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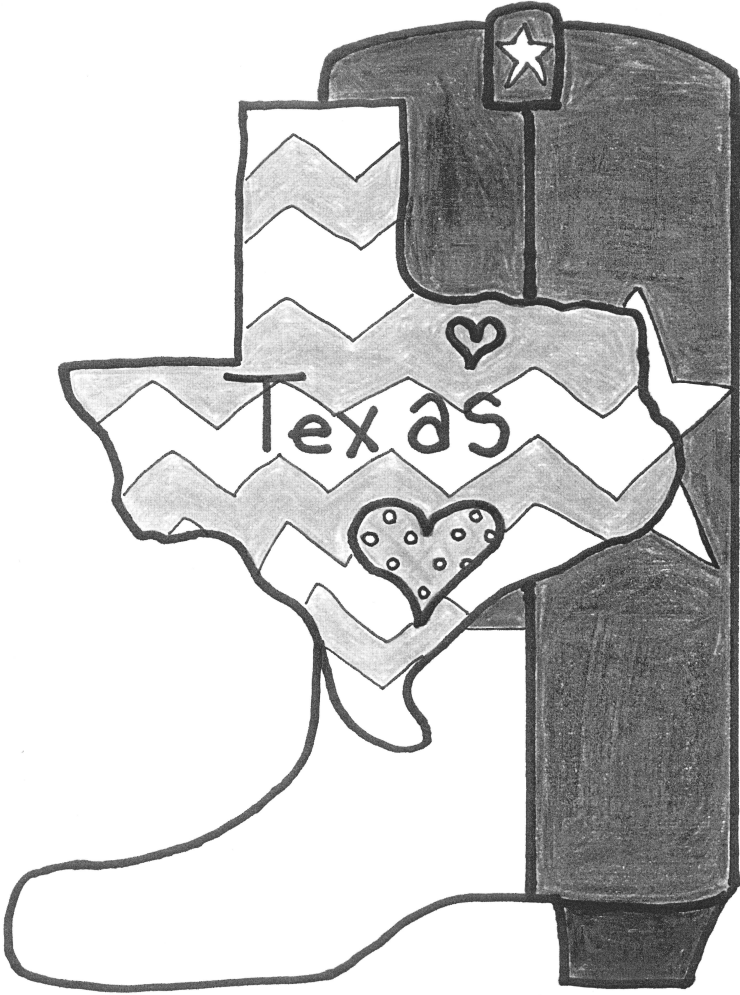
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PROPOSED RULES

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

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

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 14. [~~PERISHABLE COMMODITIES~~] HANDLING AND MARKETING OF PERISHABLE COMMODITIES [~~PROGRAM~~]

The Texas Department of Agriculture (Department) proposes amendments to Texas Administrative Code, Title 4, Chapter 14 (Perishable Commodities Handling and Marketing Program), Subchapter A (General Provisions), §14.1 (Definitions), §14.3 (Fees), and §14.4 (Cancellation of License); Subchapter B (Produce Recovery Fund Claims), §14.10 (Claims Against the Fund), §14.11 (Determination on Claims by the Department), §14.12 (Filing of Notice of Protest; Appeal to the Board), §14.13 (Payment of Claims from the Fund), and §14.14 (Reimbursement to the Fund); and Subchapter C (Produce Recovery Fund Board), §14.20 (Purpose and Scope), §14.21 (Duties of the Board and the Department), §14.22 (Meetings), §14.23 (Conduct of Hearings of the Produce Recovery Fund Board), §14.24 (The Board's Final Determination), and §14.25 (Motion for Rehearing).

The Department identified the need for the proposed amendments during its rule review conducted pursuant to Texas Government Code, §2001.039, the adoption of which can be found in the Review of Agency Rules section of this issue.

In accordance with Texas Agriculture Code (Code), §103.004 and §103.012, the Produce Recovery Fund Board (Board) is required to advise the Department in its rulemaking capacity under Chapter 103 of the Texas Agriculture Code (Code). Chapter 103 governs the Board and payments from the Produce Recovery Fund pursuant to claims against license holders and persons requiring to be licensed as handlers of perishable commodities under Chapter 101 of the Code.

The Department presented the proposed amendments to the Board at its open meeting on November 15, 2023. The Board discussed and approved the proposed amendments by a unanimous vote.

The proposed amendments replace the current title of this chapter with "Handling and Marketing of Perishable Commodities" for consistency with the name of the Department's related program and the title of Chapter 101 of the Code.

The proposed amendments to §14.1 include a definition for the "Administrative Procedure Act" to account for its frequency in this chapter, remove a definition for "agent" due to its infrequency in this chapter, update a reference in the definition for the "Open

Meetings Act," add language to the definition for "claim" to specify against whom claims can be filed, and add a citation to the Code to the definition of "perishable commodity" to denote the statutory source of its definition.

The proposed amendments to §14.3 add language specifying those agents who require identification cards.

The proposed amendments to §14.4 specify a reference to the Department's general rules of procedure outlines in Chapter 1, Subchapter A of this title and change a reference to Chapter 2001 of the Texas Government Code to account for its proposed definition in §14.1.

The proposed amendments to §14.10 remove subsection (e) to become new subsection (d) §14.10 as its provisions fit more appropriately with those of §14.14, remove an outdated provision addressing claims prior to September 1, 2009, remove unnecessary language precluding the filing of out-of-state claims, and add a reference to §14.3 to specify claim-filing fees.

The proposed amendments to §14.11 change references to this chapter from "title" to "chapter," as the latter term is generally used throughout Title 4, update a reference to Chapter 1, Subchapter A of this title, change "recommendation" to "proposal for decision" as the former is used throughout this chapter and Chapter 1, Subchapter A of this title, make "Deputy Commissioner" lower-case as "Commissioner" is made lower-case throughout this chapter, and replace general references to "agency" with "department."

The proposed amendments to §14.12 change the term "person" to "party" as the former is used within the context of a hearing and in Chapter 103 of the Code, make "proposal for decision" lower-case to be the same as its occurrences in the Department's rules of procedure in Chapter 1, Subchapter A of this title and Chapter 2001 of the Texas Government Code (the Administrative Procedure Act), and replace general references to "agency" with "department."

The proposed amendments to §14.13 remove an outdated subsection outlining payments for claims prior to September 1, 2009; remove an obsolete subsection limiting total payments on claims against a single entity to \$85,000 as its statutory analogue, former Subsection 103.008(c) of the Code, was removed in 2009; and remove a reference to its restrictions on claim payments and replace it with the applicable statutory authority in Chapter 103 of the Code.

The proposed amendments to §14.14 add subsection (e) of §14.10 as new subsection (d) as its provisions fit more appropriately with those of §14.14 and replace the term "working days" with "business days" as the former is the more prevalent term.

The proposed amendments to §14.20 update a reference to Chapter 1, Subchapter A of this title.

The proposed amendments to §14.22 remove unnecessary language addressing requirements of the Open Meetings Act and remove an incorrect provision on notice of Board meetings being published in the *Texas Register*.

The proposed amendments to §14.23 update Department contact information for prehearing motions and exhibit requests, specify that requests to the Department for hearing-related information must be written, and replace the term "working days" with "business days" as the former is the more prevalent term.

The proposed amendments to §14.25 require motions for rehearing to be sent to opposing parties and Board rulings on these motions to be made in accordance with Section 2001.146 of the Texas Government Code and update Department contact information.

In addition, "Board," "Fund," and "Chairman" are made lowercase throughout these rules to align with their occurrences in Chapter 103 of the Code. Likewise, "licensee" and "complaining party" are changed to "license holder" and "aggrieved party" throughout these rules because the latter terms are used in Chapter 103.

Also, editorial changes are made throughout these rules to correct grammar, remove superfluous or outdated language, and improve the rules' readability.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT: Mr. Philip Wright, the Administrator for Regulatory Affairs, has determined that for each year of the first five years the proposed amendments are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering them.

PUBLIC BENEFITS AND PROBABLE ECONOMIC COSTS: Mr. Wright has determined that for each year of the first five years the proposed amendments are in effect, the public benefit will be increased consumer protection due to updates to and improved readability of the chapter. Mr. Wright has also determined there are no anticipated economic costs to persons required to comply with the proposed amendments.

LOCAL EMPLOYMENT IMPACT STATEMENT: Mr. Wright has determined that the proposed amendments will not affect a local economy, so the Department is not required to prepare a local employment impact statement under Texas Government Code, §2001.022.

FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES: The Department has determined there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed amendments, therefore preparation of an economic impact statement and a regulatory flexibility analysis, as detailed under Texas Government Code, §2006.002 is not required.

GOVERNMENT GROWTH IMPACT STATEMENT: Pursuant to Texas Government Code, §2001.0221, the Department provides the following Government Growth Impact Statement for the proposed amendments. For each year of the first five years the proposed amendments will be in effect:

- (1) they will not create or eliminate a government program;
- (2) their implementation will not require the creation or elimination of existing employee positions;

(3) their implementation will not require an increase or decrease in future legislative appropriations to the Department;

(4) there will be no increase or decrease in fees paid to the Department;

(5) they will not create a new regulation;

(6) they will not expand, limit, or repeal an existing regulation;

(7) there will be no increase or decrease in the number of individuals subject to the rules; and

(8) there will be no positive or adverse effect on the state's economy.

Comments on this proposal may be submitted by mail to John "Chris" Gee, Lead Assistant General Counsel, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, or by email to chris.gee@texasagriculture.gov. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

SUBCHAPTER A. GENERAL PROVISIONS

4 TAC §§14.1 - 14.4

The amendments are proposed under the Department's authority in Section 12.016 of the Texas Agriculture Code (Code), which authorizes the Department to adopt rule to administer its powers and duties under the Code; such powers and duties include Code, Section 101.006, the requirement that the Department to set fees for licensure to handle perishable commodities by rule; Code, Section 101.010, which requires the Department to set fees for identification cards for agents of license holders who either transport or buy perishable commodities; Code, Section 103.005, which also requires the Department to set fees for filing claims against the Produce Recovery Fund (Fund); Code, Section 103.009, which further requires the Department to issue orders canceling licenses and to deny issuing new licenses or renewing licenses for license holders or those required to be licensed to handle perishable commodities who, following payments from the Fund against them, neither pays nor agrees to pay either the Fund or the aggrieved party; Code, Section 103.011, which requires the Department to set an annual fee for those licensed under Code, Chapter 101; and Code, Section 103.012, which requires the Department, with the advice of the Board, to adopt rules related to payment of claims from the Fund.

The code affected by the proposed amendments is Texas Agriculture Code, Chapters 101 and 103.

§14.1. Definitions.

In addition to the definitions set out in Texas Agriculture Code (Code), Chapters 101[;] and 103, and Chapter 1, Subchapter A of this title (relating to [the] General Rules of Practice), the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Administrative Procedure Act--The Texas Government Code, Chapter 2001 [~~Agent--An employee authorized to act for and on behalf of a licensee as a buying agent and/or a transporting agent~~].

(2) (No change.)

(3) Citrus fruit [~~Fruit~~]~~--Any fruit belonging to the genus Citrus, Poncirus, Microcitrus, Eremocitrus, or Fortunella, including grapefruit, oranges, lemons, limes, and tangerines.~~

(4) Claim--A sworn complaint accompanied by the prescribed fee alleging a loss or damages occurred as a result of a violation of the terms or conditions of a contract involving the sale of perishable

commodities grown in Texas by a license holder or person required to be licensed.

(5) License holder [Licensee]--A person who holds a license issued under the [Texas Agriculture] Code, Chapter 101.

(6) Open Meetings Act--The [Texas Open Meetings Act,] Texas Government Code, Chapter 551.

(7) Perishable commodity [Commodity]--As defined in the Code, §101.001, fresh [Fresh] produce grown in Texas and generally considered a perishable vegetable or fruit.

§14.2. Citrus Proof of Ownership.

A license holder [Licensee] or a packer, processor, warehouseman or transporter may not receive or handle citrus fruit without requiring the person from whom the citrus fruit is purchased or received to furnish proof of ownership on a form approved by the department; except for citrus fruit being transported from the farm or grove to market or the place of first processing by the producer of the citrus fruit operating the producer's vehicle or by an employee of the producer operating a vehicle owned by the producer.

§14.3. Fees.

(a) License and ~~[registration]~~ identification card fees.

(1) (No change.)

(2) The fee for each identification card for transporting and buying agents is \$30.

(b) - (d) (No change.)

§14.4. Cancellation of License.

If an award and payment is made from the fund [Fund] and the license holder [Licensee], or person required to be licensed, fails to reimburse and/or fails to agree in writing to reimburse the fund [Fund] and/or the aggrieved [complaining] party [to the ease in accordance with the provisions of this chapter, the department shall initiate proceedings], after 90 days, the department shall initiate proceedings [of failure to reimburse and/or failure to agree in writing to reimburse the Produce Recovery Fund,] to cancel the license holder's [Licensee's] license in accordance with the Texas Agriculture Code (Code), §103.009. Such proceedings shall be conducted in accordance with the [Texas Agriculture] Code, §12.032, the Administrative Procedure Act, [Texas Government Code, Chapter 2001], and the department's General Rules of Practice and Procedure found at Chapter 1, Subchapter A of this title (relating to General Practice and Procedure) [rules of procedure].

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 22, 2024.

TRD-202405726

Susan Maldonado

General Counsel

Texas Department of Agriculture

Earliest possible date of adoption: January 5, 2025

For further information, please call: (512) 463-6591



SUBCHAPTER B. PRODUCE RECOVERY

FUND CLAIMS

4 TAC §§14.10 - 14.14

The amendments are proposed under the Department's authority in Code, Section 12.016, which authorizes the Department to adopt rule to administer its powers and duties under the Code. The amendments are proposed under Code, Section 103.009, which requires the Department to set schedules for reimbursements to the Fund and payments to aggrieved parties following Department payments from the Fund and Code, Section 103.012, which requires the Department, with the advice of the Board, to adopt rules related to payment of claims from the Fund.

The code affected by the proposed amendments is Texas Agriculture Code, Chapters 101 and 103.

§14.10. Claims Against the Fund.

(a) What claims can be filed. Only claims against a license holder [Licensee] or a person required to be licensed for loss or damages due to a violation of the terms or conditions of a contract for the sale of perishable commodities grown in Texas may be filed. ~~[The following claims may not be accepted:]~~

~~[(1) Claims for perishable commodities grown out-of-state.]~~

~~(b) [(2)] Claims filed under the Perishable Agriculture Commodities Act [(PACA)] that are accepted as formal complaints and adjudicated by the United States Department of Agriculture, or claims for which an aggrieved party [a complainant] has filed suit in a court of competent jurisdiction shall not be accepted.~~

~~[(b) Who may file. A person who suffers a loss or damages due to the violation of the terms or conditions of a contract by a licensee or a person required to be licensed may file a claim against the Fund.]~~

(c) How to file. A claim shall be filed with the department on a prescribed complaint form and shall be accompanied by the [prescribed] fee required by §14.3 of this chapter (relating to Fees). The date of postmark, if mailed, or the date the complaint and fee are received by the department, if hand-delivered, shall be the date the claim is deemed filed.

(d) Statute of Limitations. A claim shall be barred if it is filed later than [one year from the date the violation of the terms or conditions of a contract occurred. This limitation applies to claims that are based on violations that occurred prior to September 1, 2009. Claims based on violations that occurred on or after September 1, 2009 shall be barred if it is filed later than] two years from the date the payment was due.

~~[(e) Respondent's Option to Pay. If a recommendation for payment from the Fund is made by a department hearing officer or a payment is awarded in a final department or Board determination, the respondent may pay the amount found to be due directly to complainant rather than have that payment made by the Fund. If direct payment is made, parties shall notify the department in writing.]~~

§14.11. Determination on Claims by the Department.

(a) Once a claim is filed in accordance with §14.10 of this chapter [title] (relating to Claims Against the Fund), the department shall investigate the claim and may conduct a hearing to determine the amount due the aggrieved party. All hearings shall be conducted by a department hearing officer in accordance with the provisions of the Administrative Procedure Act and [the department's General Rules of Practice and Procedure found at] Chapter 1, Subchapter A of this title (relating to General Rules of Practice [and Procedure]).

(b) (No change.)

(c) Parties may protest the proposal for decision [recommendation] made by the department hearing officer by filing

a Notice of Protest in accordance with §14.12 of this chapter [title] (relating to Filing of Notice of Protest; Appeal to the Board). If no protest is filed, the case will be forwarded to the deputy commissioner [Deputy Commissioner] for a final [agency] determination.

(d) Parties may also protest the department's [agency's] final determination by filing a Notice of Protest in accordance with §14.12 of this chapter [title (relating to Filing of Notice of Protest; Appeal to the Board)].

(e) (No change.)

§14.12. Filing of Notice of Protest; Appeal to the Board.

(a) A party [person] who disputes the recommendation of the department's hearing officer or the department's final determination on a claim shall file a Notice of Protest with the [department. The notice shall be sent to the attention of the] Hearings Clerk, General Counsel Division, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. A copy of the Notice of Protest shall be sent to the opposing party and/or a designated representative.

(b) A Notice of Protest shall be in writing, state the [reason or] reasons for the protest, and request a hearing before the board [Board].

(c) A Notice of Protest must be received by the department within 15 days from the date of the receipt of the hearing officer's proposal for decision [Proposal for Decision] on the claim, or if an appeal from the final department [agency] determination, within 20 days from the date the final department [agency] determination was mailed. A Notice of Protest [The department shall accept notices of protest] filed by fax shall be accepted if it [facsimile transmission; as long as the facsimile] is received no later than 5:00 [5] p.m. on the due date. [Oral notices of protest shall not be accepted.]

(d) If a Notice of Protest is received on a claim, the claim shall be referred to the board [Board] for hearing.

§14.13. Payment of Claims from the Fund.

[(a) The following payments of claims shall apply for a claim based on a violation occurring prior to September 1, 2009.]

[(1) Claims of \$2000 or less may be paid in full.]

[(2) Claims of more than \$2000 may be paid in the following manner:]

[(A) If the claim was filed on or after September 1, 1999, but prior to September 1, 2009, the first \$2000 plus no more than 70% of the amount in excess of \$2,000, may be paid.]

[(B) If the claim was filed prior to September 1, 1999, the first \$1,000 plus no more than 60% of the amount in excess of \$1000, may be paid.]

[(3) Claims arising from Same Contract. Total payment for claims arising from the same contract shall not exceed \$35,000.]

[(4) Claims Against a Single Licensee. Total payment for claims against a single licensee shall not exceed \$85,000 in any one calendar year. Claims shall be paid in the order that a final determination is made by the department or the Board. In cases when a claim cannot be paid in full due to the restrictions of this paragraph, the claimant shall be given the option of accepting immediate payment of a lesser amount or accepting full payment from the Fund during the next calendar year.]

[(b) Payment [The following payments] of claims from the fund shall be subject to the following: [apply for a claim based on a violation occurring on or after September 1, 2009.]

(1) (No change.)

(2) [Claims Arising from Same Contract.] Total payment for claims arising from the same contract shall not exceed \$50,000.

[(3) Claims Against a Single Licensee or a person required to be licensed. Total payment for claims against a single licensee or a person required to be licensed shall not exceed \$85,000 in any one calendar year.]

(3) [(4)] Claims against a person who is not licensed. Payment for claims against a person who is not licensed at the time the claim was filed shall not exceed 80% of the total recovery [claim].

(4) [(5)] Claims shall be paid in accordance with the order that a final determination is made by the department or the board [Board]. In cases when a claim cannot be paid in full due to the restrictions of the Texas Agriculture Code, §103.008(c) [this subsection], the aggrieved party [claimant] shall be given the option of accepting immediate payment of a lesser amount or accepting full payment from the fund [Fund] during the next calendar year.

§14.14. Reimbursement to the Fund.

(a) If the department pays a claim [against a licensee, or a person required to be licensed,] from the fund [Fund]:

(1) Upon issuance of a final determination from the department or the board [Board], the license holder [licensee] shall reimburse the total amount paid by the fund [Fund] or agree in writing to reimburse the fund [Fund] the total amount paid by the fund [Fund]. If a person is not licensed on the date the transaction forming the basis of the claim occurred but is required to be licensed, the person shall pay the fund one and one-half times the amount of the claim paid by the fund [Fund], upon issuance of a final determination from the department or the board [Board]. Payment to the fund [Fund] is due in full within 30 days of the date of the final [agency] determination. If the license holder [licensee], or a person required to be licensed, cannot pay the full amount owed to the fund [Fund] at that time, the department may allow the license holder [licensee], or a person required to be licensed, to pay the fund pursuant to [amount owed to the Fund on an amortization schedule set out in] paragraph (3) of this subsection plus an annual interest rate of 8.0%.

(2) After fully reimbursing the fund [Fund] for payments made to the aggrieved party [claimant], the license holder [licensee], or a person required to be licensed, shall immediately pay or agree to pay the claimant any remaining amount due that party (balance not received from the fund [Fund]). If the license holder [licensee], or a person required to be licensed, cannot pay the full amount to the aggrieved party [claimant] at that time, the department may allow the license holder [licensee], or a person required to be licensed, to pay the amount owed to the aggrieved party pursuant to [claimant on an amortization schedule as set out in] paragraph (3) of this subsection plus an annual interest rate of 8.0%, after the fund [Fund] is fully reimbursed.

(3) Payment [Amortization] Schedule [for Reimbursement to the Produce Recovery Fund and Claimant]. Claims of:

(A) - (D) (No change.)

(b) Monthly installments to the fund [Fund] are due on the last business [working] day of the month and payable to TDA, P.O. Box 12847, Austin, Texas 78711. The department may make exceptions on payment schedules for good cause shown.

(c) If a license holder [licensee], or a person required to be licensed, owes money to the fund [Fund] at the time the license holder [licensee], or a person required to be licensed, makes a claim against the fund [Fund], the department shall offset the amount owed to the fund [Fund] from the amount determined to be payable from the fund [Fund].

(d) Respondent's Option to Pay. The respondent may pay the amount found to be directly to the aggrieved party rather than have the payment made by the fund. If direct payment is made, the parties shall notify the department in writing.

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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General Counsel
Texas Department of Agriculture
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SUBCHAPTER C. PRODUCE RECOVERY FUND BOARD

4 TAC §§14.20 - 14.26

The amendments are proposed under the Department's authority in Code, Section 12.016, which authorizes the Department to adopt rule to administer its powers and duties under the Code. The amendments are proposed under Section 103.012 of the Texas Agriculture Code, which requires the Department, with the advice of the Board, to adopt rules related to payment of claims from the Fund.

The code affected by the proposed amendments is Texas Agriculture Code, Chapters 101 and 103.

§14.20. Purpose and Scope.

The purpose of this subchapter [these sections] is to provide [operating] procedures for the board [Produce Recovery Fund Board (the Board)], and to provide procedures for the conduct and determination of Board decisions], so that hearings and other proceedings before the Board may be conducted in a uniform and efficient manner. Unless otherwise provided, these rules are designed to supplement procedures established in Chapter 1, Subchapter A of this title (relating to General Rules of Practice [and Procedure]), and the Administrative Procedure Act and should be read together with those procedures.

§14.21. Duties of the Board and the Department.

(a) The board [Board] shall:

(1) advise the department on all matters relating to the fund [Fund], including the fund's [Fund's] budget and revenues necessary to accomplish the purposes of the fund [Fund];

(2) advise the department on the adoption of rules relating to the payment of claims from the fund [Fund] and to the administration of the fund [Fund]; and

(3) conduct hearings on claims on which a Notice of Protest has been filed with the department.

(b) The department shall:

(1) administer the fund [Fund], including the collection of fees from license holders [licensees], or persons [a person] required to be licensed, which are to be deposited into the fund [Fund] in accordance with the Texas Agriculture Code (Code), Chapter 103;

(2) receive and process claims;

(3) conduct hearings on claims, when [where] appropriate, and issue determinations [an agency determination] on claims;

(4) refer claims to the board when a Notice of Protest is filed [Board, where appropriate];

(5) [where an award from the Fund is made,] process payment of claims in accordance with the Code, Chapter 103, when an award from the fund is made;

(6) [where appropriate,] seek reimbursement of payments made from the fund when appropriate [Fund]; and

(7) provide administrative support to the board [Board], including posting notices of board [Board] meetings, making arrangements for board [Board] meetings, and preparing and mailing [ef] notices of hearing and other correspondence to parties on cases heard by the board [Board].

§14.22. Meetings.

(a) Location, conduct and time of meetings. The board [Board] shall meet in Austin, or other places designated by the board [Board], on dates to be determined by the department with the advice of the board [Board], for the purpose of conducting hearings on matters appealed to the board [Board] and/or for the purpose of conducting business authorized by the Texas Agriculture Code, Chapter 103. Meetings will be conducted in accordance with the Open Meetings Act.

(b) Notice of meetings. Notice [A written notice] of the agenda, date, time and place of each [business] meeting [of the Board] and/or hearing of [conducted by] the board [Board,] shall be provided [published in the Texas Register] in accordance with the Open Meetings Act. [In cases of emergency or urgent public necessity, notice shall be given as authorized by the Open Meetings Act.]

(c) Chairman to preside. The chairman of the board [Board] shall preside over all meetings of the board [Board] and shall perform all duties delegated to the chairman [him or her] under this subchapter [these rules]. In the chairman's absence, the vice-chairman shall preside over all meetings of the board [Board], and shall perform all duties of the chairman under this subchapter [these rules]. The vice-chairman shall be selected by a majority of board [Board] members present at the time of selection.

(d) Public comment period. As part of its [business] meetings, the board [Board] shall [include a public comment period to] allow members of the public to [appear and provide] comment on matters within the jurisdiction of the board [Board]. This item will be included in the agenda of [published in the Texas Register for] the [business] meeting.

§14.23. Conduct of Hearings of the Produce Recovery Fund Board.

(a) Representation. Parties to proceedings before the board [Board] shall have a right to appear and may be represented by counsel, or any other designated person, and shall have a right to have witnesses appear to testify on their behalf.

(b) Review of Department Record and Presentation By Parties.

(1) The board [In hearing cases in which a Notice of Protest has been filed, the Board] shall conduct hearings to review cases for which a Notice of Protest has been filed and base its determination on the record of the hearing held before the department and any subsequent matters filed by parties to the case which are admitted into the record by the board [Board], including any exhibits accepted into the record at the hearing before the board [Board].

(2) The board [Board] may take additional testimony [of parties or other witnesses] and admit into the record any documentary

evidence that it deems necessary to clarify the record of the hearing before the department and/or aid the board [Board] in making its determination on the case.

(3) At the board's [Board's] discretion, any party may present oral testimony or argument [~~to the Board~~] by filing a written request with the board [Board ~~a written request to do so~~] at least five business [working] days prior to the hearing [~~day on which the Board is to consider the case~~]. The board [Board] may waive the five-day [~~five working day~~] requirement for good cause shown.

(c) Ruling on Objections, Motions; Filing of Motions.

(1) The board [Board] shall have the authority to rule on motions, on the admissibility of evidence, on objections, and on amendments to pleadings.

(2) A pre-hearing [Any] motion [~~relating to a pending proceeding~~] shall [~~unless made during a hearing,~~] be written, set forth under oath the relief or order sought and the specific reasons and grounds therefor, and be directed to the board [Board]. Any motion [~~including a motion for continuance~~] shall be filed with the Hearings Clerk, General Counsel Division, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, and distributed to all interested parties, under a certificate of service, not less than seven business [working] days prior to the hearing [designated] date [~~that the matter is set to be heard by the Board~~]. The board [Board] may waive the seven-day [seven day] requirement for good cause shown. A reply to such motion may be filed by any other party to the proceeding. A pre-hearing motion [Pre-hearing motions] shall be ruled on by the chairman [Chairman] at the earliest time practicable, and a final determination [determinations] on any such motion [motions] shall be signed by the chairman [Chairman] on behalf of the board [Board].

(3) When necessary, in the judgment of the chairman [Chairman] and/or the board [Board], or upon request of a party, a hearing may be set to consider any motion. A request for hearing on a motion, or a request for hearing on a final determination issued in response to a motion shall be filed with the board [Board] no later than three business [working] days after receipt of the final determination by the requesting party.

(d) Exhibits.

(1) All exhibits admitted into the record of the hearing before the department and the [tape] recording of the hearing shall be tendered for admission into the record of the hearing before the board [Board]. All such exhibits shall be available to the [~~for inspection by~~] parties prior to the beginning of the hearing, and [~~are available prior to the hearing date~~] to any interested person or party prior to the hearing date upon filing of a written request to the Hearings Clerk [~~Deputy General Counsel, General Counsel Division, Texas Department of Agriculture~~].

(2) A [Each] party shall deliver to the other party any additional documents intended to be offered at the hearing at least three business [working] days prior to the hearing date [~~any documents in addition to those included in the record of the hearing before the department which the party intends to offer at the hearing before the Board~~].

(e) Recording the Hearing and Preparation of Transcript.

(1) All hearings before the board [Board] shall be [tape] recorded and [~~All tape recordings of hearings before the Board shall be~~] maintained by the General Counsel Division, Texas Department of Agriculture.

(2) Upon written request [~~and~~] and payment of any associated [~~the appropriate~~] cost [~~by any party~~], the department shall prepare a

copy of the [tape] recording of a hearing for any party [~~conducted by the Board~~].

(3) Upon written request and payment of any associated cost [~~of any party~~], the department shall prepare, or order the preparation of, a transcript of a hearing for any party [~~conducted by the Board~~]. The Board may assess the cost of the transcript to one or more parties.

(4) In the event a final decision of the board [Board] is appealed to the district court, the board [Board] may require the appealing party to pay all or part of the cost of preparation of the original or a certified copy of the record of the [Board] proceeding that is required to be transmitted to the reviewing court, as is specified by the board [Board].

§14.24. *The Board's Final Determination.*

(a) All final determinations of the board [Board] shall be in writing and shall set forth findings of fact and conclusions of law as required by the Administrative Procedure Act.

(b) Unless otherwise prohibited by statute or by this chapter, all final board [Board] determinations may be signed by the chairman [Chairman], on behalf of the board [Board]. In the event that the final decision of the board [Board] is not unanimous, the final determination may indicate that the vote was not unanimous, and may indicate those members dissenting.

(c) Except for good cause, the [The] Board's final determination shall be issued within 60 days of the closing of the record of the case [~~unless for good cause, the Board members hearing the case are not able to reconvene to deliberate on a case within the 60 day period after the closing of the record~~].

