, and §38.001; and Health and Safety Code, §161.0085.

§16.404. Education Service Providers and Vendors of Educational Products.

(a) To be approved as an education service provider or vendor of educational products or services by the comptroller, a provider or vendor must submit a comptroller-approved application and:

(1) if an education service provider, be located in this state;

(2) if a vendor of products or services, be registered with the secretary to do business in this state;

(3) have the right to transact business in this state by complying with all tax filing, collection, and payment requirements imposed by the state of Texas; and

(4) agree and certify under penalty of perjury that the provider or vendor will:

(A) accept orders and money from the program only for education-related expenses approved under Education Code, §29.359;

(B) subject to subsection (b) of this section, not charge a program participant for services or products paid for by the program, including tuition and fees, in an amount greater than or in addition to the established standard amount charged to all others for that service or product by the provider or vendor;

(C) not accept program money for a service or product to the extent the service or product is not provided;

(D) not rebate, refund, or credit to or share program money with a program participant or any person on behalf of a program participant;

(E) promptly return any money received in violation of program rules or other relevant law to the comptroller or designated certified educational assistance organization for deposit into the program fund;

(F) ensure that each person who will interact with a participating child by reason of their employment with the provider or vendor, including in person, online, or electronic interactions, is not identified as having engaged in misconduct described by Education Code, §22A.051(a)(2)(A), (B), (C), or (D), by:

(i) using the interagency reportable conduct search engine established under Health and Safety Code, Chapter 810; or

(ii) if the interagency reportable conduct search engine established under Health and Safety Code, Chapter 810, has not been established, using the registry established under Education Code, §22A.051;

(G) comply with the audits requirements under Education Code, §29.363, by providing to a private entity under contract with the comptroller or to the state auditor information or documentation related to a program transaction;

(H) notify the comptroller or designated certified educational assistance organization not later than the 30th calendar day after the date that the provider or vendor no longer meets the program requirements; and

(I) if an education service provider:

(i) comply with Health and Safety Code, §161.0085, and not require a participating child, a parent of a participating child, or any other person to provide documentation certifying the person's COVID-19 vaccination or post-transmission recovery as a condition of admission to, enrollment in, attendance at, or receipt of services from the provider;

(ii) not require a participating child, as a condition of admission to, enrollment in, attendance at, or receipt of services from the provider, to receive any vaccination or to provide documentation of any vaccination other than as required by Education Code, §38.001, and rules adopted under that section; and

(iii) to the extent Education Code, §38.001(c), applies to the provider, accept an exemption from immunization claimed in the manner provided by that subsection and not deny admission to, enrollment in, attendance at, or receipt of services from the provider to a participating child on the basis of an exemption so claimed; and

(J) [~~(I)~~] abide by all other program requirements.

(b) A private school may charge different standard amounts of tuition and fees for categories of students if those categories are unrelated to program participation.

(c) An approved provider of supplemental special education services under Education Code, Chapter 29, Subchapter A-1, in good standing with the agency shall be approved as a vendor of educational products or services for the program.

(d) A private school shall be approved as a provider by permitting electronic verification of, if available, or submitting proof of:

(1) accreditation by an organization recognized by the Texas Private School Accreditation Commission or agency;

(2) annual administration of an assessment instrument to participating children in grades 3 through 12;

(3) continuous operation of a campus, regardless of whether located in this state, for at least two school years preceding the date the school seeks approval; and

(4) that the school is located in this state.

(e) For a private school that operates more than one campus in this state, including a virtual campus, approval to participate extends only to a campus that is:

(1) operated by that school; and

(2) covered by the accreditation that the school submitted under subsection (d)(1) of this section or covered by another accreditation by an organization recognized by the Texas Private School Accreditation Commission or agency.

(f) A public school or open-enrollment charter school shall be approved as a vendor of educational products or services by permitting electronic verification of, if available, or submitting proof of accreditation by the agency and demonstrating the ability to provide services or products to participating children in a manner such that the children are not counted toward the district's or school's average daily attendance.

(g) A higher education provider shall be approved as a vendor of educational products or services by permitting electronic verification of, if available, or submitting proof of a nationally recognized postsecondary accreditation.

(h) A private provider of a prekindergarten or kindergarten program shall be approved as an education service provider by permitting electronic verification of, if available, or submitting proof that the provider meets the requirements of Education Code, §29.171 and is located in this state;

(i) A private tutor, therapist, or employee of a teaching service shall be approved as a vendor of educational products or services by permitting electronic verification of, if available, or submitting proof that:

(1) the individual providing the service to the child is not required to be discharged or refused to be hired by a school district under Education Code, §22A.157, and has not engaged in misconduct described by Education Code, §22A.052(b)(1), by obtaining a complete national criminal history record review in an acceptable format and dated within 30 days of the application;

(2) the individual providing the service to the child is not included in the registry under Education Code, §22A.151;

(3) if a tutor or employee of a teaching service:

(A) is an educator employed by or a retired educator formerly employed by a school accredited by the agency, an organization recognized by the agency, or an organization recognized by the Texas Private School Accreditation Commission;

(B) holds a relevant license or accreditation issued by a state, regional, or national certification or accreditation organization; or

(C) is employed in or retired from a teaching or tutoring capacity at a higher education provider; and

(4) if a therapist, the individual providing the service possesses a current, relevant license or accreditation issued by a state, regional, or national certification or accreditation organization.

(j) To be approved as a vendor of products or services under Education Code, §29.358(b-1), a vendor must comply with subsection (a) of this section and must:

(1) if a vendor of an online educational course or program under Education Code, §29.359(A)(1)(C), permit electronic verification of, if available, or submit proof that each person who will interact with a participating child by reason of their employment with the vendor, including in person, online, or electronic interactions, is not required to be discharged or refused to be hired by a school district under Education Code, §22A.157, and has not engaged in misconduct described by Education Code, §22A.052(b)(1), by obtaining a complete national criminal history record review in an acceptable format and dated within 30 days of the application;

(2) if a vendor of an academic assessment under Education Code, §29.359(4), comply with Education Code, §29.357(b); or

(3) if a vendor of transportation services under Education Code, §29.359(6), permit electronic verification of, if available, or submit proof that:

(A) each person who will interact with a participating child by reason of their employment with the vendor, including in person, online, or electronic interactions, is not required to be discharged or refused to be hired by a school district under Education Code, §22A.157, and has not engaged in misconduct described by Education Code, §22A.052(b)(1), by obtaining a complete national crim-

inal history record review in an acceptable format and dated within 30 days of the application; and

(B) each person providing such transportation services holds a valid Texas driver's license required for the transportation service provided.

(k) Money transferred by the program to a participating child's account may not be used to pay any individual related to the participating child within the third degree by consanguinity or affinity, as determined under Government Code, Chapter 573. For the purpose of this subsection, a payment to an entity, other than a sole proprietorship owned by the individual or a partnership of which the individual is a partner, is not a payment to an individual related to the participating child.

(l) The certification required by subsection (a)(4)(I) of this section is a continuing certification that an education service provider must maintain to remain in good standing and must renew annually in the manner prescribed by the comptroller. Subsection (a)(4)(I) of this section restates obligations imposed on an education service provider by other law and does not establish an additional criterion for approval under Education Code, §29.358(b), require a provider to admit, enroll, or provide services to any child, limit a provider's authority to adopt infection control or health screening protocols permitted by Health and Safety Code, §161.0085(e), or impose a requirement contrary to Education Code, §29.368.

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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Chris Blackwell
General Counsel and Associate Deputy Comptroller
Comptroller of Public Accounts
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SUBCHAPTER F. RURAL AMBULANCE SERVICE GRANT PROGRAM

34 TAC §16.507

The Comptroller of Public Accounts proposes new §16.507, concerning mandatory grant agreement provisions. The new section will be located in Texas Administrative Code, Title 34, Part 1, Chapter 16, Subchapter F, Rural Ambulance Service Grant Program.

The comptroller administers the Rural Ambulance Service Grant Program under Local Government Code, §130.914, to support the purchase of ambulances for qualified rural ambulance service providers in qualified counties. Grant recipients under the program are qualified counties, acting on behalf of qualified rural ambulance service providers. Sections 16.500 through 16.506 of this subchapter govern definitions, applications, comptroller review, awards and grant agreements, authorized uses of grant funds, reporting and compliance, and the fiscal year 2026 application period for the program.

State and federal law condition a recipient's eligibility to receive state funds, and to continue receiving disbursements under a state-funded agreement, on a number of certifications concerning the recipient's conduct, policies, and compliance with law. These include the certification required by Government Code, §2155.0061, regarding convictions for human trafficking; the prohibition in Health and Safety Code, §161.0085, on state-funded grants to entities that require documentation of COVID-19 vaccination status; the state's requirement that recipients of state funds use the United States Department of Homeland Security's E-Verify system; the certification regarding knowing employment of undocumented workers under Government Code, Chapter 2264; restrictions on providing state funds to entities owned or controlled by, or identified in federal law as affiliated with, foreign adversaries; the requirement that recipients comply with state and federal anti-discrimination law; the duties of local entities under Government Code, Chapters 752 and 753, regarding cooperation with federal immigration enforcement; and the reporting of fraud, waste, and abuse of state resources.

These certifications presently appear in the grant agreement form that the comptroller provides to grant recipients under this subchapter, which the grant agreement incorporates. They are not codified in the comptroller's rules. The new section codifies the provisions, prescribes their text, requires that each applicant make the certifications at the time of application and that each grant agreement and, where applicable, each private provider agreement contain the provisions, establishes that each certification is a continuing obligation during the term of a grant agreement, and states the consequences of an inaccurate certification or noncompliance. Codification gives applicants advance notice of the conditions attached to a grant, ensures consistency across grant years and across the comptroller's grant programs, and provides the comptroller a clear basis for enforcement.

The new section is an exercise of the comptroller's authority to administer the program and to prescribe the terms of grant agreements. It does not add to or alter the statutory eligibility criteria in Local Government Code, §130.914. A county that satisfies the statutory criteria remains eligible for a grant; the new section governs the terms on which grant funds are disbursed and retained and the consequences of a recipient's inaccurate certification or noncompliance with the grant agreement.

Because Local Government Code, §130.914, contemplates that a qualified county applies for and receives a grant on behalf of a qualified rural ambulance service provider, which may be a private entity, the new section requires that the private provider agreement between the county and a private provider contain the mandatory provisions and that the private provider make the same certifications. This ensures that the entity that ultimately operates an ambulance purchased with state funds is subject to the same conditions as the county that receives the funds.

Subsection (a) states the purpose of the section.

Subsection (b) establishes the applicability of the section. The section applies to applications submitted and grant agreements executed on or after the effective date, and to existing grant agreements upon their first amendment, renewal, or extension after that date. The section does not apply to the extent a statute, federal regulation, or federal award condition prohibits inclusion of a provision, and its requirements are cumulative of other legal requirements, including the Texas Grant Management Standards.

Subsection (c) adopts the definitions in §16.500 of this title and defines "mandatory provision."

Subsection (d) sets out the text of each of the eight mandatory provisions: human trafficking; vaccine passport; United States Department of Homeland Security's E-Verify system; immigration; foreign adversary; discriminatory diversity, equity, and inclusion activities prohibited; cooperation with United States Immigration and Customs Enforcement; and fraud, waste, and abuse prohibited.

Subsection (e) requires that each mandatory provision be included in the form set out in subsection (d), identifies the conforming changes that may be made to fit the provision to a particular document, prohibits any other alteration or omission, and authorizes the comptroller to publish model language.

Subsection (f) requires that the application form set out or incorporate the mandatory provisions and provides that submission of an application constitutes the applicant's certification; requires that each grant agreement set out or expressly incorporate the mandatory provisions; requires that a private provider agreement contain the mandatory provisions and that the private provider make the certifications before grant funds or an ambulance purchased with grant funds may be provided to the private provider; and makes each certification a continuing obligation with a duty to notify the comptroller within 10 business days if a certification becomes inaccurate.

Subsection (g) provides that an inaccurate certification or noncompliance is a material breach and identifies the available remedies, including denial of the application, withholding of undisbursed funds, termination, return of grant funds under §16.505 of this title and the grant agreement, and referral to the State Auditor's Office. The remedies are cumulative. The inclusion of a mandatory provision does not create a right of action in favor of any person other than the state.

Subsection (h) provides that the section does not authorize inclusion of a provision in violation of a statute, regulation, or court order, that in the event of conflict the statute, regulation, or order controls, and that the section does not alter the statutory eligibility criteria in Local Government Code, §130.914.

Subsection (i) is a severability provision.

Tetyana Melnyk, Chief Revenue Estimator, has determined that during the first five years that the proposed new rule is in effect, the rule: 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 rule's applicability; and will not positively or adversely affect this state's economy.

Dr. Melnyk also has determined that the proposed new rule would have no fiscal impact on the state government, units of local government, or individuals. The proposed new rule would benefit the public by providing clarity and guidance in the section. There would be no anticipated economic cost to the public. The proposed new rule would have no significant fiscal impact on small businesses or rural communities.

You may submit comments on the proposal or information related to the cost, benefit, or effect of the proposal, including any applicable data, research or analysis, to Will Counihan, P.O. Box 13528, Austin, Texas 78711-3528 or to the email address: Will.Counihan@cpa.texas.gov. The comptroller must receive your comments or other information no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The new section is proposed under Local Government Code, §130.914, which directs the comptroller to establish and administer the rural ambulance service grant program, authorizes the comptroller to award a grant under a grant agreement that includes conditions the comptroller determines necessary, and requires the comptroller to adopt rules necessary to implement the section, including rules to ensure compliance with the section; Government Code, §783.005, which directs the comptroller to establish uniform standards governing state grants to local governments; Government Code, §403.011, which grants the comptroller general authority to perform the duties of the office; and Government Code, §2001.004, which requires each state agency to adopt rules of practice stating the nature and requirements of its formal and informal procedures. The new section is also proposed under Government Code, §2155.0061, which conditions eligibility to receive state funds under an agreement with a state agency on the certification set out in that section; Health and Safety Code, §161.0085, which prohibits a governmental entity from providing a state-funded grant to an entity that requires documentation of COVID-19 vaccination status and authorizes the imposition of that requirement as a condition of the grant; Government Code, Chapter 2264, which conditions receipt of public subsidies on a recipient's certification that it does not knowingly employ undocumented workers; Government Code, §673.002, which require state agencies to use, and to require recipients of state funds to use, the E-Verify system; Government Code, Chapters 752 and 753, which govern local entities' cooperation with federal immigration enforcement and the consequences of noncompliance; and Government Code, §321.022, which requires that suspected fraud and unlawful conduct involving state funds be reported to the State Auditor's Office.

The new section implements Local Government Code, §130.914; Government Code, §§321.022, 403.011, 673.002, 783.005, and 2155.0061, and Chapters 752, 753, and 2264; Health and Safety Code, §161.0085; Labor Code, Chapter 21; Section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232); Section 1260H of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (Pub. L. 116-283); 15 C.F.R. §791.4; and 42 U.S.C. §2000d et seq. and §2000e et seq.

§16.507. Mandatory Grant Agreement Provisions.

(a) Purpose. This section identifies provisions that must be included in each grant agreement under this subchapter, and certifications that each applicant must make, to ensure that grant funds are awarded only to grant recipients eligible to receive state funds and that grant recipients and qualified rural ambulance service providers comply with applicable state and federal law throughout the term of a grant agreement.

(b) Applicability.

(1) This section applies to each application submitted, and each grant agreement executed, under this subchapter on or after the effective date of this section, including each amendment, renewal, or extension of a grant agreement executed on or after that date.

(2) A grant agreement executed before the effective date of this section becomes subject to this section on the first amendment, renewal, or extension of the grant agreement that occurs on or after the effective date of this section.

(3) This section does not apply to the extent a state or federal statute, a federal regulation, or a condition of a federal award ex-

pressly prohibits inclusion of a provision required by this section. The grant file must document the basis for any omission under this paragraph.

(4) The requirements of this section are in addition to, and do not replace, any certification, assurance, or term required by other law, by the Texas Grant Management Standards adopted under Government Code, Chapter 783, or by another section of this subchapter.

(c) Definitions. Terms used in this section have the meanings assigned by §16.500 of this title (relating to Definitions). In addition, "mandatory provision" means a provision set out in subsection (d) of this section.

(d) Mandatory provisions. Each mandatory provision reads as follows.

(1) Human trafficking. "Grantee certifies that it is eligible to enter this Agreement under Section 2155.0061, Texas Government Code, and acknowledges that CPA may withhold payment or terminate this Agreement immediately without further obligation to Grantee if this certification is inaccurate."

(2) Vaccine passport. "Grantee certifies it will comply with Health and Safety Code, §161.0085 for the term of this Agreement. Grantee certifies that it does not require its employees to provide any documentation certifying the customer's COVID-19 vaccination or post-transmission recovery on entry to, to gain access to, or to receive service from Grantee. Grantee acknowledges that requiring such documentation would make Grantee ineligible for a state-funded grant."

(3) United States Department of Homeland Security's E-Verify system. "Grantee certifies that it utilizes and will continue to utilize for the term of this Agreement the U.S. Department of Homeland Security's E-Verify system to the full extent allowed by law to determine the eligibility of all persons employed to perform duties within Texas and all persons Grantee employs or assigns to perform work pursuant to this Agreement, within the United States of America."

(4) Immigration. "Grantee represents and warrants that it shall comply with all applicable U.S. immigration laws with respect to the employment of any individual who will perform labor or services in the U.S. under this Agreement. To the extent applicable, Grantee, including any branch, division, and department of Grantee, certifies that it does not and will not knowingly employ during the term of this Agreement an undocumented worker, as defined by Government Code §2264.001(4)."

(5) Foreign adversary. "Grantee certifies that neither the Grantee nor any of its related entities are:

(A) listed in Section 889 of the 2019 National Defense Authorization Act (NDAA);

(B) listed in Section 1260H of the 2021 NDAA;

(C) owned by the government of a country on the U.S. Department of Commerce's foreign adversaries list under 15 C.F.R. § 791.4; or

(D) controlled by any governing or regulatory body located in a country on the U.S. Department of Commerce's foreign adversaries list under 15 C.F.R. § 791.4."

(6) Discriminatory diversity, equity, and inclusion activities prohibited. "Grantee certifies that no part of its performance under this Agreement will include engaging in any discriminatory diversity, equity, and inclusion activities, defined as disparate treatment based on race, color, ethnicity, religion, age, sex, and/or national origins in the recruitment, employment, contracting, program participation, or allocation or deployment of state resources. 'Program promoting diversity, equity, and inclusion' means a program that promotes preferences based on race, color, ethnicity, religion, sex, or national origins, such as in training or hiring. Grantee shall comply with all applicable state and federal anti-discrimination laws. Grantee represents and warrants that it does not operate programs promoting diversity, equity, and inclusion that violate any applicable state and federal anti-discrimination laws."

(7) Cooperation with United States Immigration and Customs Enforcement. "To the extent applicable, Grantee certifies that Grantee will comply with all federal and state laws governing cooperation with U.S. Immigration and Customs Enforcement ('ICE') including Government Code, Chapters 752 and 753. Grantee also certifies that Grantee does not have and will not adopt any policy that prohibits or materially limits cooperation with ICE."

(8) Fraud, waste, and abuse prohibited. "Grantee acknowledges the Texas Comptroller of Public Accounts ('CPA') does not tolerate any type of fraud, waste, or abuse of state resources. The CPA's policy, available at https://Comptroller.texas.gov/about/policies/ethics.php, promotes consistent, legal, and ethical organizational behavior. CPA will investigate any violation of law, CPA's policies, or standards of ethical conduct, and will take appropriate actions. Grantee must immediately notify the CPA of any formal allegation or finding of fraud, waste, or misuse of state funds or resources. Grantee must also inform the CPA of the status of any ongoing investigation related to fraud, waste or misuse of state or federal funds or resources. Grantee must also comply with Government Code, §321.022, which requires that suspected fraud and unlawful conduct be reported to the State Auditor's Office."

(e) Form of provisions; permitted conforming changes.

(1) A mandatory provision must be included in the form set out in subsection (d) of this section, except that the following conforming changes are permitted and do not constitute a modification of the provision:

(A) substituting the defined term used in the grant agreement for the comptroller ("CPA," "Comptroller," or "the state") for the term "CPA";

(B) substituting the defined term used in the grant agreement for the agreement ("Grant Agreement," "Agreement," or similar) for the term "Agreement";

(C) substituting the defined term used in the grant agreement for the grant recipient ("Grantee," "Grant Recipient," "County," or similar) for the term "Grantee," and, in a private provider agreement, substituting the defined term used for the qualified rural ambulance service provider ("Provider," "Service Provider," or similar) for the term "Grantee" and the defined term for the county for the term "CPA" where the context requires; and

(D) changes to capitalization, punctuation, numbering, or the use of quotation marks necessary to conform the provision to the format of the document in which it appears.

(2) No other change to a mandatory provision may be made, and a mandatory provision may not be omitted or negotiated, except as provided by subsection (b)(3) of this section.

(3) The comptroller may publish model application, grant agreement, and private provider agreement language incorporating the mandatory provisions. Use of the model language satisfies this subsection. Model language published under this paragraph may not alter the substance of a mandatory provision.

(f) Inclusion in applications, grant agreements, and private provider agreements.

(1) Applications. Each application form prescribed by the comptroller under §16.501 of this title (relating to Applications) must set out each mandatory provision or incorporate this section by specific reference to "34 TAC §16.507," and must state that submission of an application constitutes the applicant's certification of each statement in the mandatory provisions as of the date of submission. An applicant's submission of an application constitutes that certification.

(2) Grant agreements. Each grant agreement under §16.503 of this title (relating to Awards; Grant Agreement) must include each mandatory provision in the body of the grant agreement or in an attachment, exhibit, or set of terms and conditions that is expressly incorporated into the grant agreement. Incorporation of a mandatory provision solely by reference to this section is not sufficient for a grant agreement.

(3) Private provider agreements. If the qualified rural ambulance service provider identified in an application or grant agreement is a private entity, the private provider agreement required by this subchapter must set out each mandatory provision, applied to the qualified rural ambulance service provider in the manner described by subsection (e)(1)(C) of this section, and must require the qualified rural ambulance service provider to make each certification in the mandatory provisions as of the date the private provider agreement is executed. A grant recipient may not disburse grant funds to, or lease or transfer an ambulance purchased with grant funds to, a qualified rural ambulance service provider that is a private entity until the private provider agreement containing the mandatory provisions has been executed and a copy has been submitted to the comptroller.

(4) Continuing obligation. Each certification in a mandatory provision is a continuing certification that the grant recipient, and a qualified rural ambulance service provider that has executed a private provider agreement, must maintain throughout the term of the grant agreement, including any amendment, renewal, or extension, and for so long as an ambulance purchased with grant funds remains subject to the requirements of this subchapter. A grant recipient shall notify the comptroller in writing not later than the 10th business day after the date the grant recipient becomes aware that a certification made by the grant recipient or by its qualified rural ambulance service provider is no longer accurate.

(g) Effect of inaccurate certification or noncompliance.

(1) An inaccurate certification in a mandatory provision, whether made at the time of application or arising during the term of a grant agreement, or a grant recipient's or qualified rural ambulance service provider's failure to comply with a mandatory provision, is a material breach of the grant agreement and may result in one or more of the following, as determined by the comptroller and as permitted by the grant agreement and applicable law:

(A) denial of the application;

(B) withholding of grant funds not yet disbursed;

(C) termination of the grant agreement, in whole or in part;

(D) return of grant funds under §16.505 of this title (relating to Reporting and Compliance) and the grant agreement; and

(E) referral to the State Auditor's Office or other appropriate authority.

(2) The remedies described in paragraph (1) of this subsection are cumulative of, and do not limit, any other remedy available to the state under the grant agreement, the Texas Grant Management Standards, or applicable law, including the remedies available under the statutes referenced in a mandatory provision.

(3) The inclusion of a mandatory provision in a grant agreement or a private provider agreement does not create a right of action in favor of any person other than the state.

(h) Relationship to other law. Nothing in this section authorizes the inclusion of a mandatory provision in a manner that violates a state or federal statute, federal regulation, or court order governing a particular grant. If a provision of a mandatory provision conflicts with a statute, regulation, or order governing a particular grant, the statute, regulation, or order controls and the mandatory provision is deemed modified only to the extent necessary to eliminate the conflict. This section does not alter the eligibility criteria established by Local Government Code, §130.914, for a qualified county or a qualified rural ambulance service provider.

(i) Severability. If any provision of this section, or any mandatory provision or any portion of a mandatory provision, is held invalid or unenforceable by a court of competent jurisdiction, the invalidity does not affect the other provisions of this section or the remaining mandatory provisions, which remain in effect and are to be given full force to the extent permitted by law.

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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Chris Blackwell
General Counsel and Associate Deputy Comptroller
Comptroller of Public Accounts
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CHAPTER 20. STATEWIDE PROCUREMENT AND SUPPORT SERVICES
SUBCHAPTER A. GENERAL PROVISIONS
DIVISION 3. MANDATORY TERMS

34 TAC §20.51

The Comptroller of Public Accounts proposes new §20.51, concerning mandatory contract clauses for statewide procurement and comptroller contracts. This new section will be located in Texas Administrative Code, Title 34, Part 1, Chapter 20, Subchapter A, in new Division 3, Mandatory Terma.

The comptroller, acting through the Statewide Procurement Division, issues solicitations and awards and administers contracts on behalf of state agencies under Government Code, Title 10, Subtitle D, including term contracts, statewide contracts, Texas Multiple Award Schedule contracts, cooperative contracts, and open market purchases. The comptroller also issues solicitations and awards contracts for the comptroller's own use. State and federal law condition a vendor's eligibility to contract with the state, and to continue receiving payment under a state contract, on a number of certifications concerning the vendor's conduct, ownership, and compliance with law. These include the certi-

fication required by Government Code, §2155.0061, regarding convictions for human trafficking; the prohibition in Health and Safety Code, §161.0085, on state-funded contracts with businesses that require customers to document COVID-19 vaccination status; the state's requirement that contractors use the United States Department of Homeland Security's E-Verify system; the certification regarding knowing employment of undocumented workers under Government Code, Chapter 2264; restrictions on contracting with entities owned or controlled by, or identified in federal law as affiliated with, foreign adversaries; and the requirement that contractors comply with state and federal anti-discrimination law in the performance of state contracts.

These certifications presently appear in solicitation templates and contract forms maintained by the Statewide Procurement Division and in the comptroller's own contract templates. They are not codified in the comptroller's rules. As a result, the language of the certifications has varied across contract types and over time, the consequences of an inaccurate certification have not been uniformly stated, and vendors have had no single authoritative source identifying the certifications they will be required to make. The new section codifies the required clauses, prescribes their text, requires their inclusion in every covered solicitation, response, and contract, establishes that each certification is a continuing obligation during the term of a contract, states the consequences of an inaccurate certification or noncompliance, and provides a narrow, documented waiver procedure for the limited circumstances in which inclusion of a clause is prohibited by other law or no responsible respondent can make a certification.

The comptroller proposes the new section within Subchapter A, General Provisions, in a new Division 3, because the requirements apply across every procurement method addressed in Chapter 20 and apply both to procurements the comptroller conducts on behalf of other state agencies and to procurements the comptroller conducts for its own use. Placing the section among the chapter's general provisions rather than within a subchapter addressed to a particular procurement method or phase reflects that chapter-wide scope.

In accordance with Government Code, §2262.005, the comptroller has previously consulted with state agencies in developing contract terms and best practices for contract administration.

Subsection (a) states the purpose of the section.

Subsection (b) establishes the applicability of the section. Paragraph (1) identifies the two categories of covered procurements: solicitations, responses, and contracts issued, received, awarded, executed, or administered by the comptroller on behalf of state agencies under Government Code, Title 10, Subtitle D; and solicitations, responses, and contracts issued, received, awarded, or executed by the comptroller for its own use, regardless of procurement method, source of funds, or any exemption from Subtitle D. Paragraph (2) makes the section prospective, applying it to solicitations issued and contracts executed on or after the effective date, and to existing contracts upon their first renewal, extension, or amendment after that date. Paragraph (3) excludes interagency and interlocal contracts among governmental entities, contracts with other sovereigns or federal agencies, and contracts to the extent that a statute, federal regulation, or federal grant condition expressly prohibits inclusion of a clause. Paragraph (4) provides that the section's requirements are cumulative of other legal requirements and prevail over conflicting provisions of Chapter 20 unless the conflicting provision is required by statute.

Subsection (c) adopts the definitions in §20.25 of this title and defines the terms "covered contract," "covered response," "covered solicitation," and "mandatory clause" for purposes of the section.

Subsection (d) sets out the text of each of the six mandatory clauses: human trafficking prohibited; vaccine passport; United States Department of Homeland Security's E-Verify system; immigration; foreign adversary; and discriminatory diversity, equity, and inclusion activities prohibited.

Subsection (e) requires that each mandatory clause be included in the form set out in subsection (d), identifies the conforming changes that may be made to fit the clause to a particular document (substitution of the contract's defined terms for the parties and the agreement, and formatting changes), prohibits any other alteration or omission, and authorizes the comptroller to publish model solicitation and contract language that incorporates the mandatory clauses without altering their substance.

Subsection (f) requires inclusion of the mandatory clauses in covered solicitations, provides that submission of a response constitutes the respondent's certification of each clause as of the date of submission and that a response taking exception to a clause is non-responsive, requires that the clauses be set out in or expressly incorporated into each covered contract, and makes each certification a continuing obligation with a duty to notify the state within 10 business days if a certification becomes inaccurate.

Subsection (g) provides that an inaccurate certification or noncompliance with a mandatory clause is a material breach and identifies the remedies available to the state, including rejection of the response, termination, withholding of payment, recovery of amounts paid, and referral for debarment under Subchapter G of this chapter. The remedies are cumulative of other remedies available under the contract or applicable law. Paragraph (3) provides that the inclusion of a mandatory clause does not create a right of action in favor of any person other than the state.

Subsection (h) establishes a limited waiver procedure. A waiver is available only where inclusion of a clause is prohibited by a legal requirement described in subsection (b)(3)(C), or where the goods or services are essential to the operation of the state, no responsible respondent can make the certification, and the underlying statute does not itself prohibit the award. A waiver must be in writing, state its basis, be signed by the comptroller or the comptroller's designee, and be placed in the procurement file. No waiver may be granted for a certification that a statute requires as a condition of the contract.

Subsection (i) provides that the section does not authorize inclusion of a clause in violation of a statute, regulation, or court order governing a particular contract, and that in the event of a conflict the statute, regulation, or order controls and the clause is deemed modified only to the extent necessary to eliminate the conflict.

Subsection (j) is a severability provision.

Tetyana Melnyk, Chief Revenue Estimator, has determined that during the first five years that the proposed new rule is in effect, the rule: 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 num-

ber of individuals subject to the rule's applicability; and will not positively or adversely affect this state's economy.

Dr. Melnyk also has determined that the proposed new rule would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed new rules would benefit the public by providing clear guidance through uniform, transparent, and enforceable contract requirements that ensure state contracts are awarded only to eligible vendors and remain compliant throughout the contract term. There would be no anticipated economic cost to the public. The proposed new rule would have no fiscal impact on small businesses or rural communities.

You may submit comments on the proposal or information related to the cost, benefit, or effect of the proposal, including any applicable data, research or analysis, to Bobby Pounds, Director, Statewide Procurement Division, Comptroller of Public Accounts, P.O. Box 13186, Austin, Texas 78711-3186, or to the email address: Robert.Pounds@cpa.texas.gov. The comptroller must receive your comments or other information no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The new division and section are proposed under Government Code, §2155.0012, which authorizes the comptroller to adopt rules to efficiently and effectively administer Government Code, Title 10, Subtitle D; Government Code, §2156.005, which authorizes the comptroller to adopt rules governing the procurement procedures used by the comptroller and state agencies; Government Code, §2262.051, which requires the comptroller to develop a contract management guide for use by state agencies, including model contract provisions, and authorizes the Comptroller to adopt rules necessary to administer Government Code, Chapter 2262; Government Code, §403.011, which grants the comptroller general authority to perform the duties of the office; and Government Code, §2001.004, which requires each state agency to adopt rules of practice stating the nature and requirements of its formal and informal procedures. The new section is also proposed under Government Code, §2155.0061, which conditions a vendor's eligibility to contract with a state agency on the certification set out in that section; Health and Safety Code, §161.0085, which prohibits a governmental entity from entering a state-funded contract with a business that requires customers to document COVID-19 vaccination status and authorizes the imposition of that requirement as a contract condition; Government Code, Chapter 2264, which conditions receipt of public subsidies on a business's certification that it does not knowingly employ undocumented workers; and Government Code, §673.002, which require state agencies to use, and to require their contractors to use, the E-Verify system.

The new division and section implement Government Code, §§403.011, 2155.0012, 2155.0061, 2156.005, 2262.051, and 673.002, and Chapter 2264; Health and Safety Code, §161.0085; Labor Code, Chapter 21; Government Code, Chapter 2275 or 2276, as applicable; Section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232); Section 1260H of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (Pub. L. 116-283); 15 C.F.R. §791.4; and 42 U.S.C. §2000d et seq. and §2000e et seq.

§20.51. Mandatory Contract Clauses for Statewide Procurement and Comptroller Contracts.

(a) Purpose. This section identifies contract clauses that must be included in covered solicitations, covered responses, and covered contracts to ensure that the state contracts only with persons eligible to do business with the state and that contractors comply with applicable state and federal law throughout the term of a contract.

(b) Applicability.

(1) This section applies to:

(A) each solicitation issued, each response received, and each contract awarded, executed, or administered by the comptroller under Government Code, Title 10, Subtitle D, on behalf of one or more state agencies, including a term contract, a statewide contract, a contract awarded under the Texas Multiple Award Schedule program, a cooperative contract, and an open market purchase; and

(B) each solicitation issued, each response received, and each contract awarded or executed by the comptroller for the comptroller's own use, regardless of the procurement method used, the source of funds, or whether the procurement is exempt from Government Code, Title 10, Subtitle D.

(2) This section applies to a solicitation issued on or after the effective date of this section and to a contract executed on or after that date. A contract executed before the effective date of this section becomes subject to this section on the first renewal, extension, or amendment of the contract that occurs on or after the effective date of this section.

(3) This section does not apply to:

(A) an interagency contract under Government Code, Chapter 771, or an interlocal contract under Government Code, Chapter 791, in which each party is a governmental entity;

(B) a contract with another sovereign or with an agency of the United States; or

(C) a contract to the extent a state or federal statute, a federal regulation, or a condition of a federal grant or award expressly prohibits inclusion of a clause required by this section. The procurement file must document the basis for any omission under this subparagraph.

(4) The requirements of this section are in addition to, and do not replace, any certification, representation, or contract term required by other law or by another section of this chapter. To the extent of any conflict between this section and another section of this chapter, this section prevails unless the other section is required by statute.

(c) Definitions. Terms used in this section have the meanings assigned by §20.25 of this title (relating to Definitions), except that the following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Covered contract--A contract described by subsection (b)(1) of this section, including each renewal, extension, and amendment of the contract.

(2) Covered response--A bid, offer, proposal, quotation, statement of qualifications, or other response submitted in reply to a covered solicitation.

(3) Covered solicitation--An invitation for bids, request for offers, request for proposals, request for qualifications, request for quotations, or other document by which the comptroller solicits a response that may result in a covered contract.

(4) Mandatory clause--A clause set out in subsection (d) of this section.

(d) Mandatory clauses. Each mandatory clause reads as follows:

(1) Human trafficking prohibited. "Contractor certifies that it is eligible to enter this Agreement under Texas Government Code, §2155.0061, and acknowledges that CPA may terminate this Agreement or withhold payment if this certification is inaccurate."

(2) Vaccine passport. "Contractor certifies it will comply with Health and Safety Code §161.0085 for the term of this Agreement. Contractor certifies that it does not require its customers to provide any documentation certifying the customer's COVID-19 vaccination or post-transmission recovery on entry to, to gain access to, or to receive service from the Contractor's business. Contractor acknowledges that requiring such documentation would make Contractor ineligible for a state-funded contract."

(3) United States Department of Homeland Security's E-Verify system. "Contractor certifies that it utilizes and will continue to utilize for the term of this Agreement the U.S. Department of Homeland Security's E-Verify system to the full extent allowed by law to determine the eligibility of all persons employed to perform duties within Texas and all persons Contractor employs or assigns to perform work pursuant to this Agreement, within the United States of America."

(4) Immigration. "Contractor certifies that it shall comply with all applicable U.S. immigration laws with respect to the employment of any individual who will perform labor or services in the U.S. under this Agreement. To the extent applicable, contractor, including any branch, division, and department of contractor, certifies that it does not and will not knowingly employ during the term of this Agreement an undocumented worker, as defined by Government Code §2264.001(4)."

(5) Foreign adversary. "Contractor certifies that neither the Contractor nor any of its holding companies or subsidiaries are:

(A) listed in Section 889 of the 2019 National Defense Authorization Act (NDAA);

(B) listed in Section 1260H of the 2021 NDAA;

(C) owned by the government of a country on the U.S. Department of Commerce's foreign adversaries list under 15 C.F.R. §791.4; or

(D) controlled by any governing or regulatory body located in a country on the U.S. Department of Commerce's foreign adversaries list under 15 C.F.R. §791.4."

(6) Discriminatory diversity, equity, and inclusion activities prohibited. "Contractor certifies that no part of its performance under this Agreement will include engaging in any discriminatory diversity, equity, and inclusion activities, defined as disparate treatment based on race, color, ethnicity, religion, age, sex, and/or national origins in the recruitment, employment, contracting, program participation, or allocation or deployment of state resources. Contractor acknowledges that violation of this provision may result in termination of this Agreement. 'Program promoting diversity, equity, and inclusion' means a program that promotes preferences based on race, color, ethnicity, religion, sex, or national origins, such as in training or hiring. Contractor shall comply with all applicable state and federal anti-discrimination laws. Contractor represents and warrants that it does not operate programs promoting diversity, equity, and inclusion that violate any applicable state and federal anti-discrimination laws."

(e) Form of clauses; permitted conforming changes.

(1) A mandatory clause must be included in the form set out in subsection (d) of this section, except that the following conforming changes are permitted and do not constitute a modification of the clause:

(A) substituting the defined term used in the contract for the contracting party ("CPA," "Comptroller," "the state," or the name of the contracting state agency) for the term "CPA";

(B) substituting the defined term used in the contract for the agreement ("Contract," "Purchase Order," or similar) for the term "Agreement";

(C) substituting the defined term used in the contract for the vendor ("Vendor," "Respondent," "Supplier," or similar) for the term "Contractor"; and

(D) changes to capitalization, punctuation, numbering, or the use of quotation marks necessary to conform the clause to the format of the document in which it appears.

(2) No other change to a mandatory clause may be made, and a mandatory clause may not be omitted, negotiated, or waived, except as provided by subsection (b)(3) or subsection (h) of this section.

(3) The comptroller may publish model solicitation and contract language incorporating the mandatory clauses. Use of the model language satisfies this subsection. Model language published under this paragraph may not alter the substance of a mandatory clause.

(f) Inclusion in solicitations, responses, and contracts.

(1) Covered solicitations. Each covered solicitation must:

(A) set out each mandatory clause or incorporate this section by specific reference to "34 TAC §20.51"; and

(B) state that submission of a response constitutes the respondent's certification of, and agreement to be bound by, each mandatory clause, and that a response that disclaims, conditions, or takes exception to a mandatory clause will be rejected as non-responsive.

(2) Covered responses. A respondent's submission of a covered response constitutes the respondent's certification of each statement in the mandatory clauses as of the date of submission. A covered response that disclaims, conditions, or takes exception to a mandatory clause is non-responsive and must be rejected.

(3) Covered contracts. Each covered contract must include each mandatory clause in the body of the contract or in an attachment, exhibit, or set of terms and conditions that is expressly incorporated into the contract. Incorporation of a mandatory clause solely by reference to this section is not sufficient for a covered contract.

(4) Continuing obligation. Each certification in a mandatory clause is a continuing certification that the contractor must maintain throughout the term of the covered contract, including any renewal or extension. A contractor shall notify the comptroller, or the contracting state agency for a statewide contract, in writing not later than the 10th business day after the date the contractor becomes aware that a certification is no longer accurate.

(g) Effect of inaccurate certification or noncompliance.

(1) An inaccurate certification in a mandatory clause, whether made at the time of response or arising during the term of a covered contract, or a contractor's failure to comply with a mandatory clause, is a material breach of the covered contract and may result in one or more of the following, as determined by the comptroller or the contracting state agency and as permitted by the contract and applicable law:

(A) rejection of the covered response;

(B) termination of the covered contract, in whole or in part;

(C) withholding of payment;

(D) recovery of amounts paid; and

(E) referral for debarment under Subchapter G of this chapter (relating to Debarment).

(2) The remedies described in paragraph (1) of this subsection are cumulative of, and do not limit, any other remedy available to the state under the covered contract or applicable law, including the remedies available under the statutes referenced in a mandatory clause.

(3) A contractor's inclusion of a mandatory clause does not create a right of action in favor of any person other than the state.

(h) Waiver.

(1) The comptroller may waive the inclusion of a mandatory clause in a specific covered solicitation or covered contract only if the comptroller determines in writing that the mandatory clause cannot be included because of a legal requirement described by subsection (b)(3)(C) of this section.

(2) A waiver under this subsection must identify the mandatory clause waived, state the basis for the waiver, and be signed by the comptroller or the comptroller's designee. The waiver must be placed in the procurement file and, for a statewide contract, provided to each state agency that purchases under the contract.

(3) A waiver may not be granted for a mandatory clause to the extent the certification it contains is required by statute as a condition of the contract.

(i) Relationship to other law. Nothing in this section authorizes the inclusion of a mandatory clause in a manner that violates a state or federal statute, federal regulation, or court order governing a particular covered contract. If a provision of a mandatory clause conflicts with a statute, regulation, or order governing a particular covered contract, the statute, regulation, or order controls and the mandatory clause is deemed modified only to the extent necessary to eliminate the conflict.

(j) Severability. If any provision of this section, or any mandatory clause or any portion of a mandatory clause, is held invalid or unenforceable by a court of competent jurisdiction, the invalidity does not affect the other provisions of this section or the remaining mandatory clauses, which remain in effect and are to be given full force to the extent permitted by law.

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 November 9, 2026.

TRD-202604763
Chris Blackwell
General Counsel and Associate Deputy Comptroller
Comptroller of Public Accounts
Earliest possible date of adoption: December 20, 2026
For further information, please call: (512) 475-2220

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 5. TEXAS BOARD OF PARDONS AND PAROLES

CHAPTER 146. VIOLATION [~~REVOCATION~~] OF PAROLE OR MANDATORY SUPERVISION

37 TAC §§146.4, 146.7, 146.9, 146.11, 146.12

The Texas Board of Pardons and Paroles proposes amendments to 37 TAC Chapter 146, §§146.4, 146.7, 146.9, 146.11, and 146.12, concerning the violation of parole or mandatory supervision. The amendments are proposed for clarity and to also provide uniformity and consistency throughout the rules.

Marsha Moberley, Chair of the Board, determined that for each year of the first five-year period the proposed amendments are in effect, no fiscal implications exist for state or local government as a result of enforcing or administering these sections.

Ms. Moberley also has determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the amendments to these sections will be to clarify the duties concerning continuation, modification, and revocation of parole or mandatory supervision. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the amended rules as proposed. The amendments 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; does not create a new regulation; does not expand, limit, or repeal an existing regulation; 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.

An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed amendments will not have an economic effect on micro-businesses, small businesses, or rural communities as defined in Texas Government Code §2006.001(2).

Comments should be directed to Jennifer Childress, General Counsel, Texas Board of Pardons and Paroles, 209 W. 14th Street, Suite 500, Austin, Texas 78701, or by e-mail to . Written comments from the general public should be received within 30 days of the publication of this proposal.

The amended rules are adopted under Texas Government Code Sections 508.036(b), 508.0441(a)(5), 508.045(c), 508.281, 508.2811, and 508.283. Section 508.036(b) requires the board to adopt rules relating to the decision-making processes used by the Board and parole panels. Section 508.0441(a)(5) vests the Board with the authority to determine the continuation, modification, and revocation of parole or mandatory supervision. Section 508.045(c) provides parole panels with the authority to conduct parole revocation and mandatory supervision revocation hearings; and to grant, deny, revoke parole or mandatory supervision. Sections 508.281 and 508.2811 relate to hearings to determine violations of the releasee's parole or mandatory supervision. Sections 508.282 and 508.283 concern deadlines and sanctions for parole revocation and mandatory supervision revocation hearings.

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

§146.4. Rights of an Offender [Procedure after Waiver of Preliminary Hearing].

[(a) Following the waiver of the right to a preliminary hearing, the parole panel or a designee of the Board may proceed to a revocation hearing after a finding of probable cause or reasonable belief that the releasee violated a condition of parole or mandatory supervision.]

[(b)] [The parole panel or designee of the Board may accept a waiver of the preliminary hearing provided that a waiver of the preliminary hearing includes the following] Prior to a parole panel making a final disposition of alleged violation(s) of Parole or Mandatory Supervision, a releasee has the following due process rights:

(1) [information that the releasee was served with the following:]

[(A) notice of the right to a preliminary hearing and that its purpose is to determine whether there is probable cause or reasonable belief to believe the releasee has committed a parole violation;]

[(B)] a written notice of the allegation(s) [allegations] of parole violation [against the releasee];

(2) [(C)] a written notice of the right to full disclosure of the evidence;

[(D) notice that releasee has the opportunity to be heard in person and to present witnesses and documentary evidence;]

(3) [(E)] a written notice of [that the releasee has] the right to confront and cross-examine adverse witnesses unless the Hearing Officer specifically finds good cause for not allowing confrontation of the witness;

(4) [(F)] a written notice that the case will be heard by a neutral and detached parole panel or designee of the Board;

[(G) notice that the releasee has the opportunity to waive in writing the right to either or both the preliminary and revocation hearings, with the additional understanding that, if the releasee waives the revocation hearing, the Board will in all probability revoke; and]

(5) [(H)] a written notice that the releasee has the right to retain an attorney and the conditional right to an appointed attorney:[; and]

(6) In determining whether the releasee is to be appointed an attorney, the Chief Operating Officer or designee shall weigh the following factors:

(A) Whether the releasee is indigent;

(B) Whether the releasee lacks the ability to articulate or present a defense or mitigation evidence in response to the allegations; and

(C) The complexity of the case and whether the releasee admits to the alleged violations.

(7) Opportunity to be heard in person and present witnesses and documentary evidence;

(8) The right to request a Preliminary and/or Revocation Hearing to be held in person or videoconference;

(9) If revoked, a written statement as to the evidence relied on for revoking parole or mandatory supervision.

[(2) information which supports the evidence of the alleged rule violations, which may include but are not limited to the following:]

[(A) complaint and information or grand jury indictment;]

[(B) judgment and sentence of conviction;]

[(C) reports of violation;]

[(D) witness affidavits; or]

[(E) other evidence, e.g., if the releasee was not indicted by a grand jury or convicted.]

§146.7. Preliminary Hearing.

(a) [The parole panel or designee of the Board shall conduct the preliminary hearing.] The purpose of the preliminary hearing is to determine whether there is probable cause or a reasonable belief that the releasee violated a condition of parole or mandatory supervision.

(b) The parole panel or designee shall conduct the preliminary hearing.

(c) [(b)] The preliminary hearing shall be held at or near the location of the alleged violations or arrest, unless the releasee is:

(1) detained in federal custody;

(2) held in a hospital or other facility for diagnosis or treatment of a physical or mental condition; or

(3) arrested or detained on the authority of a warrant in a state other than the state of release.

(d) [(c)] If the parole panel decision [of the parole panel] or designee of the Board is that there is probable cause or reasonable belief to proceed to the [a] revocation hearing, upon the request of the parole panel, designee of the Board or the parole officer, the Board [Board's scheduling staff] may schedule a revocation hearing:[;]

(1) at the conclusion of the hearing, or

(2) after a pending charge is adjudicated.

(e) [(d)] If the parole panel or the designee of the Board finds that there is no probable cause or reasonable belief to proceed to a revocation hearing or does not schedule a revocation hearing, the parole panel or designee of the Board shall collect, prepare and forward to a parole panel, or to the TDCJ PD Interstate Compact for Probation and Parole Supervision, if the hearing was held pursuant to the Interstate Commission for Adult Offender Supervision rules, the following information:

(1) all documents and exhibits offered or admitted into evidence at the preliminary hearing;

(2) a summary report of the evidence relied upon to formulate the Hearing Officer's findings; and

(3) the recording of the hearing.

(f) [(e)] Following a review of the supporting evidence of rule violations as described in subsection (d) of this section, the parole panel may dispose of the case by taking one of the following actions:

(1) continue the parole or mandatory supervision in any manner warranted by the evidence;

(2) proceed to a revocation hearing; or

(3) refer the case for further action.

(g) [(f)] No preliminary hearing is required if the releasee:

(1) waives the preliminary hearing;

(2) has been charged only with an administrative violation of a condition of parole or mandatory supervision; or

(3) has been adjudicated guilty of or has pleaded guilty or nolo contendere to an offense committed after release, other than an

offense punishable by fine only involving the operation of a motor vehicle, regardless of whether the court has deferred disposition of the case, imposed a sentence in the case, or placed the releasee on community supervision.

§146.9. Revocation Hearing.

(a) [~~The parole panel or designee of the Board shall conduct the revocation hearing.~~] The purpose of the revocation hearing is to [~~consider the evidence offered pursuant to an allegation of a violation of a condition of parole or mandatory supervision. The parole panel or designee of the Board must~~] determine whether it is shown by a preponderance of the credible evidence that the releasee violated a condition of parole or mandatory supervision.

(b) The parole panel or designee shall conduct the revocation hearing.

(c) [~~(b)~~] The revocation hearing shall not proceed to the mitigation or adjustment phase unless it is determined by the parole panel or designee of the Board by a preponderance of the credible evidence that the releasee did violate a condition of parole or mandatory supervision.

(d) [~~(c)~~] At the close of the hearing or within a reasonable time thereafter, the parole panel or designee of the Board shall collect, prepare and forward to the parole panel:

(1) all documents;

(2) a summary report of the hearing separately setting out findings [~~of fact~~] relative to the alleged violation(s) [~~violation~~] [~~of a condition~~] of parole or mandatory supervision, based on a preponderance of the credible evidence, which includes statements of the evidence relied upon in reaching said finding; and

(3) the hearing recording.

(e) The offender may waive the revocation hearing.

§146.11. Releasee's Motion to Reopen Hearing or Reinstate Supervision.

(a) The releasee or releasee's attorney shall have 60 days from the date of the parole panel's revocation decision to submit a written request for reopening a case for any substantial error in the revocation process or upon newly discovered information.

(b) A written request to reopen the revocation hearing or reinstate supervision submitted later than 60 days from the date of the parole panel's revocation decision will not be considered unless under exceptional circumstances including but not limited to:

(1) judicial reversal of a judgment of conviction of a criminal offense where the offense constituted an underlying factor in the initial revocation decision;

(2) judicial order requiring a hearing;

(3) initial revocation effected without opportunity for a hearing or waiver as required under law.

(c) Any such request for reopening made under this section must be in writing and submitted [~~delivered~~] to the Board as published on the Board's website ~~or placed in the United States mail and addressed to the Texas Board of Pardons and Paroles, Attention: General Counsel, 8610 Shoal Creek Blvd., Austin, Texas 78757~~.

(d) On transmittal, a parole panel designated by the Chair other than the original panel shall dispose of the motion by:

(1) granting of the motion and ordering that the hearing be reopened for a stated specified and limited purpose;

(2) denial of the motion; or

(3) reversal of the panel decision previously entered and withdrawal of the Board's revocation warrant, under the same terms and provisions as provided in §146.10 of this title (relating to Final Board Disposition).

(e) The releasee and attorney, if any, shall be notified in writing of the parole panel's decision.

(f) When a releasee's motion to reopen the hearing under this section is granted, the releasee shall be deemed to have consented to such further reasonable delay in the final disposition of his or her case as shall be required for the procedure described in §146.12 of this title (relating to Procedure after Motion to Reopen is Granted; Time; Rights of the Releasee; Final Disposition).

§146.12. Procedure after Motion to Reopen is Granted; Time; Rights of the Releasee; Final Disposition.

(a) When the parole panel disposes of a releasee's motion to reopen under §146.11 of this title (relating to Releasee's Motion to Reopen Hearing or Reinstate Supervision) by granting said motion to reopen the hearing, the case shall be disposed of or referred to a parole panel or designee of the Board for final disposition in accordance with this section and the previous disposition of the case made by the parole panel under §146.10 of this title (relating to Final Board Disposition) shall be set aside and shall be of no force and effect.

(b) The purpose of the further proceedings before the parole panel or designee of the Board under this section shall be as specified by the parole panel in its order granting the releasee's motion to reopen pursuant to §146.11(d)(1) of this title.

(c) When the parole panel or designee of the Board convenes the reopening of the hearing, it shall have the record of the original hearing, any prior reopenings, releasees motion and any confidential Board transmittals. [~~before it the entire record previously compiled in the case, including:~~]

[~~(1) the record, report, and recommendation of the preliminary hearing under §146.7 of this title (relating to Preliminary Hearing) or revocation hearing under §146.9 of this title (relating to Revocation Hearing) collected or prepared by the designee of the Board originally assigned to the case;~~]

[~~(2) any amendments, supplements, or modifications of the record, report, or recommendation as developed through prior reopenings of the case;~~]

[~~(3) the releasee's motion to reopen the hearing pursuant to §146.11 of this title; and~~]

[~~(4) any transmittal submitted to the parole panel with recommendation from Board staff. Any transmittal submitted to the parole panel by the General Counsel constitutes legal advice which is confidential under law, and shall not be released to the public as part of the hearing packet.~~]

(d) At the conclusion of the proceedings before the parole panel or designee of the Board, [~~or within a reasonable time thereafter,~~] the parole panel shall make final disposition of the case by taking one of the following actions in any manner warranted by the evidence:

(1) continue the revocation action;

(2) rescind the revocation action and reinstate supervision, under the previous or modified conditions;

(3) rescind the revocation action and reinstate supervision, imposing confinement in an ISF or SAFP;

(4) if the releasee received a conditional pardon, recommend to the Governor that the revocation action be continued, modified, or rescinded.

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 November 5, 2026.

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Richard Gamboa
Technical Writer
Texas Board of Pardons and Paroles
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For further information, please call: (512) 406-5309

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PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

CHAPTER 163. COMMUNITY JUSTICE ASSISTANCE DIVISION STANDARDS

37 TAC §163.25

The Texas Board of Criminal Justice (board) proposes amendments to §163.25, concerning Strategic Plan. The proposed amendments revise the rule pursuant to changes mandated by Senate Bill 663 of the 89th Texas Legislative Session which centralized budget and strategic plan approval with the Community Justice Assistance Division (CJAD) while limiting judicial involvement to review and fiscal oversight. Specifically, the amendments to §163.25 remove language requiring judicial approval of the community supervision and corrections department (CSCD) strategic plans and instead requires the CJAD to approve those plans. The judicial role is specified as review-only following the CJAD approval of the plan.

Ron Steffa, Chief Financial Officer for the Texas Department of Criminal Justice (TDCJ), has determined that for each year of the first five years the proposed amendments will be in effect, enforcing or administering the proposed amendments will not have foreseeable implications related to costs or revenues for state or local government because the proposed amendments centralize CSCD strategic plan approval with the CJAD.

Mr. Steffa has also determined that for each year of the first five-year period, there will not be an economic impact on persons required to comply with the rules because the proposed amendments centralize CSCD strategic plan approval with the CJAD. There will not be an adverse economic impact on small or micro businesses or on rural communities. Therefore, no regulatory flexibility analysis is required. The anticipated public benefit, as a result of enforcing the proposed amendments, will be enhanced efficiency. No cost will be imposed on regulated persons.

The proposed amendments will have no impact on government growth; no impact on local employment; no creation or elimination of a government program; no creation or elimination of employee positions; no increase or decrease in future legislative appropriations to the TDCJ; no increase or decrease in fees paid to the TDCJ; no new regulation and no effect on an existing regulation; no increase or decrease in the number of individuals subject to the rule; and no effect upon the economy. The proposed amendments will not constitute a taking.

Comments should be directed to the Office of the General Counsel, Texas Department of Criminal Justice, P.O. Box 4004, Huntsville, Texas 77342, ogccomments@tdcj.texas.gov. Written comments from the general public must be received within 30 days of the publication of this rule in the *Texas Register*.

The amendments are proposed under Texas Government Code §492.013, which authorizes the board to adopt rules; §509.003, which authorizes the board to adopt reasonable rules establishing standards and procedures for the TDCJ Community Justice Assistance Division; and §509.007, which provides guidelines for the department budget and strategic plan.

Cross Reference to Statutes: None.

§163.25. Strategic Plan.

(a) Strategic Plan. As [~~The Community Justice Assistance Division (CJAD) shall require as~~] a condition of payment of state aid to a community supervision and corrections department (CSCD) or county under Texas Government Code §§ 509.007 and 509.011, the Texas Department of Criminal Justice Community Justice Assistance Division (TDCJ CJAD) shall require that the CSCD submit its budget for the state fiscal biennium and a strategic plan to the TDCJ CJAD, and that the budget and strategic plan be approved by the TDCJ CJAD [~~be submitted for the CSCD~~]. [~~The CSCD shall submit a strategic plan as required by Texas Government Code § 509.007. A CSCD may not submit a strategic plan under this rule unless the strategic plan is first approved by the judges described by Texas Government Code § 76.002, who established the CSCD.~~] The CSCD shall submit a revised strategic plan to the TDCJ CJAD each even-numbered year, no later than March 1. A strategic plan may be amended at any time with the approval of the TDCJ CJAD. Following TDCJ CJAD approval, the strategic plan is subject to review by the judges described by Texas Government Code § 76.002.

(b) The strategic plan shall include:

(1) a statement of goals, priorities, and commitment by the CSCD and the judges to achieve a targeted level of alternative sanctions;

(2) a description of methods for measuring the success of programs provided by the CSCD or provided by an entity served by the CSCD;

(3) a summary of the programs and services the CSCD provides or intends to provide, including a separate summary of any services the CSCD intends to provide in relation to a specialty court program; and any programs or other services the CSCD intends to provide to enhance public safety, reduce recidivism, strengthen the investigation and prosecution of criminal offenses, improve programs and services available to victims of crime, and increase the amount of restitution collected from persons supervised by the CSCD; and

(4) an outline of the CSCD's projected programmatic and budgetary needs, based on the programs and services the CSCD both provides and intends to provide.

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 November 9, 2026.

TRD-202604759
Eric Miller
General Counsel
Texas Department of Criminal Justice
Earliest possible date of adoption: December 20, 2026
For further information, please call: (936) 437-6700

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37 TAC §163.42

The Texas Board of Criminal Justice (board) proposes amendments to §163.42, concerning Substantial Noncompliance. The proposed amendments revise the rule pursuant to changes mandated by Senate Bill 663 of the 89th Texas Legislative session which centralized budget and strategic plan approval with the Community Justice Assistance Division (CJAD) while limiting judicial involvement to review and fiscal oversight. Specifically, the amendments to §163.42 remove a reference to a previously statutorily required budget meeting for each community supervision and corrections department (CSCD) while retaining CJAD's enforcement for critical violations in alignment with the governance structure where the CJAD is the central authority over CSCD budgets.

Ron Steffa, Chief Financial Officer for the Texas Department of Criminal Justice (TDCJ), has determined that for each year of the first five years the proposed amendments will be in effect, enforcing or administering the proposed amendments will not have foreseeable implications related to costs or revenues for state or local government because the proposed amendments change the definition of substantial noncompliance to remove a reference to a previously statutorily required budget meeting for CSCDs.

Mr. Steffa has also determined that for each year of the first five-year period, there will not be an economic impact on persons required to comply with the rules because the proposed amendments are consistent with centralizing CSCD budget approval with the CJAD. There will not be an adverse economic impact on small or micro businesses or on rural communities. Therefore, no regulatory flexibility analysis is required. The anticipated public benefit, as a result of enforcing the proposed amendments, will be enhanced efficiency. No cost will be imposed on regulated persons.

The proposed amendments will have no impact on government growth; no impact on local employment; no creation or elimination of a government program; no creation or elimination of employee positions; no increase or decrease in future legislative appropriations to the TDCJ; no increase or decrease in fees paid to the TDCJ; no new regulation and no effect on an existing regulation; no increase or decrease in the number of individuals subject to the rule; and no effect upon the economy. The proposed amendments will not constitute a taking.

Comments should be directed to the Office of the General Counsel, Texas Department of Criminal Justice, P.O. Box 4004, Huntsville, Texas 77342, ogccomments@tdcj.texas.gov. Written comments from the general public must be received within 30 days of the publication of this rule in the *Texas Register*.

The amendments are proposed under Texas Government Code §492.013, which authorizes the board to adopt rules; §509.003, which authorizes the board to adopt reasonable rules establishing standards and procedures for the TDCJ Community Justice Assistance Division; and §509.012, which provides guidelines for the refusal or suspension of state aid.

Cross Reference to Statutes: None.

§163.42. Substantial Noncompliance.

(a) Definition. Substantial noncompliance with the Texas Department of Criminal Justice Community Justice Assistance Division (TDCJ CJAD) standards, for purposes of Texas Government Code §509.012, is defined as:

(1) intentional diversion, theft, or misapplication of TDCJ CJAD funding or grants for purposes other than the state funding award or allocation;

(2) violations of laws, regulations, or official manuals specific to the operations of the community supervision and corrections departments (CSCDs);

(3) intentional refusal to implement a TDCJ CJAD approved action plan that is a result of audits, reviews, or inspections; and

~~[(4) for purposes of qualifying for state aid under 37 Texas Administrative Code §163.43(a)(1)(F), relating to Funding and Financial Management, failure to hold the meeting to finalize the CSCD budget as required by Texas Local Government Code §140.004; and]~~

(4) ~~[(5)]~~ interference, obstruction, or hindrance with any efforts by the Texas Comptroller of Public Accounts, county auditor of the county that manages the CSCD's funds, TDCJ CJAD, Texas Board of Criminal Justice Office of the Independent Auditor, Legislative Budget Board, Texas State Auditor's Office, or Texas Sunset Advisory Commission to examine or audit the records, transactions, and performance of the CSCD or facilities.

(b) Imposing Sanctions. Sanctions imposed for substantial noncompliance shall be in accordance with the provisions outlined in 37 Texas Administrative Code §163.47, relating to Contested Matters.

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 November 9, 2026.

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Eric Miller
General Counsel
Texas Department of Criminal Justice
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PART 15. TEXAS FORENSIC SCIENCE COMMISSION

CHAPTER 651. DNA, CODIS, FORENSIC ANALYSIS, AND CRIME LABORATORIES SUBCHAPTER C. FORENSIC ANALYST LICENSING PROGRAM

37 TAC §651.207, §651.208

The Texas Forensic Science Commission (Commission) proposes amendments to §651.207, Forensic Analyst and Forensic

Technician Licensing Requirements, Including Initial License Term and Fee, Minimum Education and Coursework, General Forensic Examination, Proficiency Monitoring, and Mandatory Legal and Professional Responsibility Training and §651.208, Forensic Analyst and Forensic Technician License Renewal. The proposed amendments end the Commission's proration of license fees and continuing forensic education (CFE) requirements for licensees who first received a license before January 1, 2024, and renew on or before December 31, 2026. After the amendments proposed herein are adopted and take effect, every license applicant, new or renewing, will pay the same fee and complete the same CFE hours that apply to the license discipline. License holders whose terms end on the last day of the licensee's birth month continue to renew on the last day of the license holder's birth month.

Reasoned Justification for Rule Amendments. The Commission's forensic analyst and technician licensing program began on January 1, 2019. Because the Commission licensed most analysts in that first cycle, most licenses expired within the same three months every fall in even-numbered years. Each cycle created a backlog for Commission staff processing the applications and left licensees waiting for their renewals.

To address this bottleneck, the Commission adopted a rule that set existing licenses to expire on the last day of the licensee's birth month (49 TexReg 1498 (March 8, 2024)). In moving existing licensees to that schedule, the Commission gave some licensees a renewal term shorter (or longer) than the typical two years and prorated their fees and CFE hours to match the terms accordingly. The Commission modified the transition in a later rulemaking (49 TexReg 6250 (Aug. 16, 2024)) that limited the "birth month expiration" to anyone licensed before January 1, 2024, and renewing before December 31, 2026 (effectively excluding *new* license applicants from the transition). New licenses since that date hold licenses that expire two years from issuance.

Over the past two years, the Commission moved a majority of its licensees to birth-month expiration dates. Staff and licensees no longer face a concentrated renewal period every fall. The proration provisions in §651.207(c)(3)(C) and §651.208(b), (c), (j), and (k) expire by their own terms on December 31, 2026. Because the transition has served its purpose, the Commission proposes to remove the expiring provisions. Removing the prorations further eliminates the second set of fee and CFE calculations that staff otherwise must apply, and it confirms that every licensee in a particular licensed discipline pays the same fee and completes the same CFE.

One-for-One Rule Requirements for Rules with a Fiscal Impact. Because Leigh M. Tomlin, Associate General Counsel of the Commission, has determined that the rules do not have a fiscal impact that imposes any additional costs on a regulated person, including another state agency, a special district, or a local government, the agency is not required to take further action under Government Code § 2001.0045. The proration provisions expire by their own terms on December 31, 2026, so the amendments impose no additional cost.

Fiscal Note. Ms. Tomlin has determined that for each year of the first five years the proposed amendments will be in effect, there will be no fiscal impact to state or local governments related to costs or revenues as a result of the enforcement or administration of the amendments.

Rural Impact Statement. The Commission expects no adverse economic effect on rural communities as the proposed amendments do not impose any direct costs or fees on municipalities in rural communities.

Public Benefit/Cost Note. Ms. Tomlin has determined that, for each of the first five years the amendments are in effect, the public benefit is a simpler, more consistent licensing process, and efficient processing of license renewals. The Commission expects no additional costs to any person required to comply.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. As required by the Government Code §2006.002(c) and (f), Ms. Tomlin has determined that the proposed amendments will not have an adverse economic effect on any small or micro business because the proposed amendments do not impose any economic costs to these businesses.

Takings Impact Assessment. Ms. Tomlin has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

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

Government Growth Impact Statement. Ms. Tomlin has determined that for the first five-year period, implementation of the proposed amendments will not have a government growth impact as described in Title 34, Part 1, Texas Administrative Code §11.1. Pursuant to the analysis required by Government Code §2001.0221(b) the proposed amendments: (1) do not create a government program; (2) do not create new employee positions; (3) do not increase or decrease future legislative appropriations to the Office of Court Administration or the Commission; (4) do not require an increase or decrease in fees paid to the agency; (5) do not create a new regulation; (6) do not create, expand, or limit a regulation, but repeal expired provisions that prorate licensing fees and CFE; (7) do not increase or decrease the number of individuals subject to regulation; and (8) have minimal to no effect on the State's economy.

Request for Public Comment. The Commission invites comments on the proposal from any member of the public. Please submit comments to Leigh M. Tomlin, 1701 North Congress Avenue, Suite 6-700, Austin, Texas 78701 or leigh@fsc.texas.gov. Comments must be received by December 29, 2026 to be considered by the Commission.

Statutory Authority. The Commission proposes the amendments pursuant to the Commission's licensing authority under Code of Criminal Procedure, Article 38.01 §4-a, which authorizes the Commission to establish qualifications for a forensic analyst license, and its general rulemaking authority under Code of Criminal Procedure, Article 38.01 §3-a, which directs the Commission to adopt rules necessary to implement Code of Criminal Procedure, Article 38.01.

Cross reference to statute. The proposal affects Code of Criminal Procedure, Article 38.01.

§651.207. Forensic Analyst and Forensic Technician Licensing Requirements, Including Initial License Term and Fee, Minimum Education and Coursework, General Forensic Examination, Proficiency Monitoring, and Mandatory Legal and Professional Responsibility Training.

(a) Issuance. The Commission may issue an individual's Forensic Analyst or Forensic Technician License under this section.

(b) License Term. A Forensic Analyst or Forensic Technician license holder must renew the license holder's license after the initial date of issuance, every two years on the day before the issuance of the initial license. A license holder whose license term ends on the last day of the licensee's birth month continues to renew on the last day of the license holder's birth month every two years. [~~with the exception of §651.208(b) of this subchapter (relating to Renewal Term).~~]

(c) Application. Before being issued a Forensic Analyst or Forensic Technician License, an applicant must:

(1) demonstrate that he or she meets the definition of Forensic Analyst or Forensic Technician set forth in this subchapter;

(2) complete and submit to the Commission a current Forensic Analyst or Forensic Technician License Application form;

(3) pay the required fee(s) as applicable:

(A) Initial Application fee of $220 for Analysts and $150 for Technicians/Screeners;

(B) Biennial renewal fee of $200 for Analyst and $130 for Technicians/Screeners;

[~~(C) Pro-rated Fees for Certain License Renewals. This subsection applies to licensees initially licensed before January 1, 2024, who are renewing on or before December 31, 2026. Application fee of $220 for Analysts and $150 for Technicians for the twenty-four months of the Initial License Term. If the Analyst or Technician's renewed license term under §651.208(b) of this subchapter exceeds twenty-four months, the Analyst or Technician shall pay an additional prorated amount of $8.33 per month (for Analysts) and $5.42 per month (for Technicians) for each month exceeding two years. If the Analyst or Technician's Initial License Term under §651.208(b) of this subchapter is less than twenty-four months, the Analyst or Technician shall pay a prorated amount of $8.33 per month (for Analysts) and $5.42 per month (for Technicians) for each month in the Initial License Term;~~]

(C) [~~(D)~~] Provisional License fee of $110 for Analysts and $75 for Technicians; An applicant who is granted a provisional license and has paid the required fee will not be required to pay an additional initial application fee if the provisional status is removed within one year of the date the provisional license is granted;

(D) [~~(E)~~] License Reinstatement fee of $220;

(E) [~~(F)~~] De Minimis License fee of $200 per ten (10) licenses;

(F) [~~(G)~~] Uncommon Forensic Analysis License fee of $200 per ten (10) licenses; and/or

(G) [~~(H)~~] Special Exam Fee of $50 for General Forensic Analyst Licensing Exam, required only if testing beyond the three initial attempts or voluntarily taking the exam under the Unaccredited Forensic Discipline Exception described in subsection (h)(5)(C) [~~(g)(5)(C)~~] of this section;

(4) provide accurate and current address and employment information to the Commission and update the Commission within five (5) business days of any change in address or change of employment. Licensees are required to provide a home address, email address, and employer name and address on an application for a license. If a forensic analyst or forensic technician departs employment, experiences a gap in employment, is no longer actively performing casework, or temporarily assumes non-forensic analysis, administrative duties from an accredited laboratory, or has ninety (90) days or less to reinstate an expired license pursuant to §651.209(a) of this subchapter (relating to Forensic Analyst and Forensic Technician License Expiration), the licensee's status is deemed inactive and will be designated as inactive in the Commission's online database of licensees, until such time that the licensee notifies the Commission of their employment by an accredited laboratory as a forensic analyst or forensic technician, or has a change in job duties requiring the licensee to resume active casework; and

(5) provide documentation that he or she has satisfied all applicable requirements set forth under this section.

(d) Minimum Education Requirements.

(1) Seized Drugs Analyst. An applicant for a Forensic Analyst License in seized drugs must have a baccalaureate or advanced degree in chemical, physical, biological science, chemical engineering or forensic science from an accredited university.

(2) Seized Drugs Technician. An applicant for a Forensic Analyst License limited to the seized drug technician category must have a minimum of an associate's degree or equivalent.

(3) Toxicology (Toxicology Analyst (Alcohol Only, Non-interpretive), Toxicology Analyst (General, Non-interpretive), Toxicology Analyst (Interpretive)). An applicant for a Forensic Analyst License in toxicology must have a baccalaureate or advanced degree in a chemical, physical, biological science, chemical engineering or forensic science from an accredited university.

(4) Toxicology Technician. An applicant for a Forensic Analyst License limited to the toxicology technician category must have a minimum of an associate's degree or equivalent.

(5) Forensic Biology (DNA Analyst, Forensic Biology Screener, Nucleic Acids other than Human DNA Analyst, Forensic Biology Technician). An applicant for any category of forensic biology license must have a baccalaureate or advanced degree in a chemical, physical, biological science or forensic science from an accredited university.

(6) Firearm/Toolmark Analyst. An applicant for a Forensic Analyst License in firearm/toolmark analysis must have a baccalaureate or advanced degree in a chemical, physical, biological science, engineering or forensic science from an accredited university.

(7) Firearm/Toolmark Technician. An applicant for a Forensic Analyst License limited to firearm/toolmark technician must have a minimum of a high school diploma or equivalent degree.

(8) Materials (Trace) Analyst. An applicant for a Forensic Analyst License in materials (trace) must have a baccalaureate or advanced degree in a chemical, physical, biological science, chemical engineering or forensic science from an accredited university. A Materials (Trace) Analyst performing only impression evidence analyses must have a minimum of a high school diploma or equivalent degree.

(9) Materials (Trace) Technician. An applicant for a Forensic Analyst License limited to materials (trace) technician must have a minimum of a high school diploma or equivalent degree.

(10) Foreign/Non-U.S. degrees. The Commission shall recognize equivalent foreign, non-U.S. baccalaureate or advanced degrees. The Commission reserves the right to charge licensees a reasonable fee for credential evaluation services to assess how a particular foreign degree compares to a similar degree in the United

States. The Commission may accept a previously obtained credential evaluation report from an applicant or licensee in fulfillment of the degree comparison assessment.

(11) If an applicant does not meet the minimum education qualifications outlined in this section, the procedure in subsection (g) [~~(f) or (j)~~] of this section applies.

(e) Specific Coursework Requirements.

(1) Seized Drugs Analyst. An applicant for a Forensic Analyst License in seized drugs must have a minimum of sixteen-semester credit hours (or equivalent) in college-level chemistry coursework above general coursework from an accredited university. In addition to the chemistry coursework, an applicant must also have a three-semester credit hour (or equivalent) college-level statistics course from an accredited university or a program approved by the Commission.

(2) Toxicology. An applicant for a Forensic Analyst License in toxicology must fulfill required courses as appropriate to the analyst's role and training program as described in the categories below:

(A) Toxicology Analyst (Alcohol Only, Non-interpretive). A toxicology analyst who conducts, directs or reviews the alcohol analysis of forensic toxicology samples, evaluates data, reaches conclusions and may sign a report for court or investigative purposes, but does not provide interpretive opinions regarding human performance must complete a minimum of sixteen-semester credit hours (or equivalent) in college-level chemistry coursework above general coursework from an accredited university.

(B) Toxicology Analyst (General, Non-interpretive). A toxicology analyst who conducts, directs or reviews the analysis of forensic toxicology samples, evaluates data, reaches conclusions and may sign a report for court or investigative purposes, but does not provide interpretive opinions regarding human performance, must complete a minimum of sixteen-semester credit hours (or equivalent) in college-level chemistry coursework above general coursework that includes organic chemistry and two three-semester credit hour (or equivalent) college-level courses in analytical chemistry and/or interpretive science courses that may include Analytical Chemistry, Chemical Informatics, Instrumental Analysis, Mass Spectrometry, Quantitative Analysis, Separation Science, Spectroscopic Analysis, Biochemistry, Drug Metabolism, Forensic Toxicology, Medicinal Chemistry, Pharmacology, Physiology, or Toxicology.

(C) Toxicology Analyst (Interpretive). A toxicology analyst who conducts, directs or reviews the analysis of forensic toxicology samples, evaluates data, reaches conclusions, signs reports, and/or provides interpretive opinions regarding human performance related to the results of toxicological tests (alcohol and general) for court or investigative purposes must complete a minimum of sixteen-semester credit hours (or equivalent) in college-level chemistry coursework above general coursework that includes organic chemistry, one three-semester credit hour (or equivalent) course in college-level analytical chemistry (Analytical Chemistry, Chemical Informatics, Instrumental Analysis, Mass Spectrometry, Quantitative Analysis, Separation Science or Spectroscopic Analysis) and one three-semester credit hour (or equivalent) college-level courses in interpretive science. (Biochemistry, Drug Metabolism, Forensic Toxicology, Medicinal Chemistry, Pharmacology, Physiology, or Toxicology).

(D) An applicant for a toxicology license for any of the categories outlined in subparagraphs (A) - (C) of this paragraph must have a three-semester credit hour (or equivalent) college-level statistics course from an accredited university or a program approved by the Commission.

(3) DNA Analyst. An applicant for a Forensic Analyst License in DNA analysis must demonstrate he/she has fulfilled the specific coursework requirements of the Federal Bureau of Investigation's Quality Assurance Standards for Forensic DNA Testing Laboratories effective at the time of the individual's application. An applicant must also have a three-semester credit hour (or equivalent) college-level statistics course from an accredited university or a program approved by the Commission.

(4) Firearm/Toolmark Analyst. An applicant must have a three-semester credit hour (or equivalent) college-level statistics course from an accredited university or a program approved by the Commission. No other specific college-level coursework is required.

(5) Materials (Trace) Analyst. An applicant for a Forensic Analyst License in materials (trace) for one or more of the chemical analysis categories of analysis (chemical determination, physical/chemical comparison, gunshot residue analysis, and fire debris and explosives analysis) must have a minimum of sixteen-semester credit hours (or equivalent) in college-level chemistry coursework above general coursework from an accredited university. In addition to chemistry coursework for the chemical analysis categories, all materials (trace) license applicants must also have a three-semester credit hour (or equivalent) college-level statistics course from an accredited university or a program approved by the Commission. An applicant for a Forensic Analyst License in materials (trace) limited to impression evidence is not required to fulfill any specific college-level coursework requirements other than the statistics requirement.

(6) Exemptions from specific coursework requirements. The following categories of licenses are exempted from coursework requirements:

(A) An applicant for the technician license category of any forensic discipline set forth in this subchapter is not required to fulfill any specific college-level coursework requirements.

(B) An applicant for a Forensic Analyst License limited to forensic biology screening, nucleic acids other than human DNA and/or Forensic Biology Technician is not required to fulfill the Federal Bureau of Investigation's Quality Assurance Standards for Forensic DNA Testing or any other specific college-level coursework requirements.

(f) Requirements Specific to Forensic Science Degree Programs. For a forensic science degree to meet the Minimum Education Requirements set forth in this section, the forensic science degree program must be either accredited by the Forensic Science Education Programs Accreditation Commission (FEPAC) or if not accredited by FEPAC, it must meet the minimum curriculum requirements pertaining to natural science core courses and specialized science courses set forth in the FEPAC Accreditation Standards.

(g) Waiver of Specific Coursework Requirements and/or Minimum Education Requirements for Lateral Hires, Promoting Analysts and Current Employees. Specific coursework requirements and minimum education requirements are considered an integral part of the licensing process; all applicants are expected to meet the requirements of the forensic discipline(s) for which they are applying or to offer sufficient evidence of their qualifications as described below in the absence of specific coursework requirements or minimum education requirements. The Commission Director or Designee may waive one or more of the specific coursework requirements or minimum education requirements outlined in this section for an applicant who:

(1) has five or more years of credible experience in an accredited laboratory in the forensic discipline for which he or she seeks licensure or three or more years of credible experience in an accredited laboratory in the firearms/toolmarks discipline and is applying for a firearms/toolmarks analyst or technician license; or

(2) is certified by one or more of the following nationally recognized certification bodies in the forensic discipline for which he or she seeks licensure;

(A) The American Board of Forensic Toxicology;

(B) The American Board of Clinical Chemistry;

(C) The American Board of Criminalistics;

(D) The International Association for Identification; or

(E) The Association of Firearm and Toolmark Examiners; and

(3) provides written documentation of laboratory-sponsored training in the subject matter areas addressed by the specific coursework requirements.

(4) An applicant must request a waiver of specific coursework requirements and/or minimum education requirements at the time the application is filed.

(5) An applicant requesting a waiver from specific coursework requirements and/or minimum education requirements shall file any additional information needed to substantiate the eligibility for the waiver with the application. The Commission Director or Designee shall review all elements of the application to evaluate waiver request(s) and shall grant a waiver(s) to qualified applicants.

(h) General Forensic Analyst Licensing Exam Requirement.

(1) Exam Requirement. An applicant for a Forensic Analyst License must pass the General Forensic Analyst Licensing Exam administered by the Commission.

(A) An applicant is required to take and pass the General Forensic Analyst Licensing Exam one time.

(B) An applicant may take the General Forensic Analyst Licensing Exam no more than three times. If an applicant fails the General Forensic Analyst Licensing Exam or the Modified General Forensic Analyst Licensing Exam three times, the applicant has thirty (30) days from the date the applicant receives notice of the failure to request special dispensation from the Commission as described in subparagraph (C) of this paragraph. Where special dispensation is granted, the applicant has 90 days from the date he or she receives notice the request for exam is granted to successfully complete the exam requirement. However, for good cause shown, the Commission or its Designee at its discretion may waive this limitation.

(C) Requests for Exam. If an applicant fails the General Forensic Analyst Licensing Exam or Modified General Forensic Analyst Licensing Exam three times, the applicant must request in writing special dispensation from the Commission to take the exam more than three times. Applicants may submit a letter of support from their laboratory director or licensing representative and any other supporting documentation supplemental to the written request.

(D) If an applicant sits for the General Forensic Analyst Licensing Exam or the Modified General Forensic Analyst Licensing Exam more than three times, the applicant must pay a $50 exam fee each additional time the applicant sits for the exam beyond the three initial attempts.

(E) Expiration of Provisional License if Special Dispensation Exam Unsuccessful. If the 90-day period during which special dispensation is granted expires before the applicant successfully completes the exam requirement, the applicant's provisional license expires.

(2) Modified General Forensic Analyst Licensing Exam. Technicians in any discipline set forth in this subchapter may fulfill the General Forensic Analyst Licensing Exam requirement by taking a modified exam administered by the Commission.

(3) Examination Requirements for Promoting Technicians. If a technician passes the modified General Forensic Analyst Licensing Exam and later seeks a full Forensic Analyst License, the applicant must complete the portions of the General Forensic Analyst Exam that were not tested on the modified exam.

(4) Credit for Pilot Exam. If an individual passes the Pilot General Forensic Analyst Licensing Exam, regardless of his or her eligibility status for a Forensic Analyst License at the time the exam is taken, the candidate has fulfilled the General Forensic Analyst Licensing Exam Requirement of this section should he or she later become subject to the licensing requirements and eligible for a Forensic Analyst License.

(5) Eligibility for General Forensic Analyst Licensing Exam and Modified General Forensic Analyst Licensing Exam.

(A) Candidates for the General Forensic Analyst Licensing Exam and Modified General Forensic Analyst Licensing Exam must be employees of a crime laboratory accredited under Texas law or employed by an agency rendering them eligible for a voluntary license under §651.222 (*Voluntary Forensic Analyst Licensing Requirements Including Eligibility, License Term, Fee, and Procedure for Denial of Initial Application or Renewal Application and Reconsideration*) of this subchapter to be eligible to take the exam.

(B) Student Examinee Exception. A student is eligible for the General Forensic Analyst Licensing Exam one time if the student:

(i) is currently enrolled in an accredited university as defined in §651.202 of this subchapter (relating to Definitions);

(ii) has completed sufficient coursework to be within 24 semester hours of completing the requirements for graduation at the accredited university at which the student is enrolled; and

(iii) designates an official university representative who will proctor and administer the exam at the university for the student.