§14.25. *Motion for Rehearing.*

A motion for rehearing shall be governed by the Administrative Procedure Act, §§2001.145-2001.146. Communications regarding any such motion shall be directed to the board [Board], and filed with the Hearings Clerk, General Counsel Division, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. A copy of the motion for rehearing shall [~~should also~~] be sent to the opposing party and/or designated representative. Board rulings on motions for rehearing shall [~~may~~] be made [~~by telephone, mail, or other suitable means of communication~~] in accordance with the Administrative Procedure Act, §2001.146. A final determination granting or denying a motion for rehearing may be signed by the chairman [Chairman] on behalf of the board [Board].

§14.26. *Appeals.*

All appeals from final board [Board] determinations shall be governed by the Administrative Procedure Act, Subchapter G [~~or other pertinent statute~~].

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 16. ECONOMIC REGULATION

PART 9. TEXAS LOTTERY COMMISSION

CHAPTER 401. ADMINISTRATION OF STATE LOTTERY ACT

The Texas Lottery Commission (Commission) proposes amendments to 16 TAC §§401.101 (Lottery Procurement Procedures), 401.102 (Protests of the Terms of a Formal Competitive Solicitation), 401.103 (Protests of Contract Award), 401.104 (Contract Monitoring Roles and Responsibilities), 401.153 (Qualifications for License), 401.158 (Suspension or Revocation of License), 401.160 (Standard Penalty Chart), 401.301 (General Definitions), 401.302 (Scratch Ticket Game Rules), 401.304 (Draw Game Rules (General)), 401.355 (Restricted Sales), and 401.501 (Lottery Security).

The proposed rule amendments are the result of the Commission's recent rule review conducted in accordance with Texas Government Code §2001.039, as well as the agency's recent review by the Texas Sunset Advisory Commission. Among the more significant changes, this proposal addresses issues identified as rulemaking gaps in the May 2024 Texas Sunset Advisory Commission Staff Report (Staff Report). Specifically, the Staff Report noted that there was "no clarification as to whether internet sales of lottery products are prohibited" (addressed in Rules 401.153(b)(12), 401.158(b)(27), 401.160(h), and 401.355(a)), and "no explanation of what it means for a person to 'engage in a business exclusively as a (lottery) sales agent' for purposes of licensure" (addressed in Rule 401.153(b)(13)).

The proposed rule amendments also clarify procurement procedures and the time period a bidder or proposer has to respond to an appeal of certain protest decisions issued by the agency in procurements; update several definitions; update a provision in the scratch ticket game rule to make it more consistent with the draw game rule; update the scratch and draw ticket prize claim processes; and update the language regarding lottery security to state that several divisions of the Commission are responsible for developing and maintaining security plans and procedures, and confirming that these plans and procedures are protected from required public disclosure as allowed under the Texas Public Information Act.

The proposed amendments to Rule 401.101 clarify the rules governing the Invitation for Bid (IFB) procurement method by reorganizing the section and by adding language that describes the process used for IFBs. The proposed amendments also clarify certain differences between the Request for Proposals (RFP) and IFB procurement methods.

The proposed amendments to Rule 401.102 add language stating that the email address designated by the vendor for correspondence in the procurement will also serve as the email address for notice of proceedings and decisions under this section.

The proposed amendments to Rule 401.103(g) clarify the time period a successful bidder or proposer has to respond to an appeal of an agency determination of a vendor's protest to a contract award resulting from a competitive solicitation. Also, the proposal adds language stating that the email address designated by the vendor for correspondence in the procurement will also serve as the email address for notice of proceedings and decisions under this section.

The proposed amendments to Rule 401.104 clarify that the agency may assign designated personnel to monitor contract compliance and facilitate historically underutilized business participation, in addition to the existing divisions within the agency that handle these matters.

The proposed amendments to Rule 401.153(b)(12) clarify that an application for a sales agent license will be denied if the applicant intends to sell lottery tickets via the internet, and the proposed amendments to Rule 401.153(b)(13) reiterate the prohibition in the State Lottery Act that an application for a sales agent license will be denied if the applicant intends to engage in business exclusively as a Texas Lottery ticket sales agent (as defined in the proposed amendments). This change addresses gaps that were identified by the Staff Report.

The proposed amendments to Rule 401.153 also add a provision that, based upon consideration of the factors in Rule 401.160(g), the director may determine a person or organization whose license has been revoked, surrendered or denied is not eligible to apply for another license for one year.

The proposed amendments to Rule 401.158(b)(23) make it an express violation to require a purchaser to buy additional items when paying for lottery tickets with a debit card and the proposed amendments to Rule 401.158(b)(27) make it an express violation to sell lottery tickets over the internet.

The proposed amendments to Rule 401.160 update the penalty chart and correspond with the proposed amendments to Rules 401.158(b)(23) and (27) referenced above.

The proposed amendments to Rule 401.301(1), (4), (51), and (55) make minor updates to multiple definitions to increase the clarity of those definitions. The proposed amendments also add a definition of "Present at the terminal" that was deleted in a non-substantive rule amendment in August 2020. The purpose of re-inserting the definition, in combination with the related proposed amendment to Rule 401.304(b)(3), is to dispel any misconception that the deletion was substantive and make clear that all aspects of a sales transaction under Rule 401.304 must take place at the retail location.

The proposed amendments to Rule 401.302(a)(1) add language from Rule 401.304(b)(3) (Draw Game Rules (General)) regarding the requirement that all aspects of a ticket purchase must take place at a licensed retail location, to make Rule 401.302 more consistent with Rule 401.304. The proposed amendments to Rule 401.302(e)(6) and (f)(2) update the rule by requiring all scratch ticket prize claim processes to be made in accordance with Commission procedures and deleting requirements that are inapplicable to mobile prize claims.

The proposed amendments to Rule 401.304(b)(3) add language that was deleted in a non-substantive rule amendment in 2020 to reiterate and clarify that no part of a draw game ticket sale may take place away from the terminal. The proposed amendments to Rule 401.304(d)(3) update the rule by requiring all draw ticket prize claim processes to be made in accordance with Commission procedures and deleting requirements that are inapplicable to mobile prize claims.

The proposed amendments to Rule 401.355(a) clarify that retailers shall not sell lottery tickets via the internet, a gap that was identified by the Staff Report, and the proposed amendments to Rule 401.355(b) update a cross-reference.

The proposed amendments to Rule 401.501 update the language regarding lottery security to state that several divisions of

the Commission are responsible for developing and maintaining security plans and procedures, including information security, gaming security, and facility security as required by the State Lottery Act to ensure the integrity and security of the lottery games, and confirming that these plans and procedures are protected from required public disclosure as allowed under the Texas Public Information Act.

Angela Zgabay-Zgarba, Administration Director, has determined that for each year of the first five years the proposed amendments will be in effect, the anticipated public benefit will be greater clarity regarding agency procedures governing procurement.

Robert Tirloni, Lottery Operations Director, has determined that for each year of the first five years the proposed amendments will be in effect, the anticipated public benefit includes a greater understanding of the Commission's rules and games by licensed lottery retailers and lottery players based on the removal of obsolete language and the addition of new, clarifying language; and addressing issues identified as rulemaking gaps in the Staff Report. The new rule language should lead to an increase in understanding and compliance.

Sergio Rey, Controller, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no significant fiscal impact for state or local governments as a result of the proposed amendments. There will be no adverse effect on small businesses or rural communities, micro businesses, or local or state employment. There will be no additional economic cost to persons required to comply with the amendments, as proposed. Furthermore, an Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed amendments will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Pursuant to Texas Government Code §2001.0221, the Commission provides the following Government Growth Impact Statement for the proposed amendments. For each year of the first five years the proposed amendments will be in effect, Sergio Rey, Controller, has determined the following:

- (1) The proposed amendments do not create or eliminate a government program.
- (2) Implementation of the proposed amendments does not require the creation of new employee positions or the elimination of existing employee positions.
- (3) Implementation of the proposed amendments does not require an increase or decrease in future legislative appropriations to the Commission.
- (4) The proposed amendments do not require an increase or decrease in fees paid to the Commission.
- (5) The proposed amendments do not create a new regulation.
- (6) The proposed amendments do not expand or limit an existing regulation.
- (7) The proposed amendments do not increase or decrease the number of individuals subject to the rule's applicability.
- (8) The proposed amendments do not positively or adversely affect this state's economy.

The Commission requests comments on the proposed amendments from any interested person. Comments may be submitted

to Kyle Wolfe, Assistant General Counsel, by mail at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at legal.input@lottery.state.tx.us. Comments must be received within 45 days after publication of this proposal in the *Texas Register* to be considered. The Commission will also hold a public hearing to receive comments on this proposal at 1:00 p.m. on January 15, 2025, at 1801 Congress Ave., George H. W. Bush Building, 4th Floor, Board Room 4.300, Austin, TX, 78701.

SUBCHAPTER A. PROCUREMENT

16 TAC §§401.101 - 401.104

These amendments are proposed under Texas Government Code §466.015(c), which authorizes the Commission to adopt rules governing the operation of the lottery, and §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

This proposal is intended to implement Texas Government Code, Chapter 466.

§401.101. Lottery Procurement Procedures.

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

(e) Formal competitive solicitations.

(1) A formal competitive solicitation is a process conducted in order to receive at least three sealed competitive bids or proposals pursuant to the issuance of an IFB, RFP, RFQ, or another statewide contract process, respectively.

(A) An IFB will be used when the agency is able to describe, by way of established specifications, exactly what it wishes to procure, and wants bidders to offer such at a specific price. For formal competitive solicitations where an IFB is used, the agency will award a contract to the qualified bidder submitting the lowest cost responsible bid meeting all specifications and providing the best value for the agency, as determined during the evaluation of the bids.

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

(2) - (4) (No change.)

~~{(5) For formal competitive solicitations where an IFB is used, the agency will award a contract to the qualified bidder submitting the lowest cost responsible bid meeting all specifications and providing the best value for the agency, as determined during the evaluation of the bids. Negotiations are not authorized when utilizing an IFB procurement method; however, if only one response is received, negotiations are allowed, provided, negotiations may not result in a material change to the advertised specifications.}~~

(f) RFPs and IFBs [RFP].

(1) Submission of RFP. When an RFP is used by the agency, the RFP will contain, at a minimum, the following:

(A) - (B) (No change.)

(C) the time and date proposals are due, and the location and person to whom they must ~~[are to]~~ be submitted;

(D) - (E) (No change.)

(2) Submission of IFB. When an IFB is used by the agency, a bidder will submit a bid in response to the solicitation. The IFB solicitation will contain, at a minimum, the following:

(A) A detailed description of the goods and/or services to be provided, and specific specifications for the goods or services to be procured;

(B) A description of the format bids must follow and the elements they must contain;

(C) The time and date bids are due, and the location and person to whom they must be submitted;

(D) an identification of the process to be utilized in evaluating bids; and

(E) a listing of the factors to be utilized in evaluating bids and awarding a purchase order. At a minimum, the factors should include:

(i) the bidder's price to provide the goods or services;

(ii) the probable quality of the offered goods or services;

(iii) the quality of the bidder's past performance in contracting with the Texas Lottery, with other state entities or with private sector entities;

(iv) the bidder's experience in providing the requested goods or services;

(v) the qualifications of the bidder's personnel; and,

(vi) whether the bidder performed the good faith effort required by the HUB subcontracting plan, as applicable.

(3) [(2)] Evaluation Process. The agency will, prior to the deadline for receipt of proposals or bids, develop and establish comprehensive evaluation criteria to be utilized by an evaluation committee in evaluating the proposals or bids. All proposals or bids that are responsive to the procurement [RFP] will be reviewed by the evaluation committee. Part of the initial evaluation process may include an inspection trip to the proposer's facilities, and/or proposers may be requested to make an oral presentation to the committee. The evaluation committee may seek advice from consultants. If consultants are employed, they may be provided all information provided by the proposers or bidders. The evaluation committee will evaluate and score all proposals in accordance with the evaluation criteria.

(4) [(3)] Best and Final Offers (BAFO). With an RFP, the [The] agency may select top proposers, which may each be given an opportunity to discuss, clarify, and negotiate with the agency, and submit revisions to their respective proposals to the agency through a BAFO process. During discussions between the proposers and the agency, no information from a competing proposal may be revealed by the agency to another competitor. Any type of auction practice or allowing the transfer of technical information is specifically prohibited. At the conclusion of the discussions, BAFOs may be formally requested from the proposers and a deadline will be set for submission. BAFOs will be submitted by supplemental pages and not a complete resubmission of the proposal. All BAFOs will be reviewed by the evaluation committee. The evaluation committee will evaluate and score the BAFO response together with the original proposal in accordance with the evaluation criteria.

(5) [(4)] Negotiation.

(A) RFP. If a BAFO process is not used, the agency will attempt to negotiate a contract with the selected proposer. If a contract cannot be negotiated with the selected proposer on terms the agency determines reasonable, negotiations with that proposer will be terminated, and negotiations will be undertaken with the next highest scored

proposer. This process will be continued until a contract is executed by a proposer and the agency, or negotiations with all qualified proposers are terminated. If no contract is executed, the agency may cancel the solicitation.

(B) IFB. Negotiations are not authorized when utilizing an IFB procurement method; however, if only one response is received, negotiations are allowed, provided, negotiations may not result in a material change to the advertised specifications.

(6) [(5)] Multiple Award. The agency may award a contract to two or more vendors or contractors using a single solicitation to furnish the same or similar supplies or services, where more than one vendor or contractor is needed to meet the agency's requirements for quantity, delivery, or service.

(g) - (i) (No change.)

§401.102. *Protests of the Terms of a Formal Competitive Solicitation.*

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

(e) The director of administration will review the protest, and the solicitation file, and will make a written determination of the protest, which may include canceling the solicitation. The director of administration's written determination will be served by email on the protestant. Confirmation that the notice was sent to an email address designated for the receipt of correspondence in the procurement will be conclusive proof that delivery was made. The decision of the director of administration may be appealed to the executive director. The appeal must be filed electronically with the commission's general counsel by 5 p.m. the next business day after issuance of the written determination. An appeal is considered timely filed if it is electronically filed before the filing deadline. An electronically filed appeal is deemed filed when transmitted to the protestant's electronic filing service provider.

(f) On appeal of the director of administration's determination, the executive director will review the protest, the solicitation file, any responses, and the director of administration's determination, including any reasoning that supports the determination. The executive director will then make a written determination of the appeal, which may include canceling the solicitation. The executive director's written determination will be served, by email on the protestant. Confirmation that the notice was sent to an email address designated for the receipt of correspondence in the procurement [correspondence,] will be conclusive proof that delivery was made. An appeal to the Texas Lottery Commission of the determination of the executive director must be filed electronically with the commission's general counsel by 5 p.m. the next business day after issuance of the written determination. An appeal is considered timely if it is electronically filed before the filing deadline. An electronically filed appeal is deemed filed when transmitted to the protestant's electronic filing service provider.

(g) - (h) (No change.)

(i) The Texas Lottery Commission will make a written determination of the protest. To make its determination, the commission [Commission] will review:

(1) - (4) (No change.)

(5) The staff attorney's recommendation. The written determination on the protest may include a determination canceling the solicitation. The Texas Lottery Commission's written determination will be served by email on the protestant. Confirmation that the notice was sent to an email address designated for the receipt of correspondence in the procurement [correspondence,] will be conclusive proof that delivery was made. The Texas Lottery Commission's determination shall be administratively final when issued.

§401.103. *Protests of Contract Award.*

(a) (No change.)

(b) A protest of any contract award must be filed electronically with the commission's general counsel, by email to legal.input@lottery.state.tx.us, within 72 hours after receipt of notice of contract award. A copy of the protest must be delivered to the successful bidder or proposer at the same time that the protest or supplement is delivered to the agency. The protestant must include its email address with the protest. A protest is considered timely filed if it is electronically filed before the filing deadline. An electronically filed protest is deemed filed when transmitted to the protestant's electronic filing service provider. Unless otherwise requested by the commission, the protestant is not required to file a paper copy of its protest. For good cause shown by the protestant, the commission may allow an alternate form of filing. The electronically filed protest must be in a text-searchable PDF format. The protestant is solely responsible for ensuring its protest is complete and filed timely with the office of the general counsel and a copy is sent to the successful bidder or proposer. A protest not filed timely will not be considered, and the protestant will be so notified in writing by the commission's general counsel by electronic notice sent to the protestant's designated email address, or the email address identified for notices in the procurement response. A protestant may supplement its timely filed protest. The deadline to supplement is 5 p.m. central time, 10 calendar days after notice of contract award.

(c) In the event of a protest of a contract award, the successful bidder(s) or proposer(s) may file a written response electronically to the protest within 72 hours after the office of the general counsel's receipt of the protest or any supplemental filing. The successful bidder(s) or proposer(s) must include its email address with the response. A response is considered timely filed if it is electronically filed before the filing deadline. An electronically filed response is deemed filed when transmitted to the successful bidder(s) or proposer(s)'s electronic filing service provider. The electronically filed response must be in a text-searchable PDF format. The successful bidder(s) or proposer(s) is solely responsible for ensuring the response is complete and filed timely with the office of the general counsel. Responses not filed timely will not be considered, and the successful bidder(s) or proposer(s) will be so notified in writing by the commission's general counsel by electronic notice sent to the successful bidder(s) or proposer(s)'s designated email address, or the email address identified for notices in the procurement response.

(d) - (e) (No change.)

(f) The director of administration will review the protest, the contract award file, any responses, and will make a written determination of the protest, which may include canceling the award of the contract. The director of administration's written determination will be served, by facsimile or by email, on the protestant and the successful bidder(s) or proposer(s). Confirmation that the notice was sent to an email address designated for the receipt of correspondence, will be conclusive proof that delivery was made. The decision of the director of administration may be appealed to the executive director [Executive Director]. The appeal must be filed electronically with the commission's general counsel by 5 p.m. of the next business day after issuance of the written determination. An appeal is considered timely filed if it is electronically filed before the filing deadline. An electronically filed appeal is deemed filed when transmitted to the protestant's electronic filing service provider.

(g) The successful bidder(s) or proposer(s) may file a response electronically to the appeal of a determination made by the director of administration or the executive director by 5 p.m. of the next business

day [Executive Director within 24 hours] after notice of the commission's receipt of the appeal. The successful bidder(s) or proposer(s) must include its email address with the response. A response is considered timely filed if it is electronically filed before the filing deadline. An electronically filed response is deemed filed when transmitted to the successful bidder(s) or proposer(s)'s electronic filing service provider. Unless otherwise requested by the commission, the successful bidder(s) or proposer(s) is not required to file a paper copy of its response. The electronically filed response must be in text-searchable PDF format. The successful bidder(s) or proposer(s) is solely responsible for ensuring the response is complete and filed timely with the office of the general counsel. Responses not filed timely will not be considered, and the respondent will be so notified in writing by the commission's general counsel by electronic notice sent to the successful bidder(s) or proposer(s)'s designated email address.

(h) On appeal of the director of administration's determination, the executive director will review the protest, the contract award file and responses, and the director of administration's determination, including any reasoning that supports the determination. The executive director [Executive Director] will then make a written determination of the protest, which may include abating the award of the contract. The executive director's written determination will be served by email on the protestant. Confirmation that the notice was sent to an email address designated for the receipt of correspondence [correspondence] will be conclusive proof that delivery was made. An appeal to the Texas Lottery Commission of the determination of the executive director must be filed electronically with the commission's general counsel by 5 p.m. of the next business day after issuance of the written determination. An appeal is considered timely filed if it is electronically filed before the filing deadline. An electronically filed appeal is deemed filed when transmitted to the protestant's electronic filing service provider.

(i) - (k) (No change.)

§401.104. *Contract Monitoring Roles and Responsibilities.*

The contract monitoring roles and responsibilities of agency internal audit staff (or contractor) and other inspection, investigative, or compliance staff are as follows:

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

(4) A division or divisions, or other designated personnel within the agency, [agency] will monitor and report to other appropriate agency divisions or units regarding contract compliance.

(5) A HUB coordinator and any other designated personnel [division] within the agency will assist the administering division or divisions and the contract management section in monitoring agency contracts in connection with applicable historically underutilized and minority business contract requirements.

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SUBCHAPTER B. LICENSING OF SALES AGENTS

16 TAC §§401.153, 40.158, 401.160

These amendments are proposed under Texas Government Code §466.015(c), which authorizes the Commission to adopt rules governing the operation of the lottery, and §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

This proposal is intended to implement Texas Government Code, Chapter 466.

§401.153. Qualifications for License.

(a) (No change.)

(b) The director may grant or deny an application for a license under this subchapter based on any one or more factors listed in subsection (a) of this section. In addition, the director shall deny an application for a license under this subchapter upon a finding that the applicant:

(1) - (9) (No change.)

(10) failed to certify to the director the applicant's compliance with the federal Americans With Disabilities Act; [or]

(11) is the subject of a license suspension or decision issued under Chapter 232, Family Code; [Code.]

(12) intends to sell lottery tickets via the internet; or

(13) intends to engage in business exclusively as a Texas Lottery ticket sales agent. For purposes of this section, an applicant "intends to engage in business exclusively as a Texas Lottery ticket sales agent" if the applicant does not sell any goods or services to the public other than Texas Lottery tickets.

(c) - (e) (No change.)

(f) Based upon consideration of the factors in §401.160(g) of this title (relating to Standard Penalty Chart), the director may determine a person or organization whose license has been revoked or surrendered, or whose application has been denied for reasons which would justify a revocation of an existing license, will not be eligible to apply for another license earlier than one year from the date of revocation, surrender, or denial.

§401.158. Suspension or Revocation of License.

(a) (No change.)

(b) Without limiting the commission's ability to consider factors listed in §401.153(b) of this title as grounds for suspension or revocation of a license issued under this subchapter, the commission may also suspend or revoke a license for reasons including, but not limited to, any of the following:

(1) - (22) (No change.)

(23) licensee charges a fee for lottery ticket purchases using a debit card, requires an additional purchase with a debit card, and/or requires a minimum dollar amount for debit card purchases of only lottery tickets.

(24) - (26) (No change.)

(27) licensee sells tickets over the telephone or internet, or via mail order sales; or [sales,] establishes or promotes a group purchase or pooling arrangement under which tickets are purchased on behalf of the group or pool and any prize is divided among the members of the group or pool, and the licensee intentionally or knowingly:

(A) - (B) (No change.)

(28) - (39) (No change.)

(40) licensee incurs four (4) notices of nonsufficient fund transfers or non-transfer of funds within a 12-month period (revocation only);

(41) licensee fails to pay the full amount of money owed to the commission after a nonsufficient funds transfer or non-transfer of funds to the commission's account (revocation only); or

(42) (No change.)

§401.160. Standard Penalty Chart.

(a) - (f) (No change.)

(g) Based upon consideration of the following factors, the commission may impose penalties other than the penalties recommended in §401.158 of this title (relating to Suspension or Revocation of License) and/or this section:

(1) - (8) (No change.)

(9) Penalties imposed for related offenses; [or]

(10) Current employment status of any employee(s) that committed violation(s); or

(11) [(+0)] Any other mitigating or aggravating circumstances.

(h) Standard Penalty Chart.

Figure: 16 TAC §401.160(h)

[Figure: 16 TAC §401.160(h)]

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. LOTTERY GAME RULES

16 TAC §§401.301, 401.302, 401.304

These amendments are proposed under Texas Government Code §466.015(c), which authorizes the Commission to adopt rules governing the operation of the lottery, and §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

This proposal is intended to implement Texas Government Code, Chapter 466.

§401.301. General Definitions.

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

(1) Caption--The letters or other characters appearing below the play symbols in the play area of a ticket that verify the correctness of the play symbols.

(2) - (3) (No change.)

(4) Claim form--The printed or electronic form authorized and provided by the commission that a claimant shall complete and submit to the commission when claiming a prize.

(5) - (34) (No change.)

(35) Present at the terminal--A player remains physically present at the terminal from the time the player's order for the purchase of draw game tickets is paid for and accepted by the retailer until the processing of the order is completed and the tickets are delivered to the player at the retailer terminal location.

(36) [(35)] Prize amounts--The amount of money payable to each share in a prize category, the annuitized future value of each share in a prize category, or the net present cash value of each share in a prize category for each draw game drawing. Prize amounts are calculated by dividing the prize category contribution, the annuitized future value of the prize category contribution, or the net present cash value of the prize category contribution by the number of shares determined for the prize category.

(37) [(36)] Prize breakage--The money which is left over from the rounding down of the pari-mutuel prize levels to the next lowest whole dollar amount or money which is in excess of the amount needed to pay a prize.

(38) [(37)] Prize category--The matching combinations of numbers and their corresponding prize levels as described in rules for the specific game being played.

(39) [(38)] Prize category contributions--Refers to contributions for each drawing to each prize category, including direct and indirect prize category contributions.

(40) [(39)] Prize fund--The monies allocated to be returned to players in winning tickets within a specific scratch ticket game.

(41) [(40)] Prize pool--In a draw game, the total amount of money available for prizes as a percentage of the total sales for the current draw period.

(42) [(41)] Prize structure--The number, value, prize payout percentage, and odds of winning prizes for an individual game as approved by the executive director.

(43) [(42)] Promotion--One or more events coordinated or conducted by the commission at retail sites, fairs, festivals and other appropriate venues, or in conjunction with one or more particular Texas Lottery games, to educate players about Texas Lottery products and/or sell Texas Lottery games through a retailer in specific markets to maximize Texas Lottery sales and statewide awareness.

(44) [(43)] Promotional drawing--A drawing in which qualified contestants are awarded prizes in a random manner in accordance with the procedures set forth for a specific promotion.

(45) [(44)] Quick Pick--A play option that generates random numbers in a manner approved by the commission.

(46) [(45)] Roll-over--The amount in a specific draw game prize pool category resulting from no matching combinations and/or prize breakage from the previous drawing.

(47) [(46)] Sales agent--A person licensed under the State Lottery Act to sell Texas Lottery tickets.

(48) [(47)] Scratch ticket--A scratch ticket lottery game, developed and offered for sale to the public in accordance with commission rules, that is played by revealing the ticket play symbols.

(49) [(48)] Shares--In a draw game, the total number of matching combinations within each prize category as determined for each drawing.

(50) [(49)] Terminal--A device authorized by the commission for the purpose of issuing draw game tickets and/or validating claims, including the commission or commission's vendor's computer hardware as well as commission-authorized third-party point-of-sale systems.

(51) [(50)] Third-party point-of-sale systems--Self-contained computerized equipment (not owned or operated by the commission or lottery operator) that performs sales-related tasks at a licensed lottery ticket retailer's checkout counter and that has the sole Texas Lottery-related purpose of selling lottery tickets. Third-party point-of-sale systems will only perform the same lottery-related tasks as terminals owned or operated by the commission or lottery operator and may not issue electronic tickets or display outcomes for draw and scratch games using casino-style graphics of any kind. Third-party point-of-sale systems do not include any gambling device.

(52) [(51)] Ticket--Any tangible evidence issued to provide participation in a lottery game or activity authorized by the State Lottery Act.

(53) [(52)] Ticket bearer--The person who has signed the ticket or who has possession of an unsigned ticket.

(54) [(53)] Ticket number--The number on the back of the scratch ticket that refers to the ticket sequence within a specific pack of a scratch ticket game.

(55) [(54)] Validation number--The unique alphanumeric number sequence or barcode printed on a ticket that provides for the verification of the ticket as a valid winner.

(56) [(55)] Valid ticket--A ticket which meets all specifications and validation requirements and entitles the holder to a specific prize amount.

(57) [(56)] Void ticket--Any ticket that is stolen, unissued, illegible, mutilated, altered, counterfeit in whole or part, misregistered, defective, incomplete, printed or produced in error, multiply printed, fails any of the commission's confidential validation tests, or is a ticket produced by or for the commission for education and training purposes.

(58) [(57)] Winning combination--One or more digits, numbers, or symbols randomly selected by the commission in a drawing which has been certified.

§401.302. *Scratch Ticket Game Rules.*

(a) Sale of scratch tickets.

(1) Only retailers who have been licensed by the commission are authorized to sell scratch tickets, and scratch tickets shall may be sold only at the [a licensed] location listed on each retailer's license from the commission. For purposes of this section, the sale of a scratch ticket at the licensed location means a lottery transaction in which all elements of the sale between the retailer and the purchaser must take place at the retailer location, including the exchange of consideration and the exchange of the scratch ticket.

(2) - (3) (No change.)

(b) - (d) (No change.)

(e) Payment of low-tier and mid-tier prizes.

(1) - (5) (No change.)

(6) If a low- or mid-tier claim is presented to the commission, the claimant shall follow all procedures of the commission related

to claiming a prize [prize, including but not limited to filling out a claim form, presenting appropriate identification if required, completing the back of the ticket, and submitting these items including the apparent winning ticket to the commission by mail or in person]. Upon validation of the ticket as a winning ticket, the commission shall pay the claimant the amount due in accordance with commission procedures. If the ticket is determined to be a non-winning ticket, the claim shall be denied and the claimant shall be promptly notified. [Tickets will not be returned to the claimant.]

(f) Payment of high-tier prizes.

(1) (No change.)

(2) If a high-tier claim is presented to the commission, the claimant shall follow all procedures of the commission related to claiming a prize [prize, including but not limited to filling out a claim form, presenting appropriate identification as required, completing the back of the ticket, and submitting these items including the apparent winning ticket to the commission by mail or in person]. Upon validation of the ticket as a winning ticket, the commission shall pay the claimant the amount due in accordance with commission procedures. If the ticket is determined to be a non-winning ticket, the claim shall be denied and the claimant shall be promptly notified. [Tickets will not be returned to the claimant.]

(3) - (9) (No change.)

(g) - (k) (No change.)

§401.304. *Draw Game Rules (General).*

(a) (No change.)

(b) Sale of tickets.

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

(3) Draw game tickets shall be sold only at the location listed on each retailer's license from the commission. For purposes of this section, the sale of a draw game lottery ticket at the licensed location means a lottery transaction in which all elements of the sale between the retailer and the purchaser must take place at the retailer location using their terminal, including the exchange of consideration, the exchange of the playslip if one is used, and the exchange of the draw game ticket. No part of the sale may take place away from the terminal.

(4) - (6) (No change.)

(c) (No change.)

(d) Procedures for claiming draw game prizes.

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

(3) To claim a draw game prize of \$600 or more, the claimant shall present the winning draw game ticket to the commission. [For purposes of this provision, the term "commission" includes claim centers located throughout Texas.] In connection with certain draw games, the top-level prizes must be claimed at commission headquarters. For any claim presented to the commission, the claimant shall follow all procedures of the commission related to claiming a prize [prize, including but not limited to filling out a claim form, presenting appropriate identification as required, completing the back of the ticket, and submitting these items including the apparent winning ticket to the commission by mail or in person]. Upon validation of the ticket as a winning ticket, the commission shall pay the claimant the amount due in accordance with commission procedures. If the ticket is determined to be a non-winning ticket, the claim shall be denied and the claimant shall be promptly notified. [Tickets will not be returned to the claimant.]