(C) Crime Laboratory Management and Unaccredited Forensic Discipline Exception. An Employee of a crime laboratory accredited under Texas law who is either part of the crime laboratory's administration or management team or authorized for independent casework in a forensic discipline listed below is eligible for the General Forensic Analyst Licensing Exam and Modified General Forensic Analyst Licensing Exam:

(i) forensic anthropology;

(ii) the location, identification, collection or preservation of physical evidence at a crime scene;

(iii) crime scene reconstruction;

(iv) latent print processing or examination;

(v) digital evidence (including computer forensics, audio, or imaging);

(vi) breath specimen testing under Transportation Code, Chapter 724, limited to analysts who perform breath alcohol calibrations; and

(vii) document examination, including document authentication, physical comparison, and product determination.

(i) Proficiency Monitoring Requirement.

(1) An applicant must demonstrate participation in the employing laboratory's process for intra-laboratory comparison, inter-laboratory comparison, proficiency testing, or observation-based performance monitoring requirements in compliance with and on the timeline set forth by the laboratory's accrediting body's proficiency monitoring requirements as applicable to the Forensic Analyst or Forensic Technician's specific forensic discipline and job duties.

(2) A signed certification by the laboratory's authorized representative that the applicant has satisfied the applicable proficiency monitoring requirements, including any intra-laboratory comparison, inter-laboratory comparison, proficiency testing, or observation-based performance monitoring requirements of the laboratory's accrediting body as of the date of the analyst's application, must be provided on the Proficiency Monitoring Certification form provided by the Commission. The licensee's authorized representative must designate the specific forensic discipline in which the Forensic Analyst or Forensic Technician actively performs forensic casework or is currently authorized to perform supervised or independent casework by the laboratory or employing entity.

(j) Mandatory Legal and Professional Responsibility Course:

(1) All Forensic Analyst and Forensic Technician License applicants must complete the current Commission-sponsored mandatory legal and professional responsibility update at the time of their application or demonstrate that they have taken the training within the 12-month period preceding the date of their application.

(2) Mandatory legal and professional responsibility training topics may include training on current and past criminal forensic legal issues, professional responsibility and human factors, courtroom testimony, disclosure and discovery requirements under state and federal law, and other relevant topics as designated by the Commission.

§651.208. Forensic Analyst and Forensic Technician License Renewal.

(a) Timing of Application for Renewal. The Commission may renew an individual's Forensic Analyst or Forensic Technician License up to 60 days before the expiration of the individual's license term.

(b) Renewal Term. The renewal date of a Forensic Analyst or Forensic Technician License is every two years on the day before the initial application was granted. A license holder whose license term ends on the last day of the licensee's birth month continues to renew on the last day of the license holder's birth month every two years.[~~, unless the applicant is a licensee who was initially licensed before January 1, 2024, and is renewing their license on or before December 31, 2026. Licensees renewing between January 1, 2024 and December 31, 2026 expire on the last day of the license holder's birth month.~~]

(c) Renewal Fees. The biennial renewal fee is $200 for Forensic Analysts and $130 for Forensic Technicians. [~~Renewal fees for Forensic Analysts and Forensic Technicians initially licensed before January 1, 2024 and renewing on or before December 31, 2026 will be pro-rated on a monthly basis depending upon the birth month of the renewing license holder and the number of months in the renewal term as described in subsection (b) of this section. The pro-rated fee will be assessed at $8.33 per month (for Forensic Analysts) and $5.42 per month (for Forensic Technicians).~~]

(d) Application. An applicant for a Forensic Analyst or Forensic Technician License renewal shall complete and submit to the Commission a current Forensic Analyst or Forensic Technician License Renewal Application provided by the Commission, pay the required fee, attach documentation of fulfillment of Continuing Forensic Education and other requirements set forth in this section.

(e) Proficiency Monitoring Certification Form for Renewal Applicants Employed by an Accredited Laboratory. An applicant for a Forensic Analyst or Forensic Technician License renewal must provide an updated copy of the Commission's Proficiency Monitoring Certification form demonstrating the applicant participates in the laboratory's process for intra-laboratory comparison, inter-laboratory comparison, proficiency testing, or observation-based performance monitoring requirements in compliance with and on the timeline set forth by the laboratory's accrediting body's requirements as applicable to the Forensic Analyst or Forensic Technician's specific forensic discipline and job duties. The form must be:

(1) signed by the licensee's authorized laboratory representative; and

(2) designate the specific forensic discipline in which the Forensic Analyst or Forensic Technician actively performs forensic casework or is currently authorized or currently participating in a training program to become authorized to perform supervised or independent forensic casework.

(f) Proficiency Monitoring Certification Form for Renewal Applicants Not Employed at an Accredited Laboratory or at an Accredited Laboratory in a Forensic Discipline Not Covered by the Scope of the Laboratory's Accreditation. An applicant for a Forensic Analyst or Forensic Technician license renewal who is employed by an entity other than an accredited laboratory or performs a forensic examination or test at an accredited laboratory in a forensic discipline not covered by the scope of the laboratory's accreditation must provide the following items.

(1) an updated copy of the Commission's Proficiency Monitoring Certification form demonstrating the applicant participates in the laboratory or employing entity's process for intra-laboratory comparison, inter-laboratory comparison, proficiency testing, or observation-based performance monitoring requirements in compliance with and on the timeline set forth by the laboratory or employing entity's Commission-approved process for proficiency monitoring as applicable to the Forensic Analyst or Forensic Technician's specific forensic discipline and job duties:

(A) signed by the licensee's authorized laboratory representative; and

(B) designating the specific forensic discipline in which the Forensic Analyst or Forensic Technician actively performs forensic casework or is currently authorized to perform supervised or independent forensic casework;

(2) written proof of the Forensic Science Commission's approval of the laboratory or employing entity's proficiency monitoring activities or exercise(s) as applicable to the applicant's specific forensic discipline and job duties; and

(3) written documentation of performance in conformance with expected consensus results in compliance with and on the timeline set forth by the laboratory or employing entity's Commission-approved proficiency monitoring activities or exercise(s) as applicable to the applicant's specific forensic discipline and job duties.

(g) Continuing Forensic Education Including Mandatory Legal and Professional Responsibility:

(1) Forensic Analyst and Forensic Technician Licensees must complete a Commission-sponsored mandatory legal and professional responsibility update by the expiration of each two-year license cycle as provided by the Commission. Forensic Technicians are not required to complete any other continuing forensic education requirements listed in this section.

(2) Mandatory legal and professional responsibility training topics may include training on current and past criminal forensic legal issues, professional responsibility and human factors, courtroom testimony, disclosure and discovery requirements under state and federal law, and other relevant topics as designated by the Commission.

(3) All forensic analysts shall be required to satisfy the following Continuing Forensic Education Requirements by the expiration of each two-year license cycle:

(A) Completion of thirty-two (32) continuing forensic education hours per 2-year license cycle.

(B) Sixteen (16) hours of the thirty-two (32) must be discipline-specific training, peer-reviewed journal articles, and/or conference education hours. If a licensee is licensed in multiple forensic disciplines, at least eight (8) hours of discipline-specific training in each forensic discipline are required, subject to the provisions set forth in subsection (h) [~~(f)~~] of this section.

(C) The remaining sixteen (16) hours may be general forensic training, peer-reviewed journal articles, and/or conference education hours that include hours credited for the mandatory legal and professional responsibility training.

(4) Continuing forensic education programs will be offered and/or designated by the Commission and will consist of independent, online trainings, readings, and participation in recognized state, regional, and national forensic conferences and workshops.

(5) Approved continuing forensic education hours are applied for credit on the date the program and/or training is delivered.

(h) Timeline for Exemption from Supplemental Continuing Forensic Education Requirements. Where a current licensee adds a forensic discipline to the scope of his or her license, the following continuing forensic education requirements apply for the supplemental forensic discipline:

(1) If the supplemental forensic discipline is added less than six (6) months prior to the expiration of the analyst's current license, no additional discipline-specific training is required for the supplemental forensic discipline.

(2) If the supplemental forensic discipline is added six (6) months or more but less than eighteen (18) months prior to the expiration of the analyst's current license, four (4) additional discipline-specific training hours are required for the supplemental forensic discipline.

(3) If the supplemental forensic discipline is added eighteen (18) months or more prior to the expiration of the analyst's current license, eight (8) additional discipline-specific training hours are required for the supplemental forensic discipline.

(i) If an applicant fails to fulfill any or all of the requirements pertaining to license renewal, continuing forensic education and the mandatory legal and professional responsibility update, the applicant may apply to the Commission for special dispensation on a form to be provided on the Commission's website. Upon approval by the Commission, the applicant may be allowed an extension of time to fulfill remaining continuing forensic education requirements.

~~[(j) Temporary Exception to Continuing Forensic Education Requirements During January 2024 to December 2026 Transition from Application to Birthdate-Based Renewal Terms. For any licensee who has less than two years to complete the continuing forensic education requirements in subsection (g) of this section as a result of the transition from application-based renewal to birthdate-based renewal, the number of required continuing education hours in subsection (g)(3)(A) and (B) of this section for license renewal shall be pro-rated based on the number of months in the renewal term.]~~

~~[(k) Subsections (j) and (k) of this section expire on December 31, 2026.]~~

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 November 2, 2026.

TRD-202604600
Leigh Tomlin
Associate General Counsel
Texas Forensic Science Commission
Earliest possible date of adoption: December 20, 2026
For further information, please call: (512) 936-0661

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 700. CHILD PROTECTIVE SERVICES

The Department of Family and Protective Services (DFPS) proposes to amend rules in Title 40, Texas Administrative Code (TAC), Part 19, Chapter 700, Subchapter H, §700.806 and §700.807, relating to enhanced adoption assistance and the repeal and proposal of new rules for Title 40, Texas Administrative Code (TAC), Part 19, Chapter 700, Subchapter Q, §700.1753, relating to the Texas Child-Centered Care System.

BACKGROUND AND PURPOSE

The General Appropriations Act, Senate Bill 1, Regular Session 2021 (Article II, Special Provisions Related to All Health and Human Services Agencies, Section 26), directed DFPS with the assistance of HHSC to develop an alternative reimbursement methodology proposal for the 87th Legislature for foster care and Community-based Care (CBC) rates. These rules will supplement the T3C rules previously adopted on December 20, 2024, which implemented the alternative reimbursement methodology that is designed to better align and support the success of CBC by establishing clearly defined foster care models/service packages with new corresponding foster care rates, as well as incorporating the T3C system into enhanced adoption assistance.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §700.806, which defines enhanced adoption assistance, amends subsection (a)(1) - (3) to include the Texas-Child Centered Care (T3C) population as eligible to receive this assistance, in addition to the current population of

children in the service level system. Subsection (b) of the proposed rule provides conforming amendments to include the T3C "recommended service package" terminology and establishes the maximum amount a family can receive for enhanced adoption assistance.

The proposed amendment of §700.807, which describes who is eligible for enhanced adoption assistance, adds children under T3C as an eligible population for the assistance. In addition, paragraph (4) of the proposed rules requires that recruitment efforts must be made for minimum of two years from the date of termination of parental rights and provides examples of what actions are considered recruitment efforts.

The amendments will repeal current rule, 40 TAC §700.1753, which establishes the rate-setting methodology for 24-Hour Residential Child-Care Reimbursements, and replaces that rule with a rate-setting methodology rule which will include facilities operating under the Texas Child Centered Care (T3C) system and the Single Source Continuum Contractors.

Subsection (a)(1) - (16) establishes the definitions to be used in the proposed rule, including, Cost Determination Process, Allowable Costs, Indirect Costs, Vendor Holds, and Rate Determination Process.

Subsection (b) requires DFPS, in collaboration with HHSC, to determine reimbursement rates and methodologies for services provided by 24RCC facilities under T3C and SSCCs.

Subsection (c) requires DFPS to approve statewide, uniform reimbursements, reimbursement ceilings, and contractor-specific reimbursements, including any reimbursement parameters, dollar amounts, and limits.

Subsection (d) describes what DFPS must take into consideration in approving reimbursement rate recommendations and rate adjustments.

Subsection (e) sets out cost report requirements for providers.

Subsection (f) describes what actions are considered provider contract violations.

Subsection (g) allows but does not require DFPS, in consultation with HHSC, to excuse required cost report criteria under certain conditions as described in subsection (g).

Subsection (h) requires DFPS to follow HHSC's cost determination process, except under certain exceptions and explains what those exceptions are.

Subsection (i) describes the process of a cost report financial examination and the actions HHSC will take during this process.

Subsection (j) sets out when a provider can request an informal review or formal appeal.

Subsection (k) describes how HHSC and DFPS will determine the reimbursement methodology under T3C and what elements/components are included in the methodology.

Subsection (l) describes how HHSC, in consultation with DFPS, will establish reimbursement rates for SSCCs operating under T3C.

FISCAL NOTE

Lea Ann Biggar, *Chief Financial Officer,* has determined that for each year of the first five years that the sections will be in effect, there will be no fiscal implications to state government as a result of enforcing and administering the sections as proposed. There will be no effect on local government.

GOVERNMENT GROWTH IMPACT STATEMENT

DFPS has determined that for each year of the first five years that the section(s) will be in effect

(1) the new, repeal and amended rules will not create or eliminate a government program;

(2) implementation of the new, repeal and amended rules will not create new employee positions and eliminate existing employee positions;

(3) implementation of the new, repeal and amended rules will not require an increase and decrease in future legislative appropriations;

(4) the new, repeal and amended rules will not affect fees paid to the agency;

(5) the new, repeal and amended rules will not create a new regulation;

(6) the new, repeal and amended rules will not expand, limit, or repeal an existing regulation;

(7) the new, repeal and amended rules will increase or decrease the number of individuals subject to the rule; and

(8) the new, repeal and amended rules will not affect the state's economy.

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

Lea Ann Biggar, *Chief Financial Officer,* has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the section(s) as proposed.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rulemaking because DFPS is exempt under subsection (c) of §2001.0045.

PUBLIC BENEFIT

Vicki Kozikoujekian, DFPS General Counsel, has determined that for each year of the first five years the section(s) are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections will provide a foster care system that is better aligned to support the success of CBC.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

DFPS invites comments on the proposed rules. DFPS requests information related to the cost, benefit, or effect of the proposed new, amended, and repealed rules, including any applicable data, research, or analysis. To be considered, comments,

questions, and information must be submitted no later than 30 days after the date of this issue to the *Texas Register*.

If a Partners for Children and Family Committee (PCFC) meeting is scheduled during the formal public comment period, an individual may register to appear before the Committee *(https://www.dfps.texas.gov/About_DFPS/Public_Meetings/Advisory_Committees/pcfc_comment_card.asp)* and give in-person public testimony. DFPS will forward the written comment that accompanies the individual's in-person public testimony to the DFPS Rules Mailbox *(RULES@dfps.texas.gov)* for consideration as formal public comment.

Electronic comments and questions may be submitted to the DFPS rules email address *RULES@dfps.texas.gov*. Hard copy comments may be submitted to the DFPS Rules Coordinator, Legal Services Sanjuanita Maltos, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030.

SUBCHAPTER H. ADOPTION ASSISTANCE PROGRAM

DIVISION 1. PROGRAM DESCRIPTION AND DEFINITIONS

40 TAC §700.806, §700.807

STATUTORY AUTHORITY

The amended rules are authorized under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall oversee the development of rules relating to matters within the department's jurisdiction and, notwithstanding any other law, shall adopt rules for the operation and provision of services by the department.

CROSS REFERENCE TO STATUTES

The amended rules implement the General Appropriations Act, Senate Bill 1, Regular Session 2021 (Article II, Special Provisions Related to All Health and Human Services Agencies, Section 26).

§700.806. What is enhanced adoption assistance?

(a) Enhanced adoption assistance is a monthly adoption assistance payment amount that may exceed the maximum monthly payment ceiling specified in §700.844(d) of this title (relating to How are monthly payment amounts determined?) that is available only with respect to a child who meets the criteria specified in §700.807 of this title (relating to Who is eligible to receive enhanced adoption assistance?).

(1) For children served under the service level system the minimum daily foster care reimbursement rate for the child's most recent authorized service level that is paid to a foster family.

(2) For children in a foster home being served under Texas-Child Centered Care (T3C), the foster family home pass through portion for the child's recommended service package. based on the most recent CANS assessment.

(3) For children being served under T3C with a recommended service package that directs placement to a General Residential Operation (GRO) Tier I or GRO Tier II setting per the CANS assessment, the maximum rate will align with the most comparable foster family home service package pass through rate, excluding the Short-Term Assessment Support and T3C Treatment Foster Family Care Services Packages.

(b) The maximum monthly payment amount that can be paid under an adoption assistance agreement on behalf of a child who qualifies for enhanced adoption assistance is based on the child's foster care rate in effect on the date the adoption assistance agreement is signed and is:

(1) the minimum amount required to be paid to a foster parent for a child assigned the same service level or recommended service package as the child who is the subject of the adoption assistance agreement (whether that is a current authorized [~~current~~] service level or current recommended service package or one in effect prior to placement as described in §700.807(2) of this title); and

(2) does not include any amount that a child-placing agency is entitled to retain under the foster care rates.

§700.807. Who is eligible to receive enhanced adoption assistance?

Enhanced adoption assistance is available to an adoptive or prospective adoptive parent who enters into an initial adoption assistance agreement on or after January 1, 2009, for a child with special needs as described in §700.804 of this title (relating to Who is a child with special needs?), who is in an approved adoptive placement, provided the child also meets each of the following criteria immediately prior to the signing of the adoptive placement agreement:

(1) The child is in the managing conservatorship of DFPS and all parental rights to the child have been terminated for at least 24 months;

(2) The child has an authorized service level of "specialized" or "intense" as defined in Subchapter W of this chapter (relating to Level-of-Care Service System), or, the child had such an authorized service level immediately prior to being placed in a facility or home operated or regulated by another state agency, such as an intermediate care facility for persons with mental retardation and/or related conditions (ICF/MR); a nursing facility, or a community-based waiver services (HCS) residential program;

(3) Under the Texas Child-Centered (T3C) System, the child is placed in a recommended service package other than the T3C Basic Foster Family Home Support Service Package; and

(4) [~~(3)~~] The child is living in:

(A) a foster care home or other residential child-care operation that is regulated by the HHSC [~~DFPS~~] Child Care Licensing Division and is approved under Licensing minimum standards to provide treatment services as defined in §749.61 of Title 26 [~~this title~~] (relating to What types of services does Licensing regulate?); or

(B) a facility or home operated or regulated by another state agency in this state or in another state that provides comparable treatment services; and

(5) [~~(4)~~] The child has not been adopted despite our having made extensive and ongoing local and national adoption recruitment efforts for a minimum of two years from the date of termination of parental rights. Recruitment efforts must include publication on available adoption listing sites as well as e-mail broadcasts, television broadcasts, and regional matching events. These efforts must include well documented serious consideration of and follow-up with the child placing agencies of [~~considering and following-up with~~] families who initially appear able to meet the child's needs and express an interest in adopting the child, and either pursuing or ruling out adoption by these families; and

(6) [~~(5)~~] The selected prospective adoptive parent is only willing to adopt the child if enhanced adoption assistance is available.

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 November 5, 2026.

TRD-202604639
Sanjuanita Maltos
Rules Coordinator
Department of Family and Protective Services
Earliest possible date of adoption: December 20, 2026
For further information, please call: (512) 945-5978

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SUBCHAPTER Q. PURCHASED PROTECTIVE SERVICES
DIVISION 3. REIMBURSEMENT METHODOLOGY FOR 24-HOUR CHILD CARE FACILITIES

40 TAC §700.1753

STATUTORY AUTHORITY

The repealed rule is authorized under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall oversee the development of rules relating to matters within the department's jurisdiction and, notwithstanding any other law, shall adopt rules for the operation and provision of services by the department.

CROSS REFERENCE TO STATUTES

The repealed rule implements the General Appropriations Act, Senate Bill 1, Regular Session 2021 (Article II, Special Provisions Related to All Health and Human Services Agencies, Section 26).

§700.1753. What is the Rate-Setting Methodology for 24-Hour Residential Child-Care Reimbursements?

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 November 5, 2026.

TRD-202604641
Sanjuanita Maltos
Rules Coordinator
Department of Family and Protective Services
Earliest possible date of adoption: December 20, 2026
For further information, please call: (512) 945-5978

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40 TAC §700.1753

STATUTORY AUTHORITY

The new rule is authorized under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall oversee the development of rules relating to matters within the department's jurisdiction and, notwithstanding any other law, shall adopt rules for the operation and provision of services by the department.

CROSS REFERENCE TO STATUTES

The new rule implements the General Appropriations Act, Senate Bill 1, Regular Session 2021 (Article II, Special Provisions Related to All Health and Human Services Agencies, Section 26).

§700.1753. Reimbursement Methodology for 24-Hour Residential Child Care Facilities (24RCC) Operating Under Texas Child Centered Care (T3C) and Single Source Continuum Contractors (SSCC).

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

(1) Allowable Costs. Allowable Costs are costs, direct and indirect, that are considered reasonable and necessary for the provision of contracted client services, as defined in 1 TAC §355.102(f), (relating to General Principles of Allowable and Unallowable Costs) and 1 TAC §355.103 (relating to Specifications for Allowable and Unallowable Costs).

(2) Child Placing Agency (CPA). A person other than the parents of a child, including a sole proprietor, partnership, business, or government entity, who places or plans for the placement of a child in a child-care operation or adoptive home.

(3) Cost Determination. Process to define direct and indirect allowable costs that may be used in the overall reimbursement determination process.

(A) The cost determination process seeks to collect accurate financial and other statistical data used to determine reimbursements.

(B) The cost determination process seeks to evaluate individual cost items of Providers to determine their allowability and whether individual cost reports are of reasonable accuracy for potential use in reimbursement determination.

(4) Direct Costs. Costs incurred by a Provider that are attributable to the operation of providing contracted client services as defined in 1 TAC §355.102.

(5) Foster family home. The primary residence of the foster parent(s) where six or fewer children or young adults are cared for under the regulation of a child-placing agency as defined in 26 TAC §749.43, (relating to What do certain words and terms mean in this chapter?).

(6) General Residential Operation (GRO). A childcare facility where seven or more children are cared for 24 hours a day, including facilities known as residential treatment centers and emergency shelters. The term has the meaning set forth in Texas Human Resources Code §42.002.

(7) Indirect Costs. Costs that benefit or contribute to the operation of providing contracted services, other business components, or the overall contracted entity as defined in 1 TAC §355.102.

(8) Pro Forma Costing. A pro-forma analysis is defined as an item-by-item, or classes-of-items, calculation of the reasonable and necessary expenses for a provider to operate.

(A) The analysis may involve assumptions about the salary of an administrator or program director, staff salaries, benefits and payroll taxes, building depreciation, mortgage interest, contracted client care expenses, and other building or administration expenses.

(B) To determine the cost per unit of service, the Health and Human Services Commission (HHSC) adds all the pro-forma expenses and divides the total by the estimated number of units of service that a fully operational provider is likely to provide. The pro-forma analysis is based on available information that is determined to be sufficient, accurate, and reliable by HHSC, including valid cost report data, survey data, or reputable data from external sources. The pro-forma analysis is conducted to ensure that the resultant reimbursements are sufficient to support the requirements of the contracted program. When HHSC staff determine that sufficient and reliable cost report data have become available, the pro-forma reimbursement determination may be replaced with a process based on cost reports.

(9) Provider. For this section, a provider is defined as a GRO or CPA contracted for residential child-care services with either DFPS or an SSCC, or an SSCC contracted with DFPS as described under paragraph (14) of this subsection.

(10) Rate Determination Process. The reimbursement determination process compares allowable costs across Providers to identify those levels of cost, either for individual cost items or groups of cost items, which must be incurred by efficient and economic providers of services meeting all state and federal standards. Thus, all costs allowed in the cost determination process may not necessarily be used in the reimbursement determination process. The basic objective of the reimbursement methodologies employed by HHSC is to facilitate and balance the broader objectives of the programs administered by the Department of Family and Protective Services (DFPS) by:

(A) promoting reasonable access for eligible clients to services that meet federal and state quality standards by contracting with an adequate number of qualified Providers; and

(B) Spending taxpayer dollars reasonably and prudently manner such that eligible clients are served at the lowest cost to taxpayers consistent with program objectives and state and federal laws, standards, and regulations.

(11) Service Package. A clearly defined set of criteria intended to meet the custom needs of a child. Under T3C, DFPS establishes and pays a unique reimbursement rate for each service package.

(12) Setting Types. Children, youth, and young adults are assessed, matched, and placed in setting types which include a CPA/foster family home or a GRO Tier I and Tier II.

(13) 24RCC. A licensed or certified residential childcare provider that operates 24 hours a day. The term includes GROs, CPAs, specialized child-care homes, cottage home operations, continuum-of-care residential operations, and agency foster homes, as defined in Chapter 42 of the Texas Human Resources Code. These operations may be a Provider, for purposes of this section, if it has a contract for residential child-care services with DFPS or an SSCC.

(14) SSCC. An entity, as described in Texas Family Code §264.154, with whom DFPS enters a contract for the provision of the full continuum of substitute care, case management, and reunification services in a designated community area.

(15) Unallowable costs. Expenses that are not reasonable or necessary, according to the criteria specified in 1 TAC §355.102. Unallowable costs cannot be reported on a cost report under subsection (c) of this section.

(16) Vendor Hold. The process described in Texas Government Code §403.055 where a state agency reports to the Texas Comptroller of Public Accounts each person who is indebted to the state. The Comptroller of Public Accounts is prohibited from issuing payments to vendors on vendor hold status until the hold is removed. Vendor holds may also be referred to as warrant holds.

(b) Introduction. In collaboration with HHSC, DFPS establishes reimbursement rates and methodologies for services provided by 24RCC facilities under T3C and SSCCs in accordance with any of the following:

(1) reimbursement methodologies described in this section;

(2) applicable state or federal law, policies, rules, regulations, or guidelines;

(3) economic conditions that, in DFPS's determination, substantially and materially affect provider participation; or

(4) available amounts of appropriated state and federal funds.

(c) Establishment of reimbursement rates and methodologies. DFPS approves statewide, uniform reimbursements, reimbursement ceilings, and contractor-specific reimbursements, including any reimbursement parameters, dollar amounts, and limits. Reimbursement amounts will be determined consistent with the state's biennium or as determined by DFPS.

(d) Reimbursement rate recommendations and rate adjustments.

(1) In approving reimbursement methodologies and rate amounts, DFPS takes into consideration reimbursement recommendations from HHSC based on the application of formulas and procedures described in this section. HHSC recommends and develops reimbursement methodologies and rates for DFPS.

(2) DFPS may adjust reimbursement recommendations when DFPS deems such adjustments are warranted by circumstances likely to affect the achievement of program objectives, including economic conditions and budgetary considerations consistent with the considerations described in paragraphs (1) - (4) of subsection (b).

(3) DFPS has oversight authority with respect to the state's reimbursement methodology and cost determination rules for T3C and SSCCs.

(e) Cost Report Requirements. Unless stated in program rules or excusal criteria, each Provider must submit financial and statistical information on cost reports in accordance with this section.

(1) General requirements. DFPS requires Providers to report all allowable costs incurred while delivering services in a manner and frequency prescribed by HHSC in consultation with DFPS. To ensure adequate financial and statistical information to base reimbursement, DFPS requires that each Provider submit a cost report and, if requested, a supplemental report.

(2) Accurate Cost Reporting. It is the Provider's responsibility to submit accurate and complete information, in accordance with any specific cost report instructions and HHSC's cost reporting rules, including:

(A) 1 TAC §355.102 (relating to General Principles of Allowable and Unallowable Costs);

(B) 1 TAC §355.103 (relating to Specifications for Allowable and Unallowable Costs);

(C) 1 TAC §355.104 (relating to Revenues); and

(D) 1 TAC §355.105 (relating to General Reporting and Documentation Requirements, Methods, and Procedures).

(3) Other Program activities. Providers may be required to submit other programmatic information, including but not limited to staff time and effort providing direct services and caseloads on their cost report or a supplemental report to support reimbursement rate determination. If requested, Providers should ensure adequate documentation, including any necessary time studies, are completed in accordance with 1 TAC §355.105(b)(2) and HHSC's cost report instructions.

(4) Mandatory cost report training. It is the Provider's responsibility to ensure that the provider's primary entity contact, financial contact and cost report preparer has completed the required state-sponsored training in accordance with 1 TAC §355.102(d).

(5) Cost report year. A Provider's cost report year must coincide with the State of Texas fiscal year, which begins September 1 and ends August 31.

(6) Cost report due date. Unless HHSC specifies otherwise, Providers must submit cost reports to HHSC 90 days from the transmittal date of the cost-reporting forms.

(7) Extension of due date. HHSC may extend the deadline for Providers when circumstances beyond their control prevent them from submitting a cost report on time. The Provider must request the extension to HHSC in a manner prescribed by HHSC before the due date, and HHSC must respond to the request within 15 days of receipt.

(8) Provider-initiated amendment. A Provider-initiated amended cost report must be received no later than 60 days after the original due date of the cost report. Amended cost reports received after the required date have no effect on the reimbursement determination. Amended cost report information that cannot be verified will not be used in reimbursement determinations.

(9) HHSC-required amendments. If HHSC requires a Provider to amend their cost report, it must be received on or before the date specified by HHSC in its request for amendment. Failure to submit the requested cost report amendment by the due date is considered a contract violation.

(f) Contract Violation. Failure to complete or the untimely submission of the cost report in accordance with HHSC's cost report training, cost report instructions, or cost reporting requirements as specified in subsection (e) of this section constitutes a contract violation if the Provider fails to submit a fully completed cost report within fifteen (15) calendar days of the cost report due date.

(1) As a result, DFPS or the SSCC may impose on its Provider contract remedies, including, but not limited to, a written warning, a corrective action plan, or contract termination.

(2) If the contract violation is not corrected within 30 days of the cost report due date, only DFPS may place the Provider on a Vendor Hold.

(g) Cost report excusal criteria. HHSC, in consultation with DFPS, can excuse a cost report if:

(1) the Provider has no current contract(s) with DFPS or an SSCC within the state for 24RCC programs,

(2) the total number of DFPS-placed days and SSCC-placed days was 10 percent or less of the total days of service provided during the cost-reporting period, or

(3) the occupancy rate was less than 50 percent for a GRO-only during the cost-reporting period.

(h) Cost determination process. DFPS adheres to HHSC's cost determination processes as specified in subsection (a)(3) of this section with the following exceptions:

(1) For SSCCs only, 1 TAC §355.103(b)(15)(B)(ii) relating to out-of-state travel costs does not apply. Out-of-state travel costs are allowable costs if the SSCC incurred the out-of-state travel costs to provide services under their contract with DFPS.

(2) For 24RCCs only, grants made from DFPS do not need to be offset from the cost report. All other grants from federal, state, or local governments must be offset before reporting costs on the cost report in accordance with 1 TAC 355.103(b)(18).

(i) Cost report financial examination. HHSC completes a financial examination of a Provider's cost reports to support the cost determination process described in subsection (a)(3).

(1) HHSC conducts desk reviews and field audits of Provider cost reports to ensure that all financial and statistical information reported in the cost reports conforms to all applicable rules and instructions in accordance with 1 TAC §355.106 (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports)

(2) HHSC may require supporting documentation other than that contained in the cost report to substantiate reported information.

(3) HHSC notifies Providers of exclusions and adjustments to reported expenses made during HHSC's desk reviews and field audits of cost reports in accordance with 1 TAC §355.107 (relating to Notification of Exclusions and Adjustments).

(j) Informal reviews and formal appeals. Providers may request an informal review or formal appeal regarding any adjustment made to a certified cost report during HHSC's financial examination in accordance with 1 TAC §355.110 (relating to Informal Reviews and Formal Appeals).

(k) Reimbursement methodology under T3C. HHSC, in collaboration with DFPS, establishes reimbursement rates for each service package and setting type under the T3C.

(1) Rate components. For each service package, HHSC will calculate the following rate components.

(A) Foster family home service package reimbursement rates include.

(i) Agency portion of the rate, including costs for client services and case management activities performed by the CPA and an administration and operations component to include the CPA's indirect costs; and

(ii) Foster Family costs, which include basic needs such as food, shelter, and clothing, and costs to support a child's normalcy.

(B) GRO (Tier I & II) rate components.

(i) GRO staffing categories, including a program director and treatment director, client services staff, case management, and administrative staff; and

(ii) Operating expenses include treatment model and training, transportation, administrative expenses, and facility Costs.

(2) Cost report-based rate determination. For services where HHSC collects cost reports, HHSC will calculate rate components defined in paragraph (1) of this subsection for each setting type using allowable costs, weighed by units of service for the applicable setting from the most recently examined 24RCC Provider cost reports adjusted for inflation as specified in 1 TAC §355.108 (relating to Determination of Inflation Indices).

(A) The result may be adjusted by a productivity adjustment to account for staff vacancies, paid leave, or other factors.

(B) The calculated rate components will be adjusted using staffing ratios, caseload assumptions, or other reputable programmatic assumptions from DFPS to calculate recommended rates for each service package.

(3) Insufficient cost data. If an insufficient number of accurate, full-year cost reports are submitted, as would occur with a new program, or if available data is insufficient, as would occur in changes in program design, changes in the definition of units of service, or changes in regulations or program requirements, reimbursements may be based on a pro-forma analysis by HHSC staff as defined in subsection (a)(8) of this section.

(l) SSCC reimbursement methodology. HHSC, in consultation with DFPS, establishes reimbursement rates for SSCCs operating under T3C.

(1) Rate Determination Process. For each of the SSCC-delivered services, HHSC and DFPS conduct a rate determination process as described in (a)(10) of this section.

(2) Cost report-based rate determination. For SSCC-delivered services where HHSC collects cost reports, HHSC will calculate rates for each SSCC-delivered service using allowable costs for the applicable service, weighed by units of service from the most recently examined SSCC cost report adjusted for inflation from the cost reporting period to the prospective rate period as specified in 1 TAC §355.108. The result may be adjusted by a productivity adjustment to account for staff vacancies, paid leave, or other factors. The calculated rate components will be adjusted to calculate recommended rates for each SSCC service using staffing ratios, caseload assumptions, or other reputable programmatic assumptions from DFPS or the cost report as described in subsection (e) of this section.

(3) Insufficient cost data. If an insufficient number of accurate, full-year cost reports are submitted, as would occur with a new program, or if there are insufficient available data, as would occur in changes in program design, changes in the definition of units of service, or changes in regulations or program requirements, reimbursements may be based on a pro-forma analysis by HHSC staff as defined in subsection (b) of this section.

(4) Alternative rate methodologies. DFPS may evaluate and implement alternative methodologies for the SSCCs operating under T3C, including but not limited to, blended or catchment-specific reimbursements at such time that DFPS, in consultation with HHSC, determines there is sufficient actual experience delivering services under T3C to inform an accurate, predictive financial model for future reimbursements.

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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Sanjuanita Maltos
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Department of Family and Protective Services
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CHAPTER 702. GENERAL ADMINISTRATION

The Texas Department of Family and Protective Services (DFPS) proposes new rules regarding state agency rules and DFPS public hearings in Title 40, Texas Administrative Code (TAC), Chapter 702, General Administrative, in new Subchapters P, §702.1501 and Q, §702.1601 and §702.1603, relating to Legal Services.

BACKGROUND AND PURPOSE

The Texas Department of Family and Protective Services' (DFPS') four-year rule review that was conducted in accordance with Government Code Section 2001.039 identified amendments and repeals that needed to be made within Chapter 730 of the Texas Administrative Code. DFPS proposes repealing Chapter 730 and creating new rules in Chapter 702. The newly proposed rules describes the form an interested party must submit to propose a rule under Texas Government Code Section 2001.021, how interested individuals can request DFPS hold a public hearing under Texas Government Code Section 2001.029 and Human Resources Code Section 40.004, and the manner in which DFPS public hearings will be conducted.

In conjunction with the quadrennial review, the rule was reviewed in accordance with Texas Regulatory Efficiency Office (TREO) guidelines. These amendments incorporate TREO's principles to reduce regulatory burdens; eliminate waste, fraud, and unnecessary rules; and increase transparency for Texas taxpayers.

SECTION-BY-SECTION SUMMARY

DFPS proposes one new rule in Subchapter P about rulemaking and two new rules in Subchapter Q about public hearings in Chapter 702, General Administration. These rules were previously in Subchapter C of Chapter 730. In accordance with Government Code Section 2001.021, a state agency is required to have a rule that describes the way an interested person may petition a state agency to adopt a rule. The active DFPS rule §730.301, "Petition for Proposed Rulemaking" that meets this statutory requirement is outdated, using DFPS's old name and mailing address and details the information DFPS needs to evaluate a rule proposal in language that is not as clear to a person not involved in DFPS rulemaking. DFPS is proposing to add a new rule, §702.1501 in Subchapter P, Chapter 702, General Administration to comply with Government Code Section 2001.021. The language in the proposed rule is clearer to an interested party on how they may propose a rule. Since this is a statutorily required rule, the new rule in Chapter 702 is accompanying this proposed repeal of Chapter 730 to avoid any delays in which DFPS would be inconsistent with the law. Additionally, DFPS is proposing rules §702.1601 and §702.1603. These two rules detail to the public how they can request a public hearing pursuant to Texas Government Code section 2001.029 and Human Resources Code Section 40.004. The newly proposed rules add clarity and transparency to the process for the public.

FISCAL NOTE

Ausra Benavides, *Deputy Chief Financial Officer*, on behalf of Lea Ann Biggar*, Chief Financial Officer,* has determined that for each year of the first five years the repeals are in effect, there will be no fiscal implications to state or local government.

GOVERNMENT GROWTH IMPACT STATEMENT

DFPS has determined that during the first five years that the section(s) will be in effect:

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

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

(3) implementation of the new rules will not require an increase in future legislative appropriations;

(4) the new rules will not affect fees paid to the agency;

(5) the new rules will not create a new rule;

(6) the new rules will not expand, limit, or repeal an existing rule

(7) the new rules will not increase the number of individuals subject to the rule; and

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

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

Ms. Benavides, on behalf of Ms. Biggar, has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as the rule repeals do not apply to small or micro-businesses, or rural communities.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

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

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 generally requires that state agencies offset the cost to regulated persons of a new rule by repealing or amending another rule. However, DFPS is exempt under §2001.0045(c).

PUBLIC BENEFIT

Vicki Kozikoujekian, *DFPS General Counsel*, has determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated is clarity and transparency to the public as the proposed amendments and repeals are intended to align the rules with and depict current operational practice.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

DFPS invites comments on the proposed rules. DFPS requests information related to the cost, benefit, or effect of the proposed new, amended, and repealed rules, including any applicable data, research, or analysis. To be considered, comments, questions, and information must be submitted no later than 30 days after the date of this issue to the *Texas Register*.

If a Partners for Children and Family Committee (PCFC) meeting is scheduled during the formal public comment period, an individual may register to appear before the Committee(https://www.dfps.texas.gov/About_DFPS/Public_Meetings/Advisory_Committees/pcfc_comment card.asp) and give in-person public testimony. DFPS will forward the written comment that accompanies the individual's in-person public testimony to the DFPS Rules Mailbox for consideration as formal public comment.

Electronic comments and questions may be submitted to the DFPS rules email address RULES@dfps.texas.gov. Hard copy comments may be submitted to the DFPS Rules Coordinator, Legal Services Sanjuanita Maltos, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030.

SUBCHAPTER P. RULEMAKING

40 TAC §702.1501

STATUTORY AUTHORITY

The rules are being proposed through the DFPS' four-year rule review that was conducted in accordance with Government Code Section 2001.039.

The rule changes are proposed under Human Resources Code Section 40.027, which provides that the DFPS Commissioner shall oversee the development of rules relating to matters within the department's jurisdiction and adopt rules for the operation and provision of services by the department.

CROSS REFERENCE TO STATUTES

The new proposed rule §702.1501 is statutorily mandated under Government Code Section 2001.021, which requires a state agency to have a rule prescribing the form in which interested parties can petition for rules.

§702.1501. Petition the Adoption of a Rule.

(a) Purpose. The purpose of this section is to provide procedures for any interested person to request that the Texas Department of Family and Protective Services (DFPS) adopt a rule.

(b) Form of the petition.

(1) The petition must be in writing.

(2) The petition must contain the following:

(A) the petitioner's name, address, and organization or affiliation, if any;

(B) a plain and brief description about why a rule or change to an existing rule is needed, required or desirable, including the public good to be served and any effect on those who would be required to comply with the rule;

(C) to the extent feasible to the petitioner, an estimated fiscal impact of the rule on state and local government, separately stated, for each of the first five years of its implementation; and, to the extent feasible to the petitioner, an estimated economic impact on persons required to comply with the rule for each of the first five years the rules are in effect;

(D) a statement of DFPS's authority to adopt the proposed rule;

(E) if the petition proposes to amend an existing rule, the text of the existing rule, with proposed changes clearly indicated within the existing text; and

(F) if the petition is for a new rule, the proposed text of the new rule.

(c) The petition must be mailed to the Texas Department of Family and Protective Services, Policy, Rules, and Program Support at MC E-611 4900 N Lamar, Austin, Texas 78751.

(d) The DFPS Commissioner reviews the petition for compliance with the requirements in subsection (b) of this section. The petition may be refused if these requirements are not met.

(1) If the requirements of subsection (b) are met, DFPS denies or accepts the petition in whole or in part.

(A) If DFPS denies the petition, the petitioner will be notified in writing and state the reason(s) for the denial.

(B) If DFPS accepts the petition, the petition will be referred to the appropriate program to initiate the rulemaking process under Government Code, Chapter §2001, Subchapter B, within 60 days from the date of submission of the petition by the petitioner.

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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Sanjuanita Maltos
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Department of Family and Protective Services
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SUBCHAPTER Q. PUBLIC HEARINGS

40 TAC §702.1601, §702.1603

STATUTORY AUTHORITY

The rules are being proposed for repeal and amendment through the DFPS' four-year rule review that was conducted in accordance with Government Code Section 2001.039.

The rule changes are proposed under Human Resources Code Section 40.027, which provides that the DFPS Commissioner shall oversee the development of rules relating to matters within the department's jurisdiction and adopt rules for the operation and provision of services by the department.

CROSS REFERENCE TO STATUTES

Newly proposed rules §702.1601 and §702.1603 regarding public hearings are authorized under Government Code Section 2001.029 and Human Resources Code Section 40.004.

§702.1601. Requests for a Public Hearing.

(a) Pursuant to Texas Government Code Section 2001.029 and Human Resources Code Section 40.004 requests made for a public hearing must be made in writing and submitted to the Texas Department of Family and Protective Services (DFPS), Policy, Rules, and Program Support at MC E-611 4900 N Lamar, Austin, Texas 78751.

(b) Public hearings will be held in Austin, at a date, time, and place determined by DFPS. The date, time, and place of the public hearing will be filed with the secretary of state to be posted and published in the *Texas Register*.

(c) DFPS must receive all eligible requests for a public hearing on a proposed rule action under Government Code Section 2001.029 not more than 14 days after publication of the notice of the proposal in the *Texas Register*.

(d) DFPS must receive all eligible requests for a public hearing on matters under Human Resources Code Section 40.004 029 not more than 14 days after the DFPS Commissioner's update is presented at a scheduled Partners for Children and Families Committee meeting.

§702.1603. Procedure for a Public Hearing.

(a) The presiding officer at a public hearing shall be the Texas Department of Family and Protective Services (DFPS) Commissioner or designee. The presiding officer will ensure that proper procedure and order are maintained throughout the public hearing. In addition, other DFPS employees and persons may be present to advise the presiding officer, answer questions from the public, and perform other functions considered appropriate by the presiding officer.

(b) All individuals desiring to make an oral presentation at the public hearing shall submit to DFPS a request for appearance. This form shall be made available at the public hearing and must be filled out and presented to the presiding officer before the hearing begins. Individuals wishing to speak who have not filled out the request for appearance form and presented it to the presiding officer before the hearing commences may speak at the discretion of the presiding officer and if time permits.

(c) A hearing secretary shall make a record of the public hearing either by electronic recording or by written minutes, at the option of DFPS.

(d) A report outlining arguments and submissions presented at the public hearing may be presented at the Partners for Children and Families Committee for discussion at the next appropriate committee meeting after the hearing. The report may include issues raised at the public hearing, DFPS's analysis and recommendations concerning the rule in question, and any action taken by DFPS.

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 707. CHILD PROTECTIVE INVESTIGATIONS

The Department of Family and Protective Services (DFPS) proposes two new rules in Title 40, Texas Administrative Code (TAC), Part 19, Chapter 707, relating to the reasons in which DFPS Child Protective Investigations (CPI) and Child Care Investigations (CCI) can reopen a closed investigation within 60 days of closing it.

BACKGROUND AND PURPOSE

During the 88th Regular Legislative Session, House Bill 730 amended Family Code Section 261.301. That section prohibits DFPS CPI and CCI from reopening an investigation or changing its finding in an investigation after a case has been closed for 60 days. Under the statute DFPS is allowed to reopen an investigation before the 60th day and change the finding, if the

department shows good cause. Good cause is not defined. DFPS is required by statute to create a rule to establish procedures for the reopening of cases prior to the 60th day after closure.

SECTION-BY-SECTION SUMMARY

Proposed new §707.500 and §707.731 defines the term "good cause," to support the reopening of a DFPS CPI or CCI investigation within 60 days of closing a case. Good cause exists when the department determines further investigation or services are needed to ensure child safety or new reliable information from a professional or other credible source is available, the CPI or CCI case can be reopened and further investigated and findings changed.

FISCAL NOTE

Lea Ann Biggar, DFPS Chief Financial Officer, has determined that for each year of the first five years that the rule(s) will be in effect, there will not be any fiscal implications to state government as a result of enforcing and administering the section(s) as amended. There will be no effect on local government.

GOVERNMENT GROWTH IMPACT STATEMENT

DFPS has determined that during the first five years that the section(s) will be in effect:

(1) the new rule will not create or eliminate a government program;

(2) implementation of the new rule will not affect the number of employee positions;

(3) implementation of the new rule will not require an increase in future legislative appropriations;

(4) the new rule will not affect fees paid to the agency;

(5) the new rule will not create a new rule;

(6) the new rule will not expand, limit, or repeal an existing rule

(7) the new rule will not increase the number of individuals subject to the rule; and

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

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

Ms. Biggar has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as the rule does not apply to small or micro-businesses, or rural communities.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the section(s) as proposed.

COSTS TO REGULATED PERSONS

Texas Government Code, §2001.0045 does not apply to these rule amendments because DFPS is exempt per subsection (c) of §2001.0045.

PUBLIC BENEFIT

Vicki Kozikoujekian, DFPS General Counsel, has determined that for each year of the first five years that the rule(s) will be in effect the public will benefit from the adoption of the rule. The anticipated public benefit anticipated as a result of enforcing the sections will be that the safety of children and the quality of care will be improved.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

DFPS invites comments on the proposed rules. DFPS requests information related to the cost, benefit, or effect of the proposed new, amended, and repealed rules, including any applicable data, research, or analysis. To be considered, comments, questions, and information must be submitted no later than 30 days after the date of this issue to the *Texas Register*.

If a Partners for Children and Family Committee (PCFC) meeting is scheduled during the formal public comment period, an individual may register to appear before the Committee (*https://www.dfps.texas.gov/About_DFPS/Public_Meetings/Advisory_Committees/pcfc_comment_card.asp*) and give in-person public testimony. DFPS will forward the written comment that accompanies the individual's in-person public testimony to the DFPS Rules Mailbox (*RULES@dfps.texas.gov*) for consideration as formal public comment.

Electronic comments and questions may be submitted to the DFPS rules email address *RULES@dfps.texas.gov*. Hard copy comments may be submitted to the DFPS Rules Coordinator, Legal Services Sanjuanita Maltos, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030.

SUBCHAPTER A. INVESTIGATIONS

DIVISION 1. INTAKE, INVESTIGATION AND ASSESSMENT

40 TAC §707.500

STATUTORY AUTHORITY

The new rules are proposed under Human Resources Code §40.027, which provides that the Department of Family and Protective Services commissioner shall oversee the development of rules relating to the matter within the department's jurisdiction and notwithstanding any other law, shall adopt rules for the operation and provision of services by the department.

CROSS REFERENCE TO STATUTES

The proposed rule implements Texas Family Code Section 261.301(k)(1) (Investigation Reports).

§707.500. Reopening a Closed Investigation.

(a) If the Department of Family and Protective Services (DFPS) closes a Child Protective Investigation (CPI) case, DFPS may reopen the case within 60 days and modify a finding that abuse and neglect occurred to a lesser finding for good cause.

(b) Good cause is defined as:

(1) further investigation or services are needed to ensure safety of a child; or

(2) new reliable information not previously considered that could change the original finding provided by a professional or other credible source.

(c) Notice of any change in a finding related to reopening a closed investigation must be sent to all parties.

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

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SUBCHAPTER C. CHILD CARE INVESTIGATIONS
DIVISION 2. OVERVIEW OF INVESTIGATION IN CHILD CARE OPERATIONS

40 TAC §707.731

STATUTORY AUTHORITY

The new rules are proposed under Human Resources Code §40.027, which provides that the Department of Family and Protective Services commissioner shall oversee the development of rules relating to the matter within the department's jurisdiction and notwithstanding any other law, shall adopt rules for the operation and provision of services by the department.

CROSS REFERENCE TO STATUTES

The proposed rule implements Texas Family Code Section 261.301(k)(1) (Investigation Reports).

§707.731. Reopening a Closed Investigation.

(a) If the Department of Family and Protective Services (DFPS) closes a Child Care Investigation (CCI) case, DFPS may reopen the case within 60 days and modify a finding that abuse and neglect occurred to a lesser finding for good cause.

(b) Good cause is defined as:

(1) further investigation or services are needed to ensure safety of a child; or

(2) new reliable information not previously considered that could change the original finding provided by a professional or other credible source.

(c) Notice of any change in a finding related to reopening a closed investigation must be sent to all parties.

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 730. LEGAL SERVICES

The Texas Department of Family and Protective Services (DFPS) proposes the repeal of Chapter 730, regarding state agency rules and DFPS public hearings in Title 40, Texas Administrative Code (TAC), Subchapter B, §§730.101 - 730.105; Subchapter C, §§730.201 - 730.210; Subchpater D, §§730.301 - 730.305; Subchapter L, §§730.1101 - 730.1105; Subchapter M, §§730.1201 - 730.1204, 730.1206, and 730.1207; Subchapter N, §§730.1301 - 730.1315, and 730.1317; Subchapter O, §730.1401 and §730.1402; Subchapter R, §§730.1701 - 730.1716; Subchapter U, §§730.2001, 730.2003, 730.2005, 730.2007, 730.2009, and 730.2011; and Subchapter W, §730.2201 and §730.2202 relating to Legal Services.

BACKGROUND AND PURPOSE

The Texas Department of Family and Protective Services' (DFPS') four-year rule review that was conducted in accordance with Government Code Section 2001.039 identified repeals that needed to be made within Chapter 730 of the Texas Administrative Code. DFPS proposes repealing Chapter 730.

In conjunction with the quadrennial review, the rule was reviewed in accordance with Texas Regulatory Efficiency Office (TREO) guidelines. These amendments incorporate TREO's principles to reduce regulatory burdens; eliminate waste, fraud, and unnecessary rules; and increase transparency for Texas taxpayers.

SECTION-BY-SECTION SUMMARY

It is proposed that all Subchapters in Chapter 730 be repealed.

Subchapter B discusses the development and procedures of the Texas Board of Protective and Regulatory Services which no longer exists.

Subchapter C, Procedure for Public Hearings on Proposed Substantive Rules, and Subchapter D, Rulemaking Procedures are outdated. Subsection C, Procedure for Public Hearings on Proposed Substantive Rules was created to detail how DFPS would hold a public hearing, in which members of the public can give oral comments on proposed rules. Public hearings on proposed rules may be requested by interested individuals under Texas Government Code Section 2001.029. Rules about rulemaking are being combined, edited for clarity and transparency, and being proposed as new rules in Chapter 702, published elsewhere in this issue of the *Texas Register*. Additionally, the new proposed rules about DFPS public hearings are more general to provide clear direction and transparency on how to request DFPS hold a public hearing as well as the DFPS process for conducting the public hearing under the Government Code and Human Resources Code.

Subchapter D contains outdated internal procedures for rulemaking, which are outdated and an overcomplication of laws in Texas Government Code Chapter 2001.

Subchapter L, Fair Hearings, Subchapter M, Appeals Process, and Subchapter N, Hearing Procedure are proposed for repeal. The programs in these Subchapters are no longer maintained

by DFPS and DFPS does not conduct fair hearings regarding the matters. Rules, including rules on how to appeal department decisions, pertaining to the two remaining social services offered by DFPS, Adoption Assistance (AA) and Permanency Care Assistance (PCA), reside in Chapter 700.

Subchapter O, Social Service Appeals, concerns Requirements and Reversals of decisions made on social services that are no longer provided by the Department.

The Administrative Procedure and Texas Register Act (APTRA) Hearings (APTRA) with rules in Subchapter R, was a law codified in the 1970s that has since been repealed. The right to review and appeal DFPS CPI cases (known as ARIF and SOAH hearings) as once covered under this section, is now covered in 26 TAC and 40 TAC rules Chapter 707. Thus, the Department proposes the repeal of this Subchapter.

Subchapter U, Fraud Involving Recipients and Subchapter W, Fraud or Abuse Involving Individual or Major Providers (Except Medical), both concern fraud of social services that, while once covered by the Department, are now covered by the Texas Health and Human Services Commission.

FISCAL NOTE

Ausra Benavides, *Deputy Chief Financial Officer*, on behalf of Lea Ann Biggar, *Chief Financial Officer,* has determined that for each year of the first five years the repeals are in effect, there will be no fiscal implications to state or local government.

GOVERNMENT GROWTH IMPACT STATEMENT

DFPS has determined that during the first five years that the section(s) will be in effect:

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

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

(3) implementation of the repealed rules will not require an increase in future legislative appropriations;

(4) the repealed rules will not affect fees paid to the agency;

(5) the repealed rules will not create a new rule;

(6) the repealed rules will not expand, limit, or repeal an existing rule

(7) the repealed rules will not increase the number of individuals subject to the rule; and

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

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

Ms. Benavides, on behalf of Ms. Biggar, has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as the rule repeals do not apply to small or micro-businesses, or rural communities.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

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

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 generally requires that state agencies offset the cost to regulated persons of a new rule by repealing or amending another rule. However, DFPS is exempt under §2001.0045(c).

PUBLIC BENEFIT

Vicki Kozikoujekian, *DFPS General Counsel*, has determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated is clarity and transparency to the public as the proposed amendments and repeals are intended to align the rules with and depict current operational practice.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

DFPS invites comments on the proposed rules. DFPS requests information related to the cost, benefit, or effect of the proposed new, amended, and repealed rules, including any applicable data, research, or analysis. To be considered, comments, questions, and information must be submitted no later than 30 days after the date of this issue to the *Texas Register*.

If a Partners for Children and Family Committee (PCFC) meeting is scheduled during the formal public comment period, an individual may register to appear before the Committee and give in-person public testimony. DFPS will forward the written comment that accompanies the individual's in-person public testimony to the DFPS Rules Mailbox for consideration as formal public comment.

Electronic comments and questions may be submitted to the DFPS rules email address RULES@dfps.texas.gov. Hard copy comments may be submitted to the DFPS Rules Coordinator, Legal Services Sanjuanita Maltos, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030.

SUBCHAPTER B. RULES OF PRACTICE BEFORE THE TEXAS BOARD OF PROTECTIVE AND REGULATORY SERVICES

40 TAC §§730.101 - 730.105

STATUTORY AUTHORITY

The repeals are proposed under Human Resources Code Section 40.027, which provides that the DFPS Commissioner shall oversee the development of rules relating to matters within the department's jurisdiction and adopt rules for the operation and provision of services by the department.

CROSS REFERENCE TO STATUTES

The repeals are being proposed through the DFPS' four-year rule review that was conducted in accordance with Government Code Section 2001.039.

§730.101. Definitions.
§730.102. Notice of Agenda.
§730.103. Requests for Information.

§730.104. Submittal of Agenda Items.
§730.105. Appearance Before Board.

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

Filed with the Office of the Secretary of State on November 5, 2026.

TRD-202604644
Sanjuanita Maltos
Rules Coordinator
Department of Family and Protective Services
Earliest possible date of adoption: December 20, 2026
For further information, please call: (512) 945-5978

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SUBCHAPTER C. PROCEDURE FOR PUBLIC HEARINGS ON PROPOSED SUBSTANTIVE RULES

40 TAC §§730.201 - 730.210

STATUTORY AUTHORITY

The repeals are proposed under Human Resources Code Section 40.027, which provides that the DFPS Commissioner shall oversee the development of rules relating to matters within the department's jurisdiction and adopt rules for the operation and provision of services by the department.

CROSS REFERENCE TO STATUTES

The repeals are being proposed for repeal through the DFPS' four-year rule review that was conducted in accordance with Government Code Section 2001.039.

§730.201. Request for Public Hearing.
§730.202. Arrangements for Hearing.
§730.203. Conduct of Hearing.
§730.204. Request for Appearance.
§730.205. Opening Hearing.
§730.206. Speakers' Time Periods.
§730.207. Subject Restriction.
§730.208. Time Limit for Hearing.
§730.209. Record and Report to Board.
§730.210. Response to Public Comments.

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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Sanjuanita Maltos
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For further information, please call: (512) 945-5978

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SUBCHAPTER D. RULEMAKING PROCEDURES

40 TAC §§730.301 - 730.305

STATUTORY AUTHORITY

The repeals are proposed under Human Resources Code Section 40.027, which provides that the DFPS Commissioner shall oversee the development of rules relating to matters within the department's jurisdiction and adopt rules for the operation and provision of services by the department.

CROSS REFERENCE TO STATUTES

The repeals are being proposed through the DFPS' four-year rule review that was conducted in accordance with Government Code Section 2001.039.

§730.301. Petition for Proposed Rulemaking.
§730.302. Advance Notice.
§730.303. Public Comment on Proposed Rules.
§730.304. Copies of Proposed Rules.
§730.305. Copies of Hearing Tapes.

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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Sanjuanita Maltos
Rules Coordinator
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SUBCHAPTER L. FAIR HEARINGS

40 TAC §§730.1101 - 730.1105

STATUTORY AUTHORITY

The repeals are proposed under Human Resources Code Section 40.027, which provides that the DFPS Commissioner shall oversee the development of rules relating to matters within the department's jurisdiction and adopt rules for the operation and provision of services by the department.

CROSS REFERENCE TO STATUTES

The repeals are being proposed through the DFPS' four-year rule review that was conducted in accordance with Government Code Section 2001.039.

§730.1101. Rule and Regulation Authority.
§730.1102. Definitions.
§730.1103. Principles.
§730.1104. Requirements.
§730.1105. Administrative Review of Fair Hearing Decisions.

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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Sanjuanita Maltos
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SUBCHAPTER M. APPEALS PROCESS

40 TAC §§730.1201 - 730.1204, 730.1206, 730.1207

STATUTORY AUTHORITY

The repeals are proposed under Human Resources Code Section 40.027, which provides that the DFPS Commissioner shall oversee the development of rules relating to matters within the department's jurisdiction and adopt rules for the operation and provision of services by the department.

CROSS REFERENCE TO STATUTES

The repeals are being proposed through the DFPS' four-year rule review that was conducted in accordance with Government Code Section 2001.039.

§730.1201. Group Hearings.
§730.1202. Information on Right of Appeal.
§730.1203. Hearing Officer.
§730.1204. Notice Requirement--Proposed Termination or Reduction of Assistance.
§730.1206. Fair Hearing Request.
§730.1207. Time and Place of Hearing.

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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Sanjuanita Maltos
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SUBCHAPTER N. HEARING PROCEDURE

40 TAC §§730.1301 - 730.1315, 730.1317

STATUTORY AUTHORITY

The repeals are proposed under Human Resources Code Section 40.027, which provides that the DFPS Commissioner shall oversee the development of rules relating to matters within the department's jurisdiction and adopt rules for the operation and provision of services by the department.

CROSS REFERENCE TO STATUTES

The repeals are being proposed through the DFPS' four-year rule review that was conducted in accordance with Government Code Section 2001.039.

§730.1301. Conduct of Fair Hearing.
§730.1302. Fair Hearing Proceedings.
§730.1303. Private (Ex Parte) Consultations.
§730.1304. Confidential Material.
§730.1305. Furnishing Medical Information.
§730.1306. Interrogatories.
§730.1307. Prehearing Conference.
§730.1308. Order of Fair Hearings.
§730.1309. Action by Hearing Officer.
§730.1310. Decisions by Hearing Officer.
§730.1311. Public Access to Decisions.
§730.1312. Transcripts.
§730.1313. Retroactive Payments or Restored Benefits or Services.
§730.1314. Recovery of Benefits in 10-day Appeals.
§730.1315. Time Limits on Appeals.
§730.1317. Time Periods for Dismissals.

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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Sanjuanita Maltos
Rules Coordinator
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For further information, please call: (512) 945-5978

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SUBCHAPTER O. SOCIAL SERVICE APPEALS

40 TAC §730.1401, §730.1402

STATUTORY AUTHORITY

The repeals are proposed under Human Resources Code Section 40.027, which provides that the DFPS Commissioner shall oversee the development of rules relating to matters within the department's jurisdiction and adopt rules for the operation and provision of services by the department.

CROSS REFERENCE TO STATUTES

The repeals are being proposed through the DFPS' four-year rule review that was conducted in accordance with Government Code Section 2001.039.

§730.1401. Requirements.
§730.1402. Reversals.

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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Sanjuanita Maltos
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For further information, please call: (512) 945-5978

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SUBCHAPTER R. ADMINISTRATIVE PROCEDURE AND TEXAS REGISTER ACT (APTRA) HEARINGS

40 TAC §§730.1701 - 730.1716

STATUTORY AUTHORITY

The repeals are proposed under Human Resources Code Section 40.027, which provides that the DFPS Commissioner shall oversee the development of rules relating to matters within the department's jurisdiction and adopt rules for the operation and provision of services by the department.

CROSS REFERENCE TO STATUTES

The repeals are being proposed through the DFPS' four-year rule review that was conducted in accordance with Government Code Section 2001.039.

§730.1701. Definitions.
§730.1702. Right to a Hearing.
§730.1703. Notice.
§730.1704. Emergency Release/Use of Data.
§730.1705. Request for a Hearing.
§730.1706. Administrative Law Judge.
§730.1707. Hearing Guidelines.
§730.1708. Venue.
§730.1709. Authority.
§730.1710. Representation for Petitioner.
§730.1711. Withdrawal of Hearing Request and Informal Disposition.
§730.1712. Conduct of Hearings--General Requirements.
§730.1713. Prehearing Procedure.
§730.1714. Evidence and Depositions.
§730.1715. Deliberation.
§730.1716. Decisions.

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 November 5, 2026.

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Sanjuanita Maltos
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Department of Family and Protective Services
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For further information, please call: (512) 945-5978

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SUBCHAPTER U. FRAUD INVOLVING RECIPIENTS

40 TAC §§730.2001, 730.2003, 730.2005, 730.2007, 730.2009, 730.2011

STATUTORY AUTHORITY

The repeals are proposed under Human Resources Code Section 40.027, which provides that the DFPS Commissioner shall oversee the development of rules relating to matters within the department's jurisdiction and adopt rules for the operation and provision of services by the department.

CROSS REFERENCE TO STATUTES

The repeals are being proposed through the DFPS' four-year rule review that was conducted in accordance with Government Code Section 2001.039.

§730.2001. Terms and General Responsibility.
§730.2003. Determination and Disposition of Intentional Program Violations.
§730.2005. Eligibility during Investigation.
§730.2007. Appeals.
§730.2009. Referral of Food Stamp and Aid to Families with Dependent Children (AFDC) Intentional Program Violation Claims to Administrative Disqualification Hearing Officer.
§730.2011. Collection Action on Food Stamp and Aid to Families with Dependent Children (AFDC) Intentional Program Violation Claims.

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 November 5, 2026.

TRD-202604652
Sanjuanita Maltos
Rules Coordinator
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Earliest possible date of adoption: December 20, 2026
For further information, please call: (512) 945-5978

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SUBCHAPTER W. FRAUD OR ABUSE INVOLVING INDIVIDUAL OR MAJOR PROVIDERS (EXCEPT MEDICAL)

40 TAC §730.2201, §730.2202

STATUTORY AUTHORITY

The repeals are proposed under Human Resources Code Section 40.027, which provides that the DFPS Commissioner shall oversee the development of rules relating to matters within the department's jurisdiction and adopt rules for the operation and provision of services by the department.

CROSS REFERENCE TO STATUTES

The repeals are being proposed through the DFPS' four-year rule review that was conducted in accordance with Government Code Section 2001.039.

§730.2201. Responsibilities of the Department in Relation to Provider Fraud.
§730.2202. Statutory Bases for Prosecution.

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 November 5, 2026.

TRD-202604653

Sanjuanita Maltos
Rules Coordinator
Department of Family and Protective Services
Earliest possible date of adoption: December 20, 2026
For further information, please call: (512) 945-5978

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WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 22. EXAMINING BOARDS

PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 104. CONTINUING EDUCATION

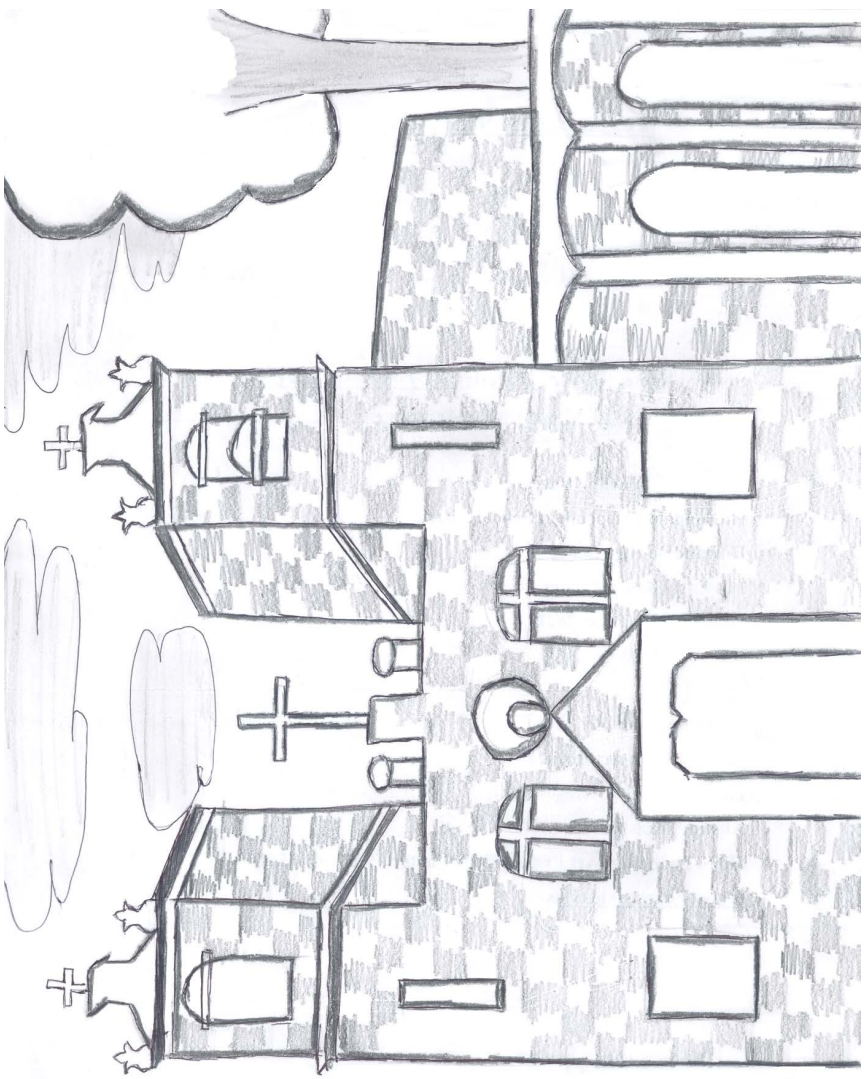
22 TAC §104.1

The State Board of Dental Examiners withdraws proposed amendments to §104.1 which appeared in the September 25, 2026, issue of the *Texas Register* (51 TexReg 6663).

Filed with the Office of the Secretary of State on November 6, 2026.

TRD-202604733
Lauren Studdard
General Counsel
State Board of Dental Examiners
Effective date: November 6, 2026
For further information, please call: (737) 363-2333

♦ ♦ ♦



ADOPTED RULES

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

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 353. MEDICAID MANAGED CARE SUBCHAPTER M. HOME AND COMMUNITY BASED SERVICES IN MANAGED CARE

1 TAC §353.1155

The executive commissioner of the Texas Health and Human Services Commission (HHSC) adopts an amendment to §353.1155, concerning the Medically Dependent Children Program.

Section 353.1155 is adopted with changes to the proposed text as published in the August 21, 2026, issue of the *Texas Register* (51 TexReg 5497). This rule will be republished.

BACKGROUND AND JUSTIFICATION

The adopted amendment is necessary to add diversion slots, which include clinical criteria, to the Medically Dependent Children Program (MDCP). Adding diversion slots allows HHSC to enroll eligible medically fragile children in the MDCP waiver before the person reaches the top of the interest list and without requiring admission to a nursing facility.

The adopted amendment supports HHSC's goal of providing home and community-based services in the most appropriate and cost-effective setting by expanding timely access to waiver services and reducing unnecessary institutionalization.

The adopted amendment does not change MDCP financial or functional eligibility criteria, service array, or service limits. Medicaid Buy-In for Children Program was removed from the rule for consistency with existing eligibility policy.

HHSC also updated the rule for formatting, clarity, and consistency.

COMMENTS

The 31-day comment period ended September 21, 2026.

During this period, HHSC received comments regarding the proposed rules from 77 commenters. HHSC received comments from Angels of Care, Disability Rights Texas, Every Child, Protect TX Fragile Kids, Texas Pediatric Society, The Arc of Texas, and 71 individuals.

HHSC held a public hearing on October 12, 2026, in accordance with Texas Government Code §2001.029(b)(1), and received comments from Angels of Care, Children's Comprehensive Care Clinic-Dell Medical School, Disability Rights Texas, Every Child, International Foundation for CDKL5 Research, Protect TX Fragile Kids, State Senate District 15, Texas Parent to Parent Advocacy, Texas Pediatric Society, The Arc of Texas, and 26 individuals. The comments provided at the public hearing aligned with the written comments received before the hearing. A summary of comments and HHSC's responses follows.

Comment: Multiple commenters recommended removing the definition of "medically fragile," replacing it with "medically dependent," aligning the definition with terminology used by other state Medicaid agencies, or limiting the definition's applicability to diversion slot determinations. Commenters expressed concern that the proposed definition could be interpreted as affecting broader MDCP eligibility requirements.

Response: HHSC agrees with the recommendations and revised the rule in response to these comments. As requested, HHSC removed the medically fragile definition proposed at §353.1155(a) and renumbered subsequent subsections. HHSC also revised the opening statement of the clinical criteria in adopted §353.1155(a)(2)(C). It now reads: "Through a diversion slot, when a person is determined to be too medically fragile to complete a stay in a nursing facility and, typically, the person meets two or more of the following criteria…". Additionally, the adopted rule does not modify the eligibility requirements for the MDCP program.

Comment: Multiple commenters recommended revising the proposed clinical criteria. Commenters expressed concern that the criteria are overly restrictive, rely on rigid clinical thresholds, and may not adequately account for individualized circumstances. Commenters requested greater reliance on physician judgment, consideration of overall medical complexity, inclusion of additional qualifying conditions, and greater flexibility in evaluating medical need.

Response: HHSC partially agrees with this recommendation and revised the rule in response to these comments. HHSC agrees that the clinical criteria should allow sufficient flexibility to account for individualized circumstances and a person's overall medical needs, but it also must provide an objective and consistent framework for identifying individuals who meet the requirements associated with nursing facility diversion opportunities. HHSC revised the opening statement of the clinical criteria in §353.1155(a)(2)(C). It now reads: "Through a diversion slot, when a person is determined to be too medically fragile to complete a stay in a nursing facility, and, typically, the person meets two or more of the following criteria…". HHSC also clarified the clinical criteria to ensure the intended flexibility is clear and revised and added clinical criteria in §353.1155(a)(2)(C)(v), (vii), and (xi) - (xiii) in response to comments. HHSC revised §353.1155(a)(3) and (4) to clarify that HHSC reviews clinical information, which may include documentation of medical necessity from the applicant's primary care provider or subspecialist, and the Physician Attestation for a Diversion Slot form to deter-

mine if a person meets the clinical criteria for a diversion slot. HHSC disagrees with removing the clinical criteria from rule or relying solely on physician judgment. The revisions preserve an objective and consistent review process while allowing HHSC to consider individualized clinical information.

Comment: Multiple commenters recommended that detailed diversion eligibility requirements be maintained in program guidance rather than codified in rule.

Response: HHSC disagrees and declines to revise the rule in response to this recommendation. HHSC determined that establishing criteria for diversion slots in rule promotes transparency, consistency, and public awareness of program requirements. The adopted provisions establish the framework necessary to administer diversion opportunities in accordance with available program resources and applicable statutory authority.

Comment: Commenters also requested clarification regarding diversion slot availability, allocation processes, implementation procedures, and the impact of the proposed provisions on existing MDCP eligibility requirements. Commenters were concerned there is an insufficient number of diversion slots and requested to increase the slot count.

Response: HHSC disagrees that this rule impacts existing eligibility requirements for the MDCP program. The number of diversion slots is not addressed in this rule; therefore, concerns about the sufficiency of the number of slots are outside the scope of this rule project. The adopted rule does not modify the eligibility requirements for the MDCP program. The legislature provided funding to add new MDCP diversion slots, which increased the total number of MDCP slots available. With this additional funding, HHSC will have both the previous interest list slot funding and funding for diversion slots. Future requests to the legislature for interest list slot funding will account for diversion slot needs, if needed.

Comment: Multiple commenters requested holding a public hearing before adoption of the rule. Commenters requested additional stakeholder engagement activities, including an extension of the comment period, and the establishment of stakeholder workgroups before adoption of the rule. Commenters stated that additional engagement would improve transparency and allow further consideration of the proposed diversion criteria.

Response: HHSC partially agrees with the commenters. HHSC agrees with the request to hold a public hearing and held a public hearing on October 12, 2026. HHSC also affirms that notice of the proposed rule and an opportunity for public comment were provided in accordance with the Texas Government Code and applicable rulemaking requirements. HHSC reviewed and considered all comments received during the public comment period and at the public hearing before adopting the rule. HHSC disagrees that an extension of the public comment period or the establishment of a stakeholder workgroup is necessary before the rule is adopted. throughout the rulemaking process, HHSC provided updates at advisory committee meetings and met informally with key stakeholder groups. HHSC therefore determined that additional engagement activities were not necessary before adopting the rule.

HHSC made minor editorial changes throughout the rule to correct formatting.

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation of and provision of services by the health and human services system; and Texas Human Resources Code §32.021, which provides HHSC with the authority to administer the federal medical assistance program in Texas and to adopt rules and standards for program administration.

§353.1155. Medically Dependent Children Program.

(a) An MCO assesses a person's eligibility for MDCP.

(1) To be eligible for MDCP, a person must:

(A) be under 21 years of age;

(B) live in Texas;

(C) meet the medical necessity level of care criteria required for nursing facility care admission as determined by HHSC;

(D) have an unmet need for support in the community that can be met through one or more MDCP services;

(E) choose MDCP as an alternative to nursing facility services, as described in 42 CFR §441.302(d);

(F) not be enrolled in one of the following Medicaid HCBS waiver programs approved by CMS:

(i) the Community Living Assistance and Support Services (CLASS) Program;

(ii) the Deaf Blind with Multiple Disabilities (DBMD) Program;

(iii) the Home and Community-based Services (HCS) Program;

(iv) the Texas Home Living (TxHmL) Program; or

(v) the Youth Empowerment Services waiver;

(G) live in:

(i) the person's home; or

(ii) an agency foster home as defined in Texas Human Resources Code, §42.002, (relating to Definitions); and

(H) be determined by HHSC to be financially eligible for Medicaid under:

(i) Chapter 358 of this title (relating to Medicaid Eligibility for the Elderly and People with Disabilities); or

(ii) Chapter 360 of this title (relating to Medicaid Buy-In Program).

(2) A person who meets the eligibility criteria in paragraph (1) of this subsection may be enrolled in MDCP in one of the following ways.

(A) The person reaches the top of the program interest list and HHSC assigns the person an available MDCP waiver slot.

(B) The person asks to enroll in MDCP while living in a nursing facility, is determined eligible for Medicaid nursing facility services, and HHSC assigns the person an available MDCP waiver slot before the person moves to the community.

(C) Through a diversion slot, when a person is determined to be too medically fragile to complete a stay in a nursing facility, and, typically, the person meets two or more of the following criteria:

(i) invasive mechanical ventilation (does not include continuous positive airway pressure (CPAP), bilevel positive airway pressure (BIPAP), or average volume-assure pressure support (AVAP));

(ii) functional tracheostomy (active route mechanical ventilation, routine suctioning and tracheostomy care);

(iii) renal dialysis;

(iv) 24-hour per day oxygen dependence;

(v) total nutrition (100% of caloric needs) via enteral tube feeding, not including comfort or pleasure feeds;

(vi) total parenteral nutrition;

(vii) congenital or acquired heart disease with heart failure requiring hospitalization in the last 12 months;

(viii) hospice;

(ix) solid organ or stem cell transplant within the last 12 months;

(x) non-invasive ventilation (includes BIPAP or Adaptive Ventilation Mode, but does not include CPAP) 20 or more hours per day;

(xi) three or more presentations to a medical facility for status epilepticus within the last 12 months;

(xii) congenital T-cell or neutrophil disorders; or

(xiii) daily seizures with motor involvement requiring the use of at least one of the following interventions for the majority of 30 calendar days:

(I) rescue medications;

(II) assisted breathing;

(III) oxygen; or

(IV) manual vagus nerve stimulation activation.

(3) An HHSC Utilization Review nurse reviews the clinical information of the person applying for a diversion slot which may include letters of medical necessity from the applicant's primary care provider or subspecialist, discharge summaries, or office visit notes within 12 months of the attestation submission date. If the person described in paragraph (2)(C) of this subsection does not meet at least two of the criteria identified in paragraph (2)(C) of this subsection, the nurse sends an HHSC Physician Attestation for Diversion Slot form and documentation to an HHSC physician for review.

(4) An HHSC physician reviews the form and documentation described in paragraph (3) of this subsection and uses the physician's medical judgment to determine if the person is too medically fragile for a nursing facility stay even if the person does not meet at least two of the criteria identified in paragraph (2)(C) of this subsection.

(5) If a person asking for enrollment in MDCP as described in subsection (a)(2)(B) of this section is discharged from a nursing facility into a community setting before being determined eligible for Medicaid nursing facility services and MDCP, HHSC denies the person's enrollment in MDCP and places the person's name on the program interest list.

(b) HHSC maintains a statewide interest list of persons interested in receiving services through MDCP.

(1) A person, the person's medical consenter, or the person's legally authorized representative (LAR) may request that the person's name be added to the MDCP interest list by:

(A) calling HHSC toll-free 1-877-438-5658;

(B) submitting a written request to HHSC; or

(C) generating a referral through the YourTexasBenefits.com, Find Support Services screening and referral tool.

(2) HHSC places the person's name on the MDCP interest list if:

(A) the person, the person's medical consenter, or the person's LAR makes a request in accordance with paragraph (1) of this subsection; and

(B) the person lives in Texas.

(3) HHSC uses the date HHSC receives the request in accordance with paragraph (1) of this subsection as the MDCP interest list date.

(4) For a person determined diagnostically or functionally ineligible during the enrollment process for the CLASS Program, DBMD Program, HCS Program, or TxHmL Program:

(A) if the person's name is not on the MDCP interest list, the person, the person's medical consenter, or the person's LAR can ask HHSC to add the person's name to the MDCP interest list using the interest list date for the waiver program for which the person was determined ineligible as the MDCP interest list date;

(B) if the person's name is on the MDCP interest list and the interest list date for the waiver program for which the person was determined ineligible is an earlier date, the person, the person's medical consenter, or the person's LAR can ask HHSC to change the person's MDCP interest list date to the earlier interest list date; or

(C) if the person's name is on the MDCP interest list and the MDCP interest list date is earlier than the interest list date for the waiver program for which the person was determined ineligible, HHSC does not change the person's MDCP interest list date.

(5) A person enrolled in MDCP who is found ineligible for MDCP because the person does not meet the medical necessity level of care criteria required for nursing facility care admission is allowed to make a one-time request, or the person's medical consenter or the person's LAR is allowed to make a one-time request, for the person's name to be placed in the first position on the MDCP interest list.

(6) A person enrolled in MDCP who is found ineligible for MDCP because the person does not meet the medical necessity level of care criteria required for nursing facility care admission or the requirement to be under 21 years of age, is allowed to request, or the person's medical consenter or the person's LAR is allowed to request, for the person's name to be placed on the interest list for any of the following programs or change the person's interest list date for any of the following programs in accordance with:

(A) 26 TAC §259.53 (relating to CLASS Interest List) for the CLASS Program;

(B) 26 TAC §260.53 (relating to DBMD Interest List) for the DBMD Program;

(C) 26 TAC §262.102 (relating to TxHmL Interest List) for the TxHmL Program; and

(D) 26 TAC §263.103 (relating to HCS Interest List) for the HCS Program.

(7) HHSC removes a person's name from the MDCP interest list if:

(A) the person is deceased;

(B) the person is assessed for MDCP, is found not eligible for the program, and has had a chance for a fair hearing, as described in Chapter 357 of this title (relating to Hearings);

(C) the person, the person's medical consenter, or the person's LAR requests in writing that HHSC remove the person's name from the interest list; or

(D) the person moves out of Texas, except if the person is a military family member living outside of Texas as described in Texas Government Code §526.0602:

(i) while the military member is on active duty; or

(ii) for less than one year after the former military member's active duty ends.

(8) A person whose name is removed from the MDCP interest list as described in paragraph (7)(B) of this subsection, or the person's medical consenter or the person's LAR, may request that HHSC place the person's name on the MDCP interest list in accordance with paragraph (1) of this subsection.

(c) An MCO develops a person-centered individual service plan (ISP) for each person in MDCP, and all applicable documentation, as described in the STAR Kids Handbook and the Uniform Managed Care Manual (UMCM).

(1) An ISP must:

(A) include services described in the waiver approved by CMS;

(B) include services necessary to protect a person's health and welfare in the community;

(C) include services that supplement rather than supplant the person's natural supports and other non-Medicaid supports and services for which the person may be eligible;

(D) include services designed to prevent the person's admission to an institution;

(E) include the most appropriate type and amount of services to meet the person's needs in the community;

(F) be reviewed and revised if the person's needs or natural supports change or at the request of the person, the person's medical consenter, or the person's LAR; and

(G) be cost effective.

(2) If a person's ISP exceeds 50 percent of the cost of the person's level of care in a nursing facility to safely serve the person's needs in the community, HHSC must review the circumstances and, when approved, provide funds through general revenue.

(d) An MCO is responsible for conducting a reassessment and developing an ISP for each person's continued eligibility for MDCP, in accordance with the policies and procedures outlined in the STAR Kids Handbook, UMCM, or materials designated by HHSC and in accordance with the timeframes outlined in the MCO's contract.

(e) An MCO is responsible for authorizing a provider of a person's choice to deliver services outlined in the person's ISP.

(f) A person participating in MDCP has the same rights and responsibilities as any person enrolled in managed care, as described in Subchapter C of this chapter (relating to Member Bill of Rights and Responsibilities), including the right to appeal a decision made by HHSC or an MCO and the right to a fair hearing, as described in Chapter 357 of this title.

(g) HHSC conducts utilization reviews of MCOs providing MDCP services.

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 November 9, 2026.

TRD-202604750
Stephanie Tourk
Deputy Chief Counsel
Texas Health and Human Services Commission
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Proposal publication date: August 21, 2026
For further information, please call: (512) 438-2910

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TITLE 4. AGRICULTURE

PART 2. TEXAS ANIMAL HEALTH COMMISSION

CHAPTER 33. FEES

4 TAC §§33.1 - 33.4

The Texas Animal Health Commission (Commission) in a duly noticed meeting on November 3, 2026, repealed Title 4, Texas Administrative Code, Chapter 33 titled "Fees." The Commission repealed Chapter 33 without changes to the proposed text published in the September 11, 2026 issue of the *Texas Register* (51 TexReg 6245) and it will not be republished.

JUSTIFICATION FOR RULE ACTION

The Commission underwent a comprehensive and collaborative rule review by the Texas Regulatory Efficiency Office (TREO). TREO made several recommendations to reduce unnecessary regulations and increase transparency. One such recommendation was repealing unused rules in Chapter 33 and updating certificate of veterinary inspection (CVI) rules to reflect the Commission's transition to electronic CVIs.

The Commission repeals Section 33.1, which contains unnecessary definitions. The Commission repeals Section 33.2, which contains outdated rules related to purchasing paper CVIs. The Commission repeals Section 33.3, which contains rules the Commission no longer uses relating to fees for inspection of foreign cattle. And finally, the Commission repeals Section 33.4, containing enforcement and penalty rules.

The repeals are made concurrently with a newly adopted Chapter 33. The newly adopted Chapter 33, entitled Certificates of Veterinary Inspection, contains a section detailing electronic CVIs and fees assessed by the Commission and a section establishing enforcement and penalty rules.

The Commission's goal in the repeal and replacement of Chapter 33 is to reduce burdensome regulation and modernize rules.

HOW THE RULE WILL FUNCTION

The repeal eliminates the entirety of Chapter 33, titled Fees, to be replaced with a newly adopted Chapter 33, titled Certificates of Veterinary Inspection.

SUMMARY OF COMMENTS RECEIVED AND COMMISSION RESPONSE

The 30-day comment period ended October 11, 2026.

During this period, the Commission received one comment. A summary of the comment relating to the rule and the Commission's response follows.

Comment: The Livestock Marketing Association of Texas stated its support for the repeal. LMAT expressed its appreciation for maintaining the current fee structure. LMAT suggested the rule could be improved by allowing livestock markets access to the electronic certificates, especially for transporting livestock post-sale to areas where cell service is limited.

Response: The Commission thanks the commenter for the feedback. No changes were made as a result of these comments.

STATUTORY AUTHORITY

The repeal is made under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code.

The Commission is vested by statute, §161.041(a), titled "Disease Control," to protect all livestock, exotic livestock, domestic fowl, and exotic fowl from disease. The Commission is authorized, through §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock, exotic livestock, domestic fowl, or exotic fowl, even if the agent of transmission is an animal species that is not subject to the jurisdiction of the Commission.

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

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

Pursuant to §161.0601, titled "Certificates of Veterinary Inspection," the Commission may adopt rules providing for the issuance of electronic certificates of veterinary inspection. The Commission shall set and charge a fee for each certificate of veterinary inspection provided to a veterinarian.

Pursuant to §161.148, titled "Administrative Penalty", the Commission may impose an administrative penalty on a person who violates Chapter 161 or a rule or order adopted under Chapter 161. The penalty for a violation may be in an amount not to exceed $5,000, effective September 1, 2021.

The repeal of the rules does not affect other statutes, sections, or codes.

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 November 6, 2026.

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Jeanine Coggeshall
General Counsel
Texas Animal Health Commission
Effective date: November 26, 2026
Proposal publication date: September 11, 2026
For further information, please call: (512) 839-0511

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4 TAC §33.1, §33.2

The Texas Animal Health Commission (Commission) in a duly noticed meeting on November 3, 2026, adopted a new Chapter 33, titled "Certificates of Veterinary Inspection." The adoption was made without changes to the proposed text published in the September 11, 2026 issue of the *Texas Register* (51 TexReg 6246) and will not be republished.

JUSTIFICATION FOR RULE ACTION

The Commission underwent a comprehensive and collaborative rule review by the Texas Regulatory Efficiency Office (TREO). TREO made several recommendations to reduce unnecessary regulations and increase transparency. One such recommendation was repealing unused rules in Chapter 33 and updating certificate of veterinary inspection (CVI) rules to reflect the Commission's transition to electronic CVIs.

The Commission repeals Section 33.1, which contains unnecessary definitions. The Commission repeals Section 33.2, which contains outdated rules related to purchasing paper CVIs. The Commission repeals Section 33.3, which contains rules the Commission no longer uses relating to fees for inspection of foreign cattle. And finally, the Commission repeals Section 33.4, containing enforcement and penalty rules.

The repeals are made concurrently with a newly adopted Chapter 33. The newly adopted Chapter 33, entitled Certificates of Veterinary Inspection, contains a section detailing electronic CVIs and fees assessed by the Commission and a section establishing enforcement and penalty rules.

The Commission's goal in the repeal and replacement of Chapter 33 is to reduce burdensome regulation and modernize rules.

HOW THE RULE WILL FUNCTION

The newly adopted Chapter 33 is titled Certificates of Veterinary Inspection, and replaces the existing Chapter 33, related to Fees.

The newly adopted §33.1, titled Certificate of Veterinary Inspection, requires accredited veterinarians to use approved electronic CVIs and sets a $7.00 fee for electronic CVIs.

The newly adopted §33.2, titled Enforcement and Penalties, establishes penalties for violating the chapter's rules.

SUMMARY OF COMMENTS RECEIVED AND COMMISSION RESPONSE

The 30-day comment period ended October 11, 2026.

During this period, the Commission received one comment. A summary of the comment relating to the rule and the Commission's response follows.

Comment: The Livestock Marketing Association of Texas stated its support for the repeal. LMAT expressed its appreciation for maintaining the current fee structure. LMAT suggested the rule could be improved by allowing livestock markets access to the electronic certificates, especially for transporting livestock post-sale to areas where cell service is limited.

Response: The Commission thanks the commenter for the feedback. No changes were made as a result of these comments.

STATUTORY AUTHORITY

The new rules are adopted under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code.

The Commission is vested by statute, §161.041(a), titled "Disease Control," to protect all livestock, exotic livestock, domestic fowl, and exotic fowl from disease. The Commission is authorized, through §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock, exotic livestock, domestic fowl, or exotic fowl, even if the agent of transmission is an animal species that is not subject to the jurisdiction of the Commission.

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

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

Pursuant to §161.0601, titled "Certificates of Veterinary Inspection," the Commission may adopt rules providing for the issuance of electronic certificates of veterinary inspection. The Commission shall set and charge a fee for each certificate of veterinary inspection provided to a veterinarian.

Pursuant to §161.148, titled "Administrative Penalty", the Commission may impose an administrative penalty on a person who violates Chapter 161 or a rule or order adopted under Chapter 161. The penalty for a violation may be in an amount not to exceed $5,000, effective September 1, 2021.

The adopted rules do not affect other statutes, sections, or codes.

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 November 6, 2026.

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Jeanine Coggeshall
General Counsel
Texas Animal Health Commission
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Proposal publication date: September 11, 2026
For further information, please call: (512) 839-0511

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CHAPTER 47. AUTHORIZED PERSONNEL SUBCHAPTER D. NEW WORLD SCREWWORM

4 TAC §§47.30 - 47.32

The Texas Animal Health Commission (Commission) in a duly noticed meeting on November 3, 2026, adopted new additions to Title 4, Texas Administrative Code, Chapter 47 titled "Authorized Personnel." Specifically, the Commission established a new Subchapter D, titled "New World Screwworm," to include new sections §47.30, concerning General Requirements and Application Procedures, §47.31, concerning Duration and Additional Training Requirements, and §47.32, concerning Grounds for Suspension and Revocation. The adoption of §47.30 and §47.32 is without changes to the proposed text published in the September 11, 2026 issue of the *Texas Register* (51 TexReg 6248) and will not be republished. Section 47.31 is adopted with changes and will be republished.

JUSTIFICATION FOR RULE ACTION

Section 161.047 of the Texas Agriculture Code requires a person, including a veterinarian, to be authorized by the Commission to engage in an activity that is part of a state or federal disease control or eradication program for animals. Existing disease control and eradication programs include, tuberculosis, trichomoniasis, piroplasmosis, equine infectious anemia, chronic wasting disease, and scrapie.

Following the June 3, 2026, detection of New World Screwworm (NWS) in a three-week-old calf in Zavala County, Texas, the Commission, USDA, and other state and federal response partners initiated unified incident command operations, increased surveillance and trapping activities, and accelerated sterile fly releases to control and eradicate the pest. As part of control and eradication efforts, the NWS Certified Inspector Program was developed. The purpose of the program is to allow more Texans to inspect animals for NWS and certify the documentation required to safely move them. The program is critical to ensure cattle and livestock commerce continues uninterrupted.

The newly established Subchapter D, titled "New World Screwworm," includes standards and requirements for persons authorized by the Commission to perform work as an NWS Certified Inspector. An NWS Certified Inspector is an individual who has completed Commission approved training on NWS detection, inspection, treatment, and movement requirements and who has been authorized to perform these activities by the Commission. The additions establish application, training, and recordkeeping requirements. Additionally, the additions detail grounds for suspension and revocation of NWS Certified Inspector status.

HOW THE RULE WILL FUNCTION

Section 47.30 includes General Requirements and Application Procedures. The addition establishes the steps individuals must take to become certified and sets forth the standards a certified inspector must maintain. Standards include fully and accurately completing Treatment/Movement Certificates and following all instructions prescribed by the Commission.

Section 47.31 includes Duration and Additional Training Requirements. The addition states that certified status is valid for one year from the date of initial certification. And the section establishes the method by which inspectors can recertify their status.

Section 47.32 includes Grounds for Suspension and Revocation. The addition lays out that violations of §47.6, §47.4, §47.31, or failing to immediately report observed signs of NWS will result in suspension or revocation of certified status.

SUMMARY OF COMMENTS RECEIVED AND COMMISSION RESPONSE

The 30-day comment period ended October 11, 2026.

During this period, the Commission received one comment. A summary of the comment relating to the rule and the Commission's response follows.

Comment: The Livestock Marketing Association of Texas expressed its appreciation to TAHC for the ability for livestock markets to have staff members become NWS Certified Inspectors to assist in the timely processing of livestock. LMAT noted the rule

will ensure TAHC can provide oversight to the NWS response activities while reducing paperwork and confusion.

Response: The Commission thanks the commenter for the feedback. No changes were made as a result of these comments.

STATUTORY AUTHORITY

The new rules are adopted under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. The Commission is vested by statute, §161.041(a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The Commission is authorized, through §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock.

Pursuant to §161.0417, entitled "Authorized Personnel for Disease Control," a person, including a veterinarian, must be authorized by the Commission in order to engage in an activity that is part of a state or federal disease control or eradication program for animals. Section 161.0417 requires the Commission to adopt necessary rules for the authorization of such persons and, after reasonable notice, to suspend or revoke a person's authorization if the Commission determines that the person has substantially failed to comply with Chapter 161 or rules adopted under that chapter. Section 161.0417 does not affect the requirement for a license or an exemption under Chapter 801, Occupations Code, to practice veterinary medicine.

Pursuant to §161.006, entitled "Documents to Accompany Shipment", if required that a certificate or permit accompany animals or commodities moved in this state, the document must be in the possession of the person in charge of the animals or commodities, if the movement is made by any other means.

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

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

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

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

Pursuant to §161.112 entitled "Rules", the Commission shall adopt rules relating to the movement of livestock, exotic livestock, and exotic fowl from livestock markets and shall require tests, immunization, and dipping of those livestock as necessary to protect against the spread of communicable diseases.

Pursuant to §161.113, entitled "Testing or Treatment of Livestock", if the Commission requires testing or vaccination under this subchapter, the testing or vaccination must be performed by an accredited veterinarian or qualified person authorized by the commission. The state may not be required to pay the cost of fees charged for the testing or vaccination. The Commission may require the owner or operator of a livestock market to furnish adequate equipment or facilities or have access to essential equipment or facilities within the immediate vicinity of the livestock market.

Pursuant to §161.081, titled "Importation of Animals," the Commission by rule may provide the method for inspecting and testing animals before and after entry into Texas. The Commission may create rules for the issuance and form of health certificates and entry permits.

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

§47.31. Duration and Additional Training Requirements.

(a) Unless otherwise suspended or revoked, New World Screwworm (NWS) Certified Inspector status shall be valid for the period of one year from the date of initial certification.

(b) NWS Certified Inspector status must be renewed by completing the New World Screwworm Preparedness and Response Education course, retaking the final exam and passing with a 94 percent, and resubmitting the NWS Certified Inspector Application to NWS_CIP@tahc.texas.gov.

(c) In determining whether additional training shall be required of current NWS Certified Inspectors before certificate renewal, the commission may consider changes in technology, treatments, procedures, programs, and the performance or competency of the individual in performing NWS program activities.

(d) If the commission requires general training or testing for all NWS Certified Inspectors, the commission will publish notice at least six months in advance of the certificate renewal date.

(e) If the commission requires individual training or testing as a result of the NWS Certified Inspector's performance or inability to perform NWS program activities, the commission may give notification and set a time and place for training or testing.

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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Jeanine Coggeshall
General Counsel
Texas Animal Health Commission
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For further information, please call: (512) 839-0511

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CHAPTER 51. ENTRY REQUIREMENTS

4 TAC §51.11

The Texas Animal Health Commission (Commission) in a duly noticed meeting on November 3, 2026, repealed Title 4, Texas Administrative Code, Chapter 51, §51.11, concerning Goats. The Commission repealed §51.11 without changes to the proposed text published in the September 11, 2026 issue of the *Texas Register* (51 TexReg 6250) and it will not be republished.

JUSTIFICATION FOR RULE ACTION

The Commission underwent a comprehensive and collaborative rule review by the Texas Regulatory Efficiency Office (TREO). TREO made several recommendations to reduce unnecessary regulations and duplications. One such recommendation was combining entry requirements for sheep and goats.

To accomplish this, the Commission repeals Section 51.11, concerning Goats. This section housed rules on tuberculosis restricted zones and scrapie requirements. However, the section's scrapie rule directed readers to Section 51.12 for requirements. The Commission simultaneously adopts amendments to Section 51.12, concerning Sheep. These changes move the goat rules of Section 51.11 into Section 51.12.

The Commission's goal in proposing the repeal is to reduce duplicative regulation and streamline Commission rules.

SECTION-BY-SECTION SUMMARY

The repeal eliminates Section 51.11, relating to entry requirements for goats.

SUMMARY OF COMMENTS RECEIVED AND COMMISSION RESPONSE

The 30-day comment period ended October 11, 2026.

During this period, the Commission received one comment. A summary of the comment relating to the rule and the Commission's response follows.

Comment: The Livestock Marketing Association of Texas stated its appreciation for the amendment to Chapter 51, noting the change would remove confusing language by centralizing the entry requirements for sheep and goats. LMAT re-urges its request that markets be provided access to eCVIs.

Response: The Commission thanks the commenter for the feedback. No changes were made as a result of these comments.

STATUTORY AUTHORITY

The repeal is made under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. The Commission is vested by statute, §161.041(a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The Commission is authorized, through §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock.

Pursuant to §161.006, entitled "Documents to Accompany Shipment", if required that a certificate or permit accompany animals or commodities moved in this state, the document must be in the possession of the person in charge of the animals or commodities, if the movement is made by any other means.

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

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

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

Pursuant to §161.113, entitled "Testing or Treatment of Livestock", if the Commission requires testing or vaccination under this subchapter, the testing or vaccination must be performed by an accredited veterinarian or qualified person authorized by the commission. The state may not be required to pay the cost of fees charged for the testing or vaccination. The Commission may require the owner or operator of a livestock market to furnish adequate equipment or facilities or have access to essential equipment or facilities within the immediate vicinity of the livestock market.

Pursuant to §161.114, entitled "Inspection of Livestock", an authorized inspector may examine livestock consigned to and delivered on the premises of a livestock market before the livestock are offered for sale. If the inspector considers it necessary, the inspector may have an animal tested or vaccinated. Any testing or vaccination must occur before the animal is removed from the livestock market.

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

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 November 6, 2026.

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Jeanine Coggeshall
General Counsel
Texas Animal Health Commission
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For further information, please call: (512) 839-0511

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4 TAC §51.12

The Texas Animal Health Commission (Commission) in a duly noticed meeting on November 3, 2026, adopted amendments to Title 4, Texas Administrative Code, Chapter 51 titled "Entry Requirements." Specifically, the Commission adopted amendments to §51.12 regarding Sheep without changes to the proposed text

published in the September 11, 2026 issue of the *Texas Register* (51 TexReg 6252) and it will not be republished.

JUSTIFICATION FOR RULE ACTION

The Commission underwent a comprehensive and collaborative rule review by the Texas Regulatory Efficiency Office (TREO). TREO made several recommendations to reduce unnecessary regulations and duplications. One such recommendation was combining entry requirements for sheep and goats.

To accomplish this, the Commission repeals of Section 51.11, concerning Goats. This section housed rules on tuberculosis restricted zones and scrapie requirements. However, the section's scrapie rule directed readers to Section 51.12 for requirements. The Commission simultaneously adopts amendments to Section 51.12, concerning Sheep. These amendments move the goat rules of Section 51.11 into Section 51.12.

The amendments to Section 51.11 include updates in rule language to reflect the Commission's move to electronic CVIs. The language was updated for readability and clarifying punctions and conjunctions. The amendments update the scrapie rule to reflect the merge of sheep and goat entry requirements. And the amendments add tuberculosis restricted zone rules without any changes those requirements.

The Commission's goal in adopting these amendments is to reduce duplicative regulation and streamline Commission rules.

HOW THE RULE WILL FUNCTION

The amendment to Section 51.12, relating to entry requirements for sheep, combines entry requirements for goats and updates language to reflect current Commission practices.

SUMMARY OF COMMENTS RECEIVED AND COMMISSION RESPONSE

The 30-day comment period ended October 11, 2026.

During this period, the Commission received one comment. A summary of the comment relating to the rule and the Commission's response follows.

Comment: The Livestock Marketing Association of Texas stated its appreciation for the amendment to Chapter 51, noting the change would remove confusing language by centralizing the entry requirements for sheep and goats. LMAT re-urges its request that markets be provided access to eCVIs.

Response: The Commission thanks the commenter for the feedback. No changes were made as a result of these comments.

STATUTORY AUTHORITY

The amendments are adopted under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. The Commission is vested by statute, §161.041(a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The Commission is authorized, through §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock.

Pursuant to §161.006, entitled "Documents to Accompany Shipment", if required that a certificate or permit accompany animals or commodities moved in this state, the document must be in the possession of the person in charge of the animals or commodities, if the movement is made by any other means.

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

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

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

Pursuant to §161.113, entitled "Testing or Treatment of Livestock", if the Commission requires testing or vaccination under this subchapter, the testing or vaccination must be performed by an accredited veterinarian or qualified person authorized by the commission. The state may not be required to pay the cost of fees charged for the testing or vaccination. The Commission may require the owner or operator of a livestock market to furnish adequate equipment or facilities or have access to essential equipment or facilities within the immediate vicinity of the livestock market.

Pursuant to §161.114, entitled "Inspection of Livestock", an authorized inspector may examine livestock consigned to and delivered on the premises of a livestock market before the livestock are offered for sale. If the inspector considers it necessary, the inspector may have an animal tested or vaccinated. Any testing or vaccination must occur before the animal is removed from the livestock market.

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

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

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Jeanine Coggeshall
General Counsel
Texas Animal Health Commission
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Proposal publication date: September 11, 2026
For further information, please call: (512) 839-0511

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CHAPTER 57. POULTRY

4 TAC §57.10, §57.11

The Texas Animal Health Commission (Commission) in a duly noticed meeting on November 3, 2026, adopted amendments to Title 4, Texas Administrative Code, Chapter 57 titled "Poultry." Specifically, the Commission adopted amendments to §57.10 regarding Definitions and §57.11 regarding General Requirements without changes to the proposed text published in the September 11, 2026 issue of the *Texas Register* (51 TexReg 6254) and it will not be republished.

JUSTIFICATION FOR RULE ACTION

The Texas Animal Health Commission adopts amendments to §57.10, concerning Definitions and to §57.11, concerning General Requirements. The amendments establish movement requirements for Texas-origin exhibition poultry traveling to and from out-of-state events.

The amendments require exhibition birds to leave Texas on a certificate of veterinary inspection (CVI) with proof of negative pullorum-typhoid test (PT) and negative avian influenza test (AI) all issued within 30 days prior to movement. For poultry originating from an NPIP certified flock with current PT Clean status, valid NPIP documentation can be substituted for PT test results. If exhibitors have complied with the CVI and testing requirements, the amendments allows the birds to return to Texas on the same CVI within its 30-day validity period provided the birds were not exhibited in a Highly Pathogenic Avian Influenza (HPAI)-Impacted state, show no signs of illness, and a quarantine was not established during the event.

Additionally, the amendments establish a 1-year recordkeeping requirement for exhibitors. The amendments outline that if HPAI was detected in the event state after the birds entered the state, the exhibitor must return the birds to the premises of origin at the earliest opportunity, notify the Commission, and isolate the birds for 14 days. The rule specifically states these movement requirements do not allow for birds to reenter Texas if they have travelled to a state that was already designated an HPAI-Impacted state at time of movement.

Finally, the amendments add definitions for "exhibition poultry," "HPAI-Impacted state," and "National Poultry Improvement Plan (NPIP)" to lend clarity to the changes to §57.11.

The purpose of these amendments is to provide a method for Texas exhibitors to travel to events out-of-state and safely return while minimizing disease-risk to other Texas poultry. The amendments focus on immediate reporting, traceability, and disease surveillance through required testing prior to movement. The requirements mirror the requirements for birds entering Texas, but allow Texas exhibitors to meet the requirements prior to leaving the state.

HOW THE RULE WILL FUNCTION

Section 57.10 includes definitions. The amendments add definitions for "exhibition poultry," "HPAI-Impacted state," and "National Poultry Improvement Plan (NPIP)." The amendments also reorder number existing definitions.

Section 57.11 includes general requirements for poultry. The amendments add movement requirements for Texas exhibition poultry traveling to an out-of-state event and returning to Texas.

SUMMARY OF COMMENTS RECEIVED AND COMMISSION RESPONSE

The 30-day comment period ended October 11, 2026.

During this period, the Commission received no comments regarding the changes to this rule.

STATUTORY AUTHORITY

The amendments are adopted under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. The Commission is vested by statute, §161.041(a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The Commission is authorized, through §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock.

Pursuant to §161.006, entitled "Documents to Accompany Shipment", if required that a certificate or permit accompany animals or commodities moved in this state, the document must be in the possession of the person in charge of the animals or commodities, if the movement is made by any other means.

Pursuant to §161.041, titled "Disease Control," the Commission shall protect all livestock, exotic livestock, domestic fowl, and exotic fowl from diseases the commission determines require control or eradication. Pursuant to §161.041(b) the Commission may act to eradicate or control any disease or agent of transmission for any disease that affects livestock, exotic livestock, domestic fowl, or exotic fowl. The Commission may adopt any rules necessary to carry out the purposes of this subsection, including rules concerning testing, movement, inspection, and treatment.

Pursuant to §161.043, titled "Regulation of Exhibitions," the Commission may regulate the entry of livestock and may require certification of those animals as reasonably necessary to protect against communicable diseases.

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

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

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

Pursuant to §161.113, entitled "Testing or Treatment of Livestock", if the Commission requires testing or vaccination under this subchapter, the testing or vaccination must be performed by an accredited veterinarian or qualified person authorized by the commission. The state may not be required to pay the cost of fees charged for the testing or vaccination. The Commission may require the owner or operator of a livestock market to fur-

nish adequate equipment or facilities or have access to essential equipment or facilities within the immediate vicinity of the livestock market.

Pursuant to §161.081, titled "Importation of Animals," the Commission by rule may provide the method for inspecting and testing animals before and after entry into Texas. The Commission may create rules for the issuance and form of health certificates and entry permits.

No other statutes, articles, or codes 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 November 6, 2026.

TRD-202604720
Jeanine Coggeshall
General Counsel
Texas Animal Health Commission
Effective date: November 26, 2026
Proposal publication date: September 11, 2026
For further information, please call: (512) 839-0511

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TITLE 7. BANKING AND SECURITIES

PART 6. CREDIT UNION DEPARTMENT

CHAPTER 91. CHARTERING, OPERATIONS, MERGERS, LIQUIDATIONS

SUBCHAPTER E. DIRECTION OF AFFAIRS

7 TAC §91.501, §91.502

The Credit Union Commission adopts amendments to §91.501, Director Eligibility and Disqualification, and §91.502, Director/Committee Member Fees, Insurance, Reimbursable Expenses, and Other Authorized Expenditures, without changes to the text as proposed in the August 21, 2026, issue of the *Texas Register* (51 TexReg 5500), and the rules will not be republished.

The amendments, identified as a part of the Credit Union Department's quadrennial rule review process, make non-substantive changes to the Department's rules. The amendments to §91.501, Director Eligibility and Disqualification, add flexibility to the recordkeeping requirement for applications of new directors. The amendments to §91.502, Director/Committee Member Fees, Insurance, Reimbursable Expense, and Other Authorized Expenditures, update the title of a rule referenced in the section.

The reasoned justification for the amendments is accuracy and streamlined recordkeeping by credit unions.

No comments were received in response to the proposed amendments.

The amendments are adopted pursuant to Texas Finance Code §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subtitle D of the Texas Finance Code, particularly §122.053, which sets forth the duties of directors, and §122.054, which directs the commission to establish qualifications for a director.

The specific sections affected by the amendments are Texas Finance Code §§122.053 and 122.054.

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 November 6, 2026.

TRD-202604706
Robert Etheridge
Commissioner
Credit Union Department
Effective date: November 26, 2026
Proposal publication date: August 21, 2026
For further information, please call: (512) 837-9236

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SUBCHAPTER F. ACCOUNTS AND SERVICES

7 TAC §91.608, §91.610

The Credit Union Commission adopts amendments to §91.608, Confidentiality of Member Records; and §91.610, Safe Deposit Box Facilities, without changes to the text as proposed in the August 21, 2026, issue of the *Texas Register* (51 TexReg 5502), and the rules will not be republished.

The amendments were identified as a part of the Credit Union Department's quadrennial rule review process. The amendments to §91.608 update references to federal regulations. The amendments to §91.610 update the references to the statute regarding imprinting of safe deposit keys to Chapter 125 of the Finance Code, which relates to credit unions, instead of Chapter 59, which relates to banks, and delete certain provisions that are duplicative of or in conflict with the statute.

The reasoned justification for the amendments is accuracy and conciseness of the rules.

No comments were submitted in response to the proposed amendments.

The amendments are adopted pursuant to Texas Finance Code §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subtitle D (Chapters 121 through 149) of the Texas Finance Code; particularly § 125.508, which establishes requirements related to imprinting of safe deposit box keys.

The specific sections affected by the amendments are Texas Finance Code §§122.053, 122.054, 122.062, 125.402, and 125.508.

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 November 6, 2026.

TRD-202604707

Robert Etheridge
Commissioner
Credit Union Department
Effective date: November 26, 2026
Proposal publication date: August 21, 2026
For further information, please call: (512) 837-9236

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TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 1. ADMINISTRATION
SUBCHAPTER A. GENERAL POLICIES AND PROCEDURES

10 TAC §1.12

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC §1.12 Negotiated Rulemaking without changes to the text previously published in the July 24, 2026 issue of the *Texas Register* (51 TexReg 4756). The rule will not be republished. The purpose of the repeal is to eliminate the current rule while replacing it with a more current version of the rule.

Tex. Gov't Code §2001.0045(b) does not apply to the rule because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

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

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

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the repeal would be in effect:

1. The repeal does not create or eliminate a government program but relates to means by which the public may seek rulemaking from the Department.

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

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

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

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

6. The repeal will not expand or contract the applicability of an existing regulation.

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

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

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

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

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The repeal does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

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

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

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

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

SUMMARY OF PUBLIC COMMENT. The Department requested comments on the proposed repeal. The public comment period was held July 24, 2026, through August 24, 2026, to receive input on the proposed action. No comments were received.

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

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

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

Filed with the Office of the Secretary of State on November 5, 2026.

TRD-202604693
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: November 25, 2026
Proposal publication date: July 24, 2026
For further information, please call: (512) 475-3959

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10 TAC §1.12

The Texas Department of Housing and Community Affairs (the Department) adopts new 10 TAC §1.12 Negotiated Rulemaking without changes to the text previously published in the July 24, 2026 issue of the *Texas Register* (51 TexReg 4757). The rule will not be republished. The purpose of the rule is to remove unnecessary rule language, add language to ensure compliance with Tex. Gov't Code 2001.021, and retitle the rule.

Tex. Gov't Code §2001.0045(b) does not apply to the rule because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

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

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

Mr. Bobby Wilkinson has determined that, for the first five years the new section would be in effect:

1. The new section does not create or eliminate a government program but relates to means by which the public may seek rulemaking from the Department.

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

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

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

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

6. The new section will not expand or contract an existing regulation.

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

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

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

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

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The new section does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

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

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

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section would be a more streamlined rule that is compliant with Tex. Gov't Code 2001.021. There will not be economic costs to individuals required to comply with the new section.

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

SUMMARY OF PUBLIC COMMENT AND INFORMATION RELATED TO COST, BENEFIT OR EFFECT. The Department requested comments on the proposed section and also requested information related to the cost, benefit, or effect of the proposed section, including any applicable data, research, or analysis from any person required to comply with the rule or any other interested person. The public comment period was held July 24, 2026, through August 24, 2026, to receive input on the proposed action. No comments were received and the rule is being adopted as proposed without changes.

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

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

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 November 5, 2026.

TRD-202604694
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: November 25, 2026
Proposal publication date: July 24, 2026
For further information, please call: (512) 475-3959

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CHAPTER 7. HOMELESSNESS PROGRAMS
SUBCHAPTER C. EMERGENCY SOLUTIONS GRANTS (ESG)

10 TAC §7.40

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal without changes from the version previously published in the July 24, 2026 issue of the *Texas Register* (51 TexReg 4758), of 10 TAC Chapter 7, Emergency Solutions Grant Program, Subchapter C Emergency Solutions Grants, §7.40 Competitive Program Participant Services Selection Criteria. The rule will not be republished.

The purpose of the rule action is to replace the rule simultaneously with a new rule that removes unnecessary language.

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

a. ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT

Tex. Gov't Code §2001.0045(b) does not apply to the rule because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

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

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the repeal would be in effect:

1. The repeal does not create or eliminate a government program but relates to making changes to an existing activity, Selection Criteria for ESG Applications.

2. The repeal does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce workload to a degree that eliminates any existing employee positions.

3. The repeal does not require additional future legislative appropriations or a reduction in future legislative appropriations.

4. The repeal will not result in an increase or decrease in fees paid to the Department.

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

6. The repeal will repeal an existing regulation. The repeal is repealing the rule, but it is being replaced by a new rule simultaneously to provide for revisions.

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

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

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

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

d. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The Department has determined that no private real property interests are affected by the action and the action does not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. Therefore, the rule does not constitute a taking by the Department and no Takings Impact Assessment is required.

e. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.022 and §2001.024(a)(6).

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

f. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the rule action would be improved regulatory efficiency and greater clarity. There will not be economic costs to individuals required to comply with the repealed section because the rule has already been in place.

g. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Robert Wilkinson has determined that for each year of the first five years the repeal is in effect, there are no estimated additional costs or reductions in costs, or increases in revenue or losses of revenue, to state or local government as a result of enforcing or administering the rule.

SUMMARY OF PUBLIC COMMENT AND INFORMATION RECEIVED RELATED TO COST, BENEFIT OR EFFECT. The Department requested public comment on the rule action from July 24, 2026, through August 24, 2026.

No public comment was received and the rule is being adopted without changes.

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

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

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

Filed with the Office of the Secretary of State on November 5, 2026.

TRD-202604688
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: November 25, 2026
Proposal publication date: July 24, 2026
For further information, please call: (512) 475-3959

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10 TAC §7.40

The Texas Department of Housing and Community Affairs (the Department) adopts new, without changes from the version previously published in the July 24, 2026 issue of the *Texas Register* (51 TexReg 4759), 10 TAC Chapter 7, Emergency Solutions Grant Program, Subchapter C Emergency Solutions Grants, §7.40 Competitive Program Participant Services Selection Criteria. The rule will not be republished.

The purpose of the rule action is to replace the rule simultaneously with a new rule that removes unnecessary language.

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

a. ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT

Tex. Gov't Code §2001.0045(b) does not apply to the rule because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

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

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the new rule would be in effect:

1. The new rule does not create or eliminate a government program but relates to making changes to an existing activity, Selection Criteria for ESG Applications.

2. The new rule does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce workload to a degree that eliminates any existing employee positions.

3. The new rule does not require additional future legislative appropriations or a reduction in future legislative appropriations.

4. The new rule will not result in an increase or decrease in fees paid to the Department.

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

6. The new rule will repeal an existing regulation. The repeal is repealing the rule, but it is being replaced by a new rule simultaneously to provide for revisions.

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

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

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

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

d. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The Department has determined that no private real property interests are affected by the action and the action does not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. Therefore, the rule does not constitute a taking by the Department and no Takings Impact Assessment is required.

e. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.022 and §2001.024(a)(6).

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

f. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the new rule is in effect, the public benefit anticipated as a result of the rule action would be improved regulatory efficiency and greater clarity. There will not be economic costs to individuals required to comply with the repealed section because the rule has already been in place.

g. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Robert Wilkinson has determined that for each year of the first five years the new rule is in effect, there are no estimated additional costs or reductions in costs, or increases in revenue or losses of revenue, to state or local government as a result of enforcing or administering the rule.

SUMMARY OF PUBLIC COMMENT AND INFORMATION RECEIVED RELATED TO COST, BENEFIT OR EFFECT. The Department requested public comment on the rule action from July 24, 2026, through August 24, 2026.

No public comment was received and the rule is being adopted without changes.

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

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

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

Filed with the Office of the Secretary of State on November 5, 2026.

TRD-202604690
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: November 25, 2026
Proposal publication date: July 24, 2026
For further information, please call: (512) 475-3959

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CHAPTER 10. UNIFORM MULTIFAMILY RULES

SUBCHAPTER F. COMPLIANCE MONITORING

10 TAC §10.614

The Texas Department of Housing and Community Affairs (the Department) adopts the amendment, without changes from the version published in the July 24, 2026 issue of the *Texas Register* (51 TexReg 4761), of 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter F, Compliance Monitoring §10.614 Utility Allowances. The rule will not be republished.

The purpose of the rule action is to simplify the regulation and improve efficiency of the rule as outlined by the Texas Regulatory Efficiency Office (TREO) in their Regulatory Efficiency Review Report.

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

a. ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT

Tex. Gov't Code §2001.0045(b) does not apply to the rule because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

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

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years, the amendment would be in effect:

1. The amendment does not create or eliminate a government.

2. The amendment does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce workload to the degree that eliminates any existing employee positions.

3. The amendment does not require additional future legislative appropriations or a reduction in future legislative appropriations.

4. The amendment will not result in an increase or decrease in fees paid to the Department.

5. The amendment is not creating a new regulation, the adopted amendment is reducing the rule by removing examples.

6. The amendment will not expand, limit or repeal existing regulations.

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

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

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

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

d. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The Department has determined that no private real property interests are affected by the action and the action does not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. Therefore, the rule does not constitute a taking by the Department and no Takings Impact Assessment is required.

e. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.022 and §2001.024(a)(6).

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

f. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the amendment is in effect, the public benefit anticipated because of the rule action results in a more efficient and concise rule. There will not be economic costs to individuals required to comply with the amendment.

g. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Robert Wilkinson has determined that for each year of the first five years the amendment is in effect, there are no estimated additional costs or reductions in costs, or increases in revenue or losses of revenue, to state or local government as a result of enforcing or administering the rule.

SUMMARY OF PUBLIC COMMENT AND INFORMATION RECEIVED RELATED TO COST, BENEFIT OR EFFECT. The Department requested public comment on the rule action from July 24, 2026, to August 24, 2026. Public comments were received from one commenter and are summarized below. Commenter: ResProp Management (1). A summary of the public comment follows, with a response provided by the Department to each comment.

§10.614.Utility Allowances

Commenter 1 is requesting that the examples removed from the Utility Allowance Rule be put in a guide or manual and published on the Departments website.

Staff Response: Staff agree with Commenter 1 and has posted the Previous Examples to the website. No changes are being made to the rule in response to this comment.

Rule §10.614(g) Requirements for Annual Review

Commenter 1 is requesting a mandatory 15-30-day notice and cure period for utility allowance submissions that miss the required deadline prior to defaulting to the Public Housing Authority (PHA) method.

Staff Response: Owners may submit annual utility allowance requests any time prior to the October 1st deadline. Staff continually provide training throughout the year, and a Listserv is issued within 90-120 days prior to the deadline. Federal regulations require a 90-day public comment period for any utility allowance update; in addition, the regulations require a utility allowance be reviewed and updated annually. To continue to comply with these requirements Staff is not recommending any changes to the rule in response to this comment.

Rule §10.614(c) Methodologies

Commenter 1 requests that the "freshness window" for the component charges be expanded to 120 days.

Staff Response: §1.42-10(b)(4)(ii) of the Internal Revenue Code requires the 60-day window. The Department does not have the authority to change this requirement. No changes are being made to the rule in response to this comment.

Rule §10.614(n) pertains to the Department's ability to outsource to a third party

Under the current rule the Texas Department of Housing and Community Affairs reserves the right to outsource reviews of the Energy Consumption Model (ECM) reviews to a third-party at the sole expense of the owner. Commenter 1 requests that the rule be amended to include language so that if the Department does engage in the third-party reviews the owners will be given prior written notice, a reasonable fee cap, and a binding 30-day review turnaround window for the third- party contractor.

Staff Response: To date the Department has not taken advantage of this right to outsource reviews of the ECM. However, if in the future the Department does engage in this outsourcing, a proper notice will be given to all current Developments utilizing the ECM method. At such time, the Department would also be open to any rule updates that affect the outsourcing. No changes are being made to the rule in response to this comment at this time.

Rule §10.614(o) pertains to the submission of utility allowance documentation to the Department

Under the current rule all requests must be uploaded directly to the Development's Compliance Monitoring and Tracking System (CMTS) account using the "Utility Allowance Documents" tag in the Type Field and "Utility Allowance" as the Department contact. Commenter 1 is requesting that submissions uploaded to the incorrect contact be issued an automated deficiency notification granting owners 5 business days to correct tagging or re-route the email submission while retaining their original date stamp.

Staff Response: The current CMTS system does not have the ability to issue automated deficiency notifications. The compliance staff is unable to track all Department employees and what has been uploaded via CMTS under their name. The Department recommends that a quick review of the submission ensures it is uploaded to the correct tags and contacts. No changes are being made to the rule in response to this comment.

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

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

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

Filed with the Office of the Secretary of State on November 5, 2026.

TRD-202604687
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: November 25, 2026
Proposal publication date: July 24, 2026
For further information, please call: (512) 475-3959

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SUBCHAPTER I. PUBLIC FACILITY CORPORATION COMPLIANCE MONITORING

10 TAC §§10.1101 - 10.1105, 10.1107

The Texas Department of Housing and Community Affairs (the Department) adopts amendments to 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter I, Public Facilities Corporation Monitoring §10.1101 Purpose, §10.1102 Definitions, §10.1103 Reporting Requirements, §10.1104 Audit Requirements, §10.1105 Income and Rent Requirements and §10.1107 Options for Review with changes from the version previously published in the July 24, 2026 issue of the *Texas Register* (51 TexReg 4767). The rules will be republished.

The purpose of the rule action is to provide a clearer more efficient and more concise rule for Public Facilities Corporation developments over which the Department has compliance monitoring oversight. Additionally, this rule action removes unnecessary requirements from the rule; adds new language that simplifies requirements for pre and post June 18, 2023, PFC developments, adds a new definition, provides clear timeframes for the issuance of reports, corrective action and close out letters; and specifies what must be included with the submission of an Audit Report and mechanism of how a report must be submitted to the Department. Audit requirements were simplified and aligned with 10 TAC Chapter 10, Subchapter J, which are the Housing Finance Corporation rules, when appropriate, to provide more detailed guidance to PFC Users, Auditors and stakeholders on what is required to be submitted, and when and how rent the reduction calculation is to be completed. New examples were included to provide detailed guidance on how the available unit rule is applied and to establish methods for determining maximum market rent when a Development is 100% restricted. Other requirements were added to allow the exemption of basic military housing allowance income from the calculation of annual income and to expand the appeals process for findings of noncompliance.

The rule is being adopted to enact HB 2071 (88th Regular Legislature), which required that the Department adopt rules to codify requirements on which Public Facility Corporation Development are required to submit annual Audit Reports to the Department by June 1 of each year.

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

a. ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT

Tex. Gov't Code §2001.0045(b) does not apply to the rule because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

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

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years, the amendment would be in effect:

1. The adopted amendment to the rule does not create or eliminate a government program but provides for an assurance that Developments created by a Public Facility Corporation must annually submit an Audit Report to the Department.

2. The adopted amendment does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce workload to a degree that eliminates any existing employee positions.

3. The adopted amendment does not require additional future legislative appropriations or a reduction in future legislative appropriations.

4. The adopted amendment will not result in an increase or decrease in fees paid to the Department.

5. The adopted amendment, or new rule is not creating a new regulation; but will expand the existing rule on this monitoring activity to ensure ongoing compliance with HB 2071.

6. The adopted amendment will not repeal an existing regulation.

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

8. The adopted amendment will not negatively or positively affect the state's economy.

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

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

d. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The Department has determined that no private real property interests are affected by the action and the action does not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. Therefore, the rule does not constitute a taking by the Department and no Takings Impact Assessment is required.

e. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.022 and §2001.024(a)(6).

The Department has evaluated the adopted amendment as to its possible effects on local economies and has determined that for the first five years the rule action would be in effect there would be no economic effect on local employment; because the rule only addresses the requirement for PFC Operator and/or Sponsor to submit annual Audit Report to the Department; therefore, no local employment impact statement is required to be prepared for the rule.

f. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the adopted amendment is in effect, the public benefit anticipated as a result of the adopted amendment to the rule is codifying requirements for PFC Developments to submit annual Audit Reports to the Department and assured compliance of the Developments. There will not be economic costs to individuals required to comply with the adopted amendment because Developments, not individuals, are required to hire an independent auditor to complete the annual Audit Reports and submit them to the Department. It is estimated the cost per annual PFC Audit Report is between $6,000 to $8,000. There are no additional costs for the PFC Operator or Sponsor to submit the annual Audit Report to the Department, as the Department does not collect a fee to review PFC reports.

g. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Robert Wilkinson has determined that for each year of the first five years the adopted amendment to the rule in effect, there are no estimated additional costs or reductions in costs, or increases in revenue or losses of revenue, to state or local government as a result of enforcing or administering the rule because the rule only relates to the requirements for PFC Operators and/or Sponsors to submit annual audit reports.

SUMMARY OF PUBLIC COMMENT AND INFORMATION RECEIVED RELATED TO COST, BENEFIT OR EFFECT. The Department requested public comments on the rule action from July 24, 2026, through August 24, 2026. Public comments were received from two commenters and are summarized below. Commenters: ResProp Management (1) and Texas Affiliation of Affordable Housing Providers (TAAHP) (2).

§10.1101. Purpose and Applicability.

Commenter 2 proposes a revision of the language to remove the word "enact" from the rule language to align with Texas Local Government Code §303.0427 Section 10(b). Commenter 2 also recommended a spacing correction to §10.1101(6) paragraph.

Staff Response: Staff removed the word, "enact" to align with Texas Local Government Code §303.0427 Section 10(b) and corrected the spacing error in the rule for adoption.

§10.1102. Definitions.

Commenter 2 suggested revising the language in §10.1102(11) from "same Unit" to "same Unit Type" for purposes of the rent reduction calculation.

Staff Response: Staff did not incorporate the suggested change because the rule as drafted uses the exact same language as reflected in Texas Local Government Code §303.0426(b)(2); the Department does not have the authority to change language and meaning of the rent reduction calculation referenced in HB 2071.

§10.1103. Reporting Requirements.

Commenter 1 is seeking clarification that using forms generated by standard Property Management Software platforms does not constitute prohibited "alteration or modification" of Department forms in §10.1103(2)(C), and recommends that the Department include explicit language that permits properties utilizing automated compliance systems. Commenter 1 also requests that the rule clarify that selecting an AMI percentage on the Income Certification form stipulated in the development's recorded Regulatory Agreement does not violate §10.1103(2)(C). Lastly, Commenter 1 requests a one-year grace period for the three (3) year Auditor rotation requirement.

Commenter 2 proposes adding the following language in §10.1103(2)(C), "without prior approval from the Department." This section of the rule requires that the audit workbook must be submitted in the format published by the Department.

Staff Response: Section 10.1103(2)(C) refers to the annual Audit Report submission and the required audit workbook that must be completed and submitted to the Department by June 1 of each year. The rule does not prohibit properties from utilizing automated compliance forms, which are allowable. Staff declines adding a new provision to the rule regarding Income Certification designation to §10.1103(2)(C), as this section of the rule is only applicable to Audit Report submissions. Regardless, if an Income Certification inadvertently was incorrectly designated with the wrong AMI tier this is not noncompliance with the rule or statute. The Department does not have the authority to change the required auditor three (3) year rotation requirement as this is codified in Texas Local Government Code §303.0426(h), so no change to allow for a grace period has been included. Staff agrees with Commenter 2 and included the suggested language about approvals from the Department being required prior to modifications being made to the audit workbook.

§10.1104. Audit Requirements.

Commenter 1 request that the PFC Income Certification form be updated with other income/rent tiers for non-standard AMI restrictions. Also, they have requested clarification on the Available Unit Rule (AUR) that the rule explicitly include that any permitted rent increases resulting from household redesignation remains subject to lease contract notice periods and waiting for the notice period to expire prior to implementation of the rent adjustment will not result in noncompliance.

Commenter 2 provided suggested revisions to §10.1104(a) to remove some of the words for better readability and to align with defined terms in HB 2071. They also suggested adding the word "Type" in conjunction with the word Unit. In addition, Commenter 2 provided a rewrite of §10.1104(b) to address minimum requirement of file sample size and create clearer directions on sample size for recertifications. Lastly, commenter 2 noted that the word "unit" in §10.1104(e)(1) was capitalized and is not a defined term.

Staff Response: While not part of the rule, staff agree with commenter 1's suggestions for revising the PFC Income Certification

form to allow for other income/rent designations. Department staff has revised the form and it is available on the Department's website. Staff also agrees that all rent increases are subject to the lease contract regulations. The rule does not conflict with lease contract requirements. In addition, complying with lease contract provisions would not result in the Department citing noncompliance; therefore, staff declined to update the language in the rule as it is not necessary. Staff has accepted most revisions suggested by commenter 2 except for including the word "Type" in connection with the word, "unit." Per staff's response above to §10.1101(11), the Department does not have the authority to change the statutory language.

§10.1105. Income and Rent Requirements.

No comments received.

§10.1107. Options for Review.

Commenter 1 requested that the Department modify the rule to pause the 60-day corrective action period if an appeal is filed timely pending final resolution of the appeal as this may cause hardship while trying to correct noncompliance and simultaneously appealing its validity.

Commenter 2 suggested that the language in this section may be inaccurate and that the appeals process could be implemented after the 60-day corrective action period. They also suggested some minor changes to the language.

Staff Response: Local Government Code §303.0426(d)(B) does not permit the Department to extend the 60-day corrective action period and therefore all appeals must be submitted during the corrective action period. Additionally, since the corrective action period may not be extended beyond the 60-day period, appeals may not be made after the corrective action period. Staff accepted Commenter 2's suggested edits to the language.

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

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

§10.1101. Purpose and Applicability.

The purpose of Chapter 10, Subchapter I is to:

(1) Provide the reporting requirements described in §10.1103 of this Subchapter for the audit requirements detailed in §10.1104 in the following manner:

(A) Development approved by a public facility corporation or the sponsor of a public facility corporation prior to June 18, 2023, are subject to §10.1104(a); or

(B) Development approved by a public facility corporation or the sponsor of a public facility corporation on or after June 18, 2023, are subject to all subsections in §10.1104.

(2) Establish rules governing Developments owned or sponsored by a Public Facility Corporation (PFC) that are subject to Sections 303.0421 and 303.0425 of the Texas Local Government Code.

(3) Enable the Department to communicate with Responsible Parties and persons with an interest in the Development, regarding the results of the Audit Report.

(4) Establish qualifications for Auditors and reporting standards and formats.

(5) Implement compliance requirements, tenant protections, and affirmative marketing requirements, as required by Sections 303.0421 and 303.0425 of the Texas Local Government Code.

(6) Applicability. This rule is not applicable to a Development that has at least 20 percent of its residential units reserved for public housing; that participates in the Rental Assistance Demonstration program administered by HUD; that receives financial assistance administered under Chapter 1372, Government Code, or that receives financial assistance from another type of tax-exempt bond; or that receives financial assistance administered under Subchapter DD, Chapter 2306, Government Code.

§10.1102. Definitions.

The capitalized terms or phrases used herein are defined in the title. Any other capitalized terms in the subchapter shall have the meaning defined in Chapter 2306 of the Texas Government Code, Chapter 303, Texas Local Government Code, and other state or Department rules, as applicable. Defined terms, when not capitalized, are to be read in context and construed according to common usage.

(1) Audit Report--A report completed by an Auditor or compliance expert, in a manner and format prescribed by the Department.

(2) Auditor--An individual who is an independent auditor or compliance expert with an established history of providing similar audits on housing compliance matters, meeting the criteria established herein.

(3) Board--The governing board of the Texas Department of Housing and Community Affairs.

(4) Chief Appraiser--The chief appraiser of the appraisal district in which a Development is located.

(5) Department--The Texas Department of Housing and Community Affairs.

(6) Development--A multifamily residential development owned by a Public Facility Corporation and operated by an Operator.

(7) Housing Choice Voucher Program--The housing choice voucher program under Section 8, United States Housing Act of 1937 (42 U.S.C. Section 1437f).

(8) HUD--The United States Department of Housing and Urban Development.

(9) Public Facility Corporation (PFC)--A nonprofit corporation that can be created by a municipality, county, school district, housing authority or a Sponsor, as outlined in Chapter 303 of the Texas Local Government Code.

(10) Public Facility User--A public-private partnership entity or a developer or other private entity that has an ownership interest or a leasehold or other possessory interest in a public facility that is a multifamily residential development. For purposes of all provisions within this rule, the terms "Public Facility User" and "Operator" shall have the same meaning and shall be interchangeable.

(11) Rent Reduction--The projected difference between the annual rent charged for a Restricted Unit and the maximum market rent that could be charged for the same unit without income restrictions.

(12) Regulatory Agreement--A Land Use Restriction Agreement (LURA), Ground Lease, Deed Restriction, and any similar restrictive instrument that is recorded in the real property records of the county in which the Development is located.

(13) Responsible Parties--The Texas Comptroller of Public Accounts, and with respect to a Development, the applicable Operator,

the PFC, the governing body of the PFC's Sponsor, and, if the PFC's Sponsor is a housing authority, the elected officials responsible for appointing the housing authority's governing board.

(14) Restricted Unit--A residential unit in a Development that is reserved for or occupied by a household meeting certain income limitations established in the Regulatory Agreement, with rent for such unit restricted as set forth in these rules. Restricted Units may float in a Development and need not be permanently fixed.

(15) Sponsor--A municipality, county, school district, housing authority, or special district that causes a corporation to be created to act in accordance with Chapter 303, Texas Local Government Code.

(16) Unit Type--Means the type of unit determined by the number of bedrooms.

§10.1103. Reporting Requirements.

The following reporting requirements apply to all Developments owned by a Public Facility Corporation (PFC), subject to Sections 303.0421 and 303.0425 of the Texas Local Government Code, and not eligible under Section 10(b) or (c) of House Bill 2071, 88th Texas Legislative Session, effective June 18, 2023, (the Act) for continuation of the former law in effect prior to the effective date of the Act. Pursuant to Section 10(d) of the Act, all Developments owned by a PFC as described in Tex. Local Gov't Code §303.0421(a), and with respect to which an exemption is sought or claimed under §303.042(c) - regardless of when the Development was acquired, approved, or occupied - must submit an Audit Report in accordance with §303.0426(b) as described below.

(1) No later than June 1 of each year, the Public Facility User will submit to the Department an Audit Report from an Auditor, obtained at the expense of the Public Facility User. The Department will reject any Audit Report received after June 1 of the applicable reporting year. Failure to submit an Audit Report, or submission of an Audit Report after the June 1 deadline, constitutes noncompliance and shall be reported to the responsible parties, the Chief Appraiser, and the Comptroller.

(2) All Audit Reports must comply with subparagraphs (A) to (C) of this paragraph:

(A) be for at least the full prior reporting period ending December 31 and include a rent roll for the same period;

(B) include contact information for all Responsible Parties; and

(C) be completed and submitted in the Department prescribed manner, including all published forms which may not be altered or modified, without prior approval from the Department.

(3) The first Audit Report must include a copy of the Regulatory Agreement. The first Audit Report for a Development must be submitted no later than June 1 of the year following the first anniversary of:

(A) The date of the PFC acquisition for an occupied Development; or

(B) The date a newly constructed PFC Development first becomes occupied by one or more tenants.

(4) No later than 60 days after the receipt of the Audit Report, the Department will post a summary of the Audit Report on its website including a detailed description of any noncompliance with this rule found by the Auditor and indication that such notice does not constitute a final determination. A copy of the summary of the Audit Report will also be provided to all Responsible Parties.

(5) If any noncompliance with Sections 303.0421 and 303.0425 are identified by the Auditor, no later than 45 days after receipt of the Audit Report, the Department will issue a monitoring report notice and make it available on the website.

(A) The monitoring report will include a detailed description of any noncompliance and at least one option for corrective action to resolve the noncompliance. The PFC User will be given 60 days from the issuance of the monitoring report notice to correct the noncompliance. At the end of the 60 days, the Department will post a final report on its website.

(B) If there is any noncompliance that is not corrected within the 60-day corrective action period, the Department will notify the Responsible Parties, Chief Appraiser, and the Texas Comptroller in writing and recommend a loss of ad valorem tax exemption respective to the Tax year being Audited.

(6) The qualification of the Auditor must be submitted with each Audit Report. Qualifications must include experience auditing housing compliance, a current Certified Occupancy Specialist (COS) certification or an equivalent certification, and resume. The Auditor may not be affiliated with or related to any Responsible Parties. Additionally, a current or previous Management Agent that has or had oversight of the Development or is/was responsible for reviewing and approving tenant files does not qualify as an Auditor under these rules.

(7) The Public Facility User may not engage the same individual as Auditor for a particular Development for more than three consecutive years. After the third consecutive Audit Report by the same Auditor, the Public Facility User must engage a new Auditor for at least two reporting years before re-engaging with a prior Auditor.

(8) Audit Reports, supporting documentation, required forms, and corrective action must be submitted through the Departments File Serve System. To obtain access to this system, the PFC User and / or Auditor must request access by emailing pfc.monitoring@tdhca.texas.gov.

§10.1104. Audit Requirements.

(a) The Auditor must identify the difference between the rent charged for a Restricted Unit and the estimated maximum market rents that could be charged for the same unit without rent or income restrictions.

(b) The Auditor's tenant file sample must include at least twenty percent (20%) of the Development Restricted Units with a minimum of two (2) household files and a maximum of fifty (50) household files. For Developments that are not leasing up, the sample should primarily consist of new move-ins and include household files subject to annual income recertification equal to at least ten percent (10%) of the total sample, with a minimum of one (1) recertification file. If recertification files represent less than ten (10%) of the requested sample, all recertification files must be included. A Development is considered to be in lease-up if it is newly constructed and not yet fully occupied, or, for an acquired Development, during the period specified in the Regulatory Agreement. For Developments in lease-up, the sampling percentages apply only to occupied Restricted Units.

(c) The Auditor will ensure Development meets the following requirements and will identify any deficiencies found in the report:

(1) The Development has a properly recorded Regulatory Agreement with an initial minimum 10-year term.

(2) For newly constructed Developments:

(A) At least ten percent (10%) of the units in the Development are reserved for, or occupied by, households at or below

sixty percent (60%) Area Median Income (AMI), adjusted for household size, as established by HUD;

(B) At least an additional forty percent (40%) of the units in the Development are reserved for, or occupied by, households at or below eighty percent (80%) AMI, adjusted for household size, as established by HUD.

(3) For occupied Developments acquired by the PFC:

(A) At least twenty-five percent (25%) of the units in the Development are reserved for, or occupied by, households at or below sixty percent (60%) AMI, adjusted for household size, established by HUD; and

(B) At least an additional forty percent (40%) of the units in the Development are reserved for, or occupied by, households at or below eighty percent (80%) AMI, adjusted for household size, as established by HUD; or

(C) The Development meets the household income restrictions set forth in §10.1104(B); and

(D) The Operator expends at least fifteen percent (15%) of the gross cost of the Development, as shown in the settlement statement, on rehabilitating, renovating, reconstructing, or repairing, the Development, with such activities commencing no later than the first anniversary of the date of acquisition, and concluding no later than the third anniversary of the date of acquisition.

(4) Monthly rent for Restricted Units may not exceed thirty percent (30%) of the imputed household income limitation for the unit, adjusted for family size, as determined by HUD. To determine the adjustment for family size, the Auditor will defer to the Development's Regulatory Agreement and/or other operative document. In the event that the adjustment for family size is unclear, it is the responsibility of the PFC User to provide the Auditor support that the manner in which the adjustment was applied is acceptable by the PFC. Notwithstanding the foregoing, if a Restricted Unit is occupied by a household with a Housing Choice Voucher, and the payment standard for that voucher is less than the monthly rent for the Restricted Unit established pursuant to the immediately preceding sentence, the household may be required to pay the difference between the payment standard and the monthly rent.

(5) The percentage of Restricted Units in each Unit Type in the Development, must be the same or greater percentage as the percentage of each Unit Type of units that are not Restricted Units in the Development.

(6) Occupants of Restricted Units are required to recertify at the time of the renewal of a lease agreement, the income of the household using a Department-approved Income Certification form. If a household exceeds the income limit at an annual income recertification, the Operator should follow the Available Unit Rule as outlined in Section 42(g)(2)(D) of the Internal Revenue Code, which will be implemented in the following manner:

(A) Where the household's income exceeds the AMI as designated, the household can be redesignated to the next AMI level in the Regulatory Agreement. The next available unit of comparable size in the Development is to be reserved for and occupied by a tenant that meets the AMI of the household that was determined to exceed the income limit. Example 1104(1): Development Regulatory Agreement includes units at 60% and 80%. Unit 101, a one-bedroom Unit Type, is designated as 60%. At the annual income recertification, the household income was determined to exceed 60% but was less than 80% AMI. The unit should be redesignated as 80% at the time the determination is made, and the next available one-bedroom Unit Type in the Development must be reserved for and occupied by an 60% household. At the time of determination that the unit should be 80%, with proper notification, the household rent may be increased to the new rent designation.

(B) Where the household's income exceeds the AMI as designated and the household is designated at the highest AMI in the Regulatory Agreement, the next available unit of comparable size in the Development is to be reserved for and occupied by a tenant that meets the AMI of the household that was determined to exceed the income limit. Example 1104(2): Development Regulatory Agreement includes units at 60% and 80%. Unit 201, a two-bedroom Unit Type is designated as 80%. At the annual income recertification, household income was determined to exceed 80% AMI, the highest AMI in the Regulatory Agreement. The next two-bedroom Unit Type in the Development must be reserved for and occupied by an 80% household. Unit 201 retains the 80% status until such time that the Available Unit Rule, as described here, is complied with or violated.

(7) The Development must affirmatively market to households participating in the Housing Choice Voucher program and local housing authorities.

(8) The PFC's website must include information about the Development and its compliance with Section 303.0425, Texas Local Government Code, along with its policies on the acceptance of Housing Choice Voucher holders.

(d) The Auditor will review the Development's form of tenant lease and leasing polices to ensure the Development meets the following requirements and will report any deficiencies found in the Audit Report:

(1) Public Facility User cannot refuse to rent to an individual or family solely because the individual or family participates in a Housing Choice Voucher program.

(2) Public Facility User cannot require a minimum income standard for families participating in a Housing Choice Voucher program that exceeds two hundred and fifty percent (250%) of the tenant portion of rent.

(3) Each residential lease agreement for a Restricted Unit must provide the following:

(A) The landlord may not retaliate against the tenant or the tenant's guests by taking action because the tenant established, attempted to establish, or participated in a tenant organization;

(B) The landlord may only choose to not renew the lease if the tenant is in material noncompliance with the lease, including nonpayment of rent; committed one or more substantial violations of the lease; failed to provide required information on the income, composition, or eligibility of the tenant's household; or committed repeated minor violations of the lease that: disrupt the livability of the Development, adversely affect the health and safety of any person or the right to quiet enjoyment of the leased premises and related Development facilities, interfere with the management of the Development, or have an adverse financial effect on the Development, including the failure of the tenant to pay rent in a timely manner.

(C) To non-renew a lease, the landlord must provide, at minimum, a thirty (30)-day written notice of non-renewal to the tenant.

(D) Tenants may not waive these protections in a lease or lease addendum.

(e) For the Rent Reduction calculation for the second, third, and fourth years after the date of acquisition by the Public Facility Corporation, it is the sole responsibility of the PFC User to calculate the

annual savings to households living in Restricted Units (when compared to the annual rental income that would have been collected on those Restricted Units if they were charged market rate).

(1) Market rate will be determined as the highest rent charged for the same Unit Type at the Development. For Developments where all of the units are Restricted Units, the PFC User must provide evidence of reasonable comparable maximum market rents, which may be based on market studies, leasing surveys, Fair Market Rent as published by HUD, or other methods acceptable to the Department.

(2) Total savings for rent-restricted households must be no less than sixty percent (60%) of the estimated amount of the annual ad-valorem taxes that would be imposed on the Development without an exemption.

(f) The Auditor must maintain monitoring records and papers for each Audit Report for three years, and must provide the Department and/or the Chief Appraiser a copy of their monitoring records upon request.

§10.1105. Income and Rent Requirements.

(a) Annual Income for a household occupying a Restricted Unit shall be determined consistent with the Section 8 Program administered by the U.S. Department of Housing and Urban Development (HUD), using the definitions of annual income described in 24 CFR §5.609 as further described in the HUD Handbook 4350.3, as amended from time to time.

(b) For purposes of determining income under this subsection, payment under section 403 of title 37, United States Code, as basic pay allowance for housing shall be disregarded with respect to any qualified building.

(1) The term "qualified building" means any building located:

(A) in any county in which is located a qualified military installation to which the number of members of the Armed Forces of the United States assigned to units based out of such qualified military installation, as of June 1, 2008, has increased by not less than 20 percent, as compared to such number on December 31, 2005, or

(B) in any county adjacent to a county described in subparagraph (A) of this paragraph.

(2) The term "qualified military installation" means any military installation or facility the number of members of the Armed Forces of the United States assigned to which, as of June 1, 2008, is not less than 1,000.

(c) Income and rent limits will be derived from data released by HUD.

(d) The income and rent limits specified in the Regulatory Agreement will be used to determine if a household's income and rent is restricted.

(e) To document compliance, PFC User must maintain sufficient documentation to support income eligibility of households which includes an application that screens for all includable sources of income and assets, firsthand or third-party documentation of income and assets, and a Department Income Certification form signed by all adults in the household.

§10.1107. Options for Review.

(a) The Public Facility User must attempt to address any issues of noncompliance identified in the Audit Report with the Auditor, prior to submission of the Audit Report to the Department.

(b) During any applicable corrective action period, the Public Facility User may appeal any noncompliance issued as provided for in §1.7 of this title (relating to Appeals). The filing of an appeal does not extend or suspend the 60-day corrective action period. The Public Facility User and Auditor, as applicable, must provide all documentation requested by the Department no later than ten (10) calendar days before the meeting.

(c) A Public Facility User may request alternative dispute resolution in accordance with the Department's rules regarding such resolution set forth at §1.17 of this title (related to Alternative Dispute Resolution).

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 November 5, 2026.

TRD-202604698
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: November 25, 2026
Proposal publication date: July 24, 2026
For further information, please call: (512) 475-3959

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CHAPTER 13. MULTIFAMILY DIRECT LOAN RULE

10 TAC §13.1

The Texas Department of Housing and Community Affairs (the Department) adopts the amendment of 10 TAC Chapter 13, Multifamily Direct Loan Rule, §13.1 Purpose, without changes to the text previously published in the September 18, 2026 issue of the *Texas Register* (51 TexReg 6393). The rule will not be republished. The purpose of the proposed amendment is to address changes proposed by the Texas Regulatory Efficiency Office (TREO) and to provide Applicants with additional guidance related to the Build America, Buy America (BABA) Act.

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

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

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the amendment would be in effect:

1. The amendment does not create or eliminate a government program, but relates to a minor change for an existing activity: administration of the Multifamily Direct Loan Program.

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

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

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

5. The amendment is not creating a new regulation.

6. The amendment will not repeal an existing regulation.

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

8. The amendment will not negatively or positively affect this state's economy.

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

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

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The amendment does not contemplate or authorize a taking by the Department, therefore no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6). The Department has evaluated the amendment as to its possible effects on local economies and has determined that for the first five years the amendment would be in effect there would be no economic effect on local employment; therefore no local employment impact statement is required to be prepared.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the amendment is in effect, the public benefit anticipated as a result of the amendment would be increased flexibility for program participants. There will not be economic costs to individuals required to comply with the amended section.

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

PUBLIC COMMENT. The Department requested comments on the amendment. The public comment period was held September 18, 2026, through October 19, 2026, to receive input on the amendment. No comments were received.

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

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

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

Filed with the Office of the Secretary of State on November 5, 2026.

TRD-202604691

Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: November 25, 2026
Proposal publication date: September 18, 2026
For further information, please call: (512) 475-3959

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 24. SUBSTANTIVE RULES APPLICABLE TO WATER AND SEWER SERVICE PROVIDERS

SUBCHAPTER B. RATES AND TARIFFS

16 TAC §24.41

The Public Utility Commission of Texas (commission) amends 16 Texas Administrative Code (TAC) §24.41 relating to Cost of Service. The commission adopts this rule with no changes to the proposed text as published in the September 25, 2026 issue of the *Texas Register* (51 TexReg 6650). The rule will not be republished. The adopted rule defines the expenses that are prohibited from inclusion as components of cost of service. The adopted rule also identifies certain criteria related to ratemaking rate base and establishes the timing for commission review of transaction and closing costs associated with the acquisition for sales, transfers, or mergers that involve a fair market valuation under 16 TAC §24.238, relating to Fair Market Valuation.

The adopted rule removes rule provisions that were inadvertently omitted due to scrivener's error under Project 59086 and not proposed for amendment as part of that rulemaking proceeding. The restored provisions are directly reflective of statutory language and well-established commission interpretations House Bill 2712, as enacted by the 89th Texas Legislature (R.S.)The amended rule also makes minor clerical and stylistic changes.

The commission received no public comments under Project Number 59086.

The amended rule is adopt under the following provisions of the Texas Water Code: §13.041(a), which provides the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by the Texas Water Code that is necessary and convenient to the exercise of that power and jurisdiction; Texas Water Code §13.041(b), which provides the commission with the authority to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; Texas Water Code §13.185(b) which requires that utility rates to be based on the original cost of property used by and useful to the utility during the test year in providing service; Texas Water Code §13.185(g) which authorizes the commission to promulgate reasonable rules and regulations with respect to the allowance or disallowance of certain expenses for ratemaking purposes; and Texas Water Code §13.305 which prescribes the ratemaking rate base associated with the acquisition of a water or sewer utility.

Cross Reference to Statute: Texas Water Code §§13.041(a) and (b); 13.185(b) and (g); 13.305.

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 November 5, 2026.

TRD-202604666
Katelyn Lewis
Rules Coordinator
Public Utility Commission of Texas
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Proposal publication date: September 25, 2026
For further information, please call: (512) 936-7044

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SUBCHAPTER J. WHOLESALE WATER OR SEWER SERVICE

16 TAC §§24.307, 24.309, 24.311

The Public Utility Commission of Texas (commission) adopts amendments to §24.307 relating to Commission's Review of Petition or Appeal Concerning Wholesale Rate, §24.309 relating to Evidentiary Hearing on Public Interest, and §24.311 relating to Determination of Public Interest with changes to the proposed text as published in the May 22, 2026, issue of the *Texas Register* (51 TexReg 3492). The rules are adopted in Project No. 53981. The rules will be republished.

These adopted rules will implement Texas Water Code §12.013 and §13.0431 as revised by Senate Bill (SB) 997 during the Texas 87th Regular Legislative Session, which establishes that a party adversely affected by a public interest determination may appeal the decision to a court of proper jurisdiction. The adopted rules will allow the commission to make a determination as to whether the protested rate is charged under a contract and allow the commission to consider cost of service evidence when evaluating whether a wholesale seller's rate is in the public interest. The commission also makes a number of minor revisions to the proposed rules to clarify intent, align with statutory language, and eliminate unnecessary or duplicative language.

The commission received comments from Texas Water Association (TWA) and Texas Association of Water Companies (TAWC).

Proposed §24.307(e) - Determination if a rate is charged under the contract

Proposed §24.307(e) allows the commission to determine if the disputed rate was charged under the contract.

TWA opposes the amended language in proposed §24.307(e) as overly broad and confusing as the commission lacks the authority to adjudicate breach of contract claims. TWA argued that when parties disagree about whether the rate is pursuant to the contract, the Commission's exercise of its jurisdiction must be paused for a court of proper jurisdiction to resolve the breach-of-contract claim as per the existing rule. As such, TWA recommended deleting the additions to §24.307(e) in the proposal for publication.

Commission Response

The commission declines to remove the additions to proposed §24.307(e), as recommended by TWA. Texas courts have repeatedly held that an agency with exclusive or primary jurisdiction may decide issues that require interpreting contracts when necessary to exercise its statutory jurisdiction. TWC §12.013 empowers the commission to fix reasonable rates for the furnishing of water for any purpose mentioned in chapter 11 or 12 of the TWC. This statute predates most if not all existing water and sewer service contracts, making the statute part of the contract terms. The commission, in exercising its rate authority under TWC § 12.103, is not making an adjudication of a contract but simply an application of the terms of the contract.

The Third Court of Appeals has also determined in Texas Water Commission v. City of Fort Worth that an agency with statutory authorization can review the reasonableness of contractual rates where the public interest is affected. Because the proposed rules require an initial determination that the contracted rates are not in the public interest, the rules are in alignment with both statutory language and judicial precedent on this topic.

Finally, the commission notes that this application is to solely to determine which procedural track at the commission is best suited to handle the issue between the parties, not to adjudicate the terms of the contract presented to the commission or SOAH.

Proposed §24.311(b) - Factors considered in a public interest determination

Proposed §24.311(b) allows the commission to consider all relevant factors in determining whether the protested rate adversely affects the public interest, including an analysis of the seller's cost of service.

TWA opposes the proposed change in §24.311(b) which allows for an analysis of the seller's cost of service as a factor in determining whether the protested rate adversely affects the public interest. TWA explained that considering cost of service would result in a significant change in the commission's consideration of these cases and further commented that the proposed change exceeds the scope of SB 997. TWA requested §24.311(b) remain as it does in the existing rule, which only allows for consideration of cost of service if the second phase of a rate appeal is reached. TAWC recommends clarifying the types of "cost of service" evidence the commission will consider in determining whether a protested wholesale rate adversely affects the public interest and whether that evidence is distinct from "cost of service" evidence the commission will consider for wholesale rate-setting.

Commission Response

While the commission agrees that the public interest determination is not based solely on whether the challenged rates match the cost of service, the cost of providing service may be a relevant factor in determining whether the rate charged harms the public interest. For example, if the cost of providing service has decreased significantly from the time the contract was entered into, increases in wholesale rates may reflect an abuse of monopoly power. The existing rule framework for wholesale water rate appeals was set by the Texas Natural Resource Conservation Commission (now the Texas Commission on Environmental Quality) under the presumption that the parties involved are sophisticated, have options to acquire water supply, and that rates charged under a contract are just and reasonable. When the commission obtained jurisdiction over water and sewer rates, these rules were transferred over to the commission without edit, but with the understanding that rulemakings would follow to refine the economic regulation of water and sewer water utilities. The commission declines to remove the proposed changes to proposed §24.311(b).

The commission acknowledges that the proposed language did not limit the analysis or type of evidence related to cost of service that may be relevant. At the public interest stage, a full rate case analysis of the seller's cost of service is inappropriate. This rule revision is merely intended to allow the presiding officer the flexibility to consider cost of service or specific components of cost of service as a consideration when analyzing whether the proposed rate harms the public interest. As such, the commission modifies proposed §24.311(b) to state, "the commission may consider all relevant factors in determining whether the protested rate harms the public interest, including evidence of the seller's cost of service."

Statutory Authority

These amendments are adopted under Texas Water Code §12.013, which provides the commission rate-fixing power over water furnished by a political subdivision to another political subdivision on a wholesale basis; Texas Water Code §13.0431(f) which requires the commission to determine that the amount charged under the contract harms the public interest prior to holding a hearing on just and reasonable amounts to be charged under the contract. Texas Water Code §13.041(a), which provides the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by the Texas Water Code that is necessary and convenient to the exercise of that power and jurisdiction; and Texas Water Code §13.041(b), which provides the commission with the authority to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross Reference to Statute: Texas Water Code §12.013; §13.041(a); and §13.041(b).

§24.307. Commission's Review of Petition or Appeal Concerning Wholesale Rate.

(a) When a petition or appeal is filed, the commission must determine within 30 days of the filing of the petition or appeal whether the petition contains all of the information required by this subchapter. For purposes of this section only, the initial review of probable grounds must be limited to a determination whether the petitioner has met the requirements §24.305 of this title (relating to Petition or Appeal). If the commission determines that the petition or appeal does not meet the requirements of §24.305 of this title, the commission must inform the petitioner of the deficiencies within the petition or appeal and allow the petitioner the opportunity to correct these deficiencies. If the commission determines that the petition or appeal does meet the requirements of §24.305 of this title, the commission must forward the petition or appeal to the State Office of Administrative Hearings for an evidentiary hearing. The scope of the evidentiary hearing will be as determined by subsection (c), (d), or (e), as applicable.

(b) For the purposes of this subchapter, a rate is charged under a written contract if the decision establishing the rate was subject to or based upon the terms of a written contract executed between the seller and buyer.

(c) For a petition or appeal to review a rate where the seller and buyer agree that the protested rate is charged under a written contract, the commission will forward the petition or appeal to the State Office of Administrative Hearings to conduct an evidentiary hearing to determine whether the amount charged under the contract harms the public interest.

(d) For a petition or appeal to review a rate where the seller and buyer agree that the protested rate is not charged under a written contract, the commission will forward the petition or appeal to the State Office of Administrative Hearings to conduct an evidentiary hearing on the rate.

(e) For a petition or appeal to review a rate where the seller and buyer disagree whether the protested rate is charged under a written contract, the commission will forward the petition or appeal to the State Office of Administrative Hearings to conduct an evidentiary hearing to determine whether the rate is charged under a written contract. The administrative law judge will prepare a proposal for decision addressing whether the protested rate is charged under a contract for consideration by the commission.

(1) If the rate is found to be charged under a written contract, the commission will forward the petition or appeal to the State Office of Administrative Hearings to conduct an evidentiary hearing to determine whether the amount charged under the contract harms the public interest.

(2) If the rate is found to not be charged under a written contract, the commission will forward the petition or appeal to the State Office of Administrative Hearings to conduct an evidentiary hearing on the rate.

§24.309. Evidentiary Hearing on Public Interest.

(a) If the commission forwards a petition or appeal to the State Office of Administrative Hearings pursuant to §24.307(a) and (c) of this title (relating to Commission's Review of Petition or Appeal Concerning Wholesale Rate) for an evidentiary hearing, the scope of the hearing will be limited to determining whether the amount charged under the contract harms the public interest.

(b) Prior to the evidentiary hearing on public interest, discovery will be limited to matters relevant to the public interest determination.

(c) The seller and buyer may agree to consolidate the evidentiary hearing on public interest and the evidentiary hearing on the rate. If the seller and buyer agree to consolidation, then the administrative law judge must hold a consolidated evidentiary hearing.

(d) If a party adversely affected by the public interest determination in a hearing under this section appeals the decision to a court of proper jurisdiction, the presiding officer will abate proceedings on the contract until the appeal is resolved.

§24.311. Determination on Public Interest.

(a) The commission may consider all relevant factors in determining whether the protested rate harms the public interest, including evidence of the seller's cost of service.

(b) The commission must determine that the amount charged under the contract harms the public interest if, after the evidentiary hearing on public interest, the commission concludes at least one of the following public interest criteria have been violated:

(1) the protested rate impairs the seller's ability to continue to provide service, based on the seller's financial integrity and operational capability;

(2) the protested rate impairs the purchaser's ability to continue to provide service to its retail customers, based on the purchaser's financial integrity and operational capability;

(3) the protested rate evidences the seller's abuse of monopoly power in its provision of water or sewer service to the purchaser. In making this inquiry, the commission must weigh all relevant factors. The factors may include:

(A) the disparate bargaining power of the parties, including the purchaser's alternative means, alternative costs, environ-

mental impact, regulatory issues, and problems of obtaining alternative water or sewer service;

(B) the seller's failure to reasonably demonstrate the changed conditions that are the basis for a change in rates;

(C) the seller changed the computation of the revenue requirement or rate from one methodology to another;

(D) any other valuable consideration received incident to the contract;

(E) incentives necessary to encourage regional projects or water conservation measures;

(F) the seller's obligation to meet federal and state wastewater discharge and drinking water standards;

(G) the rates charged in Texas by other sellers of water or sewer service for resale; or

(H) the seller's rates for water or sewer service charged to its retail customers, compared to the retail rates the purchaser charges its retail customers as a result of the rate the seller demands from the purchaser; or

(4) the protested rate is unreasonably preferential, prejudicial, or discriminatory, compared to the rates the seller charges other customers.

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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Katelyn Lewis
Rules Coordinator
Public Utility Commission of Texas
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For further information, please call: (512) 936-7044

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 103. HEALTH AND SAFETY

SUBCHAPTER BB. COMMISSIONER'S RULES CONCERNING GENERAL PROVISIONS FOR HEALTH AND SAFETY

19 TAC §103.1105

The Texas Education Agency (TEA) adopts new §103.1105, concerning the procedure related to notification to a student's parent regarding the student's mental, emotional, or physical health or well-being. The new section is adopted without changes to the proposed text as published in the June 26, 2026 issue of the *Texas Register* (51 TexReg 4070) and will not be republished. The adopted new rule implements the procedure required by Senate Bill (SB) 12, 89th Texas Legislature, Regular Session, 2025, for school districts and open-enrollment charter schools to notify the parent of a student enrolled in the district of any change in services provided or monitoring related to a student's mental, emotional, or physical health or well-being.

REASONED JUSTIFICATION: Subsection (a) establishes the statutory authority for the rule and the responsibilities of school districts and open-enrollment charter schools to implement SB 12, 89th Texas Legislature, Regular Session, 2025.

Subsection (b) establishes definitions applicable to the rule.

Subsection (c) establishes parent rights and access to information about a child that schools may not restrict.

Subsection (d) requires school districts to provide parental notification regarding health-related and health-care services available at the campus the student attends.

Subsections (e) and (f) establish criteria for school districts related to parental notification when health-related services or health-care services change.

Subsection (g) establishes timelines for parental notification when a school district changes monitoring of a student's mental, emotional, or physical health or well-being.

Subsection (h) requires that services and monitoring related to a student's mental, emotional, or physical health or well-being reinforce a parent's right to make decisions for the parent's child.

Subsection (i) requires timely parental notification when a student discloses behaviors indicating an adverse change in the student's mental, emotional, or physical health or well-being.

Subsection (j) prohibits school district procedures that encourage withholding information from parents or interfere with a parent's ability to access information or participate in decision making regarding the parent's child.

Subsection (k) preserves parental choice by requiring opt-in or opt-out decisions to be made on an individual service basis.

Subsection (l) requires school districts to allow parents to opt out of any health-related service provided to their child.

Subsection (m) specifies a parent's statutory right to exempt their child from a service or monitoring.

Subsection (n) requires parental consent before a student receives specified services, including psychological or psychiatric examinations or treatments (except as otherwise permitted by law), health-care services (except in emergencies), or the administration of certain well-being questionnaires or health screening forms.

Subsection (o) establishes when a health-related service also meets the definition of a health-care service for purposes of this rule and requires parental consent before a student participates in such a service.

Subsection (p) requires schools to provide parents with a copy of any well-being questionnaire or health screening form before it is administered to a student.

Subsection (q) limits the use of opt-in practices by school districts for first aid and routine health-related services reasonably expected to be provided in schools.

Subsection (r) establishes the duration of parental consent for health-related and health-care services, providing that consent remains effective through the end of the school year unless otherwise specified by the parent.

Subsection (s) requires school districts to maintain written parental consent in a student's education records.

Subsection (t) allows school personnel to make routine, non-service-based inquiries regarding a student's daily or general well-being without parental consent.

Subsection (u) clarifies that general caretaking provided by a school district is not considered a health-related service or a health-care service.

Subsection (v) specifies that parental notification and any opt-out rights for health screenings required by law are governed by those laws and related rules.

Subsection (w) specifies that consent for services provided through an individualized education program or as part of an evaluation to determine eligibility under the Individuals with Disabilities Education Act (IDEA) is governed by IDEA requirements related to informed consent, consent revocation, and consent expiration.

Subsection (x) preserves existing requirements to report and investigate child abuse or neglect.

Subsection (y) establishes exceptions to required parental notification when disclosure would likely result in abuse or neglect or when conducting behavioral threat assessments, while requiring compliance with other applicable notification and consent laws.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began on June 26, 2026, and ended July 27, 2026. A secondary public comment period on the proposal began on August 14, 2026, and ended on August 28, 2026. Following is a summary of the public comments received and agency responses.

Comment: Eleven individuals, Mental Health America of Greater Houston (MHAGH), Texas Coalition for Healthy Minds (TCHM), Texas Council of Administrators of Special Education (TCASE), Texas Nurses Association (TNA), Texas School Nurses Organization (TSNO), and the Texas Counseling Association (TCA) commented that the proposed rule does not clearly distinguish among health-care services, health-related services, general caretaking, nursing services, counseling services, first aid, monitoring, and emergency care. Commenters stated that ambiguous definitions may result in inconsistent implementation, confusion for parents and staff, and barriers to student services.