(4) - (10) (No change.)

(e) - (h) (No change.)

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SUBCHAPTER E. RETAILER RULES

16 TAC §401.355

These amendments are proposed under Texas Government Code §466.015(c), which authorizes the Commission to adopt rules governing the operation of the lottery, and §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

This proposal is intended to implement Texas Government Code, Chapter 466.

§401.355. *Restricted Sales.*

(a) Retailers shall not sell lottery tickets via the internet or by mail, phone, fax, or other similar method of communications. Retailers shall not sell a lottery ticket or any other document evidencing a right, privilege, or share in a lottery ticket from another jurisdiction by any means.

(b) Retailers shall not sell tickets to persons under the age of 18. Any ticket purchased by or sold to an individual under the age of 18 years shall be void and the prize otherwise payable on the ticket is treated as an unclaimed prize under Texas Government Code §466.408 [§401.302(j)(3) of this title (relating to Scratch Ticket Game Rules)].

(c) - (d) (No change.)

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SUBCHAPTER G. LOTTERY SECURITY

16 TAC §401.501

These amendments are proposed under Texas Government Code §466.015(c), which authorizes the Commission to adopt rules governing the operation of the lottery, and §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

This proposal is intended to implement Texas Government Code, Chapter 466.

§401.501. Lottery Security.

The Texas Lottery Commission considers security and integrity to be every commission [agency] employee's responsibility. [~~The security of the Texas Lottery Commission shall be developed and administered by agency's Security Division.~~] The Texas Lottery Commission [Security Division] shall develop and maintain [an internal] security plans and procedures through its designated divisions as required by the State Lottery Act, Texas Government Code, Chapter 466 [plan]. The commission's [agency's] security plans [plan] and [other security] procedures shall be designed to ensure the integrity and security of the operation of the Lottery and, to the extent that they are not inconsistent with Texas Public Information Act [Texas Open Records law], Texas Government Code, Chapter 552, are exempt from disclosure to the public.

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS

SUBCHAPTER BB. COMMISSIONER'S

RULES ON REPORTING REQUIREMENTS

19 TAC §61.1028

The Texas Education Agency (TEA) proposes the repeal of §61.1028, concerning reporting of bus collisions. The proposed repeal would relocate the existing requirements to proposed new 19 TAC §103.1231. The proposed new rule would include an update to remove the requirement related to the color of a multifunction school activity bus to align with statute.

BACKGROUND INFORMATION AND JUSTIFICATION: Section 61.1028 requires school districts and open-enrollment charter schools to report bus collisions. The proposed repeal of §61.1028 would move the existing language to proposed new §103.1231. The relocation is necessary due to a comprehensive reorganization of 19 TAC Chapter 61.

Proposed new §103.1231 would be updated to align the definition of "multifunction school activity bus" with Texas Transporta-

tion Code, §541.201, by removing the requirement related to color.

FISCAL IMPACT: James Finley, deputy chief of school safety and security, 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 repeal an existing regulation to relocate the requirements.

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 limit an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Mr. Finley 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 allow for TEA rules to be reorganized. 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: The public comment period on the proposal begins December 6, 2024, and ends January 6, 2025. 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 December 6, 2024. A form for submitting public comments is available on the TEA website at https://tea.texas.gov/About_TEA/Laws_and_Rules/Com-

missioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/.

STATUTORY AUTHORITY. The repeal is proposed under Texas Education Code, §34.015, which requires school districts to annually report to the Texas Education Agency the number of collisions in which the district's buses are involved. The agency is required to adopt rules determining the information to be reported.

CROSS REFERENCE TO STATUTE. The repeal implements Texas Education Code, §34.015.

§61.1028. Reporting of Bus Collisions.

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

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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CHAPTER 103. HEALTH AND SAFETY SUBCHAPTER CC. COMMISSIONER'S RULES CONCERNING SAFE SCHOOLS

19 TAC §103.1231

The Texas Education Agency (TEA) proposes new §103.1231, concerning reporting of bus collisions. The proposed new section would relocate existing requirements from 19 TAC §61.1028. The new section would include an update to remove the requirement related to the color of a multifunction school activity bus to align with statute.

BACKGROUND INFORMATION AND JUSTIFICATION: Proposed new §103.1231 would move existing language from 19 TAC §61.1028, which requires school districts and open-enrollment charter schools to report bus collisions. The relocation is necessary due to a comprehensive reorganization of 19 TAC Chapter 61.

Proposed new §103.1231 would include an update from the existing rule to align the definition of "multifunction school activity bus" with Texas Transportation Code, §541.201, by removing the requirement related to color.

FISCAL IMPACT: James Finley, deputy chief of school safety and security, 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 commu-

nities; 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 to relocate existing requirements.

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 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: Mr. Finley 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 allow for TEA rules to be reorganized. 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: The public comment period on the proposal begins December 6, 2024, and ends January 6, 2025. 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 December 6, 2024. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_\(TAC\)/Proposed_Commissioner_of_Education_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/).

STATUTORY AUTHORITY. The new section is proposed under Texas Education Code, §34.015, which requires school districts to annually report to the Texas Education Agency the number of collisions in which the district's buses are involved. The agency is required to adopt rules determining the information to be reported.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §34.015.

§103.1231. Reporting of Bus Collisions.

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

(1) Collision--Any collision as described by Texas Transportation Code, Chapter 550, Subchapter B.

(2) Motor bus--In accordance with Texas Education Code, §34.003, and Texas Transportation Code, §502.001, a motor bus is a vehicle designed to transport more than 15 passengers, including the driver, and includes vehicles used to transport persons on the public highways for compensation, other than a vehicle operated by muscular power or a municipal bus.

(3) Multifunction school activity bus--In accordance with Texas Transportation Code, §541.201, a multifunction school activity bus is a subcategory of school bus. It must meet all Federal Motor Vehicle Safety Standards (FMVSS) for a school bus except having traffic control devices, including flashing lights and stop arm. The multifunction school activity bus cannot be used to transport students from home to school or school to home or for any purpose other than school activities.

(4) School activity bus--In accordance with Texas Transportation Code, §541.201, a school activity bus is a bus designed to accommodate more than 15 passengers, including the operator, that is owned, operated, rented, or leased by a school district, county school, open-enrollment charter school, regional education service center, or shared services arrangement and that is used to transport public school students on a school-related activity trip, other than on routes to and from school. The term does not include a chartered bus, a bus operated by a mass transit authority, a school bus, or a multifunction school activity bus.

(5) School bus--In accordance with Texas Transportation Code, §541.201, a school bus is a motor vehicle that was manufactured in compliance with the FMVSS for school buses in effect on the date of manufacture and that is used to transport preprimary, primary, or secondary students on a route to or from school or on a school-related activity trip other than on routes to and from school. A school bus is a bus owned, leased, contracted to, or operated by a school or school district that is regularly used to transport students to and from school or school-related activities; meets all applicable FMVSS; and is readily identified by alternately flashing lights, national school bus yellow paint, and the legend "School Bus." The term does not include a multifunction school activity bus, a school activity bus, or a motor bus.

(b) Reporting.

(1) School districts and open-enrollment charter schools shall report annually to the Texas Education Agency (TEA) the number of collisions in which their buses were involved in the past year. School districts and open-enrollment charter schools shall report the collisions in a manner prescribed by the commissioner of education. School districts and open-enrollment charter schools shall file annual collision reports to TEA only in the period beginning July 1 and ending July 31 and shall include the following information in the report:

(A) the total number of bus collisions;

(B) the date each collision occurred;

(C) the type of bus, as specified in subsection (a) of this section, involved in each collision;

(D) whether the bus involved in each collision was equipped with seat belts and, if so, the type of seat belts;

(E) the number of students and adults involved in each collision;

(F) the number and types of injuries that were sustained by the bus passengers in each collision; and

(G) whether the injured passengers in each collision were wearing seat belts at the time of the collision and, if so, the type of seat belts.

(2) A school district or open-enrollment charter school shall report a bus collision involving a school bus, a multifunction school activity bus, a school activity bus, or a motor bus if:

(A) the bus is owned, leased, contracted, or chartered by a school district or charter school and was transporting school district or charter school personnel, students, or a combination of personnel and students; or

(B) the bus was driven by a school district or charter school employee or by an employee of the school district's or charter school's bus contractor with no passengers on board and the collision involved a pedestrian.

(3) A school district or open-enrollment charter school shall not report a bus collision involving a school bus, a multifunction school activity bus, a school activity bus, or a motor bus if:

(A) the bus was driven by a school district or charter school employee or by an employee of the school district's or charter school's bus contractor, the collision occurred when no passenger other than the school district's or charter school's driver or bus contractor's driver was on board the bus, and the collision did not involve a pedestrian; or

(B) the collision involved a bus chartered by a school district or charter school for a school activity trip and no school district or charter school personnel or students were on board the bus at the time of the collision.

(4) A school district or open-enrollment charter school shall not report a collision that occurred in a vehicle that is owned, contracted, or chartered by a school district or charter school and is not a school bus, a multifunction school activity bus, a school activity bus, or a motor bus.

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 22, 2024.

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: January 5, 2025

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



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 (Board) proposes this amendment to 22 TAC §104.1, concerning continuing education requirements. The proposed amendment allows dentists and dental hygienists to reduce their 24-hour continuing education

requirement by 2 hours if they attest they read all newsletters issued by the Texas State Board of Dental Examiners during their renewal period. The proposed amendment does not apply to the 16-hour technical and scientific requirement.

FISCAL NOTE: Casey Nichols, Executive Director, has determined that for the first five-year period the proposed rule is in effect, the proposed rule does not have foreseeable implications relating to cost or revenues of the state or local governments.

PUBLIC BENEFIT-COST NOTE: Casey Nichols has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of this proposed rule will be the protection of public safety and welfare.

LOCAL EMPLOYMENT IMPACT STATEMENT: Casey Nichols has also determined that the proposed rule does not affect local economies and employment.

SMALL AND MICRO-BUSINESS, RURAL COMMUNITY IMPACT STATEMENT: Casey Nichols has determined that no economic impact statement and regulatory flexibility analysis for small businesses, micro-businesses, and rural communities is necessary for this proposed rule.

GOVERNMENT GROWTH IMPACT STATEMENT: The Board has determined that for the first five-year period the proposed rule is in effect, the following government growth effects apply: (1) the proposed rule does not create or eliminate a government program; (2) implementation of the proposed rule does not require the creation or elimination of employee positions; (3) implementation of the proposed rule does not require an increase or decrease in future appropriations; (4) the proposed rule does not require an increase in fees paid to the agency; (5) the proposed rule creates a new regulation; (6) the proposed rule does not expand an existing regulation; (7) the proposed rule does not increase the number of individuals subject to the rule's applicability; and (8) the proposed rule does not positively or adversely affect the state's economy.

Comments on the proposed rule may be submitted to Casey Nichols, Executive Director, 1801 Congress Avenue, Suite 8.600, Austin, Texas 78701, by fax to (512) 649-2482, or by email to official_rules_comments@tsbde.texas.gov for 30 days following the date that the proposed rule is published in the *Texas Register*. To be considered for purposes of this rulemaking, comments must be: (1) postmarked or shipped by the last day of the comment period; or (2) faxed or e-mailed by midnight on the last day of the comment period.

This rule is proposed 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.

No statutes are affected by this proposed rule.

§104.1. Continuing Education Requirements.

As a prerequisite to the biennial renewal of a dental or dental hygiene license, proof of completion of 24 hours of acceptable continuing education is required.

(1) Each licensee shall select and participate in the continuing education courses endorsed by the providers identified in §104.2 of this title (relating to Providers). A licensee, other than a licensee who resides outside of the United States, who is unable to meet education course requirements may request that alternative courses or procedures be approved by the Licensing Committee.

(A) Such requests must be in writing and submitted to and approved by the Licensing Committee prior to the expiration of the biennial period for which the alternative is being requested.

(B) A licensee must provide supporting documentation detailing the reason why the continuing education requirements set forth in this section cannot be met and must submit a proposal for alternative education procedures.

(C) Acceptable causes may include unanticipated financial or medical hardships or other extraordinary circumstances that are documented.

(D) A licensee who resides outside of the United States may, without prior approval of the Licensing Committee, complete all required hours of coursework by self-study.

(i) These self-study hours must be provided by those entities cited in §104.2 of this title. Examples of self-study courses include correspondence courses, video courses, audio courses, and reading courses.

(ii) Upon being audited for continuing education compliance, a licensee who submits self-study hours under this subsection must be able to demonstrate residence outside of the United States for all periods of time for which self-study hours were submitted.

(E) Should a request to the Licensing Committee be denied, the licensee must complete the requirements of this section.

(2) Effective September 1, 2018, the following conditions and restrictions shall apply to coursework submitted for renewal purposes:

(A) At least 16 hours of coursework must be either technical or scientific as related to clinical care. The terms "technical" and "scientific" as applied to continuing education shall mean that courses have significant intellectual or practical content and are designed to directly enhance the practitioner's knowledge and skill in providing clinical care to the individual patient.

(B) Effective January 1, 2021, a licensed dentist whose practice includes direct patient care must complete not less than 2 hours of continuing education annually, and not less than 4 hours for each biennial renewal, regarding safe and effective pain management related to the prescription of opioids and other controlled substances. These 4 hours may be used to satisfy the 16-hour technical and scientific requirement. The courses taken to satisfy the safe and effective pain management requirement must include education regarding:

(i) reasonable standards of care;

(ii) the identification of drug-seeking behavior in patients; and

(iii) effectively communicating with patients regarding the prescription of an opioid or other controlled substance.

(C) Up to 8 hours of coursework may be in risk-management courses. Acceptable "risk management" courses include courses in risk management, record-keeping, and ethics. Dentists may complete continuing education courses described by §111.1 of this title (relating to Additional Continuing Education Required) to satisfy a portion of the risk-management requirement.

(D) Up to 8 hours of coursework may be self-study. These self-study hours must be provided by those entities cited in §104.2 of this title. Examples of self-study courses include correspondence courses, video courses, audio courses, and reading courses.

(E) Hours of coursework in the standards of the Occupational Safety and Health Administration (OSHA) annual update

course or in cardiopulmonary resuscitation (CPR) basic life support training may not be considered in the 24-hour requirement.

(F) Hours of coursework in practice finance may not be considered in the 24-hour requirement.

(3) As part of the 24-hour requirement, a course in human trafficking prevention approved by the executive commissioner of the Texas Health and Human Services Commission must be completed.

(4) Each licensee shall complete the jurisprudence assessment every four (4) years. This requirement is in addition to the twenty-four (24) hours of continuing education required biennially for the renewal of a license.

(5) A licensee may carry forward continuing education hours earned prior to a renewal period which are in excess of the 24-hour requirement and such excess hours may be applied to subsequent years' requirements. Excess hours to be carried forward must have been earned in a classroom setting and within the one year immediately preceding the renewal period. A maximum of 24 total excess credit hours may be carried forward.

(6) Examiners for The Commission on Dental Competency Assessments-The Western Regional Examining Board-The Council of Interstate Testing Agencies (CDCA-WREB-CITA), States Resources for Testing and Assessments (SRTA), and Central Regional Dental Testing Services Inc. (CRDTS) will be allowed credit for no more than 12 hours biennially, obtained from calibration and standardization exercises associated with the examinations.

(7) Any individual or entity may petition one of the providers listed in §104.2 of this title to offer continuing education.

(8) Providers cited in §104.2 of this title will approve individual courses and/or instructors.

(9) A consultant for the SBDE who is also a licensee of the SBDE is eligible to receive up to 12 hours of continuing education credit biennially to apply towards the biennial renewal continuing education requirement under this section.

(A) Continuing education credit hours shall be awarded for the issuance of an expert opinion based upon the review of SBDE cases and for providing assistance to the SBDE in the investigation and prosecution of cases involving violations of the Dental Practice Act and/or the Rules of the SBDE.

(B) The amount of continuing education credit hours to be granted for each consultant task performed shall be determined by the Executive Director, Division Director, or manager that authorizes the consultant task to be performed. The award of continuing education credit shall be confirmed in writing and based upon a reasonable assessment of the time required to complete the task.

(10) A course instructor who offers continuing education through a provider listed in §104.2 of this title is eligible to receive 2 hours of continuing education credit for every 1 hour of instruction provided. This credit applies per course, per renewal period.

(11) The 24-hour requirement may be reduced by 2 hours if licensees attest they read all newsletters issued by the Texas State Board of Dental Examiners during their renewal period. This does not apply to the 16-hour technical and scientific requirement.

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 22, 2024.

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Lauren Studdard

General Counsel

State Board of Dental Examiners

Earliest possible date of adoption: January 5, 2025

For further information, please call: (512) 305-8910

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CHAPTER 108. PROFESSIONAL CONDUCT

SUBCHAPTER D. MOBILE DENTAL FACILITIES

22 TAC §108.42

The State Board of Dental Examiners (Board) proposes this amendment to 22 TAC §108.42, concerning obtaining a permit. The proposed amendment removes the requirement that a mobile dental facility or portable dental unit must have a lead apron with thyroid shield when x-rays are made. The American Academy of Oral and Maxillofacial Radiology (AAOMR) recently issued guidelines titled "Patient shielding during dentomaxillofacial radiography" where the AAOMR recommended discontinuing the use of lead aprons and thyroid shields when making x-rays. The Board held a stakeholder meeting on September 27, 2024, where a majority of stakeholders stated that Board rules should be amended to remove requiring the use of lead aprons and thyroid shields based on the AAOMR guidelines.

FISCAL NOTE: Casey Nichols, Executive Director, has determined that for the first five-year period the proposed rule is in effect, the proposed rule does not have foreseeable implications relating to cost or revenues of the state or local governments.

PUBLIC BENEFIT-COST NOTE: Casey Nichols has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of this proposed rule will be the protection of public safety and welfare.

LOCAL EMPLOYMENT IMPACT STATEMENT: Casey Nichols has also determined that the proposed rule does not affect local economies and employment.

SMALL AND MICRO-BUSINESS, RURAL COMMUNITY IMPACT STATEMENT: Casey Nichols has determined that no economic impact statement and regulatory flexibility analysis for small businesses, micro-businesses, and rural communities is necessary for this proposed rule.

GOVERNMENT GROWTH IMPACT STATEMENT: The Board has determined that for the first five-year period the proposed rule is in effect, the following government growth effects apply: (1) the proposed rule does not create or eliminate a government program; (2) implementation of the proposed rule does not require the creation or elimination of employee positions; (3) the implementation of the proposed rule does not require an increase or decrease in future appropriations; (4) the proposed rule does not require an increase in fees paid to the agency; (5) the proposed rule does not create a new regulation; (6) the proposed rule does not expand an existing regulation; (7) the proposed rule does not increase the number of individuals subject to the rule's applicability; and (8) the proposed rule does not positively or adversely affect the state's economy.

Comments on the proposed rule may be submitted to Casey Nichols, Executive Director, 1801 Congress Avenue, Suite 8.600, Austin, Texas 78701, by fax to (512) 649-2482, or by email to official_rules_comments@tsbde.texas.gov for 30 days following the date that the proposed rule is published in the *Texas Register*. To be considered for purposes of this rulemaking, comments must be: (1) postmarked or shipped by the last day of the comment period; or (2) faxed or e-mailed by midnight on the last day of the comment period.

This rule is proposed 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.

No statutes are affected by this proposed rule.

§108.42. *Obtaining a Permit.*

(a) A licensed Texas dentist, an organization authorized by the Dental Practice Act or other organization as defined by rule 108.41 (3) of this title (relating to Definitions) and approved by the SBDE wishing to operate a mobile dental facility or a portable dental unit, shall apply to the State Board of Dental Examiners (SBDE) for a permit on a form provided by the Board and pay an application fee in an amount set by the Board. A governmental or educational entity may obtain a single permit, respectively, for all facilities; or all units listed on an application.

(b) A completed application form submitted to the SBDE with all questions answered will be reviewed and if all the requirements listed in this section are met, a permit will be issued. All applications must include:

- (1) an address of record that is not a Post Office Box; and,
- (2) the name and address of the permit holder.

(c) All applicants except governmental and higher educational entities must also include:

(1) the name and address, and when applicable, the license number of each dentist, dental hygienist, laboratory technician, and dental assistant associated with the facility or unit for which a permit is sought;

(2) a copy of a written agreement for the emergency follow-up care for patients treated in the mobile dental facility, or through a portable dental unit, and such agreement must include identification of and arrangements for treatment in a dental office which is permanently established within a reasonable geographic area;

(3) a statement that the mobile dental facility or portable dental unit has access to communication facilities which will enable dental personnel to contact assistance as needed in the event of an emergency;

(4) a statement that the mobile dental facility or portable dental unit conforms to all applicable federal, state, and local laws, regulations, and ordinances dealing with radiographic equipment, flammability, construction standards, including required or suitable access for disabled individuals, sanitation, and zoning;

(5) a statement that the applicant possesses all applicable county and city licenses or permits to operate the facility or unit;

(6) either a statement that the unit will only be used in dental offices of the applicant or other licensed dentists, or a list of all equipment to be contained and used in the mobile dental facility or portable dental unit, which must include:

(A) dental treatment chair;

(B) a dental treatment light;

(C) when radiographs are to be made by the mobile dental facility or portable dental unit, a stable portable radiographic unit that is properly monitored by the authorized agency;

~~[(D) when radiographs are to be made by the mobile dental facility or portable dental unit, a lead apron which includes a thyroid collar;]~~

~~(D) [(E)] a portable delivery system, or an integrated system if used in a mobile dental facility;~~

~~(E) [(F)] an evacuation unit suitable for dental surgical use; and~~

~~(F) [(G)] a list of appropriate and sufficient dental instruments including explorers and mouth mirrors, and infection control supplies, such as gloves, face masks, etc., that are on hand.~~

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 22, 2024.

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Lauren Studdard

General Counsel

State Board of Dental Examiners

Earliest possible date of adoption: January 5, 2025

For further information, please call: (512) 305-8910



CHAPTER 111. STANDARDS FOR PRESCRIBING CONTROLLED SUBSTANCES AND DANGEROUS DRUGS

22 TAC §111.1

The State Board of Dental Examiners (Board) proposes this amendment to 22 TAC §111.1, concerning additional continuing education requirements. The proposed amendment removes subsection (a) and paragraph (b)(1) because they are no longer in effect. The current continuing education requirement regarding controlled substances is found in paragraph (1) of this amended rule and in 22 TAC §104.1(2)(B). The proposed amendment also updates the name of the title for 22 TAC §104.1.

FISCAL NOTE: Casey Nichols, Executive Director, has determined that for the first five-year period the proposed rule is in effect, the proposed rule does not have foreseeable implications relating to cost or revenues of the state or local governments.

PUBLIC BENEFIT-COST NOTE: Casey Nichols has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of this proposed rule will be a clear regulation.

LOCAL EMPLOYMENT IMPACT STATEMENT: Casey Nichols has also determined that the proposed rule does not affect local economies and employment.

SMALL AND MICRO-BUSINESS, RURAL COMMUNITY IMPACT STATEMENT: Casey Nichols has determined that no

economic impact statement and regulatory flexibility analysis for small businesses, micro-businesses, and rural communities is necessary for this proposed rule.

GOVERNMENT GROWTH IMPACT STATEMENT: The Board has determined that for the first five-year period the proposed rule is in effect, the following government growth effects apply:

- (1) the proposed rule does not create or eliminate a government program;
- (2) implementation of the proposed rule does not require the creation or elimination of employee positions;
- (3) the implementation of the proposed rule does not require an increase or decrease in future appropriations;
- (4) the proposed rule does not require an increase in fees paid to the agency;
- (5) the proposed rule does not create a new regulation;
- (6) the proposed rule does not expand an existing regulation;
- (7) the proposed rule does not increase the number of individuals subject to the rule's applicability; and
- (8) the proposed rule does not positively or adversely affect the state's economy.

Comments on the proposed rule may be submitted to Casey Nichols, Executive Director, 1801 Congress Avenue, Suite 8.600, Austin, Texas 78701, by fax to (512) 649-2482, or by email to official_rules_comments@tsbde.texas.gov for 30 days following the date that the proposed rule is published in the *Texas Register*. To be considered for purposes of this rulemaking, comments must be: (1) postmarked or shipped by the last day of the comment period; or (2) faxed or e-mailed by midnight on the last day of the comment period.

This rule is proposed 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.

No statutes are affected by this proposed rule.

§111.1. Additional Continuing Education Required.

~~[(a) Effective until September 1, 2020, each dentist who is permitted by the Drug Enforcement Agency to prescribe controlled substances shall complete every three years a minimum of two hours of continuing education in the abuse and misuse of controlled substances, opioid prescription practices, and/or pharmacology. This continuing education may be utilized to fill the continuing education requirements of annual renewal.]~~

~~[(b)] Effective beginning September 1, 2020, each dentist who is permitted by the Drug Enforcement Agency (or any subsequent permitting authority authorized by state and federal law) to prescribe controlled substances must complete 2 hours of continuing education related to approved procedures of prescribing and monitoring controlled substances as outlined in paragraphs (1) - (2) [(3)] of this section [subsection]. These 2 hours of continuing education may be used to satisfy the recordkeeping continuing education requirements of §104.1 of this title (relating to Continuing Education Requirements [Requirement]). After completing the initial requirement, a dentist may, no more than once annually, take the course under this section [subsection] to fulfill hours toward the recordkeeping continuing education requirement.~~

~~[(1) For dentists authorized to prescribe controlled substances before September 1, 2020, the 2 hours of required continuing education must be completed no later than September 1, 2021.]~~

~~(1) [(2)] For dentists who are authorized to prescribe controlled substances on or after September 1, 2020, the 2 hours of required continuing education must be completed not later than the first anniversary after the person is issued an authorization to prescribe.~~

~~(2) [(3)] For dentists who have surrendered the permit or authorization to prescribe controlled substances or have their permit or authorization to prescribe controlled substances revoked by any administrative, civil, or criminal proceeding, the requirements of paragraph (1) [(2)] of this section [subsection] shall apply to any new permit or authorization granted on or after September 1, 2020, regardless of whether the dentist previously satisfied the requirements of this section [subsection].~~

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

Filed with the Office of the Secretary of State on November 22, 2024.

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Lauren Studdard

General Counsel

State Board of Dental Examiners

Earliest possible date of adoption: January 5, 2025

For further information, please call: (512) 305-8910



CHAPTER 113. REQUIREMENTS FOR DENTAL OFFICES

22 TAC §113.2

The State Board of Dental Examiners (Board) proposes this amendment to 22 TAC §113.2, concerning X-Ray Laboratories. The proposed amendment removes the requirement that dental patients must be protected by a lead apron with thyroid collar. The American Academy of Oral and Maxillofacial Radiology (AAOMR) recently issued guidelines titled "Patient shielding during dentomaxillofacial radiography" where the AAOMR recommended discontinuing the use of lead aprons and thyroid shields when making x-rays. The Board held a stakeholder meeting on September 27, 2024, where a majority of stakeholders stated that Board rules should be amended to remove requiring the use of lead aprons and thyroid shields based on the AAOMR guidelines.

FISCAL NOTE: Casey Nichols, Executive Director, has determined that for the first five-year period the proposed rule is in effect, the proposed rule does not have foreseeable implications relating to cost or revenues of the state or local governments.

PUBLIC BENEFIT-COST NOTE: Casey Nichols has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of this proposed rule will be the protection of public safety and welfare.

LOCAL EMPLOYMENT IMPACT STATEMENT: Casey Nichols has also determined that the proposed rule does not affect local economies and employment.

SMALL AND MICRO-BUSINESS, RURAL COMMUNITY IMPACT STATEMENT: Casey Nichols has determined that no economic impact statement and regulatory flexibility analysis for small businesses, micro-businesses, and rural communities is necessary for this proposed rule.

GOVERNMENT GROWTH IMPACT STATEMENT: The Board has determined that for the first five-year period the proposed rule is in effect, the following government growth effects apply: (1) the proposed rule does not create or eliminate a government program; (2) implementation of the proposed rule does not require the creation or elimination of employee positions; (3) the implementation of the proposed rule does not require an increase or decrease in future appropriations; (4) the proposed rule does not require an increase in fees paid to the agency; (5) the proposed rule does not create a new regulation; (6) the proposed rule does not expand an existing regulation; (7) the proposed rule does not increase the number of individuals subject to the rule's applicability; and (8) the proposed rule does not positively or adversely affect the state's economy.

Comments on the proposed rule may be submitted to Casey Nichols, Executive Director, 1801 Congress Avenue, Suite 8.600, Austin, Texas 78701, by fax to (512) 649-2482, or by email to official_rules_comments@tsbde.texas.gov for 30 days following the date that the proposed rule is published in the *Texas Register*. To be considered for purposes of this rulemaking, comments must be: (1) postmarked or shipped by the last day of the comment period; or (2) faxed or e-mailed by midnight on the last day of the comment period.

This rule is proposed 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.

No statutes are affected by this proposed rule.

§113.2. *X-Ray Laboratories.*

(a) All dental licensees, including dentists, dental hygienists or other dental auxiliaries shall comply with Title 25 Texas Administrative Code §289.232 (Radiation Control Regulations for Dental Radiation Machines) as promulgated by the Texas Department of State Health Services Radiation Control Program or its successor.

(b) All dental x-ray laboratories operating in this state must be under the general supervision of a Texas licensed dentist.

~~[(c) All dental patients must be protected by a lead apron with the thyroid collar while directly exposed to x-rays with the exception of those radiographs where it is necessary to image areas concealed or obstructed by a thyroid collar. A non-lead apron may be used instead of a lead apron if the non-lead apron provides protection from x-rays that is equivalent to that of a lead apron.]~~

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 22, 2024.

TRD-202405724

Lauren Studdard

General Counsel

State Board of Dental Examiners

Earliest possible date of adoption: January 5, 2025

For further information, please call: (512) 305-8910

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CHAPTER 114. EXTENSION OF DUTIES OF AUXILIARY PERSONNEL--DENTAL ASSISTANTS

22 TAC §114.12

The State Board of Dental Examiners (Board) proposes this amendment to 22 TAC §114.12, concerning continuing education for certificate holders. The proposed amendment updates the rule to reflect that dental assistant registrations have a biennial renewal cycle. In addition, the proposed amendment requires registered dental assistants to complete two hours of continuing education in the laws and regulations of the Board.