Response: The agency disagrees that additional definitions or distinctions are necessary. The agency has determined that the proposed rule, when read as a whole, provides sufficient context regarding the activities and services that the rule describes.

Comment: Six individuals, MHAGH, TCHM, Texas AFT, First Focus on Children, and TCA commented that routine wellness check-ins, supportive conversations, classroom-based supports, relationship-building activities, and general inquiries regarding student well-being should not be considered psychological examinations, screenings, health-care services, or regulated mental health services requiring parental consent.

Response: The agency disagrees that revisions to the rule are necessary. The agency has determined that the proposed rule, when read as a whole, provides sufficient context regarding the activities and services to which the parental consent requirements apply.

Comment: Six individuals, MHAGH, TCHM, Texas Association of School Psychologists (TASP), Clarity Child Guidance Center, First Focus on Children, and TCA commented that broad consent requirements and parental notification provisions may unintentionally restrict student access to school-based counseling, crisis intervention, suicide prevention services, behavioral supports, multi-tiered system of supports (MTSS) interventions, and other mental health services. Commenters expressed concern that delayed intervention may reduce opportunities for prevention and early support.

Response: The agency disagrees that revisions to the consent and notification requirements are necessary. The agency has determined that the rule appropriately implements statutory requirements while supporting parental awareness and involvement regarding services provided to students.

Comment: Clarity Child Guidance Center, MHAGH, TCHM, and First Focus on Children raised concerns that the proposed rule may reduce access to school-based mental health supports, prevention activities, and early intervention services. MHAGH and TCHM specifically expressed concern about reduced access to preventive and crisis-response supports, while Clarity Child Guidance Center expressed concern that these changes could increase reliance on emergency psychiatric assessments and crisis services.

Response: The agency disagrees. The agency has carefully considered the concerns raised by commenters regarding potential impacts on access to school-based mental health supports, prevention activities, early intervention services, and crisis-response supports. However, the agency has determined that the proposed rule appropriately balances parental rights and informed consent requirements with the ability of local educational agencies (LEAs) to support students' health, safety, and well-being.

Comment: Four individuals, Clarity Child Guidance Center, TASP, First Focus on Children, and TCA commented that trusted relationships between students and counselors, school psychologists, social workers, nurses, and other school personnel are critical to facilitating productive communication between students and parents and expressed concern that automatic parental notification requirements may discourage students from seeking support and undermine opportunities to facilitate parent-child communication.

Response: The agency disagrees that revisions to the proposed rule are necessary. While the agency acknowledges the commenters' perspectives regarding the importance of trusted relationships between students and school personnel, it has determined that the rule appropriately balances the role of school personnel in supporting students with the important interest of parental awareness and involvement. The agency does not agree that the notification requirements in the rule will undermine student support relationships or impede productive communication among students, parents, and school personnel.

Comment: TASP, Disability Rights Texas (DRTx), Texas AFT, American Civil Liberties Union (ACLU) of Texas, Healthy Futures of Texas, First Focus on Children, National Association of Social Workers-Texas (NASW-TX), Clarity Child Guidance Center, and the Texas Classroom Teachers Association (TCTA) commented that subsection (i), which requires parental notification regarding certain student disclosures and behaviors, extends beyond the statutory framework established by SB 12, creates implementation challenges, and may have unintended consequences for students. The commenters recommended deleting, narrowing, or substantially revising the provision.

Response: The agency disagrees that subsection (i) should be deleted, narrowed, or substantially revised. The agency has determined that the provision is consistent with the purposes of SB 12 and appropriately supports parental awareness and involvement regarding matters affecting their children.

Comment: Texas AFT, ACLU of Texas, First Focus on Children, TNA, TSNO, and TCTA commented that terms such as "adverse change," "sexual behaviors," and "harmful behaviors" are vague, subjective, and likely to result in inconsistent implementation.

Response: The agency disagrees that the terms identified by commenters require additional definition or revision. The agency has determined that the language appropriately supports consistent implementation while allowing consideration of individual circumstances.

Comment: TCA commented that the term "mental, emotional, or physical health or well-being" is overly broad and lacks sufficient specificity to distinguish crisis intervention and health-related services from routine developmental counseling activities provided through comprehensive school counseling programs.

Response: The agency disagrees that the phrase "mental, emotional, or physical health or well-being" is overly broad or requires further clarification. The agency has determined that the phrase is sufficiently clear within the context of the rule and provides appropriate flexibility for implementation.

Comment: One individual, TASP, TCASE, and First Focus on Children commented that the inclusion of tattoos and permanent body modifications as mandatory parental notification triggers is unclear and may result in inconsistent implementation. Commenters requested clarification regarding whether casual discussion, hypothetical future interest, or existing tattoos would trigger notification requirements.

Response: The agency disagrees that additional clarification is necessary. The agency has determined that the rule provides sufficient direction regarding the circumstances that trigger parental notification and that LEAs are capable of applying the provision based on the facts and context of each situation.

Comment: Texas AFT, ACLU of Texas, First Focus on Children, TNA, and TSNO commented that the requirement to notify parents regarding student disclosures involving sexual behaviors is overly broad, lacks sufficient clarity, and may discourage students from seeking support.

Response: The agency disagrees that the requirement regarding disclosures involving sexual behaviors is overly broad or lacks sufficient clarity. The agency has determined that the provision supports parental awareness and involvement regarding matters affecting their children. The agency does not agree that the requirement will discourage students from seeking support.

Comment: TASP, DRTx, Texas AFT, ACLU of Texas, Healthy Futures of Texas, First Focus on Children, NASW-TX, and Clarity Child Guidance Center commented that the abuse-or-neglect exception is too narrow, overly procedural, and inconsistent with the framework established by Texas Education Code (TEC), §26.0083, and recommended preserving professional judgment and aligning the rule more closely with the statute.

Response: The agency disagrees that revisions to the abuse-or-neglect exception are necessary. The agency has determined that the rule appropriately balances student safety, legal reporting obligations, and parental involvement.

Comment: Texas AFT, ACLU of Texas, Healthy Futures of Texas, NASW-TX, TNA, and TSNO commented that documentation requirements associated with the abuse-or-neglect exception could create records that may subsequently be accessed by parents, potentially defeating the purpose of the exception and placing students at risk, and recommended eliminating the documentation requirement or otherwise protecting such records from disclosure.

Response: The agency disagrees that revisions to the documentation requirements are necessary. The agency has determined that the documentation requirement supports consistent implementation of the rule and accountability for decisions made under the abuse-or-neglect exception. The agency further notes that access to and disclosure of student records are governed by applicable federal and state law.

Comment: MHAGH, TCHM, Texas AFT, First Focus on Children, TCASE, and DRTx commented that additional clarification is needed regarding psychological or psychiatric examinations, mental health screenings, wellness questionnaires, surveys, and screening tools. Commenters recommended distinguishing formal clinical activities from routine educational and well-being activities.

Response: The agency disagrees that additional clarification is necessary regarding psychological or psychiatric examinations, mental health screenings, wellness questionnaires, surveys, or screening tools. The agency has determined that the rule provides sufficient direction regarding the activities subject to its requirements and does not believe further distinctions between formal clinical activities and routine educational or well-being activities are needed.

Comment: NASW-TX, TNA, TSNO, and Healthy Futures of Texas commented that parental consent procedures should permit written consent in either paper or electronic form.

Response: The agency provides the following clarification. The rule does not prescribe a specific method for obtaining written parental consent and does not preclude the use of paper or electronic documentation, consistent with applicable law and local practice.

Comment: One individual and First Focus on Children commented that districts should have a mechanism to address situations in which schools make repeated, documented good-faith attempts to obtain parental consent but receive no response.

Response: The agency disagrees that additional provisions are necessary to address situations in which a parent does not respond to requests for consent. The agency has determined that the rule appropriately reflects the statutory requirement for parental consent and does not provide an exception based on a parent's lack of response.

Comment: MHAGH and TCHM commented that districts should be permitted to obtain tiered, bundled, or category-based parental consent rather than service-specific consent for each individual service.

Response: The agency disagrees that revisions are necessary to permit tiered, bundled, or category-based parental consent and has determined that the rule appropriately requires consent for the specific service or activity for which consent is sought.

Comment: One individual commented that parental consent should remain effective until revoked by a parent rather than expiring annually, while another individual expressed concern that

annual consent renewal requirements could interrupt student access to services and create administrative burdens. TNA and TSNO recommended continuity of consent for students with documented chronic health conditions accompanied by valid provider orders. Another individual supported allowing parental consent to remain valid for the school year, particularly for students with chronic health conditions requiring ongoing nursing care.

Response: The agency disagrees that revisions to the annual consent requirement are necessary. The agency has determined that annual parental consent is required by statute and therefore cannot be modified through rulemaking. While the agency acknowledges commenters' concerns regarding continuity of services and administrative burden, the agency has determined that the rule appropriately implements the statutory requirement.

Comment: DRTx and TCASE commented that the proposed rule should explicitly state that nothing in the rule modifies, delays, limits, or overrides IDEA or Section 504 requirements, including Child Find obligations, evaluations, accommodations, related services, procedural safeguards, and progress monitoring.

Response: The agency disagrees that additional language is necessary to address the relationship between this rule and requirements under IDEA and Section 504 of the Rehabilitation Act of 1973. The agency has determined that the rule does not alter, limit, or supersede any applicable federal legal requirements. LEAs remain responsible for complying with all IDEA and Section 504 obligations, including Child Find, evaluations, accommodations, related services, procedural safeguards, and progress monitoring, as applicable.

Comment: DRTx and TCASE commented that the proposed rule should not create additional consent or notification requirements that interfere with evaluations, observations, related services, progress monitoring, behavioral supports, behavior intervention plans, and services provided through an individualized education program (IEP) or Section 504 plan. TCASE also requested clarification regarding MTSS interventions and routine progress monitoring.

Response: The agency disagrees that additional revisions or clarifications are necessary. The agency has determined that the rule does not modify or supersede requirements related to IEPs, Section 504 plans, evaluations, related services, progress monitoring, behavioral supports, or other obligations under applicable law and that the rule provides sufficient direction regarding the applicability of its consent and notification requirements.

Comment: Six individuals, TNA, and TSNO commented that examples included under "general caretaking" improperly characterize licensed nursing assessments as non-clinical activities and stated that assessments involving temperature, throat condition, swollen lymph nodes, breathing, and other symptoms require professional nursing judgment.

Response: The agency disagrees that revisions to the examples of general caretaking are necessary. The agency has determined that the rule provides sufficient context regarding the types of activities addressed by the provision and does not alter the professional responsibilities, judgment, or licensure requirements applicable to school nurses and other health professionals. The examples appropriately illustrate the scope of the provision and provide adequate direction for implementation.

Comment: Six individuals, TNA, TSNO, and Healthy Futures of Texas commented that clarification is needed regarding nursing practice, nursing interventions, emergency care, medication administration, chronic condition management, physician-ordered services, and emergency medications to ensure licensed nursing functions are appropriately recognized under the rule.

Response: The agency disagrees that additional clarification is necessary regarding nursing practice, nursing interventions, emergency care, medication administration, chronic condition management, physician-ordered services, or emergency medications. The agency has determined that the rule provides sufficient direction for implementation and does not alter the professional responsibilities, judgment, or licensure requirements applicable to school nurses and other health professionals.

Comment: TCTA commented that the proposed rule would benefit from a definition of "medication," particularly because products such as antibacterial ointments may create uncertainty regarding implementation of the first-aid provisions.

Response: The agency disagrees that a definition of "medication" is necessary to implement the first-aid provisions. The agency has determined that the rule provides sufficient direction for implementation and that the term is commonly understood within the context of school health and first-aid practices.

Comment: Five individuals, TNA, and TSNO commented that additional clarification is needed regarding the distinction between first aid, medication administration, emergency medications, and routine school health interventions.

Response: The agency disagrees that additional clarification is necessary regarding the distinction between first aid, medication administration, emergency medications, and routine school health interventions. The agency has determined that the rule provides sufficient direction for implementation and does not alter the professional responsibilities, judgment, or licensure requirements applicable to school nurses and other health professionals.

Comment: TNA and TSNO commented that the rule should define "emergency," clarify emergency determinations, and protect school personnel who act in good faith during emergency situations.

Response: The agency disagrees that additional definitions, clarification, or protections are necessary. The agency has determined that the rule provides sufficient direction regarding emergency situations and allows LEAs and licensed professionals to exercise appropriate judgment based on the circumstances presented. Additionally, the rule does not alter any legal protections or responsibilities that may apply to school personnel acting in emergency situations.

Comment: Healthy Futures of Texas commented that provisions affecting student mental health supports, crisis response, and access to services may have unintended consequences for students and requested revisions to better protect access to appropriate supports and interventions.

Response: The agency disagrees that revisions are necessary to address potential impacts on student mental health supports, crisis response, or access to services. The agency has determined that the rule appropriately implements statutory requirements while preserving the ability of LEAs to support students and address their health, safety, and well-being.

Comment: TNA and TSNO commented that the rule should more clearly identify health screenings required by law and align terminology with existing statutory requirements, including diabetes risk assessments.

Response: The agency disagrees that additional language is necessary to identify specific health screenings required by law or to further align terminology with existing statutory requirements. The agency has determined that the rule provides sufficient direction for implementation and does not alter requirements established by other applicable laws governing health screenings and assessments.

Comment: TCASE, TNA, and TSNO commented that clarification is needed regarding records retention requirements for consent forms, consent revisions, revocations, notifications, and related documentation.

Response: The agency disagrees that additional clarification regarding records retention requirements is necessary. The retention and maintenance of records are governed by applicable federal and state laws, regulations, and local records management requirements.

Comment: Three individuals, TCASE, First Focus on Children, TNA, and TSNO commented that implementation of the proposed rule will create substantial administrative burdens associated with consent tracking, annual notices, documentation, monitoring, records retention, and compliance activities.

Response: The agency provides the following clarification. The requirements are necessary to implement statutory provisions and support consistent administration of the rule. While LEAs may incur responsibilities related to consent, notification, documentation, and compliance, the agency has determined that these requirements are appropriate to ensure compliance with applicable law.

Comment: Texas Public Charter School Association commented that the rule should more consistently identify provisions that apply to both school districts and open-enrollment charter schools.

Response: The agency disagrees that additional revisions are necessary to identify the applicability of the rule to open-enrollment charter schools. The agency has determined that the rule provides sufficient direction regarding the entities subject to its requirements and is consistent with applicable statutory provisions governing school districts and open-enrollment charter schools.

Comment: Four individuals commented in support of the proposed language clarifying the distinction between health-care services and health-related services and clarifying that Texas Essential Knowledge and Skills (TEKS)-based instruction and counseling curriculum topics, including suicide prevention, substance abuse prevention, wellness education, and similar instructional activities, do not require parental opt-in consent.

Response: The agency agrees that the rule appropriately distinguishes between health-care services and health-related services and clarifies that instructional activities provided as part of the TEKS and school counseling curricula, including suicide prevention, substance abuse prevention, wellness education, and similar educational activities, are not subject to parental opt-in consent requirements.

Comment: Three individuals commented that opt-in and opt-out processes should be explained using plain language and implemented in a manner that supports informed parental decision-making without creating unnecessary barriers to timely access to care.

Response: The agency agrees that parents should receive information in a manner that supports informed decision-making. However, the agency disagrees that revisions to the rule are necessary. The agency has determined that the rule provides sufficient direction regarding consent requirements while allowing LEAs flexibility in how they communicate with parents and implement consent processes.

Comment: TCA commented that parent notices should clearly identify all available student services and that all four components of the Comprehensive School Counseling Program, including guidance curriculum, responsive services, individual planning, and system support, should be recognized as student services and reflected in parental notices and consent procedures. TCA stated that excluding components of the Comprehensive School Counseling Program from notices, consent procedures, or the definition of services could limit student access to preventive, developmental, academic, career, social-emotional, and counseling-related supports.

Response: The agency disagrees that additional requirements regarding the content of parent notices are necessary or that all components of a Comprehensive School Counseling Program should be specifically identified as student services for purposes of parental notices and consent procedures. The agency has determined that the rule provides sufficient direction regarding required notifications and the services and activities subject to its requirements while allowing LEAs flexibility in communicating information about available student services and programs. The agency has determined it is not necessary to require notices to include or specifically identify all components of a Comprehensive School Counseling Program.

Comment: TCA commented that the proposed rule may create confusion regarding the relationship between SB 12 and the Comprehensive School Counseling Program requirements established under TEC, Chapter 33, and requested clarification that the rule does not limit, supersede, or conflict with those statutory requirements.

Response: The agency disagrees that additional clarification is necessary regarding the relationship between this rule and the Comprehensive School Counseling Program requirements under TEC, Chapter 33. The agency has determined that the rule appropriately implements the requirements of SB 12. To the extent there is any conflict between this rule and other agency rules or guidance, this rule controls. The agency has determined that the rule provides sufficient direction for LEAs to implement its requirements alongside other applicable legal obligations.

Comment: TCTA commented that the parental rights provisions in the proposed rule should more closely track existing statutory language governing parental rights, compelling state interests, access to information, and abuse-or-neglect protections contained elsewhere in the TEC.

Response: The agency disagrees that the rule should more closely track parental rights provisions found elsewhere in the TEC. The agency has determined that the rule appropriately implements the statutory requirements it is intended to address and provides sufficient direction for LEAs. Existing parental rights provisions and protections established in statute continue to apply according to their terms.

Comment: Seven individuals, Texas AFT, TNA, and TSNO commented that TEA should provide additional plain-language guidance, implementation examples, FAQs, and supporting resources to facilitate consistent statewide implementation.

Response: The agency disagrees that revisions to the rule are necessary. The agency has determined that the rule provides sufficient direction for implementation by LEAs.

Comment: An individual expressed concern that SB 12 may limit schools' ability to address students' social-emotional and mental health needs and provide supportive resources.

Response: The agency has determined that the rule appropriately implements the requirements of SB 12 while continuing to allow LEAs to provide services and supports consistent with applicable law.

STATUTORY AUTHORITY. The new section is adopted under Texas Education Code (TEC), §26.009, as amended by SB 12, 89th Texas Legislature, Regular Session, 2025, which establishes parental consent requirements for certain activities and services affecting a student's mental, emotional, or physical health or well-being; and TEC, §26.0083, as added by SB 12, 89th Texas Legislature, Regular Session, 2025, which establishes parental rights to receive information and to provide or withhold consent regarding a student's mental, emotional, or physical health and health related services.

CROSS REFERENCE TO STATUTE. The new section implements TEC, §26.009, as amended by SB 12, 89th Texas Legislature, Regular Session, 2025, and §26.0083, as added by SB 12, 89th Texas Legislature, Regular Session, 2025.

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 November 9, 2026.

TRD-202604756
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: November 29, 2026
Proposal publication date: June 26, 2026
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 101. DENTAL LICENSURE

22 TAC §101.1

The State Board of Dental Examiners (Board) adopts an amendment to rule 22 TAC §101.1, pertaining to general qualifications for dental licensure. The adopted amendment allows applicants to submit their National Practitioner Data Bank reports electronically. The amendment is adopted without changes to the proposed text as published in the September 25, 2026, issue of the *Texas Register* (51 TexReg 6656) and will not be republished.

Texas Dental Association (TDA) submitted a written comment in support of the rule as proposed. TDA provides that it supports the proposed amendments that allow dentist and dental hygienist applicants to submit their National Practitioner Data Bank reports electronically.

Board response: No changes were made as a result of the comment.

This rule is adopted under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

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 November 6, 2026.

TRD-202604721
Lauren Studdard
General Counsel
State Board of Dental Examiners
Effective date: November 26, 2026
Proposal publication date: September 25, 2026
For further information, please call: (737) 363-2333

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22 TAC §101.8

The State Board of Dental Examiners (Board) proposes amendments to rule 22 TAC §101.8, pertaining to persons with criminal backgrounds. The amendments update the Board's disciplinary guidelines concerning the imprisonment of a licensee following a felony conviction or deferred adjudication, in accordance with Senate Bill 1080. The amendments are adopted without changes to the proposed text as published in the September 25, 2026, issue of the *Texas Register* (51 TexReg 6658) and will not be republished.

Texas Dental Association (TDA) submitted a written comment in support of the rule as proposed. TDA provides that the amendments limit mandatory revocation after a felony conviction or deferred adjudication to offenses that directly relate to the duties and responsibilities of a licensee, offenses listed in Article 42A.054, Code of Criminal Procedure, and sexually violent offenses.

Board response: The Board agrees, and no changes were made to the proposed rule as a result of the comment.

Joe Loiacono, II, J.D. submitted a written comment in opposition of the rule as proposed. He provides: there is a conflict between the proposed section (f) and the existing provisions of sections (b)(2), (b)(3), and (j) as they relate to deferred adjudications; the new proposed section (f) and the preexisting sections (c)(1) and (c)(2) identify certain types of deferred adjudications to be considered, sections (b)(2), (b)(3), and (j) do not provide such parameters.

Board response: The Board disagrees that there is a conflict in the rule. Subsections (b)(2), (b)(3), and (j) include necessary definitions for other portions of the rule, implement statutory re-

quirements, and are necessary to protect patients. No changes were made to the proposed rule as a result of the comment.

This rule is adopted under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

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 November 6, 2026.

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Lauren Studdard
General Counsel
State Board of Dental Examiners
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Proposal publication date: September 25, 2026
For further information, please call: (737) 363-2333

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CHAPTER 103. DENTAL HYGIENE LICENSURE

22 TAC §103.1

The State Board of Dental Examiners (Board) adopts an amendment to rule 22 TAC §103.1, pertaining to general qualifications for hygiene licensure. The adopted amendment allows applicants to submit their National Practitioner Data Bank reports electronically. The amendment is adopted without changes to the proposed text as published in the September 25, 2026, issue of the *Texas Register* (51 TexReg 6662) and will not be republished.

Texas Dental Association (TDA) submitted a written comment in support of the rule as proposed. TDA provides that it supports the proposed amendments that allow dentist and dental hygienist applicants to submit their National Practitioner Data Bank reports electronically.

Board response: No changes were made as a result of the comment.

This rule is adopted under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

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 November 6, 2026.

TRD-202604724
Lauren Studdard
General Counsel
State Board of Dental Examiners
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Proposal publication date: September 25, 2026
For further information, please call: (737) 363-2333

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CHAPTER 114. EXTENSION OF DUTIES OF AUXILIARY PERSONNEL--DENTAL ASSISTANTS

22 TAC §114.6

The State Board of Dental Examiners (Board) adopts an amendment to rule 22 TAC §114.6, pertaining to general qualifications for registration or certification. The adopted amendment allows applicants to submit their National Practitioner Data Bank reports electronically. The amendment is adopted with changes to the proposed text as published in the September 25, 2026, issue of the *Texas Register* (51 TexReg 6665) and will be republished.

Texas Dental Association (TDA) submitted a written comment in support of the rule as proposed. TDA provides that it supports the proposed amendments that allow dental assistant applicants to submit their National Practitioner Data Bank reports electronically.

Board response: No changes were made as a result of the comment.

This rule is adopted under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

§114.6. General Qualifications for Registration or Certification.

(a) Any person who desires to provide dental assistant services requiring registration or certification must obtain the proper registration or certification issued by the Board before providing the services, except as provided in Texas Occupations Code §265.001(d) and §114.11 of this chapter (relating to Exemption).

(b) Any applicant for registration or certification must meet the requirements of this chapter.

(c) To be eligible for registration or certification, an applicant must provide with an application form approved by the Board satisfactory proof to the Board that the applicant:

(1) has fulfilled all requirements for registration or certification outlined in this chapter;

(2) has submitted documentation of proof of United States citizenship, legal permanent residency in the United States, or federal work authorization. This requirement applies for initial and renewal applications. The applicant must submit one of the following:

(A) a valid, unexpired driver's license or state identification certificate issued by a state or territory of the United States that complies with the minimum document requirements and issuance standards for federal recognition under the REAL ID Act of 2005, Public Law 109-13, unless the driver's license is marked "Limited Term" or "Temporary";

(B) a valid, unexpired driver's license or state identification certificate that does not comply with REAL ID issued by

one of the following states: Alabama, Alaska, Arizona, Arkansas, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Michigan, Mississippi, Missouri, Montana, Nebraska, New Hampshire, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, West Virginia, Wisconsin, or Wyoming;

(C) a valid passport. Valid passport is defined as:

(i) an unexpired passport or passport card issued by the United States government; or

(ii) an unexpired passport issued by the government of another country accompanied by a current permanent resident card or unexpired immigrant visa issued by the United States Department of Homeland Security;

(D) a valid, unexpired license to carry a handgun issued by the Texas Department of Public Safety under Government Code, Chapter 411, Subchapter H;

(E) a United States Certificate of Naturalization (Form N-550 or N-570); or

(F) a United States Certificate of Citizenship (Form N-560 or N-561);

(3) has met the requirements of §101.8 of this title (relating to Persons with Criminal Backgrounds);

(4) has not had any disciplinary action taken in this state or any other jurisdiction;

(5) has successfully completed a current course in basic life support;

(6) has taken and passed the jurisprudence assessment administered by the Board or an entity designated by the Board within one year immediately prior to application;

(7) has paid all application, examination and registration or certification fees required by the Dental Practice Act and Board rules;

(8) has completed a course in human trafficking prevention approved by the executive commissioner of the Texas Health and Human Services Commission; and

(9) has submitted a National Practitioner Data Bank self-query report upon initial registration or certification.

(d) Applications for dental assistant registration and certification must be delivered to the office of the State Board of Dental Examiners.

(e) An application for dental assistant registration or certification is filed with the Board when it is actually received, date-stamped, and logged-in by the Board along with all required documentation and fees. An incomplete application will be returned to the applicant with an explanation of additional documentation or information needed.

(f) The Board may refuse to issue a registration or certificate or may issue a conditional registration or certificate to any individual who does not meet the requirements of subsection (c)(3) or (4) of this section, or who:

(1) presents to the Board fraudulent or false evidence of the person's qualification for registration or certification;

(2) is guilty of any illegality, fraud, or deception during the process to secure a registration or certification;

(3) is habitually intoxicated or is addicted to drugs;

(4) commits a dishonest or illegal practice in or connected to dentistry;

(5) is convicted of a felony under federal law or law of this state; or

(6) is found to have violated a law of this state relating to the practice of dentistry within the 12 months preceding the date the person filed an application for a registration or certification.

(g) If the Board chooses to issue a conditional registration or certificate, the individual may be required to enter into an agreed settlement order with the Board at the time the registration or certificate is issued.

(1) The order may include limitations including, but not limited to, practice limitations, stipulations, compliance with court ordered conditions, notification to employer or any other requirements the Board recommends to ensure public safety.

(2) In the event an applicant is uncertain whether he or she is qualified to obtain a dental assistant registration or certification due to criminal conduct, the applicant may request a Criminal History Evaluation Letter in accordance with §114.9 of this chapter (relating to Criminal History Evaluation Letter), prior to application.

(3) Should the individual violate the terms of his or her conditional registration or certificate, the Board may take additional disciplinary action against the individual.

(h) An applicant whose application is denied by the Board may appeal the decision to the State Office of Administrative Hearings.

(i) An individual whose application for dental assistant registration/certification is denied is not eligible to file another application for registration/certification until the expiration of one year from the date of denial or the date of the Board's order denying the application for registration/certification, whichever date is later.

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 November 6, 2026.

TRD-202604725
Lauren Studdard
General Counsel
State Board of Dental Examiners
Effective date: November 26, 2026
Proposal publication date: September 25, 2026
For further information, please call: (737) 363-2333

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CHAPTER 116. DENTAL LABORATORIES

22 TAC §116.3

The State Board of Dental Examiners (Board) adopts amendments to rule 22 TAC §116.3, pertaining to the registration and renewal of a dental laboratory. The amendments: remove repetitive statutory language, remove repetitive language found in the Board's dental laboratory application, update the rule to reflect the Board's current licensing process, and include grammatical changes. The amendments are adopted without changes to the proposed text as published in the September 25, 2026, issue of the *Texas Register* (51 TexReg 6666) and will not be republished.

Texas Dental Association (TDA) submitted a written comment in support of the proposed rule as presented, but asked for clarification. First, TDA provides: that the amendments remove criminal history and disciplinary history from the required application information. If the questions remain only on the application, under the provision for "any other information required by the Board," the Board could change or drop them without notice and comment. TDA asks the Board to keep these questions in rule, or to confirm that it will change them only through rulemaking. Second, TDA provides: the amendments remove the requirement for the laboratory owner's notarized signature, but §116.3(b)(2)(A) still requires the notarized signature of the certified dental technician of record. TDA asks the Board to confirm whether it intends to keep this difference in the rule.

Board response: The Board requires disclosure of criminal history and disciplinary history in other rules (for example, see 22 TAC §§101.1 and 101.8). The Board plans to remove the "any other information required by the Board" language because it is repetitive statutory language (see Tex. Occ. Code §266.153). The Board plans to remove the language requiring the notarized signature of the CDT because it is repetitive language found in the Board's application. These changes will be proposed in a future issue of the *Texas Register*. No changes were made to this proposed rule as a result of the comment.

This amendment is adopted under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

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 November 6, 2026.

TRD-202604729
Lauren Studdard
General Counsel
State Board of Dental Examiners
Effective date: November 26, 2026
Proposal publication date: September 25, 2026
For further information, please call: (737) 363-2333

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PART 8. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

CHAPTER 153. RULES RELATING TO PROVISIONS OF THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT

22 TAC §153.5

The Texas Appraiser Licensing and Certification Board (TALCB) adopts amendments to 22 TAC §153.5, Fees.

The amendments are adopted without changes to the proposed text as published in the August 28, 2026, issue of the *Texas Register* (51 TexReg 5622) and will not be republished.

The amendments to §153.5 remove extraneous language for greater clarity and the ability for users to submit payment to the agency through an online process.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Occupations Code §1103.151, which authorizes TALCB to adopt rules related certifying or licensing an appraiser or appraiser trainee and qualifying education and experience required for certifying or licensing an appraiser or appraiser trainee that are consistent with applicable federal law and guidelines recognized by the Appraiser Qualifications Board (AQB); §1103.152, which authorizes TALCB to prescribe qualifications for appraisers that are consistent with the qualifications established by the AQB, §1103.153, which authorizes TALCB to adopt rules relating to the requirements for approval of a provider or course for qualifying or continuing education, and §1103.156 which authorizes TALCB to establish reasonable fees to administer Chapter 1103, 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 November 6, 2026.

TRD-202604731
Kathleen Santos
General Counsel
Texas Appraiser Licensing and Certification Board
Effective date: November 26, 2026
Proposal publication date: August 28, 2026
For further information, please call: (512) 936-3088

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

22 TAC §§159.1, 159.3, 159.4, 159.52, 159.101, 159.102, 159.104, 159.109, 159.161, 159.201, 159.203

The Texas Appraiser Licensing and Certification Board (TALCB) adopts amendments to 22 TAC §159.1, Definitions; §159.3, Appraisal Management Company Advisory Committee; §159.4, Exemptions; §159.52, Fees; §159.101, Use of Business Name; §159.102, Eligibility for Registration; Ownership; §159.104, Primary Contact; Appraiser Contact; Controlling Person; Contact Information; §159.109, Inactive Status; §159.161, Appraiser Panel; §159.201, Guidelines for Disciplinary Action; and §159.203, Sanctions Guidelines.

The amendments are adopted without changes to the proposed text as published in the August 28, 2026, issue of the *Texas Register* (51 TexReg 5623) and will not be republished.

The amendments to Chapter 159 are made following TALCB's quadrennial rule review for this Chapter. Additionally, the proposed amendments to §159.1, Definitions clarify the definition of "appraisal panel" under the AMC Act.

The amendments to §159.3 extend the date for the AMC advisory committee to continue to exist to coincide with the next deadline to complete the quadrennial rule review for Chapter 159.

The amendments to §159.4 add a requirement for specific disclaimer language to be utilized by a person seeking to become registered under the AMC Act when soliciting prospective panelists.

The amendments to §159.52 remove extraneous language for greater clarity in light of the ability for users to submit payment to the agency through an online process.

The amendments to §159.101 and §159.161(a) are made as a result of the agency's license management system project. Because of this project, users will be able to provide information to the agency through an online process, rather than by submitting a paper form. As a result, the language is clarified to reflect this change.

The amendments to §159.102 clarify terms utilized to determine eligibility for registration.

The amendments to §159.104 and §159.109 are made for readability and greater clarity.

The amendments to §159.161(b) are made to more clearly identify when an AMC is considered to have made an assignment to an appraiser.

The amendments to §159.201 clarify an AMC's controlling person is subject to disciplinary action under the AMC Act and adds language allowing the Board to take disciplinary action or deny issuing or renewing a license for an act relating to the business of appraisal management that warrants suspension or revocation.

Finally, the amendments to §159.203 more clearly defines instances of minor deficiencies and serious deficiencies for the purposes of TALCB's sanctions guidelines.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Occupations Code §1104.151, which authorizes TALCB to adopt rules necessary to administer the provisions of Chapter 1104, 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 November 6, 2026.

TRD-202604730
Kathleen Santos
General Counsel
Texas Appraiser Licensing and Certification Board
Effective date: November 26, 2026
Proposal publication date: August 28, 2026
For further information, please call: (512) 936-3088

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PART 15. TEXAS STATE BOARD OF PHARMACY

CHAPTER 291. PHARMACIES
SUBCHAPTER A. ALL CLASSES OF PHARMACIES

22 TAC §291.9

The Texas State Board of Pharmacy adopts amendments to §291.9, concerning Prescription Pick Up Locations. These amendments are adopted without changes to the proposed text as published in the September 18, 2026, issue of the *Texas Register* (51 TexReg 6400). The rule will not be republished.

The amendments clarify that a dangerous drug may be delivered to the office of a prescriber if the drug is picked up by or administered to the patient in the prescriber's office.

The Board received comments from Jeenu Philip, R.Ph., with Walgreens suggesting the rule be amended to remove the term "single-dose" from subsection (b)(2)(A)(ii) and to expressly recognize the delivery practices authorized under 21 U.S.C. §829a and 21 C.F.R. §1306.07(f)(1).

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 November 9, 2026.

TRD-202604752
Daniel Carroll, Pharm.D.
Executive Director
Texas State Board of Pharmacy
Effective date: November 29, 2026
Proposal publication date: September 18, 2026
For further information, please call: (512) 305-8084

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TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 509. FREESTANDING EMERGENCY MEDICAL CARE FACILITIES
SUBCHAPTER C. OPERATIONAL REQUIREMENTS

26 TAC §509.45

The executive commissioner of the Texas Health and Human Services Commission (HHSC) adopts an amendment to §509.45, concerning Medical Staff.

Section 509.45 is adopted with changes to the proposed text as published in the July 24, 2026, issue of the *Texas Register* (51 TexReg 4808). This rule will be republished.

BACKGROUND AND JUSTIFICATION

Currently, to have medical staff privileges in a freestanding emergency medical care (FEMC) facility licensed by HHSC, a physician must have at least one year of experience in emergency services and current certification in advanced cardiac life support (ACLS), pediatric advanced life support (PALS), and advanced trauma life support (ATLS).

HHSC amends §509.45 to allow an FEMC facility to grant medical staff privileges to a physician who has at least one year of experience in emergency services and current board certification in emergency medicine from the American Board of Emergency Medicine (ABEM) or the American Osteopathic Board of Emergency Medicine (AOBEM) without requiring the physician to maintain separate ACLS, PALS, and ATLS certifications. The amendment is in response to requests from providers, and because HHSC determined that emergency medicine board certification from the ABEM or AOBEM ensures a physician has the required knowledge and skills related to emergency life support without having additional life support certifications.

The amendment addresses concerns from providers and physicians that additional certifications for board-certified emergency room physicians create a regulatory hardship for FEMC facilities.

COMMENTS

The 31-day comment period ended August 24, 2026.

HHSC received comments regarding the proposed rule from three commenters. HHSC received comments from Texas Association of Freestanding Emergency Centers, Texas College of Emergency Physicians, and one individual. A summary of comments relating to the rule and HHSC's responses follows.

Comment: An individual supported reconsideration of the existing rule, citing the Coalition of Board-Certified Emergency Physicians statement that an ABEM or AOBEM physician board certification supersedes the requirements for life support certifications such as ACLS, PALS, and ATLS.

Response: HHSC declines to revise the rules in response to the comment because the proposed amendment provides flexibility by allowing either physician board certifications or life support certifications.

Comment: The Texas Association of Freestanding Emergency Centers and Texas College of Emergency Physicians expressed support for the proposed rules.

Response: HHSC acknowledges these comments. No changes were made in response to the comments.

HHSC made minor editorial changes to the rule text for consistency and clarity.

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation of and provision of health and human services by the health and human services system, and Texas Health and Safety Code §254.101, which authorizes HHSC to adopt rules regarding freestanding emergency medical care facilities.

§509.45. Medical Staff.

(a) The medical staff shall periodically conduct appraisals of its members according to medical staff bylaws.

(b) The medical staff shall examine credentials of candidates for medical staff membership and make recommendations to the governing body on the appointment of the candidate.

(c) The medical staff shall be well-organized and accountable to the governing body for the quality of the medical care provided to patients.

(1) The medical staff shall be organized in a manner approved by the governing body.

(2) If the medical staff has an executive committee, the members of the committee shall be doctors of medicine or osteopathy.

(3) The facility shall maintain records of medical staff meetings.

(4) The governing body shall assign responsibility for the organization and conduct of the medical staff only to an individual physician.

(5) Each medical staff member shall sign a statement signifying the member will abide by medical staff and facility policies.

(d) The medical staff shall adopt, implement, and enforce written bylaws, rules, and regulations that outline the responsibilities of the medical staff. The bylaws shall:

(1) be approved by the governing body;

(2) include a statement of the duties and privileges of each category of medical staff (e.g., active, courtesy, consultant);

(3) describe the organization of the medical staff;

(4) describe the qualifications a candidate must meet for the medical staff to recommend the governing body appoint the candidate; and

(5) include criteria for determining the privileges to be granted and a procedure for applying the criteria to individuals requesting privileges.

(e) To have medical staff privileges, a physician must have at least one year of experience in emergency services, and current certification in:

(1) advanced cardiac life support;

(2) pediatric advanced life support; and

(3) advanced trauma life support.

(f) A physician with at least one year of experience in emergency services and current board certification in emergency medicine from the American Board of Emergency Medicine (ABEM) or the American Osteopathic Board of Emergency Medicine (AOBEM) may be granted privileges without having the certifications required in subsection (e) of this section.

(g) If a physician with at least one year of experience in emergency services has an expired board certification in emergency medicine from the ABEM or AOBEM, the physician shall not be granted privileges until the physician has:

(1) current board certification in emergency medicine from the ABEM or AOBEM; or

(2) the current certifications listed in subsection (e) 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 November 2, 2026.

TRD-202604602
Stephanie Tourk
Deputy Chief Counsel
Health and Human Services Commission
Effective date: November 22, 2026
Proposal publication date: July 24, 2026
For further information, please call: (512) 834-4591

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CHAPTER 742. MINIMUM STANDARDS FOR LISTED FAMILY HOMES
SUBCHAPTER D. NOTIFICATIONS AND LIABILITY INSURANCE REQUIREMENTS

26 TAC §742.402

The executive commissioner of the Texas Health and Human Services Commission (HHSC) adopts new §742.402, concerning Disclosed Revocations and Parental Notice Requirements.

Section 742.402 is adopted without changes to the proposed text as published in the July 31, 2026, issue of the *Texas Register* (51 TexReg 4977). This rule will not be republished.

BACKGROUND AND JUSTIFICATION

The new section is necessary to comply with Senate Bill (SB) 225, 87th Legislature, Regular Session, 2021.

SB 225 added Texas Human Resources Code §42.0562, which requires the collection of information on any child care home employee who has had a revocation of a state-issued license, registration, certificate, permit, or other occupational authorization by a licensing authority.

The new section meets the requirements of Texas Human Resources Code §42.0562 and extends those requirements to child care home permit holders, controlling persons, employees, and prospective employees. The new section also requires the child care home to notify a parent for each enrolled child if a revocation is disclosed.

COMMENTS

The 31-day comment period ended August 31, 2026.

HHSC received comments regarding the proposed rule from two individuals. A summary of comments relating to the rule and HHSC's responses follows.

Comment: Two commenters expressed support for the rule project.

Response: HHSC acknowledges the comments, and no changes are needed in response to these comments.

STATUTORY AUTHORITY

The new section is adopted under Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation of and provision of services by the health and human services system, as well as Texas Government Code §524.0005, which provides the executive commissioner with broad rule-making authority. In addition, §742.402 is authorized by Texas Human Resources Code §42.042(a), which requires the executive commissioner to adopt rules to carry out the provisions of Chapter 42.

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

Filed with the Office of the Secretary of State on November 6, 2026.

TRD-202604719
Stephanie Tourk
Deputy Chief Counsel
Health and Human Services Commission
Effective date: December 17, 2026
Proposal publication date: July 31, 2026
For further information, please call: (512) 438-3269

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CHAPTER 747. MINIMUM STANDARDS FOR CHILD CARE HOMES
SUBCHAPTER B. ADMINISTRATION AND COMMUNICATION

The executive commissioner of the Texas Health and Human Services Commission (HHSC) adopts an amendment to §747.207, concerning Primary Caregiver Responsibilities, and new §747.311, concerning Disclosed Revocations and Parental Notice Requirements.

Section 747.207 is adopted with changes to the proposed text as published in the July 31, 2026, issue of the *Texas Register* (51 TexReg 4978). The changes include clarifying which requirements are considered a violation of HHSC minimum standards. This rule will be republished.

Section 747.311 is adopted without changes to the proposed text as published in the July 31, 2026, issue of the *Texas Register* (51 TexReg 4978). This rule will not be republished.

BACKGROUND AND JUSTIFICATION

The amendment and new section are necessary to comply with Senate Bill (SB) 225, 87th Legislature, Regular Session, 2021.

SB 225 added Texas Human Resources Code §42.0562, which requires the collection of information on any child care home employee who has had a revocation of a state-issued license, registration, certificate, permit, or other occupational authorization by a licensing authority.

The new section meets the requirements of Texas Human Resources Code §42.0562 and extends those requirements to child care home permit holders, controlling persons, employees, and prospective employees. The new section also requires the child care home to notify a parent for each enrolled child if a revocation is disclosed.

The amendment requires that a child care home's primary caregiver comply with Texas Workforce Commission Child Care Services (CCS) requirements related to fiscal accountability and fraud prevention when receiving subsidies. The amendment

strengthens rules related to a child care home's compliance with the CCS program requirements if receiving subsidies.

In addition, the amendment makes non-substantive changes, including the removal of the hyphen between "child" and "care."

COMMENTS

The 31-day comment period ended August 31, 2026.

HHSC received comments regarding the proposed rules from three commenters. HHSC received comments from the Texas Workforce Commission and two individuals. A summary of comments relating to the rules and HHSC's responses follows.

Comment: Two commenters expressed support for the rule project.

Response: HHSC acknowledges the comments, and no changes are needed in response to these comments.

Comment: Regarding §747.207, one commenter expressed support for the rule project.

Response: HHSC acknowledges the comment, and no changes are needed in response to this comment.

Changes were made to §747.207(11) to clarify which failures to comply with CCS requirements are considered violations of HHSC minimum standards.

DIVISION 1. PRIMARY CAREGIVER RESPONSIBILITIES

26 TAC §747.207

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation of and provision of services by the health and human services system, as well as Texas Government Code §524.0005, which provides the executive commissioner with broad rule-making authority. In addition, §747.207 and §747.311 are authorized by Texas Human Resources Code §42.042(a), which requires the executive commissioner to adopt rules to carry out the provisions of Chapter 42.

§747.207. Primary Caregiver Responsibilities.

The primary caregiver must:

(1) develop and follow the operational policies, as specified in this chapter;

(2) ensure all assistant caregivers and substitute caregivers follow the minimum standards, as specified in this chapter, and receive assignments that match each caregiver's skills, abilities, and training;

(3) ensure all household members follow the minimum standards, as specified in this chapter;

(4) report any suspected abuse, neglect, or exploitation directly to the Texas Abuse and Neglect Hotline, as required by Texas Family Code §261.101. The responsibility to make a report cannot be delegated, and the primary caregiver may not require a household member or employee to seek approval to make a report or to notify the primary caregiver that a report was made;

(5) allow a parent to visit the child care home any time during operating hours, without prior approval;

(6) request background checks as specified in Chapter 745, Subchapter F of this title (relating to Background Checks);

(7) keep all information about background checks confidential and protect background check information from disclosure to unauthorized persons, as required by law;

(8) follow liability insurance requirements in this division;

(9) ensure the number of children in care, both at the child care home and away from the home, such as during a field trip, does not exceed the licensed or registered capacity;

(10) comply with Chapter 42 of the Human Resources Code, all the minimum standards, and any other Texas Administrative Code rules that apply; and

(11) when receiving Texas Workforce Commission Child Care Services (CCS) subsidies, comply with CCS requirements related to fiscal accountability and fraud prevention. Failure to comply is considered a violation of the Texas Health and Human Services Commission minimum standards.

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 November 6, 2026.

TRD-202604722
Stephanie Tourk
Deputy Chief Counsel
Health and Human Services Commission
Effective date: December 17, 2026
Proposal publication date: July 31, 2026
For further information, please call: (512) 438-3269

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DIVISION 2. REQUIRED NOTIFICATIONS

26 TAC §747.311

STATUTORY AUTHORITY

The new section is adopted under Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation of and provision of services by the health and human services system, as well as Texas Government Code §524.0005, which provides the executive commissioner with broad rule-making authority. In addition, §747.207 and §747.311 are authorized by Texas Human Resources Code §42.042(a), which requires the executive commissioner to adopt rules to carry out the provisions of Chapter 42.

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

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Stephanie Tourk
Deputy Chief Counsel
Health and Human Services Commission
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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 3. LIFE, ACCIDENT, AND HEALTH INSURANCE AND ANNUITIES

SUBCHAPTER T. MINIMUM STANDARDS FOR MEDICARE SUPPLEMENT POLICIES

28 TAC §§3.3309, 3.3312, 3.3324

The commissioner of insurance adopts amendments to 28 TAC §§3.3309, 3.3312, and 3.3324, concerning requirements for Medicare supplement coverage. The amendments are adopted with one change to the proposed text published in the May 15, 2026 issue of the *Texas Register* (51 TexReg 3306). Section 3.3312 was modified in light of the adoption's expected publish date. The section will be republished. Section 3.3309 and §3.3324 are adopted without changes and will not be republished.

REASONED JUSTIFICATION. The amendments to §§3.3309, 3.3312, and 3.3324 are necessary to implement House Bill 2516, 89th Legislature, 2025, which added Insurance Code §1652.059 and §1652.060, requiring that individuals younger than 65 who become enrolled in Medicare by reason of end stage renal disease (ESRD) or amyotrophic lateral sclerosis (ALS) be given access to the same coverage, and in some cases at the same rates, as those offered to individuals 65 and older. The amendments also clarify the existing language and protections regarding guaranteed issuance and the rating of disabled enrollees when they turn 65, which were discussed in Commissioner's Bulletin #B-0027-21 (October 1, 2021) (available online at www.tdi.texas.gov/bulletins/2021/B-0027-21.html).

Descriptions of the sections' amendments follow.

Section 3.3309. Amendments to subsection (a)(1) remove language from subparagraphs (D) and (E) related to coverage for outpatient prescription drugs. Those provisions were included to implement the Medicare Prescription Drug Improvement and Modernization Act of 2003 but are no longer relevant.

Amendments to subsection (b) require that Medicare supplement applications elicit information as to whether someone younger than 65 qualifies under HB 2516. These changes are necessary to ensure that issuers have the information to comply with the new requirements. The amendments also delete extraneous language from the subsection.

Amendments to Figure: 28 TAC §3.3309(f) remove a reference to enrollment in Part D, which is no longer needed, and remove unnecessary underlines.

An amendment to subsection (g) revises a reference in the rule text that incorrectly refers to parts of Figure: 28 TAC §3.3309(f) as paragraphs of subsection (f).

Amendments also include nonsubstantive rule drafting and formatting changes for plain language and to conform to the agency's current rule drafting style and improve clarity. For example, "shall" is changed to "must" throughout the rule text, and "preexisting conditions" is changed to "preexisting condition limitations."

Section 3.3312. The title of this section is amended to add a reference "Notice Requirements" in light of the notification requirement found in new subsection (f) of this section.

Amendments to subsection (b) delete paragraphs (7) and (9) relating to enrollment in Medicare Part D and the Texas Health Insurance Pool, as the references in these paragraphs are obsolete and unnecessary, and renumber current paragraph (8) as paragraph (7). New subsection (b)(8) identifies for purposes of other amendments individuals meeting the requirements of Insurance Code §1652.059 and enrolled in Medicare before the effective date of the rule amendments.

An amendment in subsection (c)(1) revises a reference to the paragraphs in subsection (b) to reflect the changes to the paragraphs in that subsection. Subparagraphs (A) and (B) in subsection (c)(1) are amended to implement HB 2516 by clarifying that individuals eligible under that bill are entitled to the same plans that anyone turning 65 is eligible for. To conform to the deletion of subsection (b)(7), subsection (c)(2) is amended to remove provisions related to the removal of prescription drug coverage, and subsection (c)(4) is deleted.

New subsection (c)(4) implements the protections of HB 2516 by providing that individuals eligible under that bill are entitled to the same plans offered to others by the issuer and may not be subject to separate forms or rates.

An amendment deletes current subsection (d)(5) to conform to the deletion of subsection (b)(7). Subsequent paragraphs are renumbered.

An amendment to subsection (d)(6) deletes the reference to the Texas Health Insurance Pool, as it is obsolete. In accordance with Insurance Code §1652.060(d), which authorizes the commissioner to designate enrollment periods by rule, new text is added in subsection (d)(6) to provide a guaranteed issue period for those eligible under HB 2516. As proposed, subsection (d)(6) provided a guaranteed issue period from October 15, 2026, through March 31, 2027, to align with Medicare open enrollment periods and support individuals who may switch from a Medicare Advantage plan to traditional Medicare and want to purchase Medicare supplement coverage. Because the rule amendments are being adopted after October 15, the guaranteed issue period is modified to start December 1, 2026, and run through March 31, 2027.

New subsection (f) requires issuers to provide timely notice to those eligible for the enrollment period created by subsection (d)(6). This will ensure that those eligible under HB 2516 receive notice of their opportunity to realize the benefits of that legislation. As proposed, the text prohibited sending this notice prior to September 1, 2026 or later than October 15, 2026. Because the rule amendments are being adopted after those dates, the text "not earlier than September 1, 2026, and" has been deleted, and the deadline for sending the notice is modified to be January 1, 2027, to align with the start of the enrollment period.

The amendments include nonsubstantive rule drafting and formatting changes for plain language and to conform the section to the agency's current rule drafting style and improve clarity. For example, "in accordance with" is changed to "according to," and edits are made to paragraph organization for clarity.

Section 3.3324. Amendments to subsection (a) make clarifying changes to implement HB 2516. The changes relate to medical underwriting and exceptions to the required availability of Medicare supplement policies and certificates.

Amendments to subsection (b)(1) are necessary to distinguish between requirements for individuals younger than 65 who are eligible under HB 2516 and those who are not.

Amendments to subsection (b)(2) clarify that an individual turning 65 who previously obtained Medicare supplement coverage due to disability and early enrollment in Medicare has the same rights to obtain Medicare supplement coverage at age 65 as anyone else turning 65. If an individual chooses to remain with their plan, they must be charged the same premium as someone enrolling for the first time at age 65.

New subsection (b)(3) requires notice (beginning 90 days after the effective date of the section) to those enrollees turning 65 of any premium adjustment and new open enrollment period under subsection (b)(2). These changes are consistent with TDI's 2021 Bulletin #B-0027-21 (online at www.tdi.texas.gov/bulletins/2021/B-0027-21.html), which cited CMS' December 2002 guidance, Transmittal No. 02-03 (available online at www.cms.gov/Medicare/Health-Plans/Medigap/Downloads/mdgp0203.pdf), requiring a second open enrollment opportunity at age 65 for Medicare supplement policyholders who obtained coverage before 65 because of disability.

New subsection (b)(4) implements HB 2516 by requiring that qualifying individuals be charged the same rates as others for some plans and no more than 200% of the rates charged others for other plans. It also prohibits application of preexisting condition exclusions or waiting periods to these qualifying individuals.

New subsection (b)(5) provides that issuers filing for rate increases before January 1, 2028, in which they rely on HB 2516 as justification for the rate increase, must also affirm that the rates for those individuals that do not qualify under HB 2516 will continue to meet the loss ratio standards of 28 TAC §3.3307. This will assist TDI's review of rate increase requests and ensure compliance with rating requirements. In particular, TDI will be reviewing cases in which issuers reexamine their rates and increase them when eligible individuals are moved into the larger risk pool of those who become eligible for Medicare at age 65. In those cases, the rates of those individuals younger than 65 who are not eligible under HB 2516 and who remain in a separate risk pool that now no longer includes individuals with ESRD or ALS should also be reexamined to ensure they are not excessive.

In addition, the amendments include nonsubstantive rule drafting and formatting changes for plain language and to conform the section to the agency's current style and improve clarity.

SUMMARY OF COMMENTS AND AGENCY RESPONSE. TDI provided an opportunity for public comment on the rule proposal for a period that ended on June 17, 2026.

Commenters: TDI received written comments from four commenters: For Members Only Insurance Services and joint comments from the Texas Association of Health Plans (TAHP), America's Health Insurance Plans (AHIP), and the Texas Association of Life and Health Insurers (TALHI). No commenters spoke at a public hearing on the proposal held on June 15, 2026. Commenters in support of the proposal with changes are TAHP, AHIP, and TALHI. Commenters against the proposal are For Members Only Insurance Services.

General Comment

Comment. One commenter opposes the rule, noting that some insurance companies have paused or discontinued sales of Medicare supplement plans in Texas after HB 2516 went into effect, leading to fewer available plans and causing an increase in rates. The commenter asserts that the rule will reduce access to Medicare supplement plans and cause some seniors to cancel their plans due to cost and enroll in Medicare Advantage plans that may not meet their medical needs.

Agency Response. TDI declines to make a change because the proposed amendments to TDI's Medicare supplement rules are largely required in order to implement HB 2516. The main exercise of discretion in the proposal is to provide a second open enrollment opportunity to the ESRD and ALS populations. However, as discussed in response to the following comment, HB 2516 clearly gave TDI this discretion, which it is exercising due to the lack of evidence that individuals with ESRD and ALS were aware of the limited open enrollment opportunity provided by the bill that has now closed.

Comment on §3.3312(d)(6)

Comment. Three commenters oppose the proposed additional guaranteed issue period for individuals with ESRD and ALS that would run from October 15, 2026, through March 31, 2027. The commenters note that HB 2516 provided a guaranteed issue period from December 1, 2025, to June 1, 2026, a sufficient opportunity to obtain or change coverage. The commenters assert that a guaranteed issue period of 11 and a half months within a span of 16 months is not a limited enrollment window. Finally, the commenters state that the cumulative effect is to compound adverse selection, driving up premiums, while going further than the law requires and further than sound insurance market policy supports.

Agency Response. TDI disagrees and declines to make a change. The commenters do not assert that TDI lacks statutory authority and discretion to create a second open enrollment period. Insurance Code §1652.060, enacted in HB 2516, specifically requires the commissioner to "adopt rules as necessary to administer this section, including rules designating enrollment periods." Though the commenters assert that the ESRD and ALS population has already had a meaningful opportunity to obtain or change coverage, they have presented no evidence that any carrier has done anything to notify their current ESRD/ALS Medicare supplement enrollees of their opportunity to change plans, nor have they presented any evidence of any carrier doing any outreach to those with ESRD and ALS but without Medicare supplement coverage. Given the limited information provided regarding the initial open enrollment period that ended June 1, 2026, TDI believes it would frustrate the intent of the legislation not to provide an additional enrollment opportunity. TDI notes that, in addition to the discretionary rulemaking authority vested in the commissioner as described above, according to the bill analysis for HB 2516, the bill's purpose is to "improve access to Medicare supplement benefit plans for Texans younger than 65 years of age who qualify for Medicare due to disability, end stage renal disease, or amyotrophic lateral sclerosis by requiring that such individuals be offered coverage under those supplemental plans. . . ." *See* House Research Org., Bill Analysis, Tex. HB 2516, 89th Leg., 2025. Accordingly, TDI has determined it is appropriate to provide a second open enrollment opportunity, aligning with the Medicare general and Medicare Advantage open enrollment periods and require that carriers notify their current impacted enrollees of the limited opportunity to move to another plan. As noted in a preceding paragraph, because the rule amendments are being adopted after October 15, 2026, the guaranteed issue period as proposed is modified to start December 1, 2026, and run through March 31, 2027.

STATUTORY AUTHORITY. TDI adopts amendments to §§3.3309, 3.3312, and 3.3324 under Insurance Code §§1652.005, 1652.051, 1652.060, 1652.101, 1652.103, 1701.060, and 36.001.

Insurance Code §1652.005 requires the commissioner to adopt reasonable rules necessary and proper to carry out Insurance Code Chapter 1652, including rules necessary to retain federal certification as a state with an approved regulatory program.

Insurance Code §1652.051 requires the commissioner to adopt reasonable rules to establish standards for provisions in Medicare supplement benefit plans and standards for facilitating comparisons between different Medicare supplement plans. The standards may include provisions relating to initial and subsequent conditions of eligibility. These rules may also include reasonable rules that specifically prohibit plan provisions that are not otherwise specifically authorized by statute and that the commissioner determines are unjust, unfair, or unfairly discriminatory.

Insurance Code §1652.060 requires the commissioner to adopt rules as necessary to administer that section, including rules designating enrollment periods.

Insurance Code §1652.101 requires the commissioner to adopt reasonable rules to establish minimum loss ratio standards for Medicare supplement plans.

Insurance Code §1652.103 requires the commissioner by rule to provide a process for reviewing and approving or disapproving a proposed premium increase relating to Medicare supplement plans.

Insurance Code §1701.060 gives the commissioner general rulemaking authority to adopt reasonable rules necessary to implement the purposes of Insurance Code Chapter 1701, including rules that establish procedures and criteria under which forms will be reviewed.

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.

§3.3312. Guaranteed Issue for Eligible Persons; Notice Requirements.

(a) Guaranteed issue.

(1) Eligible persons are those individuals described in subsection (b) of this section who seek to enroll under the Medicare supplement policy during the period specified in subsection (d) of this section, who indicate on the application for a Medicare supplement policy that they meet the requirements of this section, and who submit evidence of eligibility as necessary, such as the date of termination, disenrollment, or Medicare Part D enrollment with the application for a Medicare supplement policy.

(2) With respect to eligible persons, an issuer must not deny or condition the issuance or effectiveness of a Medicare supplement policy described in subsection (c) of this section that is offered and is available for issuance to newly enrolled individuals by the issuer; must not discriminate in the pricing of a Medicare supplement policy because of health status, claims experience, receipt of health care, or medical condition; and must not impose an exclusion of benefits based on a preexisting condition under a Medicare supplement policy.

(b) Eligible persons. An eligible person is an individual described in any of the following paragraphs.

(1) The individual is enrolled under an employee welfare benefit plan that provides health benefits that supplement the benefits under Medicare, and the plan terminates, or the plan ceases to provide supplemental health benefits to the individual; or the individual is enrolled under an employee welfare benefit plan that is primary to Medicare and the plan terminates or the plan ceases to provide all health benefits to the individual because the individual leaves the plan.

(2) The individual is enrolled with a Medicare Advantage organization under a Medicare Advantage plan under Part C of Medicare, and any of the following circumstances apply, or the individual is age 65 or older and is enrolled with a Program of All-Inclusive Care for the Elderly (PACE) provider under §1894 of the Social Security Act, and there are circumstances similar to the following that would permit discontinuance of the individual's enrollment with the provider if the individual were enrolled in a Medicare Advantage plan:

(A) the certification of the organization or plan has been terminated;

(B) the organization has terminated or otherwise discontinued providing the plan in the area in which the individual resides;

(C) the individual is no longer eligible to elect the plan because of a change in the individual's place of residence or other change in circumstances specified by the Secretary, but not including termination of the individual's enrollment on the basis described in §1851(g)(3)(B) of the Social Security Act (where the individual has not paid premiums on a timely basis or has engaged in disruptive behavior as specified in standards under §1856), or the plan is terminated for all individuals within a residence area;

(D) the individual demonstrates, according to guidelines established by the Secretary, that:

(i) the organization offering the plan substantially violated a material provision of the organization's contract under 42 U.S.C. Chapter 7, Subchapter XVIII, Part D, in relation to the individual, including the failure to provide an individual on a timely basis medically necessary care for which benefits are available under the plan or the failure to provide the covered care according to applicable quality standards; or

(ii) the organization, agent, or other entity acting on the organization's behalf materially misrepresented the plan's provisions in marketing the plan to the individual; or

(E) the individual meets other exceptional conditions as the Secretary may provide.

(3) The individual is enrolled with an entity listed in subparagraphs (A) - (D) of this paragraph and enrollment ceases under the same circumstances that would permit discontinuance of an individual's election of coverage under paragraph (2) of this subsection:

(A) an eligible organization under a contract under §1876 of the Social Security Act (Medicare cost);

(B) a similar organization operating under demonstration project authority, effective for periods before April 1, 1999;

(C) an organization under an agreement under §1833(a)(1)(A) of the Social Security Act (health care prepayment plan); or

(D) an organization under a Medicare Select policy.

(4) The individual is enrolled under a Medicare supplement policy and the enrollment ceases because:

(A) of the insolvency of the issuer or bankruptcy of the nonissuer organization; or of other involuntary termination of coverage or enrollment under the policy;

(B) the issuer of the policy substantially violated a material provision of the policy; or

(C) the issuer, an agent, or other entity acting on the issuer's behalf materially misrepresented the policy's provisions in marketing the policy to the individual.

(5) The individual was enrolled under a Medicare supplement policy and terminates enrollment and subsequently enrolls, for the first time, with any Medicare Advantage organization under a Medicare Advantage plan under Part C of Medicare, any eligible organization under a contract under §1876 of the Social Security Act (Medicare cost), any similar organization operating under demonstration project authority, any PACE provider under §1894 of the Social Security Act, or a Medicare Select policy; and the subsequent enrollment is terminated by the individual during any period within the first 12 months of the subsequent enrollment (during which time the individual is permitted to terminate the subsequent enrollment under §1851(e) of the Social Security Act).

(6) The individual, on first becoming enrolled in Medicare Part B, enrolls in a Medicare Advantage plan under Part C of Medicare, or with a PACE provider under §1894 of the Social Security Act, and disenrolls from the plan or program no later than 12 months after the effective date of enrollment.

(7) The individual loses eligibility for health benefits under Title XIX of the Social Security Act (Medicaid).

(8) The individual meets the criteria in Insurance Code §1652.059, concerning Coverage for Certain Individuals Younger than 65, and enrolled in Medicare Part B before the effective date of this section.

(c) Products that eligible persons are entitled to.

(1) Persons described by subsection (b)(1), (2), (3), (4), and (7) of this section are entitled to a Medicare supplement policy that has a benefit package classified as follows:

(A) Plan A, B, C, F (including F with a High Deductible), K, or L offered by any issuer, for an individual age 65 or older, or an individual who meets the criteria in Insurance Code §1652.059, who first became eligible for Medicare before January 1, 2020, except that for persons under age 65 who do not meet the criteria in Insurance Code §1652.059, it is a policy that has a benefit package classified as Plan A; or

(B) Plan A, B, D, G (including G with a High Deductible), K, or L offered by any issuer, for a 2020 newly eligible individual who is age 65 or older or meets the criteria in Insurance Code §1652.059, except that for persons under age 65 who do not meet the criteria in Insurance Code §1652.059, it is a policy that has a benefit package classified as Plan A.

(2) Persons described by subsection (b)(5) of this section are entitled to the same Medicare supplement policy in which the individual was most recently enrolled, if available from the same issuer or, if not available, a policy described in paragraph (1) of this subsection.

(3) Persons described by subsection (b)(6) of this section are entitled to any Medicare supplement policy offered by any issuer, with the exception of Plans C or F (including F with a High Deductible) for a 2020 newly eligible individual.

(4) Persons described by subsection (b)(8) of this section are entitled to enroll in any plan type that is offered by any issuer, provided that:

(A) an issuer is not permitted to make Plans C or F (including F with a High Deductible) available to a 2020 newly eligible individual;

(B) coverage must be issued according to terms provided in Insurance Code §1652.060, concerning Enrollment Period for Certain Individuals Younger Than 65; and

(C) notwithstanding §3.3307(d) of this title (relating to Loss Ratio Standards and Refund or Credit of Premiums) and §3.3322(d) of this title (relating to Filing and Approval of Policies, Certificates and Premium Rates; Discontinuance of Forms), an issuer may not have a separate form or rates for persons described by subsection (b)(8) of this section.

(d) Guaranteed issue time period.

(1) In the case of an individual described in subsection (b)(1) of this section:

(A) for a plan that supplements the benefits under Medicare, the guaranteed issue period begins on the later of:

(i) the date the individual receives a notice of termination or cessation of all supplemental health benefits (or, if a notice is not received, the date the individual receives notice that a claim has been denied because of the termination or cessation); or

(ii) the date the applicable coverage terminates or ceases; or

(B) for a plan that is primary to the benefits under Medicare, the guaranteed issue period begins on the later of:

(i) the date the individual receives a notice of termination or cessation of all health benefits (or if a notice is not received, the date the individual receives notice that a claim has been denied because of the termination or cessation); or

(ii) the date the applicable coverage terminates or ceases; and

(C) the guaranteed issue period ends 63 days after the date the applicable coverage terminates or ceases.

(2) In the case of an individual described in subsection (b)(2), (3), (5), or (6) of this section whose enrollment is terminated involuntarily, the guaranteed issue period begins on the date that the individual receives a notice of termination and ends 63 days after the date the applicable coverage is terminated.

(3) In the case of an individual described in subsection (b)(4)(A) of this section, the guaranteed issue period begins on the earlier of the date that the individual receives a notice of termination, a notice of the issuer's bankruptcy or insolvency, or other such similar notice, if any, and the date that the applicable coverage is terminated, and ends on the date that is 63 days after the date the coverage is terminated.

(4) In the case of an individual described in subsection (b)(2), (4)(B) and (C), (5), or (6) of this section, who disenrolls voluntarily, the guaranteed issue period begins on the date that is 60 days before the effective date of the disenrollment and ends on the date that is 63 days after the effective date of disenrollment.

(5) In the case of an individual described in subsection (b) of this section, but not described in paragraphs (1) - (5) of this subsection, the guaranteed issue period begins on the effective date of disen-

rollment and ends on the date that is 63 days after the effective date of disenrollment.

(6) In the case of an individual described in subsection (b)(8) of this section, the guaranteed issue period is December 1, 2026, through March 31, 2027.

(e) Extended Medicare supplement access for interrupted trial periods.

(1) In the case of an individual described in subsection (b)(5) of this section (or deemed to be so described under this paragraph), whose enrollment with an organization or provider described in subsection (b)(5) of this section is involuntarily terminated within the first 12 months of enrollment, and who, without an intervening enrollment, enrolls with another organization or provider, the subsequent enrollment will be deemed to be an initial enrollment as described in subsection (b)(5) of this section.

(2) In the case of an individual described in subsection (b)(6) of this section (or deemed to be so described under this paragraph), whose enrollment with a plan or in a program described in subsection (b)(6) of this section is involuntarily terminated within the first 12 months of enrollment, and who, without an intervening enrollment, enrolls with another plan or program, the subsequent enrollment will be deemed to be an initial enrollment as described in subsection (b)(6) of this section.

(3) For purposes of subsection (b)(5) and (6) of this section, no enrollment of an individual with an organization or provider described in subsection (b)(5) of this section, or with a plan or in a program described in subsection (b)(6) of this section, may be deemed to be an initial enrollment under this paragraph after the two-year period beginning on the date that the individual first enrolled with the organization, provider, plan, or program.

(f) Notification of enrollment period for certain individuals under age 65. For an insured described by subsection (b)(8) of this section who enrolled in a Medicare supplement policy before the effective date of this section, the issuer must provide notice not later than January 1, 2027, informing the insured of the right to change plans during the enrollment period provided in subsection (d)(6) 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.

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CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER Q. GENERAL PROPERTY AND CASUALTY RULES

DIVISION 4. APPRAISAL REQUIREMENTS

28 TAC §§5.9800 - 5.9806

The commissioner of insurance adopts new 28 TAC §§5.9800 - 5.9806, concerning requirements for appraisals, in new Division 4. The new sections are adopted with changes to the proposed text published in the May 8, 2026 issue of the *Texas Register* (51 TexReg 3050). The commissioner adopts §§5.9801, 5.9803, and 5.9804 without changes to the proposed text, and these sections will not be republished. Sections 5.9800, 5.9802, 5.9805, and 5.9806 were revised in response to public comments. These sections will be republished.

REASONED JUSTIFICATION. New §§5.9800 - 5.9806 are necessary to implement Senate Bill 458, 89th Legislature, 2025, which added new Insurance Code Chapter 1813, concerning Appraisal of Disputed Losses. SB 458 requires certain insurers writing personal automobile or residential property insurance to include an appraisal provision that complies with Insurance Code Chapter 1813 in an insurance policy delivered, issued for delivery, or renewed in Texas. New Insurance Code §1813.002 directs the commissioner to adopt rules necessary to implement the chapter, including rules that mandate appraisal and establish the period in which appraisal must be completed. The statute also directs the commissioner to consider the qualifications and selection of appraisers and umpires in adopting rules.

Sections 5.9800 - 5.9806 are added to new Division 4, which addresses the appraisal process for both personal automobile and residential property insurance and the notice insurers must send to a policyholder informing them of their right to appraisal. The requirements and conditions in Division 4 do not prohibit appraisal provisions from including other requirements or conditions that do not limit or violate Insurance Code Chapter 1813 and Division 4. Any other requirements and conditions remain subject to other applicable Texas laws, such as the standards for forms subject to filing and approval under Insurance Code Chapter 2301, Subchapter A.

TDI proposed to make September 1, 2026, the deadline to implement the new requirements. In response to comments, the adopted deadline to implement the new requirements is March 1, 2027. This adopted compliance date will give insurers time to amend the appraisal provisions in automobile and residential property insurance policies and to draft and incorporate the appraisal process notice into their claim handling procedures. In addition, it gives insurers time to file the amended policy forms with TDI for review and approval before the adopted March 1, 2027 deadline.

Descriptions of the new sections follow.

Section 5.9800. This section describes the purpose and scope of new Division 4, relating to Appraisal Requirements. Subsection (a) states that the purpose of Division 4 is to implement Insurance Code Chapter 1813. Subsections (b) and (c) provide the applicability of Division 4, consistent with Insurance Code §1813.001, and state that Division 4 applies to personal automobile and residential property insurance delivered, issued for delivery, or renewed on or after March 1, 2027. As previously stated, the deadline to implement Division 4 is changed in response to comments from September 1, 2026, to March 1, 2027, in subsection (c).

Section 5.9801. This section provides definitions for use in new Division 4 to ensure clear and consistent interpretation and application of the rules. This section includes definitions of appraisal, appraisal provision, appraisal award, appraiser, party, personal

automobile insurance, residential property insurance, and umpire.

The definition of "appraisal" refers to the process to resolve disputes about the amount of loss as described in Insurance Code Chapter 1813, and the definition of "appraisal provision" refers to the policy provision that provides for appraisal required under Insurance Code Chapter 1813.

The definition of "appraisal award" specifies that the determination of the amount of loss is signed by both appraisers or one appraiser and the umpire. Consistent with a typical appraisal provision, the umpire cannot unilaterally determine the amount of loss.

The definition of "party" means the insurer or the policyholder.

The definitions of "personal automobile insurance" and "residential property insurance" align with the description of those terms in Insurance Code §2301.051, helping to ensure clear and consistent application of these rules.

"Appraiser" and "umpire" are defined similarly to mean an individual who is qualified to act as an appraiser or umpire under Division 4 and who is hired or otherwise selected or appointed to participate in the appraisal process.

Section 5.9802. This section outlines the general requirements for appraisal provisions required in certain insurance policies under Insurance Code Chapter 1813. These requirements do not prohibit appraisal provisions from including other requirements or conditions that do not limit or violate Insurance Code Chapter 1813 and new Division 4. Any other requirements and conditions remain subject to other applicable Texas laws, such as the standards for forms subject to filing and approval under Insurance Code Chapter 2301, Subchapter A.

To establish the general requirements for appraisal provisions, this section specifies that every policy subject to Insurance Code Chapter 1813 must include an appraisal provision that meets the standards outlined in paragraphs (1) - (6) of the section.

Paragraph (1) requires applicable policies to contain an appraisal provision that states that either party has the right to unilaterally demand appraisal. Permitting either party to invoke appraisal is consistent with SB 458, which mandates that certain automobile and residential property insurance policies include an appraisal provision. Requiring both parties to consent to appraisal before it is executed would frustrate the purpose of SB 458.

Paragraph (2) states that the ability to demand appraisal must not be conditioned on the parties reaching an impasse. As described in Insurance Code §1813.003, the appraisal provision is intended to provide a dispute resolution process when the amount of loss is in dispute. A dispute indicates disagreement between the parties and does not require the parties to show that there is no chance of reaching an agreement.

Paragraph (3) states that appraisal is available for partial and total losses. Appraisal is not limited to total losses; it is also available for damaged property that only requires repair. In response to comments, TDI has modified paragraph (3) to clarify that appraisal subject to Division 4 does not apply to a total loss by fire that is subject to Insurance Code §862.053(a).

Paragraph (4) aligns with Insurance Code §1813.004 to clarify that an appraisal provision must require the appraisal award to be binding as to the amount of loss unless it was made without authority; was not made in substantial compliance with the appraisal provision; or there was fraud, accident, or material mistake relevant to the appraisal.

Paragraph (5) requires appraisal provisions to state the deadlines and process for appraisal. Deadlines must include the specific amounts of time listed in new §5.9805 and §5.9806 and be consistent with the other requirements in Division 4. The time limits and deadlines in new §5.9805 and §5.9806 provide a consistent and reliable basic timeframe for the appraisal process, while also giving the parties flexibility to agree to modify deadlines after a claim is made and the notice of acceptance or rejection under Insurance Code §542.056 has been provided. For example, after the notice is provided, the parties could agree to shorten or lengthen the amount of time for the appraisers to reach an agreement on the amount of loss, tailoring the amount of time to accommodate schedules or account for a simple or complex loss. Paragraph (5) does not prohibit an appraisal provision from having additional deadlines.

Paragraph (6) clarifies that appraisal provisions must not conflict with new Division 4 or other Texas law, such as the policy form standards in Insurance Code Chapter 2301, Subchapter A.

Section 5.9803. This section outlines the information that must be included in an appraisal process notice provided to policyholders. The requirement to send the appraisal process notice promotes consumer protection by alerting the policyholder and elevating key information, such as how to demand an appraisal, the policyholder's responsibilities, and the time limits. Findings in TDI's 2024 Appraisal Experience Data Call Report (Appraisal Experience Report available at www.tdi.texas.gov/reports/pc/documents/2024-appraisal-experience-data-call-report.pdf) indicate that appraisal is demanded in only a small percentage of claims. Policyholders are unlikely to be familiar with how appraisal works and might not be aware of the availability of appraisal to resolve a dispute about the amount of loss. The appraisal process notice helps ensure policyholders are informed of appraisal and receive basic information about how it works when an insurer notifies the policyholder of the acceptance or rejection of a claim.

Subsection (a) requires an insurer to provide an appraisal process notice to the policyholder at the same time the insurer provides the notice of acceptance or rejection of the claim required under Insurance Code §542.056. The insurer may add the information required under subsection (b) to the notice sent under Insurance Code §542.056. Insurers may also choose to create a separate notice containing the information required under new §5.9803 and provide it to the policyholder at the same time as the notice required under Insurance Code §542.056.

Subsection (b) requires the appraisal process notice to be written in plain language and appear in at least 10-point type, and explain the following basic information:

- where the appraisal provision is located in the policy contract;

- how the policyholder may demand appraisal, including where to send the demand and what information the demand should include;

- the policyholder's responsibilities in the appraisal process;

- how the policyholder may request appointment of an umpire if the appraisers fail to jointly choose the umpire within the time provided, including how to request judicial appointment of an umpire;

- the applicable time limits in the appraisal process, including certain minimum information regarding deadlines; and

- the effect of the appraisal award.

Section 5.9804. This section outlines the minimum qualifications that an appraiser or umpire must possess for appraisals subject to Insurance Code Chapter 1813 and new Division 4. Under subsection (a), all appraisers and umpires must meet the minimum qualifications, including (1) competency to evaluate the type of loss in the dispute, (2) independence from the parties, and (3) disinterest in the outcome of the appraisal. A competency element is a long-standing, standard feature in personal automobile and residential property appraisal provisions, including in promulgated Texas personal automobile and homeowners policies. Independence from the parties is also a common element in many appraisal provisions, including in promulgated Texas homeowners policies. Finally, many appraisal provisions require appraiser and umpire disinterest in the outcome. Preventing appraisers from having a particular pecuniary interest in the outcome promotes fairness and trustworthiness in dispute resolution.

Under subsection (b), appraisers and umpires in a residential property appraisal that involves loss to a dwelling must also be an (1) adjuster or public adjuster with experience or training in estimating residential property losses; (2) engineer or architect with experience or training in residential construction or repair, investigating residential property damage, or estimating residential property losses; or (3) individual who otherwise has occupational experience or training in constructing or repairing the type of damaged property at issue or estimating the type of property loss at issue. Specifying particular experience or training for appraisal of loss to a dwelling helps ensure that only properly qualified individuals participate and increases consistency in the market.

Because the section outlines only the minimum qualifications of an appraiser or umpire, appraisal provisions may establish additional or more specific qualifications so long as those provisions do not conflict with Division 4. This added flexibility reflects that loss disputes of this nature can vary significantly, such as the variation in the type and extent of property at issue; insurers can decide whether more nuanced qualifications may be appropriate.

Section 5.9805. This section specifies requirements for the appraisal process under residential property insurance policies. Subsection (a) is reorganized to accommodate the changes made to subsection (a)(1) and (2) in response to comment. As adopted, subsection (a) states that a demand for appraisal under a residential property insurance policy must be made in writing and delivered to the other party within the time limits listed in subsection (a)(1) - (3). As adopted, subsection (a)(1) - (3) specify deadlines for demanding appraisal.

As proposed, subsection (a)(1) specified that, except as provided in subsection (a)(2), an appraisal demand must be made in writing not later than one year after the insurer notifies the policyholder of acceptance or rejection of the claim as required under Insurance Code §542.056. In response to comment, subsection (a)(1) is modified to remove the one-year deadline to demand appraisal. As adopted, subsection (a)(1) states that, except as provided in subsection (a)(2) and (3), a demand for appraisal must be made not later than the expiration of the limitations period for filing suit under the policy. This change retains the "use-it-or-lose-it" nature of appraisal under Division 4 while aligning the appraisal demand deadline with the limitations period stated in the policy. TDI expects this change will lessen potential complexity or disagreement about these deadlines, reduce the potential for deadline gamesmanship, and provide ample opportunity for parties to invoke appraisal. Appraisal can be a more affordable and efficient dispute resolution process than litigation when an amount of loss is in dispute, so preserving a party's ability to initiate appraisal as an alternative to initiating litigation is beneficial.

In the proposal, subsection (a)(2) required the respondent to a lawsuit to have 30 days to demand appraisal if a lawsuit was filed concerning the loss at issue. However, in response to comment, subsection (a)(2) and (3) create separate deadlines to demand appraisal in response to a pre-suit notice under Insurance Code §542A.003 and in response to a filed lawsuit. As adopted, subsection (a)(2) states that if a pre-suit notice is provided under Insurance Code §542A.003, an appraisal demand by an insurer must be made not later than 60 days after the notice is provided. This change addresses claims arising under Insurance Code Chapter 542A and connects the deadline to demand appraisal after receiving the Insurance Code §542A.003 notice to the notice period. Insurance Code §542A.003 requires the claimant to provide a pre-suit notice at least 61 days before filing a lawsuit and outlines the specific information that must be included in the notice. TDI expects that the information in the pre-suit notice will provide insurers with sufficient information to decide whether to demand appraisal. The 60-day deadline in subsection (a)(2) will help ensure that an insurer is aware of a dispute about the amount of loss before the opportunity to demand appraisal is gone while requiring the demand be made before litigation begins. New subsection (a)(3)(B) addresses the deadline for demanding appraisal in response to a lawsuit and is discussed in a subsequent paragraph.

In response to comment, new subsection (a)(3) explains what happens when a lawsuit is filed concerning the loss at issue for both the plaintiff and the respondent. Subsection (a)(3)(A) provides that the plaintiff may no longer demand appraisal if a lawsuit is filed concerning the loss at issue. However, if the insurance policy requires an appraisal before a lawsuit may proceed and the lawsuit was filed by a policyholder before the expiration of the limitations for filing suit under the policy, then the plaintiff may still demand appraisal under subsection (a)(3)(A)(i) and (ii). Allowing a party to initiate litigation and then later demand appraisal raises concerns about potential gamesmanship and unnecessary delay and expense. However, in the situation described in clauses (i) and (ii) of subsection (a)(3)(A), the insurer's preference to pursue appraisal before proceeding with litigation is indicated by the policy itself.

Subsection (a)(3)(B) states that, except for an insurer who is provided a pre-suit notice under Insurance Code §542A.003, an appraisal demand by the respondent to a lawsuit must be made no later than the date the answer is filed or the date the answer is due, whichever is earlier. Subsection (a)(3)(B) addresses commenters concerns about receiving notice of the lawsuit after the window to demand appraisal has expired while still giving the claimant certainty on the next stage of dispute resolution--either the respondent will demand appraisal before the date the answer to the lawsuit is due or the lawsuit will continue with appraisal no longer a unilateral option to the parties. Appraisal can be a more affordable and efficient dispute resolution process than litigation when an amount of loss is in dispute, so preserving a limited opportunity to initiate appraisal is beneficial. As adopted, subsection (a)(3)(B) provides that appraisal is an option after a lawsuit

is filed, while ensuring it cannot be used for strategic advantage late in litigation.

Subsection (b) outlines other procedures and deadlines for residential property appraisal, including the deadlines to hire an appraiser, choose an umpire, and attempt to agree on the amount of loss. An appraisal award ordinarily represents the completion of appraisal. Because an appraisal award requires both appraisers or the umpire and one of the appraisers to agree on an amount of loss, setting deadlines establishes the time in which appraisal must be completed.

Under subsection (b)(1), each party must hire an appraiser and provide the other party with the appraiser's name and contact information in writing within 20 days after written demand for appraisal is made. This prevents undue delay and is consistent with many appraisal provisions, including those in promulgated Texas homeowners policies.

Subsection (b)(2) requires appraisers to jointly choose an umpire and requires the appraisal provision to use one of the two deadline options in subparagraphs (A) and (B) for when umpire selection must occur. The first option requires the appraisers to choose an umpire not later than 15 days after the requirements in subsection (b)(1) are completed. This is a common deadline used in many appraisal provisions, including those in promulgated Texas homeowners policies. The second option requires the appraisers to choose an umpire not later than 15 days after the appraisers cannot agree on the amount of loss in dispute within the time under subsection (b)(4). The second option is an alternative for insurers that might prefer to have an appraisal provision that allows appraisers to wait to see whether they can agree on the amount of loss before choosing an umpire. The two options give insurers flexibility to establish when the umpire selection should occur during the appraisal process.

For circumstances in which the appraisers fail to choose an umpire within the adopted deadlines, subsection (b)(3) states the methods of umpire selection. Under subsection (b)(3)(A), an appraisal provision must allow either party to request judicial appointment of an umpire through a county or district court where the residential property is located. Judicial appointment is the method many residential property appraisal provisions use, including in promulgated Texas homeowners policies, if the appraisers cannot agree on an umpire. Appraisal is a binding dispute resolution process that can offer an alternative to litigation, so it is reasonable to require appraisal provisions to have a judicial appointment option if there is a disagreement over who should be the umpire.

Subsection (b)(3)(B) authorizes insurers to include, in addition to judicial appointment required under subsection (b)(3)(A), other methods of umpire appointment in an appraisal provision. In response to comment, TDI changes (b)(3)(B) to clarify that judicial appointment must always be included in an appraisal provision under §5.9805, but that insurers may also include other appointment options as outlined in subsection (b)(2)(B)(i) and (ii). Some residential property appraisal provisions currently provide for the umpire to be chosen by an independent vendor if the appraisers cannot agree. As proposed, subsection (b)(3)(B)(i) allowed an insurer to provide an option for umpire appointment by an independent vendor that offers umpire selection services. The proposed options included providing at least two vendors and letting the policyholder select the vendor, or allowing only the policyholder to invoke the independent vendor option if only one vendor was provided. In response to comment and to promote fairness, subsection (b)(3)(B)(i) is modified. As adopted, it permits an insurer to include an option for umpire appointment by an independent vendor as long as the policy allows only the policyholder to invoke that option. This allows both parties to participate in selecting the vendor method: the insurer can decide whether to offer a vendor appointment option and what vendor to include in the policy, and the policyholder can decide whether to invoke the option if it is offered. This change addresses numerous commenters' concerns, which are discussed in the response to comment section of this adoption order. Because the independent vendor appointment option may be invoked only at the policyholders' option, the alternative "two vendor" option that was proposed is removed.

Subsection (b)(3)(B)(ii) allows for an umpire appointment through any alternative method that both parties mutually agree to in writing after appraisal has been demanded. By allowing the options of subparagraph (B), in addition to the required judicial appointment option, the adopted rule gives insurers the opportunity to offer potentially more flexibility and efficiency in the appointment process while preserving policyholder choice.

Subsection (b)(3)(C) requires a party requesting umpire appointment through judicial appointment or by independent vendor to give written notice to the other party at least 10 days before making the request. For judicial appointments, the written notice must include the location and identity of the court. Subsection (b)(3)(D) also requires the party requesting appointment to provide the other party with a copy of the request before or when the request is submitted. Subparagraphs (C) and (D) in subsection (b)(3) ensure that both parties are aware of an umpire appointment request.

Subsection (b)(4) and (5) outlines the deadlines for attempting to agree on the amount of loss in dispute during appraisal. Under subsection (b)(4), appraisers must attempt to agree within 120 days after the appraisal demand. The 120-day deadline strikes a balance between providing time for the appraisers to attempt to agree on the amount of loss while ensuring that appraisal is completed in a reasonable amount of time. Findings in the Appraisal Experience Report indicate that about 75% of residential property appraisal awards that did not involve an umpire were made within 120 days after appraisal was demanded.

Under subsection (b)(5), when appraisers are unable to agree and an umpire is involved, the appraisers must submit their differences to the umpire and each other. An appraisal award must be issued not later than 240 days after the appraisal demand was made. Appraisal provisions, including those in promulgated Texas homeowners policies, commonly require appraisers to submit their differences to an umpire if the appraisers cannot agree on an amount of loss. According to the Appraisal Experience Report, 75% of residential property appraisal awards involving an umpire were made within 278 days after appraisal was demanded, and 50% were made within 193 days. The adopted 240-day deadline strikes a balance between completing appraisal in a timely manner and the need to give the umpire sufficient time to evaluate the loss, examine the differences, and attempt to agree on the amount of loss with at least one of the appraisers. Subject to subsection (c), if the appraisal award is not issued by the 240-day deadline, then the umpire's engagement is terminated on that date, and the appraisers must choose a new umpire within 15 days after the deadline passes.

Subsection (c) authorizes parties to modify any deadline in the appraisal process by written agreement after the appraisal process notice is provided under §5.9803. This gives the parties

flexibility to adjust the timeframe after a loss occurs, allowing them to extend or shorten deadlines to tailor the appraisal process to the relative breadth and complexity of the loss at issue.

Section 5.9806. This section specifies requirements for the appraisal process under personal automobile insurance policies. Subsection (a) is reorganized to accommodate the changes made to subsection (a)(1) and (2) in response to comment. As adopted, subsection (a) states that a demand for appraisal under a personal automobile insurance policy must be made in writing and delivered to the other party within the time limits listed in subsection (a)(1) and (2). As adopted, subsection (a)(1) and (2) specify deadlines for demanding appraisal.

As proposed, subsection (a)(1) specified that, except as provided in subsection (a)(2), an appraisal demand must be made in writing not later than 120 days after the insurer notifies the policyholder of acceptance or rejection of a claim as required under Insurance Code §542.056. In response to comment, subsection (a)(1) is modified to remove the 120-day deadline to demand appraisal. As adopted, subsection (a)(1) states that, except as provided in subsection (a)(2), a demand for appraisal must be made not later than the expiration of the limitations period for filing suit under the policy. This change retains the "use-it-or-lose-it" nature of appraisal under Division 4 while aligning the appraisal demand deadline with the limitations period stated in the policy. TDI expects this change will lessen potential complexity or disagreement about these deadlines, reduce the potential for deadline gamesmanship, and provide ample opportunity for parties to invoke appraisal. As previously discussed, appraisal can be a more affordable and efficient dispute resolution process than litigation when an amount of loss is in dispute, so preserving a party's ability to initiate appraisal as an alternative to initiating litigation is beneficial.

In the proposal, subsection (a)(2) provided that if a lawsuit was filed concerning the loss at issue, the respondent to the lawsuit must have 30 days to demand appraisal. However, in response to comment, subsection (a)(2) as adopted provides that if a lawsuit is filed concerning the loss at issue, then subsection (a)(2)(A) and (B) apply. Under new subparagraph (A), if a lawsuit is filed concerning the loss at issue, the plaintiff to the lawsuit may no longer demand appraisal unless the insurance policy requires an appraisal before a lawsuit may proceed and the lawsuit was filed by a policyholder before the expiration of the limitations period for filing suit under the policy. Allowing a party to initiate litigation and then later demand appraisal raises concerns about potential gamesmanship and unnecessary delay and expense. In subsection (a)(2), a party's ability to unilaterally demand appraisal after the party files a lawsuit is limited to the circumstances described in (a)(2)(A)(i) and (ii). In that situation, the insurer's preference to pursue appraisal before proceeding with litigation is indicated by the policy itself. Adopted subsection (a)(2)(B) states that an appraisal demand by the respondent to a lawsuit must be made no later than the date the answer is filed or the date the answer is due, whichever is earlier.

Subsection (a)(2), as adopted, addresses commenters concerns about receiving notice of the lawsuit after the window to demand appraisal has expired while still giving the claimant certainty on the next stage of dispute resolution--either the respondent will demand appraisal before the date the answer to the lawsuit is due, or the lawsuit will continue with appraisal no longer a unilateral option to the parties. As adopted, subsection (a)(2) provides appraisal as an option after a lawsuit is filed, while ensuring it cannot be used for strategic advantage late in litigation.

Subsection (b) outlines other procedures and deadlines for personal automobile appraisal, including the deadlines to hire an appraiser, choose an umpire, and attempt to agree on the amount of loss. An appraisal award ordinarily represents the completion of appraisal. Because an appraisal award requires both appraisers or the umpire and one of the appraisers to agree on an amount of loss, setting deadlines establishes the time in which appraisal must be completed.

Under subsection (b)(1), each party must hire an appraiser and provide the other party with the appraiser's name and contact information in writing within 20 days after written demand for appraisal is made. While many personal auto appraisal provisions do not specify a deadline to select an appraiser, setting a 20-day deadline helps to ensure that appraisers are identified and able to begin efforts to agree on the amount of loss in a timely manner.

Subsection (b)(2) requires appraisers to jointly choose an umpire and requires the appraisal provision to use one of the two deadline options in subparagraphs (A) and (B) for when umpire selection must occur. The first option requires the appraisers to choose an umpire not later than 15 days after the requirements in subsection (b)(1) are completed. The second option requires the appraisers to choose an umpire not later than 15 days after the appraisers cannot agree on the amount of loss in dispute within the time under subsection (b)(4). While many personal auto appraisal provisions do not specify a deadline to choose an umpire, setting a 15-day deadline will help ensure that an umpire is identified and able to begin efforts to resolve the appraisal in a timely manner if the appraisers cannot agree on the amount of loss. The two options give insurers flexibility to establish when the umpire selection should occur during the appraisal process.

For circumstances in which the appraisers fail to choose an umpire within the adopted deadlines, subsection (b)(3) states the methods of umpire selection. Under subsection (b)(3)(A), an appraisal provision must allow either party to request judicial appointment of an umpire through a county or district court where the vehicle is principally garaged. Appraisal is a binding dispute resolution process that can offer an alternative to litigation, so it is reasonable to require appraisal provisions to include a judicial appointment option if there is a disagreement over who should be the umpire. In response to comment, proposed subsection (b)(3)(A) is modified to clarify that the vehicle is "principally garaged as identified in the personal automobile insurance policy." This clarification will help reduce potential confusion and provide more certainty about where to request judicial appointment of an umpire.

Subsection (b)(3)(B) authorizes insurers to include, in addition to judicial appointment required under subsection (b)(3)(A), other methods of umpire appointment in an appraisal provision. In response to comment, TDI modifies (b)(3)(B) to clarify that judicial appointment must always be included in an appraisal provision under §5.9805, but that insurers may also include other appointment options as outlined in subsection (b)(2)(B)(i) and (ii). As proposed, subsection (b)(3)(B)(i) allowed an insurer to provide for the umpire to be chosen by an independent vendor if the appraisers cannot agree. The proposed options included providing at least two vendors and letting the policyholder select the vendor or allowing only the policyholder to invoke the independent vendor option if only one vendor was provided. In response to comment and to help ensure fairness, subsection (b)(3)(B)(i) is

modified. As adopted, it permits an insurer to include an option for umpire appointment by an independent vendor so long as the policy allows only the policyholder to invoke that option. This allows both parties to participate in selecting the vendor method: the insurer can decide whether to offer a vendor appointment option and what vendor to include in the policy, and the policyholder can decide whether to invoke the option if it is offered. This addresses numerous commenters' concerns, discussed in the comment section of this adoption order. Because the independent vendor appointment option may be invoked only at the policyholders' option, TDI removes the alternative "two vendor" option that was proposed.

Subsection (b)(3)(B)(ii) allows for an umpire appointment through any alternative method that both parties mutually agree to in writing after appraisal has been demanded. By allowing the options in subparagraph (B), in addition to the required judicial appointment option, the adopted rule gives insurers the opportunity to offer potentially more flexibility and efficiency in the appointment process while preserving policyholder choice.

Subsection (b)(3)(C) requires a party requesting umpire appointment through judicial appointment or by independent vendor to give written notice to the other party at least 10 days before making the request. For judicial appointments, the written notice must include the location and identity of the court. Subsection (b)(3)(D) also requires the party requesting appointment to provide the other party with a copy of the request before or when the request is submitted. Subsection (b)(3)(C) and (D) ensure that both parties are aware of an umpire appointment request.

Subsection (b)(4) and (5) outlines the deadlines for attempting to agree on the amount of loss in dispute during appraisal. Under subsection (b)(4), appraisers must attempt to agree within 40 days after the appraisal demand. The 40-day deadline strikes a balance between providing time for the appraisers to attempt to agree on the amount of loss while ensuring that appraisal is completed in a reasonable amount of time. Findings in the Appraisal Experience Report indicate that over 75% of personal automobile appraisal awards that did not involve an umpire were made within 40 days after appraisal was demanded.

Under subsection (b)(5), when appraisers are unable to agree and an umpire is involved, the appraisers must submit their differences to the umpire and each other. An appraisal award must be issued not later than 180 days after the appraisal demand was made. Appraisal provisions, including those in the promulgated Texas personal automobile policy, commonly require appraisers to submit their differences to an umpire if the appraisers cannot agree on an amount of loss. According to the Appraisal Experience Report, 75% of personal automobile appraisal awards that involved an umpire were made within 210 days after appraisal was demanded, and 50% were made within 114 days. Setting a 180-day deadline strikes a balance between completing appraisal in a timely manner and the need to give the umpire sufficient time to evaluate the loss, examine the differences, and attempt to agree on the amount of loss with at least one of the appraisers. Subject to subsection (c), if the appraisal award is not issued by the 180-day deadline, then the umpire's engagement is terminated on that date, and the appraisers must choose a new umpire within 15 days after the deadline passes.

Subsection (c) authorizes parties to modify any deadline in the appraisal process by written agreement after the appraisal process notice is provided under §5.9803. This gives the parties flexibility to adjust the timeframe after a loss occurs, allowing them to extend or shorten deadlines to tailor the appraisal process to the relative breadth and complexity of the loss at issue.

SUMMARY OF COMMENTS AND AGENCY RESPONSE. TDI provided an opportunity for public comment on the rule proposal for a period that ended on June 15, 2026.

Commenters: TDI received comments from 204 commenters. Eighteen commenters spoke at a public hearing on the proposal held on June 2, 2025. Commenters in support of the proposal with changes were American Adjuster Association, American Property and Casualty Insurers of America, Auto Body Association of Texas, Auto Claim Specialists, Avondale Collision and Repair, Bravura Claims Negotiations LLC, Chad T. Wilson Law Firm, DC Group, Direct Appraisal, Frank Kent Cadillac, Germania Farm Mutual Insurance Association, Green Klein Wood and Jones, Griffin's Paint & Body Inc., High Gear Collision, Insurance Council of Texas, Koning Rubarts LLP, Markel Specialty, Law Office of Michael P. Bowman PLLC, Miracle Body & Paint, Mitchell Williams, National Association of Mutual Insurance Companies, National Property Claim Solutions, Office of Public Insurance Counsel, PALCO Claims, Palker Law Firm, Petty Details LLC, Reno Paint & Body, Rise Document Inc., State Representative Matt Morgan, Texas Automobile Dealers Association, Texas Farm Bureau Insurance, Texas Watch, Universal Motorcars of Houston, United States Automobile Association, and Zelle LLP, as well as 168 individual commenters and a commenter on behalf of "AAA."

General Comments

Comment. One commenter notes that the scope of SB 458 is narrow and that its key purpose is to mandate that an appraisal provision be included in residential property and personal automobile policies. The commenter recommends the rules remain narrowly focused on mandating an appraisal provision, identifying time to completion of appraisal, and the qualifications and selection of appraisers and umpires. The commenter expresses concern that the proposed rule goes beyond the scope of SB 458 and the specificity in the proposed rule will require significant revision and refiling of existing appraisal provisions in policies. The commenter urges TDI to adopt rules that meet the core goal of ensuring the availability of appraisal but not to expand the rule into a myriad of other legal and procedural issues that may be better addressed outside of rulemaking.

Agency Response. TDI disagrees that the rule goes beyond the scope of SB 458 or is too broad and declines to make a change. The rules provide a general framework focused on minimum qualifications and selection of appraisers and umpires, and deadlines that establish the period in which appraisal must be completed. The rules also focus on ensuring the availability of appraisal to each party, including requiring insurers to provide a well-timed notice of the appraisal process to policyholders. Within those focus areas, the rules provide notable flexibility, such as providing an opportunity for parties to mutually agree to modify deadlines under §5.9805(c) and §5.9806(c) and allowing appraisal provisions to establish additional or more specific appraiser and umpire qualifications as long as they do not conflict with the rules.

Comment. Multiple commenters express interest in how the appraisal process will interact with Insurance Code Chapter 542, Subchapter B, which regulates the prompt payment of claims. Two commenters request clarification on whether an appraisal award that exceeds an insurer's original settlement offer could be a violation of Insurance Code Chapter 542, Subchapter B.

One of the commenters argues that participation in the appraisal process should not expose insurers to prompt payment penalties and that a discrepancy between the initial payment and the appraisal award is not evidence of noncompliance with prompt payment standards.

Conversely, another commenter states that the rule should make clear that invoking appraisal does not excuse an insurer from paying any undisputed amounts throughout the settlement or appraisal process.

Another commenter recommends that any statutory interest that might be triggered from the prompt pay statutes should be tolled during the pendency of the appraisal process to avoid inequitable outcomes caused by procedural delays.

Agency Response. TDI declines to modify rule text in response to the comments as it is outside the scope of the rules. Insurance Code Chapter 542, Subchapter B, specifies requirements for prompt payment of claims, and TDI expects insurers to comply with those requirements and other Texas insurance law when settling claims.

Comment. Multiple commenters mention the Texas Supreme Court case *Rodriguez v. Safeco Ins. Co. of Ind.*, 684 S.W.3d 789 (Tex. 2024). One commenter notes that the decision limits the ability of policyholder attorneys to recover attorneys' fees in certain appraisal matters, consistent with the plain statutory language of Insurance Code §542A.007. The commenter recommends that concerns about the *Rodriguez* decision be directed to the legislature, as it is an issue far outside the scope of SB 458 and not within TDI's rulemaking authority. Another commenter expresses concern that the case is a catalyst for insurers to weaponize appraisal for their benefit and states that the rules do not fix this issue.

Agency Response. TDI declines to make a change, as the issue is outside the scope of this rulemaking.

Comment. Multiple commenters request clarification on enforcement of these rules and suggest different enforcement techniques to ensure parties, appraisers, and umpires comply with the requirements.

Commenters request clarification on how TDI will approach enforcement of the appraisal requirements. One commenter asks whether TDI intends to impose compliance penalties for failure to meet timelines and, if so, requests that TDI impose penalties on insurers only when the timing of processes is within their control. Another commenter notes that the rules provide detailed timing and qualification requirements but are silent on enforcement or the consequences of noncompliance. The commenter asks TDI to clarify which parties are subject to enforcement of the timelines and qualification requirements, the specific consequences of noncompliance by each party, and whether and how TDI intends to enforce the requirements against nonregulated parties.

Other commenters recommend that TDI add various noncompliance penalties to the rules, including administrative sanctions, cost-shifting, judicial remedies, loss of the right to invoke appraisal, or fines. One commenter specifically notes that Insurance Code Chapter 84 provides TDI with express authority to impose administrative penalties and urges TDI to adopt explicit penalties under that chapter to protect the appraisal process from corruption. Another commenter states that there are virtually no repercussions if an insurer abuses the appraisal process as written with the current state of Texas law.

Agency Response. TDI appreciates the commenters' suggestions on how to enforce the appraisal process requirements to ensure the process remains effective, efficient, and fair but declines to make a change.

The Insurance Code empowers TDI to take enforcement, disciplinary, and other administrative action against insurers and other persons licensed or regulated under Texas insurance laws, such as imposing administrative penalties under Insurance Code Chapter 84 as a commenter referenced. Where TDI identifies a violation of Insurance Code Chapter 1813 or these rules, TDI will take administrative action consistent with its authority. The proposed rules did not address specific enforcement mechanisms, such as shifting the cost of the appraisal to one party as a punishment, establishing judicial remedies, or revoking the right to appraisal. TDI declines to add appraisal-specific enforcement mechanisms, as those topics are beyond the scope of this rulemaking.

TDI notes that the rules primarily establish requirements for the appraisal provisions in personal automobile and residential property insurance policies. Policyholders and insurers retain the ability to enforce their policy contracts. With respect to timing, the parties also can modify deadlines by written mutual agreement after the claim arises and the insurer provides the appraisal process notice required under §5.9803. As a practical matter, appraisers must also respect deadlines because the rules create a framework that allows appraisal to proceed if one appraiser fails to act in a timely manner. For example, if the appraisers cannot agree on the amount of loss in dispute within the time provided, an umpire becomes involved and the award can be determined by the umpire and one appraiser.

Comment. Multiple commenters recommend that TDI establish a formal licensing requirement or require that appraisers and umpires prove that they are in good standing with any other regulatory agency responsible for their oversight. Commenters in support of the licensing requirement note that the failure to license these entities may result in lack of enforcement authority and difficulty in identifying appraisers and umpires who are bad actors in the appraisal process. One commenter specifically states that a licensing regime would give "the entire framework the accountability it currently lacks." Another commenter recommends specific license types based on the individual's role in the appraisal and whether it is an automobile or residential property appraisal.

Response. TDI declines to establish a licensing requirement for appraisers or umpires under Insurance Code Chapter 1813 because it is outside the scope of this rulemaking. Likewise, TDI declines to add a requirement that appraisers and umpires prove good standing or licensing with another regulatory agency. The proposed rules did not address the potential inclusion of a requirement of good standing or licensing with another agency; the topic is outside the scope of this rulemaking. In addition, a good-standing or licensing requirement might inadvertently eliminate competent appraisers and umpires who have training and experience to evaluate the type of loss in dispute but do not maintain an occupational license, such as a retired adjuster or public adjuster.

Comments on §5.9800

Comment. One commenter notes that the September 1, 2026 implementation date is reasonable, and states that it is time for the SB 458 rules to be in effect. However, other commenters state that the proposed implementation date will present logistical challenges. Those commenters note that additional im-

plementation time is needed to update appraisal provision language, file updated policy forms with TDI for approval, draft or update the appraisal process notice, and complete various programming and operational tasks to ensure new forms and notice documents are issued timely to policyholders. Commenters also note that the timing difficulties are further exacerbated for renewal policies, which are commonly issued 45 to 60 days before the renewal date. A few commenters recommend that the effective date be no earlier than three or six months, respectively, from the date the adopted rule is published, and another commenter suggests the rules take effect one year after the rule is finalized. Other commenters recommend the implementation date be no earlier than January 1, 2027.

Agency Response. TDI recognizes the challenge of implementing the appraisal process requirements by the proposed deadline and agrees to extend the implementation time to March 1, 2027. TDI expects that delaying the implementation date to March 1, 2027, will provide insurers with sufficient time to update their appraisal provisions, file applicable revised policy forms or endorsements for TDI approval, create or update the appraisal process notice as required under §5.9803, and update or modify related programming or processes as needed. The adopted implementation date of March 1, 2027, will ensure that appraisal provisions begin reflecting the new requirements without unnecessary delay.

To reflect this, TDI changes the date in §5.9800(b) from September 1, 2026, to March 1, 2027. New Division 4 will apply to personal automobile and residential property policies delivered, issued for delivery, or renewed on or after March 1, 2027.

Comment. One commenter asks for clarification on how the rules impact "legacy appraisals" and "declaration of appraisal."

Agency Response. TDI understands the commenter to mean appraisals that are demanded on policies delivered, issued for delivery, or renewed before the rule's implementation date. The adopted rules will apply to personal automobile and residential property insurance policies delivered; issued for delivery; or renewed on or after March 1, 2027, and all appraisal provisions in those policies are subject to the new rules. For policies delivered; issued for delivery; or renewed before March 1, 2027, the appraisal provision in the policy will control the appraisal process and is not subject to the new rules.

Comment. Two commenters request clarification on the scope of the appraisal rule, specifically whether the requirements apply to uninsured and underinsured motorist property damage losses. One of the commenters notes that uninsured motorist property damage claims may involve different legal damages because the damages are based on what the insured is legally entitled to recover from an uninsured motorist. The commenter suggests that the rules should focus on the valuation components necessary to determine the covered physical damage loss and avoid confusing the issues.

Agency Response. TDI agrees that uninsured and underinsured motorist coverage ordinarily involves a determination on what an insured would be legally entitled to recover from another motorist. TDI understands that appraisal provisions have typically not extended to uninsured and underinsured motorist coverage of property damage losses. Accordingly, TDI declines to extend these rules to uninsured or underinsured motorist coverage. TDI also declines to extend these rules because the rules as proposed did not address the potential inclusion of uninsured or underinsured motorist coverage and the topic is likely outside the scope of this rulemaking.

Comment. Commenters recommend clarifying the applicability of Division 4 to a total loss of real property by fire under Insurance Code §862.053. One commenter notes that, once covered real property is determined to be a total loss by fire, the property insured is considered a liquidated demand against the company for the full amount of the fire insurance policy. The commenter states that appraisal under Insurance Code Chapter 1813 should not be used to decide the threshold fact question of total loss, reduce the liquidated amount owed, or delay payment of building limits. Another commenter notes that §5.9802(3) directly conflicts with Insurance Code §862.053 and recommends carving out statutory total loss scenarios to lessen "appellate exposure."

Agency Response. TDI agrees that clarification about the applicability of appraisal to total losses subject to Insurance Code §862.053(a) is appropriate. TDI revises §5.9802(3) to clarify that the required appraisal provision does not apply to a total loss of real property by fire that is subject to Insurance Code §862.053(a).

Comments on §5.9801

Comment. One commenter expresses support for the definitions set out in §5.9801.

Agency Response. TDI appreciates the commenter's support.

Comment. One commenter suggests changing the definition of "appraisal" in §5.9801(1) to clarify that the process is meant to resolve a dispute between the insurer and a policyholder "that is limited to" the amount of loss as described in Insurance Code Chapter 1813.

Agency Response. TDI declines to make the suggested change. Insurance Code §1813.003(b) states that the appraisal provision required by Insurance Code Chapter 1813 is "intended to provide a type of dispute resolution process solely to determine the amount of loss when that amount is in dispute between the policyholder and the insurer." This statutory language is restated in §5.9800(a), which outlines the scope and applicability of these rules. In addition, the definition of appraisal in §5.9801(1) specifically refers to the description in Insurance Code Chapter 1813. TDI disagrees that additional clarification is needed. Further, introducing additional language might be construed as establishing a different scope and applicability than what is described in Insurance Code Chapter 1813.

Comment. Commenters recommend adding a definition of "loss" to the rule. One commenter notes that the rule as proposed uses the term "amount of loss" without limiting it to a covered loss under the applicable policy. The commenter recommends using the term "covered loss" instead and states that the appraisal process was designed to resolve disputes about covered losses, not to create a separate mechanism for adjudicating coverage questions or determining amounts for losses that are not covered. The commenter warns that failure to clarify the word "loss" may expand appraisal to uncovered claims, which will create confusion for policyholders and carriers and expand the scope of SB 458.

Another commenter notes that SB 458 directs the commissioner to adopt rules mandating appraisal for total loss and damage of the property that is the subject of the appraisal. The commenter suggests defining "loss" under the applicable policy to include "valuation of a total loss, cost of repair or replacement, actual

cash value, and related costs or expenses when requested by either party."

Similarly, a commenter expresses concern that §5.9801 does not include a definition for "amount of loss" and states that if TDI fails to define the term broadly enough, insurers may attempt to narrow appraisal through policy language or claim handling positions that treat appraisal as mere price list calculation. The commenter recommends defining "amount of loss" to mean "the monetary valuation of covered loss, damage, cost, expense, or benefit owed under the policy. . . " and include a list of specific factors or considerations that may apply based on the claim details. The commenter also cites to various court cases to support the suggested definition.

Another commenter recommends defining "complex loss" to aid in identifying losses that involve multisystem damage, competing causation theories, or engineering expertise. The commenter also suggests allowing structured deadline extensions to lessen the possibility of incomplete awards.

Agency Response. TDI declines to define "loss" or introduce the term "covered loss" in the rule. The rule uses the term "amount of loss," which is consistent with Insurance Code Chapter 1813. Section 5.9800 and the definition of "appraisal" in §5.9801(1) specifically refer to Insurance Code Chapter 1813 for scope and applicability. Insurance Code §1813.003(b) states that the appraisal provision is "intended to provide a type of dispute resolution process solely to determine the amount of loss when that amount is in dispute between the policyholder and the insurer." Insurance Code §1813.004(a) states that an appraisal under the appraisal provision required by Insurance Code Chapter 1813 "does not affect any applicable policy terms." These statutory provisions sufficiently establish scope and applicability. No additional clarification is needed, and introducing new definitions might be construed as establishing a different scope and applicability than what is described in Insurance Code Chapter 1813.

TDI also declines to define "amount of loss" or to identify items within the scope of appraisal because the rule's purpose is to specify the requirements for an appraisal provision and outline the overarching appraisal process. Defining the extent of appraisal or the items or factors that may be considered during appraisal is outside the scope of this rulemaking.

TDI also declines to define "complex loss," as a complex loss will vary depending on the facts, the property at issue, and the policy. Parties may mutually agree to extend deadlines under §5.9805(c) or §5.9806(c), including when a complex loss is at issue.

Comment. One commenter recommends adding a definition of "independent vendor" to §5.9801 so a policyholder who is unfamiliar with the appraisal process is better able to understand the process for appraisals and umpire appointment.

Similarly, another commenter states that the terms "independent" and "disinterested" need clearer definitions. The commenter points out that independence and disinterest might depend on the circumstances. The commenter states that failure to define these terms could result in side disputes and suggests that the proper question is whether the appraiser or umpire has a direct financial interest in the outcome of that specific appraisal or another listed relationship that may result in a conflict of interest.

Agency Response. TDI declines to add a definition of "independent vendor." A definition would introduce specific constraints that have not been considered in this rulemaking and might be unnecessary. The parties to an appraisal are best suited to determine whether a vendor is independent based on the circumstances of that appraisal. In response to other comments, TDI clarified in §5.9805 and §5.9806 that the policyholder has the right to decide whether a vendor may appoint an umpire, so a policyholder with concerns about possible lack of independence can decide not to have a vendor appoint the umpire.

TDI also declines to specify the types of relationships that may create a conflict of interest or result in the appraiser or umpire not satisfying the minimum qualifications in §5.9804. Many existing appraisal provisions, including those in promulgated Texas homeowners policies, require appraisers and umpires to be "independent" without further specification. Similarly, many appraisal provisions require appraisers and umpires to be "disinterested," again without further description of that term. Adding definitions of "independent" and "disinterested" would likely introduce specific constraints that have not been considered in this rulemaking and might be unnecessary. As commenters acknowledge, questions of independence and disinterest might depend on the circumstances. Parties to the appraisal are best suited to determine whether an appraiser or umpire fails to meet the minimum qualifications. In addition, parties may discuss concerns and ultimately challenge the qualifications of an appraiser or umpire in a court of law. TDI expects insurers to comply with Texas law and the applicable insurance policy when participating in appraisal.

Concerns about a direct financial interest in the outcome of appraisal are already satisfactorily addressed by the "disinterested" requirement. As discussed in the rule proposal's preamble, the "disinterested" requirement prevents appraisers from having a pecuniary interest in the outcome.

Comments on §5.9802

Comment. Multiple commenters advocate that TDI should adopt a mandatory, uniform appraisal provision for policies subject to Insurance Code Chapter 1813. One commenter states a uniform provision would ensure consistency among carriers and expedite the form filing process. Other commenters express concern that, without a uniform appraisal provision, insurers and carriers will have too much leeway to draft restrictive or otherwise unfairly favorable provisions.

Agency Response. TDI declines to promulgate a uniform appraisal provision. SB 458 directs the commissioner to adopt rules necessary to implement Insurance Code Chapter 1813, including rules that mandate appraisal and establish the period in which appraisal must be completed. The statute also directs the commissioner to consider the qualifications and selection of appraisers and umpires in adopting rules. Accordingly, new §§5.9800 - 5.9806 focus on those subjects. An appraisal provision might reasonably address additional subjects or contain additional requirements, as long as it does not conflict with new Division 4 or other Texas law.

These rules enumerate items that each appraisal provision must have, ensuring specific consumer protections are established while providing insurers flexibility to implement the requirements into their current appraisal provisions. Because SB 458 requires policies delivered; issued for delivery; or renewed on or after January 1, 2026, to include an appraisal provision, insurers have a baseline appraisal provision they can update to conform with §5.9802. Most policies subject to Insurance Code Chapter 1813 are written on policy forms or endorsements that must be filed

with TDI for review and approval under Insurance Code Chapter 2301. Policy forms must comply with Texas law, including the Insurance Code and the rules implementing it.

Comment. Generally, commenters support allowing either party to unilaterally demand appraisal. One commenter suggests that, before either party has the right to unilaterally demand appraisal under proposed §5.9802(1), the rule could authorize appraisal provisions to include a short period of time before the initiation of appraisal to allow parties to work out differences and determine whether appraisal is necessary. The commenter also suggests adding language to §5.9802(1) that encourages parties to exchange information, allow inspection, and attempt to resolve disputes before or after invoking appraisal. The commenter notes that these suggestions would benefit both parties by resolving disputes before incurring the time and expense of appraisal. One commenter states that the right to demand appraisal must apply equally to both parties and must be governed by the same deadline for both parties.

Similarly, commenters recommend requiring the exchange of estimates and other claim settlement documents to promote transparent disclosure and streamline claims settlement. One commenter notes the importance of balancing an efficient appraisal process with ensuring all important claim settlement documents are examined so policyholders obtain payment for necessary repairs.

One commenter states that a "dispute" between parties presupposes that the parties have exchanged information and have been unable to resolve their differences. Commenters state that the rule would allow an appraisal demand before the policyholder has responded to the insurer's request for existing estimates or other loss documentation, and before any meaningful exchange of positions has occurred. One commenter states that this issue is especially acute for personal automobile claims, where the differences between a repair shop's estimate and the insurer's estimate arise routinely and are often resolved through the supplement and reinspection process. The commenter states that §5.9802(1) as proposed is in tension with the plain language of Insurance Code §1813.003(b)(1) and suggests modifying it to allow either party to unilaterally invoke appraisal 15-days after exchanging statements and estimates.

Agency Response. TDI declines to modify the rule text to allow appraisal clauses to require an amount of time to pass before appraisal can be demanded. Policyholders and insurers are already incentivized to resolve disputes without the time and expense of appraisal. Findings in the Appraisal Experience Report show that appraisal was demanded in only a small percentage of claims and typically resulted in an award greater than the insurer's initial offer, suggesting that appraisal is not undertaken lightly or needlessly. The rules do not prevent parties from attempting dispute resolution before appraisal is invoked.

TDI also declines to change the rule text to require or "encourage" the exchange of estimates or similar information before an appraisal demand. Parties have natural incentives to exchange information to resolve disputes, and adding requirements to exchange estimates would introduce constraints that have not been considered in this rulemaking and might be unnecessary.

Comment. Similar to the discussion of specifying conditions that must be met before appraisal may be demanded, multiple commenters express concern with the proposed requirement in §5.9802(2) that prohibits an appraisal provision from requiring the parties to reach an impasse before a party can demand appraisal. Commenters state that the proposed requirement will result in parties invoking appraisal prematurely, before the parties have had a meaningful opportunity to negotiate and resolve the dispute.

A few commenters refer to Texas case law, with one arguing that long-standing case law and standard policy language reinforce that appraisal is a "mechanism of last resort," appropriate only when the parties fail to agree on the amount of loss and exhaust reasonable efforts to resolve their differences. Another commenter states that case law treats an impasse as the point at which neither party will negotiate further. The commenter cites to *In re Acceptance Indemnity Insurance Co.*, stating "an impasse is not a disagreement about the amount or scope of loss. To constitute an 'impasse,' both parties must believe additional negotiations would be futile. An impasse is the apparent breakdown of good-faith negotiations; in other words, it is that point at which the parties have exhausted any prospect of reaching an agreement and further discussion would be fruitless." 562 S.W.3d 645, 650 (Tex. App.--San Antonio 2018, no pet.).

Multiple commenters warn that the prohibition on impasse may have adverse consequences and may negatively affect access to and affordability of insurance. One commenter notes that if an impasse is not required before appraisal can be invoked, then claimants and their representatives will have an incentive to bypass the ordinary claims process entirely, forcing carriers into a parallel and more costly resolution mechanism from the earliest stage of any claim and resulting in higher insurance costs.

One commenter includes specific policy language that states, "If we and you do not agree on the amount of loss, either may demand an appraisal" and notes concern about removing the impasse requirement from the policy language.

Lastly, one commenter objects to the rules as proposed unless a distinction is made between a statutory proof-of-loss concept under Insurance Code Chapter 542 and a contractual sworn proof of loss required by policy terms. Otherwise, insurers may argue that the rules treat any reference to proof of loss as a contractual sworn proof-of-loss prerequisite to appraisal, creating unnecessary disputes.

Agency Response. TDI declines to change §5.9802(2) to allow appraisal provisions to require an impasse before appraisal can be demanded.

As one commenter notes, *In re Acceptance Indem. Ins. Co.* states that "an impasse is not a disagreement" and that "both parties must believe additional negotiations would be futile." By that standard, an impasse requires more than a dispute. It positions one party to decide that although a dispute exists, additional negotiations could be fruitful. The effect would be to allow one party's view of negotiations to indefinitely deprive the other party of access to appraisal.

TDI maintains that conditioning a party's right to demand appraisal on the other party's singular view of whether additional negotiations are warranted is contrary to the plain language and the intent of SB 458. Insurance Code §1813.003(b) states that appraisal under the chapter is intended to provide a type of dispute resolution process when the amount of loss is in dispute. The Statement of Intent in the Bill Analysis for SB 458 as enrolled supports the understanding that an impasse is not required, stating "the appraisal process serves as a method of dispute resolution to determine the amount of loss when there is a *disagreement* between the policyholder and the insurer." Senate Bus. & Com., Bill Analysis, Tex. SB 458 (89R, 2025). Insurance Code

Chapter 1813 does not require exhaustion of good-faith negotiations or a shared belief that additional negotiations would be futile or fruitless; it merely requires a dispute between the insurer and policyholder as to the amount of loss.

The policy language cited by one commenter ("if we and you do not agree on the amount of loss, either may demand an appraisal") appears to align with SB 458 by stating that either party may demand appraisal where a dispute on the amount of loss exists.

TDI disagrees that prohibiting an impasse requirement will affect access and affordability to insurance. Instead, it aligns with Insurance Code Chapter 1813 by ensuring that parties have access to appraisal when a dispute about the amount of loss occurs. Parties already have an incentive to exchange information. Claimants want to restore damaged property as promptly as possible and will likely provide estimates and other settlement documentation to support their position. Insurers are required by law to promptly pay claims under Insurance Code Chapter 542, Subchapter B, after receipt of notice of the claim. Parties are also incentivized to settle the claim before invoking appraisal because appraisal extends the time and increases the expense to settle the claim. TDI expects that parties and their representatives will exchange documentation throughout the settlement process to ensure efficient and effective claims handling.

TDI also declines to modify rule text in response to the last comment because clarification is unnecessary.

Comment. One commenter expresses concern that "dispute" is not expressly defined in the rule. The commenter states that insurers may attempt to narrowly define "dispute" or effectively apply an impasse standard by requiring mandatory pre-appraisal waiting periods, item-by-item dispute letters, repeat reinspections, or other conditions before a "dispute" is found.

Agency Response. TDI declines to make a change because the rule and Insurance Code Chapter 1813 are sufficiently clear: appraisal applies when an amount of loss is in dispute between the policyholder and the insurer. An ordinary understanding of the word "dispute" indicates disagreement between the parties and does not require parties to demonstrate that there is no chance of reaching an agreement. Under §5.9802(2), an appraisal provision may not attempt to require an impasse.

Comment. A few commenters express concern about the scope of appraisal as proposed. One commenter notes that the rules limit dispute resolution under appraisal to only the amount of loss and states that, in practice, carriers routinely disguise coverage disputes as amount of loss disputes. The commenter states that the rules will continue that practice with implicit blessing from the department. Another commenter states general support for the requirements in §5.9802 but recommends that TDI consider clarifying that potential coverage disputes do not defeat a contractual right to appraisal. The commenter references Texas Supreme Court precedent when stating that most appraisals can be structured in a way that decides the amount of loss without deciding any liability questions.

Agency Response. TDI declines to make a change because Insurance Code Chapter 1813 sufficiently establishes scope and applicability for these rules, so no further clarification is needed. Insurance Code §1813.003(b) states that an appraisal provision required under the chapter is "intended to provide a type of dispute resolution process solely to determine the amount of loss when that amount is in dispute between the policyholder and the insurer." Insurance Code §1813.004(a) states that an appraisal under the appraisal provision required by Insurance Code Chapter 1813 "does not affect any applicable policy terms." TDI declines to introduce changes that might be construed as establishing a different scope and applicability than what is described in Insurance Code Chapter 1813. TDI will monitor implementation and, if issues are identified, may recommend clarification or changes.

Comment. A commenter requests that TDI add another reason for an appraisal award to be nonbinding in §5.9802(4). In §5.9802(4) as proposed, every applicable appraisal provision must require that the appraisal award be binding as to the amount of loss unless it was made without authority; it was not made in substantial compliance with the appraisal provision; or there is fraud, accident, or material mistake relevant to the appraisal. The commenter recommends adding that "the appraiser or umpire has an interest, pecuniary or otherwise, in the outcome of the appraisal," to the list of reasons an appraisal award may be nonbinding. The commenter also suggests that TDI provide a process for parties to file a complaint if an appraiser or umpire does not satisfy the general requirements for appraisal provisions in §5.9802.

Agency Response. TDI declines to add another reason for an appraisal award to be nonbinding in §5.9802(4). The reasons outlined in §5.9802(4) specifically reflect the requirements outlined in Insurance Code §1813.004, and §5.9804(a)(3) already requires appraisers and umpires to be disinterested in the outcome of the appraisal.

TDI also declines to create a separate complaint processing system for appraisal under Insurance Code Chapter 1813. TDI has an established complaint process that parties may use to file a complaint. TDI will use complaints to help monitor compliance with SB 458 and new Division 4.

Comments on §5.9803

Comment. One commenter requests clarification on a bulletin issued by an insurer trade group about the rule as proposed, specifically a comment in the bulletin about insurers being required to provide policyholders with a separate document about the appraisal process.

Agency Response. TDI declines to comment or interpret a document issued by another entity. The commenter may review the requirements adopted in §5.9803 for details on what information must be included in the appraisal process notice.

Comment. Commenters ask TDI to adopt a promulgated, standardized appraisal process notice form for use by all carriers. One commenter notes that a promulgated appraisal process notice would ensure consistency among carriers and would expedite the form filing process.

Agency Response. TDI declines to promulgate an appraisal notice process form. The rules provide insurers with some flexibility on how to implement the appraisal provision, as authorized by the rules and consistent with Texas law, so the information in the appraisal process notice will depend on the specific appraisal provision the insurer uses.

Comment. Multiple commenters object to the content of the appraisal process notice as proposed in §5.9803. Commenters note that the right to appraisal is already outlined in the appraisal provision in the insurance policy, so creating a separate prescriptive appraisal process notice document imposes administrative burdens and is duplicative. The commenters recommend removing the notice requirement or, alternatively, providing a

notice that simply restates the entire appraisal provision. One commenter also suggests replacing notice with a simple, general statement of the right to appraisal based on the definition of appraisal in rule text, along with a statement that the insurance policy contains an appraisal provision and that the policyholder should consult the policy for additional details.

Another commenter recommends adding information from §5.9802(2) into the appraisal process notice. Specifically, that appraisal does not require the parties to reach an impasse before appraisal can be demanded.

Agency Response. TDI declines to make a change to the appraisal process notice in response to the comments. Appraisal is an important dispute resolution mechanism that can be cheaper, more efficient, and a timelier option than litigation. However, policyholders are unlikely to have experience with the appraisal process. The requirement to send the appraisal process notice promotes consumer protection by alerting the policyholder and elevating key information, such as how to demand an appraisal, the policyholder's responsibilities in the process, and the time limits in the process. The notice must be written in plain language and be provided at a time when the information may be especially relevant. Restating an entire appraisal provision or giving a simple, general statement about the right to appraisal does not achieve the same effect of elevating key information.

TDI declines to add information about the prohibition of an impasse requirement. The elements listed in §5.9803 are meant to elevate key information found in the appraisal provision. Adding information about the absence of an impasse requirement may result in consumer confusion.

Comment. One commenter requests that §5.9803 explicitly authorizes an insurer to electronically provide the required notice.

Agency Response. TDI declines to make a change to the rule text because Insurance Code Chapter 35 already authorizes regulated entities to conduct business electronically, subject to the requirements of that chapter. The rule as proposed does not prohibit electronic notice. Insurers may provide the appraisal process notice electronically, consistent with Insurance Code Chapter 35.

Comment. TDI received multiple comments on the timing of the appraisal notice. One commenter agrees with TDI that requiring the notice of the appraisal process at the same time as the notice of acceptance or rejection of a claim required under Insurance Code §542.056 provides a consistent and well-established marker in the claim settlement process.

Multiple other commenters express concern about when the appraisal process notice should be sent to a policyholder. The commenters generally note that requiring the appraisal notice at the same time as the notice of acceptance or rejection of a claim may result in consumer confusion--such as confusion about applicability or the existence of a dispute--and require changes to existing insurer processes that create unnecessary administrative burden. Instead of the proposed timing, one commenter recommends providing the appraisal process notice at the time of claim acknowledgment. Some commenters recommend providing it when a valuation or settlement determination is made, such as with the estimate cover letters or total loss settlement offer letters. The commenters note that changing the timing will ensure the notice is delivered at a time when the appraisal option is more meaningful or relevant to the policyholder.

One commenter expresses concern that sending the appraisal process notice when the Insurance Code §542.056 notice is sent may confuse the statutory prompt pay requirements with the Division 4 appraisal requirements. The commenter states that the appraisal process notice should inform policyholders of their right to appraisal but should *not* become a mechanism for insurers to evade their statutory duties under Insurance Code Chapter 542, Subchapter B. The commenter states the notice must state the exact appraisal deadline, as well as explain that appraisal is binding only to the amount of loss; appraisal does not decide coverage or liability; and appraisal does not toll, reset, or eliminate Insurance Code Chapter 542, Subchapter B rights or deadlines. The commenter suggests modifying rule text or promulgating an appraisal notice form to address their concerns.

One commenter also states that §5.9803 does not identify a specific date the notice must be provided by and suggests that TDI clarify the timing to ensure more consistent compliance.

Agency Response. TDI declines to change when the appraisal process notice must be sent or to modify the rule text to clarify long-standing statutory requirements. The requirement to send the appraisal process notice is tied to the requirement to send the notice of acceptance or rejection of a claim under Insurance Code §542.056 because it is a consistent marker that insurers are already statutorily required to comply with. Providing the appraisal process notice at a different time during the settlement process may result in inconsistent practice between insurers or between personal automobile or residential property claims.

Once the insurer receives notice of a claim under Insurance Code §542.055, it is statutorily required to acknowledge receipt; commence any claim investigation; and request all items, statements, and forms that the insurer reasonably believes--at the time--will be required from the claimant. Ordinarily, not later than 15 days after the insurer receives the documentation required to secure final proof of loss, the insurer must send the notice of acceptance or rejection to the policyholder under Insurance Code §542.056. If the insurer notifies the policyholder that the insurer will pay a claim or part of a claim, the insurer must usually pay the claim within five business days under Insurance Code §542.057. By tying the appraisal process notice to when the insurer sends notice of claim acceptance or rejection, the policyholder will receive important information about appraisal at a time when the policyholder is likely to be considering an insurer's decision about the amount of loss. TDI disagrees that the timing of the appraisal process notice will create confusion about the existence of a dispute. Also, TDI notes that the rules do not prevent an insurer from communicating that a policyholder is not required to demand appraisal if the policyholder is satisfied.

To lessen insurers' administrative costs, they may provide the appraisal process notice either as a separate document or they may incorporate the required elements of §5.9803 in the claim acceptance or rejection notice itself.

TDI disagrees that sending the appraisal process notice when the §542.056 notice is sent will become a mechanism to evade statutory duties under Insurance Code Chapter 542, Subchapter B. The appraisal process notice is a separate requirement to inform policyholders of the appraisal process and does not alter an insurer's statutory obligations under Insurance Code Chapter 542, Subchapter B. TDI also declines to promulgate an appraisal notice form for reasons given in response to other comments.

Comments on §5.9804

Comment. Two commenters express general support for the appraiser and umpire qualifications in §5.9804. One commenter suggests that TDI also prohibit insurers from imposing additional, policy-based qualifications. The commenter states that if insurers are allowed to impose heightened qualifications, they may exclude otherwise qualified public adjusters, contractors, estimators, engineers, architects, or repair professionals.

Agency Response. TDI appreciates the general support but declines to make a change to the rule text as proposed to prohibit an insurer from imposing additional qualifications. TDI proposed minimum qualifications for appraisers and umpires to provide flexibility in implementation and because certain losses may warrant an appraiser or umpire with specific expertise. The parties are best able to determine whether appraisers with specific expertise are appropriate and, if so, what expertise is needed. TDI declines to preemptively determine that any additional or more specific qualifications are necessarily inappropriate. Most policies are written on policy forms or endorsements that must be filed with TDI for review and approval under Insurance Code Chapter 2301 and remain subject to the standards of that chapter. TDI will monitor implementation of Insurance Code Chapter 1813 and these rules and take further action if needed.

Comment. Multiple commenters state that the appraiser and umpire qualifications are set too low. One commenter suggests that appraisers and umpires be required to have both structured training and substantial experience, since appraisal panels are called on to set amounts of loss on complex and catastrophic claims and are rarely subject to judicial review.

Multiple commenters recommend heightened qualifications specifically for appraisers and umpires in automobile appraisals. Commenters recommend that the heightened criteria for residential appraisers and umpires proposed in §5.9804(b) should similarly apply to automobile appraisals. One commenter states that automobile appraisal is not one generic skill--a person may be qualified to write a repair estimate or use estimating software but may be unqualified to determine market value or lack expertise in other necessary disciplines. The commenter suggests that §5.9804 should require competence in the specific automobile valuation issue being appraised. Another commenter suggests requiring appraisers and umpires in automobile appraisal to hold ASE certification and the I-CAR Platinum certification.

Agency Response. TDI declines to specify "structured" training or the substantial experience needed to act as an appraiser or umpire under Insurance Code Chapter 1813. TDI agrees that appraisal panels play an important role in claims handling and settlement disputes. Parties to the appraisal are best suited to determine whether an appraiser or umpire is qualified to evaluate the type of loss at issue. By mandating minimum qualifications under §5.9804, parties have flexibility to hire appraisers with expertise specific to the loss at issue. As described in the rule proposal's Explanation section, because §5.9804 outlines only the minimum qualifications of an appraiser or umpire, appraisal provisions may establish additional or more specific qualifications as long as those provisions do not conflict with Division 4. This added flexibility reflects that loss disputes of this nature can vary significantly, such as the variation in the type and extent of property at issue; insurers can decide whether more nuanced qualifications may be appropriate.

Similarly, TDI declines to require all appraisers and umpires to possess both training and experience as a minimum qualification. Individuals might have ample experience to satisfactorily evaluate a loss amount without also having formal training. Likewise, individuals might have sufficient training to evaluate a loss without having specific prior experience evaluating that type of loss.

TDI also declines to modify the rule to add more specific qualifications for appraisers and umpires in automobile appraisals. TDI agrees that automobile appraisal involves skills that may vary based on the loss at issue. As proposed, §5.9804(a)(1) addresses that concern by requiring appraisers and umpires to be competent to evaluate the type of loss in dispute. Although TDI proposed additional qualifications for appraisers and umpires in appraisals involving loss to a dwelling in §5.9804(b), §5.9804(b)(3) retained the flexibility to allow for an appraiser or umpire with other applicable occupational experience or training. The proposed rule did not address the potential inclusion of additional, specific qualifications for automobile appraisers and umpires, and TDI declines to establish additional or more specific qualifications at this time. Most policies are written on policy forms or endorsements that must be filed with TDI for review and approval under Insurance Code Chapter 2301 and remain subject to the standards of that chapter. TDI will monitor implementation of Insurance Code Chapter 1813 and these rules and take further action if needed.

Comment. Multiple commenters express concern about the potential for conflicts of interest between the parties, appraisers, and umpire during an appraisal. Under §5.9804(a)(2) and (3), appraisers and umpires must be independent from the parties and disinterested in the outcome of the appraisal. One commenter notes that "independent" and "disinterested" are not meaningfully defined and may result in dispute unless clarification is provided. The commenter recommends defining acceptable relationships and setting disclosure standards to lessen the number of qualification challenges. Another commenter recommends modifying §5.9804(a)(3) to clarify that, not only must appraisers and umpires be disinterested in the outcome of the appraisal but they must also be disinterested in the outcome of "the claim."

A commenter expresses concern that allowing adjusters or public adjusters to serve as appraisers may create a conflict of interest and asks that TDI remove that category of qualification in §5.9804(b)(1).

Agency Response. TDI declines to attempt to identify or further define what relationships may result in appraisers and umpires failing to meet the "independent" and "disinterested" standards in §5.9804(a)(2) and (3). Many appraisal provisions, including those in promulgated Texas homeowners policies, require appraisers and umpires to be "independent" without further description. Similarly, many appraisal provisions require appraisers and umpires to be "disinterested," again without further description of that term. Adding definitions of "independent" and "disinterested" would likely introduce specific constraints that have not been considered in this rulemaking and might be unnecessary. In addition, the relationships or circumstances that may result in disqualification of a particular appraiser or umpire are varied, fact-specific, and outside the scope of this rulemaking. The parties may discuss concerns and ultimately challenge the qualifications of an appraiser or umpire in a court of law.

Because the rules outline only minimum qualifications, appraisal provisions may establish additional or more specific qualifications, as long as those provisions do not conflict with Division 4. TDI declines to preemptively determine that any additional or

more specific qualifications are necessarily inappropriate. Most policies are written on policy forms or endorsements that must be filed with TDI for review and approval under Insurance Code Chapter 2301 and remain subject to the standards of that chapter. TDI will monitor implementation of Insurance Code Chapter 1813 and these rules and take further action if needed.

TDI also declines to add the phrase "and the claim" to the language in §5.9804(a)(3), as it seems redundant and may result in confusion about the qualification. Appraisers and umpires are required to be "disinterested in the outcome of the appraisal," which would necessarily include disinterest in the outcome of the relevant claim.

Lastly, TDI declines to remove adjusters or public insurance adjusters from §5.9804(b)(1) based on an assumption that an adjuster or public insurance adjuster may have a conflict of interest. All individuals who may wish to act as an appraiser or umpire must be independent from the parties and disinterested in the outcome of the appraisal, including adjusters and public insurance adjusters. Further, adjusters and public insurance adjusters hold licenses with TDI and may be subject to disciplinary action for failure to comply with Texas law, including the requirement that they be independent and disinterested under §5.9804(a).

Comment. Multiple commenters recommend TDI adopt or mandate a code of ethics that appraisers and umpires must satisfy. Some commenters share experiences working with appraisers and umpires, stating that some kind of ethical standard should apply. One commenter suggests referencing the statutorily required code of ethics adopted for public insurance adjusters in 28 TAC §19.713 or the stricter engineering code of ethics when developing and adopting an ethical standard. At a minimum, the commenter recommends adding the requirement that appraisers and umpires "act ethically."

One commenter expresses uncertainty about whether there is a mechanism to enforce the code of ethics, given the absence of appraiser or umpire licensing. However, the commenter states that mandating ethical standards may help clarify appraiser and umpire duties and assist courts with reviewing challenged conduct.

One commenter states that TDI should not adopt ethical standards or a code of ethics without providing industry with the opportunity to comment on the specific requirements and notes that the matter may be better suited for the legislature to adopt.

Agency Response. TDI appreciates the commenters' suggestions but declines to modify the qualifications in §5.9804 to adopt a code of ethics or ethical standard. TDI agrees that the topic is beyond the scope of this rulemaking, and it may be more appropriate for the legislature to provide guidance.

Comments on §5.9805 and §5.9806

Comment. Multiple commenters express interest in the scope of the appraisal rules, with some commenters recommending changes to improve the process. One commenter notes that the appraisal process must remain transparent and guided by fairness, and another commenter notes that appraisal can make a big difference in resolving cost disputes when used properly. One commenter states that the proposed changes in the appraisal process for automobiles under §5.9806 is a detriment to policyholders, though the commenter does not specify further.

Multiple commenters suggest changes to the appraisal process in §5.9805 and §5.9806 to promote dispute resolution. One commenter suggests requiring appraisers in residential property appraisals under §5.9805 to inspect all components reasonably related to the claimed damage, consider all costs necessary to complete a proper repair, and identify categories of damage considered. The commenter also suggests that the rules provide a mechanism to adjust costs used in the award for inflation and other factors, as well as address situations where a significant component was not considered during appraisal.

Commenters also suggest modifying §5.9806 to clarify the information that is within the scope of automobile appraisal. One commenter requests that TDI expressly exclude information like the amount of coverage, the losses related to the claim, whether the vehicle is repairable as compared to a total loss, and transportation and rental expenses (among other variables) for appraisal addressing the dispute for an amount of loss on a repairable automobile claim. Other commenters request changes to §5.9806 to require appraisers and umpires to include all valuation components necessary to resolve the dispute about the amount of loss. In general, commenters suggest requiring valuation or consideration of elements like the actual cash value, salvage value, cost of repair, loss of use, loss of market value, value to protect, cost adjustments, and comparable vehicle analysis. Some commenters also (1) emphasize the information needed to appraise total loss claims, especially where the owner retains the total loss vehicle; and (2) list types of information that may be needed to properly evaluate the amount of loss, depending on the claim's facts and circumstances.

Agency Response. TDI appreciates the different perspectives and suggestions from the various commenters on the scope of the appraisal process proposed in §5.9805 and §5.9806. TDI declines to make a change to the proposed rule text. As stated previously in response to another comment, the parties and their representatives are best suited to determine what information to consider when estimating or evaluating a loss and what documentation is appropriate to support a determination of the amount of loss. In addition, the proposed rules did not specify what information or documentation an appraiser or umpire should consider when making a determination. SB 458 directs the commissioner to adopt rules necessary to implement Insurance Code Chapter 1813, including rules that mandate appraisal and establish the period in which appraisal must be completed. The statute also directs the commissioner to consider the qualifications and selection of appraisers and umpires in adopting rules. Accordingly, new §§5.9800 - 5.9806 focus on those subjects and do not dictate what is or is not properly considered within an appraisal.

Comment. One commenter requests that TDI modify language in §5.9805(a)(1) and §5.9806(a)(1) as proposed, which outline how and when appraisal must be demanded for residential property and personal automobile appraisal, respectively. The commenter notes that the proposed rules require an appraisal demand to be made "in writing." The commenter suggests clarifying that the appraisal demand must also be "delivered to the other party."

Agency Response. TDI agrees and modifies §5.9805(a) and §5.9806(a) as proposed to specify that, to demand appraisal under the applicable insurance policy, the appraisal demand must be made in writing "and delivered to the other party."

Comment. One commenter recommends that "invoking appraisal remain a contractual condition precedent to filing a suit." The commenter notes that this would allow both the policyholder and the insurer an opportunity to resolve disputes concerning

the amount of loss before invoking the Texas court system and incurring unnecessary legal fees.

Agency Response. TDI disagrees and declines to make a change in response to comment, as it is beyond the scope of this rulemaking. The rules as proposed do not prohibit insurers from establishing appraisal as a condition that must be met before a lawsuit may proceed when there is a dispute about the amount of loss. Consistent with its authority in Insurance Code Chapter 2301, TDI will review policy forms filed for approval to ensure compliance with Texas law.

Comment. Many commenters express interest in what was informally described in comments and at the rule hearing as "use it or lose it." As proposed, after the insurer provides the notice of acceptance or rejection under Insurance Code §542.056, a demand must be made within one year for residential property appraisal under §5.9805(a)(1) and within 120 days for automobile appraisal under §5.9806(a)(1).

Commenters express support for the proposed use-it-or-lose-it deadlines, stating that the deadlines promote efficiency in the appraisal process, protect consumers by reducing expense and claim handling delays, and preventing litigation. One commenter suggests language for both §5.9805 and §5.9806 to ensure that policy language cannot shorten the one-year or 120-day use-it-or-lose-it windows. Another commenter states the legislative record for SB 458 shows legislative intent for appraisal to operate on a use-it-or-lose-it basis.

Alternatively, many commenters express opposition to the proposed use-it-or-lose-it deadlines. Commenters reason that the deadlines undermine legislative intent or reforms, add unnecessary complexity, incentivize gamesmanship or intentional delay, and increase litigation expenses. One commenter notes that the goal of SB 458 is to preserve the right to appraisal as an essential method of dispute resolution and that the proposed use-it-or-lose-it deadlines undermine that purpose and are inconsistent with public policy and existing legal frameworks. A few commenters state that the proposed use-it-or-lose-it deadlines are outside TDI's rulemaking authority under Insurance Code Chapter 1813, and one commenter recommends that TDI focus on ensuring appraisal proceeds promptly after a dispute arises.

Multiple commenters state that the proposed use-it-or-lose-it deadlines will add complexity to an already functioning process and may increase the likelihood that parties delay or stall claim settlements in order to extinguish the right to appraisal. The commenters worry that the potential for gamesmanship may increase the litigation costs related to claim settlement and lessen the overarching public benefit of resolving disputes outside of litigation. The commenters recommend removing the framework entirely or aligning the deadlines with the contractual suit limitations or statute of limitations periods. The commenters state that modifying the use-it-or-lose-it deadlines as recommended will ensure fairness and address the concerns raised.

A few commenters recommend changing the amount of time provided for parties to use it or lose it. One commenter states that the one-year deadline for residential property appraisal demand in §5.9805(a)(1) is too long and will result in protracted appraisals. The commenter recommends shortening the deadline from one year to 240 days. Another commenter opposes the proposed 120-day deadline for personal automobile appraisal demand in §5.9806(a)(1) because it does not protect consumers who may not understand the valuation documents, do not know that the appraisal demand clock has begun to run, or are not aware that the right to appraisal exists. The commenter recommends either extending the proposed 120-day deadline to one year or tying the deadline to a different settlement document to ensure the policyholder has time to reasonably understand that appraisal is necessary.

One commenter suggests that if the use-it-or-lose-it deadline is retained, TDI should adopt a tolling or abatement rule that preserves all contractual, statutory, extra-contractual, and common-law causes of action while appraisal proceeds.

Agency Response. TDI appreciates the commenters' feedback on the proposed use-it-or-lose-it deadlines. Insurance Code §1813.002 directs TDI to adopt rules necessary to implement the chapter, including rules that establish the period in which an appraisal subject to the chapter must be completed. This directive reasonably includes establishing a deadline to initiate appraisal. Although the use-it-or-lose-it deadlines that TDI proposed were based on data gathered in the Appraisal Experience Report, TDI agrees to modify the deadlines as proposed to align with the suit-limitations deadline. This change should lessen potential complexity or disagreement about these deadlines, reduce the potential for deadline gamesmanship, and provide ample opportunity for parties to invoke appraisal. Appraisal can be a more affordable and efficient dispute resolution process than litigation when an amount of loss is in dispute, so preserving a party's ability to initiate appraisal as an alternative to initiating litigation is beneficial.

Data in the Appraisal Experience Report suggests that establishing a one-year or 120-day deadline is not necessary to prompt most parties to make appraisal demands without undue delay. According to the report, approximately 90% of residential property appraisals were demanded within 11 months after the claim was filed, and over 90% of personal automobile appraisals were demanded within 120 days of filing.

TDI has modified §5.9805(a)(1) and §5.9806(a)(1) to state that, except as provided in §5.9805(a)(2) and (3) and §5.9806(a)(2), a party's appraisal demand must be made not later than the expiration of the limitations period for filing suit under the policy.

TDI declines to modify the rules to adopt a tolling or abatement rule that preserves causes of action while appraisal proceeds. The proposed rules did not address the potential inclusion of a tolling or abatement requirement, and such a topic is outside the scope of this rulemaking.

Comment. Multiple commenters express concern about the proposed "trigger" that would start a countdown to the "use-it-or-lose-it" deadline. As previously stated, the rules as proposed required a demand for appraisal under §5.9805(a)(1) or §5.9806(a)(1) to be made within a specific amount of time after the insurer provides the notice of acceptance or rejection under Insurance Code §542.056. Multiple commenters oppose using the §542.056 notice of acceptance or rejection as the trigger because it gives insurers substantial control over when the appraisal demand deadline countdown starts and may result in the insurer rushing, delaying, or underpaying a claim to adversely affect a policyholder's right to appraisal. The commenters also note that the proposed trigger may create ambiguity and lead to confusion about when the appraisal demand deadline countdown has started and, as a result, confusion about when the appraisal demand deadline expires, causing parties to lose the right to demand appraisal under §5.9805(a) and §5.9806(a). One commenter notes that some litigation stems from disputes about deadlines and, as proposed, the

trigger might increase that litigation. The commenters suggest various solutions, such as tying the right to demand appraisal to a more neutral, objective event; providing some protective measures to ensure the right to demand appraisal is retained in certain circumstances; or entirely removing the requirement that parties invoke appraisal within a certain amount of time after the §542.056 notice is provided to the policyholder.

Agency Response. TDI declines to make a change to implement the various solutions that commenters suggested because it is unnecessary. As previously discussed, TDI has replaced the proposed use-it-or-lose-it deadlines triggered by the notice of acceptance or rejection of the claim. As adopted, §5.9805(a)(1) and §5.9806(a)(1) state that, except as provided in §5.9805(a)(2) and (3) and §5.9806(a)(2), a party's appraisal demand must be made not later than the expiration of the limitations period for filing suit under the policy. TDI expects that this change will reduce potential confusion because it is an established deadline that is likely to be more familiar to parties or their representatives than a separate deadline created in rule. Because the appraisal demand deadlines in §5.9805(a)(1) and §5.9806(a)(1) no longer rely on the Insurance Code §542.056 notice of acceptance or rejection as a trigger, no further clarification is needed in response to the comments about the trigger.

Comment. Many commenters express support in the underlying premise that appraisal should not be invoked long after litigation is filed. One commenter states that it is critical for the rules to require the "timely invocation of appraisal" if it is intended to provide a faster, less expensive alternative to litigation. Another commenter notes that lawmakers heard testimony about insurance appraisal being used to create delay and strategic advantage during litigation and mentions a court case where appraisal was demanded only two weeks out from the scheduled trial after years of litigation. Commenters recognize that the rule sought to eliminate this practice in proposed §5.9805(a)(2) and §5.9806(a)(2), which provided that "if a lawsuit is filed concerning the loss at issue, the respondent must have 30 days from when the lawsuit is filed to make an appraisal demand."

Multiple commenters express concern about the proposed 30-day deadline to demand appraisal in response to litigation, as well as establishing the date the lawsuit is filed as the date the 30-day countdown begins. The commenters state that the 30-day period assumes that the responding party will immediately learn of the lawsuit being filed, which is often not the case. The commenters note that an insurance company may not know that a policyholder disputes a claim decision until the lawsuit is filed or until the company is served notice of the suit; thus, the right to demand appraisal might be lost without ever knowing there is a dispute. Another commenter notes that, as an advocate, they would be obligated to delay service of process on the insurance company to offset the extra 30 days provided for in §5.9805(a)(2) and §5.9806(a)(2).

Multiple commenters recommend modifying the timing framework in §5.9805(a)(2) and §5.9806(a)(2) slightly to preserve the respondent's 30-day time limit. One commenter suggests that the 30-day period begin from the date of service on the respondent. Another commenter recommends that the period run from the earlier of the date the lawsuit is served or answered, so that a delay in service does not deprive the responding party of its appraisal rights. Other commenters suggest a deadline of 30 or 45 days after the date the respondent's answer to the lawsuit is due. These commenters state that their suggested changes will ensure a respondent is reasonably aware of the lawsuit before the deadline to demand appraisal has ended.

Other commenters suggest treating claims subject to Insurance Code Chapter 542A differently from "non-542A claims," giving respondents to an action on an Insurance Code Chapter 542A claim a limited amount of time to demand appraisal after the §542A.003 pre-suit notice is provided. Based on the definition of "claim" in Insurance Code §542A.001(2), Insurance Code Chapter 542A applies to a first-party claim that is (A) made by an insured under an insurance policy providing coverage for real property, (B) paid by the insurer directly to the insured, and (C) arises from damage to or loss of covered property, wholly or partly, by forces of nature as specified in the section. Under Insurance Code §542A.003, the claimant must first give a pre-suit notice not later than the 61st day before the date a claimant files an action. Insurance Code §542A.003 requires the pre-suit notice to provide information about the claim, including the specific amount alleged to be owed by the insurer on the claim for damage to or loss of covered property. One commenter states that, given the pre-suit notice requirements, TDI should not provide additional time for an appraisal demand beyond 61 days.

One commenter also recommends revising the rules to prevent a policyholder from demanding appraisal after the policyholder files a lawsuit. One commenter similarly suggests that filing suit should not revive, extend, toll, or create a new unilateral appraisal right, and that after suit is filed, appraisal should be available only by mutual agreement.

Agency Response. TDI agrees appraisal should not be demanded long after litigation has begun because it causes unnecessary delay and expense that might be avoided by more timely initiation of appraisal. But because appraisal can be a more affordable and efficient dispute resolution process than litigation, preserving a limited opportunity to initiate appraisal is beneficial.

As a result, except for insurers who are provided a pre-suit notice under Insurance Code Chapter 542A, TDI adds §5.9805(a)(3)(B) and §5.9806(a)(2)(B) to give respondents a short window to demand appraisal after a lawsuit is filed. More specifically, a respondent who wants to demand appraisal must do so not later than the date the answer to the lawsuit is filed or the date the answer is due, whichever is earlier. This window of time will help ensure that a respondent is aware of an apparent dispute about the amount of loss before the opportunity to demand appraisal is gone while also preventing a respondent from initiating appraisal long after litigation has begun.

If a pre-suit notice is provided under Insurance Code Chapter 542A, TDI revises §5.9805(a)(2) to give insurers a short window to demand appraisal after the notice. As adopted, an insurer that wants to demand appraisal must do so not later than 60 days after the notice is provided. The deadline will help ensure that the insurer is aware of an apparent dispute about the amount of loss before the opportunity to demand appraisal is gone. It will also help ensure that if the insurer wants to demand appraisal, the demand is made before litigation begins.

TDI notes that if both parties want to pursue appraisal after the demand deadline has expired, the deadline can be modified by written agreement as provided in §5.9805(c) or §5.9806(c).

With one exception, TDI agrees with the recommendation that the rules should constrain a party from demanding appraisal after litigation has begun. TDI recognizes that litigation might cause delay and extra expense that can be avoided by appraisal, but

allowing a party to initiate litigation and later demand appraisal raises at least equal concerns about potential gamesmanship and more delay and expense. If a party files a lawsuit concerning the loss at issue, then appraisal should generally not be available without the other party's agreement. An exception is appropriate for a policyholder who timely files a lawsuit and seeks to initiate appraisal because the policy requires appraisal before the policyholder can proceed with the lawsuit. In that situation, the insurer's preference to pursue appraisal before proceeding with litigation is indicated by the policy itself. As a result, §5.9805(a)(3)(A) and §5.9806(a)(2)(A) specify that those paragraphs do not apply to a policyholder who timely filed a lawsuit and is demanding appraisal because the policy requires it before the policyholder can proceed with the lawsuit.

Comment. Commenters generally support TDI's decision to create uniform timelines after appraisal is demanded. Multiple commenters suggest changes to the deadlines outlined in the appraisal and umpire procedures in §5.9805(b) and §5.9806(b).

One commenter notes that the proposed deadlines are too long and may result in appraisal taking years to complete, especially in response to catastrophic storms like Hurricane Beryl. The commenter recommends shortening the deadlines at each step of the process to ensure efficient dispute resolution. Another commenter notes that the proposed deadlines are longer than those included in many policies. That commenter suggests establishing the proposed deadlines as maximums so insurers can include quicker timelines in their policies; the commenter reasons that this approach reflects the legislature's concern that the appraisal process takes too long to complete.

Other commenters state that the proposed deadlines are too short and will result in rushed, potentially incomplete appraisals. Commenters recommend adjusting the deadlines or the requirements within the deadlines to address their concerns. One commenter recommends that the deadlines for appraisers and umpires in residential property appraisal under §5.9805(b)(4) and (5) should not begin to run until the appraisal panel is fully formed. In addition, rather than the proposed requirement that the appraisers "attempt" to agree on the amount of loss in dispute within 120 days, the commenter recommends requiring that appraisers must either agree or submit the dispute to the umpire within 120 days under §5.9805(b)(4). Another commenter suggests extending the time for appraisers to attempt to agree during a personal automobile appraisal in §5.9806(b)(4) from 40 days to 90 days.

A commenter notes that, while the deadlines as proposed in §5.9805(b) and §5.9806(b) appear reasonable for average circumstances, they may be challenging when a more catastrophic event occurs because many parties will be competing for the same appraisers and umpires. A few commenters recommend that deadlines should be automatically extended under §5.9805(b) and §5.9806(b) upon a showing of good cause, such as when catastrophic events occur.

One commenter suggests the adopted rule should use one clear timeline sequence. Another commenter suggests replacing the specific timelines proposed in §5.9805(b) or §5.9806(b) with a "prompt standard" and uses as an example of "promptly, but not later than *x* number of days."

One commenter suggests the rules should define when the appraisal panel is formed and that deadlines should run from panel formation or umpire's appointment, rather than the date appraisal was demanded. The commenter states that delays in selecting an umpire should toll completion deadlines.

Agency Response. TDI recognizes the commenters' concerns about establishing appropriate, flexible deadlines. TDI declines to change the deadlines as proposed because they strike an appropriate balance between completing appraisal in a timely manner and giving appraisers and umpires sufficient time to agree on an appraisal award. The deadlines provide a consistent framework while giving parties the flexibility to tailor it to the relative breadth and complexity of the loss at issue or to other considerations, such as challenges following a catastrophic event.

Commenters' concerns mainly focus on the length of the deadlines in §5.9805(b)(4) and (5) and §5.9806(b)(4) and (5). The 120-day deadline in §5.9805(b)(4) strikes a balance between providing time for the appraisers to attempt to agree on the amount of loss while ensuring that appraisal is completed in a reasonable amount of time. Findings in the Appraisal Experience Report indicate that about 75% of residential property appraisal awards that did not involve an umpire were made within 120 days after appraisal was demanded. Similarly, the proposed 240-day deadline in §5.9805(b)(5) strikes a balance between completing appraisal in a timely manner and the need to give the umpire sufficient time to evaluate the loss, examine the differences, and attempt to agree on the amount of loss with at least one of the appraiser. According to the Appraisal Experience Report, 75% of residential property appraisal awards involving an umpire were made within 278 days after appraisal was demanded, and 50% were made within 193 days.

Likewise, the 40-day deadline in §5.9806(b)(4) strikes a balance between providing time for the appraisers to attempt to agree on the amount of loss while ensuring that appraisal is completed in a reasonable amount of time. Findings in the Appraisal Experience Report indicate that over 75% of personal automobile appraisal awards that did not involve an umpire were made within 40 days after appraisal was demanded. Similarly, the proposed 180-day deadline in §5.9806(b)(5) strikes a balance between completing appraisal in a timely manner and the need to give the umpire sufficient time to evaluate the loss, examine the differences, and attempt to agree on the amount of loss with at least one of the appraisers. According to the Appraisal Experience Report, 75% of personal automobile appraisal awards that involved an umpire were made within 210 days after appraisal was demanded, and 50% were made within 114 days.

TDI also declines to change the §5.9805(b)(4) requirement that appraisers "attempt" to agree on the amount of loss within 120 days to specifically requiring the appraisers agree or submit the dispute to the umpire within that period. As proposed, §5.9805(b)(4) and §5.9805(b)(5) already work in tandem to ensure that the appraisers must involve an umpire if they cannot agree on the amount of loss within 120 days after the appraisal demand is made.

TDI also declines to tie deadlines in §5.9805(b)(4) and (b)(5) to when the appraisers and the umpire are appointed, rather than when appraisal is demanded. The adopted deadlines promote appraisal in one continuous process, while deadlines contingent on when appraisers are selected or when an umpire is appointed would risk undue delays.

Comment. Multiple commenters express concern about §5.9805(c) and §5.9806(c), which state that parties may modify any deadline in the appraisal process by written agreement after the insurer provides the appraisal process notice required

under §5.9803. Commenters state that, while §5.9805(c) and §5.9806(c) attempt to provide flexibility for parties to adjust timelines to suit the particular dispute at issue, it assumes cooperation and might incentivize bad acts, such as leveraging an agreement to one side's benefit or introducing extracontractual conditions into the appraisal process. One commenter suggests requiring any request to modify a deadline to include clear notice that the agreement requires mutual consent. A few commenters suggest clearly prohibiting insurers from conditioning any part of appraisal on a policyholder's agreement to modify the appraisal procedures or deadlines.

One commenter requests clarification that, under §5.9805(c) or §5.9806(c), the parties may always mutually agree to use appraisal, regardless of the expiration of any rule timeframes for demanding appraisal.

Agency Response. TDI declines to change §5.9805(c) and §5.9806(c) as proposed. The timeframes in §5.9805 and §5.9806 are fair and reasonable and generally supported by findings in the Appraisal Experience Report. Because the timeframes are fair and reasonable, it is also fair and reasonable to allow changes to those timeframes based on mutual, written agreement by the parties consistent with §5.9805(c) and §5.9806(c), enabling them to tailor the deadlines to the particular loss at issue.

TDI disagrees that additional notice is necessary. TDI also disagrees that additional rule text is needed to clarify that insurers may not condition part of appraisal on a policyholder's agreement to modify appraisal procedures or deadlines. Section 5.9802 requires appraisal provisions to state the deadlines and process for appraisal, including the specific amounts of time listed in §5.9805 or §5.9806, as applicable. Section 5.9803 requires insurers to provide policyholders an appraisal process notice that explains important information about the appraisal process in plain language, including applicable time limits and deadlines. TDI will monitor implementation of Insurance Code Chapter 1813 and these rules and take further action if needed.

TDI agrees that--subject to the requirements of §5.9805(c) and §5.9806(c)--parties can mutually agree to use appraisal even after the timeframes for demanding appraisal under §5.9805(a) and §5.9806(a) have expired.

Comment. Many commenters express concern with proposed provisions in §5.9805(b)(3) and §5.9806(b)(3) regarding umpire appointment when appraisers fail to jointly select an umpire. One commenter notes that the proposed provisions will require revisions to many long-standing TDI-approved policy forms that use alternative umpire appointment procedures. The commenter states that it would be better to exclude specific requirements for umpire selection from the rule or, at a minimum, that the adopted requirements not be made more prescriptive than proposed.

Another commenter states that the umpire appointment and deadline provisions will increase cost. The commenter notes that requiring a judicial appointment option is too formal and expensive for automobile appraisals. The commenter also notes that a consumer should not have to navigate a county or district court just to get an umpire appointed in a modest automobile property damage dispute.

One commenter suggests the umpire selection should occur immediately after both appraisers are appointed, and that the rules should clarify when the umpire is "involved."

Agency Response. TDI appreciates the commenters' concerns about umpire appointment when appraisers fail to agree but declines to remove it from the adopted rules. Judicial appointment of umpires is a long-standing practice included in many policy forms used in Texas, including in appraisal provisions in promulgated Texas homeowners policies. TDI agrees that some insurers may need to update their policy forms to conform to the judicial appointment requirement. However, it is likely that insurers will need to make other changes to their policy forms to conform to these rules implementing SB 458.

Insurers may still include a vendor option, subject to the adopted requirement that a vendor option may only be invoked by the policyholder. If a policyholder prefers not to request judicial appointment of an umpire, the policyholder may use other options included in the policy, such as invoking a vendor option consistent with §5.9805(b)(3)(B)(i) or §5.9806(b)(3)(B)(i); or mutually agreeing with the other party on an alternative option consistent with §5.9805(b)(3)(B)(ii) or §5.9806(b)(3)(B)(ii).

In the unlikely event the appraisers cannot agree on an umpire, judicial appointment is a fair method of appointing an umpire, considering that automobile appraisal results in a binding determination of the amount of loss. Findings in the Appraisal Experience Report indicate that an umpire was used in about 7% of personal automobile appraisals, and likely only a fraction of those involved selection by means other than appraiser agreement.

TDI declines to require umpire selection immediately after the appraisers are appointed. Sections 5.9805(b)(2) and 5.9806(b)(2) require insurers to use one of the two deadline options for when umpire selection must occur. The first option requires the appraisers to choose an umpire within a short time after the appraisers are selected. This is a common approach used in many appraisal provisions, including in promulgated Texas homeowners policies. The second option does not require an umpire unless the appraisers cannot agree on the amount of loss in dispute within the time under §5.9805(b)(4) or §5.9806(b)(4). Both options help ensure that an umpire is identified and able to begin efforts to resolve the appraisal in a timely manner if the appraisers cannot agree on the amount of the loss. The second option creates an opportunity for appraisers to avoid spending time and effort on choosing an umpire unless and until one is needed.

TDI also declines to define when an umpire is considered "involved" because it is sufficiently clear from the context in §5.9805(b)(5) and §5.9806(b)(5).

Comment. Commenters request a clarifying change to §5.9806(b)(3)(A) as proposed, which states that the personal automobile appraisal provision must allow either party to request judicial appointment of an umpire through a county or district court where the vehicle is principally garaged. The commenters request adding "as stated in the policy" at the end of the sentence, to ensure that the county or district would not change after the dispute arises and to prevent venue-shopping.

Agency Response. TDI agrees with the suggested clarification and has modified §5.9806(b)(3)(A) to state, "The appraisal provision must allow either party to request judicial appointment of an umpire. The judicial appointment must be through a county or district court where the vehicle is principally garaged as identified in the personal automobile insurance policy."

Comment. Many commenters express concern about the vendor-appointed umpire option proposed in §5.9805(b)(3)(B)(i) and

§5.9806(b)(3)(B)(i) and state that the rule should ensure that the policyholder has the sole right to choose which umpire appointment method is used at the time of the dispute. As proposed, an appraisal provision could include "an option for umpire appointment by an independent vendor that offers umpire selection services. An option for umpire appointment by an independent vendor must include two vendors and allow the policyholder to select which vendor is used, or it must allow only the policyholder to invoke the option for umpire appointment by a vendor."

The commenters say that the vendor-appointed umpire option shifts power to the insurer, which creates an unfair balance of control in umpire appointment. One commenter notes that, even where the policyholder may select from more than one vendor, those vendors may still be selected, approved, or influenced by the insurer before the dispute arises. Another commenter states that insurers should not be allowed total control over the appraisal process to essentially control pricing for the industry based on the insurer's associated vendors, and another commenter argues that this practice would erode confidence in the system and compromise the neutral role the umpire is intended to serve.

Many commenters note the importance of fairness in the appraisal process, especially given the binding nature of the appraisal award. By allowing an insurer to "embed" a vendor-appointment mechanism into the policy or steer policyholders toward preferred vendors, commenters express concern that vendors may be partial to the insurer, creating the possibility of manipulation or gamesmanship in the appraisal process that would effectively deny or limit policyholders' ability to fully exercise their right to appraisal. One commenter suggests that allowing the insurance company the sole ability to choose the umpire amounts to corruption.

One commenter disagrees with the use of "any alternative method" agreed on by both parties, as that kind of broad language invites insurer-drafted procedures that function as steering. Instead, the final rules should identify specific umpire-selection methods, limited to joint selection by the appraisers and judicial appointment. If the independent vendor appointment option is retained, it should include standardized disclosures, and insurers should be prohibited from steering the policyholder to a particular vendor.