FISCAL NOTE: Casey Nichols, Executive Director, has determined that for the first five-year period the proposed rule is in effect, the proposed rule does not have foreseeable implications relating to cost or revenues of the state or local governments.

PUBLIC BENEFIT-COST NOTE: Casey Nichols has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of this proposed rule will be the protection of public safety and welfare.

LOCAL EMPLOYMENT IMPACT STATEMENT: Casey Nichols has also determined that the proposed rule does not affect local economies and employment.

SMALL AND MICRO-BUSINESS, RURAL COMMUNITY IMPACT STATEMENT: Casey Nichols has determined that no economic impact statement and regulatory flexibility analysis for small businesses, micro-businesses, and rural communities is necessary for this proposed rule.

GOVERNMENT GROWTH IMPACT STATEMENT: The Board has determined that for the first five-year period the proposed rule is in effect, the following government growth effects apply: (1) the proposed rule does not create or eliminate a government program; (2) implementation of the proposed rule does not require the creation or elimination of employee positions; (3) implementation of the proposed rule does not require an increase or decrease in future appropriations; (4) the proposed rule does not require an increase in fees paid to the agency; (5) the proposed rule creates a new regulation; (6) the proposed rule does not expand an existing regulation; (7) the proposed rule does not increase the number of individuals subject to the rule's applicability; and (8) the proposed rule does not positively or adversely affect the state's economy.

Comments on the proposed rule may be submitted to Casey Nichols, Executive Director, 1801 Congress Avenue, Suite 8.600, Austin, Texas 78701, by fax to (512) 649-2482, or by email to official_rules_comments@tsbde.texas.gov for 30 days following the date that the proposed rule is published in the *Texas Register*. To be considered for purposes of this rulemaking, comments must be: (1) postmarked or shipped by the last day of the comment period; or (2) faxed or e-mailed by midnight on the last day of the comment period.

This rule is proposed 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.

No statutes are affected by this proposed rule.

§114.12. *Continuing Education for Certificate Holders.*

(a) To renew a certificate of registration issued under this chapter, a dental assistant must complete twelve (12) [six (6)] hours of continuing education biennially [each year] in areas covering dental assistant duties.

(1) At least six (6) [three (3)] of these twelve (12) [six (6)] hours must be clinical continuing education; and, [-]

(2) Effective September 1, 2025, at least two (2) of these twelve (12) hours must be a course in the laws and regulations of the Texas State Board of Dental Examiners.

(b) A dental assistant may fulfill the continuing education requirement through board-approved self-study, interactive computer courses, or lecture courses. All continuing education must be offered by providers approved under 22 Texas Administrative Code §104.2.

(c) As a prerequisite to the renewal of a dental assistant's certificate of registration, a course in human trafficking prevention approved by the executive commissioner of the Texas Health and Human Services Commission must be completed.

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 22, 2024.

TRD-202405721

Lauren Studdard

General Counsel

State Board of Dental Examiners

Earliest possible date of adoption: January 5, 2025

For further information, please call: (512) 305-8910



PART 8. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

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

22 TAC §153.16

The Texas Appraiser Licensing and Certification Board (TALCB) proposes amendments to 22 TAC §153.16, License Reinstatement.

The proposed amendments to §153.16 define the requirements for the reinstatement of an expired trainee license.

Kathleen Santos, General Counsel, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for the state or units of local government as a result of enforcing or administering the pro-

posed amendments. There is no adverse economic impact anticipated for local or state employment, rural communities, small businesses, or micro businesses as a result of implementing the proposed amendments. There is no significant economic cost anticipated for persons who are required to comply with the proposed amendments. Accordingly, no Economic Impact statement or Regulatory Flexibility Analysis is required.

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

Growth Impact Statement:

For each year of the first five years the proposed amendments and rules are in effect the amendments and rules will not:

create or eliminate a government program;

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

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

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

create a new regulation;

expand, limit or repeal an existing regulation; and

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

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

Comments on the proposed amendments may be submitted to Kathleen Santos, General Counsel, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188 or emailed to general.counsel@talcb.texas.gov. Comments may also be submitted electronically at <https://www.talcb.texas.gov/agency-information/rules-and-laws/comment-on-proposed-rules>. 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 to certificates and licenses that are consistent with applicable federal law and guidelines adopted by the AQB; §1103.152, which authorizes TALCB to prescribe qualifications for appraisers that are consistent with the qualifications established by the Appraiser Qualifications Board; and §1103.154, which authorizes TALCB to adopt rules relating to professional conduct.

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

§153.16. *License Reinstatement.*

(a) Subsections (a) - (f) apply [~~This section applies~~] only to a person who:

(1) previously held a residential appraiser license or certification or general appraiser certification issued by the Board that has been expired for more than six months; and

(2) seeks to obtain the same level of appraiser license previously held by the person before its expiration.

(b) A person who seeks to reinstate a license expired less than five years must:

- (1) submit an application for reinstatement on a form approved by the Board;
- (2) pay the required fee;
- (3) satisfy the Board as to the person's honesty, trustworthiness and integrity;
- (4) satisfy the fingerprint and criminal history check requirements in §153.12 of this title; and
- (5) complete all AQB continuing education requirements that would have been required had the license not expired.

(c) A person who seeks to reinstate a license expired five years or more must:

- (1) satisfy the requirements of subsection (b); and
- (2) submit an experience log demonstrating his or her experience complies with USPAP, as outlined in subsection (d).

(d) An experience log submitted under subsection (c) must include at least 10 appraisals of a property type accepted by the AQB for the applicable license category, completed within 5 years from the date of application under this section.

(e) Unless otherwise provided in this section, the board will verify and award experience submitted under subsection (d) in accordance with §153.15 of this title (relating to Experience Required for Licensing).

(f) If a person who seeks to reinstate a license under subsection (c) is unable to submit appraisals or supporting documentation for verification, he or she may apply for a license as an appraiser trainee for the purposes of acquiring the appraisal experience required for reinstatement.

(g) Subsections (g) - (h) apply only to a person who previously held a trainee license issued by the Board that has been expired for more than six months and seeks to reinstate the trainee license.

(h) A person who seeks to reinstate a trainee license must:

- (1) submit an application for reinstatement on a form approved by the Board;
- (2) pay the required fee;
- (3) satisfy the Board as to the person's honesty, trustworthiness and integrity;
- (4) satisfy the fingerprint and criminal history check requirements in §153.12 of this title; and
- (5) complete all AQB continuing education requirements that would have been required had the license not expired.

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 20, 2024.

TRD-202405627

Kathleen Santos

General Counsel

Texas Appraiser Licensing and Certification Board

Earliest possible date of adoption: January 5, 2025

For further information, please call: (512) 936-3088



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

22 TAC §159.203, §159.204

The Texas Appraiser Licensing and Certification Board (TALCB) proposes amendments to 22 TAC §159.204, Complaint Processing and new 22 TAC §159.203, Sanctions Guidelines.

The proposed amendments to §159.204 clarifies the preliminary investigative review process, adds a subsection for the online payment of administrative penalties and required fees, and removes the sanctions guidelines for placement into new rule, 159.203.

New §159.203 is formerly section (m) of §159.204 that outlines the Board's sanctions guidelines and factors taken into consideration for case disposition. Both rules are amended for renumbering and to reflect corresponding references to sections within the rule.

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

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

Growth Impact Statement:

For each year of the first five years the proposed amendments and rules are in effect the amendments and rules will not:

- create or eliminate a government program;
- require the creation of new employee positions or the elimination of existing employee positions;
- require an increase or decrease in future legislative appropriations to the agency;
- require an increase or decrease in fees paid to the agency;
- create a new regulation;
- expand, limit or repeal an existing regulation; and

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

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

Comments on the proposed amendments and new rule may be submitted to Kathleen Santos, General Counsel, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188 or emailed to general.counsel@talcb.texas.gov. Comments may also be submitted electronically at <https://www.talcb.texas.gov/agency-information/rules-and-laws/comment-on-proposed-rules>. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments and new rule are proposed under Texas Occupations Code §1104.151, which authorizes TALCB to adopt rules necessary to administer the provisions of Chapter 1104, Texas Occupations Code.

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

§159.203. Sanctions Guidelines.

In determining the proper disposition of a formal complaint pending as of or filed after the effective date of this section, and subject to the maximum penalties authorized under Chapter 1104, Texas Occupations Code, staff, the administrative law judge in a contested case hearing and the Board shall consider the following sanctions guidelines and list of non-exclusive factors as demonstrated by the evidence in the record of a contested case proceeding.

(1) For the purposes of these sanctions guidelines:

(A) An AMC will not be considered to have had a prior warning letter, contingent dismissal or discipline if that prior warning letter, contingent dismissal or discipline occurred more than ten years ago;

(B) A prior warning letter, contingent dismissal or discipline given less than ten years ago will not be considered unless the Board took final action against the AMC before the date of the incident that led to the subsequent disciplinary action;

(C) Prior discipline is defined as any sanction, including an administrative penalty, received under a Board final or agreed order;

(D) A violation refers to a violation of any provision of the AMC Act or Board rules;

(E) "Minor deficiencies" is defined as violations of the AMC Act or Board rules which do not call into question the qualification of the AMC for licensure in Texas;

(F) "Serious deficiencies" is defined as violations of the Act or Board rules which do call into question the qualification of the AMC for licensure in Texas;

(G) "Remedial measures" include training, auditing, or any combination thereof; and

(H) The terms of a contingent dismissal agreement will be in writing and agreed to by all parties. Staff may dismiss the complaint with a non-disciplinary warning upon written agreement that the Respondent will complete all remedial measures within the agreed-upon timeframe. If the Respondent fails to meet the deadlines in the agreement, the Respondent's license or certification will be automatically set to inactive status until the Respondent completes the remedial measures set forth in the agreement.

(2) List of factors to consider in determining proper disposition of a formal complaint:

(A) Whether the Respondent has previously received a warning letter or contingent dismissal, and if so, the similarity of facts or violations in that previous complaint to the facts or violations in the instant complaint matter;

(B) Whether the Respondent has previously been disciplined;

(C) If previously disciplined, the nature of the discipline, including:

(i) Whether it concerned the same or similar violations or facts;

(ii) The nature of the disciplinary sanctions imposed;

(iii) The length of time since the previous discipline;

(D) The difficulty or complexity of the incident at issue;

(E) Whether the violations found were of a negligent, grossly negligent or a knowing or intentional nature;

(F) Whether the violations found involved a single appraisal or instance of conduct or multiple appraisals or instances of conduct;

(G) To whom were the appraisal report(s) or the conduct directed, with greater weight placed upon appraisal report(s) or conduct directed at:

(i) A financial institution or their agent, contemplating a lending decision based, in part, on the appraisal report(s) or conduct at issue;

(ii) The Board;

(iii) A matter which is actively being litigated in a state or federal court or before a regulatory body of a state or the federal government;

(iv) Another government agency or government sponsored entity, including, but not limited to, the United States Department of Veteran's Administration, the United States Department of Housing and Urban Development, the State of Texas, Fannie Mae, and Freddie Mac;

(v) A consumer contemplating a real property transaction involving the consumer's principal residence;

(H) Whether Respondent's violations caused any harm, including financial harm, and the amount of such harm;

(I) Whether Respondent acknowledged or admitted to violations and cooperated with the Board's investigation prior to any contested case hearing;

(J) The business operating history of the AMC, including:

(i) The size of the AMC's appraiser panel;

(ii) The length of time Respondent has been licensed as an AMC in Texas;

(iii) The length of time the AMC has been conducting business operations, in any jurisdiction;

(iv) The nature and extent of any remedial measures and sanctions the Respondent had received related to the areas in which violations were found; and

(v) Respondent's affiliation with other business entities;

(K) Whether Respondent can improve the AMC's practice through the use of remedial measures; and

(L) Whether Respondent has voluntarily completed remedial measures prior to the resolution of the complaint.

(3) The sanctions guidelines contained herein shall be employed in conjunction with the factors listed in paragraph (2) of this section to assist in reaching the proper disposition of a formal complaint:

(A) 1st Time Discipline Level 1--violations of the AMC Act or Board rules which evidence minor deficiencies will result in one of the following outcomes:

- (i) Dismissal;
- (ii) Dismissal with non-disciplinary warning letter;
- (iii) Contingent dismissal with remedial measures.

(B) 1st Time Discipline Level 2--violations of the AMC Act or Board rules which evidence serious deficiencies will result in one of the following outcomes:

- (i) Contingent dismissal with remedial measures;
- (ii) A final order which imposes one or more of the following:

(I) Remedial measures;
(II) Required adoption and implementation of written, preventative policies or procedures;

(III) A probationary period with provisions for monitoring the AMC;

(IV) Monitoring and/or preapproval of AMC panel removals for a specified period of time;

(V) Monitoring and/or preapproval of the licensed activities of the AMC for a specified time period or until specified conditions are satisfied;

(VI) Minimum of \$1,000 in administrative penalties per act or omission which constitutes a violation(s) of the AMC Act or Board rules; each day of a continuing violation is a separate violation.

(C) 1st Time Discipline Level 3--violations of the AMC Act or Board rules which evidence serious deficiencies and were done with knowledge, deliberately, willfully, or with gross negligence will result in a final order which imposes one or more of the following:

- (i) A period of suspension;
- (ii) A revocation;
- (iii) Remedial measures;
- (iv) Required adoption and implementation of written, preventative policies or procedures;

(v) A probationary period with provisions for monitoring the AMC;

(vi) Monitoring and/or preapproval of AMC panel removals for a specified period of time;

(vii) Monitoring and/or preapproval of the licensed activities of the AMC for a specified time period or until specified conditions are satisfied;

(viii) Minimum of \$2,500 in administrative penalties per act or omission which constitutes a violation(s) of the AMC Act or Board rules; each day of a continuing violation is a separate violation.

(D) 2nd Time Discipline Level 1--violations of the AMC Act or Board rules which evidence minor deficiencies will result in one of the following outcomes:

- (i) Dismissal;
- (ii) Dismissal with non-disciplinary warning letter;
- (iii) Contingent dismissal with remedial measures;
- (iv) A final order which imposes one or more of the following:

(I) Remedial measures;
(II) Required adoption and implementation of written, preventative policies or procedures;

(III) A probationary period with provisions for monitoring the AMC;

(IV) Monitoring and/or preapproval of AMC panel removals for a specified period of time;

(V) Monitoring and/or preapproval of the licensed activities of the AMC for a specified time period or until specified conditions are satisfied;

(VI) Minimum of \$1,000 in administrative penalties per act or omission which constitutes a violation(s) of the AMC Act or Board rules; each day of a continuing violation is a separate violation.

(E) 2nd Time Discipline Level 2--violations of the AMC Act or Board rules which evidence serious deficiencies will result in a final order which imposes one or more of the following:

- (i) A period of suspension;
- (ii) A revocation;
- (iii) Remedial measures;
- (iv) Required adoption and implementation of written, preventative policies or procedures;

(v) A probationary period with provisions for monitoring the AMC;

(vi) Monitoring and/or preapproval of AMC panel removals for a specified period of time;

(vii) Monitoring and/or preapproval of the licensed activities of the AMC for a specified time period or until specified conditions are satisfied;

(viii) Minimum of \$2,500 in administrative penalties per act or omission which constitutes a violation(s) of AMC Act or Board rules; each day of a continuing violation is a separate violation.

(F) 2nd Time Discipline Level 3--violations of the AMC Act or Board rules which evidence serious deficiencies and were done with knowledge, deliberately, willfully, or with gross negligence will result in a final order which imposes one or more of the following:

- (i) A period of suspension;
- (ii) A revocation;
- (iii) Remedial measures;

(iv) Required adoption and implementation of written, preventative policies or procedures;

(v) A probationary period with provisions for monitoring the AMC;

(vi) Monitoring and/or preapproval of AMC panel removals for a specified period of time;

(vii) Monitoring and/or preapproval of the licensed activities of the AMC for a specified time period or until specified conditions are satisfied;

(viii) Minimum of \$4,000 in administrative penalties per act or omission which constitutes a violation(s) of the AMC Act or Board rules; each day of a continuing violation is a separate violation.

(G) 3rd Time Discipline Level 1--violations of the AMC Act or Board rules which evidence minor deficiencies will result in a final order which imposes one or more of the following:

(i) A period of suspension;

(ii) A revocation;

(iii) Remedial measures;

(iv) Required adoption and implementation of written, preventative policies or procedures;

(v) A probationary period with provisions for monitoring the AMC;

(vi) Monitoring and/or preapproval of AMC panel removals for a specified period of time;

(vii) Monitoring and/or preapproval of the licensed activities of the AMC for a specified time period or until specified conditions are satisfied;

(viii) Minimum of \$2,500 in administrative penalties per act or omission which constitutes a violation(s) of the AMC Act or Board rules; each day of a continuing violation is a separate violation.

(H) 3rd Time Discipline Level 2--violations of the AMC Act or Board rules which evidence serious deficiencies will result in a final order which imposes one or more of the following:

(i) A period of suspension;

(ii) A revocation;

(iii) Remedial measures;

(iv) Required adoption and implementation of written, preventative policies or procedures;

(v) A probationary period with provisions for monitoring the AMC;

(vi) Monitoring and/or preapproval of AMC panel removals for a specified period of time;

(vii) Monitoring and/or preapproval of the licensed activities of the AMC for a specified time period or until specified conditions are satisfied;

(viii) Minimum of \$4,000 in administrative penalties per act or omission which constitutes a violation(s) of the AMC Act or Board rules; each day of a continuing violation is a separate violation.

(I) 3rd Time Discipline Level 3--violations of the AMC Act or Board rules which evidence serious deficiencies and were done

with knowledge, deliberately, willfully, or with gross negligence will result in a final order which imposes one or more of the following:

(i) A revocation; and

(ii) Minimum of \$7,000 in administrative penalties per act or omission which constitutes a violation(s) of Board Rules, or the AMC Act; each day of a continuing violation is a separate violation.

(J) 4th Time Discipline--violations of the AMC Act or Board rules will result in a final order which imposes one or more of the following:

(i) A revocation; and

(ii) \$10,000 in administrative penalties per act or omission which constitutes a violation(s) of the AMC Act or Board rules; each day of a continuing violation is a separate violation.

(K) Unlicensed AMC activity will result in a final order which imposes a \$10,000 in administrative penalties per unlicensed AMC activity; each day of a continuing violation is a separate violation.

(4) In addition, staff may recommend any or all of the following:

(A) Reducing or increasing the recommended sanction or administrative penalty for a complaint based on documented factors that support the deviation, including but not limited to those factors articulated under paragraph (2) of this section;

(B) Probating all or a portion of any remedial measure, sanction, or administrative penalty for a period not to exceed three years;

(C) Requiring additional reporting requirements;

(D) Payment of costs expended by the Board associated with the investigation, and if applicable, a contested case, including legal fees and administrative costs; and

(E) Such other recommendations, with documented support, as will achieve the purposes of the AMC Act or Board rules.

§159.204. Complaint Processing.

(a) Receipt of a Complaint Intake Form by the Board does not constitute the filing of a formal complaint by the Board against the AMC named on the Complaint Intake Form. Upon receipt of a signed Complaint Intake Form, staff will:

(1) assign the complaint a case number in the complaint tracking system; and

(2) send written acknowledgement of receipt to the complainant.

(b) Priority of complaint investigations. The Board prioritizes and investigates complaints based on the risk of harm each complaint poses to the public. Complaints that pose a high risk of public harm include violations of the AMC Act or Board rules that:

(1) evidence serious deficiencies, including:

(A) Fraud;

(B) Identity theft;

(C) Unlicensed activity;

(D) Ethical violations;

(E) Violations of appraiser independence; or

(F) Other conduct determined by the Board that poses a significant risk of public harm; and

- (2) were done:
 - (A) with knowledge;
 - (B) deliberately;
 - (C) willfully; or
 - (D) with gross negligence.

(c) If the staff determines at any time that the complaint is not within the Board's jurisdiction, or that no violation exists, the complaint will be dismissed with no further processing. The Board or the Executive Director may delegate to staff the duty to dismiss complaints.

(d) A complaint alleging mortgage fraud or in which mortgage fraud is suspected:

- (1) may be investigated covertly; and
- (2) will be referred to the appropriate prosecutorial authorities.

(e) Staff may request additional information necessary to determine how to proceed with the complaint from any person.

(f) If the TALCB Division requires additional information from a Respondent during the [As part of a] preliminary investigative review, a copy of the Complaint Intake Form and all supporting documentation will be included in the request [sent to the Respondent] unless the complaint qualifies for covert investigation and the TALCB Division deems covert investigation appropriate.

(g) The Board will:

(1) protect the complainant's identity to the extent possible by excluding the complainant's identifying information from a complaint notice sent to a respondent.

(2) periodically send written notice to the complainant and each respondent of the status of the complaint until final disposition. For purposes of this subsection, "periodically" means at least once every 90 days.

(h) The Respondent must submit a response within 20 days of receiving a copy of the Complaint Intake Form. The 20-day period may be extended for good cause upon request in writing or by e-mail. The response must include the following:

(1) A copy of the appraisal report(s), if any, that is (are) the subject of the complaint;

(2) A copy of the documents or other business records associated with the appraisal report(s), incident(s), or conduct listed in the complaint, with the following signed statement attached to the response: I SWEAR AND AFFIRM THAT EXCEPT AS SPECIFICALLY SET FORTH HEREIN, THE COPY OF EACH AND EVERY BUSINESS RECORD ACCOMPANYING THIS RESPONSE IS A TRUE AND CORRECT COPY OF THE ACTUAL BUSINESS RECORD, AND NOTHING HAS BEEN ADDED TO OR REMOVED FROM THIS BUSINESS RECORD OR ALTERED. (SIGNATURE OF RESPONDENT);

(3) A narrative response to the complaint, addressing each and every item in the complaint;

(4) A list of any and all persons known to the Respondent to have actual knowledge of any of the matters made the subject of the complaint and, if in the Respondent's possession, contact information;

(5) Any documentation that supports Respondent's position that was not in the original documentation, as long as it is conspicuously labeled as additional documentation and kept separate from the original documentation. The Respondent may also address other

matters not raised in the complaint that the Respondent believes need explanation; and

(6) a signed, dated and completed copy of any questionnaire sent by Board staff.

(i) Staff will evaluate the complaint within three months of receipt of the response from Respondent to determine whether sufficient evidence of a potential violation of the AMC Act or Board rules exists to pursue investigation and possible formal disciplinary action. If staff determines there is no jurisdiction, no violation exists, or there is insufficient evidence to prove a violation, or the complaint warrants dismissal, including contingent dismissal, under subsection (m) of this section, the complaint will be dismissed with no further processing.

(j) A formal complaint will be opened and investigated by a staff investigator or investigative committee if:

(1) the informal complaint is not dismissed under subsection (i) of this section; or

(2) staff opens a formal complaint on its own motion.

(k) Written notice that a formal complaint has been opened will be sent to the Complainant and Respondent.

(l) The staff investigator or investigative committee assigned to investigate a formal complaint will prepare a report detailing all findings.

~~[(m) In determining the proper disposition of a formal complaint pending as of or filed after the effective date of this subsection, and subject to the maximum penalties authorized under Chapter 1104, Texas Occupations Code, staff, the administrative law judge in a contested case hearing and the Board shall consider the following sanctions guidelines and list of non-exclusive factors as demonstrated by the evidence in the record of a contested case proceeding.]~~

~~[(1) For the purposes of these sanctions guidelines:]~~

~~[(A) An AMC will not be considered to have had a prior warning letter, contingent dismissal or discipline if that prior warning letter, contingent dismissal or discipline occurred more than ten years ago;]~~

~~[(B) A prior warning letter, contingent dismissal or discipline given less than ten years ago will not be considered unless the Board took final action against the AMC before the date of the incident that led to the subsequent disciplinary action;]~~

~~[(C) Prior discipline is defined as any sanction, including an administrative penalty, received under a Board final or agreed order;]~~

~~[(D) A violation refers to a violation of any provision of the AMC Act or Board rules;]~~

~~[(E) "Minor deficiencies" is defined as violations of the AMC Act or Board rules which do not call into question the qualification of the AMC for licensure in Texas;]~~

~~[(F) "Serious deficiencies" is defined as violations of the Act or Board rules which do call into question the qualification of the AMC for licensure in Texas;]~~

~~[(G) "Remedial measures" include training, auditing, or any combination thereof; and]~~

~~[(H) The terms of a contingent dismissal agreement will be in writing and agreed to by all parties. Staff may dismiss the complaint with a non-disciplinary warning upon written agreement that the Respondent will complete all remedial measures within the agreed-upon timeframe. If the Respondent fails to meet the deadlines in the~~

agreement, the Respondent's license or certification will be automatically set to inactive status until the Respondent completes the remedial measures set forth in the agreement.}]

[(2) List of factors to consider in determining proper disposition of a formal complaint:}]

[(A) Whether the Respondent has previously received a warning letter or contingent dismissal, and if so, the similarity of facts or violations in that previous complaint to the facts or violations in the instant complaint matter;}]

[(B) Whether the Respondent has previously been disciplined;}]

[(C) If previously disciplined, the nature of the discipline, including:}]

[(i) Whether it concerned the same or similar violations or facts;}]

[(ii) The nature of the disciplinary sanctions imposed;}]

[(iii) The length of time since the previous discipline;}]

[(D) The difficulty or complexity of the incident at issue;}]

[(E) Whether the violations found were of a negligent, grossly negligent or a knowing or intentional nature;}]

[(F) Whether the violations found involved a single appraisal or instance of conduct or multiple appraisals or instances of conduct;}]

[(G) To whom were the appraisal report(s) or the conduct directed, with greater weight placed upon appraisal report(s) or conduct directed at:}]

[(i) A financial institution or their agent, contemplating a lending decision based, in part, on the appraisal report(s) or conduct at issue;}]

[(ii) The Board;}]

[(iii) A matter which is actively being litigated in a state or federal court or before a regulatory body of a state or the federal government;}]

[(iv) Another government agency or government sponsored entity, including, but not limited to, the United States Department of Veteran's Administration, the United States Department of Housing and Urban Development, the State of Texas, Fannie Mae, and Freddie Mac;}]

[(v) A consumer contemplating a real property transaction involving the consumer's principal residence;}]

[(H) Whether Respondent's violations caused any harm, including financial harm, and the amount of such harm;}]

[(I) Whether Respondent acknowledged or admitted to violations and cooperated with the Board's investigation prior to any contested case hearing;}]

[(J) The business operating history of the AMC, including:}]

[(i) The size of the AMC's appraiser panel;}]

[(ii) The length of time Respondent has been licensed as an AMC in Texas;}]

[(iii) The length of time the AMC has been conducting business operations, in any jurisdiction;}]

[(iv) The nature and extent of any remedial measures and sanctions the Respondent had received related to the areas in which violations were found; and}]

[(v) Respondent's affiliation with other business entities;}]

[(K) Whether Respondent can improve the AMC's practice through the use of remedial measures; and}]

[(L) Whether Respondent has voluntarily completed remedial measures prior to the resolution of the complaint.}]

[(3) The sanctions guidelines contained herein shall be employed in conjunction with the factors listed in paragraph (2) of this subsection to assist in reaching the proper disposition of a formal complaint:}]

[(A) 1st Time Discipline Level 1—violations of the AMC Act or Board rules which evidence minor deficiencies will result in one of the following outcomes:}]

[(i) Dismissal;}]

[(ii) Dismissal with non-disciplinary warning letter;}]

[(iii) Contingent dismissal with remedial measures.}]

[(B) 1st Time Discipline Level 2—violations of the AMC Act or Board rules which evidence serious deficiencies will result in one of the following outcomes:}]

[(i) Contingent dismissal with remedial measures;}]

[(ii) A final order which imposes one or more of the following:}]

[(I) Remedial measures;}]

[(II) Required adoption and implementation of written, preventative policies or procedures;}]

[(III) A probationary period with provisions for monitoring the AMC;}]

[(IV) Monitoring and/or preapproval of AMC panel removals for a specified period of time;}]

[(V) Monitoring and/or preapproval of the licensed activities of the AMC for a specified time period or until specified conditions are satisfied;}]

[(VI) Minimum of \$1,000 in administrative penalties per act or omission which constitutes a violation(s) of the AMC Act or Board rules; each day of a continuing violation is a separate violation.}]

[(C) 1st Time Discipline Level 3—violations of the AMC Act or Board rules which evidence serious deficiencies and were done with knowledge, deliberately, willfully, or with gross negligence will result in a final order which imposes one or more of the following:}]

[(i) A period of suspension;}]

[(ii) A revocation;}]

[(iii) Remedial measures;}]

[(iv) Required adoption and implementation of written, preventative policies or procedures;}]

{(v)} A probationary period with provisions for monitoring the AMC;]

{(vi)} Monitoring and/or preapproval of AMC panel removals for a specified period of time;]

{(vii)} Monitoring and/or preapproval of the licensed activities of the AMC for a specified time period or until specified conditions are satisfied;]

{(viii)} Minimum of \$2,500 in administrative penalties per act or omission which constitutes a violation(s) of the AMC Act or Board rules; each day of a continuing violation is a separate violation.]

{(D) 2nd Time Discipline Level 1--violations of the AMC Act or Board rules which evidence minor deficiencies will result in one of the following outcomes:]

{(i)} Dismissal;]

{(ii)} Dismissal with non-disciplinary warning letter;]

{(iii)} Contingent dismissal with remedial measures;]

{(iv)} A final order which imposes one or more of the following:]

{(I)} Remedial measures;]

{(II)} Required adoption and implementation of written, preventative policies or procedures;]

{(III)} A probationary period with provisions for monitoring the AMC;]

{(IV)} Monitoring and/or preapproval of AMC panel removals for a specified period of time;]

{(V)} Monitoring and/or preapproval of the licensed activities of the AMC for a specified time period or until specified conditions are satisfied;]

{(VI)} Minimum of \$1,000 in administrative penalties per act or omission which constitutes a violation(s) of the AMC Act or Board rules; each day of a continuing violation is a separate violation.]

{(E) 2nd Time Discipline Level 2--violations of the AMC Act or Board rules which evidence serious deficiencies will result in a final order which imposes one or more of the following:]

{(i)} A period of suspension;]

{(ii)} A revocation;]

{(iii)} Remedial measures;]

{(iv)} Required adoption and implementation of written, preventative policies or procedures;]

{(v)} A probationary period with provisions for monitoring the AMC;]

{(vi)} Monitoring and/or preapproval of AMC panel removals for a specified period of time;]

{(vii)} Monitoring and/or preapproval of the licensed activities of the AMC for a specified time period or until specified conditions are satisfied;]

{(viii)} Minimum of \$2,500 in administrative penalties per act or omission which constitutes a violation(s) of AMC Act or Board rules; each day of a continuing violation is a separate violation.]