Conversely, one commenter opposes requiring only judicial appointment of an umpire and recommends that §5.9805(b)(3)(A) and §5.9806(b)(3)(A) permit an insurer to choose whether to appoint an umpire by judicial appointment or to require appointment by an option of at least two independent vendors, without mandating one method of umpire appointment over the other. The commenter states that a policyholder is unlikely to have access or familiarity with an umpire selection service vendor and that independent vendors used by the insurers are skilled in dispute resolution.

Agency Response. TDI recognizes the concerns and has modified §5.9805(b)(3)(B)(i) and §5.9806(b)(3)(B)(i) to state that while an appraisal provision may include an option for umpire appointment by an independent vendor that offers umpire selection services, the option may be invoked only by the policyholder. Under §5.9805(b)(3)(A) and §5.9806(b)(3)(A), every appraisal provision subject to Insurance Code Chapter 1813 must still include access to judicial appointment. Insurers that elect to also include the vendor-appointment option must provide that the option can be invoked only by the policyholder.

TDI agrees that the method of umpire appointment must be fair. If the appraisers cannot agree on an umpire, requiring the option of judicial appointment helps ensure fairness. Judicial appointment is a fair and appropriate method considering that appraisal is a binding dispute resolution process that can offer an alternative to litigation. TDI has modified §5.9805(b)(3)(B) and §5.9806(b)(3)(B) to further clarify that judicial appointment must always be included in an appraisal provision under §5.9805 and §5.9806.

Giving insurers the ability to offer an additional vendor-appointment option that can be invoked only by the policyholder provides the opportunity for added flexibility while preserving fairness. Both parties participate in selecting that method: an insurer can decide whether to offer a vendor-appointment option, and a policyholder can decide whether to invoke that option if it is offered.

Because TDI has modified the umpire-appointment option so it can be invoked only by the policyholder, TDI removed the proposed option for an insurer to include multiple vendors that the policyholder could select from. Under §5.9805(b)(3)(B)(ii) and §5.9806(b)(3)(B)(ii), insurers may still include an option for umpire appointment through any alternative method that both parties mutually agree to in writing after appraisal has been demanded.

For the reasons described, TDI declines to make the change suggested by the last commenter, which would permit an insurer to choose between requiring judicial appointment or vendor appointment. The suggested change is also inconsistent with the bulk of the comments received regarding the vendor-appointed option. Those comments were largely in support of retaining policyholder autonomy to choose the method of umpire appointment.

Comment. Many commenters state that it is unclear whether the judicial appointment option prevails over the vendor-appointed option when both are included in a policy. One commenter notes that policyholders must retain the right to ask a court to appoint an umpire, as judicial appointment is the only safeguard that ensures independence, neutrality, and public accountability. Another commenter states that policyholders may be unable to challenge insurer-chosen umpire appointment methods because they lack sufficient understanding of the appraisal process, regardless of whether judicial appointment prevails over alternative appointment options. The commenters suggest clarifying that judicial appointment prevails when either party requests it. Another commenter recommends specific language to preserve the right to judicial appointment.

In addition to the clarification, one commenter suggests requiring the appraisal process notice under §5.9803 and the insurance policy to include language that the judicial appointment method prevails over other umpire appointment methods.

Agency Response. In response to other comments on the vendor-appointed option, TDI has modified §5.9805(b)(3)(B)(i) and §5.9806(b)(3)(B)(i) so that only the policyholder may invoke the option for a vendor-appointed umpire. Judicial appointment will be the standard umpire appointment method when appraisers fail to jointly agree, so no further clarification is needed. If alternative appointment methods are included in a policy, judicial appointment of an umpire will control unless a policyholder invokes the vendor-appointed method or both parties mutually agree in writing to an alternative appointment method after appraisal is demanded.

TDI declines to change the appraisal process notice as suggested because the notice requirements under proposed §5.9803 already require an explanation of how the policyholder may request appointment of an umpire if the appraisers fail to jointly choose the umpire, including how to request judicial appointment of an umpire.

Comment. Similar to the other concerns raised by commenters about the proposed vendor-appointed option under §5.9805(b)(3)(B)(i) and §5.9806(b)(3)(B)(i), many commenters recommend requiring an insurer that includes the vendor-appointed option in a policy to also disclose whether the vendor is compensated by or is "financially related" to the insurer. Commenters recommend the disclosure appear in the policy document to promote transparency, lessen an insurer's influence over the process, and ensure policyholders have the necessary information to make a meaningful choice.

Finally, a commenter recommends requiring vendors to be independent from the parties, just as the proposed rules require umpires to be independent. The commenter states that any vendor receiving compensation from an insurer or its affiliate for umpire appointment services in connection with that insurer's policy should be disqualified from serving on the insurer's vendor list.

Agency Response. TDI declines to add a vendor-related disclosure because the requested change is outside the scope of this rulemaking. The request would presumably require TDI to specify the types of relationships, transactions, or interests that necessitate disclosure and determine what information must be disclosed. These topics were not considered in the proposed rules. TDI also declines to introduce other vendor-specific requirements because those specifications were not considered in this rulemaking and might be unnecessary.

TDI modifies §5.9805(b)(3)(B)(i) and §5.9806(b)(3)(B)(i) in response to other comments so that only a policyholder may invoke the option for umpire appointment by a vendor. A policyholder who is concerned about a particular vendor's independence or a lack of information about a particular vendor can simply decline to invoke the vendor option and instead request judicial appointment under §5.9805(b)(3)(A) and §5.9806(b)(3)(A). If the policyholder identifies a more preferrable vendor, the policyholder may also propose that vendor to the insurer as an alternative method of umpire appointment under §5.9805(b)(3)(B)(ii) and §5.9806(b)(3)(B)(ii). To use the alternative appointment method, the parties would need to mutually agree in writing to the alternative appointment method after appraisal has been demanded.

TDI declines to make the change as requested by the last commenter. Under §5.9805(b)(3)(B)(i) and §5.9806(b)(3)(B)(i), a vendor is already required to be independent. In addition, TDI declines to introduce additional specifications related to vendor independence because additional specifications were not considered in this rulemaking and might be unnecessary. As noted, TDI modifies §5.9805(b)(3)(B)(i) and §5.9806(b)(3)(B)(i) in response to other comments so that only a policyholder may invoke the option for umpire appointment by a vendor. This change will produce a comparable effect because a policyholder who is concerned about a particular vendor's independence can simply decline to invoke the vendor option and instead request judicial appointment of the umpire.

Comment. In addition to the other concerns raised by commenters on the proposed vendor-appointed option under §5.9805(b)(3)(B)(i) and §5.9806(b)(3)(B)(i), many commenters express concern about potential costs when a vendor appoints an umpire. Commenters state that each party usually pays for its own appraiser, and if an umpire is needed, the cost of the umpire's services is split between the parties. One commenter notes that this standard payment practice is fair when both parties have an equal role in selecting the umpire; it becomes unfair, however, when the insurer effectively controls the vendor-appointing mechanism by vetting, negotiating a contract, and embedding the chosen vendor in the policy. Commenters note that using a vendor-appointment service will unfairly financially burden the policyholder, who has no way of knowing the cost of using a vendor for umpire appointment, and that costs may vary significantly between the vendors insurers list in the policy. Many commenters recommend that TDI require insurers to bear the full cost of any vendor-appointed umpire. One commenter suggests that TDI place a cap on umpire costs.

Agency Response. TDI declines to make a change in response to the comments. As commenters stated, the parties to an appraisal usually split the cost of umpire services evenly. When a vendor is used to appoint or select an umpire, TDI understands that there likely is an additional fee or cost for the vendor's service of appointing the umpire in addition to the umpire's compensation for participating on the appraisal panel. As previously discussed, TDI has modified §5.9805(b)(3)(B)(i) and §5.9806(b)(3)(B)(i) so that only a policyholder may invoke the option for umpire appointment by a vendor. This change addresses those underlying concerns of policyholder costs and fairness.

TDI also declines to adopt a fee cap for umpire services, as it is outside the scope of this rulemaking.

Comment. One commenter states that neither party should be able to designate a vendor to appoint umpires and instead recommends an approved vendor list established by TDI or another state agency.

Another commenter states that they envision a Texas-based independent vendor organization led by policyholder advocates and reputable insurance industry professionals and commits to working with those individuals to create such an organization.

Agency Response. TDI appreciates the commenters' ideas but declines to make a change as both are outside the scope of this rulemaking.

Comment. One commenter notes that the proposal appears to terminate an umpire's engagement if no appraisal award is issued within the timelines in §5.9805(b)(5) and §5.9806(b)(5). The commenter states that a deadline should promote progress, not nullify work that has already been performed. The commenter recommends that the rule should instead allow for replacement of an umpire for good cause, unreasonable delay, misconduct, or prejudice. Another commenter states that if an umpire is removed for nonperformance within the prescribed timelines, then any fees collected should be returned to the parties.

Another commenter recommends that TDI consider providing additional clarity on the timeframe for a new umpire after the previous umpire is terminated in accordance with §5.9805(b)(5) or §5.9806(b)(5). Similarly, a commenter expresses concern that automatic termination of an umpire invites gamesmanship, and another states that umpire removal places a disproportionate burden on policyholders.

Agency Response. TDI declines to modify the rule to remove the specific time limits under §5.9805(b)(5) and §5.9806(b)(5)

and replace them with specified conditions under which an umpire may be replaced. The time limits set a clear and certain time within which an umpire can act to help determine an appraisal award. The time limits help establish the period in which appraisal must be completed, which is part of the rulemaking charge in SB 458. Also, the proposed rules did not consider creating a specific set of conditions under which an umpire would be replaced other than the deadlines in §5.9805(b)(5) and §5.9806(b)(5). Establishing and defining the scope of conditions such as "good cause," "unreasonable delay," "misconduct," and "prejudice" would require additional rulemaking. It would also potentially increase the likelihood of potential disputes during the appraisal process by establishing standards that are more difficult to apply than a deadline. Also, the parties have the ability under §5.9805(c) and §5.9806(c) to agree to shorten or extend time limits in the appraisal process, including the deadlines in §5.9805(b)(5) and §5.9806(b)(5).

TDI also declines to modify the rule to require umpire fee refund in certain circumstances or to specify additional timelines where a new umpire is selected or appointed after the previous umpire is terminated. The deadlines in §5.9805(b)(5) and §5.9806(b)(5) and the parties' ability to modify deadlines in §5.9805(c) and §5.9806(c) strike a balance between efficient processing and flexibility. Parties can extend the amount of time to issue an appraisal award to ensure the work that has already been performed is not lost. Similarly, the parties can establish deadlines for the new umpire to act. TDI declines to add more procedures for situations where an umpire is terminated, and a new umpire is selected or appointed. Findings in the Appraisal Experience Report indicate that most appraisals involving an umpire are likely to be completed within the timeframes reflected in §5.9805(b)(5) and §5.9806(b)(5).

Comment. One commenter expresses concern about insurance companies steering all jobs to conglomerate autobody shops, which will destroy independent autobody shops.

Agency Response. TDI notes that the appraisal process rules do not address the topic of autobody shop steering.

STATUTORY AUTHORITY.

The commissioner adopts new §§5.9800 - 5.9806 under Insurance Code §1813.002 and §36.001.

Insurance Code §1813.002 requires the commissioner to adopt rules necessary to implement Insurance Code Chapter 1813, including rules establishing the period in which an appraisal under Insurance Code Chapter 1813 must be completed and rules mandating an appraisal for total loss and damage of the property that is the subject of the appraisal.

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.

§5.9800. Purpose and Scope.

(a) This division implements Insurance Code Chapter 1813, concerning Appraisal of Disputed Losses, which requires personal automobile and residential property insurance policies to include an appraisal provision that is intended to provide a type of dispute resolution process solely to determine the amount of loss when that amount is in dispute between the policyholder and the insurer.

(b) This division applies to personal automobile and residential property insurance policies delivered, issued for delivery, or renewed on or after March 1, 2027, in Texas by insurers described in Insurance Code §1813.001(a), concerning Applicability of Chapter.

(c) This division does not apply to:

(1) Texas Windstorm Insurance Association policies; or

(2) commercial insurance policies.

§5.9802. General Requirements for Appraisal Provisions.

Every insurance policy subject to this division must have an appraisal provision that:

(1) states either party has the right to unilaterally demand appraisal;

(2) does not require the parties to reach an impasse before a party can demand appraisal;

(3) applies to disputes between the parties about the amount of loss, including partial or total loss, other than a total loss by fire that is subject to Insurance Code §862.053(a), concerning Fire Insurance: Total Loss of Real Property;

(4) requires the appraisal award to be binding as to the amount of loss, unless:

(A) it was made without authority;

(B) it was not made in substantial compliance with the appraisal provision; or

(C) there was fraud, accident, or material mistake relevant to the appraisal;

(5) states the deadlines and process for appraisal, which must include the specific amounts of time listed in §5.9805 of this title (relating to Residential Property Appraisal Process) or §5.9806 of this title (relating to Personal Automobile Appraisal Process) as applicable and be consistent with the other requirements in this division; and

(6) does not conflict with this division or other Texas law.

§5.9805. Residential Property Appraisal Process.

(a) Appraisal demand. An appraisal demand must be made in writing and delivered to the other party within the following time limits.

(1) Except as provided in paragraphs (2) and (3) of this subsection, an appraisal demand must be made not later than the expiration of the limitations period for filing suit under the policy.

(2) If a pre-suit notice is provided under Insurance Code §542A.003, concerning Notice Required, an appraisal demand by an insurer must be made not later than 60 days after the notice is provided.

(3) If a lawsuit is filed concerning the loss at issue, the following apply.

(A) The plaintiff to the lawsuit may no longer demand appraisal unless:

(i) the insurance policy requires an appraisal before a lawsuit may proceed; and

(ii) the lawsuit was filed by a policyholder before the expiration of the limitations period for filing suit under the policy.

(B) Except for an insurer who is provided a pre-suit notice under Insurance Code §542A.003, an appraisal demand by the respondent to the lawsuit must be made not later than the date the answer is filed or the date the answer is due, whichever is earlier.

(b) Appraisal and umpire procedures. Subject to subsection (c) of this section, the following deadlines apply after a written demand for appraisal is made under subsection (a) of this section.

(1) Within 20 days, each party must hire its own appraiser and provide the appraiser's name and contact information to the other party in writing.

(2) The appraisers must jointly choose an umpire. The appraisal provision must require the appraisers to jointly choose an umpire not later than 15 days after either:

(A) the requirements in paragraph (1) of this subsection are completed; or

(B) the appraisers cannot agree on the amount of loss in dispute within the time provided in paragraph (4) of this subsection.

(3) If the appraisers fail to jointly choose an umpire within the time provided under paragraph (2) of this subsection, an umpire must be appointed subject to the following provisions.

(A) The appraisal provision must allow either party to request judicial appointment of an umpire. The judicial appointment must be through a county or district court where the residential property is located.

(B) In addition to judicial appointment required under subparagraph (3)(A) of this subsection, an appraisal provision may also include the following options.

(i) An option for umpire appointment by an independent vendor that offers umpire selection services. If this option is included, the policy must allow only the policyholder to invoke the option for umpire appointment by a vendor.

(ii) An option for umpire appointment through any alternative method that the parties mutually agree to in writing after appraisal has been demanded.

(C) A party requesting umpire appointment through judicial appointment or by an independent vendor must give written notice to the other party at least 10 days before making the request. For a judicial appointment, the written notice must include the location and identity of the court.

(D) On or before submitting a request for umpire appointment under this subsection, the party requesting the appointment must give the other party a copy of the request.

(4) Within 120 days after the appraisal demand was made, the two appraisers must attempt to agree on the amount of loss in dispute.

(5) If the appraisers cannot agree on the amount of loss in dispute, they must submit their differences to each other and the umpire. When an umpire is involved, the appraisal award must be issued not later than 240 days after the appraisal demand was made. If an appraisal award is not issued by the deadline, the umpire's engagement is terminated on that date, and the appraisers must choose a new umpire within 15 days after the deadline passes.

(c) Modifying deadlines. The parties may modify any deadline in the appraisal process by written agreement after the insurer provides the appraisal process notice required under §5.9803 of this title (relating to Appraisal Process Notice to Policyholders).

§5.9806. Personal Automobile Appraisal Process.

(a) Appraisal demand. A demand for appraisal under a personal automobile insurance policy must be made in writing and delivered to the other party within the following time limits.

(1) Except as provided in paragraph (2) of this subsection, an appraisal demand must be made not later than the expiration of the limitations period for filing suit under the policy.

(2) If a lawsuit is filed concerning the loss at issue, the following apply.

(A) The plaintiff to the lawsuit may no longer demand appraisal unless:

(i) the insurance policy requires an appraisal before a lawsuit may proceed; and

(ii) the lawsuit was filed by a policyholder before the expiration of the limitations period for filing suit under the policy.

(B) An appraisal demand by the respondent to the lawsuit must be made not later than the date the answer is filed or the date the answer is due, whichever is earlier.

(b) Appraisal and umpire procedures. Subject to subsection (c) of this section, the following deadlines apply after a written demand for appraisal is made under subsection (a) of this section.

(1) Within 20 days, each party must hire its own appraiser and provide the appraiser's name and contact information to the other party in writing.

(2) The appraisers must jointly choose an umpire. The appraisal provision must require the appraisers to jointly choose an umpire not later than 15 days after either:

(A) the requirements in paragraph (1) of this subsection are completed; or

(B) the appraisers cannot agree on the amount of loss in dispute within the time provided in paragraph (4) of this subsection.

(3) If the appraisers fail to jointly choose an umpire within the time provided under paragraph (2) of this subsection, an umpire must be appointed subject to the following provisions.

(A) The appraisal provision must allow either party to request judicial appointment of an umpire. The judicial appointment must be through a county or district court where the vehicle is principally garaged as identified in the personal automobile insurance policy.

(B) In addition to judicial appointment required under subparagraph (3)(A) of this subsection, an appraisal provision may also include the following options.

(i) An option for umpire appointment by an independent vendor that offers umpire selection services. If this option is included, the policy must allow only the policyholder to invoke the option for umpire appointment by a vendor.

(ii) An option for umpire appointment through any alternative method that the parties mutually agree to in writing after appraisal has been demanded.

(C) A party requesting umpire appointment through judicial appointment or by an independent vendor must give written notice to the other party at least 10 days before making the request. For judicial appointment, the written notice must include the location and identity of the court.

(D) On or before submitting a request for umpire appointment under this subsection, the party requesting the appointment must give the other party a copy of the request.

(4) Within 40 days after the appraisal demand was made, the two appraisers must attempt to agree on the amount of loss in dispute.

(5) If the appraisers cannot agree on the amount of loss in dispute, they must submit their differences to each other and the umpire. When an umpire is involved, the appraisal award must be issued

not later than 180 days after the appraisal demand was made. If an appraisal award is not issued by the deadline, the umpire's engagement is terminated on that date, and the appraisers must choose a new umpire within 15 days after the deadline passes.

(c) Modifying deadlines. The parties may modify any deadline in the appraisal process by written agreement after the insurer provides the appraisal process notice required under §5.9803 of this title (relating to Appraisal Process Notice to Policyholders).

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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CHAPTER 21. TRADE PRACTICES
SUBCHAPTER X. EVALUATION OF NETWORK PHYSICIANS AND PROVIDERS

The commissioner of insurance adopts the repeal of 28 TAC §21.3202 and new §21.3202, concerning designated organizations for physician ranking. The new section is adopted with changes to the proposed text published in the May 8, 2026 issue of the *Texas Register* (51 TexReg 3078). Section 21.3202 was revised to reflect the final designated organizations for physician ranking and in response to public comments. The section will be republished. The repeal of §21.3202 is adopted without changes and will not be republished.

REASONED JUSTIFICATION. The repeal and replacement of §21.3202 implements Insurance Code §1460.003 and §1460.005. Chapter 1460 was added by House Bill 1888, 81st Legislature, 2009, to address the requirements for health benefit plan issuers when making certain comparisons of physicians. Under HB 1888, issuers could make only certain comparisons of physicians, using nationally recognized standards and guidelines adopted by the commissioner. Senate Bill 926, 89th Legislature, 2025, made substantive changes to Insurance Code Chapter 1460 by removing the list of nationally recognized organizations that establish guidelines and performance measures, and instead providing criteria that an organization and its standards must meet to be eligible to be designated by Texas Department of Insurance (TDI) rules. SB 926 also added provisions related to health plans that use steering and tiering to encourage enrollees to use certain network physicians and providers, which were implemented in separate adoption orders amending sections in 28 TAC Chapters 3 and 11 issued on September 21, 2026.

Under SB 926, a health benefit plan issuer may rank physicians or classify physicians into tiers based on performance only if the standards used in the ranking are developed or prescribed by an organization designated by the commissioner. Insurance Code §1460.005 provides amended eligibility criteria that organizations must meet to be designated.

SB 926 also extended the commissioner's enforcement authority. Insurance Code §1460.007(c) requires that the commissioner prohibit a health benefit plan issuer from using a ranking or classification system for not less than 12 consecutive months if the commissioner determines that the health benefit plan issuer has engaged in a pattern of discrepancies, falsehoods, or violations described by Insurance Code §1460.003(a-1).

In addition, SB 926 amended the due process protections that health benefit plan issuers are required to provide to affected physicians.

Since the passage of SB 926, TDI has been receiving nominations of organizations that the commissioner should designate to implement Insurance Code Chapter 1460. On November 20, 2025, TDI also issued a public request for such nominations. TDI received nominations of the following entities:

- Any national medical specialty society, as defined in Insurance Code Chapter 1460

- Blue Health Intelligence (BHI)

- CareMetro

- Core Quality Measures Collaborative (CQMC)

- Denniston Data Inc. (DDI)

- Global Appropriateness Measures (GAM)

- IntegerHealth

- Joint Commission

- Motive Medical Intelligence

- National Committee for Quality Assurance (NCQA)

- National Quality Forum (NQF)

- Partnership for Quality Measures (PQM)

- Patient Centered Episode System (PACES)

- Purchaser Business Group on Health (PBGH)

- United States Department of Health and Human Services (HHS), including the Agency for Healthcare Research and Quality (AHRQ), Centers for Disease Control and Prevention (CDC), Centers for Medicare and Medicaid Services (CMS), Food and Drug Administration (FDA), and National Institutes of Health (NIH)

- U.S. Preventive Services Task Force (USPSTF)

- Commission on Accreditation of Rehabilitation Facilities (CARF® International)

- Utilization Review Accreditation Commission (URAC)

As proposed, new §21.3202 included all nominated organizations for commissioner designation under Insurance Code Chapter 1460, except that two nominated organizations--CARF and URAC--were excluded from the list of proposed organizations because they indicated that they did not wish to be designated.

TDI sent a survey to each nominated organization (other than medical specialty societies and federal agencies and task forces) to assess whether the organization and its standards meet the statutory criteria. TDI's proposal sought comments in support of, or in opposition to, all the listed organizations. TDI's determination regarding each entity was based on survey

responses, publicly available information, and comments received. TDI changed §21.3202(a) as proposed to remove four organizations from the proposed list of designated organizations.

Entities that were proposed for designation but are not adopted include the following:

- *Blue Health Intelligence (BHI)* - BHI is not adopted as a designated entity because its survey response indicated "yes" when asked if the organization has "any conflicts of interest or other bias toward or against any medical provider or health benefit plan issuer," explaining that BHI is owned by 17 Blue Plans and the Blue Cross Blue Shield Association. SB 926 (in Insurance Code §1460.005(c)(1)(B)) permits TDI to designate an organization only if it is unbiased toward or against any medical provider or health benefit plan issuer.

- *Global Appropriateness Measures (GAM)* - GAM is not adopted as a designated entity because its survey response indicated "no," when asked if the standards have a publicly transparent methodology. SB 926 (in Insurance Code §1460.005(c)(2)(A)(ii)) permits TDI to designate an organization only if the standards developed or prescribed by the organization have a publicly transparent methodology.

- *IntegerHealth (IH)* - IntegerHealth was removed from the list of designated entities because its survey response indicated "no," when asked if physicians in clinical practice are actively involved in the development of the standards. IntegerHealth's response also indicated uncertainty about whether the standards are "nationally recognized, in widely circulated peer-reviewed medical literature, expert-based physician consensus quality standards, or leading objective clinical evidence-based scholarship." Insurance Code §1460.006 requires a health benefit plan issuer to ensure that "physicians currently in clinical practice are actively involved in the development of the standards." Additionally, SB 926 (in Insurance Code §1460.005(c)(2)(A)) permits TDI to designate an organization only if the standards developed or prescribed by the organization are "nationally recognized, in widely circulated peer-reviewed medical literature, expert-based physician consensus quality standards, or leading objective clinical evidence-based scholarship."

- *Patient Centered Episode System (PACES)* - PACES is not adopted as a designated entity because its survey response indicated "no," when asked if its standards were compatible with a process for physicians to report errors. SB 926 (in Insurance Code §1460.005(c)(2)(B)) permits TDI to designate an organization only if the standards developed or prescribed by the organization are "compatible with an easy-to-use process in which a physician or person acting on behalf of the physician may report data, evidentiary, factual, or mathematical discrepancies, errors, omissions, or faulty assumptions for investigation and, if appropriate, correction." It also appears that PACES primarily defines episodes of care and could not be used by a health benefit plan issuer to rank or classify physicians independently of other standards. Insurance Code Chapter 1460 does not prevent an issuer from using tools (like PACES) to define episodes of care or otherwise standardize data for analysis, if such tools are used in connection with compliant standards developed or prescribed by a designated entity and do not prevent the issuer from complying with Insurance Code §1460.003.

TDI declined to adopt §21.3202(b), in response to comments. TDI changed proposed §21.3202(c), which is adopted as §21.3202(b), in response to comments to clarify issuer responsibilities for compliance with Insurance Code Chapter 1460.

SUMMARY OF COMMENTS AND AGENCY RESPONSE. TDI provided an opportunity for public comment on the rule proposal for a period that ended on June 8, 2026, including a public hearing held on June 1, 2026.

Commenters: TDI received comments from four commenters. No commenters spoke at the public hearing. Commenters in support of the proposal were Denniston Data, Inc. and commenters in support of the proposal with changes were the Texas Association of Health Plans. Commenters against the proposal were the Texas Medical Association and the Texas Hospital Association.

General Comment. One commenter asserts that provisions of SB 926, including restrictions on physician ranking systems, are likely unconstitutional restrictions on how health plans may communicate with enrollees. The commenter recognizes that the rule must be promulgated consistent with current statutory requirements but requests that TDI monitor litigation on similar issues and promptly issue guidance to issuers.

Agency Response. TDI appreciates the comment and will continue to monitor litigation on these issues. Because no change in the rule text is requested, no change has been made.

Comments on §21.3202(a)

Comment. One commenter supports DDI's designation, providing a detailed explanation of how DDI's organization and standards comply with the statutory requirements. Another commenter supports the designation of all the organizations.

Agency Response. TDI appreciates the comments and has retained DDI on the list of designated organizations. As noted, TDI has removed several other organizations from the adopted list.

Comment. Two commenters oppose the proposed list of designated organizations because:

1. TDI has failed in the proposal to make an affirmative demonstration and determination that the designated entities comply with Insurance Code Chapter 1460's requirements. The burden is on TDI, not stakeholders, to establish that each organization is eligible or ineligible for designation.

2. TDI has not provided a transparent process to designate organizations or ensured compliance with the statutory requirements. Information regarding TDI's survey of potential organizations and responses is not contained in the proposal or otherwise provided. And there is insufficient publicly available information about the proposed entities for stakeholders to otherwise make meaningful comments.

3. TDI's survey was not created through the rulemaking process.

4. The survey participants should be required to attest that they meet the statutory criteria and provide supporting documentation.

5. The designated organizations are not required to annually reaffirm their qualification or notify TDI if they are no longer qualified.

Agency Response. TDI disagrees with the comments and declines to make a change based on the comments. However, as discussed, TDI has removed four of the proposed designated organizations for various reasons.

TDI disagrees that Insurance Code Chapter 1460 requires that TDI demonstrate in the rule proposal itself that the designated entities are eligible for designation. Insurance Code §1460.005 requires that TDI "adopt rules as necessary to ensure that a health benefit plan issuer that uses a physician ranking system complies [with the chapter's requirements]" and that in adopting rules TDI may only designate an organization that meets the chapter's requirements. TDI's process of requiring nominated entities to affirm their compliance with the statutory qualifications and providing notice and an opportunity for the public to comment that the qualifications are not met satisfies the statutory requirements for initial designation. As discussed in the response to comments regarding oversight, TDI also will use a robust oversight system to identify and remove designated entities as appropriate, without the need for detailed rulemaking. A more burdensome process for designating entities, such as by creating a survey through the rulemaking process or requiring sworn attestations, is not necessary to protect the public. *See* Texas Regulatory Efficiency Office Rulemaking Guide For State Agencies, available at https://efficiency.texas.gov/treo-files/Rulemaking%20Guide.pdf ("Rules should express only what is necessary to meet the specific statutory objective or provide clarity. Also, rules should provide the least restrictive form of regulation to meet the statutory objective and that will adequately protect the public.") The entities that were proposed for designation are not new companies, and most have been involved in physician ranking and tiering for many years. Chapter 1460, before the SB 926 amendments, already mandated that issuers use standards that were nationally recognized and disclosed to physicians in advance. And TDI's rule has long required that ranking and tiering standards be endorsed by nationally recognized organizations or be limited to "nationally recognized guidelines, expert-based physician consensus quality standards, or leading objective clinical evidence and scholarship standards," that physicians in clinical practice be actively involved in their creation, and that the methodologies be transparent and valid. It is thus reasonable for TDI to ask the physician community to identify standards setting organizations that they feel are not qualified for designation. TDI notes that despite these existing standards, it has not received significant complaints against any of the designated entities.

Comment. A commenter requests additional clarification in the rule that if an issuer's program is certified by a designated organization, the issuer's standards should be considered compliant without requiring a separate designation. Specifically, the commenter asserts that if NCQA is a designated organization, its certification of a health plan's physician ranking program should satisfy the designation requirement. According to the commenter, when a listed organization certifies an issuer's program, that program's standards are inherently prescribed by that organization for use by issuers. This is supported by Insurance Code §847.005, which establishes a presumption of compliance if an issuer receives nonconditional accreditation by a national accreditation organization.

Agency Response. TDI disagrees with the comment and declines to make a change. A designated organization's certification of a health plan's physician ranking program cannot satisfy Insurance Code Chapter 1460 because providing a certification related to physician ranking is substantially different than developing or prescribing a standard for physician ranking. Since Insurance Code Chapter 1460 gave TDI the responsibility for designating physician ranking standards-setting organizations, TDI cannot delegate that responsibility to a third party that has a certification program. This is especially true in the case of NCQA, which does not assess the validity of the physician ranking measures that health plans use, even if they are not developed by a nationally recognized organization. TDI also disagrees that Insurance Code §847.005 provides a presumption of compliance with Insurance Code Chapter 1460 for an issuer that receives the NCQA's Physician Quality Certification (PQC). The PQC does not satisfy the criteria in Insurance Code §847.005(a)(2) because the certification criteria is not "the same, substantially similar to, or more stringent than" the requirements in Insurance Code Chapter 1460. For example, an issuer would not be denied a PQC on the basis that they use standards that are not developed or prescribed by a TDI-designated organization.

Comments on §21.3202(b)

Comment. A commenter supports the proposed interim designation provision that would allow TDI to designate an organization on an interim basis via a commissioner order as a reasonable and practical solution that reflects the realities of the industry. The commenter supports this because requiring full rulemaking each time a new entity seeks designation would create unnecessary delays and could leave enrollees without access to current, high-quality information. Two commenters oppose proposed §21.3202(b), citing concerns about statutory authority, improper rulemaking, insufficient transparency and public comment opportunities, and the risk that an ineligible organization could be designated. The commenters note that Insurance Code §1460.005 requires that entities be specifically identified in TDI rules, and designation on an interim basis would not satisfy this requirement.

Agency Response. In response to the commenters' concerns, TDI does not adopt §21.3202(b) as proposed, and proposed subsection (c) has been redesignated as subsection (b).

Comments on §21.3202(c)

Comment. Two commenters oppose proposed §21.3202(c) because it does not create sufficient oversight to ensure issuer compliance with Chapter 1460. The commenters assert that TDI's proposal appears to delegate to the issuers the responsibility to ensure compliant deployment and assessments of ongoing compliance. Instead, the commenters encourage TDI to require TDI review of an issuer's physician ranking system before deployment, annual eligibility checks, and regular data calls relating to issuer ranking systems.

Agency Response. TDI disagrees in part and agrees in part with the comments. SB 926 does not require that TDI create new oversight mechanisms regarding physician ranking, and TDI's oversight is not required to be set out in the physician ranking rule. The Insurance Code already gives TDI broad authority to enforce the law, and TDI disagrees that it is necessary to include unique oversight and enforcement provisions in each rule. This is, again, consistent with the Texas Regulatory Efficiency Office recommendation that rules should express only what is necessary and provide the least restrictive form of regulation. TDI intends to prioritize the monitoring of these issues going forward, both to quickly address compliance issues and to determine what is needed for any future rulemaking. TDI will also prioritize rulemaking to remove designated entities should the need arise.

TDI typically relies on complaints from affected parties to identify statute and rule violations, and physicians will be in the best position to bring Insurance Code Chapter 1460 compliance issues to TDI's attention. TDI has implemented an internal complaint tracking mechanism specific to Insurance Code Chapter

1460 complaints so that they are easily tracked. Insurance Code §1460.003 requires that issuers may not rank or classify physicians into tiers unless the methodology is disclosed to impacted physicians in advance, and TDI expects that this disclosure will include the name of the TDI-designated entity that developed the standards. If the name is not included, TDI will be able to obtain it through TDI's complaint process. Should a designated entity appear to no longer qualify for designation, TDI will notify the carrier of the need for corrective action and prioritize amending the rule to remove the organization's designation. TDI will also incorporate review of Insurance Code Chapter 1460 compliance into its triennial examination of health plans and may also look at compliance issues during targeted market conduct examinations. A more burdensome ongoing oversight process, such as by requiring annual surveys of designated entities, is not necessary to protect the public.

Nevertheless, TDI agrees that additional clarity in the rule text about issuer responsibilities for compliance would be beneficial. Accordingly, text has been added to make clear that an issuer may not continue to use a designated organization's standards if the organization does not qualify for designation under Insurance Code Chapter 1460.

28 TAC §21.3202

STATUTORY AUTHORITY. The commissioner adopts the repeal of §21.3202 under Insurance Code §1460.005(a) and (b) and §36.001.

Insurance Code §1460.005(a) requires the commissioner to adopt rules as necessary to implement Insurance Code Chapter 1460.

Insurance Code §1460.005(b) requires the commissioner to adopt rules as necessary to ensure that a health benefit plan issuer that uses a physician ranking system complies with the standards and guidelines described in Insurance Code §1460.005(c).

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

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

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Jessica Barta
General Counsel
Texas Department of Insurance
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For further information, please call: (512) 656-6777

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28 TAC §21.3202

STATUTORY AUTHORITY. The commissioner adopts new §21.3202 under Insurance Code §§1460.003(a), 1460.005(a) and (b) and 36.001.

Insurance Code §1460.003(a) prohibits health benefit plan issuers from ranking or classifying physicians into tiers based on performance unless, among other things, the standards used to rank or classify are developed or prescribed by an organization designated by the commissioner by rule.

Insurance Code §1460.005(a) requires the commissioner to adopt rules as necessary to implement Insurance Code Chapter 1460.

Insurance Code §1460.005(b) requires the commissioner to adopt rules as necessary to ensure that a health benefit plan issuer that uses a physician ranking system complies with the standards and guidelines described in Insurance Code §1460.005(c).

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.

§21.3202. Designated Organizations for Physician Ranking.

(a) For the purposes of Insurance Code Chapter 1460, concerning Standards Required Regarding Certain Physician Rankings by Health Benefit Plans, the commissioner designates the following organizations:

(1) any national medical specialty society, as defined in Insurance Code Chapter 1460;

(2) CareMetro;

(3) Core Quality Measures Collaborative (CQMC);

(4) Denniston Data Inc. (DDI);

(5) Joint Commission;

(6) Motive Medical Intelligence;

(7) National Committee for Quality Assurance (NCQA);

(8) National Quality Forum (NQF);

(9) Partnership for Quality Measures Evaluation and Maintenance (PQM);

(10) Purchaser Business Group on Health (PBGH);

(11) United States Department of Health and Human Services (HHS), including:

(A) the Agency for Healthcare Research and Quality (AHRQ);

(B) Centers for Disease Control and Prevention (CDC);

(C) Centers for Medicare and Medicaid Services (CMS);

(D) Food and Drug Administration (FDA), and;

(E) National Institutes of Health; and;

(12) United States Preventive Services Task Force (USPSTF).

(b) A health benefit plan issuer retains ultimate responsibility for compliance with the requirements of Insurance Code Chapter 1460, including ensuring that any standard used to rank physicians or classify physicians into tiers based on performance meets the requirements of Insurance Code §§1460.003 - 1460.006 and that the issuer does not continue to use an organization's standards if the organization does not qualify for designation under Chapter 1460.

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

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 210. USE OF RECLAIMED WATER
SUBCHAPTER E. SPECIAL REQUIREMENTS FOR USE OF INDUSTRIAL RECLAIMED WATER

30 TAC §210.54

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendments to §210.54.

Amendment to §210.54 is adopted without changes to the proposed text as published in the May 15, 2026, issue of the *Texas Register* (51 TexReg 3339) and, therefore, will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

TCEQ is adopting amendments to 30 Texas Administrative Code (TAC) Chapter 210 (Use of Reclaimed Water), Subchapter E (Special Requirements for Use of Industrial Reclaimed Water) to implement Senate Bill (SB) 1145, 89th Regular Texas Legislative Session, which amended Texas Water Code (TWC), §26.131 (Duties of the Railroad Commission), to transfer permitting authority for the land application of produced water that is treated for beneficial use from the Railroad Commission of Texas (RRC) to TCEQ for permit applications filed on or after September 1, 2025.

TCEQ is adopting amendments to §210.54 to add produced water regulated under 40 Code of Federal Regulations (CFR) Parts 435 and 437 to the list of process wastewater exceptions that may be authorized for reuse under the subchapter.

As part of this rulemaking, the commission is also adopting amendments to 30 TAC Chapter 309 (Domestic Wastewater Effluent Limitations and Plant Siting) concurrently in this issue of the *Texas Register*.

Section by Section Discussion

Amended §210.54, *Wastes Not Eligible for Coverage*, revises paragraph (a)(5), regarding exceptions to the wastes ineligible for coverage under Subchapter E that are process wastewater regulated under 40 CFR Parts 400- 471, to add produced water regulated under 40 CFR Part 435 as new subparagraphs (J) within §210.54(a)(5). The amended paragraph also adds produced water regulated under 40 CFR Part 437 in accordance with requirements, conditions, and prohibitions in Part 437, as new subparagraph (L) within §210.54(a)(5). Existing subsequent subparagraphs are renumbered.

TCEQ's jurisdiction at facilities seeking authorization to reuse produced water that has been treated for beneficial use under this subchapter is outlined under §7.117 of this title,

Memorandum of Understanding between the Railroad Commission of Texas (RRC) and the Texas Commission on Environmental Quality (TCEQ).

Final Regulatory Impact Determination

The commission reviewed the rulemaking action in consideration of the regulatory analysis requirements of Texas Government Code (TGC), §2001.0225, and determined that the action is not subject to §2001.0225 because it does not meet the definition of a "Major environmental rule" as defined in that statute. A "Major environmental rule" is defined as a rule, the specific intent of which, is 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. The proposed rulemaking is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. Rather, it intends to implement SB 1145, which amended TWC, §26.131 and transferred permitting authority from the RRC to the TCEQ of applications filed on or after September 1, 2025, for the land application of produced water that is treated for beneficial use, and to expand the existing requirements under 30 TAC Chapter 210, Subchapter E, to add produced water regulated under 40 CFR Parts 435 and 437 to the list of process wastewater exceptions that may be authorized for reuse under the subchapter.

Even if the proposed rulemaking was a "Major environmental rule," TGC, §2001.0225 still would not apply to this rulemaking because §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 does not meet any of these four applicability criteria because it: 1) does not exceed a standard set by federal law; 2) does not exceed an express requirement of state law; 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, but rather specifically under 40 CFR Parts 435 and 437, which provide effluent limitations and guidelines pursuant to 33 U.S.C. §§1251, 1311, 1316, and 1326 (Federal Water Pollution Control Act); TWC, §26.131, which authorizes the commission to issue permits for the land application of produced water; §26.027, which authorizes the commission to issue permits; and §26.121, which authorizes the commission to prohibit unautho-

rized discharges. Therefore, this proposed rulemaking does not fall under any of the applicability criteria in TGC, §2001.0225.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. Healthy Gulf submitted comments regarding the draft regulatory impact analysis.

Takings Impact Assessment

TCEQ evaluated this proposed rule and performed an analysis of whether it constitutes a taking under TGC, Chapter 2007. The proposed rulemaking intends to implement SB 1145, which amended TWC, §26.131 and transferred permitting authority from RRC to TCEQ of applications filed on or after September 1, 2025, for the land application of produced water that is treated for beneficial use, and to add produced water regulated under 40 CFR Parts 435 and 437 to the list of process wastewater exceptions that may be authorized for reuse under the subchapter.

Promulgation and enforcement of the proposed rulemaking would be neither a statutory nor a constitutional taking of private real property. The proposed rule does not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Consequently, this rulemaking action does not meet the definition of a taking under TGC, §2007.002(5).

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 §29.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §29.11(a)(6). Therefore, the adopted rules are not subject to the Texas Coastal Management Program.

The commission invited public comment on the consistency with the CMP during the public comment period. No comments were received regarding the CMP.

Public Comment

TCEQ held a public hearing on June 15, 2026. The comment period closed on June 16, 2026. TCEQ received 617 public comments on the proposal including Greater Edwards Aquifer Alliance, Meta Midstream, Sierra Club, WildEarth Guardians, Community Advocate, Healthy Gulf, Nature Conservancy, Future Heist, Commission Shift, Earthworks, Clean Water Action/Clean Water Fund, Hill County Alliance, National Wildlife Federation, Galveston Bay Foundation, Bayou City Waterkeeper, Glenrose Engineering, Truckers Movement for Justice, Circle Verde Water, Hinds Feat, NGL Water Solutions Permian, Texas Oil and Gas Association, Texas Independent Producers Water Association, Texas Alliance of Energy Producers, Earthjustice, Texas Industry Project, and CMV Consulting, and several individuals. Commentors expressed mixed support, requested further changes to the proposed rules, and recommended the commission limit the rulemaking to statutorily required changes.

Response to Comments

Comment

General Opposition

Commission Shift, Earthworks, Greater Edwards Aquifer Alliance, Clean Water Action/Clean Water Fund, Sierra Club, Glenrose Engineering, National Wildlife Federation, Galveston Bay Foundation, Bayou City Waterkeeper, Nature Conservancy, Hill County Alliance, WildEarth Guardians, Earthjustice, Healthy Gulf, Truckers Movement for Justice, and individuals expressed general opposition to disposal of treated produced water by land application under 30 TAC Chapter 309 and/or Chapter 210. Future Heist requested that the commission reject or withdraw the proposed rules.

Response

The executive director acknowledges these comments.

Comment

WildEarth Guardians and Healthy Gulf requested that TCEQ prohibit the land application of treated produced water.

Response

SB 1145, 89th Regular Legislative Session, amended TWC, Chapter 26, Subchapter D (relating to Prohibition Against Pollution; Enforcement) to amend §26.131 (relating to Duties of the Railroad Commission) to transfer permitting authority for the land application of produced water by irrigation that is treated for beneficial use from the Railroad Commission of Texas (RRC) to TCEQ for permit applications filed on or after September 1, 2025. If this activity were prohibited by TCEQ rules, TCEQ would not be compliant with state statute.

Comment

Clean Water Action/Clean Water Fund, Hinds Feat, Sierra Club, Glenrose Engineering, Greater Edwards Aquifer Alliance, National Wildlife Federation, Galveston Bay Foundation, Bayou City Waterkeeper, Nature Conservancy in Texas, Hill County Alliance, WildEarth Guardians, Earthjustice, Community Advocate, Healthy Gulf and individuals stated that the proposed rules are inconsistent with statute. Commentors noted that the statute directed TCEQ to adopt standards for land application of treated produced water, or that the statute did not mention industrial waste-streams.

Response

The proposed rules would clarify that 30 TAC Chapter 309 establishes the minimum requirements for disposal of treated produced water through irrigation to ensure the protection of water quality, human health, and the environment. The proposed rules are consistent with the statute and required to implement SB 1145. A future rulemaking may be conducted to adopt additional standards for land application of treated produced water.

In addition to the revisions required to implement SB 1145, proposed amendments to 30 TAC Chapter 309 would clarify applicability regarding the land application of industrial wastewater, which includes treated produced water. The minimum requirements for land application of treated effluent established under Chapter 309 have historically been applied to land application of industrial wastewater on the basis of best professional judgement. This proposed revision would clarify that the rules apply to TCEQ industrial land application permits. The amended chapter would also add a reference to 30 TAC §217.203 (relating to Design Criteria for Natural Treatment Systems) to clarify that the requirements of the section are applicable to the treatment of domestic wastewater as appropriate (see 30 TAC §217.201 relating to Applicability) and correct the title of two figures.

Comment

Clean Water Action/Clean Water Fund, Hinds Feat, Sierra Club, Glenrose Engineering, Greater Edwards Aquifer Alliance, National Wildlife Federation, Galveston Bay Foundation, Bayou

City Waterkeeper, Nature Conservancy in Texas, Hill County Alliance, WildEarth Guardians, Earthjustice, Community Advocate, Healthy Gulf and individuals expressed concern that the proposed rules under Chapter 309 are insufficient or do not provide a sufficient regulatory framework for land application of treated produced water by irrigation. Commentors requested that TCEQ develop a full permitting program that includes public participation requirements (including availability of application materials, public notice requirements, and opportunities for public comment and contested case hearings; enforcement requirements), compliance history requirements, testing requirements, and enforcement requirements.

Response

The proposed rules would be consistent with TCEQ's Texas land application permitting program. The proposed rules would clarify that Chapter 309 establishes the minimum requirements for disposal of treated produced water through land irrigation and are expected to be sufficient to develop permits that will be protective of water quality, human health, and the environment.

Applications submitted to obtain a Texas land application permit (TLAP) under Chapter 26 of the TWC are processed under 30 TAC Chapters 305 (relating to Consolidated Permits) and 281 (relating to Application Processing), and are subject to all applicable TCEQ rules, regulations, and prohibitions, including but not limited to those under 30 TAC Chapters 25 (relating to Environmental Testing Laboratory Accreditation and Certification), 39 (relating to Public Notice), 55 (relating to Requests for Reconsideration and Contest Case Hearing; Public Comment), 60 (relating to Compliance History), 70 (relating to Enforcement), 80 (relating to Contested Case Hearings), 213 (relating to the Edwards Aquifer), 222 (Subsurface Area Drip Dispersal Systems), 327 (relating to Spill Prevention and Control), and 335 (relating to Industrial Solid Waste and Municipal Hazardous Waste).

Comment

An individual questioned the basis of testing and reporting requirements associated with renewing an existing land application permit as related to the protection of water quality and public resources, where water is applied on private property and does not leave the permitted site.

Response

Standard sampling required for the renewal of land application permits often tests for a broader suite of toxic or trace pollutants than routine monthly monitoring. This catches unexpected contaminants in the wastestream. Testing data is used during TCEQ's application review process to verify current effluent characteristics and update limitations in an existing permit.

The testing and reporting requirements contained in the water quality permit application to obtain or renew a land application permit are based on applicable state and federal rules and guidance to ensure protection of water quality, human health, and the environment.

General Support

Comment

Greater Edwards Aquifer Alliance, Circle Verde Water, Hinds Feat, NGL Water Solutions Permian, Texas Oil and Gas Association, Texas Independent Producers Water Association, Texas Alliance of Energy Producers, Earthjustice, Texas Industry Project, CMV Consulting, and individuals expressed general support for the proposed Chapter 309 rulemaking regarding land application of treated produced water. Some individuals also expressed general support for transfer of jurisdiction for the land application of produced water from RRC to TCEQ.

Response

The executive director acknowledges these comments.

Comment

Meta Midstream, Texas Oil and Gas Association, Texas Independent Produced Water Association, and Texas Industry Project expressed general support for the proposed Chapter 210 rulemaking regarding reuse of treated produced water.

Response

The executive director acknowledges these comments.

Concerns related to Water Quality

Comment

Greater Edwards Aquifer Alliance, Meta Midstream, Sierra Club, Glenrose Engineering, National Wildlife Federation, Galveston Bay Foundation, Bayou City Waterkeeper, Nature Conservancy in Texas, Hill County Alliance, WildEarth Guardians, Earthjustice, Community Advocate, Healthy Gulf, and individuals expressed concern that land application of treated produced water by irrigation will impact groundwater and drinking water supplies, including public and private wells.

Response

The legislature has determined that "the goal of groundwater policy in this state is that the existing quality of groundwater not be degraded. This goal of non-degradation does not mean zero-contaminant discharge." Chapter 26 of the TWC further states, "discharges of pollutants, disposal of wastes, or other activities subject to regulation by state agencies be conducted in a manner that will maintain present uses and not impair potential uses of groundwater or pose a public health hazard."

The proposed rules would be consistent with TCEQ's Texas land application permitting program. The proposed rules would clarify that Chapter 309 establishes the minimum requirements for disposal of treated produced water through land irrigation to ensure protection of water quality (including groundwater), human health, and the environment. No discharge of pollutants into water in the state is authorized under an individual TLAP and it is therefore expected to be protective of groundwater. However, additional site-specific provisions may be established on a case-by-case basis to ensure protection of potable water sources and supplies.

Comment

An individual expressed concern that land application of treated produced water will impact wetlands. National Wildlife Federation, Galveston Bay Foundation, Bayou City Waterkeeper, Nature Conservancy in Texas, Sierra Club, and Hill County Alliance recommended expanding the existing prohibition of a wastewater treatment plant at 30 TAC §309.13(b) to apply to constructed wetlands.

Response

The TWC defines "water" or "water in the state" to mean groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, wetlands, marshes, inlets, canals, the Gulf of America, inside the territorial limits of the state, and all other bodies of surface water, natural

or artificial, inland or coastal, fresh or salt, navigable or non-navigable, and including the beds and banks of all watercourses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state.

The proposed rules would be consistent with TCEQ's land application permitting program and would clarify that Chapter 309 establishes the minimum requirements for disposal of treated effluent. No discharge of pollutants into water in the state is authorized under an individual TLAP and it is therefore expected to be protective of wetlands. However, additional site-specific provisions may be established in an issued land application permit as necessary to ensure protection of potable water sources and supplies.

Comment

Greater Edwards Aquifer Alliance, Glenrose Engineering, Earthjustice, and Sierra Club expressed concern about potential land application of treated produced water over aquifers, including the Edwards Aquifer. Glenrose Engineering requested the proposed rule be revised to prohibit land application of treated produced water over the Edwards Aquifer Contributing, Recharge, and Transition Zones.

Response

No discharge of pollutants into water in the state is authorized by a TLAP. TCEQ has established rules for regulated activities on the Edwards Aquifer recharge and contributing zones under 30 TAC Chapter 213 (Edwards Aquifer). The proposed rules would be implemented on a case-by-case basis in individual TLAPs.

Concerns regarding Health and the Environment

Comment

Commission Shift, Earthworks, Greater Edwards Aquifer Alliance, Sierra Club, Glenrose Engineering, National Wildlife Federation, Galveston Bay Foundation, Bayou City Waterkeeper, Nature Conservancy in Texas, Hill County Alliance, WildEarth Guardians, Earthjustice, Community Advocate, Healthy Gulf, Truckers Movement for Justice, and individuals expressed concerns about potential impacts to human health and/or public health from irrigation of treated produced water.

Response

As previously stated, Chapter 26 of the TWC requires that discharges of pollutants, disposal of wastes, or other activities subject to regulation by state agencies be conducted in a manner that will not pose a public health hazard.23

The proposed rules would be consistent with TCEQ's land application permitting program and would clarify that Chapter 309 establishes the minimum requirements for disposal of treated effluent, including produced water that is treated for beneficial use, to ensure protection of human health and public health. Additional site-specific provisions may be established in an issued land application permit on a case-by-case basis to ensure protection of human health.

Comment

Commission Shift, Earthworks, Greater Edwards Aquifer Alliance, Sierra Club, Glenrose Engineering, National Wildlife Federation, Galveston Bay Foundation, Bayou City Waterkeeper, Nature Conservancy in Texas, Hill County Alliance, Future Heist, WildEarth Guardians, Earthjustice, Community Advocate, Healthy Gulf, Truckers Movement for Justice, and individuals expressed concerns about potential impacts to the environment, including wildlife, livestock and farmland, and other critical environmental features or natural resources.

Response

The proposed rules would be consistent with TCEQ's land application permitting program and would clarify that Chapter 309 establishes the minimum requirements for disposal of treated effluent, including produced water that is treated for beneficial use, to ensure protection of the environment. However, additional site-specific provisions may be established in an issued land application permit on a case-by-case basis, as necessary, to ensure protection of the environment, including wildlife, livestock and farmland, and other critical environmental features or natural resources.

Comment

National Wildlife Federation, Galveston Bay Foundation, Bayou City Waterkeeper, Nature Conservancy, Hill County Alliance, Future Heist, WildEarth Guardians, Sierra Club, and an individual expressed concerns about potential impacts from spills.

Response

Spills are considered an unauthorized discharge and are subject to 30 TAC Chapter 327 (relating to Spill Prevention and Control). An unauthorized discharge is a violation of the proposed permit for which an enforcement action can be brought by TCEQ against a permittee. However, an issued TLAP would not limit anyone's ability to seek legal remedies from the owner or operator (i.e, permittee) regarding any potential trespass, nuisance, or other cause of action in response to the proposed facility's activities that may result in injury to human health or property or interfere with the normal use and enjoyment of property.

Comment

National Wildlife Federation, Galveston Bay Foundation, Sierra Club, Bayou City Waterkeeper, Nature Conservancy, Hill County Alliance, Future Heist, WildEarth Guardians; Healthy Gulf, and individuals expressed concerns about potential impacts from leaching and runoff.

Response

Potential impacts from leaching would be evaluated during the application review process for a permit to land irrigation with produced water that is treated for beneficial use. Any potential impacts identified during evaluation would be addressed by site-specific permit requirements established in the issued land application permit.

Land application permits authorize the disposal of wastewater by irrigation only. A TLAP does not authorize the discharge of pollutants off site or into waters in the state and prohibits any unauthorized discharges. Leaching into groundwater and runoff are two forms of unauthorized discharge prohibited. An unauthorized discharge is a violation of the proposed permit for which an enforcement action can be brought by TCEQ against a permittee.

Concerns related to the Proposed Rule

Comment

Greater Edwards Aquifer Alliance, National Wildlife Federation, Galveston Bay Foundation, Bayou City Waterkeeper, Nature Conservancy in Texas, Hill County Alliance, Future Heist, WildEarth Guardians, Earthjustice, Healthy Gulf, and individuals expressed concern that the proposed rules do not establish spe-

cific effluent analysis and testing requirements for an application to obtain a permit to land apply treated produced water. Sierra Club, Glenrose Engineering, Greater Edwards Aquifer Alliance, National Wildlife Federation, Galveston Bay Foundation, Bayou City Waterkeeper, Nature Conservancy, Hill County Alliance, Future Heist, WildEarth Guardians, Earthjustice, Community Advocate, Healthy Gulf, Truckers Movement for Justice, and individuals expressed concerns that treated produced water to be land-applied could contain chemicals such as salts, clays, waxes, metals and heavy metals, per- and polyfluoroalkyl substances (e.g., PFAS), industrial solvents, inorganic and organic compounds, including volatile organic compounds and other dissolved gases, chemical additives and fracking fluids, and other unknown substances. Sierra Club, Glenrose Engineering, Future Heist, Nature Conservancy, Earthjustice, Healthy Gulf, and individuals expressed concern about radioactive materials or naturally occurring radioactive materials in produced water. Commission Shift, Greater Edwards Aquifer Alliance, Meta Midstream, Sierra Club, Glenrose Engineering, National Wildlife Federation, Galveston Bay Foundation, Bayou City Waterkeeper, Nature Conservancy, Hill County Alliance, WildEarth Guardians, Earthjustice, Healthy Gulf, and individuals commented that the proposed rule should establish specific or minimum effluent limitations and standards for land application of produced water, including toxicity testing.

Response

The proposed rules would clarify that Chapter 309 establishes the minimum requirements for disposal of treated produced water through irrigation.

Analytical requirements for proposed land application activities are established in the water quality permit application for industrial wastewater dischargers and under an issued land application permit based on applicable state and federal rules and guidance. During technical review, TCEQ staff establish appropriate site-specific effluent limitations, irrigation rates, and any special provisions necessary to ensure the protection of water quality, health, and the environment in the land application permit. Irrigation rates established in an issued TLAP are site-specific and based on agronomic rates to ensure crop growth, nutrient uptake, and effluent retention in the soil to prevent effluent runoff, seepage, ponding, or accumulation of pollutants, and may include lifetime loading limits for certain pollutants if needed to ensure protection of water quality, health, and the environment. If issued, a permittee would be required to comply with the permit and adhere to the effluent analysis and testing requirements established in the permit, as well as the application rate and effluent limitations.

To clarify that additional site-specific requirements will be developed on a case-by-case basis, proposed 30 TAC §309.20 was revised to include new provision (d), as follows:

"(d) Additional Requirements. Additional site-specific requirements for the treatment and disposal of industrial wastewater, including disposal of produced water under Tex. Water Code §26.131(e) that has been treated for beneficial use, may be established on a case-by-case basis."

Comment

Commission Shift, Sierra Club, Glenrose Engineering, National Wildlife Federation, Galveston Bay Foundation, Bayou City Waterkeeper, Nature Conservancy in Texas, Hill County Alliance, WildEarth Guardians, Healthy Gulf, and individuals expressed concerns about pollutant accumulation from land application activities. Additionally, Healthy Gulf and individuals commented that the rules should require bioaccumulation tracking.

Response

The proposed rules would clarify that Chapter 309 establishes the minimum requirements for disposal of treated produced water through irrigation.

During technical review, TCEQ staff establish appropriate site-specific effluent limitations, irrigation rates, and any special provisions necessary to ensure the protection of water quality, health, and the environment in the land application permit. Irrigation rates established in an issued TLAP are site-specific and based on agronomic rates to ensure crop growth, nutrient uptake, and effluent retention in the soil to prevent effluent runoff, seepage, ponding, or accumulation of pollutants, and may include lifetime loading limits for certain pollutants if needed to ensure the permit is protective of water quality, health, and the environment.

Comment

Individuals expressed concerns that produced water is not like wastewater from domestic, agricultural, or other industrial sources. Commentors recommended that TCEQ create separate regulations for produced water. CMV Consulting LLC commented that separate rules should be developed for land application of produced water over the Carrizo aquifer.

Response

TCEQ follows the methodology and procedures outlined under 30 TAC Chapter 309 to evaluate an application to dispose of treated effluent. Based on technical reviews of the application and proposed activities, TCEQ staff develop a permit that establishes effluent limitations and permit requirements that are expected to protect human health and the environment.

The proposed rules would be consistent with TCEQ's land application permitting program and would clarify that Chapter 309 establishes the minimum requirements for disposal of treated effluent. A TLAP does not authorize the discharge of pollutants off site or into water in the State.

Additional site-specific provisions may be established in an issued land application permit as necessary to ensure protection of groundwater resources. The rule also provides for regulatory flexibility when establishing requirements under 30 TAC §309.13(c) in a permit by allowing TCEQ to consider exceptions and establish alternative provisions if the alternative provides adequate protection of potable water sources and supplies.

Comment

National Wildlife Federation, Galveston Bay Foundation, Sierra Club, Bayou City Waterkeeper, Nature Conservancy, and Hill County Alliance expressed concern about setback distances 30 TAC §309.13(c)(1) - (6) and commented that larger setback distances are needed to ensure protection of water resources from land irrigation with industrial wastewater, including produced water, as well as Sierra Club, Greater Edwards Aquifer Alliance, National Wildlife Federation, Galveston Bay Foundation, Bayou City Waterkeeper, Nature Conservancy, Hill County Alliance, Future Heist, Healthy Gulf, Community Advocate and other individuals . Greater Edwards Aquifer Alliance also expressed concern and recommended that the required setbacks be revised to one-acre from water supply wells for land application of produced water. Sierra Club commented that the proposed setback at 30 TAC §309.13(c)(6) should be greater and requested

TCEQ provide the technical basis for the proposed distances and demonstrate why they are protective of the environment and public health. The Texas Industry Project expressed concern about the proposed requirement at 30 TAC §309.13(c)(6) and requested removal. The Texas Industry Project noted the provision may cause a broad suite of facilities to be out of compliance with TCEQ rules and it addresses conditions beyond those required to be addressed under SB 1145, and recommend it be removed. Alternatively, The Texas Industry Project suggested that the distance limit should (1) expressly apply only to new units, not units that were authorized or constructed prior to the effective date of the final rule and (2) expressly allow case-by-case exceptions as approved by the Executive Director. Future Heist commented that the proposed requirement at 30 TAC §309.13(c)(6) fails to account for slope. Future Heist and individuals requested the rules establish setbacks for neighborhoods, schools, daycares, and community centers.

Response

The proposed rules would be consistent with TCEQ's land application permitting program and would clarify that Chapter 309 establishes the minimum requirements for disposal of treated effluent, including produced water that is treated for beneficial use. An individual TLAP does not authorize the discharge of pollutants off site or into water in the state, including groundwater.

Requirements under 30 TAC §309.13(c) would establish distances required to locate a wastewater treatment unit (including an irrigation area) from water features. These requirements are expected to be protective of groundwater, surface water, and public health in the event of an unauthorized discharge or significant rain event that could cause run off from an irrigation area.

The proposed 100-foot setback under 30 TAC §309.13(c)(6) is a standard provision included in issued TLAPs that authorize the disposal of industrial wastewaters through land application. This provision ensures protection of water in the state from land application activities and is consistent with existing buffer zone requirements for land application activities already authorized by the commission under 30 TAC §222.81 relating to Subsurface Area Drip Dispersal Systems (SADDS) and 30 TAC §§321.40(h), 321.48(e)(6), and 321.409(1) relating to CAFOs.

Additional site-specific provisions may be established in an issued land application permit as necessary to ensure protection of groundwater resources. However, the rule also provides for regulatory flexibility when establishing requirements under 30 TAC §309.13(c) in a permit by allowing TCEQ to consider exceptions and establish alternative provisions if the alternative provides adequate protection of potable water sources and supplies.

Comment

Healthy Gulf and individuals expressed concern about accountability. Glenrose Engineering, WildEarth Guardians, and individuals expressed concern about TCEQ's ability to enforce a TLAP for treated produced water. Sierra Club and individuals expressed concern that the proposed rules do not contain enforcement requirements for the land application of treated produced water. Meta Midstream expressed concern about the lack of additional record-keeping requirements in the proposed rule.

Response

A TCEQ-issued permit contains enforceable requirements and provisions to ensure accountability for permit holders in the operation of their facility and land application area(s). A permit holder is required to maintain records and notify the agency if the effluent does not meet the permit conditions according to the requirements established in the permit. In addition, TCEQ regional staff may sample the effluent during routine inspections or in response to a complaint.

A land application permit holder is subject to administrative, civil, and criminal penalties, as applicable, under TWC, §§7.051 - 7.075 (relating to Administrative Penalties), 7.101 - 7.111 (relating to Civil Penalties), and 7.141 - 7.202 (relating to Criminal Offenses and Penalties) for violations including, but not limited to, negligently or knowingly violating the federal Clean Water Act (CWA) §§301, 302, 306, 307, 308, 318, or 405, or any condition or limitation implementing any sections in a permit issued under CWA §402.

Penalties, including the monetary amount of administrative fines, are determined by the TCEQ Enforcement Division and depend on the nature and extent of the violation(s).

Comment

Greater Edwards Aquifer Alliance, Meta Midstream, Sierra Club, WildEarth Guardians, Community Advocate, Healthy Gulf, and individuals expressed concern about agency oversight for a land application permit for treated produced water. Commentors recommended TCEQ revise the rule to include requirements such as independent testing, additional or continuous monitoring requirements, and livestock monitoring requirements.

Response

The proposed rules would be consistent with TCEQ's land application permitting program and would clarify that Chapter 309 establishes the minimum requirements for disposal of treated effluent, including produced water that is treated for beneficial use.

All wastewater treatment facilities and land application areas must be operated and maintained consistent with applicable TCEQ rules. An issued permit describes the conditions under which a specific wastewater facility must operate and will include provisions that require the facility and land application site(s) to be properly operated and maintained at all times.

Monitoring requirements established in an issued permit are based on TCEQ guidance documents for establishing monitoring frequencies. The monitoring frequencies in a draft permit can be increased or decreased based on an Applicant's ability to demonstrate compliance with the permitted effluent limitations.

TCEQ's Office of Compliance and Enforcement ensures compliance with applicable state and federal regulations. The appropriate regional office conducts a mandatory comprehensive compliance investigation (CCI) at EPA-classified minor facilities once every five fiscal years. Additional mandatory investigations can be required if the facility is categorized as significant noncompliance (SNC). SNC is determined by the Compliance Monitoring Section of TCEQ and is based on self-reported effluent violations.

Comment

Hinds Feat requested that TCEQ develop an expedited permitting route for land application of produced water.

Response

The executive director is proposing to amend Chapter 210 to include treated produced water as a wastestream eligible for reuse to create an accelerated authorization route for the land application of produced water that is treated for beneficial use. Indus-

trial reclaimed water authorizations issued under Chapter 210 are reviewed and issued following a streamlined approach, typically taking about two months to obtain.

Industrial reuse activities that may be authorized under Chapter 210 are much smaller in scale and must adhere to the criteria, requirements, and prohibitions outlined in the Chapter, thus requiring significantly less technical review and oversight. Industrial reuse applications do not require public notice or offer an opportunity for a contested case hearing, which also reduces the timeframes needed to obtain an authorization.

Comment

The Texas Industry Project and Texas Oil and Gas Association expressed concerns about creating an inconsistency within the rules because the proposed definition of "produced water" at 30 TAC §309.11(9) incorporates by reference the definition at 30 TAC §305.541(b), which specifically mentions discharges into water in the state.

Response

The proposed definition has been revised as follows:

Produced water - is defined for the commission's implementation of Texas Water Code, §26.131(e), all wastewater associated with oil and gas exploration, development, and production activities, except hydrostatic test water and gas plant effluent.

Comment

Sierra Club commented that the proposed rules should include a definition for "treated produced water". The Texas Industry Project requested the addition of a definition for "treated produced water fluids", as follows:

"…for purposes of this Chapter 309, produced water that has been treated for beneficial use and is land applied. For purposes of this Chapter 309, the definition does not include those treated wastewaters that are industrial reclaimed water as defined by 30 TAC 210.52 and regulated under Chapter 210 or that are treated fluid as defined by 16 TAC 4.110 and regulated by the Railroad Commission of Texas."

Response

The executive director declines to include a definition for produced water that is treated for beneficial use and land applied.

Comment

National Wildlife Federation, Galveston Bay Foundation, Sierra Club, Bayou City Waterkeeper, Nature Conservancy, and Hill County Alliance expressed concern about the existing definition of "new facility," which includes only domestic wastewater treatment facilities.

Response

To clarify applicability to both domestic and industrial wastewater treatment facilities, the definition for "New Facility" has been revised to "Any wastewater treatment facility which is not an existing facility."

Comment

National Wildlife Federation, Galveston Bay Foundation, Sierra Club, Bayou City Waterkeeper, Nature Conservancy, and Hill County Alliance recommended the addition of a definition for the term "domestic raw water supply."

Response

The executive director declines to include a definition for "domestic raw water supply." TCEQ rules and regulations related to raw water supply are located under 30 TAC Chapter 290 (relating to Public Drinking Water). TCEQ defines raw water supply conceptually as untreated surface water entering a domestic water treatment plant.

Comment

National Wildlife Federation, Galveston Bay Foundation, Sierra Club, Bayou City Waterkeeper, Nature Conservancy, and Hill County Alliance recommended the addition of a definition for the term "agricultural practice."

Response

The executive director declines to include a definition for "agricultural practices". Definitions for "agriculture or agricultural" and "agricultural use" are established under TCEQ rules located at 30 TAC Chapter 297 (relating to Water Rights).

Comment

The Sierra Club (Lone Star Chapter) commented that the proposed rules should include a definition for "land application."

Response

The executive director declines to include a definition for "land application." Land application activities that may be authorized under Chapter 309 include the disposal of treated effluent by surface irrigation, drainfields, or subsurface land application, unless otherwise prohibited by state or federal rules or statute.

Comment

NGL Water Solutions Permian, LLC, Texas Oil and Gas Association, Texas Industry Project, National Wildlife Federation, Galveston Bay Foundation, Sierra Club, Bayou City Waterkeeper, Nature Conservancy, and Hill County Alliance expressed concerns about applicability of requirements for treatment and disposal of domestic wastewater to industrial wastewater, including produced water. Texas Oil and Gas Association, NGL Water Solutions Permian, Texas Industry Project, National Wildlife federation, Galveston Bay Foundation, Sierra Club, Bayou City Waterkeeper, Nature Conservancy, and Hill County Alliance recommended revisions to remove ambiguity and ensure that provisions applicable only to domestic wastewater treatment facilities do not inadvertently apply to land application of industrial wastewater or treated produced water.

Response

The following revisions to the proposed rule text for Chapter 309 have been made to clarify the applicability of requirements that are explicitly for the treatment and disposal of domestic wastewater:

30 TAC §§309.1(b) and (e)and 30 TAC §§309.13(e)- (i) have been revised to clarify applicability of the requirement to treated domestic sewage

30 TAC §309.10(a)(1) has been revised as follows:

(1) This subchapter establishes minimum standards for the location of domestic wastewater treatment facilities and land application of industrial wastewater, including produced water under Tex. Water Code §26.131(e) that is treated for beneficial use. These standards are to be applied in the evaluation of an application for a permit to:

(A) treat and dispose of domestic wastewater;

(B) treat and dispose of industrial wastewater, including disposal of produced water under Tex. Water Code §26.131(e) that is treated for beneficial use;

(C) obtain approval of construction plans and specifications for domestic wastewater treatment facilities."

Comment

National Wildlife Federation, Galveston Bay Foundation, Sierra Club, Bayou City Waterkeeper, Nature Conservancy, and Hill County Alliance commented that proposed rule language at 30 TAC §309.2(b) should be revised from "may" to "must".

Response

The executive director acknowledges this comment; however, no revisions to this subsection were proposed to implement SB 1145 or clarify TCEQ's land application permitting program as it relates to disposal of industrial wastewaters.

Comment

The Texas Industry Project requested TCEQ include a "nondisturbance" provision under 30 TAC §309.10, as follows:

"This chapter does not apply to the management, transport, storage, recycling, or impoundment of produced water or treated produced water fluids prior to being applied to land for irrigation or other beneficial use."

Response

The executive director declines to include a "nondisturbance" provision for oil and gas waste. However, the executive director acknowledges that the proposed rules do not apply to the management, transport, storage, recycling, or impoundment of produced water or treated produced water fluids prior to being applied to land for irrigation or other beneficial use. Jurisdictional boundaries between TCEQ and RRC are established in the Memorandum of Understanding between TCEQ and RRC located at 30 TAC §7.117.

Comment

National Wildlife Federation, Galveston Bay Foundation, Sierra Club, Bayou City Waterkeeper, Nature Conservancy, and Hill County Alliance commented that proposed revisions at 30 TAC §309.20 are inadequate to ensure protection from land irrigation with industrial wastewater, including produced water. The commentors requested that 30 TAC §309.20(a)(4) be revised to require groundwater testing and monitoring to protect groundwater quality resources as well as livestock and wildlife that obtain water from those resources. They also requested revisions of 30 TAC §309.20(b) to expand scope relating to crop irrigation, primary and secondary effluent requirements, design analysis, and soil testing requirements to ensure the requirements apply to and are appropriate to be protective for irrigation with treated produced water.

Response

The proposed rules would clarify that Chapter 309 establishes the minimum requirements for disposal of treated produced water through land irrigation to ensure protection of water quality (including groundwater), human health, and the environment, and would be consistent with TCEQ's Texas land application permitting program. No discharge of pollutants into water in the state is authorized under an individual TLAP and it is therefore expected to be protective of groundwater and potable water resources. Additional site-specific provisions may be established on a case-by-case basis to ensure an issued permit is protective for irrigation with produced water that is treated for beneficial use.

Comment

An individual commented that the proposed rules should require a redemonstration of compliance to obtain a permit to land-apply produced water.

Response

As described, entities seeking to land-apply treated effluent are required to provide analytical data with their application that is representative of the proposed effluent to be land-applied.

Following issuance of a land application permit, the permittee is required to analyze the treated effluent prior to conducting land application activities. The permittee is also required to maintain monthly reports of the results of the effluent analyses and flow measurements for a minimum of three years. A permittee may either collect and analyze the effluent samples themselves, or it may contract with a third party for either or both the sampling and analysis. However, all samples must be collected and analyzed according to 30 TAC Chapter 319, Subchapter A. The permittee is required to further notify the agency if the effluent does not meet the permit limits according to the requirements in the permit. In addition, TCEQ regional staff may sample the effluent during routine inspections or in response to a complaint.

Based on staff review, TCEQ may establish additional site-specific monitoring requirements as necessary to assure protection of water quality, human health, and the environment.

Comment

Future Heist, WildEarth Guardians, and individuals commented that TCEQ should require financial assurance to obtain a permit to land-apply treated produced water.

Response

TCEQ develops rules and requirements for financial assurance when authority to do so is provided by State or Federal law. Inclusion of financial assurance requirements goes beyond the authority provided under TWC, §26.131.

However, an issued TLAP would not limit anyone's ability to seek legal remedies from the owner or operator (i.e., permittee) regarding any potential trespass, nuisance, or other cause of action in response to the proposed facility's activities that may result in injury to human health or property or interfere with the normal use and enjoyment of property.

Comment

Glenrose Engineering commented 30 TAC §213.3(28)(B)(iii), which exempts activities associated with the exploration, development, and production of oil, gas, or geothermal resources under the jurisdiction of RRC should be amended to clarify that land application of produced water associated with the exploration, development, and production of oil, gas, or geothermal resources for either disposal or beneficial use is a regulated activity under 30 TAC §213.

Response

The executive director acknowledges this comment. Any revisions needed to Chapter 213 would be conducted under a separate rulemaking.

Comment

Glenrose Engineering expressed concern that the proposed rules, under 30 TAC Chapter 210 are inadequate for treated produced water, including the lack of additional effluent limitations, monitoring requirements and frequencies, or setbacks, and recommended the proposed rule be revised to include continuous effluent monitoring requirements, soil and groundwater monitoring on a quarterly basis. Glenrose Engineering also expressed concerns about the allowable reuse activities and irrigation practices under the proposed rules, including the type of authorization required (Level I versus Level II authorization).

Response

Chapter 210, Subchapter E, establishes requirements for industrial reclaimed water which may be used instead of potable or raw water sources for purposes such as landscape irrigation, dust suppression, and impoundment maintenance. This proposed rulemaking would amend Chapter 210 to establish the minimum requirements for the reuse of produced water that is treated for beneficial use.

A Level I authorization for industrial reclaimed water, including treated produced water, provides coverage for on-site reuse without notification to, or written approval from, TCEQ. Eligible wastestreams listed under 30 TAC §210.53(a) may be used in accordance with end uses listed under 30 TAC §210.56(b)(2) and must not contain measured effluent concentrations above the thresholds listed in Table 30 TAC §210.53(a)(9) or above the minimum analytical level for all other priority pollutants in 40 Code of Federal Regulations (CFR), Part 122 Appendix D, Tables II and III.

A Level II authorization for industrial reclaimed water, including treated produced water, provides coverage for on- or off-site reuse after notification is made and written approval is received from TCEQ.

While the proposed revisions to Chapter 210 would establish the minimum requirements for reuse of produced water that is treated for beneficial reuse, additional site-specific effluent limitations and provisions may be established in an issued industrial reuse authorization to ensure protection of water quality, human health, and the environment. If issued, the permittee would be required to comply with the effluent limitations, monitoring frequencies, and reporting requirements established in the industrial reuse authorization.

However, the executive director may also require a land application permit for the proposed reuse activity depending on the proposed volume of treated effluent to be reused, technical complexity of the proposed reuse activity, or quality of the treated effluent to use reused, including produced water that is treated for beneficial use.

Comment

Sierra Club commented that the proposed rule does not include discharge standards specifically designed for treated produced water.

Response

A land application permit for disposal of treated effluent (including produced water treated for beneficial use) does not authorize the discharge of pollutants off-site or into water in the State.

Concerns related to the Rulemaking Process

Comment

Commission Shift, Earthworks, Clean Water Action/Clean Water Fund, Sierra Club, Greater Edwards Aquifer Alliance, Future Heist, Healthy Gulf, and individuals expressed concerns about the public notice and requested an extension of the public comment period.

Response

Consistent with the requirements of 30 TAC Chapter 39, notice of the rulemaking as well as the public hearing on the proposed rule, and proposed rule text were published in the *Texas Register* on May 15, 2026. A hybrid in-person and virtual public hearing was held at TCEQ on June 15, 2026. The public comment period began on the date of publication and ran until the close of the business on the following day, June 16, 2026. The executive director declines to extend the public comment period on this rulemaking.

Comment

The Sierra Club and individuals commented that any standards developed for the land application of treated produced water should receive notice and opportunity for public input.

Response

Any subsequent rulemakings that the executive director may undertake to adopt additional standards for the land application of treated produced water will comply with TCEQ rules under 30 TAC Chapter 39 (relating to Public Notice) and all applicable public participation requirements to ensure opportunity for public input.

Comment

Future Heist expressed concerns about transparency in the rulemaking process.

Response

Updates regarding this rulemaking have been provided at the executive director's quarterly Water Quality Advisory Work Group meetings. The executive director's staff also have been available throughout the rulemaking process for questions. Filings related to the proposed rulemaking, including the notice, proposed rule text, and descriptions and basis for the proposed changes were available through the Commissioners' Integrated Database for early review by the general public on April 10, 2026, and linked to the Commissioners' Meeting Agenda available on TCEQ's website. Notice of the rulemaking, as well as the public hearing on the proposed rule, and proposed rule text were published in the *Texas Register* on May 15, 2026. A hybrid in-person and virtual public hearing was held at TCEQ on June 15, 2026. The public comment period began on the date of publication and ran until the close of the business on the following day, June 16, 2026.

Comment

Commission Shift, Earthworks, Clean Water Action/Clean Water Fund, Sierra Club, Future Heist, Community Advocate, Healthy Gulf, and individuals expressed concern about the single public hearing offered on this rulemaking and requested additional in-person and virtual public meetings or hearings on this rulemaking in impacted communities, including rural communities, across the Permian Basin, the Eagle Ford Shale, and the East Texas Basin.

Response

A hybrid in-person and virtual public hearing was held at TCEQ on June 15, 2026. Ten people attended in person and 75 exter-

nal participants attended virtually. The executive director's staff have been available throughout the rulemaking process. The executive director declines to hold additional public meetings or hearings on this rulemaking.

Comment

The Texas Industry Project suggested TCEQ consider gathering additional stakeholder input to define features that would not be considered "water in the state" for purposes of this rule (e.g., exempt ditches, etc.).

Response

The executive director acknowledges this comment.

Comment

Healthy Gulf expressed concerns about TCEQ Public Costs and Benefits analysis and recommended that TCEQ revise its analysis to acknowledge the potential costs of contaminated groundwater, soil degradation, and public health harm associated with land application of produced water.

Response

TCEQ staff reviewed the proposed rule amendments in a manner consistent with Texas Government Code (TGC), 2001.024. TLAPs authorize the disposal of wastewater by irrigation, only. A TLAP does not authorize the discharge of pollutants off site or into waters in the state and prohibit any unauthorized discharges. As previously discussed, an issued TLAP will contain site-specific application rates to ensure effluent retention in the soil to prevent effluent runoff, seepage, ponding, or accumulation of pollutants. TCEQ also develops and includes special provisions in a TLAP to prevent surface and groundwater contamination and runoff. The site-specific effluent limits and additional permit requirements that are established in an issued land application permit are expected to assure protection of water quality, human health, and the environment.

As such, TCEQ staff determined that the public benefit will be rule language that provides clarity and establishes minimum requirements regarding how TCEQ would issue permits for the land application of industrial wastewater, including produced water for beneficial use as authorized by SB 1145. The determination also concluded that the public will benefit from the clarity of promulgated requirements related to the location of wastewater treatment plant units or effluent used for irrigation in relation to waters of the state (30 TAC §309.13(d)(2)), as well as from other various clarifications in the rule. The addition of the requirements proposed in the rule would lead to increased protection of water quality in the waters of the state and the land application of produced water may lead to the increased availability of water for beneficial reuse.

Comment

Healthy Gulf expressed concerns about TCEQ's "Major Environmental Rule" analysis. Healthy Gulf commented rulemaking implicates the economy, agricultural productivity, public health, and the environment in ways that plainly meet the threshold for major environmental rule status.

Response

The executive director acknowledges this comment. No change was made in response to this comment. TCEQ staff reviewed the proposed rule amendments in a manner consistent with TGC, 2001.0225.

A "Major environmental rule" is defined as a rule, the specific intent of which, is 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.

The proposed rulemaking is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. Rather, it intends to implement SB 1145, which amended TWC, §26.131 and transferred permitting authority from RRC to TCEQ of applications filed on or after September 1, 2025, for the land application of produced water that is treated for beneficial use, and to clarify applicability to the land application of industrial wastewater, including produced water under TWC, §26.131 and establish minimum requirements for land application of produced water.

This rulemaking would not: 1) exceed a standard set by federal law; 2) exceed an express requirement of state 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. Specifically, TWC, §26.131 authorizes the commission to issue permits for the land application of produced water; §26.027, which authorizes the commission to issue permits; and §26.121, which authorizes the commission to prohibit unauthorized discharges. Therefore, this proposed rulemaking does not fall under any of the applicability criteria in TGC, §2001.0225.

Comment

Healthy Gulf expressed concerns about TCEQ's analysis of potential impacts on rural communities and recommended that TCEQ prepare and publicly share a full Rural Communities Impact Assessment, establish specific science-based setback distances and contaminant standards that account for the disproportionate rural exposure, and ensure that rural communities have meaningful access to permit information and the ability to participate in permitting decisions before this rule is finalized.

Response

TCEQ staff reviewed the proposed rule amendments in a manner consistent with TGC, §2006.002.

The proposed amendments would apply statewide and have the same effect in rural communities as in urban communities. They are consistent with TCEQ's Texas land application permitting program and establish the minimum requirements for disposal of treated produced water through land application. As previously discussed, TCEQ reviews proposed land application activities and establishes site-specific effluent limits and additional permit requirements in an issued land application permit as necessary to ensure the protection of water quality, human health, and the environment. Additionally, as previously stated, TLAPs are subject to TCEQ's public participation rules under 30 TAC Chapters 39, 55, and 80, which will provide ample opportunity for interested persons to participate in permitting decisions.

Comment

Individuals expressed concerns about impacts to the state and local economy. Additionally, Healthy Gulf expressed concerns about TCEQ's analysis of potential impacts on the state economy and local economies and recommended that TCEQ conduct and publicly share a full Local Employment Impact State-

ment focused specifically on agricultural communities in areas where land application permits are most likely to be sought, with sufficient time for public review before the rule is finalized.