{(F) 2nd Time Discipline Level 3--violations of the AMC Act or Board rules which evidence serious deficiencies and were done with knowledge, deliberately, willfully, or with gross negligence will result in a final order which imposes one or more of the following:]

{(i)} A period of suspension;]

{(ii)} A revocation;]

{(iii)} Remedial measures;]

{(iv)} Required adoption and implementation of written, preventative policies or procedures;]

{(v)} A probationary period with provisions for monitoring the AMC;]

{(vi)} Monitoring and/or preapproval of AMC panel removals for a specified period of time;]

{(vii)} Monitoring and/or preapproval of the licensed activities of the AMC for a specified time period or until specified conditions are satisfied;]

{(viii)} Minimum of \$4,000 in administrative penalties per act or omission which constitutes a violation(s) of the AMC Act or Board rules; each day of a continuing violation is a separate violation.]

{(G) 3rd Time Discipline Level 1--violations of the AMC Act or Board rules which evidence minor deficiencies will result in a final order which imposes one or more of the following:]

{(i)} A period of suspension;]

{(ii)} A revocation;]

{(iii)} Remedial measures;]

{(iv)} Required adoption and implementation of written, preventative policies or procedures;]

{(v)} A probationary period with provisions for monitoring the AMC;]

{(vi)} Monitoring and/or preapproval of AMC panel removals for a specified period of time;]

{(vii)} Monitoring and/or preapproval of the licensed activities of the AMC for a specified time period or until specified conditions are satisfied;]

{(viii)} Minimum of \$2,500 in administrative penalties per act or omission which constitutes a violation(s) of the AMC Act or Board rules; each day of a continuing violation is a separate violation.]

{(H) 3rd Time Discipline Level 2--violations of the AMC Act or Board rules which evidence serious deficiencies will result in a final order which imposes one or more of the following:]

{(i)} A period of suspension;]

{(ii)} A revocation;]

{(iii)} Remedial measures;]

{(iv)} Required adoption and implementation of written, preventative policies or procedures;]

{(v)} A probationary period with provisions for monitoring the AMC;]

{(vi)} Monitoring and/or preapproval of AMC panel removals for a specified period of time;]

~~[(vii) Monitoring and/or preapproval of the licensed activities of the AMC for a specified time period or until specified conditions are satisfied;]~~

~~[(viii) Minimum of \$4,000 in administrative penalties per act or omission which constitutes a violation(s) of the AMC Act or Board rules; each day of a continuing violation is a separate violation.]~~

~~[(I) 3rd Time Discipline Level 3—violations of the AMC Act or Board rules which evidence serious deficiencies and were done with knowledge, deliberately, willfully, or with gross negligence will result in a final order which imposes one or more of the following:]~~

~~[(i) A revocation; and]~~

~~[(ii) Minimum of \$7,000 in administrative penalties per act or omission which constitutes a violation(s) of Board Rules, or the AMC Act; each day of a continuing violation is a separate violation.]~~

~~[(J) 4th Time Discipline—violations of the AMC Act or Board rules will result in a final order which imposes one or more of the following:]~~

~~[(i) A revocation; and]~~

~~[(ii) \$10,000 in administrative penalties per act or omission which constitutes a violation(s) of the AMC Act or Board rules; each day of a continuing violation is a separate violation.]~~

~~[(K) Unlicensed AMC activity will result in a final order which imposes a \$10,000 in administrative penalties per unlicensed AMC activity; each day of a continuing violation is a separate violation.]~~

~~[(4) In addition, staff may recommend any or all of the following:]~~

~~[(A) Reducing or increasing the recommended sanction or administrative penalty for a complaint based on documented factors that support the deviation, including but not limited to those factors articulated under paragraph (2) of this subsection;]~~

~~[(B) Probating all or a portion of any remedial measure, sanction, or administrative penalty for a period not to exceed three years;]~~

~~[(C) Requiring additional reporting requirements;]~~

~~[(D) Payment of costs expended by the Board associated with the investigation, and if applicable, a contested case, including legal fees and administrative costs; and]~~

~~[(E) Such other recommendations, with documented support, as will achieve the purposes of the AMC Act or Board rules.]~~

~~[(m) ~~[(n)]~~ The Board may order a person regulated by the Board to refund the amount paid by a consumer to the person for a service regulated by the Board.~~

~~[(n) Payment of an administrative penalty must be submitted in a manner acceptable to the to the Board. Payment authorized to be submitted online may be subject to fees set by the Department of Information Resources that are in addition to the administrative penalty assessed by the Board.~~

~~[(o) Agreed resolutions of complaint matters pursuant to Texas Occupations Code §1104.2081 must be signed by:~~

~~(1) The Board Chair or if the Board Chair is unavailable or must recuse him or herself, the Board Chair's designee, whom shall be~~

(in priority order) the Board Vice Chair, the Board Secretary, or another Board member;

(2) Respondent;

(3) A representative of the TALCB Division; and

(4) The Executive Director or his or her designee.

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 20, 2024.

TRD-202405626

Kathleen Santos

General Counsel

Texas Appraiser Licensing and Certification Board

Earliest possible date of adoption: January 5, 2025

For further information, please call: (512) 936-3088



TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 1. MISCELLANEOUS PROVISIONS SUBCHAPTER Y. ADVERSE LICENSING, LISTING, OR REGISTRATION DECISIONS

25 TAC §1.601

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §1.601, concerning Decisions Based on Interagency Records.

BACKGROUND AND PURPOSE

House Bill 4611, 88th Legislature, Regular Session, 2023, made certain non-substantive revisions to Subtitle I, Title 4, Texas Government Code, which governs HHSC, Medicaid, and other social services as part of the legislature's ongoing statutory revision program. This proposal is necessary to update citations in the rule to Texas Government Code Chapter 526 that becomes effective on April 1, 2025. The proposed amendment updates the affected citations to Texas Government Code.

FISCAL NOTE

Trey Wood, HHSC 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

HHSC 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 HHSC 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 HHSC;
- (5) the proposed rule will not create a new regulation;
- (6) the proposed rule will not expand, limit, or repeal existing regulations;
- (7) the proposed rule will not change 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

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

The rule does not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rule because the amendment only updates references to existing laws.

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

Libby Elliott, Deputy Executive Commissioner, Office of Policy and Rules, has determined that for each year of the first five years the rule is in effect, the public will benefit from rules that accurately cite the laws governing HHSC, Medicaid, and other social services.

Trey Wood 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 amendment only updates references to existing laws.

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

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

business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 24R085" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Chapter 526.

The amendment affects Texas Government Code §531.0055 and Chapter 526.

§1.601. Decisions Based on Interagency Records.

(a) Scope of subchapter. In accordance with Health and Safety Code, Chapter 531, this subchapter applies to the final licensing or registration decisions of the Department of State Health Services (department) that resulted in a final order that was not reversed on appeal, for the following persons or entities regulated under the Health and Safety Code:

- (1) a youth camp licensed under Chapter 141;
- (2) a hospital licensed under Chapter 241;
- (3) a special care facility licensed under Chapter 248;
- (4) a chemical dependency treatment facility licensed under Chapter 464; and
- (5) a mental hospital or mental health facility licensed under Chapter 577.

(b) Record of final decision. In accordance with Texas Government Code §526.0454[~~Government Code, §531.952~~], the department shall maintain a record:

- (1) of each application for a license, including a renewal license or a registration that is denied by the department under the law authorizing the department to regulate the person or entity;
- (2) of each license or registration that is revoked, suspended, or terminated by the department under the applicable law;
- (3) until the 10th anniversary of the date of the denial, revocation, suspension, or termination;
- (4) that includes:
 - (A) the name and address of the applicant for a license or registration that is denied by the department, and the name and address of each person named on the application for a license or registration that is denied;
 - (B) the name of each controlling person of an entity for which an application, license or registration is denied, revoked, suspended, or terminated as described in paragraphs (1) and (2) of this subsection and the specific type of license or registration that was denied, revoked, suspended, or terminated by the department;
 - (C) a summary of the terms of the denial, revocation, suspension, or termination; and
 - (D) the period the denial, revocation, suspension, or termination was effective.
- (5) The department shall provide a copy of the records maintained under this section, in a form determined by the department, to the Department of Aging and Disability Services and the Department of Family and Protective Services (each Health and Human Services agency that regulates a person described by Texas

Government Code Chapter 526 [Government Code, Chapter 531] on a monthly basis.

(c) Denial of application based on adverse agency decision. The department may deny an application for a license, including a renewal license or a registration of a person described in subsection (a) of this section if:

(1) the applicant, a person named on the application, or a person determined by the regulating agency to be a controlling person of an entity for which the license, listing, or registration is sought is listed in a record maintained by a Health and Human Services agency under Texas Government Code §526.0454[Government Code, §531.952]; and

(2) the agency's action that resulted in the person being listed in a record maintained under Texas Government Code §526.0454[Government Code, §531.952], is based on:

(A) an act or omission that resulted in physical or mental harm to an individual in the care of the applicant or person;

(B) a threat to the health, safety, or well-being of an individual in the care of the applicant or person;

(C) the physical, mental, or financial exploitation of an individual in the care of the applicant or person; or

(D) a determination by the agency that the applicant or person has committed an act or omission that renders the applicant unqualified or unfit to fulfill the obligations of the license, listing, or registration.

(d) Required application information. An applicant submitting an initial or renewal application for a license, including a renewal license or a registration described in subsection (a) of this section must include with the application a written statement of:

(1) the name of any person who is or will be a controlling person of the entity for which the license or registration is sought; and

(2) any other relevant information required by law, rule, or department policy.

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 21, 2024.

TRD-202405679

Karen Ray

Chief Counsel

Department of State Health Services

Earliest possible date of adoption: January 5, 2025

For further information, please call: (512) 221-9021



PART 7. TEXAS MEDICAL DISCLOSURE PANEL

CHAPTER 602. PROCEDURE REQUIRING FULL DISCLOSURE OF SPECIFIC RISKS AND HAZARDS--LIST A

25 TAC §§602.3, 602.5, 602.9, 602.16

The Texas Medical Disclosure Panel (Panel) proposes amendments to §602.3, concerning Digestive System Treatments and Procedures; §602.5, concerning Endocrine System Treatments and Procedures; §602.9, concerning Breast Surgery (non-cosmetic) Treatments and Procedures; and §602.16, concerning Urinary System Treatments and Procedures.

BACKGROUND AND PURPOSE

These amendments are proposed in accordance with Texas Civil Practice and Remedies Code §74.102, which created the Panel to determine which risks and hazards related to medical care and surgical procedures must be disclosed by health care providers or physicians to their patients or persons authorized to consent for their patients and to establish the general form and substance of such disclosure.

The purpose of these amendments is to modify the list of procedures and risks and hazards in §§602.3, 602.5, 602.9, and 602.16 and update these sections using plain language when possible.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §602.3, Digestive System Treatments and Procedures, revises and lists additional types of digestive system treatments and procedures that the Panel has determined require full disclosure of the risks and hazards associated with them, and includes plain language explanations, where necessary.

The proposed amendment to §602.5, Endocrine System Treatments and Procedures, revises and lists additional types of endocrine system treatments and procedures that the Panel has determined require full disclosure of the risks and hazards associated with them, and includes plain language explanations, where necessary.

The proposed amendment to §602.9, Breast Surgery (Non-cosmetic) Treatments and Procedures, revises and lists additional types of breast surgery (non-cosmetic) treatments and procedures that the Panel has determined require full disclosure of the risks and hazards associated with them, and includes plain language explanations, where necessary.

The proposed amendment to §602.16, Urinary System Treatments and Procedures, revises and lists additional types of urinary system treatments and procedures that the Panel has determined require full disclosure of the risks and hazards associated with them, and includes plain language explanations, where necessary.

FISCAL NOTE

Dr. Noah Appel, Panel Chairman, has determined that for each year of the first five years that the rules will be in effect, enforcing or administering the rules do not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

The Panel 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 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 the agency;
- (5) the proposed rules will not create new rules;
- (6) the proposed rules will not expand, limit, or repeal existing rules;
- (7) the proposed rules will not change the number of individuals subject to the rules; and
- (8) the Panel has insufficient information to determine the proposed rules' effect on the state's economy.

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

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

The rules do not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rules.

The Panel is unable to provide an estimate of the number of small businesses and micro businesses affected.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

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

PUBLIC BENEFIT AND COSTS

Dr. Noah Appel, Panel Chairman, has determined that for each year of the first five years the rules are in effect, the public benefit will be that patients are better informed about the risks and hazards related to medical treatments and surgical procedures they are considering and there will be improved clarity in this chapter of the Texas Administrative Code.

Dr. Appel 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.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Comments on the proposal may be submitted to Debasmitha Bhakta, TMDP Liaison, Health and Human Services Commission; P.O. Box 149030, Mail Code E-249, Austin, Texas, 78714-9030; fax (877) 438-5827; office (512) 438-2889, or by email to: hhsc_tmddp@hhsc.state.tx.us.

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) faxed or emailed before midnight on the last day of the comment period. If last day

to submit comments falls on a holiday, comments must be post-marked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule" in the subject line.

STATUTORY AUTHORITY

The amendments to the sections are authorized under Texas Civil Practice and Remedies Code §74.102, which created the Panel to determine which risks and hazards related to medical care and surgical procedures must be disclosed by health care providers or physicians to their patients or persons authorized to consent for their patients and to establish the general form and substance of such disclosure, and §74.103, which requires the Panel to prepare lists of medical treatments and surgical procedures that do and do not require disclosure by physicians and health care providers of the possible risks and hazards, and to prepare the forms for the treatments and procedures which do require disclosure.

The amendments to the sections implement Texas Civil Practice and Remedies Code Chapter 74, Subchapter C.

The Panel hereby certifies that this proposal has been reviewed by legal counsel and found to be a valid exercise of the Panel's legal authority.

§602.3. Digestive System Treatments and Procedures.

(a) Cholecystectomy with or without common bile duct exploration.

(1) Pancreatitis (inflammation of the pancreas).

(2) Bile duct injury (Injury to the tube between the liver and the bowel) [~~Injury to the tube between the liver and the bowel~~].

(3) Retained bile duct stones (stones remaining in the tube between the liver and the bowel) [~~in the tube between the liver and the bowel~~].

(4) Bile duct stenosis or occlusion (narrowing or obstruction of the tube between the liver and the bowel) [~~Narrowing or obstruction of the tube between the liver and the bowel~~].

(5) Injury to the bowel and/or intestinal obstruction.

(6) Bile leak (leak of bile from end of gallbladder duct or variant duct from the liver).

(b) Bariatric surgery (including gastric bypass (Roux-en-Y), biliopancreatic diversion with duodenal switch, sleeve gastrectomy, gastric banding).

(1) Failure of wound to heal or wound dehiscence (separation of wound).

(2) Injury to organs.

(3) Failure of device, including slippage or erosion requiring additional surgical procedure (for surgeries with implanted devices such as gastric banding).

(4) Obstructive symptoms requiring additional surgical procedure.

(5) Development of gallstones (Roux-En-Y).

(6) Development of metabolic and vitamin disorders (Roux-En-Y, biliopancreatic diversion with duodenal switch).

(7) Dumping syndrome causing nausea, vomiting, diarrhea, dizziness, sweating (Roux-En-Y, biliopancreatic diversion with duodenal switch).

(c) Pancreatectomy (subtotal or total and including Whipple Procedure (pancreaticoduodenectomy)).

- (1) Pancreatitis (inflammation of the pancreas) (subtotal).
- (2) Diabetes (total).
- (3) Lifelong requirement of enzyme and digestive medication.

(4) Anastomotic leaks (leak of bile or intestinal fluids at surgical site where ducts and intestines are joined).

(d) Colectomy - total or subtotal [Total colectomy].

- (1) Permanent ileostomy.
- (2) Injury to organs.
- (3) Infection.
- (4) Anastomotic leaks (leak of bowel contents at site where intestines reattached).

(5) Need for colostomy, permanent or temporary (subtotal colectomy).

(6) Incontinence (if ileoanal anastomosis)(unable to control bowel if small bowel attached directly to anus).

[(e) Subtotal colectomy.]

- [(1) Anastomotic leaks.]
- [(2) Temporary colostomy.]
- [(3) Infection.]
- [(4) Second surgery.]
- [(5) Injury to organs.]

(e) [(f)] Hepatobiliary drainage/intervention including percutaneous transhepatic cholangiography, percutaneous biliary drainage, percutaneous cholecystostomy, biliary stent placement (temporary or permanent), biliary stone removal/therapy (bile duct, gallbladder, and gallstone related procedures).

(1) Leakage of bile at the skin site or into the abdomen with possible peritonitis (inflammation of the abdominal lining and pain or if severe can be life threatening).

- (2) Pancreatitis (inflammation of the pancreas).
- (3) Hemobilia (bleeding into the bile ducts).

(4) Cholangitis, cholecystitis, sepsis (inflammation/infection of the bile ducts, gallbladder or blood).

(5) Pneumothorax (collapsed lung) or other pleural complications (complication involving chest cavity).

(f) [(g)] Gastrointestinal tract stenting.

(1) Stent migration (stent moves from location in which it was placed).

(2) Esophageal/bowel perforation (creation of a hole or tear in the tube from the throat to the stomach or in the intestines).

(3) Tumor ingrowth or other obstruction of stent.

(4) For stent placement in the esophagus (tube from the throat to the stomach).

(A) Tracheal compression (narrowing of windpipe) with resulting or worsening of shortness of breath.

(B) Reflux (stomach contents passing up into esophagus or higher).

(C) Aspiration pneumonia (pneumonia from fluid getting in lungs) (if stent in lower part of the esophagus).

(D) Foreign body sensation (feeling like there is something in throat) (for stent placement in the upper esophagus).

(E) Tracheoesophageal fistula (formation of hole and connection between the windpipe and tube between mouth and stomach).

(g) Anti reflux procedures (surgical, endoscopic, including hiatal hernia repair).

(1) Dysphagia (difficulty swallowing).

(2) Stomach bloating, difficulty belching or vomiting.

(3) Esophageal perforation (hole in tube from mouth to stomach).

(4) Mediastinal abscess (infected collection in central portion of chest).

(5) Pneumothorax (collapsed lung).

(6) Device erosion into esophagus/surrounding tissues (procedures with implanted devices).

(h) Endoscopy simple (diagnostic endoscopy).

(1) Perforation (hole) of the esophagus (tube from mouth to stomach), stomach, small intestine (with leakage of contents into chest or abdomen), possibly requiring additional procedures including open surgery.

(2) Need for inclusion of or conversion to advanced endoscopy procedures with those risks (see subsection (i) of this section).

(i) Advanced upper endoscopic procedures (anything more than simple, diagnostic endoscopy) (ERCP, POEM, ESD, pancreatic fluid collection drainage/necrosectomy).

(1) Perforation (hole) of the esophagus, stomach, small intestine (with leakage of contents into chest or abdomen).

(2) Pancreatitis (inflammation of the pancreas) (for any procedures involving pancreas/pancreatic duct).

(3) Hemorrhage (Severe bleeding).

(4) Adjacent organ injury for transluminal procedures (e.g. liver biopsy, fluid drainage).

(5) Biliary peritonitis (bile leakage causing inflammation of the abdominal cavity).

(6) Sepsis (severe infection).

(j) Appendectomy.

(1) Injury to nearby organs.

(2) Infectious collection of fluid (abscess) requiring additional procedure(s).

(3) Normal appendix.

(k) Hemorrhoidectomy with/without fistulectomy or fissurectomy.

(1) Fecal incontinence (unable to control bowel).

(2) Anal stenosis (narrowing of the anus).

(3) Damage to bowel.

(4) Recurrent or new hemorrhoid(s).

(l) Repair and plastic operations on anus and rectum (anal fistula repair, rectovaginal fistula repair, rectal prolapse repair, anal sphincter repair, perineal reconstruction).

(1) Fecal incontinence (unable to control bowel).

(2) Anal stenosis (narrowing of the anus).

(3) Damage to bowel.

(m) Hernia repair (for example inguinal or ventral) (for hiatal hernia repair see subsection (g) of this section).

(1) Injury to adjacent structures (bowel, bladder, blood vessels, nerves).

(2) Seroma (fluid) or hematoma (blood) collection at surgical site.

(3) Chronic pain.

(4) Testicular injury (for those of male sex).

(5) If mesh used, infection, failure, migration, or rejection of the mesh.

(6) Recurrence.

(n) Esophageal dilatation (opening a narrowing of the tube between the mouth and the stomach).

(1) Perforation of the esophagus (creation of hole in tube from mouth to stomach), with possible need for additional procedures including open surgery.

(2) Recurrent stenosis (return of narrowing of the tube from the mouth to the stomach).

(o) Gastrostomy/gastrojejunostomy open, percutaneous, or endoscopic (placement of tube directly between the skin and the stomach with surgical incision, puncture from the skin into the stomach, or puncture from the stomach out towards the skin with endoscopy (camera)).

(1) Damage to surrounding organs.

(2) Hemorrhage (severe bleeding).

(3) Peritonitis (irritation of the abdominal compartment).

(p) Pyloromyotomy (cutting of the muscle at the end of the stomach to treat blockage of the stomach outlet).

(1) Perforation (creation of a hole from the mucosa (inside of the stomach) to the outside of the stomach) possibly requiring additional procedures or surgeries.

(2) Incomplete myotomy (incomplete cutting of the muscle) possibly requiring repeat procedure/surgery.

(3) Delayed gastric emptying (food takes longer to leave the stomach than normal).

(q) Colonoscopy. Perforation (creation of a hole in the intestine) possibly requiring additional procedures or open surgery.

§602.5. *Endocrine System Treatments and Procedures.*

(a) Thyroidectomy.

(1) Acute airway obstruction requiring temporary tracheostomy (creation of hole in neck to breathe).

(2) Injury to nerves resulting in hoarseness or impairment of speech.

(3) Injury to parathyroid glands resulting in low blood calcium levels that require extensive medication to avoid serious degenerative conditions, such as cataracts, brittle bones, muscle weakness and muscle irritability.

(4) Lifelong requirement of thyroid medication.

(b) For scarless/minimally invasive thyroidectomy.

(1) All risks of standard thyroidectomy.

(2) For axillary approach.

(A) Injury to brachial plexus (nerves in shoulder/neck) which can affect function of muscles and sensation in the affected extremity.

(B) Tract seeding of thyroid tissue (thyroid tissue can deposit and grow along the surgical tract).

(C) Postoperative seroma (fluid collection in the area of the surgery).

(D) Great vessel injury (injury to large blood vessels of the upper chest and neck).

(3) Transoral/transoral vestibular approach (TOETVA)).

(A) CO2 embolism (gas bubbles enter bloodstream) (Transoral/transoral vestibular approach (TOETVA)).

(B) Mental nerve injury (nerve injury causing paresthesias (pins and needles sensation) of the lower lip and/or chin) (Transoral/transoral vestibular approach (TOETVA)).

(C) Skin perforation (hole in skin) (Transoral/transoral vestibular approach (TOETVA)).

(D) Burns (Transoral/transoral vestibular approach (TOETVA)).

(E) Surgical space infection (Transoral/transoral vestibular approach (TOETVA)).

(c) [(b)] Parathyroidectomy.

(1) Acute airway obstruction requiring temporary tracheostomy (creation of hole in neck to breathe).

(2) Injury to nerves resulting in hoarseness or impairment of speech.

(3) Low blood calcium levels that require extensive medication to avoid serious degenerative conditions, such as cataracts, brittle bones, muscle weakness, and muscle irritability.

(4) Persistent high calcium level with need for additional treatment/surgery.

(d) [(e)] Adrenalectomy.

(1) Loss of endocrine functions (lifelong requirement for hormone replacement therapy and steroid medication).

[(2) Lifelong requirement for hormone replacement therapy and steroid medication.]

(2) [(3)] Damage to kidneys.

(d) Other procedures.

(e) For pituitary surgery, see §602.13 of this chapter (relating to Nervous System Treatments and Procedures).

(f) [(e)] For pancreatic surgery, see [See also Pancreatectomy under] §602.3 of this chapter (relating to Digestive System Treatments and Procedures).

§602.9. *Breast Surgery (non-cosmetic) Treatments and Procedures.*

(a) Radical or modified radical mastectomy (removal of the breast, possible removal of other chest wall tissues, and possible removal of lymph nodes in the chest and/or under the arm).

- (1) Limitation of movement of shoulder and arm.
- (2) Permanent swelling of the arm.
- (3) Loss of the skin of the chest requiring skin graft.

(4) Residual or recurrent [Reurrence of] malignancy, if present (cancer remaining or comes back after the surgery, if cancer present before the surgery).

(5) Decreased sensation or numbness of the inner aspect of the arm and chest wall.

(b) Simple mastectomy (removal of the breast).

(1) Loss of skin of the chest requiring skin graft.

(2) Residual or recurrent [Reurrence of] malignancy, if present (cancer remaining or comes back after the surgery, if cancer present before the surgery).

(3) Decreased sensation or numbness of the nipple.

(c) Lumpectomy (removal of a portion of the breast).

(1) Loss of skin of the chest requiring skin graft.

(2) Residual or recurrent [Reurrence of] malignancy, if present (cancer remaining or comes back after the surgery, if cancer present before the surgery).

(3) Decreased sensation or numbness of the nipple.

(d) Open biopsy of the breast.

(1) Loss of skin of the chest requiring skin graft.

(2) Residual or recurrent [Reurrence of] malignancy, if present (cancer remaining or comes back after the surgery, if cancer present before the surgery).

(3) Decreased sensation or numbness of the nipple.

§602.16. *Urinary System Treatments and Procedures.*

(a) Nephrectomy [Partial nephrectomy] (removal of part or all of the kidney).

(1) Incomplete removal of stone(s) or tumor, if present.

(2) Blockage of urine (risk of partial nephrectomy).

(3) Leakage of urine at surgical site.

(4) Injury to or loss of the entire kidney (risk of partial nephrectomy, intentional for total or radical nephrectomy).

(5) Loss of the adrenal gland (gland on top of the kidney that makes certain hormones/chemicals the body needs) - intentional in the case of radical nephrectomy.

(6) [(5)] Damage to organs next to kidney.

[(b) Radical nephrectomy (removal of kidney and adrenal gland for cancer).]

[(1) Loss of the adrenal gland (gland on top of kidney that makes certain hormones/chemicals the body needs).]

[(2) Incomplete removal of tumor.]

[(3) Damage to organs next to kidney.]

[(e) Nephrectomy (removal of kidney).]

[(1) Incomplete removal of tumor if present.]

[(2) Damage to organs next to kidney.]

[(3) Injury to or loss of the kidney.]

(b) [(4)] Nephrolithotomy and pyelolithotomy (removal of kidney stone(s)).

(1) Incomplete removal of stone(s).

(2) Blockage of urine.

(3) Leakage of urine at surgical site.

(4) Injury or loss of the kidney.

(5) Damage to organs next to kidney.

(c) [(e)] Pyeloureteroplasty (pyeloplasty or reconstruction of the kidney drainage system). Ureteroplasty (reconstruction of ureter (tube between kidney and bladder)).

(1) Blockage of urine.

(2) Leakage of urine at surgical site.

(3) Injury to or loss of the kidney (pyeloureteroplasty) or ureter (ureterolithotomy).

(4) Damage to organs next to kidney.

(5) Incomplete removal of the stone or tumor (when applicable).

[(f) Exploration of kidney or perinephric mass.]

[(1) Incomplete removal of stone(s) or tumor, if present.]

[(2) Leakage of urine at surgical site.]

[(3) Injury to or loss of the kidney.]

[(4) Damage to organs next to kidney.]

[(g) Ureteroplasty (reconstruction of ureter (tube between kidney and bladder)).]

[(1) Leakage of urine at surgical site.]

[(2) Incomplete removal of the stone or tumor (when applicable).]

[(3) Blockage of urine.]

[(4) Damage to organs next to ureter.]

[(5) Damage to or loss of the ureter.]

(d) [(4)] Ureterolithotomy (surgical removal of stone(s) from ureter (tube between kidney and bladder)).

(1) Leakage of urine at surgical site.

(2) Incomplete removal of stone.

(3) Blockage of urine.

(4) Damage to organs next to ureter (tube that carries urine from kidney to bladder).

(5) Damage to or loss of ureter (tube that carries urine from kidney to bladder).

(e) [(4)] Ureterectomy (partial/complete removal of ureter tube that carries urine from kidney to bladder). Ureterolysis (partial/complete removal of ureter (tube that carries urine from kidney to bladder) from adjacent tissue [(tube between kidney and bladder)].

(1) Leakage of urine at surgical site.

- (2) Incomplete removal of stone (if stone present).
- (3) Blockage of urine.
- (4) Damage to organs next to ureter.
- (5) Damage to or loss of ureter (ureterolysis).
- ~~[(j)]~~ Ureterolysis (partial/complete removal of ureter (tube between kidney and bladder from adjacent tissue)).
- ~~[(1)]~~ Leakage of urine at surgical site.
- ~~[(2)]~~ Blockage of urine.
- ~~[(3)]~~ Damage to organs next to ureter.
- ~~[(4)]~~ Damage to or loss of ureter.
- ~~[(f)]~~ ~~[(k)]~~ Ureteral reimplantation (reinserting ureter (tube between kidney and bladder) into the bladder).
- (1) Leakage of urine at surgical site.
- (2) Blockage of urine.
- (3) Damage to or loss of ureter.
- (4) Backward flow of urine from bladder into ureter.
- (5) Damage to organs next to ureter.
- ~~[(g)]~~ ~~[(h)]~~ Prostatectomy (partial or total removal of prostate).
- (1) Leakage of urine at surgical site.
- (2) Blockage of urine.
- (3) Incontinence (difficulty with control of urine flow).
- (4) Semen passing backward into bladder.
- (5) Difficulty with penile erection (possible with partial and probable with total prostatectomy).
- ~~[(h)]~~ ~~[(m)]~~ Total cystectomy (removal of bladder).
- (1) Probable loss of penile erection and ejaculation in the male.
- (2) Damage to organs next to bladder.
- (3) This procedure will require an alternate method of urinary drainage (urine will need a new place to collect or empty from the body).
- ~~[(i)]~~ ~~[(n)]~~ Radical cystectomy.
- (1) Probable loss of penile erection and ejaculation in the male.
- (2) Damage to organs next to bladder.
- (3) This procedure will require an alternate method of urinary drainage (urine will need a new place to collect or empty from the body).
- (4) Chronic (continuing) swelling of thighs, legs and feet.
- (5) Recurrence or spread of cancer if present.
- ~~[(j)]~~ ~~[(o)]~~ Partial cystectomy (removal of a portion of the bladder [partial removal of bladder]).
- (1) Leakage of urine at surgical site.
- (2) Incontinence (difficulty with control of urine flow).
- (3) Backward flow of urine from bladder into ureter (tube between kidney and bladder).
- (4) Blockage of urine.
- (5) Damage to organs next to bladder.
- ~~[(k)]~~ Cystolithotomy (surgical removal of stone(s) from the bladder).
- (1) Injury to bladder or surrounding organs.
- (2) Urinary incontinence (inability to control release of urine from bladder).
- ~~[(l)]~~ Cystolitholapaxy (cystoscopic crushing and removal of bladder stone(s)).
- (1) Injury to bladder.
- (2) Scarring/injury of urethra (tube from bladder to outside).
- ~~[(m)]~~ Cystostomy (placement of tube into the bladder). Injury to bladder or surrounding organs.
- ~~[(n)]~~ Diverticulectomy of the bladder (removal of outpouching of the bladder).
- (1) Injury to bladder or surrounding organs.
- (2) Urinary incontinence (inability to control release of urine from bladder).
- ~~[(o)]~~ ~~[(p)]~~ Urinary diversion (ileal conduit, colon conduit).
- (1) Blood chemistry abnormalities requiring medication.
- (2) Development of stones, strictures (scars or narrowings) or infection in the kidneys, ureter or bowel (intestine).
- (3) Leakage of urine at surgical site.
- (4) This procedure will require an alternate method of urinary drainage (urine will need a new place to collect or empty from the body).
- ~~[(p)]~~ ~~[(q)]~~ Ureterosigmoidostomy attachment of ureters (tubes between kidney and bladder to the colon (large intestine)) [~~placement of kidney drainage tubes into the large bowel (intestine)~~].
- (1) Blood chemistry abnormalities requiring medication.
- (2) Development of stones, strictures or infection in the kidneys, ureter or bowel (intestine).
- (3) Leakage of urine at surgical site.
- (4) Difficulty in holding urine in the rectum.
- ~~[(q)]~~ ~~[(r)]~~ Urethroplasty (construction/reconstruction/dilation [~~construction/reconstruction~~] of drainage tube from bladder to the outside).
- (1) Leakage of urine at surgical site.
- (2) Stricture formation (narrowing of urethra (tube from bladder to outside)).
- (3) Need for additional surgery.
- ~~[(r)]~~ Diverticulectomy or diverticulotomy of the urethra (repair or drainage of outpouching of the urethra).
- (1) Injury to urethra (tube from bladder to outside) with leak of urine or narrowing of urethra.
- (2) Fistula formation (connection between urethra and other pelvic structure).
- (3) Sexual dysfunction (pain with sexual intercourse, change in sensation with sex).
- (s) Percutaneous nephrostomy/stenting/stone removal.

(1) Pneumothorax or other pleural complications (collapsed lung or filling of the chest cavity on the same side with fluid).

(2) Septic shock/bacteremia (infection of the blood stream with possible shock/severe lowering of blood pressure) when pyonephrosis (infected urine in the kidney) present.

(3) Bowel (intestinal) injury.

(4) Blood vessel injury with or without significant bleeding.

(t) Lithotripsy ("Shockwave Lithotripsy") (sound wave removal of stones from kidney and ureter).

(1) Injury to kidney, ureter (tube between kidney and bladder), or other nearby organs.

(2) Stone fragments blocking ureter.

(3) Bleeding in or around kidney or ureter.

(u) [(t)] Dialysis (technique to replace functions of kidney and clean blood of toxins).

(1) Hemodialysis.

(A) Hypotension (low blood pressure).

(B) Hypertension (high blood pressure).

(C) Air embolism (air bubble in blood vessel) resulting in possible death or paralysis.

(D) Cardiac arrhythmias (irregular heart rhythms).

(E) Infections of blood stream, access site, or blood borne (for example: Hepatitis B, C, or HIV).

(F) Hemorrhage (severe bleeding as a result of clotting problems or due to disconnection of the bloodline).

(G) Nausea, vomiting, cramps, headaches, and mild confusion during and/or temporarily after dialysis.

(H) Allergic reactions.

(I) Chemical imbalances and metabolic disorders (unintended change in blood minerals).

(J) Pyrogenic reactions (fever).

(K) Hemolysis (rupture of red blood cells).

(L) Graft/fistula damage including bleeding, aneurysm, formation (ballooning of vessel), clotting (closure) of graft/fistula.

(2) Peritoneal dialysis.

(A) Infections, including peritonitis (inflammation or irritation of the tissue lining the inside wall of abdomen and covering organs), catheter infection and catheter exit site infection.

(B) Development of hernias of umbilicus (weakening of abdominal wall or muscle).

(C) Hypertension (high blood pressure).

(D) Hypotension (low blood pressure).

(E) Hydrothorax (fluid in chest cavity).

(F) Arrhythmia (irregular heart rhythm).

(G) Perforation of the bowel (hole in intestine).

(H) Sclerosis or scarring of the peritoneum (lining of the abdomen) with loss of dialysis function.

(I) Weight gain leading to obesity.

(J) Abdominal discomfort/distension.

(K) Heartburn or reflux.

(L) Increase in need for anti-diabetic medication.

(M) Muscle weakness.

(N) Dehydration (extreme loss of body fluid).

(O) Chemical imbalances and metabolic disorders (unintended change in blood minerals).

(P) Allergic reactions.

(Q) Nausea, vomiting, cramps, headaches, and mild confusion during and/or temporarily after dialysis.

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 20, 2024.

TRD-202405661

Dr. Noah Appel

Panel Chairman

Texas Medical Disclosure Panel

Earliest possible date of adoption: January 5, 2025

For further information, please call: (512) 438-2889



CHAPTER 603. PROCEDURES REQUIRING NO DISCLOSURE OF SPECIFIC RISKS AND HAZARDS--LIST B

25 TAC §603.3, §603.16

The Texas Medical Disclosure Panel (Panel) proposes amendments to §603.3, concerning Digestive System Treatments and Procedures; and §603.16, concerning Urinary System Treatments and Procedures.

BACKGROUND AND PURPOSE

These amendments are proposed in accordance with Texas Civil Practice and Remedies Code §74.102, which created the Panel to determine which risks and hazards related to medical care and surgical procedures must be disclosed by health care providers or physicians to their patients or persons authorized to consent for their patients and to establish the general form and substance of such disclosure.

The purpose of these amendments is to modify the list of procedures and risks and hazards in §603.3 and §603.16 and update these sections using plain language when possible.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §603.3, Digestive System Treatments and Procedures, revises and lists additional types of digestive system treatments and procedures that the Panel has determined require no disclosure of specific risks and hazards associated with them, and includes plain language explanations, where necessary.

The proposed amendment to §603.16, Urinary System Treatments and Procedures, revises and lists additional types of urinary system treatments and procedures that the Panel has de-

terminated require no disclosure of specific risks and hazards associated with them, and includes plain language explanations, where necessary.

FISCAL NOTE

Dr. Noah Appel, Panel Chairman, has determined that for each year of the first five years that the rules will be in effect, enforcing or administering the rules do not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

The Panel 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 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 the agency;
- (5) the proposed rules will not create new rules;
- (6) the proposed rules will not expand, limit, or repeal existing rules;
- (7) the proposed rules will not change the number of individuals subject to the rules; and
- (8) the Panel has insufficient information to determine the proposed rules' effect on the state's economy.

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

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

The rules do not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rules.

The Panel is unable to provide an estimate of the number of small businesses and micro businesses affected.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

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

PUBLIC BENEFIT AND COSTS

Dr. Noah Appel, Panel Chairman, has determined that for each year of the first five years the rules are in effect, the public benefit will be that patients are better informed about the risks and hazards related to medical treatments and surgical procedures they are considering and there will be improved clarity in this chapter of the Texas Administrative Code.

Dr. Appel 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.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Comments on the proposal may be submitted to Debasmitta Bhakta, TMDP Liaison, Health and Human Services Commission; P.O. Box 149030, Mail Code E-249, Austin, Texas, 78714-9030; fax (877) 438-5827; office (512) 438-2889, or by email to: hhsc_tmdp@hhsc.state.tx.us.

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) faxed or emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate 'Comments on Proposed Rule' in the subject line.

STATUTORY AUTHORITY

The amendments to the sections are authorized under Texas Civil Practice and Remedies Code §74.102, which created the Panel to determine which risks and hazards related to medical care and surgical procedures must be disclosed by health care providers or physicians to their patients or persons authorized to consent for their patients and to establish the general form and substance of such disclosure, and §74.103, which requires the Panel to prepare lists of medical treatments and surgical procedures that do and do not require disclosure by physicians and health care providers of the possible risks and hazards, and to prepare the forms for the treatments and procedures which do require disclosure.

The amendments to the sections implement Texas Civil Practice and Remedies Code Chapter 74, Subchapter C.

The Panel hereby certifies that this proposal has been reviewed by legal counsel and found to be a valid exercise of the Panel's legal authority.

§603.3. Digestive System Treatments and Procedures.

~~{(a) Appendectomy. }~~

~~{(b) Hemorrhoidectomy with fistulectomy or fissurectomy.}~~

~~{(c) Hemorrhoidectomy.}~~

(a) ~~{(d)}~~ Incision (cutting into) or excision (removal) of perirectal tissue.

(b) ~~{(e)}~~ Local excision (removal) and/or [and] destruction of a lesion of anus and/or rectum [lesion, anus and rectum].

~~{(f) Operations for correction of cleft palate.}~~

~~{(g) Repair of inguinal or ventral hernia.}~~

~~{(h) Repair and plastic operations on anus and rectum.}~~

~~{(i) Colonoscopy.}~~

~~{(j) Tonsillectomy with adenoidectomy.}~~

(c) ~~{(k)}~~ Tonsillectomy without adenoidectomy.

§603.16. *Urinary System Treatments and Procedures.*

- ~~[(a) Nephrotomy (placement of drainage tubes).]~~
- ~~(a) [(b)] Biopsy of prostate, bladder or urethra.~~
- ~~(b) Urethrotomy (incision of the urethra).~~
- ~~[(c) Cystolithotomy (surgical removal of stone(s) from the bladder).]~~
- ~~[(d) Cystolitholapaxy (cystoscopic crushing and removal of bladder stone(s)).]~~
- ~~[(e) Cystostomy (placement of tube into the bladder).]~~
- ~~[(f) Urethrotomy (incision of the urethra).]~~
- ~~[(g) Diverticulectomy of the bladder (removal of outpouching of the bladder).]~~
- ~~[(h) Diverticulectomy or diverticulotomy of the urethra (repair or drainage of outpouching of the urethra).]~~
- ~~[(i) Lithotripsy (sound wave removal of stones from kidney and ureter).]~~

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 20, 2024.

TRD-202405662

Dr. Noah Appel

Panel Chairman

Texas Medical Disclosure Panel

Earliest possible date of adoption: January 5, 2025

For further information, please call: (512) 438-2889



PART 11. CANCER PREVENTION AND RESEARCH INSTITUTE OF TEXAS

CHAPTER 703. GRANTS FOR CANCER PREVENTION AND RESEARCH

25 TAC §703.13, §703.26

The Cancer Prevention and Research Institute of Texas ("CPRIT" or "the Institute") proposes amending 25 Texas Administrative Code §703.13 and §703.26 relating the grant recipient audit threshold, unallowable grant recipient expenses, and a reference to Texas Grant Management Standards.

Background and Justification

The proposed amendment to §703.13(b) increases the grant recipient audit threshold from \$750,000 to \$1 million. The amendment harmonizes CPRIT's administrative rules with recent changes to the Texas Grant Management Standards (TxGMS) published by the Comptroller of Public Accounts. Currently, CPRIT grantees who expend \$750,000 or more in state funds must obtain either an annual single independent audit, a program specific independent audit, or an agreed upon procedures engagement. CPRIT follows the guidance in TxGMS to determine the audit threshold. On October 1, 2024, the Comptroller's of Public Accounts released a new version of TxGMS that increased the threshold to \$1 million.

CPRIT proposes amending §703.26(e) to add the following as an unallowable expense for grant recipients, "Reimbursements to employees for their out-of-pocket health insurance premium or other health care expenses which are not made through an employer-sponsored plan established under Section 105 of the Internal Revenue Code." For these expenses to be considered fringe benefits that are reimbursable from CPRIT grant funds, the employer must have an established health reimbursement arrangement program under Section 105 of the Internal Revenue Code. Thus, this amendment clarifies that CPRIT program standards for reimbursements conform to other relevant laws.

Lastly, the Institute proposes a non-substantive, technical amendment to § 703.26(b). This amendment proposes replacing an outdated reference to the Uniform Grant Management Standards (UGMS) with a reference to TxGMS. CPRIT relied on UGMS, the predecessor to TxGMS, as guidance for grant recipients and referred to it in the Institute's administrative rules. When TxGMS went into effect, CPRIT updated its administrative rules to replace references to UGMS with references to TxGMS. The proposed amendment to § 703.26(b) corrects a reference that was inadvertently excluded from the previous update.

Fiscal Note

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

Public Benefit and Costs

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

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

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

Government Growth Impact Statement

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

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

Submit written comments on the proposed rule changes to Mr. John Ellis, General Counsel, Cancer Prevention and Research Institute of Texas, P.O. Box 12097, Austin, Texas 78711, no later than January 7, 2025. The Institute asks parties filing comments to indicate whether they support the rule revision proposed by the Institute and, if the party requests a change, to provide specific text for the proposed change. Parties may submit comments electronically to jellis@cpr.it.texas.gov or by facsimile transmission to 512/475-2563.

Statutory Authority

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

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

§703.13. Audits and Investigations.

(a) Upon request and with reasonable notice, an entity receiving Grant Award funds directly under the Grant Contract or indirectly through a subcontract under the Grant Contract shall allow, or shall cause the entity that is maintaining such items to allow the Institute, or auditors or investigators working on behalf of the Institute, including the State Auditor and/or the Comptroller of Public Accounts for the State of Texas, to review, inspect, audit, copy or abstract its records pertaining to the specific Grant Contract during the term of the Grant Contract and for the three year period following the date the last disbursement of funds is made by the Institute or all reports required pursuant to the Grant Contract are submitted and approved, whichever date is later.

(1) A Grant Recipient shall maintain its records pertaining to the specific Grant Contract for a period of three years following the date the last disbursement of funds is made by the Institute or all reports required pursuant to the Grant Contract are submitted and approved, whichever date is later.

(2) The Grant Recipient may maintain its records in either electronic or paper format.

(b) Notwithstanding the foregoing, the Grant Recipient shall submit a single audit determination form no later than 60 days following the close of the Grant Recipient's fiscal year. The Grant Recipient shall report whether the Grant Recipient has expended \$1 million [\$750,000] or more in state awards during the Grant Recipient's fiscal year. If the Grant Recipient has expended \$1 million [\$750,000] or more in state awards in its fiscal year, the Grant Recipient shall obtain either an annual single independent audit, a program specific independent audit, or an agreed upon procedures engagement as defined by the American Institute of Certified Public Accountants and pursuant to guidance provided in subsection (e) of this section.

(1) The audited time period is the Grant Recipient's fiscal year.

(2) The audit must be submitted to the Institute within thirty (30) days of receipt by the Grant Recipient but no later than nine (9) months following the close of the Grant Recipient's fiscal year and shall include a corrective action plan that addresses any weaknesses, deficiencies, wrongdoings, or other concerns raised by the audit report and a summary of the action taken by the Grant Recipient to address the concerns, if any, raised by the audit report.

(A) The Grant Recipient may seek additional time to submit the required audit and corrective action plan by providing a

written explanation for its failure to timely comply and providing an expected time for the submission.

(B) The Grant Recipient's request for additional time must be submitted on or before the due date of the required audit and corrective action plan. For purposes of this rule, the "due date of the required audit" is no later than nine (9) months following the close of the Grant Recipient's fiscal year.

(C) Approval of the Grant Recipient's request for additional time is at the discretion of the Institute. Such approval must be granted by the Chief Executive Officer.

(c) No reimbursements or advances of Grant Award funds shall be made to the Grant Recipient if the Grant Recipient is delinquent in filing the required audit and corrective action plan. A Grant Recipient that has received approval from the Institute for additional time to file the required audit and corrective action plan may receive reimbursements or advances of Grant Award funds during the pendency of the delinquency unless the Institute's approval declines to permit reimbursements or advances of Grant Award funds until the delinquency is addressed.

(d) A Grant Recipient that is delinquent in submitting to the Institute the audit and corrective action plan required by this section is not eligible to be awarded a new Grant Award or a continuation Grant Award until the required audit and corrective action plan are submitted. A Grant Recipient that has received approval from the Institute for additional time to file the required audit and corrective action plan may remain eligible to be awarded a new Grant Award or a continuation Grant Award unless the Institute's approval declines to continue eligibility during the pendency of the delinquency.

(e) For purposes of this rule, an agreed upon procedures engagement is one in which an independent certified public accountant is hired by the Grant Recipient to issue a report of findings based on specific procedures to be performed on a subject matter.

(1) The option to perform an agreed upon procedures engagement is intended for a non-profit or for-profit Grant Recipient that is not subject to Generally Accepted Government Audit Standards (also known as the Yellow Book) published by the U.S. Government Accountability Office.

(2) The agreed upon procedures engagement will be conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants.

(3) The certified public accountant is to perform procedures prescribed by the Institute and to report his or her findings attesting to whether the Grant Recipient records are in agreement with stated criteria.

(4) The agreed upon procedures apply to all current year expenditures for Grant Awards received by the Grant Recipient. Nothing herein prohibits the use of a statistical sample consistent with the American Institute of Certified Public Accountants' guidance regarding government auditing standards and 2 CFR Part 200, Subpart F, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards."

(5) At a minimum, the agreed upon procedures report should address:

- (A) Processes and controls;
- (B) The Grant Contract;
- (C) Indirect Costs;
- (D) Matching Funds, if appropriate;

(E) Grant Award expenditures (payroll and non-payroll related transactions);

(F) Equipment;

(G) Revenue Sharing and Program Income;

(H) Reporting; and

(I) Grant Award closeout.

(6) The certified public accountant should consider the specific Grant Mechanism and update or modify the procedures accordingly to meet the requirements of each Grant Award and the Grant Contract reviewed.

(f) For purposes of this rule, a program specific audit should address:

(1) Sample of awards;

(2) Reporting;

(3) Indirect costs;

(4) Matching funds, if appropriate;

(5) Expenditures;

(6) Expenditure Reporting;

(7) Personnel Level of Effort Reporting;

(8) Grant Closeout;

(9) Performance Measures;

(10) Publications and Acknowledgements;

(11) Title to equipment;

(12) Contract certifications;

(13) Changes in Principal Investigator or Program Director;

(14) Intellectual Property and revenue sharing;

(15) Early termination and event of default; and

(16) Any other issue identified by the Institute, the Grant Recipient, or the person performing the program specific audit.

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

§703.26. Allowable Costs.

(a) A cost is an Allowable Cost and may be charged to the Grant Award if it is reasonable, allocable, and adequately documented.

(1) A cost is reasonable if the cost does not exceed that which would be incurred by a prudent individual or organization under the circumstances prevailing at the time the decision was made to incur the cost; and is necessary for the performance of the Grant Award defined in the Scope of Work in the Grant Contract.

(2) A cost is allocable if the cost:

(A) Benefits the Grant Award either directly or indirectly, subject to Indirect Cost limits stated in the Grant Contract;

(B) Is assigned the Grant Award in accordance with the relative benefit received;

(C) Is allowed or not prohibited by state laws, administrative rules, contractual terms, or applicable regulations;

(D) Is not included as a cost or used to meet Matching Fund requirements for any other Grant Award in either the current or a prior period; and

(E) Conforms to any limitations or exclusions set forth in the applicable cost principles, administrative rules, state laws, and terms of the Grant Contract.

(3) A cost is adequately documented if the cost is supported by the organization's accounting records and documented consistent with §703.24 of this title (relating to Financial Status Reports).

(b) Grant Award funds must be used for Allowable Costs as provided by the terms of the Grant Contract, Chapter 102, Texas Health and Safety Code, the Institute's administrative rules, and the Texas Grant Management Standards (TxGMS) adopted by the Comptroller's Office. If guidance from TxGMS [the Uniform Grant Management Standards] on a particular issue conflicts with a specific provision of the Grant Contract, Chapter 102, Texas Health and Safety Code or the Institute's administrative rules, then the Grant Contract, statute, or Institute administrative rule shall prevail.

(c) An otherwise Allowable Cost will not be eligible for reimbursement if the Grant Recipient incurred the expense outside of the Grant Contract term, unless the Grant Recipient has received written approval from the Institute's Chief Executive Officer to receive reimbursement for expenses incurred prior to the effective date of the Grant Contract.

(d) An otherwise Allowable Cost will not be eligible for reimbursement if the benefit from the cost of goods or services charged to the Grant Award is not realized within the applicable term of the Grant Award. The Grant Award should not be charged for the cost of goods or services that benefit another Grant Award or benefit a period prior to the Grant Contract effective date or after the termination of the Grant Contract.

(e) Grant Award funds shall not be used to reimburse unallowable expenses, including, but not limited to:

(1) Bad debt, such as losses arising from uncollectible accounts and other claims and related costs.

(2) Contributions to a contingency reserve or any similar provision for unforeseen events.

(3) Contributions and donations made to any individual or organization.

(4) Costs of entertainment, amusements, social activities, and incidental costs relating thereto, including tickets to shows or sports events, meals, alcoholic beverages, lodging, rentals, transportation and gratuities.

(5) Costs relating to food and beverage items, unless the food item is related to the issue studied by the project that is the subject of the Grant Award.

(6) Fines, penalties, or other costs resulting from violations of or failure to comply with federal, state, local or Indian tribal laws and regulations.

(7) An honorary gift or a gratuitous payment.

(8) Interest and other financial costs related to borrowing and the cost of financing.

(9) Legislative expenses such as salaries and other expenses associated with lobbying the state or federal legislature or similar local governmental bodies, whether incurred for purposes of legislation or executive direction.

(10) Liability insurance coverage.

(11) Benefit replacement pay or legislatively-mandated pay increases for eligible general revenue-funded state employees at Grant Recipient state agencies or universities.

(12) Professional association fees or dues for an individual employed by the Grant Recipient. Professional association fees or dues for the Grant Recipient's membership in business, technical, and professional organizations may be allowed, with prior approval from the Institute, if:

(A) the professional association is not involved in lobbying efforts; and

(B) the Grant Recipient demonstrates how membership in the professional association benefits the Grant Award project(s).

(13) Promotional items and costs relating to items such as T-shirts, coffee mugs, buttons, pencils, and candy that advertise or promote the project or Grant Recipient.

(14) Fees for visa services.

(15) Payments to a subcontractor if the subcontractor working on a Grant Award project employs an individual who is a Relative of the Principal Investigator, Program Director, Company Representative, Authorized Signing Official, or any person designated as Key Personnel for the same Grant Award project (collectively referred to as "affected Relative"), and the Grant Recipient will be paying the subcontractor with Grant Award funds for any portion of the affected Relative's salary or the Relative submits payment requests on behalf of the subcontractor to the Grant Recipient for payment with Grant Award funds.

(A) For exceptional circumstances, the Institute's Chief Executive Office may grant an exception to allow payment of Grant Award funds if the Grant Recipient notifies the Institute prior to finalizing the subcontract. The Chief Executive Officer must notify the Oversight Committee in writing of the decision to allow reimbursement for the otherwise unallowable expense.

(B) Nothing herein is intended to supersede a Grant Recipient's internal policies, to the extent that such policies are stricter.

(16) Fundraising.

(17) Tips or gratuities.

(18) Reimbursements to employees for their out-of-pocket health insurance premium or other health care expenses which are not made through an employer-sponsored plan established under Section 105 of the Internal Revenue Code.

(f) Pursuant to Texas Health and Safety Code Section 102.203(b) the Institute may authorize reimbursement for one or more of the following expenses incurred by a cancer clinical trial participant that are associated with participating in a clinical trial and included in the Grant Recipient's Approved Budget:

(1) transportation, including car mileage, parking, bus fare, taxi or ride hailing fare exclusive of tips, and commercial economy class airfare within the borders of the State of Texas;

(2) lodging; and

(3) any cost reimbursed under a cancer clinical trial participation program established pursuant to Texas Health and Safety Code Chapter 51 (relating to Cancer Clinical Trial Participation Program).

(g) The Institute is responsible for making the final determination regarding whether an expense shall be considered an Allowable Cost.

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 21, 2024.

TRD-202405674

Heidi McConnell

Deputy Executive Officer / Chief Operating Officer

Cancer Prevention and Research Institute of Texas

Earliest possible date of adoption: January 5, 2025

For further information, please call: (512) 463-3190



TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 52. CONTRACTING FOR COMMUNITY SERVICES

SUBCHAPTER A. APPLICATION AND DEFINITIONS

26 TAC §52.1

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §52.1, concerning Application.

BACKGROUND AND PURPOSE

House Bill 4611, 88th Legislature, Regular Session, 2023, made certain non-substantive revisions to Subtitle I, Title 4, Texas Government Code, which governs HHSC, Medicaid, and other social services as part of the legislature's ongoing statutory revision program. This proposal is necessary to update a citation in the rule to Texas Government Code Chapter 546 that becomes effective on April 1, 2025. The proposed amendment updates the affected citation to Texas Government Code.

FISCAL NOTE

Trey Wood, HHSC 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

HHSC 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 HHSC 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 HHSC;

(5) the proposed rule will not create a new regulation;

(6) the proposed rule will not expand, limit, or repeal existing regulations;

(7) the proposed rule will not change 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

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

The rule does not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rule because the amendment only updates a reference to existing law.

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

Libby Elliott, Deputy Executive Commissioner, Office of Policy and Rules, has determined that for each year of the first five years the rule is in effect, the public will benefit from rules that accurately cite the laws governing HHSC, Medicaid, and other social services.

Trey Wood 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 amendment only updates a reference to existing law.

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

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 24R085" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Chapter 546.

The amendment affects Texas Government Code §531.0055 and Chapter 546.

§52.1. Application.

(a) Except as provided in subsections (b) - (e) of this section, all of the sections of this chapter apply to an applicant or contractor for one or more of the following programs and services:

(1) Medicaid waiver programs and services under Title XIX, §1915(c) of the Social Security Act as follows:

(A) the Community Living Assistance and Support Services (CLASS) Program:

(i) CLASS-case management agency (CMA);

(ii) CLASS-continued family services (CFS);

(iii) CLASS-direct service agency (DSA); and

(iv) CLASS-support family services (SFS);

(B) the Deaf Blind with Multiple Disabilities (DBMD) Program;

(C) the Home and Community-based Services (HCS) Program;

(D) the Texas Home Living (TxHmL) Program; and

(E) transition assistance services (TAS);

(2) Medicaid state plan programs or services under Title XIX, §1902(a)(10)(A) of the Social Security Act as follows:

(A) hospice;

(B) the Primary Home Care (PHC) Program;

(C) the Community Attendant Services (CAS) Program; and

(D) day activity and health services (DAHS);

(3) services and programs under Title XX, Subtitle A of the Social Security Act as follows:

(A) adult foster care (AFC);

(B) emergency response services;

(C) the Home-Delivered Meals (HDM) Program;

(D) residential care (RC);

(E) DAHS;

(F) the Family Care (FC) Program;

(G) the Consumer Managed Personal Attendant Services (CMPAS) Program;

(H) special services to persons with disabilities (SSPD); and

(I) SSPD - 24-hour shared attendant care; and

(4) financial management services under the consumer directed services option authorized under Texas Government Code Chapter 546, Subchapter C [~~§531.051~~] as follows:

(A) financial management services agency (FMSA)--CLASS;

- (B) FMSA-DBMD;
- (C) FMSA-HCS;
- (D) FMSA-PHC/CAS/FC; and
- (E) FMSA-TxHmL.

(b) Section 49.310 of this chapter (relating to Abuse, Neglect, and Exploitation Allegations), Subchapter D of this chapter (relating to Monitoring and Investigation of a Contractor), and Subchapter E, Divisions 2 and 3 of this chapter (relating to Immediate Protection; and Actions) do not apply to a contractor that has a contract for:

- (1) the HCS Program; or
- (2) the TxHmL Program.

(c) Subchapter D of this chapter and §49.523 of this chapter (relating to Referral Hold) do not apply to a contractor that has a contract for hospice.

(d) Sections 49.202 - 49.205 and §§49.207 - 49.211 of this chapter (relating to Provisional Contract; Provisional Contract Application Process; Additional Provisional Contract Application Requirements; License, Certification, Accreditation, and Other Requirements; Provisional Contract Application Denial; Provisional Contract Application Approval; Standard Contract; Contractor Change of Ownership or Legal Entity; and Religious Organization Applicants) and Subchapter G of this chapter (relating to Application Denial Period) do not apply to a contractor that has a contract for:

- (1) the CMPAS Program;
- (2) SSPD; or
- (3) SSPD - 24-hour shared attendant care.

(e) Section 49.310 of this chapter does not apply to a contractor that has a contract for one or more of the following programs or services:

- (1) a CLASS-CMA;
- (2) a CLASS-DSA;
- (3) the CMPAS Program;
- (4) the DBMD Program;
- (5) an FMSA-CLASS;
- (6) an FMSA-DBMD;
- (7) an FMSA-HCS;
- (8) an FMSA-PHC/CAS/FC;
- (9) an FMSA-TxHmL;
- (10) the PHC Program;
- (11) the CAS Program; and
- (12) the FC Program.

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 21, 2024.

TRD-202405680

Karen Ray
 Chief Counsel
 Health and Human Services Commission
 Earliest possible date of adoption: January 5, 2025
 For further information, please call: (512) 221-9021



CHAPTER 259. COMMUNITY LIVING ASSISTANCE AND SUPPORT SERVICES (CLASS) PROGRAM AND COMMUNITY FIRST CHOICE (CFC) SERVICES

SUBCHAPTER A. DEFINITIONS, DESCRIPTION OF SERVICES, AND EXCLUDED SERVICES

26 TAC §259.5

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §259.5, concerning Definitions.

BACKGROUND AND PURPOSE

House Bill 4611, 88th Legislature, Regular Session, 2023, made certain non-substantive revisions to Subtitle I, Title 4, Texas Government Code, which governs HHSC, Medicaid, and other social services as part of the legislature's ongoing statutory revision program. This proposal is necessary to update citations in the rule to Texas Government Code sections that become effective on April 1, 2025. The proposed amendment updates the affected citations to Texas Government Code.