Response

TCEQ staff reviewed the proposed rule amendments in a manner consistent with applicable provisions of the TGC, including §§2001.022 and 2001.024.

Entities seeking to land apply treated produced water who were previously able to obtain a permit from RRC would now be required to obtain a land application permit or TLAP from TCEQ. A landowner must provide authorization to land apply treated effluent, including treated produced water, to their land. Additionally, as previously stated, TLAPs are subject to TCEQ's public participation rules under 30 TAC Chapters 39, 55, and 80. These requirements are not expected to adversely affect the state or local economies in a material way.

Comment

Future Heist expressed concerns about inconsistencies in the Growth and Government Impact Statement.

Response

TCEQ staff reviewed the proposed rule amendments in a manner consistent with TGC, §2001.0221.

TCEQ already has the ability to issue land application permits for disposal of treated effluent (including treated produced water) under Chapter 309. Entities seeking to land apply treated produced water who were previously able to obtain a permit from RRC are now required to obtain a land application permit or TLAP from TCEQ; further, TCEQ already has a land application permitting program established. This rulemaking clarifyies the applicability of that permitting program and not expanding it.

TCEQ staff prepared an accurate Government Growth Impact Statement which determined that the proposed rulemaking does not create or eliminate a government program and will not require an increase or decrease in future legislative appropriations to the agency; does not require the creation of new employee positions, eliminating current employee positions, nor require an increase or decrease in fees paid to the agency; amends an existing regulation, but does not create, expand, repeal, or limit the regulation; and does not increase or decrease the number of individuals subject to its applicability. Therefore, TCEQ staff concluded that the proposed rule should not impact positively or negatively the state's economy.

Comment

Individuals commented that additional studies should be required prior to the proposing rules for land application of treated produced water.

Response

The executive director is reviewing existing effluent data available from RRC and pilot programs conducted under their jurisdiction, as well as application materials from applicants seeking a land application permit under TWC, Chapter 26 to determine if additional parameters will be added to the pollutant analysis suite requested in the water quality permit application for land application of treated produced water. A future rulemaking may be conducted to add performance-based effluent limitations or additional permit requirements for treated produced water, as appropriate to ensure the protection of water quality, human health, and the environment.

Comment

Sierra Club requested TCEQ to consider pausing this rulemaking to create an informal draft and stakeholder group.

Response

The executive director acknowledges this comment.

Concerns related to the Permitting Process

Comment

Individuals commented that permit recipients must have good compliance histories.

Response

During the technical review of an application, TCEQ reviews the Applicant's compliance history according to the rules in 30 TAC Chapter 60.

Comment

Sierra Club commented that the proposed rule's reliance on case-by-case permit evaluations and professional judgement raises transparency and consistency concerns. Sierra Club, Greater Edwards Aquifer Alliance, Future Heist, Nature Conservancy, WildEarth Guardians, Community Advocate, Healthy Gulf, and individuals expressed concerns about transparency in the land application permitting process for produced water that is treated for beneficial use.

Response

This proposed rulemaking would establish the minimum requirements for land irrigation with produced water that is treated for beneficial use. Additional, site-specific requirements beyond the requirements of Chapter 309 may be established in an issued permit as neccesary to ensure protection of water quality, human health, and the environment.

As previously stated, the proposed rules would be consistent with TCEQ's land application permitting program. Applications submitted to obtain a TLAP under TWC, Chapter 26 are subject to all applicable TCEQ rules, regulations, and prohibitions, including but not limited to those under 30 TAC Chapters 39 (relating to Public Notice), 55 (relating to Requests for Reconsideration and Contest Case Hearing; Public Comment), and 80 (relating to Contested Case Hearings).

TCEQ rules provide opportunities for transparency during the process to obtain a land application permit.

Specifically, there are two public notices regarding this permit action, the Notice of Receipt of Application and Intent to Obtain a Wastewater Permit (NORI) and the Notice of Application and Preliminary Decision (NAPD). TCEQ's notice rules require applicants to provide public notices for wastewater permits by publishing the NORI in a "newspaper of largest circulation in the county in which the facility is located or proposed to be located … if the facility is located or proposed to be located in a municipality, the applicant publish notice in any newspaper of general circulation in the municipality." After the Office of the Chief Clerk has mailed the preliminary decision and the NAPD to the applicant, they are required to publish the NAPD "at least once in a newspaper regularly published or circulated within each county where the proposed facility or discharge is located and in each county affected by the discharge."

TCEQ's notice rules for a new permit or major amendment require mailed notice of the NORI and NAPD to landowners

named on the application map and persons on the mailing list maintained by the Office of the Chief Clerk. An applicant is required to submit a landowner map as part of the application materials. The landowner map must include the property boundaries of landowners surrounding the applicant's property and the property boundaries of all landowners surrounding the discharge point and on both sides of the discharge route for one full stream mile downstream of the discharge point. Additionally, any persons who submit a comment or contested case hearing request prior to the end of the public comment period are added to the mailing list for that permit action.

An applicant must place a physical copy of all application materials in a public viewing location (described in both public notices). In addition, TCEQ must make an exact electronic copy of all applications materials available online for applications submitted on or after June 1, 2024.

Comment

Greater Edwards Aquifer Alliance, Meta Midstream, Sierra Club, WildEarth Guardians, Community Advocate, Healthy Gulf, and individuals expressed concern about agency oversight for a land application permit for treated produced water. Commentors recommended TCEQ revise the rule to include requirements such as independent testing, additional or continuous monitoring, and livestock monitoring requirements.

Response

All wastewater treatment facilities and land application areas must be operated and maintained consistent with applicable TCEQ rules. An issued permit describes the conditions under which a specific wastewater facility must operate and will include provisions that require the facility and land application site(s) to be properly operated and maintained at all times.

Additionally, monitoring requirements established in the proposed permit are based on TCEQ guidance documents for establishing monitoring frequencies and are typically set at the most stringent allowable for applicants that do not demonstrate a significant potential to exceed the permitted limitations. The monitoring frequencies in a draft permit can be increased or decreased based on an Applicant's ability to demonstrate compliance with the permitted effluent limitations.

TCEQ's Office of Compliance and Enforcement ensures compliance with applicable state and federal regulations. The appropriate regional office conducts a mandatory comprehensive compliance investigation (CCI) at EPA-classified minor facilities once every five fiscal years. Additional mandatory investigations can be required if the facility is categorized as significant noncompliance (SNC). SNC is determined by the Compliance Monitoring Section of TCEQ and is based on self-reported effluent violations.

Concerns Outside of TCEQ Jurisdiction

Comment

WildEarth Guardians commented that the proposed rules should address flood risks.

Response

TLAPs authorize the disposal of wastewater by irrigation, only. A TLAP does not authorize the discharge of pollutants off-site or into waters in the state and prohibits any unauthorized discharges.

TCEQ does not have jurisdiction to address flooding or erosion issues in the wastewater permitting process. The permitting process for land application of wastewater is limited to prohibiting the discharge of pollutants into water in the state. Irrigation rates established in a TLAP are site-specific and based on agronomic rates to ensure crop growth, nutrient uptake, and effluent retention in the soil to prevent effluent runoff, seepage, or ponding. Additionally, TLAPs prohibit irrigation during a significant rainfall event. If issued, the permittee would be required to comply with the limitations, requirements, and prohibitions established in their permit and would not be expected to contribute to flooding or erosion.

For flooding concerns, please contact the local floodplain administrator for this area. If you need help finding the local floodplain administrator, please call TCEQ Resource Protection Team at (512) 239-4691.

Comment

An individual commented that they should have the right to sue.

Response

Issuance of a Texas Land Application permit for treated produced water does not limit the ability of an individual to seek legal remedies against an applicant regarding any potential trespass, nuisance, or other causes of action in response to activities that may result in injury to human health or property, or that may interfere with the normal use and enjoyment of property. For concerns, please contact local law enforcement or County Sheriff's Office to inquire if there are ordinances in your area.

Comment

An individual expressed concerns about potential impacts to property.

Response

TWC, §26.027 makes clear that TCEQ may issue permits for disposal and dispersal of wastewater adjacent to water in the State through the executive director's evaluation of TLAP applications using the information provided in an application and recommending issuance or denial based on the application's compliance with the TWC and TCEQ rules.

However, an issued land application permit would not limit anyone's ability to seek legal remedies from the permit holder regarding any potential trespass, nuisance, or other cause of action in response to the permitted activities that may result in injury to property or interfere with the normal use and enjoyment of property.

Comment

Hinds Feat commented about potential mineral recovery from produced water and oil and gas exploration activities.

Response

Mineral recovery cannot be addressed in the review of water quality application, as the scope of the executive director's jurisdiction in a land application permit is limited to the issues set out by statute. The land application rules do not prohibit the recovery of minerals from produced water.

Comment

Individuals commented on other potential uses for treated produced water, including for data centers. An individual also com-

mented about alternative disposal options for treated produced water.

Response

TCEQ does not have the authority to mandate the method of disposal of treated effluent or use of alternative disposal options if the applicant adheres to the rules and provisions under TWC, Chapter 26 and 30 TAC Chapters 305, 307, and 309. The proposed rules would not limit potential uses for produced water that is treated for beneficial use.

Comment

Clean Water Action/Clean Water Fund, WildEarth Guardians, Future Heist, and Truckers Movement for Justice questioned how biosolids and byproducts from treatment of produced water would be addressed in a TCEQ permit to land irrigate with produced water.

Response

Any wastewater, biosolids, or other wastes generated during the treatment of produced water are considered oil and gas wastes. Management and disposal authority for oil and gas waste remains under the jurisdiction of RRC.

Comment

The Texas Oil and Gas Association questioned if this proposed rulemaking would alter spill reporting obligations to RRC, except when an unauthorized discharge of wastewater into or adjacent to water in the state would be reported to TCEQ as an element of the TPDES or TLAP permit requirements.

Response

No, this proposed rulemaking is not expected to alter spill reporting obligations to the RRC. However, TCEQ permittees would be required to report unauthorized discharges under the TCEQ-issued permit requirements.

Comment

The Texas Oil and Gas Association expressed concerns about potential impacts to surface impoundments under the proposed rules.

National Wildlife Federation, Galveston Bay Foundation, Sierra Club, Bayou City Waterkeeper, Nature Conservancy, Hill County Alliance, and an individual expressed concern about the potential public and wildlife exposure to stored treated produced water.

Response

The revised statute transferred jurisdiction over disposal of produced water that is treated for beneficial reuse by land application. Jurisdiction over the management, including treatment and storage, and disposal of produced water via evaporation in surface impoundments remains under RRC.

Concerns Beyond Scope of Rulemaking

Comment

Greater Edwards Aquifer Alliance expressed concerns about the lack of pretreatment requirements in the proposed rules for land application of treated produced water.

Response

Federal regulations related to pretreatment requirements are located under 40 CFR Part 403 and are applicable to entities that discharge to a publicly-owned treatment work (POTW). These rules do not apply to the disposal of treated produced water by land application.

Comment

Greater Edwards Aquifer Alliance and Future Heist expressed concerns about the lack of remediation requirements in the proposed rules for land application of treated produced water.

Response

TCEQ rules related to remediation requirements are located under 30 TAC Chapter 350, Texas Risk Reduction Program, and are outside of the scope of a water quality permit to land apply treated produced water.

Comment

Future Heist and WildEarth Guardians expressed concerns about the lack of restoration requirements or cleanup standards in the proposed rules for land application of treated produced water.

Response

TCEQ develops rules and requirements to specifically require restoration requirements or cleanup standards when authority to do so is provided by State or Federal law. Inclusion of restoration requirements goes beyond the requirements of the statute under TWC, §26.131.

As previously described, TCEQ establishes site-specific effluent limits and additional permit requirements in the draft permit that are necessary to assure protection of groundwater quality, human health, and the environment. TCEQ establishes irrigation rates in an issued TLAP that are site-specific and based on agronomic rates to ensure crop growth, nutrient uptake, and effluent retention in the soil to prevent effluent runoff, seepage, ponding, or accumulation of pollutants, as well as any special provisions needed to prevent surface and groundwater contamination and runoff. If issued, the permittee would be required to comply with the effluent limitations and requirements established in the permit.

Spills and runoff are considered unauthorized discharges. An unauthorized discharge is a violation of the proposed permit for which an enforcement action can be brought by TCEQ against a permittee, subject to cleanup standards under 30 TAC Chapter 327 (relating to Spill Prevention and Control).

However, an issued TLAP would not limit anyone's ability to seek legal remedies from the owner or operator (i.e., permittee) regarding any potential trespass, nuisance, or other cause of action in response to the proposed facility's activities that may result in injury to human health or property or interfere with the normal use and enjoyment of property.

Comment

An individual recommended TCEQ develop a freshwater discharge permit for treated produced water.

Response

The executive director acknowledges this comment.

Comment

Individuals expressed general concerns about TCEQ issuing permits for data centers.

Response

The executive director acknowledges this comment.

Comment

Earthjustice commented that TCEQ must ensure the final rule does not exacerbate ongoing issues with underground injection control wells.

Response

TCEQ rules related to underground injection control well requirements are located under 30 TAC Chapter 331 (Underground Injection Control) and are outside of the scope of a water quality permit to land apply treated produced water.

Comment

Glenrose Engineering commented that the rulemaking should be expanded to prohibit the use of subsurface drip disposal for any reclaimed water, including produced water, with total dissolved solids higher than 5,000 mg/L.

Response

The executive director acknowledges this comment. Any revisions needed to Chapter 222 would be conducted under a separate rulemaking.

Comment

Earthjustice requested that the commission adopt methodology and incorporate into rule as a defined process to implement "best professional judgement."

Response

The executive director acknowledges this comment.

Comment

Earthjustice requested that the commission deny all pending applications seeking to dispose of treated produced water by land application.

Response

The executive director acknowledges this comment.

Miscellaneous comments

Comment

An individual requested TCEQ pause these actions to allow more time to research alternatives and evaluate impacts. Individuals requested that TCEQ slow down or go slowly to develop the proposed rules to implement the statute.

Response

The executive director acknowledges these comments.

Comment

An individual asked where land application of produced water would occur.

Response

Land application of produced water that is treated for beneficial use may occur statewide.

Comment

Clean Water Action/Clean Water Fund, Nature Conservancy and individuals expressed concerns about available treatment methods and treatment requirements for produced water.

Response

TCEQ-issued permits establish performance-based requirements that are outcome-focused instead of prescribing specific treatment methods or technology requirements.

Applicants seeking to dispose of treated produced water through land application must describe the treatment methods that will be used to treat effluent in their wastewater permit application. Provisions included in an issued permit require a permittee to notify TCEQ if any information provided in their application changes, such as proposed treatment technologies or methods to comply with the limits and provisions in the permit. TCEQ staff will determine if any additional information or permit actions are needed to accommodate additional or alternative treatment options and methods.

Comment

Grant Hensarling expressed concern about the potential volume of treated produced water that could be land applied.

Response

TCEQ requires applicants to design their proposed irrigation rates according to the land application site's soil and crop requirements and water balance calculations. The irrigation rates are site-specific and are based on agronomic rates to ensure crop growth, nutrient uptake, and effluent retention in the soil to prevent effluent runoff, seepage, and ponding. Also, land application permits require monitoring of the volume applied and analysis of the irrigation effluent at a minimum of once per year. Permits also require the permittee to annually submit the laboratory results from these analyses to the TCEQ Water Quality Assessment Team (MC 150), the appropriate TCEQ Region Office, and the Enforcement Division (MC 224) of TCEQ by the end of September of each monitoring year.

Comment

An individual commented that this rulemaking prioritizes the oil and gas industry's waste disposal convenience over the safety of Texas citizens, soil, and ecosystems. Future Heist and individuals expressed concern that the proposed rulemaking places corporate and financial interest over public interest.

Response

TCEQ's mission is to protect the state's public health and natural resources while supporting sustainable economic growth and development. The agency's goals are focused on clean water, clean air, and safe waste management. Permitting decisions are grounded in law, sound science, common sense, and fiscal responsibility, and TCEQ strives to ensure meaningful public participation throughout the decision-making process. The CWA and TWC, which provide the statutory authority for TCEQ rules and regulations related to the protection of water quality, promote voluntary compliance and operational flexibility in achieving environmental goals.

Comment

WildEarth Guardians expressed concerns about the applicability of the oil and gas exploration and production exemption under RCRA.

Response

The oil and gas exploration and production exemption under the Resource Conservation and Recovery Act (RCRA) excludes certain wastes generated by oil, gas, and geothermal operations from federal hazardous waste regulations under RCRA Subtitle C (see 40 CFR 261.4(b)(5)). However, the exemption does not

apply to the disposal of produced water that is treated for beneficial use, which is subject to state-level water quality rules.

As previously stated, this rulemaking would clarify that Chapter 309 establishes the minimum requirements for disposal of produced water that is treated for beneficial use through irrigation to ensure the protection of water quality, human health, and the environment. Any biosolids or other wastes generated during the treatment of produced water are considered oil and gas wastes. Management and disposal authority for oil and gas waste remains under the jurisdiction of RRC.

Comment

Future Heist and WildEarth Guardians expressed concerns about the lack of waste-management requirements under the proposed rules.

Response

Oil and gas wastes, including those generated during the treatment of produced water, are regulated under the jurisdiction of RRC. TCEQ rules for managing industrial solid and hazardous wastes are located under 30 TAC Chapter 335. TCEQ-issued permits for disposal of treated wastewater, including treated produced water, through land application do not authorize the disposal of any solid or hazardous wastes, or absolve an entity from adhering to all applicable state and federal rules and requirements.

Comment

WildEarth Guardians and Earthjustice expressed concern that a TCEQ-issued land application permit could insulate permittees, treatment companies, transporters, landowners, or other responsible parties from otherwise applicable federal or state legal obligations. Future Heist expressed concern that H.B. 49 made compliance with a TCEQ permit a liability shield: a company that puts this treated waste to beneficial use under its permit generally cannot be sued in court by the people it harms, except for gross negligence, an intentional act, or a failure to follow its permit (Tex. Nat. Res. Code §122.003, added by H.B. 49, 2025).

Response

The executive director acknowledges this comment. No changes were made in response to it. As previously stated, TCEQ-issued permits for disposal of treated wastewater, including treated produced water, through land application do not authorize the disposal of any solid or hazardous wastes, or absolve an entity (including permittees and upstream or downstream services or disposal activities) from adhering to all applicable state and federal rules and requirements.

Comment

Earthjustice commented that land application permits for produced water should contain site-specific limits based on soil type, depth to groundwater, proximity to wells and surface water, flood risk, crop type, grazing use, wildlife exposure, and cumulative contaminant loading.

Response

The proposed rules would be consistent with TCEQ's land application permitting program and would clarify that Chapter 309 establishes the minimum requirements for disposal of treated effluent, including produced water that is treated for beneficial use, to ensure protection of human health and public health. Additional site-specific provisions may be established in an issued land application permit on a case-by-case basis to ensure protection of human health and public health.

Comment

Earthjustice questioned if this rulemaking violated the federal prohibition on discharge of produced water west of the 98th meridian.

Response

The federal prohibition located at 40 CFR §435.32 applies to the discharge of produced water or treated produced water into waters of the United States. As previously stated, an issued TLAP does not authorize the discharge of produced water or treated produced water into water in the state.

Changes to the proposed rules:

1. Proposed §309.11(6) has been revised to the following (emphasis added):

"New facility - Any wastewater treatment facility which is not an existing facility."

2. Proposed §309.11(9) has been revised to the following (emphasis added):

"Produced water- is defined for the commission's implementation of Texas Water Code, §26.131(e), all wastewater associated with oil and gas exploration, development, and production activities, except hydrostatic test water and gas plant effluent."

3. Proposed §§309.1(b) and (e) and §§309.13(e)- (i) have been revised to clarify applicability of the requirement to treated domestic sewage.

4. Proposed §309.10(a)(1) has been revised as follows:

(1) This subchapter establishes minimum standards for the location of domestic wastewater treatment facilities and land application of industrial wastewater, including produced water under Tex. Water Code §26.131(e) that is treated for beneficial use. These standards are to be applied in the evaluation of an application for a permit to:

(A) treat and dispose of domestic wastewater;

(B) treat and dispose of industrial wastewater, including disposal of produced water under Tex. Water Code §26.131(e) that is treated for beneficial use;

(C) obtain approval of construction plans and specifications for domestic wastewater treatment facilities.

5. Proposed 309.20 has been revised to include new provision (d), as follows:

"(d) Additional Requirements. Additional site-specific requirements for the treatment and disposal of industrial wastewater, including disposal of produced water under Tex. Water Code §26.131(e) that is treated for beneficial use, may be established on a case-by-case basis."

Statutory Authority

These amendments to 30 Texas Administrative Code Chapter 210 are adopted under the Texas Water Code (TWC). Specifically, TWC, §5.013, which establishes the general jurisdiction of the commission while TWC, §5.102, provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC, §5.103; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the code and other

laws of the state; TWC, §5.105, which authorizes the commission to adopt rules and policies necessary to carry out its responsibilities and duties under the TWC; and TWC, §5.120, which requires the commission to administer the law for the maximum conservation and protection of the environment and natural resources of the state. These amendments are also adopted under TWC, §26.027, which authorizes the commission to issue permits for the discharge of waste or pollutants into or adjacent to water in the state; TWC, §26.121, which provides the commission's authority to prohibit unauthorized discharges into or adjacent to water in the state; and TWC, §26.131, which provides the commission's authority to issue permits for the discharge of produced water into water in the state and for the land application of produced water.

The adopted amendments implement TWC, §§5.013, 5.102, 5.103, 5.105, 5.120, 26.027, 26.121, and 26.131.

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 November 6, 2026.

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CHAPTER 309. WASTEWATER EFFLUENT LIMITATIONS AND PLANT SITING

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts amendments to §§309.1, 309.10, 309.11, 309.13, and 309.20.

Amendments to §§309.1, 309.10, 309.11, 309.13, and 309.20 are adopted with changes to the proposed text as published in the May 15, 2026, issue of the *Texas Register* (51 TexReg 3342) and, therefore, will be republished.

Background and Summary of the Factual Basis for the Adopted Rules

TCEQ is adopting amendments to 30 Texas Administrative Code (TAC) Chapter 309 (Domestic Wastewater Effluent Limitations and Plant Siting) to implement Senate Bill (SB) 1145, 89th Regular Legislative Session, which amended Texas Water Code (TWC), §26.131 (Duties of the Railroad Commission), to transfer permitting authority for the land application of produced water that is treated for beneficial use from the Railroad Commission of Texas (RRC) to TCEQ for permit applications filed on or after September 1, 2025.

TCEQ is adopting amendments to §§309.1, 309.10, 309.11, 309.13, and 309.20 to clarify applicability to the land application of industrial wastewater, including produced water under TWC, §26.131 and establish minimum requirements for land application of produced water that is treated for beneficial use.

As part of this rulemaking, the commission is also adopting amendments to 30 TAC Chapter 210 (Use of Reclaimed Water) concurrently in this issue of the *Texas Register*.

Section by Section Discussion

The adopted rules amend the title of the chapter to "Wastewater Effluent Limitations and Plant Siting" by removing the word "Domestic" to clarify that this chapter applies to both domestic wastewater and industrial wastewater.

The adopted rules also amend the title of the Subchapter C and §309.20 to "Land Application of Treated Effluent" by removing the word "Sewage" to similarly clarify that this chapter applies to both domestic wastewater and industrial wastewater.

Amended §309.1, *Scope and Applicability*, revises subsection (a) to clarify that applicability to treated effluent (i.e., domestic wastewater and industrial wastewater) by removing the reference to only ‘domestic sewage'. The amended section clarifies applicability of subsections (b) and (e) to treated domestic sewage. The amended section also corrects the title of Figure: 30 TAC §309.1(b).

Amended §309.10, *Purpose, Scope, and Applicability*, clarifies applicability to both domestic wastewater and industrial wastewater, including produced water. Subsection (a) would be restructured into paragraphs (1) and (2) and amended, as follows:

Amended subsection (a)(1) clarifies that Subchapter B (relating to Location Standards) applies to land application of industrial wastewater, including produced water under TWC, §26.131(e) that is treated for beneficial use, in addition to domestic wastewater treatment facilities. The amended paragraph also restructures existing provisions related to evaluation of an application as subsection (a)(1)(A) related to domestic wastewater and subsection (a)(1)(C) related to plans and specifications. New subsection (a)(1)(B) clarifies applicability to the evaluation of an application to treat and dispose of industrial wastewater, including produced water under TWC, §26.131(e) that is treated for beneficial use.

Amended subsection (a)(2) expands applicability to include land application permit applications in addition to domestic wastewater permit applications.

Amended §309.11, *Definitions*, adds a reference to the definition for "Industrial Wastewater" (as defined in 30 TAC §210.52). The amended section also adds a definition for "Produced water" (is defined for the commission's implementation of Tex. Water Code §26.131(e), as all wastewater associated with oil and gas exploration, development, and production activities, except hydrostatic test water and gas plant effluent). The amended section revises the definition for "New facility" by removing the word "domestic" to clarify applicability to domestic and industrial wastewater facilities. Subsequent definitions are renumbered.

Amended §309.13, *Unsuitable Site Characteristics*, clarifies applicability as well as establish minimum requirements for treatment and disposal of treated effluent.

Amended subsection (c) clarifies applicability to industrial wastewater, including produced water under TWC, §26.131. Amended subsection (c) also adds new paragraph (6) requiring a wastewater treatment plant unit, or land where irrigation using wastewater effluent occurs, to be located a minimum horizontal distance of 100 feet from a water in the state.

Amended subsection (d) clarifies that additional requirements under 30 TAC §217.203 of this title (relating to Design Criteria for Natural Treatment Systems) may apply.

Amended §309.20, *Land Application of Treated Effluent*, corrects the title of Figure: 30 TAC §309.20(b)(3)(C). The amended section also adds new subsection (d) to establish that additional site-specific requirements for the treatment and disposal of industrial wastewater, including disposal of produced water under TWC, §26.131(e) that is treated for beneficial use, may be established on a case-by-case basis.

TCEQ's jurisdiction at facilities seeking authorization to land apply produced water that is treated for beneficial use under this chapter is outlined under §7.117 of this title,

Memorandum of Understanding between the Railroad Commission of Texas (RRC) and the Texas Commission on Environmental Quality (TCEQ).

Final Regulatory Impact Determination

The commission reviewed the rulemaking action in consideration of the regulatory analysis requirements of Texas Government Code (TGC), §2001.0225, and determined that the action is not subject to §2001.0225 because it does not meet the definition of a "Major environmental rule" as defined in §2001.0225(g)(3). A "Major environmental rule" is defined as a rule, the specific intent of which, is 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. The proposed rulemaking is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. Rather, it intends to implement SB 1145, which amended TWC, §26.131 and transferred permitting authority from RRC to TCEQ of applications filed on or after September 1, 2025, for the land application of produced water that is treated for beneficial use, and to clarify applicability to the land application of industrial wastewater, including produced water under TWC, §26.131 and establish minimum requirements for land application of produced water.

Even if the proposed rulemaking was a "Major environmental rule," TGC, §2001.0225 still would not apply to this rulemaking because §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 does not meet any of these four applicability criteria because it: 1) does not exceed a standard set by federal law; 2) does not exceed an express requirement of state law; 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, but rather specifically under TWC, §26.131, which authorizes the commission to issue permits for the land application of produced water; §26.027, which authorizes the commission to issue permits; and §26.121, which authorizes the commission to prohibit unauthorized discharges. Therefore, this proposed rulemaking does not fall under any of the applicability criteria in TGC, §2001.0225.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. Healthy Gulf submitted comments regarding the draft regulatory impact analysis.

Takings Impact Assessment

TCEQ evaluated this proposed rule and performed an analysis of whether it constitutes a taking under TGC, Chapter 2007. The proposed rulemaking intends to implement SB 1145, which amended TWC, §26.131 and transferred permitting authority from RRC to TCEQ for the land application of produced water that is treated for beneficial use, and to clarify applicability to the land application of industrial wastewater, including produced water under TWC, §26.131 and establish minimum requirements for land application of produced water.

Promulgation and enforcement of the proposed rulemaking would be neither a statutory nor a constitutional taking of private real property. The proposed rule does not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Consequently, this rulemaking action does not meet the definition of a taking under TGC, §2007.002(5).

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 §29.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §29.11(a)(6). Therefore, the adopted rules are not subject to the Texas Coastal Management Program.

The commission invited public comment on the consistency with the CMP during the public comment period. No comments were received regarding the CMP.

Public Comment

TCEQ held a public hearing on June 15, 2026. The comment period closed on June 16, 2026. TCEQ received 617 public comments on the proposal including Greater Edwards Aquifer Alliance, Meta Midstream, Sierra Club, WildEarth Guardians, Community Advocate, Healthy Gulf, Nature Conservancy, Future Heist, Commission Shift, Earthworks, Clean Water Action/Clean Water Fund, Hill County Alliance, National Wildlife Federation, Galveston Bay Foundation, Bayou City Waterkeeper, Glenrose Engineering, Truckers Movement for Justice, Circle Verde Water, Hinds Feat, NGL Water Solutions Permian, Texas Oil and Gas Association, Texas Independent Producers Water Association, Texas Alliance of Energy Producers, Earthjustice, Texas Industry Project, and CMV Consulting, and several individuals. Commentors expressed mixed support, requested further changes to the proposed rules, and recommended the commission limit the rulemaking to statutorily required changes.

Comment

General Opposition

Commission Shift, Earthworks, Greater Edwards Aquifer Alliance, Clean Water Action/Clean Water Fund, Sierra Club, Glenrose Engineering, National Wildlife Federation, Galveston Bay Foundation, Bayou City Waterkeeper, Nature Conservancy,

Hill County Alliance, WildEarth Guardians, Earthjustice, Healthy Gulf, Truckers Movement for Justice, and individuals expressed general opposition to disposal of treated produced water by land application under 30 TAC Chapter 309 and/or Chapter 210. Future Heist requested that the commission reject or withdraw the proposed rules.

Response

The executive director acknowledges these comments.

Comment

WildEarth Guardians and Healthy Gulf requested that TCEQ prohibit the land application of treated produced water.

Response

SB 1145, 89th Regular Legislative Session, amended TWC, Chapter 26, Subchapter D (relating to Prohibition Against Pollution; Enforcement) to amend §26.131 (relating to Duties of the Railroad Commission) to transfer permitting authority for the land application of produced water by irrigation that is treated for beneficial use from the Railroad Commission of Texas (RRC) to TCEQ for permit applications filed on or after September 1, 2025. If this activity were prohibited by TCEQ rules, TCEQ would not be compliant with state statute.

Comment

Clean Water Action/Clean Water Fund, Hinds Feat, Sierra Club, Glenrose Engineering, Greater Edwards Aquifer Alliance, National Wildlife Federation, Galveston Bay Foundation, Bayou City Waterkeeper, Nature Conservancy in Texas, Hill County Alliance, WildEarth Guardians, Earthjustice, Community Advocate, Healthy Gulf and individuals stated that the proposed rules are inconsistent with statute. Commentors noted that the statute directed TCEQ to adopt standards for land application of treated produced water, or that the statute did not mention industrial waste-streams.

Response

The proposed rules would clarify that 30 TAC Chapter 309 establishes the minimum requirements for disposal of treated produced water through irrigation to ensure the protection of water quality, human health, and the environment. The proposed rules are consistent with the statute and required to implement SB 1145. A future rulemaking may be conducted to adopt additional standards for land application of treated produced water.

In addition to the revisions required to implement SB 1145, proposed amendments to 30 TAC Chapter 309 would clarify applicability regarding the land application of industrial wastewater, which includes treated produced water. The minimum requirements for land application of treated effluent established under Chapter 309 have historically been applied to land application of industrial wastewater on the basis of best professional judgement. This proposed revision would clarify that the rules apply to TCEQ industrial land application permits. The amended chapter would also add a reference to 30 TAC §217.203 (relating to Design Criteria for Natural Treatment Systems) to clarify that the requirements of the section are applicable to the treatment of domestic wastewater as appropriate (see 30 TAC §217.201 relating to Applicability) and correct the title of two figures.

Comment

Clean Water Action/Clean Water Fund, Hinds Feat, Sierra Club, Glenrose Engineering, Greater Edwards Aquifer Alliance, National Wildlife Federation, Galveston Bay Foundation, Bayou City Waterkeeper, Nature Conservancy in Texas, Hill County Alliance, WildEarth Guardians, Earthjustice, Community Advocate, Healthy Gulf and individuals expressed concern that the proposed rules under Chapter 309 are insufficient or do not provide a sufficient regulatory framework for land application of treated produced water by irrigation. Commentors requested that TCEQ develop a full permitting program that includes public participation requirements (including availability of application materials, public notice requirements, and opportunities for public comment and contested case hearings; enforcement requirements), compliance history requirements, testing requirements, and enforcement requirements.

Response

The proposed rules would be consistent with TCEQ's Texas land application permitting program. The proposed rules would clarify that Chapter 309 establishes the minimum requirements for disposal of treated produced water through land irrigation and are expected to be sufficient to develop permits that will be protective of water quality, human health, and the environment.

Applications submitted to obtain a Texas land application permit (TLAP) under Chapter 26 of the TWC are processed under 30 TAC Chapters 305 (relating to Consolidated Permits) and 281 (relating to Application Processing), and are subject to all applicable TCEQ rules, regulations, and prohibitions, including but not limited to those under 30 TAC Chapters 25 (relating to Environmental Testing Laboratory Accreditation and Certification), 39 (relating to Public Notice), 55 (relating to Requests for Reconsideration and Contest Case Hearing; Public Comment), 60 (relating to Compliance History), 70 (relating to Enforcement), 80 (relating to Contested Case Hearings), 213 (relating to the Edwards Aquifer), 222 (Subsurface Area Drip Dispersal Systems), 327 (relating to Spill Prevention and Control), and 335 (relating to Industrial Solid Waste and Municipal Hazardous Waste).

Comment

An individual questioned the basis of testing and reporting requirements associated with renewing an existing land application permit as related to the protection of water quality and public resources, where water is applied on private property and does not leave the permitted site.

Response

Standard sampling required for the renewal of land application permits often tests for a broader suite of toxic or trace pollutants than routine monthly monitoring. This catches unexpected contaminants in the wastestream. Testing data is used during TCEQ's application review process to verify current effluent characteristics and update limitations in an existing permit.

The testing and reporting requirements contained in the water quality permit application to obtain or renew a land application permit are based on applicable state and federal rules and guidance to ensure protection of water quality, human health, and the environment.

General Support

Comment

Greater Edwards Aquifer Alliance, Circle Verde Water, Hinds Feat, NGL Water Solutions Permian, Texas Oil and Gas Association, Texas Independent Producers Water Association, Texas Alliance of Energy Producers, Earthjustice, Texas Industry Project, CMV Consulting, and individuals expressed general support for the proposed Chapter 309 rulemaking regarding land applica-

tion of treated produced water. Some individuals also expressed general support for transfer of jurisdiction for the land application of produced water from RRC to TCEQ.

Response

The executive director acknowledges these comments.

Comment

Meta Midstream, Texas Oil and Gas Association, Texas Independent Produced Water Association, and Texas Industry Project expressed general support for the proposed Chapter 210 rulemaking regarding reuse of treated produced water.

Response

The executive director acknowledges these comments.

Concerns related to Water Quality

Comment

Greater Edwards Aquifer Alliance, Meta Midstream, Sierra Club, Glenrose Engineering, National Wildlife Federation, Galveston Bay Foundation, Bayou City Waterkeeper, Nature Conservancy in Texas, Hill County Alliance, WildEarth Guardians, Earthjustice, Community Advocate, Healthy Gulf, and individuals expressed concern that land application of treated produced water by irrigation will impact groundwater and drinking water supplies, including public and private wells.

Response

The legislature has determined that "the goal of groundwater policy in this state is that the existing quality of groundwater not be degraded. This goal of non-degradation does not mean zero-contaminant discharge." Chapter 26 of the TWC further states, "discharges of pollutants, disposal of wastes, or other activities subject to regulation by state agencies be conducted in a manner that will maintain present uses and not impair potential uses of groundwater or pose a public health hazard."

The proposed rules would be consistent with TCEQ's Texas land application permitting program. The proposed rules would clarify that Chapter 309 establishes the minimum requirements for disposal of treated produced water through land irrigation to ensure protection of water quality (including groundwater), human health, and the environment. No discharge of pollutants into water in the state is authorized under an individual TLAP and it is therefore expected to be protective of groundwater. However, additional site-specific provisions may be established on a case-by-case basis to ensure protection of potable water sources and supplies.

Comment

An individual expressed concern that land application of treated produced water will impact wetlands. National Wildlife Federation, Galveston Bay Foundation, Bayou City Waterkeeper, Nature Conservancy in Texas, Sierra Club, and Hill County Alliance recommended expanding the existing prohibition of a wastewater treatment plant at 30 TAC §309.13(b) to apply to constructed wetlands.

Response

The TWC defines "water" or "water in the state" to mean groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, wetlands, marshes, inlets, canals, the Gulf of America, inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or non-navigable, and including the beds and banks of all watercourses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state.

The proposed rules would be consistent with TCEQ's land application permitting program and would clarify that Chapter 309 establishes the minimum requirements for disposal of treated effluent. No discharge of pollutants into water in the state is authorized under an individual TLAP and it is therefore expected to be protective of wetlands. However, additional site-specific provisions may be established in an issued land application permit as necessary to ensure protection of potable water sources and supplies.

Comment

Greater Edwards Aquifer Alliance, Glenrose Engineering, Earthjustice, and Sierra Club expressed concern about potential land application of treated produced water over aquifers, including the Edwards Aquifer. Glenrose Engineering requested the proposed rule be revised to prohibit land application of treated produced water over the Edwards Aquifer Contributing, Recharge, and Transition Zones.

Response

No discharge of pollutants into water in the state is authorized by a TLAP. TCEQ has established rules for regulated activities on the Edwards Aquifer recharge and contributing zones under 30 TAC Chapter 213 (Edwards Aquifer). The proposed rules would be implemented on a case-by-case basis in individual TLAPs.

Concerns regarding Health and the Environment

Comment

Commission Shift, Earthworks, Greater Edwards Aquifer Alliance, Sierra Club, Glenrose Engineering, National Wildlife Federation, Galveston Bay Foundation, Bayou City Waterkeeper, Nature Conservancy in Texas, Hill County Alliance, WildEarth Guardians, Earthjustice, Community Advocate, Healthy Gulf, Truckers Movement for Justice, and individuals expressed concerns about potential impacts to human health and/or public health from irrigation of treated produced water.

Response

As previously stated, Chapter 26 of the TWC requires that discharges of pollutants, disposal of wastes, or other activities subject to regulation by state agencies be conducted in a manner that will not pose a public health hazard.23

The proposed rules would be consistent with TCEQ's land application permitting program and would clarify that Chapter 309 establishes the minimum requirements for disposal of treated effluent, including produced water that is treated for beneficial use, to ensure protection of human health and public health. Additional site-specific provisions may be established in an issued land application permit on a case-by-case basis to ensure protection of human health.

Comment

Commission Shift, Earthworks, Greater Edwards Aquifer Alliance, Sierra Club, Glenrose Engineering, National Wildlife Federation, Galveston Bay Foundation, Bayou City Waterkeeper, Nature Conservancy in Texas, Hill County Alliance, Future Heist, WildEarth Guardians, Earthjustice, Community Advocate, Healthy Gulf, Truckers Movement for Justice, and individuals expressed concerns about potential impacts to the

environment, including wildlife, livestock and farmland, and other critical environmental features or natural resources.

Response

The proposed rules would be consistent with TCEQ's land application permitting program and would clarify that Chapter 309 establishes the minimum requirements for disposal of treated effluent, including produced water that is treated for beneficial use, to ensure protection of the environment. However, additional site-specific provisions may be established in an issued land application permit on a case-by-case basis, as necessary, to ensure protection of the environment, including wildlife, livestock and farmland, and other critical environmental features or natural resources.

Comment

National Wildlife Federation, Galveston Bay Foundation, Bayou City Waterkeeper, Nature Conservancy, Hill County Alliance, Future Heist, WildEarth Guardians, Sierra Club, and an individual expressed concerns about potential impacts from spills.

Response

Spills are considered an unauthorized discharge and are subject to 30 TAC Chapter 327 (relating to Spill Prevention and Control). An unauthorized discharge is a violation of the proposed permit for which an enforcement action can be brought by TCEQ against a permittee. However, an issued TLAP would not limit anyone's ability to seek legal remedies from the owner or operator (i.e, permittee) regarding any potential trespass, nuisance, or other cause of action in response to the proposed facility's activities that may result in injury to human health or property or interfere with the normal use and enjoyment of property.

Comment

National Wildlife Federation, Galveston Bay Foundation, Sierra Club, Bayou City Waterkeeper, Nature Conservancy, Hill County Alliance, Future Heist, WildEarth Guardians; Healthy Gulf, and individuals expressed concerns about potential impacts from leaching and runoff.

Response

Potential impacts from leaching would be evaluated during the application review process for a permit to land irrigation with produced water that is treated for beneficial use. Any potential impacts identified during evaluation would be addressed by site-specific permit requirements established in the issued land application permit.

Land application permits authorize the disposal of wastewater by irrigation only. A TLAP does not authorize the discharge of pollutants off site or into waters in the state and prohibits any unauthorized discharges. Leaching into groundwater and runoff are two forms of unauthorized discharge prohibited. An unauthorized discharge is a violation of the proposed permit for which an enforcement action can be brought by TCEQ against a permittee.

Concerns related to the Proposed Rule

Comment

Greater Edwards Aquifer Alliance, National Wildlife Federation, Galveston Bay Foundation, Bayou City Waterkeeper, Nature Conservancy in Texas, Hill County Alliance, Future Heist, WildEarth Guardians, Earthjustice, Healthy Gulf, and individuals expressed concern that the proposed rules do not establish specific effluent analysis and testing requirements for an application to obtain a permit to land apply treated produced water. Sierra Club, Glenrose Engineering, Greater Edwards Aquifer Alliance, National Wildlife Federation, Galveston Bay Foundation, Bayou City Waterkeeper, Nature Conservancy, Hill County Alliance, Future Heist, WildEarth Guardians, Earthjustice, Community Advocate, Healthy Gulf, Truckers Movement for Justice, and individuals expressed concerns that treated produced water to be land-applied could contain chemicals such as salts, clays, waxes, metals and heavy metals, per- and polyfluoroalkyl substances (e.g., PFAS), industrial solvents, inorganic and organic compounds, including volatile organic compounds and other dissolved gases, chemical additives and fracking fluids, and other unknown substances. Sierra Club, Glenrose Engineering, Future Heist, Nature Conservancy, Earthjustice, Healthy Gulf, and individuals expressed concern about radioactive materials or naturally occurring radioactive materials in produced water. Commission Shift, Greater Edwards Aquifer Alliance, Meta Midstream, Sierra Club, Glenrose Engineering, National Wildlife Federation, Galveston Bay Foundation, Bayou City Waterkeeper, Nature Conservancy, Hill County Alliance, WildEarth Guardians, Earthjustice, Healthy Gulf, and individuals commented that the proposed rule should establish specific or minimum effluent limitations and standards for land application of produced water, including toxicity testing.

Response

The proposed rules would clarify that Chapter 309 establishes the minimum requirements for disposal of treated produced water through irrigation.

Analytical requirements for proposed land application activities are established in the water quality permit application for industrial wastewater dischargers and under an issued land application permit based on applicable state and federal rules and guidance. During technical review, TCEQ staff establish appropriate site-specific effluent limitations, irrigation rates, and any special provisions necessary to ensure the protection of water quality, health, and the environment in the land application permit. Irrigation rates established in an issued TLAP are site-specific and based on agronomic rates to ensure crop growth, nutrient uptake, and effluent retention in the soil to prevent effluent runoff, seepage, ponding, or accumulation of pollutants, and may include lifetime loading limits for certain pollutants if needed to ensure protection of water quality, health, and the environment. If issued, a permittee would be required to comply with the permit and adhere to the effluent analysis and testing requirements established in the permit, as well as the application rate and effluent limitations.

To clarify that additional site-specific requirements will be developed on a case-by-case basis, proposed 30 TAC §309.20 was revised to include new provision (d), as follows:

"(d) Additional Requirements. Additional site-specific requirements for the treatment and disposal of industrial wastewater, including disposal of produced water under Tex. Water Code §26.131(e) that has been treated for beneficial use, may be established on a case-by-case basis."

Comment

Commission Shift, Sierra Club, Glenrose Engineering, National Wildlife Federation, Galveston Bay Foundation, Bayou City Waterkeeper, Nature Conservancy in Texas, Hill County Alliance, WildEarth Guardians, Healthy Gulf, and individuals expressed concerns about pollutant accumulation from land application ac-

tivities. Additionally, Healthy Gulf and individuals commented that the rules should require bioaccumulation tracking.

Response

The proposed rules would clarify that Chapter 309 establishes the minimum requirements for disposal of treated produced water through irrigation.

During technical review, TCEQ staff establish appropriate site-specific effluent limitations, irrigation rates, and any special provisions necessary to ensure the protection of water quality, health, and the environment in the land application permit. Irrigation rates established in an issued TLAP are site-specific and based on agronomic rates to ensure crop growth, nutrient uptake, and effluent retention in the soil to prevent effluent runoff, seepage, ponding, or accumulation of pollutants, and may include lifetime loading limits for certain pollutants if needed to ensure the permit is protective of water quality, health, and the environment.

Comment

Individuals expressed concerns that produced water is not like wastewater from domestic, agricultural, or other industrial sources. Commentors recommended that TCEQ create separate regulations for produced water. CMV Consulting LLC commented that separate rules should be developed for land application of produced water over the Carrizo aquifer.

Response

TCEQ follows the methodology and procedures outlined under 30 TAC Chapter 309 to evaluate an application to dispose of treated effluent. Based on technical reviews of the application and proposed activities, TCEQ staff develop a permit that establishes effluent limitations and permit requirements that are expected to protect human health and the environment.

The proposed rules would be consistent with TCEQ's land application permitting program and would clarify that Chapter 309 establishes the minimum requirements for disposal of treated effluent. A TLAP does not authorize the discharge of pollutants off site or into water in the State.

Additional site-specific provisions may be established in an issued land application permit as necessary to ensure protection of groundwater resources. The rule also provides for regulatory flexibility when establishing requirements under 30 TAC §309.13(c) in a permit by allowing TCEQ to consider exceptions and establish alternative provisions if the alternative provides adequate protection of potable water sources and supplies.

Comment

National Wildlife Federation, Galveston Bay Foundation, Sierra Club, Bayou City Waterkeeper, Nature Conservancy, and Hill County Alliance expressed concern about setback distances 30 TAC §309.13(c)(1) - (6) and commented that larger setback distances are needed to ensure protection of water resources from land irrigation with industrial wastewater, including produced water, as well as Sierra Club, Greater Edwards Aquifer Alliance, National Wildlife Federation, Galveston Bay Foundation, Bayou City Waterkeeper, Nature Conservancy, Hill County Alliance, Future Heist, Healthy Gulf, Community Advocate and other individuals. Greater Edwards Aquifer Alliance also expressed concern and recommended that the required setbacks be revised to one-acre from water supply wells for land application of produced water. Sierra Club commented that the proposed setback at 30 TAC §309.13(c)(6) should be greater and requested TCEQ provide the technical basis for the proposed distances and demonstrate why they are protective of the environment and public health. The Texas Industry Project expressed concern about the proposed requirement at 30 TAC §309.13(c)(6) and requested removal. The Texas Industry Project noted the provision may cause a broad suite of facilities to be out of compliance with TCEQ rules and it addresses conditions beyond those required to be addressed under SB 1145, and recommend it be removed. Alternatively, The Texas Industry Project suggested that the distance limit should (1) expressly apply only to new units, not units that were authorized or constructed prior to the effective date of the final rule and (2) expressly allow case-by-case exceptions as approved by the Executive Director. Future Heist commented that the proposed requirement at 30 TAC §309.13(c)(6) fails to account for slope. Future Heist and individuals requested the rules establish setbacks for neighborhoods, schools, daycares, and community centers.

Response

The proposed rules would be consistent with TCEQ's land application permitting program and would clarify that Chapter 309 establishes the minimum requirements for disposal of treated effluent, including produced water that is treated for beneficial use. An individual TLAP does not authorize the discharge of pollutants off site or into water in the state, including groundwater.

Requirements under 30 TAC §309.13(c) would establish distances required to locate a wastewater treatment unit (including an irrigation area) from water features. These requirements are expected to be protective of groundwater, surface water, and public health in the event of an unauthorized discharge or significant rain event that could cause run off from an irrigation area.

The proposed 100-foot setback under 30 TAC §309.13(c)(6) is a standard provision included in issued TLAPs that authorize the disposal of industrial wastewaters through land application. This provision ensures protection of water in the state from land application activities and is consistent with existing buffer zone requirements for land application activities already authorized by the commission under 30 TAC §222.81 relating to Subsurface Area Drip Dispersal Systems (SADDS) and 30 TAC §§321.40(h), 321.48(e)(6), and 321.409(1) relating to CAFOs.

Additional site-specific provisions may be established in an issued land application permit as necessary to ensure protection of groundwater resources. However, the rule also provides for regulatory flexibility when establishing requirements under 30 TAC §309.13(c) in a permit by allowing TCEQ to consider exceptions and establish alternative provisions if the alternative provides adequate protection of potable water sources and supplies.

Comment

Healthy Gulf and individuals expressed concern about accountability. Glenrose Engineering, WildEarth Guardians, and individuals expressed concern about TCEQ's ability to enforce a TLAP for treated produced water. Sierra Club and individuals expressed concern that the proposed rules do not contain enforcement requirements for the land application of treated produced water. Meta Midstream expressed concern about the lack of additional record-keeping requirements in the proposed rule.

Response

A TCEQ-issued permit contains enforceable requirements and provisions to ensure accountability for permit holders in the operation of their facility and land application area(s). A permit

holder is required to maintain records and notify the agency if the effluent does not meet the permit conditions according to the requirements established in the permit. In addition, TCEQ regional staff may sample the effluent during routine inspections or in response to a complaint.

A land application permit holder is subject to administrative, civil, and criminal penalties, as applicable, under TWC, §§7.051 - 7.075 (relating to Administrative Penalties), 7.101 - 7.111 (relating to Civil Penalties), and 7.141 - 7.202 (relating to Criminal Offenses and Penalties) for violations including, but not limited to, negligently or knowingly violating the federal Clean Water Act (CWA) §§301, 302, 306, 307, 308, 318, or 405, or any condition or limitation implementing any sections in a permit issued under CWA §402.

Penalties, including the monetary amount of administrative fines, are determined by the TCEQ Enforcement Division and depend on the nature and extent of the violation(s).

Comment

Greater Edwards Aquifer Alliance, Meta Midstream, Sierra Club, WildEarth Guardians, Community Advocate, Healthy Gulf, and individuals expressed concern about agency oversight for a land application permit for treated produced water. Commentors recommended TCEQ revise the rule to include requirements such as independent testing, additional or continuous monitoring requirements, and livestock monitoring requirements.

Response

The proposed rules would be consistent with TCEQ's land application permitting program and would clarify that Chapter 309 establishes the minimum requirements for disposal of treated effluent, including produced water that is treated for beneficial use.

All wastewater treatment facilities and land application areas must be operated and maintained consistent with applicable TCEQ rules. An issued permit describes the conditions under which a specific wastewater facility must operate and will include provisions that require the facility and land application site(s) to be properly operated and maintained at all times.

Monitoring requirements established in an issued permit are based on TCEQ guidance documents for establishing monitoring frequencies. The monitoring frequencies in a draft permit can be increased or decreased based on an Applicant's ability to demonstrate compliance with the permitted effluent limitations.

TCEQ's Office of Compliance and Enforcement ensures compliance with applicable state and federal regulations. The appropriate regional office conducts a mandatory comprehensive compliance investigation (CCI) at EPA-classified minor facilities once every five fiscal years. Additional mandatory investigations can be required if the facility is categorized as significant noncompliance (SNC). SNC is determined by the Compliance Monitoring Section of TCEQ and is based on self-reported effluent violations.

Comment

Hinds Feat requested that TCEQ develop an expedited permitting route for land application of produced water.

Response

The executive director is proposing to amend Chapter 210 to include treated produced water as a wastestream eligible for reuse to create an accelerated authorization route for the land application of produced water that is treated for beneficial use. Industrial reclaimed water authorizations issued under Chapter 210 are reviewed and issued following a streamlined approach, typically taking about two months to obtain.

Industrial reuse activities that may be authorized under Chapter 210 are much smaller in scale and must adhere to the criteria, requirements, and prohibitions outlined in the Chapter, thus requiring significantly less technical review and oversight. Industrial reuse applications do not require public notice or offer an opportunity for a contested case hearing, which also reduces the timeframes needed to obtain an authorization.

Comment

The Texas Industry Project and Texas Oil and Gas Association expressed concerns about creating an inconsistency within the rules because the proposed definition of "produced water" at 30 TAC §309.11(9) incorporates by reference the definition at 30 TAC §305.541(b), which specifically mentions discharges into water in the state.

Response

The proposed definition has been revised as follows:

Produced water - is defined for the commission's implementation of Texas Water Code, §26.131(e), all wastewater associated with oil and gas exploration, development, and production activities, except hydrostatic test water and gas plant effluent.

Comment

Sierra Club commented that the proposed rules should include a definition for "treated produced water". The Texas Industry Project requested the addition of a definition for "treated produced water fluids", as follows:

"…for purposes of this Chapter 309, produced water that has been treated for beneficial use and is land applied. For purposes of this Chapter 309, the definition does not include those treated wastewaters that are industrial reclaimed water as defined by 30 TAC 210.52 and regulated under Chapter 210 or that are treated fluid as defined by 16 TAC 4.110 and regulated by the Railroad Commission of Texas."

Response

The executive director declines to include a definition for produced water that is treated for beneficial use and land applied.

Comment

National Wildlife Federation, Galveston Bay Foundation, Sierra Club, Bayou City Waterkeeper, Nature Conservancy, and Hill County Alliance expressed concern about the existing definition of "new facility," which includes only domestic wastewater treatment facilities.

Response

To clarify applicability to both domestic and industrial wastewater treatment facilities, the definition for "New Facility" has been revised to "Any wastewater treatment facility which is not an existing facility."

Comment

National Wildlife Federation, Galveston Bay Foundation, Sierra Club, Bayou City Waterkeeper, Nature Conservancy, and Hill County Alliance recommended the addition of a definition for the term "domestic raw water supply."

Response

The executive director declines to include a definition for "domestic raw water supply." TCEQ rules and regulations related to raw water supply are located under 30 TAC Chapter 290 (relating to Public Drinking Water). TCEQ defines raw water supply conceptually as untreated surface water entering a domestic water treatment plant.

Comment

National Wildlife Federation, Galveston Bay Foundation, Sierra Club, Bayou City Waterkeeper, Nature Conservancy, and Hill County Alliance recommended the addition of a definition for the term "agricultural practice."

Response

The executive director declines to include a definition for "agricultural practices". Definitions for "agriculture or agricultural" and "agricultural use" are established under TCEQ rules located at 30 TAC Chapter 297 (relating to Water Rights).

Comment

The Sierra Club (Lone Star Chapter) commented that the proposed rules should include a definition for "land application."

Response

The executive director declines to include a definition for "land application." Land application activities that may be authorized under Chapter 309 include the disposal of treated effluent by surface irrigation, drainfields, or subsurface land application, unless otherwise prohibited by state or federal rules or statute.

Comment

NGL Water Solutions Permian, LLC, Texas Oil and Gas Association, Texas Industry Project, National Wildlife Federation, Galveston Bay Foundation, Sierra Club, Bayou City Waterkeeper, Nature Conservancy, and Hill County Alliance expressed concerns about applicability of requirements for treatment and disposal of domestic wastewater to industrial wastewater, including produced water. Texas Oil and Gas Association, NGL Water Solutions Permian, Texas Industry Project, National Wildlife federation, Galveston Bay Foundation, Sierra Club, Bayou City Waterkeeper, Nature Conservancy, and Hill County Alliance recommended revisions to remove ambiguity and ensure that provisions applicable only to domestic wastewater treatment facilities do not inadvertently apply to land application of industrial wastewater or treated produced water.

Response

The following revisions to the proposed rule text for Chapter 309 have been made to clarify the applicability of requirements that are explicitly for the treatment and disposal of domestic wastewater:

30 TAC §309.1(b) and (e), 30 TAC §309.10(a)(2), and 30 TAC §309.13(e) - (i) have been revised to clarify applicability of the requirement to treated domestic sewage or industrial land application, as appropriate.

30 TAC §309.10(a)(1) has been revised as follows:

(1) This subchapter establishes minimum standards for the location of domestic wastewater treatment facilities and land application of industrial wastewater, including produced water under Tex. Water Code §26.131(e) that is treated for beneficial use. These standards are to be applied in the evaluation of an application for a permit to:

(A) treat and dispose of domestic wastewater;

(B) treat and dispose of industrial wastewater, including disposal of produced water under Tex. Water Code §26.131(e) that is treated for beneficial use;

(C) obtain approval of construction plans and specifications for domestic wastewater treatment facilities."

Comment

National Wildlife Federation, Galveston Bay Foundation, Sierra Club, Bayou City Waterkeeper, Nature Conservancy, and Hill County Alliance commented that proposed rule language at 30 TAC §309.2(b) should be revised from "may" to "must".

Response

The executive director acknowledges this comment; however, no revisions to this subsection were proposed to implement SB 1145 or clarify TCEQ's land application permitting program as it relates to disposal of industrial wastewaters.

Comment

The Texas Industry Project requested TCEQ include a "nondisturbance" provision under 30 TAC §309.10, as follows:

"This chapter does not apply to the management, transport, storage, recycling, or impoundment of produced water or treated produced water fluids prior to being applied to land for irrigation or other beneficial use."

Response

The executive director declines to include a "nondisturbance" provision for oil and gas waste. However, the executive director acknowledges that the proposed rules do not apply to the management, transport, storage, recycling, or impoundment of produced water or treated produced water fluids prior to being applied to land for irrigation or other beneficial use. Jurisdictional boundaries between TCEQ and RRC are established in the Memorandum of Understanding between TCEQ and RRC located at 30 TAC §7.117.

Comment

National Wildlife Federation, Galveston Bay Foundation, Sierra Club, Bayou City Waterkeeper, Nature Conservancy, and Hill County Alliance commented that proposed revisions at 30 TAC §309.20 are inadequate to ensure protection from land irrigation with industrial wastewater, including produced water. The commentors requested that 30 TAC §309.20(a)(4) be revised to require groundwater testing and monitoring to protect groundwater quality resources as well as livestock and wildlife that obtain water from those resources. They also requested revisions of 30 TAC §309.20(b) to expand scope relating to crop irrigation, primary and secondary effluent requirements, design analysis, and soil testing requirements to ensure the requirements apply to and are appropriate to be protective for irrigation with treated produced water.

Response

The proposed rules would clarify that Chapter 309 establishes the minimum requirements for disposal of treated produced water through land irrigation to ensure protection of water quality (including groundwater), human health, and the environment, and would be consistent with TCEQ's Texas land application permitting program. No discharge of pollutants into water in the state is authorized under an individual TLAP and it is therefore expected to be protective of groundwater and potable water re-

sources. Additional site-specific provisions may be established on a case-by-case basis to ensure an issued permit is protective for irrigation with produced water that is treated for beneficial use.

Comment

An individual commented that the proposed rules should require a redemonstration of compliance to obtain a permit to land-apply produced water.

Response

As described, entities seeking to land-apply treated effluent are required to provide analytical data with their application that is representative of the proposed effluent to be land-applied.

Following issuance of a land application permit, the permittee is required to analyze the treated effluent prior to conducting land application activities. The permittee is also required to maintain monthly reports of the results of the effluent analyses and flow measurements for a minimum of three years. A permittee may either collect and analyze the effluent samples themselves, or it may contract with a third party for either or both the sampling and analysis. However, all samples must be collected and analyzed according to 30 TAC Chapter 319, Subchapter A. The permittee is required to further notify the agency if the effluent does not meet the permit limits according to the requirements in the permit. In addition, TCEQ regional staff may sample the effluent during routine inspections or in response to a complaint.

Based on staff review, TCEQ may establish additional site-specific monitoring requirements as necessary to assure protection of water quality, human health, and the environment.

Comment

Future Heist, WildEarth Guardians, and individuals commented that TCEQ should require financial assurance to obtain a permit to land-apply treated produced water.

Response

TCEQ develops rules and requirements for financial assurance when authority to do so is provided by State or Federal law. Inclusion of financial assurance requirements goes beyond the authority provided under TWC, §26.131.

However, an issued TLAP would not limit anyone's ability to seek legal remedies from the owner or operator (i.e., permittee) regarding any potential trespass, nuisance, or other cause of action in response to the proposed facility's activities that may result in injury to human health or property or interfere with the normal use and enjoyment of property.

Comment

Glenrose Engineering commented 30 TAC §213.3(28)(B)(iii), which exempts activities associated with the exploration, development, and production of oil, gas, or geothermal resources under the jurisdiction of RRC should be amended to clarify that land application of produced water associated with the exploration, development, and production of oil, gas, or geothermal resources for either disposal or beneficial use is a regulated activity under 30 TAC §213.

Response

The executive director acknowledges this comment. Any revisions needed to Chapter 213 would be conducted under a separate rulemaking.

Comment

Glenrose Engineering expressed concern that the proposed rules, under 30 TAC Chapter 210 are inadequate for treated produced water, including the lack of additional effluent limitations, monitoring requirements and frequencies, or setbacks, and recommended the proposed rule be revised to include continuous effluent monitoring requirements, soil and groundwater monitoring on a quarterly basis. Glenrose Engineering also expressed concerns about the allowable reuse activities and irrigation practices under the proposed rules, including the type of authorization required (Level I versus Level II authorization).

Response

Chapter 210, Subchapter E, establishes requirements for industrial reclaimed water which may be used instead of potable or raw water sources for purposes such as landscape irrigation, dust suppression, and impoundment maintenance. This proposed rulemaking would amend Chapter 210 to establish the minimum requirements for the reuse of produced water that is treated for beneficial use.

A Level I authorization for industrial reclaimed water, including treated produced water, provides coverage for on-site reuse without notification to, or written approval from, TCEQ. Eligible wastestreams listed under 30 TAC §210.53(a) may be used in accordance with end uses listed under 30 TAC §210.56(b)(2) and must not contain measured effluent concentrations above the thresholds listed in Table 30 TAC §210.53(a)(9) or above the minimum analytical level for all other priority pollutants in 40 Code of Federal Regulations (CFR), Part 122 Appendix D, Tables II and III.

A Level II authorization for industrial reclaimed water, including treated produced water, provides coverage for on- or off-site reuse after notification is made and written approval is received from TCEQ.

While the proposed revisions to Chapter 210 would establish the minimum requirements for reuse of produced water that is treated for beneficial reuse, additional site-specific effluent limitations and provisions may be established in an issued industrial reuse authorization to ensure protection of water quality, human health, and the environment. If issued, the permittee would be required to comply with the effluent limitations, monitoring frequencies, and reporting requirements established in the industrial reuse authorization.

However, the executive director may also require a land application permit for the proposed reuse activity depending on the proposed volume of treated effluent to be reused, technical complexity of the proposed reuse activity, or quality of the treated effluent to use reused, including produced water that is treated for beneficial use.

Comment

Sierra Club commented that the proposed rule does not include discharge standards specifically designed for treated produced water.

Response

A land application permit for disposal of treated effluent (including produced water treated for beneficial use) does not authorize the discharge of pollutants off-site or into water in the State.

Concerns related to the Rulemaking Process

Comment

Commission Shift, Earthworks, Clean Water Action/Clean Water Fund, Sierra Club, Greater Edwards Aquifer Alliance, Future Heist, Healthy Gulf, and individuals expressed concerns about the public notice and requested an extension of the public comment period.

Response

Consistent with the requirements of 30 TAC Chapter 39, notice of the rulemaking as well as the public hearing on the proposed rule, and proposed rule text were published in the *Texas Register* on May 15, 2026. A hybrid in-person and virtual public hearing was held at TCEQ on June 15, 2026. The public comment period began on the date of publication and ran until the close of the business on the following day, June 16, 2026. The executive director declines to extend the public comment period on this rulemaking.

Comment

The Sierra Club and individuals commented that any standards developed for the land application of treated produced water should receive notice and opportunity for public input.

Response

Any subsequent rulemakings that the executive director may undertake to adopt additional standards for the land application of treated produced water will comply with TCEQ rules under 30 TAC Chapter 39 (relating to Public Notice) and all applicable public participation requirements to ensure opportunity for public input.

Comment

Future Heist expressed concerns about transparency in the rulemaking process.

Response

Updates regarding this rulemaking have been provided at the executive director's quarterly Water Quality Advisory Work Group meetings. The executive director's staff also have been available throughout the rulemaking process for questions. Filings related to the proposed rulemaking, including the notice, proposed rule text, and descriptions and basis for the proposed changes were available through the Commissioners' Integrated Database for early review by the general public on April 10, 2026, and linked to the Commissioners' Meeting Agenda available on TCEQ's website. Notice of the rulemaking, as well as the public hearing on the proposed rule, and proposed rule text were published in the *Texas Register* on May 15, 2026. A hybrid in-person and virtual public hearing was held at TCEQ on June 15, 2026. The public comment period began on the date of publication and ran until the close of the business on the following day, June 16, 2026.

Comment

Commission Shift, Earthworks, Clean Water Action/Clean Water Fund, Sierra Club, Future Heist, Community Advocate, Healthy Gulf, and individuals expressed concern about the single public hearing offered on this rulemaking and requested additional in-person and virtual public meetings or hearings on this rulemaking in impacted communities, including rural communities, across the Permian Basin, the Eagle Ford Shale, and the East Texas Basin.

Response

A hybrid in-person and virtual public hearing was held at TCEQ on June 15, 2026. Ten people attended in person and 75 external participants attended virtually. The executive director's staff have been available throughout the rulemaking process. The executive director declines to hold additional public meetings or hearings on this rulemaking.

Comment

The Texas Industry Project suggested TCEQ consider gathering additional stakeholder input to define features that would not be considered "water in the state" for purposes of this rule (e.g., exempt ditches, etc.).

Response

The executive director acknowledges this comment.

Comment

Healthy Gulf expressed concerns about TCEQ Public Costs and Benefits analysis and recommended that TCEQ revise its analysis to acknowledge the potential costs of contaminated groundwater, soil degradation, and public health harm associated with land application of produced water.

Response

TCEQ staff reviewed the proposed rule amendments in a manner consistent with Texas Government Code (TGC), 2001.024. TLAPs authorize the disposal of wastewater by irrigation, only. A TLAP does not authorize the discharge of pollutants off site or into waters in the state and prohibit any unauthorized discharges. As previously discussed, an issued TLAP will contain site-specific application rates to ensure effluent retention in the soil to prevent effluent runoff, seepage, ponding, or accumulation of pollutants. TCEQ also develops and includes special provisions in a TLAP to prevent surface and groundwater contamination and runoff. The site-specific effluent limits and additional permit requirements that are established in an issued land application permit are expected to assure protection of water quality, human health, and the environment.

As such, TCEQ staff determined that the public benefit will be rule language that provides clarity and establishes minimum requirements regarding how TCEQ would issue permits for the land application of industrial wastewater, including produced water for beneficial use as authorized by SB 1145. The determination also concluded that the public will benefit from the clarity of promulgated requirements related to the location of wastewater treatment plant units or effluent used for irrigation in relation to waters of the state (30 TAC §309.13(d)(2)), as well as from other various clarifications in the rule. The addition of the requirements proposed in the rule would lead to increased protection of water quality in the waters of the state and the land application of produced water may lead to the increased availability of water for beneficial reuse.

Comment

Healthy Gulf expressed concerns about TCEQ's "Major Environmental Rule" analysis. Healthy Gulf commented rulemaking implicates the economy, agricultural productivity, public health, and the environment in ways that plainly meet the threshold for major environmental rule status.

Response

The executive director acknowledges this comment. No change was made in response to this comment. TCEQ staff reviewed the proposed rule amendments in a manner consistent with TGC, 2001.0225.

A "Major environmental rule" is defined as a rule, the specific intent of which, is 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.

The proposed rulemaking is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. Rather, it intends to implement SB 1145, which amended TWC, §26.131 and transferred permitting authority from RRC to TCEQ of applications filed on or after September 1, 2025, for the land application of produced water that is treated for beneficial use, and to clarify applicability to the land application of industrial wastewater, including produced water under TWC, §26.131 and establish minimum requirements for land application of produced water.

This rulemaking would not: 1) exceed a standard set by federal law; 2) exceed an express requirement of state 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. Specifically, TWC, §26.131 authorizes the commission to issue permits for the land application of produced water; §26.027, which authorizes the commission to issue permits; and §26.121, which authorizes the commission to prohibit unauthorized discharges. Therefore, this proposed rulemaking does not fall under any of the applicability criteria in TGC, §2001.0225.

Comment

Healthy Gulf expressed concerns about TCEQ's analysis of potential impacts on rural communities and recommended that TCEQ prepare and publicly share a full Rural Communities Impact Assessment, establish specific science-based setback distances and contaminant standards that account for the disproportionate rural exposure, and ensure that rural communities have meaningful access to permit information and the ability to participate in permitting decisions before this rule is finalized.

Response

TCEQ staff reviewed the proposed rule amendments in a manner consistent with TGC, §2006.002.

The proposed amendments would apply statewide and have the same effect in rural communities as in urban communities. They are consistent with TCEQ's Texas land application permitting program and establish the minimum requirements for disposal of treated produced water through land application. As previously discussed, TCEQ reviews proposed land application activities and establishes site-specific effluent limits and additional permit requirements in an issued land application permit as necessary to ensure the protection of water quality, human health, and the environment. Additionally, as previously stated, TLAPs are subject to TCEQ's public participation rules under 30 TAC Chapters 39, 55, and 80, which will provide ample opportunity for interested persons to participate in permitting decisions.

Comment

Individuals expressed concerns about impacts to the state and local economy. Additionally, Healthy Gulf expressed concerns about TCEQ's analysis of potential impacts on the state economy and local economies and recommended that TCEQ conduct and publicly share a full Local Employment Impact Statement focused specifically on agricultural communities in areas where land application permits are most likely to be sought, with sufficient time for public review before the rule is finalized.

Response

TCEQ staff reviewed the proposed rule amendments in a manner consistent with applicable provisions of the TGC, including §§2001.022 and 2001.024.

Entities seeking to land apply treated produced water who were previously able to obtain a permit from RRC would now be required to obtain a land application permit or TLAP from TCEQ. A landowner must provide authorization to land apply treated effluent, including treated produced water, to their land. Additionally, as previously stated, TLAPs are subject to TCEQ's public participation rules under 30 TAC Chapters 39, 55, and 80. These requirements are not expected to adversely affect the state or local economies in a material way.

Comment

Future Heist expressed concerns about inconsistencies in the Growth and Government Impact Statement.

Response

TCEQ staff reviewed the proposed rule amendments in a manner consistent with TGC, §2001.0221.

TCEQ already has the ability to issue land application permits for disposal of treated effluent (including treated produced water) under Chapter 309. Entities seeking to land apply treated produced water who were previously able to obtain a permit from RRC are now required to obtain a land application permit or TLAP from TCEQ; further, TCEQ already has a land application permitting program established. This rulemaking clarifies the applicability of that permitting program and not expanding it.

TCEQ staff prepared an accurate Government Growth Impact Statement which determined that the proposed rulemaking does not create or eliminate a government program and will not require an increase or decrease in future legislative appropriations to the agency; does not require the creation of new employee positions, eliminating current employee positions, nor require an increase or decrease in fees paid to the agency; amends an existing regulation, but does not create, expand, repeal, or limit the regulation; and does not increase or decrease the number of individuals subject to its applicability. Therefore, TCEQ staff concluded that the proposed rule should not impact positively or negatively the state's economy.

Comment

Individuals commented that additional studies should be required prior to the proposing rules for land application of treated produced water.

Response

The executive director is reviewing existing effluent data available from RRC and pilot programs conducted under their jurisdiction, as well as application materials from applicants seeking a land application permit under TWC, Chapter 26 to determine if additional parameters will be added to the pollutant analysis suite requested in the water quality permit application for land application of treated produced water. A future rulemaking may be conducted to add performance-based effluent limitations or additional permit requirements for treated produced water, as appropriate to ensure the protection of water quality, human health, and the environment.

Comment

Sierra Club requested TCEQ to consider pausing this rulemaking to create an informal draft and stakeholder group.

Response

The executive director acknowledges this comment.

Concerns related to the Permitting Process

Comment

Individuals commented that permit recipients must have good compliance histories.

Response

During the technical review of an application, TCEQ reviews the Applicant's compliance history according to the rules in 30 TAC Chapter 60.

Comment

Sierra Club commented that the proposed rule's reliance on case-by-case permit evaluations and professional judgement raises transparency and consistency concerns. Sierra Club, Greater Edwards Aquifer Alliance, Future Heist, Nature Conservancy, WildEarth Guardians, Community Advocate, Healthy Gulf, and individuals expressed concerns about transparency in the land application permitting process for produced water that is treated for beneficial use.

Response

This proposed rulemaking would establish the minimum requirements for land irrigation with produced water that is treated for beneficial use. Additional, site-specific requirements beyond the requirements of Chapter 309 may be established in an issued permit as necessary to ensure protection of water quality, human health, and the environment.

As previously stated, the proposed rules would be consistent with TCEQ's land application permitting program. Applications submitted to obtain a TLAP under TWC, Chapter 26 are subject to all applicable TCEQ rules, regulations, and prohibitions, including but not limited to those under 30 TAC Chapters 39 (relating to Public Notice), 55 (relating to Requests for Reconsideration and Contest Case Hearing; Public Comment), and 80 (relating to Contested Case Hearings).

TCEQ rules provide opportunities for transparency during the process to obtain a land application permit.

Specifically, there are two public notices regarding this permit action, the Notice of Receipt of Application and Intent to Obtain a Wastewater Permit (NORI) and the Notice of Application and Preliminary Decision (NAPD). TCEQ's notice rules require applicants to provide public notices for wastewater permits by publishing the NORI in a "newspaper of largest circulation in the county in which the facility is located or proposed to be located … if the facility is located or proposed to be located in a municipality, the applicant publish notice in any newspaper of general circulation in the municipality." After the Office of the Chief Clerk has mailed the preliminary decision and the NAPD to the applicant, they are required to publish the NAPD "at least once in a newspaper regularly published or circulated within each county where the proposed facility or discharge is located and in each county affected by the discharge."

TCEQ's notice rules for a new permit or major amendment require mailed notice of the NORI and NAPD to landowners named on the application map and persons on the mailing list maintained by the Office of the Chief Clerk. An applicant is required to submit a landowner map as part of the application materials. The landowner map must include the property boundaries of landowners surrounding the applicant's property and the property boundaries of all landowners surrounding the discharge point and on both sides of the discharge route for one full stream mile downstream of the discharge point. Additionally, any persons who submit a comment or contested case hearing request prior to the end of the public comment period are added to the mailing list for that permit action.

An applicant must place a physical copy of all application materials in a public viewing location (described in both public notices). In addition, TCEQ must make an exact electronic copy of all applications materials available online for applications submitted on or after June 1, 2024.

Comment

Greater Edwards Aquifer Alliance, Meta Midstream, Sierra Club, WildEarth Guardians, Community Advocate, Healthy Gulf, and individuals expressed concern about agency oversight for a land application permit for treated produced water. Commentors recommended TCEQ revise the rule to include requirements such as independent testing, additional or continuous monitoring, and livestock monitoring requirements.

Response

All wastewater treatment facilities and land application areas must be operated and maintained consistent with applicable TCEQ rules. An issued permit describes the conditions under which a specific wastewater facility must operate and will include provisions that require the facility and land application site(s) to be properly operated and maintained at all times.

Additionally, monitoring requirements established in the proposed permit are based on TCEQ guidance documents for establishing monitoring frequencies and are typically set at the most stringent allowable for applicants that do not demonstrate a significant potential to exceed the permitted limitations. The monitoring frequencies in a draft permit can be increased or decreased based on an Applicant's ability to demonstrate compliance with the permitted effluent limitations.

TCEQ's Office of Compliance and Enforcement ensures compliance with applicable state and federal regulations. The appropriate regional office conducts a mandatory comprehensive compliance investigation (CCI) at EPA-classified minor facilities once every five fiscal years. Additional mandatory investigations can be required if the facility is categorized as significant noncompliance (SNC). SNC is determined by the Compliance Monitoring Section of TCEQ and is based on self-reported effluent violations.

Concerns Outside of TCEQ Jurisdiction

Comment

WildEarth Guardians commented that the proposed rules should address flood risks.

Response

TLAPs authorize the disposal of wastewater by irrigation, only. A TLAP does not authorize the discharge of pollutants off-site or into waters in the state and prohibits any unauthorized discharges.

TCEQ does not have jurisdiction to address flooding or erosion issues in the wastewater permitting process. The permitting process for land application of wastewater is limited to prohibiting the discharge of pollutants into water in the state. Irrigation rates established in a TLAP are site-specific and based on agronomic rates to ensure crop growth, nutrient uptake, and effluent retention in the soil to prevent effluent runoff, seepage, or ponding. Additionally, TLAPs prohibit irrigation during a significant rainfall event. If issued, the permittee would be required to comply with the limitations, requirements, and prohibitions established in their permit and would not be expected to contribute to flooding or erosion.

For flooding concerns, please contact the local floodplain administrator for this area. If you need help finding the local floodplain administrator, please call TCEQ Resource Protection Team at (512) 239-4691.

Comment

An individual commented that they should have the right to sue.

Response

Issuance of a Texas Land Application permit for treated produced water does not limit the ability of an individual to seek legal remedies against an applicant regarding any potential trespass, nuisance, or other causes of action in response to activities that may result in injury to human health or property, or that may interfere with the normal use and enjoyment of property. For concerns, please contact local law enforcement or County Sheriff's Office to inquire if there are ordinances in your area.

Comment

An individual expressed concerns about potential impacts to property.

Response

TWC, §26.027 makes clear that TCEQ may issue permits for disposal and dispersal of wastewater adjacent to water in the State through the executive director's evaluation of TLAP applications using the information provided in an application and recommending issuance or denial based on the application's compliance with the TWC and TCEQ rules.

However, an issued land application permit would not limit anyone's ability to seek legal remedies from the permit holder regarding any potential trespass, nuisance, or other cause of action in response to the permitted activities that may result in injury to property or interfere with the normal use and enjoyment of property.

Comment

Hinds Feat commented about potential mineral recovery from produced water and oil and gas exploration activities.

Response

Mineral recovery cannot be addressed in the review of water quality application, as the scope of the executive director's jurisdiction in a land application permit is limited to the issues set out by statute. The land application rules do not prohibit the recovery of minerals from produced water.

Comment

Individuals commented on other potential uses for treated produced water, including for data centers. An individual also commented about alternative disposal options for treated produced water.

Response

TCEQ does not have the authority to mandate the method of disposal of treated effluent or use of alternative disposal options if the applicant adheres to the rules and provisions under TWC, Chapter 26 and 30 TAC Chapters 305, 307, and 309. The proposed rules would not limit potential uses for produced water that is treated for beneficial use.

Comment

Clean Water Action/Clean Water Fund, WildEarth Guardians, Future Heist, and Truckers Movement for Justice questioned how biosolids and byproducts from treatment of produced water would be addressed in a TCEQ permit to land irrigate with produced water.

Response

Any wastewater, biosolids, or other wastes generated during the treatment of produced water are considered oil and gas wastes. Management and disposal authority for oil and gas waste remains under the jurisdiction of RRC.

Comment

The Texas Oil and Gas Association questioned if this proposed rulemaking would alter spill reporting obligations to RRC, except when an unauthorized discharge of wastewater into or adjacent to water in the state would be reported to TCEQ as an element of the TPDES or TLAP permit requirements.

Response

No, this proposed rulemaking is not expected to alter spill reporting obligations to the RRC. However, TCEQ permittees would be required to report unauthorized discharges under the TCEQ-issued permit requirements.

Comment

The Texas Oil and Gas Association expressed concerns about potential impacts to surface impoundments under the proposed rules.

National Wildlife Federation, Galveston Bay Foundation, Sierra Club, Bayou City Waterkeeper, Nature Conservancy, Hill County Alliance, and an individual expressed concern about the potential public and wildlife exposure to stored treated produced water.

Response

The revised statute transferred jurisdiction over disposal of produced water that is treated for beneficial reuse by land application. Jurisdiction over the management, including treatment and storage, and disposal of produced water via evaporation in surface impoundments remains under RRC.

Concerns Beyond Scope of Rulemaking

Comment

Greater Edwards Aquifer Alliance expressed concerns about the lack of pretreatment requirements in the proposed rules for land application of treated produced water.

Response

Federal regulations related to pretreatment requirements are located under 40 CFR Part 403 and are applicable to entities that discharge to a publicly-owned treatment work (POTW). These

rules do not apply to the disposal of treated produced water by land application.

Comment

Greater Edwards Aquifer Alliance and Future Heist expressed concerns about the lack of remediation requirements in the proposed rules for land application of treated produced water.

Response

TCEQ rules related to remediation requirements are located under 30 TAC Chapter 350, Texas Risk Reduction Program, and are outside of the scope of a water quality permit to land apply treated produced water.

Comment

Future Heist and WildEarth Guardians expressed concerns about the lack of restoration requirements or cleanup standards in the proposed rules for land application of treated produced water.

Response

TCEQ develops rules and requirements to specifically require restoration requirements or cleanup standards when authority to do so is provided by State or Federal law. Inclusion of restoration requirements goes beyond the requirements of the statute under TWC, §26.131.

As previously described, TCEQ establishes site-specific effluent limits and additional permit requirements in the draft permit that are necessary to assure protection of groundwater quality, human health, and the environment. TCEQ establishes irrigation rates in an issued TLAP that are site-specific and based on agronomic rates to ensure crop growth, nutrient uptake, and effluent retention in the soil to prevent effluent runoff, seepage, ponding, or accumulation of pollutants, as well as any special provisions needed to prevent surface and groundwater contamination and runoff. If issued, the permittee would be required to comply with the effluent limitations and requirements established in the permit.

Spills and runoff are considered unauthorized discharges. An unauthorized discharge is a violation of the proposed permit for which an enforcement action can be brought by TCEQ against a permittee, subject to cleanup standards under 30 TAC Chapter 327 (relating to Spill Prevention and Control).

However, an issued TLAP would not limit anyone's ability to seek legal remedies from the owner or operator (i.e., permittee) regarding any potential trespass, nuisance, or other cause of action in response to the proposed facility's activities that may result in injury to human health or property or interfere with the normal use and enjoyment of property.

Comment

An individual recommended TCEQ develop a freshwater discharge permit for treated produced water.

Response

The executive director acknowledges this comment.

Comment

Individuals expressed general concerns about TCEQ issuing permits for data centers.

Response

The executive director acknowledges this comment.

Comment

Earthjustice commented that TCEQ must ensure the final rule does not exacerbate ongoing issues with underground injection control wells.

Response

TCEQ rules related to underground injection control well requirements are located under 30 TAC Chapter 331 (Underground Injection Control) and are outside of the scope of a water quality permit to land apply treated produced water.