FISCAL NOTE

Trey Wood, HHSC 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

HHSC 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 HHSC 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 HHSC;
- (5) the proposed rule will not create a new regulation;
- (6) the proposed rule will not expand, limit, or repeal existing regulations;
- (7) the proposed rule will not change 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

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

The rule does not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rule because the amendment only updates references to existing laws.

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

Libby Elliott, Deputy Executive Commissioner, Office of Policy and Rules, has determined that for each year of the first five years the rule is in effect, the public will benefit from rules that accurately cite the laws governing HHSC, Medicaid, and other social services.

Trey Wood 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 amendment only updates references to existing laws.

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

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 24R085" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Chapters 521 and 543A.

The amendment affects Texas Government Code §531.0055 and Chapters 521 and 543A.

§259.5. *Definitions.*

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

(1) Abuse--

- (A) physical abuse;
- (B) sexual abuse; or
- (C) verbal or emotional abuse.

(2) Actively involved--Significant, ongoing, and supportive involvement with an individual by a person, as determined by the individual, based on the person's:

- (A) interactions with the individual;
- (B) availability to the individual for assistance or support when needed; and
- (C) knowledge of, sensitivity to, and advocacy for the individual's needs, preferences, values, and beliefs.

(3) Adaptive aids--A Community Living Assistance and Support Services (CLASS) Program service that:

- (A) enables an individual to retain or increase the ability to perform activities of daily living (ADLs) or perceive, control, or communicate with the environment in which the individual lives; and
- (B) meets one of the following criteria:

(i) is an item included in the list of adaptive aids in the *Community Living Assistance and Support Services Provider Manual*; or

(ii) is the repair or maintenance of an item on the list of adaptive aids in the *Community Living Assistance and Support Services Provider Manual* that is not covered by a warranty.

(4) Adaptive behavior--The effectiveness with or degree to which an individual meets the standards of personal independence and social responsibility expected of the individual's age and cultural group as assessed by an adaptive behavior screening assessment.

(5) Adaptive behavior level--The categorization of an individual's functioning level based on a standardized measure of adaptive behavior. There are four adaptive behavior levels ranging from mild limitations in adaptive skills (I) through profound limitations in adaptive skills (IV).

(6) Adaptive behavior screening assessment--A standardized assessment used to determine an individual's adaptive behavior level, and conducted using the current version of one of the following assessment instruments:

- (A) American Association of Intellectual and Developmental Disabilities (AAIDD) Adaptive Behavior Scales (ABS);
- (B) Inventory for Client and Agency Planning (ICAP);
- (C) Scales of Independent Behavior; or
- (D) Vineland Adaptive Behavior Scales.

(7) ADLs--Activities of daily living. Basic personal everyday activities, including tasks such as eating, toileting, grooming, dressing, bathing, and transferring.

(8) Agency foster home--This term has the meaning set forth in Texas Human Resources Code §42.002.

(9) Alarm call--A signal transmitted from an individual's Community First Choice emergency response services (CFC ERS) equipment to the CFC ERS response center indicating that the individual needs immediate assistance.

(10) ALF--Assisted living facility. A facility licensed in accordance with Texas Health and Safety Code (THSC), Chapter 247, Assisted Living Facilities.

(11) Alleged perpetrator--A person alleged to have committed an act of abuse, neglect, or exploitation of an individual.

(12) Aquatic therapy--A specialized therapy that involves a low-risk exercise method performed in water to improve an individual's range of motion, flexibility, muscular strengthening and toning, cardiovascular endurance, fitness, and mobility.

(13) Audio-only--An interactive, two-way audio communication platform that only uses sound.

(14) Auditory integration training/auditory enhancement training--A CLASS Program service that provides specialized training to assist an individual to cope with hearing dysfunction or over-sensitivity to certain frequency ranges of sound by facilitating auditory processing skills and exercising the middle ear and auditory nervous system.

(15) Auxiliary aid--A service or device that enables an individual with impaired sensory, manual, or speaking skills to participate in the person-centered planning process. An auxiliary aid includes interpreter services, transcription services, and a text telephone.

(16) Behavior support plan--A comprehensive, individualized written plan based on a current functional behavior assessment that includes specific outcomes and behavioral techniques designed to teach or increase adaptive skills and decrease or eliminate target behaviors.

(17) Behavioral support--A CLASS Program service that provides specialized interventions to assist an individual in increasing adaptive behaviors and replacing or modifying behaviors that prevent or interfere with the individual's inclusion in the community and which consist of the following activities:

(A) conducting a functional behavior assessment;

(B) developing an individualized behavior support plan;

(C) training and consulting with an individual, family member, or other persons involved in the individual's care regarding the implementation of the behavior support plan;

(D) monitoring and evaluating the effectiveness of the behavior support plan;

(E) modifying, as necessary, the behavior support plan based on monitoring and evaluating the plan's effectiveness; and

(F) counseling and educating an individual, family members, or other persons involved in the individual's care about the techniques to use in assisting the individual to control challenging or socially unacceptable behaviors.

(18) 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).

(19) Calendar day--Any day, including weekends and holidays.

(20) Case management--A CLASS Program service that assists an individual in the following:

(A) assessing the individual's needs;

(B) enrolling into the CLASS Program;

(C) developing the individual's individual plan of care (IPC);

(D) coordinating the provision of CLASS Program services and CFC services;

(E) monitoring the effectiveness of the CLASS Program services and CFC services and the individual's progress toward achieving the outcomes identified for the individual;

(F) revising the individual's IPC, as appropriate;

(G) accessing non-CLASS Program services and non-CFC services;

(H) resolving a crisis that occurs regarding the individual; and

(I) advocating for the individual's needs.

(21) Case manager--A service provider of case management.

(22) Catchment area--As determined by the Texas Health and Human Services Commission (HHSC), a geographic area composed of multiple Texas counties.

(23) CDS option--Consumer directed services option. A service delivery option defined in 40 TAC §41.103 (relating to Definitions).

(24) CFC--Community First Choice.

(25) CFC ERS--CFC emergency response services. A CFC service that provides 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.

(26) CFC ERS provider--The entity directly providing CFC ERS to an individual, which may be the DSA or a contractor of the DSA.

(27) CFC FMS--CFC financial management services. A CFC service provided to an individual who receives only CFC PAS/HAB through the CDS option.

(28) CFC PAS/HAB--CFC personal assistance services/habilitation. A CFC service:

(A) that consists of:

(i) personal assistance services, which provides assistance to 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 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, which 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, including:

(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.

(29) CFC support consultation--A CFC service that provides support consultation to an individual who receives only CFC PAS/HAB through the CDS option.

(30) CFC support management--A CFC service that provides training on how to select, manage, and dismiss an unlicensed service provider of CFC PAS/HAB.

(31) CFR--Code of Federal Regulations.

(32) CFS--Continued family services. A CLASS Program service described in Subchapter E of this chapter (relating to Support Family Services and Continued Family Services).

(33) CLASS Program--The Community Living Assistance and Support Services Program.

(34) CMA--Case management agency. A program provider that has a contract with HHSC to provide case management.

(35) CMS--The Centers for Medicare & Medicaid Services. CMS is the agency within the United States Department of Health and Human Services that administers Medicare and Medicaid programs.

(36) Cognitive rehabilitation therapy--A CLASS Program service that:

(A) assists an individual in learning or relearning cognitive skills that have been lost or altered as a result 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.

(37) Competitive employment--Employment that pays an individual at least the minimum wage if the individual is not self-employed.

(38) Contract--A provisional contract that HHSC enters into in accordance with 40 TAC §49.208 (relating to Provisional Contract Application Approval) that has a term of no more than 3 years, not including any extension agreed to in accordance with 40 TAC §49.208(e) or a standard contract that HHSC enters into in accordance with 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 40 TAC §49.209(d).

(39) 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.

(40) Denial--An action taken by HHSC that:

(A) rejects an individual's request for enrollment into the CLASS Program;

(B) disallows a CLASS Program service or a CFC service requested on an IPC that was not authorized on the prior IPC; or

(C) disallows a portion of the amount or level of a CLASS Program service or a CFC service requested on an IPC that was not authorized on the prior IPC.

(41) Dental treatment--A CLASS Program service that:

(A) consists of the following:

(i) emergency dental treatments, which are procedures necessary to control bleeding, relieve pain, and eliminate acute infection; operative procedures that are required to prevent the imminent loss of teeth; and treatment of injuries to the teeth or supporting structures;

(ii) routine preventative dental treatments, which are examinations, x-rays, cleanings, sealants, oral prophylaxes, and topical fluoride applications;

(iii) therapeutic dental treatments, which include fillings, scaling, extractions, crowns, pulp therapy for permanent and primary teeth; restoration of carious permanent and primary teeth; maintenance of space; and limited provision of removable prostheses when masticatory function is impaired, when an existing prosthesis is unserviceable, or when aesthetic considerations interfere with employment or social development;

(iv) orthodontic dental treatments, which are procedures that include treatment of retained deciduous teeth; cross-bite therapy; facial accidents involving severe traumatic deviations; cleft palates with gross malocclusion that will benefit from early treatment; and severe, handicapping malocclusions affecting permanent dentition with a minimum score of 26 as measured on the Handicapping Labiolingual Deviation Index; and

(v) dental sedation, which is sedation necessary to perform dental treatment including non-routine anesthesia, (for example, intravenous sedation, general anesthesia, or sedative therapy prior to routine procedures) but not including administration of routine local anesthesia only; and

(B) does not include cosmetic orthodontia.

(42) DFPS--The Texas Department of Family and Protective Services.

(43) Dietary services--A CLASS Program service that provides nutrition services, as defined in Texas Occupations Code §701.002.

- (44) Direct services--Includes the following services:
- (A) CLASS Program services other than case management, FMS, support consultation, support family services, CFS, and TAS;
 - (B) CFC PAS/HAB;
 - (C) CFC ERS; and
 - (D) CFC support management.

(45) DSA--Direct services agency. A program provider that has a contract with HHSC to provide direct services.

(46) Employment assistance--A CLASS Program service that provides assistance to an individual to help the individual locate competitive employment in the community to the same degree of access as individuals not receiving CLASS Program services.

(47) Enrollment IPC--The first individual plan of care (IPC) for an individual developed before the individual's enrollment into the CLASS Program.

(48) Enrollment IPP--The first individual program plan (IPP) for an individual developed before the individual's enrollment into the CLASS Program in accordance with §259.67 of this chapter (relating to Development of IPPs).

(49) 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.

(50) FMS--Financial management services. A CLASS Program service that is defined in 40 TAC §41.103 and is provided to an individual participating in the CDS option.

(51) FMSA--Financial management services agency. An entity, as defined in 40 TAC §41.103, that provides FMS.

(52) 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.

(53) Functional behavior assessment--An evaluation that is used to determine the underlying function or purpose of an individual's behavior, so an effective behavior support plan can be developed.

(54) Good cause--As determined by HHSC, a reason outside the control of a CFC ERS provider that is an acceptable reason for the CFC ERS provider's failure to comply.

(55) Group setting--A setting, other than an individual's residence, in which more than one individual or other person is receiving pre-vocational services or a similar service.

(56) Habilitation--A CLASS Program service that allows an individual to reside successfully in a community setting by training the individual to acquire, retain, and improve self-help, socialization, and daily living skills or assisting the individual with ADLs. Habilitation services consist of the following:

(A) habilitation training, which is interacting in person with an individual who is awake to train the individual in the following activities:

- (i) self-care;

- (ii) personal hygiene;
- (iii) household tasks;
- (iv) mobility;
- (v) money management;
- (vi) community integration;
- (vii) use of adaptive equipment;
- (viii) management of caregivers;
- (ix) personal decision making;
- (x) interpersonal communication;
- (xi) reduction of challenging behaviors;
- (xii) socialization and the development of relationships;
- (xiii) participating in leisure and recreational activities;
- (xiv) use of natural supports and typical community services available to the public;
- (xv) self-administration of medication; and
- (xvi) strategies to restore or compensate for reduced cognitive skills;

(B) habilitation ADLs, which are:

(i) interacting in person with an individual who is awake to assist the individual in the following activities:

- (I) self-care;
- (II) personal hygiene;
- (III) ambulation and mobility;
- (IV) money management;
- (V) community integration;
- (VI) use of adaptive equipment;
- (VII) self-administration of medication;
- (VIII) reinforce any therapeutic goal of the individual;

individual;

- (IX) provide transportation to the individual; and
- (X) protect the individual's health, safety and security;

security;

(ii) interacting in person or by telephone with an individual or an involved person regarding an incident that directly affects the individual's health or safety; and

(iii) performing one of the following activities that does not involve interacting in person with an individual:

- (I) shopping for the individual;
- (II) planning or preparing meals for the individual;
- (III) housekeeping for the individual;
- (IV) procuring or preparing the individual's medication; or
- (V) arranging transportation for the individual;

and

(C) habilitation delegated, which is tasks delegated by a registered nurse (RN) to a service provider of habilitation in accordance with 22 TAC Chapter 224 (relating to Delegation of Nursing Tasks By Registered Professional Nurses to Unlicensed Personnel For Clients With Acute Conditions Or In Acute Care Environments) or Chapter 225 (relating to RN Delegation to Unlicensed Personnel and Tasks Not Requiring Delegations In Independent Living Environments For Clients With Stable and Predictable Conditions).

(57) Health-related tasks--Specific tasks related to the needs of an individual that can be delegated or assigned by a licensed health care professional under state law to be performed by a service provider of CFC PAS/HAB. These include:

(A) tasks delegated by a registered nurse (RN);

(B) health maintenance activities, as defined in 22 TAC §225.4 (relating to Definitions), that may not require delegation; and

(C) activities assigned to a service provider of CFC PAS/HAB by a licensed physical therapist, occupational therapist, or speech-language pathologist.

(58) HHSC--The Texas Health and Human Services Commission.

(59) Hippotherapy--A specialized therapy that:

(A) involves an individual interacting with and riding on horses;

(B) is designed to improve the balance, coordination, focus, independence, confidence, and motor and social skills of the individual; and

(C) is provided by two service providers at the same time, as described in §259.355(d)(11) of this chapter (relating to Qualifications of DSA Staff Persons).

(60) Hospital--A public or private institution that is licensed or is exempt from licensure in accordance with THSC Chapters 13, 241, 261, or 552.

(61) IADLs--Instrumental activities of daily living. 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.

(62) ICF/IID--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.

(63) 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.

(64) ID/RC Assessment--Intellectual Disability/Related Conditions Assessment. An HHSC form used to determine the level of care (LOC) for an individual.

(65) Individual--A person seeking to enroll or who is enrolled in the CLASS Program.

(66) Individual transportation plan--A written plan developed by an individual's service planning team and documented on the

HHSC individual transportation plan form. An individual transportation plan describes how transportation as a habilitation activity will be delivered to support an individual's desired goals and outcomes identified in the IPP.

(67) Inpatient chemical dependency treatment facility--A facility licensed in accordance with THSC Chapter 464, Facilities Treating Persons with a Chemical Dependency.

(68) In person or in-person--Within the physical presence of another person. In person or in-person does not include using videoconferencing or a telephone.

(69) Institution for mental diseases--Has the meaning set forth in 42 CFR §435.1010.

(70) Institutional services--Medicaid-funded services provided in a nursing facility or in an ICF/IID.

(71) Intellectual disability--Consistent with THSC §591.003, significantly sub-average general intellectual functioning that is concurrent with deficits in adaptive behavior and originates during the developmental period.

(72) IPC--Individual plan of care. A written plan developed by an individual's service planning team and documented on the HHSC Individual Plan of Care form. An IPC:

(A) documents:

(i) the type and amount of each CLASS Program service and each CFC service, except for CFC support management, to be provided to the individual during an IPC year; and

(ii) if an individual will receive CFC support management; and

(B) is authorized by HHSC.

(73) IPC cost--Estimated annual cost for CLASS Program services on an IPC.

(74) IPC period--The effective period of an enrollment IPC and a renewal IPC as follows:

(A) for an enrollment IPC, the period of time from the effective date of the enrollment IPC, as described in §259.65(g) of this chapter (relating to Development of an Enrollment IPC), through the last calendar day of the 11th month after the month in which enrollment occurred; and

(B) for a renewal IPC, a 12-month period of time starting on the effective date of the renewal IPC, as described in §259.77(b) of this chapter (relating to Renewal IPC and Requirement for Authorization to Continue Services).

(75) IPP--Individual program plan. A written plan developed in accordance with §259.67 of this chapter (relating to Development of IPPs) and documented on an HHSC Individual Program Plan form.

(76) LAR--Legally authorized representative. A person authorized by law to act on behalf of an individual with regard to a matter described in this chapter, including a parent, guardian, or managing conservator of a minor; a guardian of an adult; an agent appointed under a power of attorney; or a representative payee appointed by the Social Security Administration. An LAR, such as an agent appointed under a power of attorney or representative payee appointed by the Social Security Administration, may have limited authority to act on behalf of a person.

(77) Licensed vocational nurse--A person licensed to provide vocational nursing in accordance with Texas Occupations Code Chapter 301.

(78) Licensed vocational nursing--A CLASS Program service that provides vocational nursing, as defined in Texas Occupations Code §301.002.

(79) LIDDA--Local intellectual and developmental disability authority. An entity designated by the executive commissioner of HHSC, in accordance with THSC §533A.035.

(80) LOC--Level of care. A determination given to an individual as part of the eligibility determination process based on data on the ID/RC Assessment.

(81) Managed care organization--This term has the meaning set forth in Texas Government Code §543A.0001(11) [§536.001].

(82) MAO Medicaid--Medical Assistance Only Medicaid. A type of Medicaid by which an individual qualifies financially for Medicaid assistance but does not receive Supplemental Security Income (SSI) benefits.

(83) Massage therapy--A specialized therapy defined in Texas Occupations Code §455.001.

(84) Medicaid--A program administered by CMS and funded jointly by the states and the federal government that pays for health care to eligible groups of low-income people.

(85) Medicaid HCBS--Medicaid home and community-based services. Medicaid services provided to an individual in an individual's home and community, rather than in a facility.

(86) Mental health facility--A facility licensed in accordance with THSC Chapter 577.

(87) MESAV--Medicaid Eligibility Service Authorization Verification. The automated system that contains information regarding an individual's Medicaid eligibility and service authorizations.

(88) 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.

(89) 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.

(90) Minor home modifications--A CLASS Program service that:

(A) makes a physical adaptation to an individual's residence that:

(i) is necessary to address the individual's specific needs; and

(ii) enables the individual to function with greater independence in the individual's residence or to control his or her environment; and

(B) meets one of the following criteria:

(i) is included on the list of minor home modifications in the *Community Living Assistance and Support Services Provider Manual*; or

(ii) is the repair or maintenance of a minor home modification purchased through the CLASS Program that:

(I) is needed after one year has elapsed from the date the minor home modification is complete;

(II) is needed for a reason other than the minor home modification was intentionally damaged, as described in §259.285(c) of this chapter (relating to Repair or Replacement of Minor Home Modification); and

(III) is not covered by a warranty.

(91) Music therapy--A specialized therapy that uses musical or rhythmic interventions to restore, maintain, or improve an individual's social or emotional functioning, mental processing, or physical health.

(92) Natural supports--Unpaid persons, including family members, volunteers, neighbors, and friends, who assist and sustain an individual.

(93) Neglect--A negligent act or omission that caused physical or emotional injury or death to an individual or placed an individual at risk of physical or emotional injury or death.

(94) Nursing--One or more of the following CLASS Program services:

- (A) licensed vocational nursing;
- (B) registered nursing;
- (C) specialized licensed vocational nursing; and
- (D) specialized registered nursing.

(95) Nursing facility--A facility that is licensed or is exempt from licensure in accordance with THSC Chapter 242.

(96) Occupational therapy--A CLASS Program service that provides occupational therapy, as described in Texas Occupations Code §454.006.

(97) Own home or family home--A residence that is not:

- (A) an ICF/IID;
- (B) a nursing facility;
- (C) an ALF;
- (D) a residential child-care facility unless it is an agency foster home;
- (E) a hospital;
- (F) a mental health facility;
- (G) an inpatient chemical dependency treatment facility;
- (H) a residential facility operated by the Texas Workforce Commission;
- (I) a residential facility operated by the Texas Juvenile Justice Department;
- (J) a jail; or
- (K) a prison.

(98) PAS/HAB plan--Personal Assistance Services/Habilitation Plan. A written plan developed by an individual's service planning team and documented on the HHSC Personal Assistance Services (PAS)/Habilitation Plan form that describes the type and frequency of CFC PAS/HAB activities to be performed by a service provider.

(99) Person--A corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, natural person, or any other legal entity that can function legally, sue or be sued, and make decisions through agents.

(100) Person-centered planning process--The process described in §259.57 of this chapter (relating to Person-Centered Planning Process).

(101) Physical abuse--Any of the following:

(A) an act or failure to act performed knowingly, recklessly, or intentionally, including incitement to act, that 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;

(C) the use of a restraint on an individual not in compliance with federal and state laws, rules, and regulations; or

(D) seclusion.

(102) Physical therapy--A CLASS Program service that provides physical therapy, as defined in Texas Occupations Code §453.001.

(103) Physician--Consistent with §558.2 of this title (relating to Definitions), a person who is:

(A) licensed in Texas to practice medicine or osteopathy in accordance with Texas Occupations Code Chapter 155;

(B) licensed in Arkansas, Louisiana, New Mexico, or Oklahoma to practice medicine, who is the treating physician of an individual, and orders home health or hospice services for the individual in accordance with Texas Occupations Code §151.056(b)(4); or

(C) a commissioned or contract physician or surgeon who serves in the United States uniformed services or Public Health Service, if the person is not engaged in private practice, in accordance with the Texas Occupations Code §151.052(a)(8).

(104) Platform--This term has the meaning set forth in Texas Government Code §521.0001(10) [§531.001(4-d)].

(105) Prevocational services--A CLASS Program service that provides services that are not job-task oriented and are provided to an individual whose service planning team does not expect to be employed, without receiving supported employment, within one year after the date prevocational services begin. Prevocational services prepare an individual for competitive employment and consist of:

(A) assessment of vocational skills an individual needs to develop or improve upon;

(B) individual and group instruction regarding barriers to employment;

(C) training in skills:

(i) that are not job-task oriented;

(ii) that are related to goals identified in the individual's IPP for prevocational services;

(iii) that are essential to obtaining and retaining competitive employment, such as the effective use of community resources, transportation, and mobility training; and

(iv) for which an individual is not compensated more than 50 percent of the federal minimum wage or industry standard, whichever is greater;

(D) training in the use of adaptive equipment necessary to obtain and retain competitive employment; and

(E) transportation between the individual's place of residence and a group setting in which prevocational services are provided when other forms of transportation are unavailable or inaccessible.

(106) Program provider--A person that has a contract with HHSC to provide CLASS Program services, excluding an FMISA. In the CLASS Program, there are two types of program providers, a DSA and a CMA.

(107) Public emergency personnel--Personnel of a sheriff's department, police department, emergency medical service, or fire department.

(108) Recreational therapy--A specialized therapy that provides recreational or leisure activities that assist an individual to restore, remediate, or habilitate the individual's level of functioning and independence in life activities; promote health and wellness; and reduce or eliminate the activity limitations caused by an illness or disabling condition.

(109) Reduction--An action taken by HHSC as a result of a review of a revised IPC or renewal IPC that decreases the amount or level of a service authorized by HHSC on the prior IPC.

(110) Registered nursing--A CLASS Program service that provides professional nursing, as defined in Texas Occupations Code §301.002.

(111) Related condition--As defined in 42 CFR §435.1010, 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 22 years of age;

(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.

(112) 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 *Community Living Assistance and Support Services Provider Manual*.

(113) Renewal IPC--An IPC developed in accordance with §259.79 of this chapter (relating to Renewal and Revision of an IPC).

(114) Residential child-care facility--The term has the meaning set forth in Texas Human Resources Code §42.002.

(115) Respite--A CLASS Program service that provides temporary assistance and support with an individual's ADLs if the individual has the same residence as a person who routinely provides the assistance and support to the individual, and the person is temporarily unavailable to provide such assistance and support.

(A) If the person who routinely provides assistance and support, resides with the individual, and is temporarily unavailable to provide assistance and support, is a service provider of transportation as a habilitation activity or CFC PAS/HAB or an employee in the CDS option of transportation as a habilitation activity or CFC PAS/HAB, HHSC does not approve respite unless:

(i) the service provider or employee routinely provides unpaid assistance and support with ADLs to the individual;

(ii) the amount of respite does not exceed the amount of unpaid assistance and support routinely provided; and

(iii) the service provider of respite or employee in the CDS option of respite does not have the same residence as the individual.

(B) If the person who routinely provides assistance and support, resides with the individual, and is temporarily unavailable to provide assistance and support, is a service provider of support family services or CFS, HHSC does not approve respite unless:

(i) for an individual receiving support family services, the individual does not receive respite on the same day the individual receives support family services;

(ii) for an individual receiving CFS, the individual does not receive respite on the same day the individual receives CFS; and

(iii) the service provider of respite or employee in the CDS option of respite does not have the same residence as the individual.

(C) Respite consists of the following:

(i) interacting in person with an individual who is awake to assist the individual in the following activities:

(I) self-care;

(II) personal hygiene;

(III) ambulation and mobility;

(IV) money management;

(V) community integration;

(VI) use of adaptive equipment;

(VII) self-administration of medication;

(VIII) reinforce any therapeutic goal of the individual;

(IX) provide transportation to the individual; and

(X) protect the individual's health, safety, and security;

(ii) interacting in person or by telephone with an individual or an involved person regarding an incident that directly affects the individual's health or safety; and

(iii) performing one of the following activities, which may not involve interacting in person with an individual:

(I) shopping for the individual;

(II) planning or preparing meals for the individual;

(III) housekeeping for the individual;

(IV) procuring or preparing the individual's medication;

(V) arranging transportation for the individual; or

(VI) protecting the individual's health, safety, and security while the individual is asleep.

(116) Responder--A person designated to respond to an alarm call activated by an individual.

(117) Revised IPC--An enrollment IPC or a renewal IPC that is revised during an IPC period in accordance with §259.79 of this chapter to add a new CLASS Program service or CFC service or change the amount of an existing service.

(118) RN--Registered nurse. A person licensed to provide professional nursing in accordance with Texas Occupations Code Chapter 301.

(119) Seclusion--The involuntary placement of an individual alone in an area from which the individual is prevented from leaving.

(120) Service backup plan--A written plan developed in accordance with §259.89 of this chapter (relating to Service Backup Plans) to ensure continuity of critical program services if service delivery is interrupted.

(121) Service planning team--A team consisting of:

(A) the individual;

(B) if applicable, the individual's LAR or actively involved person;

(C) the individual's case manager;

(D) a representative of the DSA;

(E) other persons whose inclusion is requested by the individual, LAR, or actively involved person, including an managed care organization service coordinator, a family member, a friend, and a teacher; and

(F) a person selected by the DSA, with the approval of the individual and LAR, who is:

(i) professionally qualified by certification or licensure and has special training and experience in the diagnosis and habilitation of persons with the individual's related condition; or

(ii) directly involved in the delivery of services and supports to the individual.

(122) Service provider--A person who is an employee or contractor of a DSA who provides a direct service.

(123) Sexual abuse--Any of the following:

(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 person, volunteer, or controlling person, unless a consensual sexual relationship with an adult individual existed before the service provider, staff person, volunteer, or controlling person became a service provider, staff person, volunteer, or controlling person.

(124) Sexual activity--An activity that is sexual in nature, including kissing, hugging, stroking, or fondling with sexual intent.

(125) 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.

(126) Specialized licensed vocational nursing--A CLASS Program service that provides licensed vocational nursing to an individual who has a tracheostomy or is dependent on a ventilator.

(127) Specialized registered nursing--A CLASS Program service that provides registered nursing to an individual who has a tracheostomy or is dependent on a ventilator.

(128) Specialized therapies--A CLASS Program service that promotes skills development, maintains skills, decreases inappropriate behaviors, facilitates emotional well-being, creates opportunities for socialization, or improves physical and medical status and consists of:

(A) aquatic therapy;

(B) hippotherapy;

(C) massage therapy;

(D) music therapy;

(E) recreational therapy; and

(F) therapeutic horseback riding.

(129) Speech and language pathology--A CLASS Program service that provides speech-language pathology, as defined in Texas Occupations Code §401.001.

(130) Staff person--A full-time or part-time employee of a program provider.

(131) 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.

(132) Store and forward technology--This term has the meaning set forth in Texas Occupations Code §111.001(2).

(133) Support consultation--A CLASS Program service that is defined in 40 TAC §41.103 and may be provided to an individual who chooses to participate in the CDS option.

(134) SFS--Support family services. A CLASS Program service that is described in Subchapter E of this chapter.

(135) Supported employment--A CLASS Program service that provides assistance to sustain competitive employment to an individual who, because of a disability, requires intensive, ongoing support to be self-employed, work from home, or perform in a work setting at which individuals without disabilities are employed.

(136) Synchronous audio-visual--An interactive, two-way audio and video communication platform that:

(A) allows a service to be provided to an individual in real time; and

(B) conforms to the privacy requirements under the Health Insurance Portability and Accountability Act.

(137) 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.

(138) TAC--Texas Administrative Code. A compilation of state agency rules published by the Texas State Secretary of State in accordance with Texas Government Code, Chapter 2002, Subchapter C.

(139) Target behavior--A behavior identified in a behavior support plan for reduction or elimination.

(140) TAS--Transition assistance services. A CLASS Program service provided in accordance with Chapter 272 of this title (related to Transition Assistance Services) to an individual who is receiving institutional services and is eligible for and enrolling into the CLASS Program.

(141) Telehealth services--This term has the meaning set forth in Texas Occupations Code §111.001.

(142) Texas Workforce Commission--The state agency established under Texas Labor Code Chapter 301.

(143) Therapeutic horseback riding--A specialized therapy that:

(A) involves an individual interacting with and riding on horses; and

(B) is designed to improve the balance, coordination, focus, independence, confidence, and motor and social skills of the individual.

(144) THSC--Texas Health and Safety Code. Texas statutes relating to health and safety.

(145) 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.

(146) Videoconferencing--An interactive, two-way audio and video communication:

(A) used to conduct a meeting between two or more persons who are in different locations; and

(B) that conforms to the privacy requirements under the Health Insurance Portability and Accountability Act.

(147) Volunteer--A person who works for a program provider without compensation, other than reimbursement for actual expenses.