Comment

Glenrose Engineering commented that the rulemaking should be expanded to prohibit the use of subsurface drip disposal for any reclaimed water, including produced water, with total dissolved solids higher than 5,000 mg/L.

Response

The executive director acknowledges this comment. Any revisions needed to Chapter 222 would be conducted under a separate rulemaking.

Comment

Earthjustice requested that the commission adopt methodology and incorporate into rule as a defined process to implement "best professional judgement."

Response

The executive director acknowledges this comment.

Comment

Earthjustice requested that the commission deny all pending applications seeking to dispose of treated produced water by land application.

Response

The executive director acknowledges this comment.

Miscellaneous comments

Comment

An individual requested TCEQ pause these actions to allow more time to research alternatives and evaluate impacts. Individuals requested that TCEQ slow down or go slowly to develop the proposed rules to implement the statute.

Response

The executive director acknowledges these comments.

Comment

An individual asked where land application of produced water would occur.

Response

Land application of produced water that is treated for beneficial use may occur statewide.

Comment

Clean Water Action/Clean Water Fund, Nature Conservancy and individuals expressed concerns about available treatment methods and treatment requirements for produced water.

Response

TCEQ-issued permits establish performance-based requirements that are outcome-focused instead of prescribing specific treatment methods or technology requirements.

Applicants seeking to dispose of treated produced water through land application must describe the treatment methods that will be used to treat effluent in their wastewater permit application. Provisions included in an issued permit require a permittee to notify TCEQ if any information provided in their application changes, such as proposed treatment technologies or methods to comply with the limits and provisions in the permit. TCEQ staff will determine if any additional information or permit actions are needed to accommodate additional or alternative treatment options and methods.

Comment

Grant Hensarling expressed concern about the potential volume of treated produced water that could be land applied.

Response

TCEQ requires applicants to design their proposed irrigation rates according to the land application site's soil and crop requirements and water balance calculations. The irrigation rates are site-specific and are based on agronomic rates to ensure crop growth, nutrient uptake, and effluent retention in the soil to prevent effluent runoff, seepage, and ponding. Also, land application permits require monitoring of the volume applied and analysis of the irrigation effluent at a minimum of once per year. Permits also require the permittee to annually submit the laboratory results from these analyses to the TCEQ Water Quality Assessment Team (MC 150), the appropriate TCEQ Region Office, and the Enforcement Division (MC 224) of TCEQ by the end of September of each monitoring year.

Comment

An individual commented that this rulemaking prioritizes the oil and gas industry's waste disposal convenience over the safety of Texas citizens, soil, and ecosystems. Future Heist and individuals expressed concern that the proposed rulemaking places corporate and financial interest over public interest.

Response

TCEQ's mission is to protect the state's public health and natural resources while supporting sustainable economic growth and development. The agency's goals are focused on clean water, clean air, and safe waste management. Permitting decisions are grounded in law, sound science, common sense, and fiscal responsibility, and TCEQ strives to ensure meaningful public participation throughout the decision-making process. The CWA and TWC, which provide the statutory authority for TCEQ rules and regulations related to the protection of water quality, promote voluntary compliance and operational flexibility in achieving environmental goals.

Comment

WildEarth Guardians expressed concerns about the applicability of the oil and gas exploration and production exemption under RCRA.

Response

The oil and gas exploration and production exemption under the Resource Conservation and Recovery Act (RCRA) excludes certain wastes generated by oil, gas, and geothermal operations from federal hazardous waste regulations under RCRA Subtitle C (see 40 CFR 261.4(b)(5)). However, the exemption does not apply to the disposal of produced water that is treated for beneficial use, which is subject to state-level water quality rules.

As previously stated, this rulemaking would clarify that Chapter 309 establishes the minimum requirements for disposal of produced water that is treated for beneficial use through irrigation to ensure the protection of water quality, human health, and the environment. Any biosolids or other wastes generated during the treatment of produced water are considered oil and gas wastes. Management and disposal authority for oil and gas waste remains under the jurisdiction of RRC.

Comment

Future Heist and WildEarth Guardians expressed concerns about the lack of waste-management requirements under the proposed rules.

Response

Oil and gas wastes, including those generated during the treatment of produced water, are regulated under the jurisdiction of RRC. TCEQ rules for managing industrial solid and hazardous wastes are located under 30 TAC Chapter 335. TCEQ-issued permits for disposal of treated wastewater, including treated produced water, through land application do not authorize the disposal of any solid or hazardous wastes, or absolve an entity from adhering to all applicable state and federal rules and requirements.

Comment

WildEarth Guardians and Earthjustice expressed concern that a TCEQ-issued land application permit could insulate permittees, treatment companies, transporters, landowners, or other responsible parties from otherwise applicable federal or state legal obligations. Future Heist expressed concern that H.B. 49 made compliance with a TCEQ permit a liability shield: a company that puts this treated waste to beneficial use under its permit generally cannot be sued in court by the people it harms, except for gross negligence, an intentional act, or a failure to follow its permit (Tex. Nat. Res. Code §122.003, added by H.B. 49, 2025).

Response

The executive director acknowledges this comment. No changes were made in response to it. As previously stated, TCEQ-issued permits for disposal of treated wastewater, including treated produced water, through land application do not authorize the disposal of any solid or hazardous wastes, or absolve an entity (including permittees and upstream or downstream services or disposal activities) from adhering to all applicable state and federal rules and requirements.

Comment

Earthjustice commented that land application permits for produced water should contain site-specific limits based on soil type, depth to groundwater, proximity to wells and surface water, flood risk, crop type, grazing use, wildlife exposure, and cumulative contaminant loading.

Response

The proposed rules would be consistent with TCEQ's land application permitting program and would clarify that Chapter 309 establishes the minimum requirements for disposal of treated effluent, including produced water that is treated for beneficial use, to ensure protection of human health and public health. Additional site-specific provisions may be established in an issued

land application permit on a case-by-case basis to ensure protection of human health and public health.

Comment

Earthjustice questioned if this rulemaking violated the federal prohibition on discharge of produced water west of the 98th meridian.

Response

The federal prohibition located at 40 CFR §435.32 applies to the discharge of produced water or treated produced water into waters of the United States. As previously stated, an issued TLAP does not authorize the discharge of produced water or treated produced water into water in the state.

Changes to the proposed rules:

1. Proposed §309.11(6) has been revised to the following (emphasis added):

"New facility - Any wastewater treatment facility which is not an existing facility."

2. Proposed §309.11(9) has been revised to the following (emphasis added):

"Produced water - is defined for the commission's implementation of Texas Water Code, §26.131(e), all wastewater associated with oil and gas exploration, development, and production activities, except hydrostatic test water and gas plant effluent."

3. Proposed §309.1(b) and (e), 30 TAC §309.10(a)(2), and §309.13(e) - (i) have been revised to clarify applicability of the requirement to treated domestic sewage or industrial land application, as appropriate.

4. Proposed §309.10(a)(1) has been revised as follows:

(1) This subchapter establishes minimum standards for the location of domestic wastewater treatment facilities and land application of industrial wastewater, including produced water under Tex. Water Code §26.131(e) that is treated for beneficial use. These standards are to be applied in the evaluation of an application for a permit to:

(A) treat and dispose of domestic wastewater;

(B) treat and dispose of industrial wastewater, including disposal of produced water under Tex. Water Code §26.131(e) that is treated for beneficial use;

(C) obtain approval of construction plans and specifications for domestic wastewater treatment facilities."

5. Proposed 309.20 has been revised to include new provision (d), as follows:

"(d) Additional Requirements. Additional site-specific requirements for the treatment and disposal of industrial wastewater, including disposal of produced water under Tex. Water Code §26.131(e) that is treated for beneficial use, may be established on a case-by-case basis."

SUBCHAPTER A. EFFLUENT LIMITATIONS

30 TAC §309.1

Statutory Authority

These amendments to 30 Texas Administrative Code (TAC) Chapter 309 are adopted under the Texas Water Code (TWC). Specifically, TWC, §5.013, which establishes the general jurisdiction of the commission while TWC, §5.102, provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC, §5.103; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the code and other laws of the state; TWC, §5.105, which authorizes the commission to adopt rules and policies necessary to carry out its responsibilities and duties under the TWC; and TWC, §5.120, which requires the commission to administer the law for the maximum conservation and protection of the environment and natural resources of the state. These amendments are also adopted under TWC, §26.027, which authorizes the commission to issue permits for the discharge of waste or pollutants into or adjacent to water in the state; TWC, §26.121, which provides the commission's authority to prohibit unauthorized discharges into or adjacent to water in the state; and TWC, §26.131, which provides the commission's authority to issue permits for the discharge of produced water into water in the state and for the land application of produced water.

The adopted amendments implement TWC, §§5.013, 5.102, 5.103, 5.105, 5.120, 26.027, 26.121, and 26.131.

§309.1. Scope and Applicability.

(a) The purpose of this subchapter is to promulgate a set of effluent quality limitations for treated effluent, which will be required of permittees as appropriate to maintain water quality in accordance with the commission's surface water quality standards. Any incorporation of federal regulations into this chapter shall apply only to disposal of treated effluent.

(b) Secondary treatment requirements for treated domestic sewage, with exceptions applicable to certain stabilization pond systems and other natural systems, is defined as a minimum reduction of pollutants to meet the quality specified in Figure: 30 TAC §309.1(b): Figure: 30 TAC §309.1(b)

(c) Effective April 1988, all permits containing an ammonia-nitrogen effluent limit are modified to change Biochemical Oxygen Demand (BOD_5) to carbonaceous biochemical oxygen demand ($CBOD_5$).

(d) Effective January 1, 1988, any permit containing a BOD5 effluent limitation may be monitored and reported as $CBOD_5$ as long as nitrogen is monitored and reported as ammonia-nitrogen at the same sampling frequency. If the permit authorizes a discharge to land or an evaporation pond only, ammonia-nitrogen monitoring and reporting are not required to change to $CBOD_5$.

(e) For treated domestic sewage, the state of Texas has established a state water quality management program and a continuing planning process which sets forth the strategy and procedures for accomplishing the management program's objectives. Essential elements of the program include updates of basin plans, total maximum daily loads, and wasteload evaluations by basin segments. In order to achieve compliance with water quality standards within certain segments, more stringent effluent quality limitations may be required to protect water quality.

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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Proposal publication date: May 15, 2026
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SUBCHAPTER B. LOCATION STANDARDS

30 TAC §§309.10, 309.11, 309.13

Statutory Authority

These amendments to 30 Texas Administrative Code (TAC) Chapter 309 are adopted under the Texas Water Code (TWC). Specifically, TWC, §5.013, which establishes the general jurisdiction of the commission while TWC, §5.102, provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC, §5.103; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the code and other laws of the state; TWC, §5.105, which authorizes the commission to adopt rules and policies necessary to carry out its responsibilities and duties under the TWC; and TWC, §5.120, which requires the commission to administer the law for the maximum conservation and protection of the environment and natural resources of the state. These amendments are also adopted under TWC, §26.027, which authorizes the commission to issue permits for the discharge of waste or pollutants into or adjacent to water in the state; TWC, §26.121, which provides the commission's authority to prohibit unauthorized discharges into or adjacent to water in the state; and TWC, §26.131, which provides the commission's authority to issue permits for the discharge of produced water into water in the state and for the land application of produced water.

The adopted amendments implement TWC, §§5.013, 5.102, 5.103, 5.105, 5.120, 26.027, 26.121, and 26.131.

§309.10. Purpose, Scope, and Applicability.

(a) Applicability

(1) This subchapter establishes minimum standards for the location of domestic wastewater treatment facilities and land application of industrial wastewater, including produced water under Tex. Water Code §26.131(e) that is treated for beneficial use. These standards are to be applied in the evaluation of an application for a permit to:

(A) treat and dispose of domestic wastewater;

(B) treat and dispose of industrial wastewater, including disposal of produced water under Tex. Water Code §26.131(e) that is treated for beneficial use;

(C) obtain approval of construction plans and specifications for domestic wastewater treatment facilities.

(2) This subchapter applies to domestic wastewater and industrial land application permit applications and construction plans and specifications filed on or after October 8, 1990, for new facilities and substantial changes in the function or use of existing units.

(b) The purpose of this subchapter is to condition issuance of a permit and/or approval of construction plans and specifications for new domestic wastewater treatment facilities or the substantial change in the function or use of an existing unit on selection of a site that minimizes possible contamination of water in the state; to define the characteristics that make an area unsuitable or inappropriate for a wastewater treatment facility; to minimize the possibility of exposing the public to nuisance conditions; and to prohibit issuance of a permit for a facility to be located in an area determined to be unsuitable or inappropriate, unless the design, construction, and operational features of the facility will mitigate the unsuitable site characteristics.

§309.11. Definitions.

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

(1) Active geologic processes--Any natural process which alters the surface and/or subsurface of the earth, including, but not limited to, erosion (including shoreline erosion along the coast), submergence, subsidence, faulting, karst formation, flooding in alluvial flood wash zones, meandering river bank cutting, and earthquakes.

(2) Aquifer--A geologic formation, group of formations, or part of a formation capable of yielding a significant amount of groundwater to wells or springs. Portions of formations, such as clay beds, which are not capable of yielding a significant amount of groundwater to wells or springs are not aquifers.

(3) Erosion--The group of natural processes, including weathering, deterioration, detachment, dissolution, abrasion, corrosion, wearing away, and transportation, by which earthen or rock material is removed from any part of the earth's surface.

(4) Existing facility--Any facility used for the storage, processing, or application of domestic wastewater and which has obtained approval of construction plans and specifications as of March 1, 1990.

(5) Industrial wastewater--As defined in 30 Tex. Admin. Code §210.52(9).

(6) New facility--Any wastewater treatment facility which is not an existing facility.

(7) Nuisance odor prevention--The reduction, treatment, and dispersal of potential odor conditions that interfere with another's use and enjoyment of property that are caused by or generated from a wastewater treatment plant unit, which conditions cannot be prevented by normal operation and maintenance procedures of the wastewater treatment unit.

(8) One hundred-year flood plain--Any land area which is subject to a 1.0% or greater chance of flooding in any given year from any source.

(9) Produced water--Is defined for the commission's implementation of Tex. Water Code, §26.131(e), all wastewater associated with oil and gas exploration, development, and production activities, except hydrostatic test water and gas plant effluent.

(10) Substantial change in the function or use--An increase in the pollutant load or modification in the existing purpose of the unit.

(11) Wastewater treatment plant unit--Any apparatus necessary for the purpose of providing treatment of wastewater (i.e., aeration basins, splitter boxes, bar screens, sludge drying beds, clarifiers, overland flow sites, treatment ponds or basins that contain wastewater, etc.). For purposes of compliance with the requirements of §309.13(e) of this title (relating to Unsuitable Site Characteristics), this definition does not include off-site bar screens, off-site lift stations, flow metering equipment, or post-aeration structures needed to meet permitted effluent minimum dissolved oxygen limitations.

(12) Wetlands--Those areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil condi-

tions. Wetlands generally include swamps, marshes, bogs, playa lakes, and similar areas.

§309.13. Unsuitable Site Characteristics.

(a) A wastewater treatment plant unit may not be located in the 100-year flood plain unless the plant unit is protected from inundation and damage that may occur during that flood event.

(b) A wastewater treatment plant unit may not be located in wetlands. (This prohibition is not applicable to constructed wetlands.)

(c) A wastewater treatment plant unit may not be located closer than 500 feet from a public water well as provided by §290.41(c)(1)(B) of this title (relating to Water Sources) nor 250 feet from a private water well. The following separation distances apply to any facility used for the storage, processing, or application of domestic wastewater and industrial wastewater, including produced water under Tex. Water Code §26.131(e) that is treated for beneficial use. Exceptions to these requirements will be considered at the request of a permit applicant on a case-by-case basis, and alternative provisions will be established in a permit if the alternative condition provides adequate protection to potable water sources and supplies.

(1) A wastewater treatment plant unit, or land where irrigation using wastewater effluent occurs must be located a minimum horizontal distance of 150 feet from a private water well.

(2) A wastewater treatment plant unit, or land where irrigation using wastewater effluent occurs, must be located a minimum horizontal distance of 500 feet from an elevated or ground potable-water storage tank as provided by §290.43(b)(1) of this title (relating to Water Storage).

(3) A wastewater treatment plant unit, or land where irrigation using wastewater effluent occurs, must be located a minimum horizontal distance of 500 feet from a public water well site as provided by §290.41(c)(1)(C) of this title, spring, or other similar sources of public drinking water.

(4) A wet well or pump station at a wastewater treatment facility must be located a minimum horizontal distance of 300 feet from a public water well site, spring, or other similar sources of public drinking water as provided by §290.41(c)(1)(B) of this title.

(5) A wastewater treatment plant unit, or land where irrigation using wastewater effluent occurs, must be located a minimum horizontal distance of 500 feet from a surface water treatment plant as provided by §290.42(a)(2)(A) of this title (relating to Water Treatment).

(6) A wastewater treatment plant unit, or land where irrigation using wastewater effluent occurs, must be located a minimum horizontal distance of 100 feet from a water in the state.

(d) A wastewater treatment surface impoundment may not be located in areas overlying the recharge zones of major or minor aquifers, as defined by the Texas Water Development Board, unless the aquifer is separated from the base of the containment structure by a minimum of three feet of material with a hydraulic conductivity toward the aquifer not greater than 10-7 cm/sec or a thicker interval of more permeable material which provides equivalent or greater retardation of pollutant migration. A synthetic membrane liner may be substituted with a minimum of 40 mils thickness and an underground leak detection system with appropriate sampling points. Additional requirements under §217.203 of this title (relating to Design Criteria for Natural Treatment Systems) may apply.

(e) For treated domestic sewage, one of the following alternatives must be met as a compliance requirement to abate and control a nuisance of odor prior to construction of a new domestic wastewater treatment plant unit, or substantial change in the function or use of an existing domestic wastewater treatment unit.

(1) Lagoons with zones of anaerobic activity (e.g., facultative lagoons, un-aerated equalization basins, etc.) may not be located closer than 500 feet to the nearest property line. All other wastewater treatment plant units may not be located closer than 150 feet to the nearest property line. Land used to treat primary effluent is considered a plant unit. Buffer zones for land used to dispose of treated effluent by irrigation shall be evaluated on a case-by-case basis. The permittee must hold legal title or have other sufficient property interest to a contiguous tract of land necessary to meet the distance requirements specified in this paragraph during the time effluent is disposed by irrigation.

(2) The applicant must submit a nuisance odor prevention request for approval by the executive director. A request for nuisance odor prevention must be in the form of an engineering report, prepared and sealed by a licensed Texas professional engineer in support of the request. At a minimum, the engineering report shall address existing climatological conditions such as wind velocity and atmospheric stability, surrounding land use which exists or which is anticipated in the future, wastewater characteristics in affected units pertaining to the area of the buffer zone, potential odor generating units, and proposed solutions to prevent nuisance conditions at the edge of the buffer zone and beyond. Proposed solutions shall be supported by actual test data or appropriate calculations. The request shall be submitted, prior to construction, either with a permit application and subject to review during the permitting process or submitted for executive director approval after the permitting process is completed.

(3) The permittee must submit sufficient evidence of legal restrictions prohibiting residential structures within the part of the buffer zone not owned by the applicant. Sufficient evidence of legal restriction may, among others, take the form of a suitable restrictive easement, right-of-way, covenant, deed restriction, deed recorded, or a private agreement provided as a certified copy of the original document. The request shall be submitted, prior to construction, either with a permit application and subject to review during the permitting process or submitted for executive director approval after the permitting process is completed.

(f) For a domestic wastewater treatment facility for which a permit application, other than a renewal application, is made after October 8, 1990, if the facility will not meet the buffer zone requirement by one of the alternatives described in subsection (e) of this section, the applicant shall include in the application for the discharge permit a request for a variance. A variance will be considered on a case-by-case basis and, if granted by the commission, shall be included as a condition in the permit. This variance may be granted by the commission, consistent with the policies set out in Texas Water Code, §26.003.

(g) For treated domestic sewage, any approved alternative for achieving the requirements of this section must remain in effect as long as the wastewater treatment plant is permitted by the commission. To comply with this requirement, the permittee must carry out the nuisance odor prevention plan at all times, shall ensure sufficient property ownership or interest and shall maintain easements prohibiting residential structures, as appropriate.

(h) For a permitted domestic wastewater treatment facility undergoing renewal of an existing permit with plans and specifications approved prior to March 1, 1990, for which no design change is requested, the facility will not be required to comply with the requirements of this section.

(i) Domestic wastewater treatment facilities for which plans and specifications have been approved prior to March 1, 1990, are not

required to resubmit revised plans and specifications to meet changed requirements in this section in obtaining renewal of an existing permit.

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

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SUBCHAPTER C. LAND APPLICATION OF TREATED EFFLUENT

30 TAC §309.20

Statutory Authority

These amendments to 30 Texas Administrative Code (TAC) Chapter 309 are adopted under the Texas Water Code (TWC). Specifically, TWC, §5.013, which establishes the general jurisdiction of the commission while TWC, §5.102, provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC, §5.103; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the code and other laws of the state; TWC, §5.105, which authorizes the commission to adopt rules and policies necessary to carry out its responsibilities and duties under the TWC; and TWC, §5.120, which requires the commission to administer the law for the maximum conservation and protection of the environment and natural resources of the state. These amendments are also adopted under TWC, §26.027, which authorizes the commission to issue permits for the discharge of waste or pollutants into or adjacent to water in the state; TWC, §26.121, which provides the commission's authority to prohibit unauthorized discharges into or adjacent to water in the state; and TWC, §26.131, which provides the commission's authority to issue permits for the discharge of produced water into water in the state and for the land application of produced water.

The adopted amendments implement TWC, §§5.013, 5.102, 5.103, 5.105, 5.120, 26.027, 26.121, and 26.131.

§309.20. Land Application of Treated Effluent.

(a) Technical report. Each project shall be accompanied by a preliminary engineering report outlining the design of the wastewater application system. The report shall include maps, diagrams, basis of design, calculations, and other pertinent data as described in this section.

(1) Location.

(A) Site map. A copy of the United States Geological Survey 7 1/2 minute topographic map or equivalent for renewals of the area which indicates the exact boundaries of the application operation must be included in the technical report. A map from the 7 1/2 minute series is required if it is published for the site area.

(B) Site drawing. A scale drawing and legal description of all land which is to be a part of the application operation will be included in the technical report. The drawing must show the location of all existing and proposed facilities to include: buildings, wastewater application or treatment facilities, effluent storage and tail water control facilities, buffer zones, and water wells. This drawing must have an index of wells, adjacent property, and other prominent features. Ownership of land tracts adjacent to the irrigated land shall be shown on the site drawing and identified by listing legal ownership.

(2) Geology. The existence of any unusual geological formations such as faults or sink holes on the wastewater application site shall be noted in the technical report and identified on the site map. The conceptual design of the wastewater application system shall include appropriate engineering considerations with respect to limitations presented by these features.

(3) Soils. A general survey of soils with regard to standard classifications shall be compiled for all areas of wastewater application to the soil. Soil surveys compiled by the United States Department of Agriculture Natural Resources Conservation Service shall be utilized where available. Conceptual design aspects related to wastewater application rates, crop systems, seepage, and runoff controls shall be based upon the soil physical and chemical properties, hydraulic characteristics, and crop use suitabilities for the wastewater application site.

(4) Groundwater quality. The technical report shall fully assess the impact of the wastewater application operation on the uses of local groundwater resources. In regard to performing this assessment, the report shall systematically address subparagraphs (A) and (B) of this paragraph.

(A) All water wells within a 1/2 mile radius of the application site boundaries shall be located. If available, the water uses from each well shall be identified. In addition, aspects of construction such as well logs, casing, yield, static elevation, water quality, and age shall be furnished and evaluated in the technical report. Local groundwater resources below the wastewater application site shall be monitored to establish preoperational baseline groundwater quality when monitoring wells are available. Monitoring shall provide the following analytical determination: total dissolved solids, nitrate nitrogen, chlorides, sulfates, pH, and *Escherichia coli* bacteria.

(B) Groundwater resources serving as sources or potential sources of domestic raw water supply will be protected by limiting wastewater application rates. Effluent storage and/or treatment ponds presenting seepage hazards to these groundwater resources shall be constructed with adequate liners.

(5) Agricultural practice. The technical report shall describe the crop system proposed for the wastewater application operation. This description shall include a discussion of the adaptability of the crop to the particular soil, climatological, and wastewater sensitivity conditions that will exist at the wastewater application site. Annual nutrient uptake of the crop system shall be specified, and crop harvesting frequencies shall be described within the report.

(b) Irrigation. Irrigation application systems utilize effluent to supply the growth needs of the cover crop.

(1) Secondary effluent. Land application system operators who use land accessible to the general public shall provide a degree of treatment equivalent to secondary treatment standards, as required by §309.3(f)(1) of this title (relating to Application of Effluent Sets), prior to application of wastewater to land areas.

(2) Primary effluent. Land application systems may provide for the application of effluent from primary treatment units pro-

vided that the wastewater application system conforms with the requirements contained in subparagraphs (A) - (E) of this paragraph.

(A) The wastewater application system shall be designed and operated to prevent a discharge from entering surface water in the state, and to prevent recharge of groundwater resources which supply or offer the potential of supplying domestic raw water.

(B) The land application system shall be designed and operated to achieve application of effluent without adversely affecting the agricultural productivity of the land application site.

(C) The economic benefits derived from agricultural operations carried out at the land application site are secondary to the proper application of wastewater.

(D) The sewerage system owner shall maintain direct responsibility and control over all aspects of the sewage pretreatment and application operations, as well as all aspects of any agricultural activities carried out on the application site.

(E) The land application system shall contain sufficient area to provide for normal expansion of the facility service area. In most cases, the application system shall have a design life of at least 20 years.

(3) Design analysis. The designing engineers shall utilize a detailed design analysis of limiting hydraulic and nutrient application rates, and effluent storage needs, as the basis of the application system design. All projects shall include the detailed design analysis described in subparagraphs (A) - (C) of this paragraph.

(A) Hydraulic application rate. A water balance study shall be provided as a part of a detailed application rate analysis in order to determine the irrigation water requirement, including a leaching requirement if needed, for the crop system on the wastewater application areas. The water balance study should generally follow the example shown in Table 1 in Figure: 30 TAC §309.20(b)(3)(B). Precipitation inputs to the water balance shall utilize the average yearly rainfall and the monthly precipitation distribution based on past rainfall records. The consumptive use requirements (evapotranspiration losses) of the crop system shall be developed on a monthly basis. The method of determining the consumptive use requirement shall be documented as a part of the water balance study. A leaching requirement, calculated as shown in Table 1 of this subparagraph, shall be included in the water balance study when the total dissolved solids concentration of the effluent presents the potential for developing excessive soil salinity buildup due to the long term operation of the irrigation system.

(B) Effluent storage. An effluent storage study shall be performed to determine the necessary storage requirements. The storage requirements shall be based on a design rainfall year with a return frequency of at least 25 years (the expected 25 year-one year rainfall, alternately the highest annual rainfall during the last 25 years of record may be used) and a normal monthly distribution, the application rate and cycle, the effluent available on a monthly basis, and evaporation losses. An example of an effluent storage study is shown in Table 3 in Figure: 30 TAC §309.20(b)(3)(B).
Figure: 30 TAC §309.20(b)(3)(B) (No change.)

(C) Nitrogen application rate. Irrigation shall be limited to prevent excessive nitrogen application. The annual liquid loading shall not exceed that which would introduce more nitrogen than is annually required by the crop plus 20% volatilization. Values of crop nitrogen requirements shall be justified in the design report. The application rate shall be calculated by the formula in Figure: 30 TAC §309.20(b)(3)(C).
Figure: 30 TAC §309.20(b)(3)(C)

(4) Soil testing. Representative soil samples shall be taken from the root zones of wastewater application sites to establish preoperational soil concentrations of pH, total nitrogen, potassium, phosphorus, and conductivity. Sampling procedures shall employ accepted techniques of soil science for obtaining representative analytical results. Preoperational soil concentration of the parameters listed in this paragraph shall be furnished in the technical report. The project development shall provide for a minimum of one soil test annually from each wastewater application site for the duration of the application system design life.

(5) Standard irrigation best management practices.

(A) Screening devices should be installed on all lift pump suction intakes.

(B) The design of sprinkler irrigation systems should allow operational flexibility and efficiency and ease of maintenance.

(i) The system should be designed to provide a uniform water distribution.

(ii) The designing engineer should consider such items as permanently buried mains with readily accessible valve boxes, two or more lateral lines, and quick coupling valves at the main/lateral connections.

(iii) Cross connection with a potable water supply system is prohibited. Cross connection with a well water system will be reviewed on a case-by-case basis.

(C) Vehicular access to conveyance system locations and equipment should be provided at intervals of 1,000 feet to 1,300 feet.

(D) The cover crop of each wastewater application area shall be harvested a minimum of once per year. Consideration should be given to the selection of crops which will allow two or more harvests per year to be made.

(E) All effluent applied as irrigation water should have a pH within the range of 6.0 to 9.0.

(c) Percolation. Percolation application systems provide for ultimate application of the wastewater by evaporation and percolation with no resulting discharge to surface water in the state.

(1) Percolation systems will not be permitted in those locations where seepage would adversely affect the uses of groundwater resources.

(2) Primary treatment of the raw sewage shall be provided prior to land application.

(3) Percolation systems shall be limited to sites having soil textures suitable for sustaining a rapid intake rate. Percolation dosing sites shall be limited to soils classified as sands, loamy sands, or sandy loams having a minimum infiltration rate of six inches per hour.

(4) Multiple dosing basins shall be provided for the application of wastewater. The wastewater distribution system shall be designed to provide a maximum dosing period of 24 hours upon any individual dosing basin and a minimum resting period for any individual dosing basin of five days following a period of dosing.

(5) The hydraulic loading rate will be considered on a case-by-case basis. The designing engineer shall identify the permeability of the limiting soil layer.

(6) The design shall provide an area equal to a minimum of 20% of the total application site area for the construction of wastewater

storage for use during periods of wet or freezing weather and to provide flexibility of dosing site use.

(d) Additional Requirements. Additional site-specific requirements for the treatment and disposal of industrial wastewater, including disposal of produced water under Tex. Water Code §26.131(e) that is treated for beneficial use, may be established on a case-by-case basis.

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 November 6, 2026.

TRD-202604702
Amy L. Browning
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: November 26, 2026
Proposal publication date: May 15, 2026
For further information, please call: (512) 239-2678

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

CHAPTER 159. SPECIAL PROGRAMS

37 TAC §159.21

The Texas Board of Criminal Justice (board) adopts amendments to §159.21, concerning Continuity of Care and Service Program for Offenders who are Persons with Mental Impairments, Physical Disabilities, Terminal or Significant Illnesses, or who are Elderly without changes to the proposed text as published in the July 3, 2026, issue of the *Texas Register* (51 TexReg 4361) and will not be republished. The adopted amendments revise the title for clarity; remove the Memorandum of Understanding as an attachment to the rule; and make other formatting and grammatical updates.

No public comments were received regarding the amendments.

The amendments are adopted under Texas Government Code §492.001, which establishes the board's authority over the department; §492.013, which authorizes the board to adopt rules; Texas Health and Safety Code §§614.013-.016, which mandates a memorandum of understanding be established for the continuity of care for offenders with mental impairments, elderly offenders, offenders with physical disabilities, terminal illnesses, or significant illnesses, and for certain offenders by law enforcement and jails.

Cross Reference to Statutes: 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 November 9, 2026.

TRD-202604754
Eric Miller
General Counsel
Texas Department of Criminal Justice
Effective date: November 29, 2026
Proposal publication date: July 3, 2026
For further information, please call: (936) 437-6700

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PART 15. TEXAS FORENSIC SCIENCE COMMISSION

CHAPTER 651. DNA, CODIS, FORENSIC ANALYSIS, AND CRIME LABORATORIES
SUBCHAPTER C. FORENSIC ANALYST LICENSING PROGRAM

37 TAC §651.219

The Texas Forensic Science Commission (Commission) adopts an amendment to 37 Texas Administrative Code §651.219, Code of Professional Responsibility, without changes to the text as published in the September 4, 2026 issue of the *Texas Register* (51 TexReg 6154). The rule will not be republished. The adopted changes clarify that §651.219(b)(15) requiring licensed individuals to communicate honestly and fully with all parties--including investigators, prosecutors, defense attorneys, and other expert witnesses, unless prohibited by law--also applies to communications with the Commission.

Summary of Comments. The public comment period on the rule proposal began on September 4, 2026, and ended on October 6, 2026. The Commission did not receive any comments.

Statutory Authority. The rule is adopted pursuant to the Commission's licensing authority under Code of Criminal Procedure, Art. 38.01 §4-a, which provides that the Commission may establish qualifications for a forensic analyst license, and the Commission's general rulemaking authority under Art. 38.01 §3-a, which directs the Commission to adopt rules necessary to implement Code of Criminal Procedure, Art. 38.01.

Cross reference to statute. The adoption affects Code of Criminal Procedure, Article 38.01.

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 November 2, 2026.

TRD-202604599
Leigh Tomlin
Associate General Counsel
Texas Forensic Science Commission
Effective date: November 22, 2026
Proposal publication date: September 4, 2026
For further information, please call: (512) 936-0661

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SUBCHAPTER H. DEPARTMENT OF PUBLIC SAFETY CRIME LABORATORY RECORDS PORTAL COMPLIANCE

37 TAC §§651.701 - 651.703

The Texas Forensic Science Commission (Commission) adopts new Subchapter H, Department of Public Safety Crime Laboratory Portal Compliance, to establish new rules: (1) §651.701 Purpose; (2) §651.702 Definitions; and (3) §651.703 Disciplinary Action for Violation, without changes to the text as published in the September 4, 2026 issue of the *Texas Register* (51 TexReg 6156). The rules will not be republished.

Reasoned Justification for Rule. Adopted new Subchapter H implements Senate Bill 991 (SB 991), enacted by the 88th Texas Legislature. SB 991 established a statewide requirement for certain crime laboratory records to be requested, exchanged, and transferred through a crime laboratory records portal established by the Department of Public Safety (DPS). The requirement for DPS to establish the portal was codified in Government Code §411.162. Senate Bill 991 further directs the Commission to establish a disciplinary process for accredited crime laboratories that fail to comply with portal participation requirements. This authority is now codified in Government Code §411.163(b). The legislation provides that a violation of the portal participation requirement is subject to disciplinary action by the Commission in the same manner as a violation of accreditation standards under Article 38.01, Code of Criminal Procedure. Adopted Subchapter H is therefore necessary to establish a clear enforcement framework and to ensure compliance with the statutory requirements governing participation in the DPS crime laboratory records portal.

Summary of Comments. The public comment period on Subchapter H and corresponding rules, (1) §651.701 Purpose; (2) §651.702 Definitions; and (3) §651.703 Disciplinary Action for Violation, began on September 4, 2026 and ended on October 6, 2026. The Commission did not receive any comments.

Statutory Authority. The Commission adopts new subchapter H under Code of Criminal Procedure, Article 38.01 §3-a, the Commission's general rulemaking authority, and under Government Code §411.163(b), which requires the Commission to establish disciplinary action for crime laboratory noncompliance with Government Code §411.163(a).

Cross reference to statute. The adoption affects Government Code §§411.162-411.163.

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 November 2, 2026.

TRD-202604601
Leigh Tomlin
Associate General Counsel
Texas Forensic Science Commission
Effective date: November 22, 2026
Proposal publication date: September 4, 2026
For further information, please call: (512) 936-0661

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 2. DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES

CHAPTER 101. ADMINISTRATIVE RULES AND PROCEDURES

SUBCHAPTER C. COUNCILS, BOARD, AND COMMITTEES

DIVISION 2. STATE INDEPENDENT LIVING COUNCIL

40 TAC §§101.401, 101.403, 101.405, 101.407, 101.409

The executive commissioner of the Texas Health and Human Services Commission (HHSC) adopts the repeal of §101.401, concerning Purpose; §101.403, concerning Legal Authority; §101.405, concerning Definitions; §101.407, concerning Tasks; and §101.409, concerning Funding.

Sections 101.401, 101.403, 101.405, 101.407, and 101.409 are adopted without changes to the proposed text as published in the September 4, 2026, issue of the *Texas Register* (51 TexReg 6158). These rules will not be republished.

BACKGROUND AND JUSTIFICATION

The State Independent Living Council (SILC) was created as a result of the Rehabilitation Act (Act) in Title 29 United States Code Section 796d. The Act requires Texas to maintain a SILC. Rules for the SILC were originally adopted in 1993 in accordance with Senate Bill 383, 73rd Legislature, Regular Session, which required state agencies to outline in rule the committees and councils which advise the state.

The adopted repeals are necessary because the SILC is not considered an advisory body, as defined in Texas Government Code §2110.001, and the SILC's primary function does not include advising the state. The requirements for the SILC are specified in the Act.

COMMENTS

The 31-day comment period ended on October 5, 2026. HHSC did not receive any comments regarding the proposed rule repeals.

STATUTORY AUTHORITY

The repeals are adopted under Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation of and provision of services by the health and human services system; and Texas Government Code §524.0005, which provides the executive commissioner of HHSC with broad rulemaking authority.

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 November 6, 2026.

TRD-202604710

Stephanie Tourk
Deputy Chief Counsel
Department of Assistive and Rehabilitative Services
Effective date: November 26, 2026
Proposal publication date: September 4, 2026
For further information, please call: (512) 221-9021

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REVIEW OF AGENCY RULES

This section contains notices of state agency rule review as directed by the Texas Government Code, §2001.039. Included here are proposed rule review notices, which invite public comment to specified rules under review; and adopted rule review notices, which summarize public comment received as part of the review. The complete text of an agency's rule being reviewed is available in the *Texas Administrative Code* on the Texas Secretary of State's website.

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the website and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Department of Housing and Community Affairs

Title 10, Part 1

The Texas Department of Housing and Community Affairs (the Department) files this notice of rule review for 10 TAC Chapter 1, Administration, Subchapter A, General Policies and Procedures, §1.11, Definition of Service-Enriched Housing. The purpose of the proposed action is to conduct a rule review in accordance with Tex. Gov't Code §2001.039, which requires state agencies to periodically review their rules.

The Department has determined that the reason for initially adopting this rule continues to exist. Tex. Gov't Code §2306.1091(b) directs the Department, with the advice and assistance of the Housing and Health Services Coordination Council, to define service-enriched housing. Staff recommends readoption without amendment, subject to the outcome of the review and public comments. This rule proposed for readoption will be noted in the *Texas Register's* Review of Agency Rules section without publication of the rule text.

REQUEST FOR PUBLIC COMMENT. The Department requests comments on the rule review. Written comments may be submitted from November 20, 2026 through December 21, 2026 to Brooke Boston at brooke.boston@tdhca.texas.gov. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, December 21, 2026.

TRD-202604695
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Filed: November 5, 2026

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Adopted Rule Reviews

Credit Union Department

Title 7, Part 6

The Texas Credit Union Commission (Commission) adopts the review of Texas Administrative Code Title 7, Part 6, Chapter 91, Subchapters H (Investments) and Subchapter I (Reserves and Dividends).

Notice of the review of 7 TAC, Part 6, Chapter 91, Subchapters H and I was published in the September 25, 2026, issue of the *Texas Register* (51 TexReg 6755). The Credit Union Department received no comments in response to the review of these subchapters.

After reviewing these rules, the Commission determined that the reasons for initially adopting these rules continue to exist and readopts Chapter 91, Subchapters H and I in their entirety in accordance with the requirements of Texas Government Code § 2001.039. However, the Commission has determined that certain sections of these subchapters should be amended and is proposing those changes elsewhere in this issue of the *Texas Register*. This concludes the review of Texas Administrative Code Title 7, Part 6, Chapter 91, Subchapters H and I.

TRD-202604713
Robert Etheridge
Commissioner
Credit Union Department
Filed: November 6, 2026

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Texas Appraiser Licensing and Certification Board

Title 22, Part 8

In accordance with Texas Government Code §2001.039, the Texas Appraiser Licensing and Certification Board (TALCB) has concluded its review of 22 TAC Chapter 159, Rules Relating to the Provisions of the Texas Appraisal Management Company Registration and Regulation Act. The notice of proposed rule review was published in the March 6, 2026, issue of the *Texas Register* (51 TexReg 1429).

TALCB has determined that the reasoned justification for adopting 22 TAC Chapter 159 continues to exist. Furthermore, the review process may indicate that a specific rule needs to be amended to further refine or better reflect current TALCB procedures and policy considerations, or that rules be combined or reduced for simplification and clarity. Accordingly, TALCB adopts with amendments 22 TAC Chapter 159 as proposed in the August 28, 2026, issue of the *Texas Register* (51 TexReg 5623) and adopted under the Adopted Rules section of this issue of the *Texas Register*.

One comment was received regarding TALCB's notice of review. The comment requested the Board consider amending fees paid by Appraisal Management Companies. The Board's Budget and Finance Committee considered the comment, and no changes were recommended to the Board as a result. This notice concludes TALCB's review of 22 TAC Chapter 159, Rules Relating to the Provisions of the Texas Appraisal Management Company Registration and Regulation Act.

TRD-202604734
Kathleen Santos
General Counsel
Texas Appraiser Licensing and Certification Board
Filed: November 6, 2026

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Department of State Health Services

Title 25, Part 1

The Texas Health and Human Services Commission (HHSC), in its own capacity and on behalf of the Texas Department of State Health Services (DSHS), adopts the review of the chapter below in Title 25, Part 1, of the Texas Administrative Code (TAC):

Chapter 133, Hospital Licensing

Notice of the review of this chapter was published in the September 4, 2026, issue of the *Texas Register* (51 TexReg 6177) for public comment.

The 31-day comment period ended October 5, 2026. During this period, HHSC did not receive any comments regarding the proposed rule review.

HHSC has reviewed Chapter 133 in accordance with Texas Government Code §2001.039, which requires state agencies to assess, every four years, whether the initial reasons for adopting a rule continue to exist.

The agency determined that the original reasons for adopting all rules in the chapter continue to exist and readopts Chapter 133. Any amendments, if applicable, to Chapter 133 identified by HHSC in the rule review will be proposed in a future issue of the *Texas Register*.

This concludes HHSC's review of 25 TAC Chapter 133 as required by Texas Government Code §2001.039.

TRD-202604705
Jessica Miller
Director, Rules Coordination Office
Department of State Health Services
Filed: November 6, 2026

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Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 26 TAC §565.45(b)

[~~Figure: 40 TAC §9.181(b)~~]

Severity of Violation		**Scope of Violation**		
		Isolated	Pattern	Widespread
Immediate threat	Initial violation	$400-$1000	$1000-$2000	$2000-$3000
	Repeated violation	$500-$1000	$2000-$4000	$3000-$5000
	Critical or not critical	CRITICAL	CRITICAL	CRITICAL
ACTUAL HARM	Initial violation	$100-$200	$200-$1000	$300-$1500
	Repeated violation	$200-$1000	$300-$2000	$400-$3000
	Critical or not critical	NOT CRITICAL	CRITICAL	CRITICAL
	Initial violation	$0-$200	$0-$350	$0-$500

POTENTIAL FOR ACTUAL HARM	Repeated violation	$0-$300	$0-$500	$0-$1000
	Critical or not critical	NOT CRITICAL	NOT CRITICAL	CRITICAL
NO POTENTIAL FOR ACTUAL HARM	Initial violation	$0-$200	$0-$350	$0-$500
	Repeated violation	$0-$200	$0-$350	$0-$500
	Critical or not critical	NOT CRITICAL	NOT CRITICAL	NOT CRITICAL

Figure: 30 TAC §309.1(b)

Biochemical Oxygen Demand (BOD_5), 5-Day (milligram per liter, mg/l)

30-Day Average	20
7-Day Average	30
Daily Maximum	45
Single Grab	65

Total Suspended Solids (TSS) (mg/l)

30-Day Average	20
7-Day Average	30
Daily Maximum	45
Single Grab	65

Dissolved Oxygen (DO) (mg/l)

Single Grab (minimum) 2.0

pH (Standard Units)

Within limits of 6.0 – 9.0

Figure: 30 TAC §309.20(b)(3)(C)

$$L = \frac{N}{2.7C}$$

where,

L = annual liquid loading – feet/year

C = effluent nitrogen concentration – mg/l

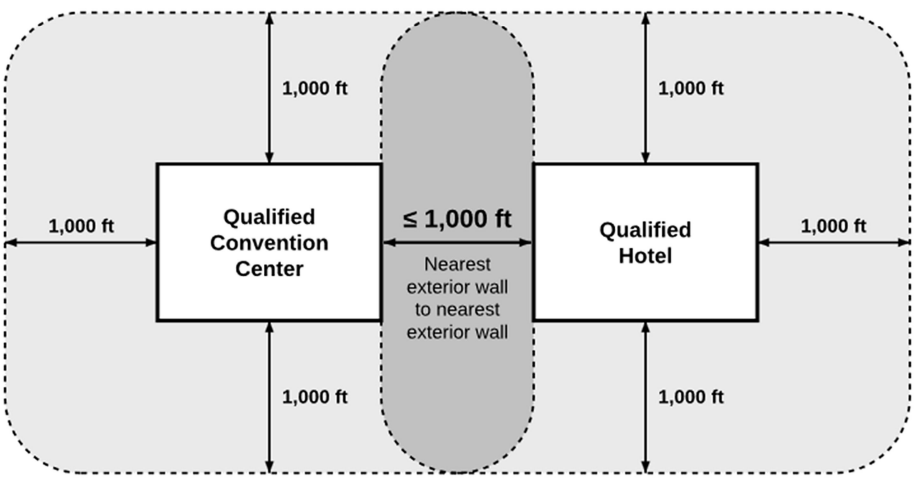
N = annual crop requirement of nitrogen plus 20% volatilization – pound/acre/yr

Figure 1: 34 TAC §3.12(e)(2)(A)

Figure 1. Qualified hotel and qualified convention center

Independent exterior-wall-to-exterior-wall measurement

Rule 3.12(e)(2)(A); Tax Code §§351.156, 351.157



Notes:

1. Measure from the nearest exterior wall of each facility.
2. Each building has a 1,000-foot area extending outward from all exterior walls.

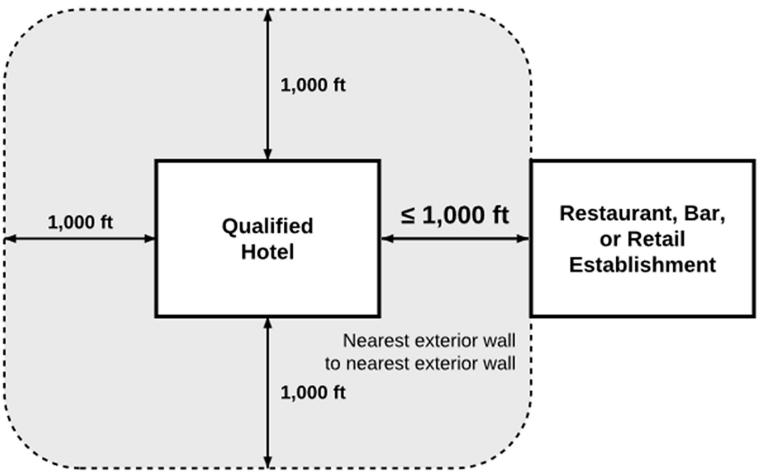
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Figure 2: 34 TAC §3.12(e)(2)(A)

Figure 2. Restaurant, bar, or retail establishment

1,000-foot closest-wall example

Rule 3.12(e)(2)(A); Tax Code §351.157



Notes:

1. Measure from the nearest exterior wall of each facility.
2. The qualified establishment must be within 1,000 feet of the nearest exterior wall of the qualified hotel or qualified convention center facility. Tax Code §351.157.

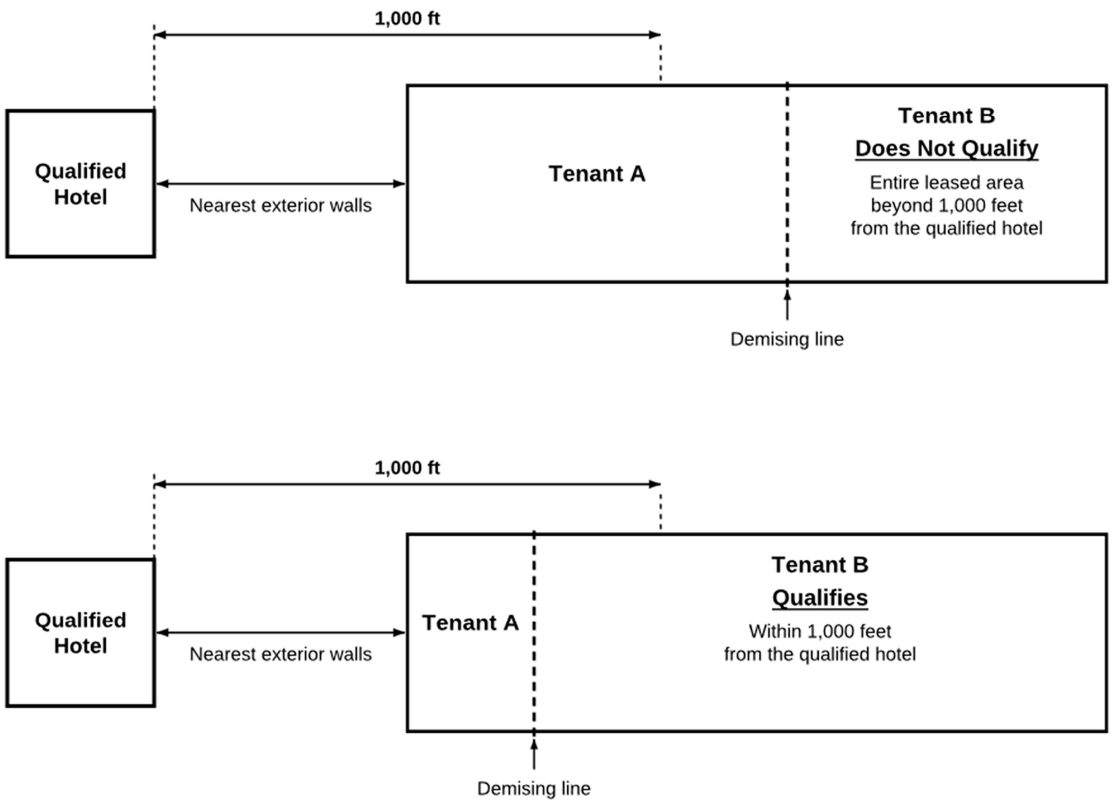
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Figure 1: 34 TAC §3.12(e)(2)(C)

Figure 3. Multi-tenant building — closest exterior wall test

Tenant B outside 1,000 feet does not qualify; Tenant B inside 1,000 feet qualifies

Rule 3.12(e)(2)(C); Tax Code §351.157



Notes:

1. Distance is measured to the nearest exterior wall of the building.
2. Tenant B does not qualify when the demising line is beyond 1,000 feet from the qualified hotel. Tenant B qualifies when the demising line is within 1,000 feet from the qualified hotel. See §351.157.

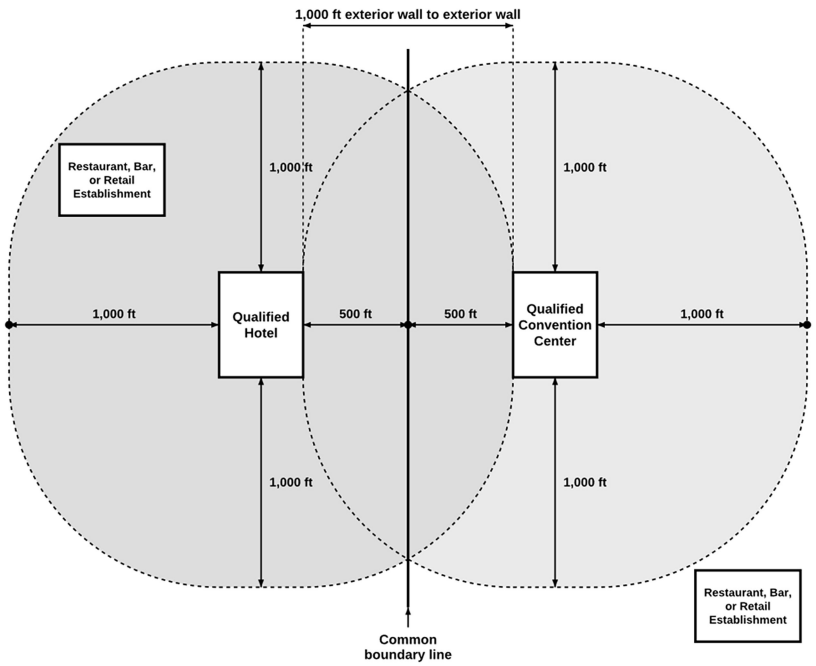
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Figure 2: 34 TAC §3.12(e)(2)(C)

Figure 4. Common boundary standard — qualified hotel and qualified convention center

Qualified hotel 500 feet and qualified convention center 500 feet from common boundary line

Rule 3.12(e)(2)(C); proposed common-boundary interpretation



Notes:

1. Any qualified establishment within the shaded areas qualifies for rebates.
2. Each building has a 1,000 foot area extending from all of its exterior walls.
3. Any qualified establishment located within the shaded area is within 1,000 feet of either the qualified hotel or the qualified convention center.
4. This is a §351.156 project. The land for the qualified hotel will be municipal-owned land.

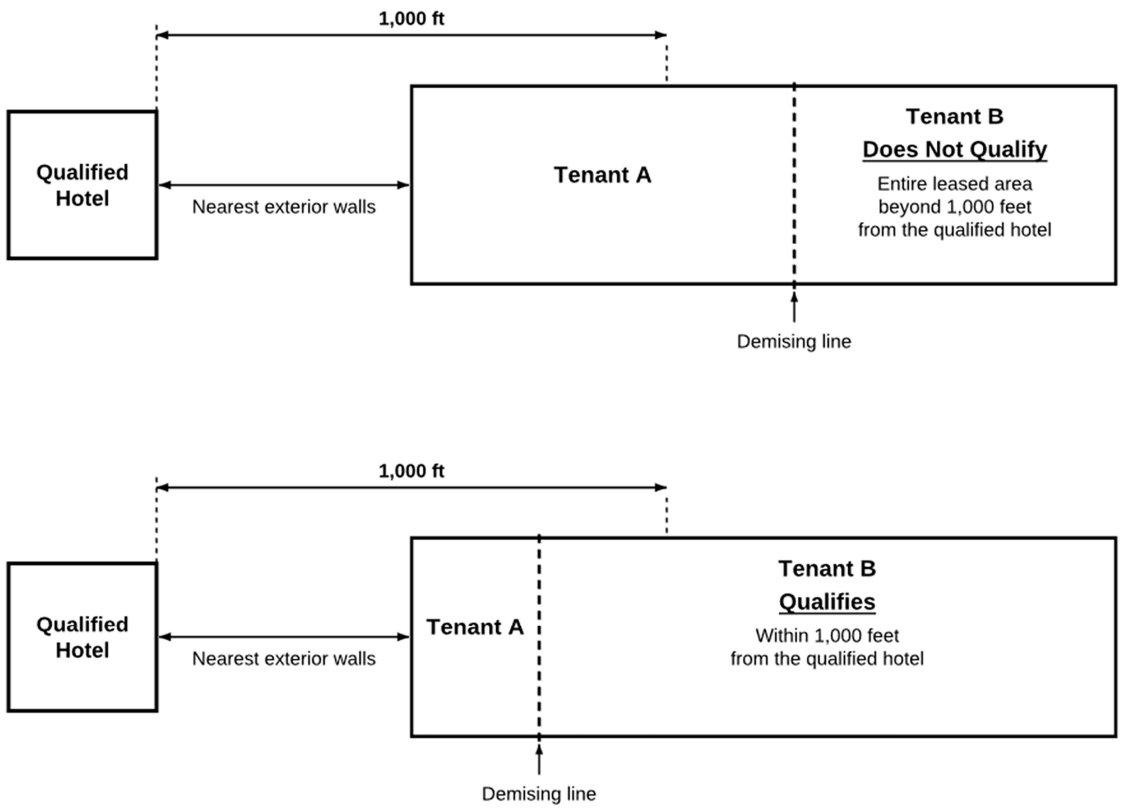
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Figure: 34 TAC §3.12(e)(2)(E)

Figure 3. Multi-tenant building — closest exterior wall test

Tenant B outside 1,000 feet does not qualify; Tenant B inside 1,000 feet qualifies

Rule 3.12(e)(2)(C); Tax Code §351.157



Notes:

1. Distance is measured to the nearest exterior wall of the building.
2. Tenant B does not qualify when the demising line is beyond 1,000 feet from the qualified hotel. Tenant B qualifies when the demising line is within 1,000 feet from the qualified hotel. See §351.157.

N

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Coastal Bend Workforce Development Board

Request for Proposal for Management and Operation of Career Center System (Including Youth Services) RFP No. 26-04

The Coastal Bend Workforce Development Board, dba Workforce Solutions Coastal Bend (WFSCB) is soliciting responses from qualified individuals or firms for the Management and Operation of the Career Center System (Including Youth Services) for Fiscal Year 2026-27. The contract may be renewed for three (3) additional one-year periods beyond the original acceptance award for a total not to exceed four (4) years.

WFSCB serves the eleven (11) county Coastal Bend Region consisting of the following counties: Aransas, Bee Brooks, Duval, Jim Wells, Kenedy, Kleberg, Live Oak, Nueces, Refugio, and San Patricio. The Workforce Services Delivery System operates one-stop centers in the Cities of Alice, Beeville, Corpus Christi, Kingsville, and Sinton. WFSCB also operates satellite offices in the Cities of Falfurrias and Rockport. Services provided include general workforce information and referral; customer, employer, and job seeker services; customer intake, program eligibility and assessment; case management; enrollment into education and training programs; job placement; career counseling; support services; follow-up and retention services as funded by the Workforce Innovation and Opportunity Act (WIOA) Youth, Adult, and Dislocated Worker, Temporary Assistance to Needy Families (TANF)/Choices, Supplemental Nutrition Assistance Program (SNAP), Employment and Training, and Wagner-Peyser.

The RFP will be available on Friday, November 20, 2026, at 2:00 p.m. Central Time and can be accessed on our website at: https://www.workforcesolutionscb.org/about-us/procurement-opportunities/ or by contacting Imelda Trevino at (361) 885-3059 or imelda.trevino@workforcesolutionscb.org

A Pre-Proposal Conference will be held on Wednesday, December 2, 2026, at 10:00 a.m. Central Time in the Main Conference Room at WFSCB's Administrative Offices located at 400 Mann Street, Suite 800, Corpus Christi, Texas 78401. The purpose of the meeting is to review the RFP requirements and answer any questions related to the RFP. While this meeting is not mandatory, attendance is strongly recommended. Parties unable to attend in person may participate virtually from a computer, tablet, or smart phone via Zoom:

Join Zoom Meeting

https://us02web.zoom.us/j/88558422551?pwd=aHpT50hxMi8GVFRnoyTdKNPG5TZmQo.1

US Toll-Free: 888 475 4499

Meeting ID: 885 5842 2551

Passcode: 283481

The RFP process consists of the submission of an Application and a Proposal. **Applications are due on Tuesday, December 22, 2026, at noon Central Time** and **Proposals are due on Thursday, January 14, 2027, at noon Central Time.** Responses should be submitted via email to imelda.trevino@workforcesolutionscb.org or may be hand delivered or mailed to: Workforce Solutions of the Coastal Bend, 400 Mann Street, Suite 800, Corpus Christi, Texas 78401.

Workforce Solutions Coastal Bend is an Equal Opportunity Employer/Program. Auxiliary aids and services are available upon request to individuals with disabilities. Relay Texas: (800) 735-2989 (TDD) and (800) 735-2988 or 711 (Voice). Historically Underutilized Businesses (HUBs) are encouraged to apply.

This document contains vital information about requirements, rights, determinations, and/or responsibilities for accessing workforce system services. Language services, including the interpretation/translation of this document, are available free of charge upon request.

Este documento contiene información importante sobre los requisitos, los derechos, las determinaciones y las responsabilidades del acceso a los servicios del sistema de la fuerza laboral. Hay disponibles servicios de idioma, incluida la interpretación y la traducción de documentos, sin ningún costo y a solicitud.

Tài liệu này có thông tin quan trọng về các yêu cầu, quyền hạn, quyết định, và/hoặc trách nhiệm để sử dụng các dịch vụ của hệ thống nhân lực. Các dịch vụ trợ giúp ngôn ngữ, bao gồm thông dịch/chuyển ngữ tài liệu này, có sẵn miễn phí khi quý vị yêu cầu.

TRD-202604751
Imelda Trevino
Contracts & Procurement Manager
Coastal Bend Workforce Development Board
Filed: November 9, 2026

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the proposed orders and the 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 **December 23, 2026**. 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 physical copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas

78753, (512) 239-2545 and at the applicable regional office listed as follows. Additionally, copies of the proposed AO can be found online by using either the Chief Clerk's eFiling System at https://www.tceq.texas.gov/goto/efilings or the TCEQ Commissioners' Integrated Database at https://www.tceq.texas.gov/goto/cid, and searching either of those databases with the proposed AO's identifying information, such as its docket number. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at Enforcement Division, MC 128, P.O. Box 13087, Austin, Texas 78711-3087 and must be postmarked by 5:00 p.m. on **December 23, 2026**. Written comments may also be sent to the enforcement coordinator by email to ENFCOMNT@tceq.texas.gov or by facsimile machine at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed contact information; however, TWC, §7.075 provides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: ArcelorMittal Texas HBI LLC; DOCKET NUMBER: 2026-0698-IWD-E; IDENTIFIER: RN106597875; LOCATION: Portland, San Patricio County; TYPE OF FACILITY: direct-reduced iron/hot-briquetting iron facility; PENALTY: $19,912; ENFORCEMENT COORDINATOR: Madison Crawford, (512) 239-4603; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753, CENTRAL OFFICE - AUSTIN.

(2) COMPANY: Brazoria County Municipal Utility District 55; DOCKET NUMBER: 2026-0535-MWD-E; IDENTIFIER: RN105177208; LOCATION: Rosharon, Brazoria County; TYPE OF FACILITY: wastewater treatment facility; PENALTY: $3,750; ENFORCEMENT COORDINATOR: Madison Crawford, (512) 239-4603; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753, CENTRAL OFFICE - AUSTIN.

(3) COMPANY: City of Jourdanton; DOCKET NUMBER: 2026-1062-PWS-E; IDENTIFIER: RN101395648; LOCATION: Jourdanton, Atascosa County; TYPE OF FACILITY: public water supply; PENALTY: $16,687; ENFORCEMENT COORDINATOR: Emerson Rinewalt, (512) 239-1131; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753, CENTRAL OFFICE - AUSTIN.

(4) COMPANY: City of Point Comfort; DOCKET NUMBER: 2024-1963-PWS-E; IDENTIFIER: RN101391266; LOCATION: Point Comfort, Calhoun County; TYPE OF FACILITY: public water supply; PENALTY: $2,575; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET: $2,060; ENFORCEMENT COORDINATOR: Ilia Perez Ramirez, (512) 239-2556; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, REGION 12 - HOUSTON.

(5) COMPANY: Coleman County Special Utility District; DOCKET NUMBER: 2026-0385-MLM-E; IDENTIFIER: RN101212520; LOCATION: Coleman, Coleman County; TYPE OF FACILITY: public water supply; PENALTY: $24,360; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET: $19,488; ENFORCEMENT COORDINATOR: Wyatt Throm, (512) 239-1120; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753Coleman, CENTRAL OFFICE - AUSTIN.

(6) COMPANY: Decatur Warehouse, LLC; DOCKET NUMBER: 2026-0723-PWS-E; IDENTIFIER: RN112421722; LOCATION: Decatur, Wise County; TYPE OF FACILITY: public water supply; PENALTY: $1,675; ENFORCEMENT COORDINATOR: Taner Hengst, (512) 239-1143; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753, CENTRAL OFFICE - AUSTIN.

(7) COMPANY: H & K Jolly LLC; DOCKET NUMBER: 2025-1428-PST-E; IDENTIFIER: RN102078334; LOCATION: Wichita Falls, Clay County; TYPE OF FACILITY: convenience store with retail sales of gasoline; PENALTY: $11,177; ENFORCEMENT COORDINATOR: Rachel Murray, (903) 535-5149; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, REGION 5 - TYLER.

(8) COMPANY: Jackrabbit Road Public Utility District; DOCKET NUMBER: 2026-0159-MWD-E; IDENTIFIER: RN102343597; LOCATION: Houston, Harris County; TYPE OF FACILITY: wastewater treatment facility; PENALTY: $26,325; ENFORCEMENT COORDINATOR: Madison Crawford, (512) 239-4603; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753, CENTRAL OFFICE - AUSTIN.

(9) COMPANY: Lowe's Home Centers, LLC; DOCKET NUMBER: 2026-0931-PST-E; IDENTIFIER: RN105498323; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: underground storage tank system; PENALTY: $5,125; ENFORCEMENT COORDINATOR: Sarah Kalainoff, (512) 239-4631; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753, CENTRAL OFFICE - AUSTIN.

(10) COMPANY: Phelps Dodge Refining Corporation; DOCKET NUMBER: 2026-0814-PWS-E; IDENTIFIER: RN100226000; LOCATION: El Paso, El Paso County; TYPE OF FACILITY: public water supply; PENALTY: $1,992; ENFORCEMENT COORDINATOR: Tessa Bond, (512) 239-1269; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753, CENTRAL OFFICE - AUSTIN.

(11) COMPANY: QU Drilling, LLC; DOCKET NUMBER: 2026-0617-WR-E; IDENTIFIER: RN112423256; LOCATION: Mill Creek, Shelby County; TYPE OF FACILITY: general contractor company; PENALTY: $4,000; ENFORCEMENT COORDINATOR: Logan Thompson, (512) 239-4576; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753, CENTRAL OFFICE - AUSTIN.

(12) COMPANY: Reed Scrap Metals LLC; DOCKET NUMBER: 2026-1056-MSW-E; IDENTIFIER: RN105278303; LOCATION: Sulphur Springs, Hopkins County; TYPE OF FACILITY: scrap metal processing and recycling facility; PENALTY: $7,125; ENFORCEMENT COORDINATOR: Ramyia Wendt, (512) 239-2513; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753, CENTRAL OFFICE - AUSTIN.

(13) COMPANY: T & W Water Service Company; DOCKET NUMBER: 2026-0953-PWS-E; IDENTIFIER: RN101195832; LOCATION: Vidor, Orange County; TYPE OF FACILITY: public water supply; PENALTY: $988; ENFORCEMENT COORDINATOR: Savannah Jackson, (512) 239-4306; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753, CENTRAL OFFICE - AUSTIN.

(14) COMPANY: Texas Water Utilities, L.P.; DOCKET NUMBER: 2026-0930-PWS-E; IDENTIFIER: RN101284438; LOCATION: Center Point, Kerr County; TYPE OF FACILITY: public water supply; PENALTY: $1,050; ENFORCEMENT COORDINATOR: Deshaune Blake, (210) 403-4033; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, REGION 13 - SAN ANTONIO.

(15) COMPANY: Undine Texas, LLC; DOCKET NUMBER: 2026-1000-PWS-E; IDENTIFIER: RN101224541; LOCATION: Liverpool, Brazoria County; TYPE OF FACILITY: public water supply; PENALTY: $2,875; ENFORCEMENT COORDINATOR: Tessa Bond, (512) 239-1269; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753, CENTRAL OFFICE - AUSTIN.

(16) COMPANY: Upper Jasper County Water Authority; DOCKET NUMBER: 2023-0048-MLM-E; IDENTIFIER: RN101185270; LOCATION: Jasper, Jasper County; TYPE OF FACILITY: public water supply; PENALTY: $10,256; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET: $8,205; ENFORCEMENT COORDINA-

TOR: Penny Wimberly, (512) 239-0538; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753, CENTRAL OFFICE - AUSTIN.

(17) COMPANY: Valley Dewatering Services, Inc.; DOCKET NUMBER: 2025-1912-MLM-E; IDENTIFIER: RN104799044; LOCATION: Mercedes, Hidalgo County; TYPE OF FACILITY: municipal solid waste Type V processing facility; PENALTY: $25,689; ENFORCEMENT COORDINATOR: Celicia Garza, (210) 657-8422; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, REGION 13 - SAN ANTONIO.

TRD-202604736
Gitanjali Yadav
Deputy Director, Litigation Division
Texas Commission on Environmental Quality
Filed: November 8, 2026

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Texas Health and Human Services Commission

Notice of Public Hearing on Proposed Medicaid Payment Rate Actions for Community Hospice

Notice of Public Hearing on Proposed Medicaid Payment Rate Actions for Community Hospice, Effective Retroactive to October 1, 2026, State Veterans Nursing, Effective Retroactive to September 1, 2026, and Truman W. Smith Children's Care Center, Effective December 1, 2026.

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing to receive public comments regarding proposed payment rates on Friday, December 11, 2026, at 9 a.m. CST.

The public hearing will be held at the following location:

Texas Department of State Health Services (DSHS)

Robert Bernstein Building

Room K-100, First Floor

1100 West 49th Street

Austin, Texas 78756

This hearing will be conducted both in person and as an online event. To join the hearing from your computer, tablet, or smartphone, register for the hearing in advance using the following registration URL:

https://attendee.gotowebinar.com/register/8751004708017103449

Webinar ID: 763-007-083

After registering, you will receive a confirmation email containing information about joining the webinar. Instructions for dialing in by phone will be provided via email after you register.

The hearing will be held in compliance with Texas Human Resources Code Section 32.0282, which requires public notice of hearings on proposed Medicaid reimbursements. HHSC will consider feedback shared during the hearing before final rate approval. If you have any questions regarding the information in this document, contact:

HHSC Provider Finance Department (PFD), Long-term Services and Supports (LTSS) via email: PFD-LTSS@hhs.texas.gov.

HHSC will archive the recorded public hearing. After the hearing, the recording can be accessed on demand at https://hhs.texas.gov/about-hhs/communications-events/live-archived-meetings.

Proposal.

Medicaid Community Hospice

HHSC proposes the federal fiscal year (FFY) 2027 payment rate actions for Medicaid Community Hospice for routine home care, continuous home care, inpatient respite care, general inpatient care services, and the service intensity add-on, effective retroactive to October 1, 2026.

State Veterans Nursing Homes

HHSC proposes the interim rates determined by the Veterans Land Board (VLB) for the State Veterans Nursing Homes. The proposed interim rates account for actual and projected cost changes to operate these facilities. The proposed rate will be effective retroactive to September 1, 2026.

Truman W. Smith Children's Care Center

HHSC proposes to increase the payment rate for the pediatric care facility special reimbursement class, for which the Truman W. Smith Children's Care Center is the sole provider. The proposed rate will be effective December 1, 2026.

Background.

Medicaid Community Hospice

The Medicaid Community Hospice Program provides palliative care consisting of medical, social, and support services to terminally ill individuals when curative treatment is no longer effective. Payment rates for this program are calculated based on annual hospice rates established by CMS. 42 CFR 418.306(c) requires Medicaid hospice payment rates to be adjusted every federal fiscal year by the wage index data issued by CMS as published in the *Federal Register*.

CMS issued notification of the finalized Medicaid hospice payment rates in the *Federal Register* and published the federal fiscal year 2027 hospice wage indices on September 30, 2026.

State Veterans Nursing Homes

HHSC maintains a program so that Medicaid-eligible veterans can reside in State Veteran's Nursing Homes. Currently, ten homes are in operation, overseen by the Veterans Land Board (VLB). The VLB is authorized to operate these nursing facilities under Chapter 164, Natural Resources Code. The VLB determines rates for the Texas State Veterans Homes, which are available at https://vlb.texas.gov/veterans-homes/costs/index.html. However, HHSC is responsible for setting the Medicaid rates paid to these homes through our rate-setting process.

Truman W. Smith Children's Care Center

For pediatric care center services, HHSC PFD sets a facility-specific payment rate to recognize the cost differences between a nursing facility that serves adults and one that predominantly serves children. Currently, the Truman W. Smith Children's Care Center (Truman Smith) is the only member of the pediatric care facility special reimbursement class in Texas.

Methodology and Justification.

Medicaid Community Hospice

The proposed payment rate actions for Medicaid Community Hospice were calculated in accordance with Section 1814(i)(1)(C)(ii) of the Social Security Act, which outlines annual increases in payment rates for hospice care services. Payment rates for this program are calculated based on annual hospice rates and wage indices established by CMS.

State Veterans Nursing Homes

The specific administrative rule that governs the establishment of the fees in this proposal were calculated in accordance with Title 1 of the Texas Administrative Code (TAC) Section 355.311, concerning Medicaid Reimbursement Rates for State Veterans Homes.

Truman W. Smith Children's Care Center

The methodological rate for this class of services aligns with the nursing and non-therapy ancillary components, adjusted by applying the highest case-mix index, and non-case-mix component contained in the rural Medicare skilled nursing facilities federal per diem rate for the most recent federal fiscal year, as published in the *Federal Register*.

Rate Hearing Packet. A briefing packet describing the proposed payment rates will be made available by November 20, 2026, at https://pfd.hhs.texas.gov/rate-packets. Interested parties may obtain a copy of the briefing packet on or after that date by contacting the Provider Finance Department by telephone at (512) 730-7401, by fax at (512) 730-7475, or by email at PFD-LTSS@hhs.texas.gov.

Written Comments. Written comments regarding the proposed payment rates may be submitted instead of oral testimony until 5:00 p.m. on the day of the hearing. Written comments may be sent by U.S. mail, overnight mail, special delivery mail, fax, or email:

U.S. Mail

Texas Health and Human Services Commission

Attention: Provider Finance Department, Mail Code H-400

P.O. Box 149030

Austin, Texas 78714-9030

Overnight Mail or Special Delivery Mail

Texas Health and Human Services Commission

Attention: Provider Finance Department, Mail Code H-400

North Austin Complex

4601 W. Guadalupe St.

Austin, Texas 78751

Phone number for package delivery: (512) 730-7401

Fax

Attention: Provider Finance: (512) 730-7475

Email: PFD-LTSS@hhs.texas.gov

Preferred Communication. For the quickest response, use email or phone to communicate with HHSC regarding this rate hearing.

Persons with disabilities who wish to participate in the hearing and require auxiliary aids or services should call Provider Finance at (512) 730-7401 at least 72 hours before the hearing so appropriate arrangements can be made.

TRD-202604735
Nycia Deal
Chief Counsel
Texas Health and Human Services Commission
Filed: November 6, 2026

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Texas Department of Housing and Community Affairs

Notice of Funding Availability (NOFA) Release for 2027 Community Services Block Grant Discretionary (CSBG-D) Funds - Reentry Activities

The Texas Department of Housing and Community Affairs (the Department) announces the availability of $400,000 in CSBG Discretionary funding for Reentry Activities. Each year the Department sets aside 5% of its annual CSBG allocation for state discretionary use. Each year funds from CSBG Discretionary are used for specific identified efforts that the Department supports such as assisting previously incarcerated individuals reenter the community and helping them to obtain rental housing through landlord incentives, security deposits and other reentry activities related to housing. This year, $400,000 has been programmed for Reentry Activities for which the Department is issuing this NOFA. The Department will release funds competitively.

The Department's contract period for the 2027 CSBG Discretionary Reentry Activities is 12 months and is anticipated to begin May 1, 2027, and end on April 30, 2028.

Interested applicants must meet the requirements set forth in the NOFA and must submit a complete application through the established system described in the NOFA by 5:00 p.m., Central Time on December 4, 2026.

The application forms contained in this packet and submission instructions are available on the Department's web site at https://www.tdhca.texas.gov/notices-funding-availability-nofas. Should you have any questions, please contact Madison Lozano at (512) 475-3341 or madison.lozano@tdhca.texas.gov.

TRD-202604704
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Filed: November 6, 2026

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Texas Department of Licensing and Regulation

Scratch Ticket Game Number 2790 "$100 LOADED!"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2790 is "$100 LOADED!". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2790 shall be $2.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2790.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 02, 03, 04, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 5X SYMBOL, 20X SYMBOL, $2.00, $5.00, $10.00, $20.00, $50.00 and $100.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2790 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
06	SIX
07	SVN
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI

30	TRTY
5X SYMBOL	WINX5
20X SYMBOL	WINX20
$2.00	TWO$
$5.00	FIV$
$10.00	TEN$
$20.00	TWY$
$50.00	FFTY$
$100	ONHN

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 (2790), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 125 within each Pack. The format will be: 2790-0000001-001.

H. Pack - A Pack of the "$100 LOADED!" Scratch Ticket Game contains 125 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). One Ticket will be folded over to expose a front and back of one Ticket on each Pack. Please note the Packs will be in an A, B, C and D configuration.

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 140.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "$100 LOADED!" Scratch Ticket Game No. 2790.

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 140.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "$100 LOADED!" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose twenty-two (22) Play Symbols. PLAY INSTRUCTIONS: If a player matches any of the YOUR NUMBERS Play Symbols to either of the WINNING NUMBERS Play Symbols, the player wins the PRIZE for that number. If the player reveals a "5X" Play Symbol, the player wins 5 TIMES the PRIZE for that symbol. If the player reveals a "20X" Play Symbol, the player wins 20 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 twenty-two (22) 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 twenty-two (22) 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 twenty-two (22) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the twenty-two (22) 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 of the Texas Lottery ("Executive Director") may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. GENERAL: The top Prize Symbol will appear on every Ticket, unless restricted by other parameters, play action or prize structure.

B. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

C. KEY NUMBER MATCH: No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., $2 and 02).

D. KEY NUMBER MATCH: There will be no matching non-winning YOUR NUMBERS Play Symbols on a Ticket.

E. KEY NUMBER MATCH: There will be no matching WINNING NUMBERS Play Symbols on a Ticket.

F. KEY NUMBER MATCH: A non-winning Prize Symbol will never match a winning Prize Symbol.

G. KEY NUMBER MATCH: A Ticket may have up to two (2) matching non-winning Prize Symbols, unless restricted by other parameters, play action or prize structure.

H. KEY NUMBER MATCH: The "5X" (WINX5) Play Symbol will only appear on winning Tickets, as dictated by the prize structure.

I. KEY NUMBER MATCH: The "20X" (WINX20) Play Symbol will only appear on winning Tickets, as dictated by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "$100 LOADED!" Scratch Ticket Game prize of $2.00, $5.00, $10.00, $20.00, $50.00 or $100, 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 or $100 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 "$100 LOADED!" 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 Taxpayer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery, 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 "$100 LOADED!" 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 "$100 LOADED!" 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 6,000,000 Scratch Tickets in Scratch Ticket Game No. 2790. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2790 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$2.00	624,000	9.62
$5.00	384,000	15.63
$10.00	144,000	41.67
$20.00	72,000	83.33
$50.00	20,250	296.30
$100	7,500	800.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.79. 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.

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. 2790 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 §140.302(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. 2790, 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 140, and all final decisions of the Executive Director.

TRD-202604703

Deanne Rienstra
General Counsel
Texas Department of Licensing and Regulation
Filed: November 6, 2026

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North Central Texas Council of Governments

Notice of Contract Award for Fort Worth to Plano Regional Trail Branding and Wayfinding Plan

Pursuant to the provisions of Government Code, Chapter 2254, the North Central Texas Council of Governments publishes this notice of contract award. The request appeared in the June 12, 2026, issue of the *Texas Register* (51 TexReg 3942). The selected entity will develop a branding and wayfinding signage plan for the Regional Trail from Fort Worth to Plano in the Dallas-Fort Worth (DFW) metropolitan area.

The entity selected for this project is Moore Iacofano Goltsman Inc.; 317 Lexington Ave, #2, San Antonio, Texas 78215, for a contract not to exceed $260,000.

Issued in Arlington, Texas on November 5, 2026.

TRD-202604689
Monte Mercer
Acting Executive Director
North Central Texas Council of Governments
Filed: November 5, 2026

♦ ♦ ♦

Public Utility Commission of Texas

Project No. 59999 - SLLIA Proposal Notice

The Public Utility Commission of Texas (commission) proposes and requests comments on the new Standardized Large Load Interconnection Agreement (SLLIA).

The new form will serve as the standard agreement for all large loads interconnecting within the ERCOT region of Texas and continue the implementation of Senate Bill (SB) 6 enacted in the 89th Legislature (R.S.). Specifically, SB 6 requires the commission to, by rule, ensure that large load customers that are subject to the standards adopted under Public Utility Regulatory Act (PURA) §37.0561 contribute to the recovery of costs associated with interconnecting the large load to the utility's system. (See PURA §35.004(c-1)) SB 6 further requires such standards to be established in a manner designed to support business development while minimizing the potential for stranded infrastructure costs and maintaining system reliability. (See also PURA §37.0561(b))

Accordingly, the SLLIA will also integrate specific provisions and obligations as required by 16 Texas Administrative Code §25.194, relating to Large Load Interconnection Standards, adopted in Project 58481. The SLLIA will also integrate the transmission cost recovery standards for large load customers pending in Project 58000, including any obligations associated with the "minimum billing demand." Specifically, the SLLIA will incorporate any related terms, definitions, and requirements established by the amendments to §25.192, relating to Transmission Service Rates and §25.193, relating to Distribution Service Provider Transmission Cost Recovery Factor (TCRF), and new §25.252 relating to Large Load Customer Tariffs upon adoption of those rules by the commission. Additionally, the SLLIA also reflects recent changes to the ERCOT interconnection process for large loads, as implemented by Planning Guide Revision Request (PGRR) 145 and other changes to the ERCOT protocols.

The contents of the standard agreement are subject to change upon adoption to reflect the final rule text in Project 58000 and any policy decisions reached by the commission in that project.

The proposed new SLLIA will ensure the uniform obligations established by the commission and by ERCOT are imposed upon large loads interconnecting within the ERCOT region at transmission or distribution voltage while maintaining flexibility for different interconnection configurations. The SLLIA is accordingly drafted such that it may be entered as a bilateral (two-party) or trilateral (three-party) agreement and requires certain preceding interconnection agreements to be integrated and merged into the standard form. Additionally, the SLLIA establishes specific performance obligations for large load customers at each stage of the interconnection process, including for transmission cost recovery, as required by 16 TAC §25.194. The SLLIA further imposes disclosure obligations including large load water and energy usage and specifies audit and verification requirements in the event an audit is required by the commission or ERCOT. The SLLIA also requires the reallocation of a large load customer's transmission capacity in the event the 24-month delay threshold established for phased energization is exceeded; establishes specific and limited conditions for assignment; and requires compliance with the Lone Star Infrastructure Protection Act by all parties to the SLLIA, including affiliates of those parties. Project 59999 is assigned to this proceeding.

Questions concerning the project should be directed to Mackenzie Arthur, Rules and Projects, at mackenzie.arthur@puc.texas.gov. Hearing and speech-impaired individuals with text telephones (TTY) may contact the Commission at (512) 936-7136.

TRD-202604667
Katelyn Lewis
Rules Coordinator
Public Utility Commission of Texas
Filed: November 5, 2026

♦ ♦ ♦


TEXAS

How to Use the Texas Register

Information Available: The sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Review of Agency Rules - notices of state agency rules review.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 51 (2026) is cited as follows: 51 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 "51 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 51 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: https://www.sos.texas.gov. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The *Texas Administrative Code (TAC*) is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State's website at http://www.sos.state.tx.us/tac.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §91.1: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §91.1 is the section number of the rule (91 indicates that the section is under Chapter 91 of Title 1; 1 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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