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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Karen Ray

Chief Counsel

Health and Human Services Commission

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For further information, please call: (512) 221-9021



CHAPTER 275. CONSUMER MANAGED PERSONAL ATTENDANT SERVICES (CMPAS) PROGRAM

SUBCHAPTER B. ELIGIBILITY AND SERVICE PLANS

26 TAC §275.29

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §275.29, concerning Assessment and Eligibility Determination.

BACKGROUND AND PURPOSE

House Bill 4611, 88th Legislature, Regular Session, 2023, made certain non-substantive revisions to Subtitle I, Title 4, Texas Government Code, which governs HHSC, Medicaid, and other social services as part of the legislature's ongoing statutory revision program. This proposal is necessary to update a citation in the rule to a Texas Government Code section that becomes effective on April 1, 2025. The proposed amendment updates the affected citation to Texas Government Code.

FISCAL NOTE

Trey Wood, HHSC 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

HHSC 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 HHSC 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 HHSC;

(5) the proposed rule will not create a new regulation;

(6) the proposed rule will not expand, limit, or repeal existing regulations;

(7) the proposed rule will not change 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

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

The rule does not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rule because the amendment only updates a reference to existing law.

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

Libby Elliott, Deputy Executive Commissioner, Office of Policy and Rules, has determined that for each year of the first five years the rule is in effect, the public will benefit from rules that accurately cite the laws governing HHSC, Medicaid, and other social services.

Trey Wood 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 amendment only updates a reference to existing law.

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

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 24R085" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Chapter 546.

The amendment affects Texas Government Code §531.0055 and Chapter 546.

§275.29. *Assessment and Eligibility Determination.*

(a) Within 30 days after the provider receives a referral from DADS regional office, the provider must:

(1) ensure that the assessor of need conducts an initial on-site assessment with the applicant;

(2) determine CMPAS Program eligibility in accordance with §44.201 of this subchapter (relating to Eligibility Criteria);

(3) inform the applicant, both orally and in writing, of all applicable publicly funded programs that offer attendant services and allow the applicant to choose whether to participate in CMPAS;

(4) keep in the applicant's record a written record of the notification given in accordance with paragraph (3) of this subsection and the applicant's signed and dated acknowledgement and choice document;

(5) assess the applicant's service needs by using the DADS Needs Assessment Questionnaire and Task/Hour Guide form available at www.dads.state.tx.us; and

(6) for an eligible applicant:

(A) develop a service plan based on the results of the assessment questionnaire that:

(i) includes the number of hours and tasks negotiated between the applicant and the assessor of need; and

(ii) is agreed to and signed by the applicant and assessor of need;

(B) determine with the applicant the amount of the applicant's co-payment under §44.501 of this chapter (relating to Determining an Individual's Co-payment) and explain to the applicant that making co-payments is required to remain eligible for CMPAS;

(C) explain orally and give written information to the applicant on the available service delivery options described in Subchapter D of this chapter (relating to Service Delivery Options);

(D) have the applicant sign and date a service delivery option choice document; and

(E) keep the signed and dated service delivery choice document in the applicant's file.

(b) If the applicant's service plan includes a health-related task, the provider must:

(1) before an attendant performs a health-related task, verify that the task:

(A) may be performed under Texas Government Code §546.0104 [, §531.051(e)];

(B) does not require nurse or physician delegation; or

(C) is properly delegated under:

(i) 22 TAC Part 11, Chapter 225; or

(ii) Texas Occupations Code, Chapter 157; and

(2) if a health-related task is delegated, maintain records in the applicant's file that:

(A) identify and are signed and dated by the delegating physician or registered nurse;

(B) include the name of the individual, the names of the attendants performing the delegated health-related tasks for the individual, and a description of the specific health-related tasks to be performed; and

(C) comply with the Texas Nurse Practice Act, the Medical Practice Act, and any other applicable state or federal law.

(c) The provider must notify an applicant who is not eligible for services in writing by mailing the DADS Notification of Community Care Services form within three days after the date of the decision. This form notifies the applicant of the right to a fair hearing and explains how to request a fair hearing.

(d) The provider must send DADS written notice of the disposition of the referral. The provider must ensure that DADS receives the notice within 30 days after the provider receives the referral from DADS. If the provider does not notify DADS within the 30-day period, DADS may impose contract sanctions on the provider.

(e) The provider must document any failure to complete the assessment activities within the 30-day period, including the reasons for the delay, the provider's ongoing efforts to complete the assessment, and the anticipated date of completion. The reasons for delay must be beyond the provider's control. The provider must send the documentation of delays to the DADS regional designee by the due date in subsection (d) of this section.

(f) Upon receiving notice from the provider of an applicant's eligibility to receive services in the CMPAS Program, the DADS regional designee will enter the CMPAS authorization in DADS Service Authorization System.

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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Karen Ray

Chief Counsel

Health and Human Services Commission

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For further information, please call: (512) 221-9021



CHAPTER 280. PEDIATRIC TELECONNECTIVITY RESOURCE PROGRAM FOR RURAL TEXAS

26 TAC §§280.1, 280.3, 280.5

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §280.1, concerning Purpose; §280.3, concerning Definitions; and §280.5, concerning Grant Program Administration.

BACKGROUND AND PURPOSE

House Bill 4611, 88th Legislature, Regular Session, 2023, made certain non-substantive revisions to Subtitle I, Title 4, Texas Government Code, which governs HHSC, Medicaid, and other social services as part of the legislature's ongoing statutory revision program. This proposal is necessary to update citations in the rules to Texas Government Code sections that become effective on April 1, 2025. The proposed amendments update the affected citations to Texas Government Code.

FISCAL NOTE

Trey Wood, HHSC Chief Financial Officer, has determined that for each year of the first five years that the rules will be in effect, enforcing or administering the rules do 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 not create a new regulation;
- (6) the proposed rules will not expand, limit, or 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

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

The rules do not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rules because the amendments only update references to existing laws.

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 do not impose a cost on regulated persons and are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

PUBLIC BENEFIT AND COSTS

Libby Elliott, Deputy Executive Commissioner, Office of Policy and Rules, has determined that for each year of the first five years the rules are in effect, the public will benefit from rules that accurately cite the laws governing HHSC, Medicaid, and other social services.

Trey Wood has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because the amendments only update references to existing laws.

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

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 24R085" in the subject line.

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Chapter 548.

The amendments affect Texas Government Code §531.0055 and Chapter 548.

§280.1. Purpose.

(a) This chapter implements Texas Government Code Chapter 548, Subchapter H [Texas Government Code, Chapter 541], which authorizes the Texas Health and Human Services Commission (HHSC) to establish a pediatric tele-connectivity resource program for rural Texas by awarding grants to support nonurban health care facilities in establishing the capability to provide pediatric telemedicine services.

(b) The Pediatric Tele-Connectivity Resource Program for Rural Texas will continue until all appropriations are expended.

§280.3. Definitions.

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

(1) Grant Program--The Pediatric Tele-Connectivity Resource Program for Rural Texas.

(2) Grant recipient--A nonurban health care facility awarded a grant under this chapter.

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

(4) Nonurban health care facility--As defined by Texas Government Code §548.0351 [§541.001(1)].

(5) Pediatric tele-specialty provider--As defined by Texas Government Code §548.0351 [§541.001(4)].

(6) Telemedicine medical services--As defined by Texas Government Code §548.0351 [§541.004(7)].

§280.5. *Grant Program Administration.*

(a) Use of grant funds. A grant recipient uses grant funds awarded under this chapter:

(1) to purchase equipment necessary for implementing telemedicine medical services;

(2) to modernize the facility's information technology infrastructure and secure information technology support to ensure an uninterrupted two-way video signal that is compliant with the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191), as referenced in Texas Government Code §548.0353 [Texas Government Code, §541.003];

(3) to pay a contracted pediatric tele-specialty provider for telemedicine medical services; or

(4) to pay for other activities, services, supplies, facilities, resources, and equipment that HHSC determines necessary for the grant recipient to use telemedicine medical services.

(b) Role of HHSC. HHSC will administer funding in the form of grants to an eligible nonurban health care facility.

(c) Grant eligibility requirements. To be eligible for a grant under this chapter, a nonurban health care facility must:

(1) have a quality assurance program that measures the compliance of the facility's health care providers with the facility's medical protocols;

(2) have at least one full-time equivalent physician, on staff, who has training and experience in pediatrics and one person who is responsible for ongoing nursery and neonatal support and care;

(3) have a designated neonatal intensive care unit or an emergency department;

(4) have a commitment to obtaining neonatal or pediatric education from a tertiary facility to expand the facility's depth and breadth of telemedicine medical service capabilities; and

(5) have the capability of maintaining records and producing reports that measure the effectiveness of a grant received by the facility under this chapter.

(d) Role of the stakeholder workgroup. HHSC may establish a stakeholder workgroup to assist HHSC:

(1) in developing, implementing, and evaluating the Grant Program; and

(2) in preparing a report on the results and outcomes of the grants awarded under this chapter.

(e) Stakeholder workgroup member compensation. A stakeholder workgroup member is not entitled to any form of compensation for serving on the workgroup and may not be reimbursed for travel or other expenses incurred while conducting the business of the workgroup.

(f) Compliance. A grant recipient must comply with:

(1) the requirements described in this chapter; and

(2) all other applicable state and federal laws, rules, regulations, policies, and guidelines.

(g) Program evaluation. HHSC evaluates the use of grant funds based on criteria as defined by HHSC.

(h) Grant funding distribution. HHSC distributes funding on a schedule defined by HHSC.

(i) Reporting responsibilities and protocol. No later than December 1 of each even-numbered year, HHSC reports the results and outcomes of grants awarded under this chapter to the Governor and members of the Legislature. The report is comprised of information provided by the grant recipient as defined by HHSC.

(j) Audits. A grant recipient is subject to audit and recovery of grant funds by the HHSC Office of the Inspector General, as provided in 1 TAC, §371.11 (relating to Scope).

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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Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: January 5, 2025

For further information, please call: (512) 221-9021



CHAPTER 306. BEHAVIORAL HEALTH DELIVERY SYSTEM

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §306.45, concerning Definitions; and §306.273, concerning MH Case Management Employee Competencies.

BACKGROUND AND PURPOSE

House Bill 4611, 88th Legislature, Regular Session, 2023, made certain non-substantive revisions to Subtitle I, Title 4, Texas Government Code, which governs HHSC, Medicaid, and other social services as part of the legislature's ongoing statutory revision program. This proposal is necessary to update citations in the rules to Texas Government Code sections that become effective on April 1, 2025. The proposed amendments update the affected citations to Texas Government Code.

FISCAL NOTE

Trey Wood, HHSC Chief Financial Officer, has determined that for each year of the first five years that the rules will be in effect, enforcing or administering the rules do 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 not create a new regulation;
- (6) the proposed rules will not expand, limit, or 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

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

The rules do not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rules because the amendments only update references to existing laws.

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 do not impose a cost on regulated persons and are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

PUBLIC BENEFIT AND COSTS

Libby Elliott, Deputy Executive Commissioner, Office of Policy and Rules, has determined that for each year of the first five years the rules are in effect, the public will benefit from rules that accurately cite the laws governing HHSC, Medicaid, and other social services.

Trey Wood has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because the amendments only update references to existing laws.

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

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 24R085" in the subject line.

SUBCHAPTER B. STANDARDS OF CARE IN CRISIS STABILIZATION UNITS

DIVISION 1. GENERAL REQUIREMENTS

26 TAC §306.45

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Chapter 546 and 547.

The amendment affects Texas Government Code §531.0055 and Chapter 546 and 547.

§306.45. Definitions.

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

(1) Administrator--A person or entity that has authority to represent a facility and is responsible for implementing and supervising its administrative policies and procedures and for administratively supervising the provision of services to individuals on a day-to-day basis.

(2) Administrator's designee--A staff member designated in a facility's written policies and procedures to act for a specified purpose on behalf of the administrator.

(3) Admission--The acceptance of an individual for crisis stabilization services based on a physician's order issued in accordance with §306.55 (relating to Voluntary Admission Criteria and Intake Process) and §306.57 (relating to Involuntary Admission Criteria and Intake Process) of this subchapter.

(4) Admission examination--A psychiatric examination and physical assessment conducted by a physician, to determine if an individual requesting voluntary admission to an inpatient mental health facility meets clinical criteria for admission, in accordance with Texas Health and Safety Code §572.0025(f).

(5) Adolescent--An individual at least 13 years of age, but younger than 18 years of age.

(6) Adult--An individual 18 years of age or older.

(7) Adult caregiver--An adult person whom a parent has authorized to provide temporary care for a child, as defined in Texas Family Code §34.0015(1).

(8) APRN--Advanced practice registered nurse. A registered nurse licensed by the Texas Board of Nursing and as provided in Texas Occupations Code §301.152.

(9) Assessment--The administrative process an inpatient mental health facility uses to gather information from an individual to determine if the admission is clinically justified, in accordance with Texas Health and Safety Code §572.0025(h)(2), including a medical history and the problem for which the individual is seeking treatment.

(10) Business day--Any day except a Saturday, Sunday, or legal holiday listed in Texas Government Code §662.021.

(11) Child--An individual at least three years of age, but younger than 13 years of age.

(12) Confidential information--Any communication or record (whether oral, written, electronically stored or transmitted, or in any other form) that consists of or includes any or all of the information that must be protected from unauthorized use or disclosure as required

by applicable state or federal laws, and as defined in 1 TAC §390.1(5) (relating to Definitions).

(13) Crisis stabilization services--Short-term residential treatment designed to reduce acute symptoms of a mental illness or serious emotional disturbance of an individual and prevent admission of the individual to an inpatient mental health facility.

(14) CSU--Crisis stabilization unit. A short-term residential treatment unit designed to reduce an individual's acute symptoms of mental illness or serious emotional disturbance instead of admission to an inpatient mental health facility, licensed in accordance with Chapter 510 of this title (relating to Private Psychiatric Hospitals and Crisis Stabilization Units) and Texas Health and Safety Code Chapter 577.

(15) Day--Calendar day, unless otherwise specified.

(16) DD--Developmental disability. As listed in Texas Health and Safety Code §531.002(15), a severe, chronic disability attributable to mental or physical impairment or a combination of mental and physical impairments that:

(A) manifest before the individual reaches 22 years of age;

(B) are likely to continue indefinitely;

(C) reflect the individual's need for a combination and sequence of special, interdisciplinary, or generic services, individualized supports, or other forms of assistance that are of a lifelong or extended duration and are individually planned and coordinated; and

(D) result in substantial functional limitations in three or more of the following categories of major life activity:

(i) self-care;

(ii) receptive and expressive language;

(iii) learning;

(iv) mobility;

(v) self-direction;

(vi) capacity for independent living; and

(vii) economic self-sufficiency.

(17) Discharge--The formal release of an individual from the custody and care of an inpatient mental health facility in accordance with Texas Health and Safety Code §572.004.

(18) Emergency medical condition--In accordance with the Emergency Medical Treatment & Labor Act (42 U.S.C. §1395dd) (Relating to examination and treatment for emergency medical conditions and women in labor), a medical condition manifested by acute symptoms of sufficient severity that the absence of immediate medical attention could reasonably be expected to result in:

(A) placing the health of the individual (or with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy;

(B) serious impairment to bodily functions;

(C) serious dysfunction of any bodily organ or part; or

(D) in the case of a pregnant woman having contractions:

(i) inadequate time to arrange a safe transfer to a hospital before delivery; or

(ii) a transfer posing a threat to the health or safety of the woman or the unborn child.

(19) General hospital--A hospital operated primarily to diagnose, care for, and treat individuals who are physically ill and licensed in accordance with Texas Health and Safety Code Chapter 241.

(20) HHSC--Texas Health and Human Services Commission or its designee.

(21) ID--Intellectual disability. Consistent with Texas Health and Safety Code §591.003, significantly sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior and originates during the developmental period.

(22) IDT--Interdisciplinary team. A group of licensed, credentialed, and unlicensed staff members who possess the knowledge, skills, and expertise to develop and implement an individual's treatment or recovery plan and also includes:

(A) the individual's treating physician;

(B) the individual, and the individual's LAR or adult caregiver, if applicable;

(C) the staff members identified in the treatment or recovery plan as responsible for providing or ensuring the provision of each treatment in accordance with §568.61(c)(1)(E)(iii) of this title (relating to Inpatient Mental Health Treatment and Treatment Planning);

(D) any person identified by the individual, and the individual's LAR or adult caregiver if applicable, unless clinically contraindicated; and

(E) other staff members as clinically appropriate.

(23) Individual--A person seeking or receiving services under this subchapter.

(24) Inpatient mental health facility--A mental health facility that can provide 24-hour residential and psychiatric services and that is:

(A) a facility operated by HHSC;

(B) a private mental hospital licensed by HHSC;

(C) a community center, facility operated by or under contract with a community center or other entity HHSC designates to provide mental health services;

(D) an identifiable part of a general hospital in which diagnosis, treatment, and care for individuals with mental illness is provided and that is licensed by HHSC; or

(E) a hospital operated by a federal agency.

(25) Intake--The administrative process for gathering information about an individual and giving an individual information about an inpatient mental health facility and the facility's treatment and services, in accordance with Texas Health and Safety Code §572.0025(h)(3).

(26) Involuntarily-admitted individual--An individual receiving inpatient mental health facility services based on an admission made in accordance with:

(A) Texas Health and Safety Code Chapter 573 and described in §306.57(a) of this subchapter; or

(B) Texas Health and Safety Code §574.021 and described in §306.57(f) of this subchapter.

(27) LAR--Legally authorized representative. A person authorized by law to act on behalf of an individual regarding a matter described in this subchapter, and may include a parent, guardian, or managing conservator of a minor, or the guardian of an adult.

(28) LBHA--Local behavioral health authority. An entity designated as the local behavioral health authority by HHSC in accordance with Texas Health and Safety Code §533.0356.

(29) Legal holiday--A holiday listed in the Texas Government Code §662.021 and an officially designated county holiday applicable to a court in which proceedings under the Texas Mental Health Code are held.

(30) LIDDA--Local intellectual and developmental disability authority. An entity designated as the local intellectual and developmental disability authority by HHSC in accordance with Texas Health and Safety Code §533A.035.

(31) LMHA--Local mental health authority. An entity designated as the local mental health authority by HHSC in accordance with Texas Health and Safety Code §533.035(a).

(32) LPHA--Licensed practitioner of the healing arts. A person who possesses any of the following state licenses is considered an LPHA and is automatically certified as a qualified mental health professional-community services (QMHP-CS):

- (A) a physician;
- (B) a physician assistant;
- (C) an APRN;
- (D) a licensed psychologist;
- (E) a licensed professional counselor;
- (F) a licensed clinical social worker; or
- (G) a licensed marriage and family therapist.

(33) LVN--Licensed vocational nurse. A person licensed as a vocational nurse by the Texas Board of Nursing in accordance with Texas Occupations Code Chapter 301.

(34) Medical director--A physician who is board eligible or certified in psychiatry by the American Board of Psychiatry and Neurology or by the American Osteopathic Board of Neurology and Psychiatry and who provides clinical and policy oversight for the CSU.

(35) Medical record--A compilation of systematic and organized information relevant to the services provided to an individual.

(36) Medical services--Acts or services provided by a physician acting as described in Texas Occupations Code Chapter 151, or as delegated by a physician, in accordance with Texas Occupations Code Chapter 157.

(37) Mental illness--An illness, disease, or condition, other than a sole diagnosis of epilepsy, dementia, substance use disorder, ID, or DD that:

- (A) substantially impairs an individual's thought, perception of reality, emotional process, or judgment; or
- (B) grossly impairs behavior as demonstrated by recent disturbed behavior.

(38) Monitoring--One or more staff members observing an individual in person continuously or at pre-determined intervals; as ordered by a physician or physician-delegated physician's assistant (PA) or APRN; or by established protocol; and intervening when necessary to protect the individual from harming self or others.

(39) Nursing facility--A Medicaid-certified facility that is licensed in accordance with the Texas Health and Safety Code Chapter 242.

(40) Nursing services--Acts or services provided by a registered nurse (RN) acting within the RN's scope of practice and assigned to an LVN, or delegated to an unlicensed person, in accordance with Texas Occupations Code Chapter 301.

(41) Nursing staff--A person required to be licensed in accordance with Texas Occupations Code Chapter 301 to engage in professional or vocational nursing or the person delegated to perform common nursing functions under the authority of an RN.

(42) Ombudsman--The Ombudsman for Behavioral Health Access to Care established by Texas Government Code §547.0002 [~~§531.02251~~], which serves as a neutral party to help individuals, including individuals who are uninsured or have public or private health benefit coverage and behavioral health care providers navigate and resolve issues related to the individual's access to behavioral health care, including care for mental health conditions and substance use disorders.

(43) PA--Physician's assistant. A person licensed as a physician assistant by the Texas State Board of Physician Assistant Examiners in accordance with Texas Occupations Code Chapter 204.

(44) PASRR--Preadmission screening and resident review.

(45) PASRR Level I screening--The process of screening an individual seeking admission to a nursing facility to identify whether the individual is suspected of having a mental illness, ID, or DD.

(46) PASRR Level II evaluation--A face-to-face evaluation:

(A) of an individual seeking admission to a nursing facility who is suspected of having a mental illness, ID, or DD; and

(B) performed by a LIDDA, LHMA, or LBHA to determine if the individual has a mental illness, ID, or DD and, if so, to:

- (i) assess the individual's need for care in a nursing facility;
- (ii) assess the individual's need for specialized services; and
- (iii) identify alternate placement options.

(47) Peer specialist--A person who uses lived experience, in addition to skills learned in formal training, to deliver strengths-based, person-centered services to promote an individual's recovery and resiliency, in accordance with 1 TAC Chapter 354, Subchapter N (relating to Peer Specialist Services).

(48) Physician--A staff member:

(A) licensed as a physician by the Texas Medical Board in accordance with Texas Occupations Code Chapter 155; or

(B) authorized to perform medical acts under an institutional permit at a Texas postgraduate training program approved by the Accreditation Council on Graduate Medical Education, the American Osteopathic Association, or the Texas Medical Board.

(49) Pre-admission screening--The clinical process used by a QMHP-CS or LPHA to gather information from an individual, including a medical history, any history of substance use, trauma, and the problem for which the individual is seeking treatment to determine if a physician should conduct an admission examination.

(50) Preliminary examination--The psychiatric examination and assessment for medical stability performed and documented by a physician in accordance with Texas Health and Safety Code §573.022 to determine if emergency detention in an inpatient mental health facility is clinically justified for an individual for whom:

(A) an application for emergency detention is filed in accordance with Texas Health and Safety Code §573.011;

(B) a peace officer or emergency medical services personnel of an emergency medical services provider transporting the individual in accordance with a memorandum of understanding executed in accordance with Texas Health and Safety Code §573.005 files a notification of detention completed by the peace officer in accordance with Texas Health and Safety Code §573.002(a); or

(C) the LAR transporting their adult ward, without the assistance of a peace officer, in accordance with Texas Health and Safety Code §573.003, files an application for detention in accordance with Texas Health and Safety Code §573.004.

(51) Psychosocial rehabilitative services--Services that assist an individual in regaining and maintaining daily living skills required to function effectively in the community.

(52) QMHP-CS--Qualified mental health professional-community services. A staff member who is credentialed as a QMHP-CS who has demonstrated and documented competency in the work to be performed and:

(A) has a bachelor's degree from an accredited college or university with a minimum number of hours that is equivalent to a major in psychology, social work, medicine, nursing, rehabilitation, counseling, sociology, human growth and development, gerontology, special education, educational psychology, early childhood education, or early childhood intervention;

(B) is an RN; or

(C) completes an alternative credentialing process as determined by an LMHA or LBHA in accordance with HHSC requirements.

(53) Recovery--A process of change through which individuals improve their health and wellness, live a self-directed life, and strive to reach their full potential.

(54) Recovery or treatment plan--A written plan:

(A) is developed in collaboration with the individual, and the individual's LAR or adult caregiver if applicable, and a QMHP-CS or LPHA;

(B) is amended at any time based on an individual's needs or requests;

(C) guides the recovery process and fostering resiliency;

(D) is completed in conjunction with the assessment tool adopted by HHSC;

(E) identifies the individual's changing strengths, capacities, goals, preferences, needs, and desired outcomes; and

(F) includes recommended services and supports or reasons for the exclusion of services and supports.

(55) Restraints--Any personal, mechanical, or chemical restraint defined in 25 TAC §415.253 (relating to Definitions).

(56) RN--Registered nurse. A staff member licensed as a registered nurse by the Texas Board of Nursing in accordance with Texas Occupations Code Chapter 301.

(57) Screening--Activities performed by a QMHP-CS to:

(A) collect triage information either in person, or through telephone or telehealth interviews with an individual or collateral contact;

(B) determine if the individual's need is emergent, urgent, or routine, and conducted before the in person or telehealth assessment to determine the need for emergency services; and

(C) determine the need for immediate assessment and mental health treatment recommendations.

(58) Seclusion--The involuntary separation of an individual from other individuals for any period of time and or the placement of the individual alone in an area from which the individual is prevented from leaving, as defined in 25 TAC §415.253(28).

(59) SED--Serious emotional disturbance. A diagnosed mental health disorder that substantially disrupts a child's or adolescent's ability to function socially, academically, and emotionally in accordance with Texas Government Code §547.0051 [Texas Government Code, §531.251].

(60) Serious physical injury--An injury determined by a physician, or physician-delegated PA or APRN, to require treatment by an appropriately licensed medical professional or licensed health-care professional, or in an emergency department or licensed hospital.

(61) Stabilize--With respect to an emergency medical condition, to provide such medical treatment of the condition necessary to assure, within reasonable medical probability, that no material deterioration of the condition is likely to result from or occur during the individual's transfer from a facility or, if the emergency medical condition for a woman is that she is in labor, that the woman has delivered the child and the placenta.

(62) Staff member--Personnel including a full-time and part-time employee, contractor, or intern, but excluding a volunteer.

(63) Staffing plan--A written plan that:

(A) demonstrates the number, qualifications, and responsibilities of staff members, including the administrator or designee, are appropriate for the size and scope of the services provided and that workloads are reasonable to meet the needs of individuals receiving services; and

(B) identifies staffing patterns, hours of coverage, and plans for providing back-up staff in emergencies.

(64) Substance use disorder--The use of one or more drugs, including alcohol, which significantly and negatively impacts one or more major areas of life functioning and which meets the criteria described in the current edition of the *Diagnostic Statistical Manual of Mental Disorders* for substance use disorders.

(65) TAC--Texas Administrative Code.

(66) Telehealth service--A health-care service, other than telemedicine medical services, delivered by a health professional licensed, certified or otherwise entitled to practice in Texas and acting within the scope of the health professional's license, certification or entitlement to an individual at a different physical location other than the health professional using telecommunications or information technology, in accordance with Texas Occupation Code §111.001(3).

(67) Telemedicine medical service--A health-care service delivered to an individual at a different physical location using telecommunications or information technology by:

(A) a physician licensed in Texas; or

(B) a health professional who acts under the delegation and supervision of a physician licensed in Texas and within the scope of the health professional's license in Texas.

(68) Transfer--The movement (including the discharge) of an individual outside a facility at the facility's direction, but it does not include such a movement of an individual who has been declared dead or leaves the facility without the facility's permission.

(69) Treating physician--A physician who coordinates and oversees an individual's treatment.

(70) Unit--A discrete and identifiable area of an inpatient mental health facility that includes individuals' rooms or other living areas and is separated from another similar area:

- (A) by a locked door;
- (B) by a floor; or
- (C) because the other similar area is in a different building.

(71) UP--Unlicensed person. A person, not licensed as a health care provider, who provides certain health related tasks and functions in a complementary or assistive role to the RN in providing direct care of an individual or carrying out common nursing functions as described in 22 TAC Chapter 224 (relating to Delegation of Nursing Tasks by Registered Professional Nurses to Unlicensed Personnel for Clients with Acute Conditions or in Acute Care Environments) and care in conformity with this chapter:

(A) who is monetarily compensated, including nurse aides, assistants, attendants, technicians, and other individuals providing care or assistance of health-related services; or

(B) who is a professional nursing student, not licensed as an RN or LVN, providing care for monetary compensation and not as part of their formal education.

(72) Voluntarily admitted individual--An individual receiving facility services based on an admission in accordance with:

(A) §306.55 of this subchapter (relating to Voluntary Admission Criteria and Intake Process); or

(B) §306.59 of this subchapter (relating to Voluntary Treatment Following Involuntary Admission).

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 21, 2024.

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Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: January 5, 2025

For further information, please call: (512) 221-9021



SUBCHAPTER E. MENTAL HEALTH CASE MANAGEMENT

26 TAC §306.273

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of

services by the health and human services agencies, and Chapter 546 and 547.

The amendment affects Texas Government Code §531.0055 and Chapter 546 and 547.

§306.273. *MH Case Management Employee Competencies.*

(a) The provider must implement a process to ensure the competency of a case manager and a case manager supervisor that, at a minimum, ensures:

(1) an accurate knowledge of the requirements of this subchapter and the following subchapters of this title:

(A) Chapter 412, Subchapter G of this title (relating to Mental Health Community Services Standards);

(B) Chapter 404, Subchapter E of this title (relating to Rights of Persons Receiving Mental Health Services);

(C) Chapter 414, Subchapter L of this title (relating to Abuse, Neglect, and Exploitation in Local Authorities and Community Centers); and

(D) Chapter 411, Subchapter N of this title (relating to Standards for Services to Individuals with Co-Occurring Psychiatric and Substance Use Disorders (COPSD));

(2) an accurate understanding of the nature of mental illness and serious emotional disturbance;

(3) an awareness and sensitivity in communicating and coordinating services with an individual who has a special physical need such as a hearing or visual impairment;

(4) the ability to respond to an individual's language and cultural needs through knowledge of customs, beliefs, and values of various, racial, ethnic, religious, and social groups;

(5) the ability to complete the uniform assessment;

(6) the ability to understand and apply the utilization management guidelines;

(7) the ability to develop and implement a plan if the case manager is providing intensive case management services to a child or adolescent;

(8) the ability to identify an individual in crisis;

(9) knowledge of appropriate actions to take in managing a crisis;

(10) an understanding of the developmental needs of an adult, a child, or an adolescent;

(11) an understanding of the wraparound planning process or other department-approved model, if the case manager is providing intensive case management services to a child or adolescent;

(12) knowledge of health and human services available to a child or adolescent as described in Texas Government Code §546.0052 [Texas Government Code, §531.0244], if the case manager is providing intensive case management services to a child or adolescent;

(13) knowledge of available resources within the local community;

(14) knowledge of strategies for advocating effectively on behalf of individuals; and

(15) the ability to document the MH case management services described in §412.413 of this title (relating to Documenting MH Case Management Services).

(b) The provider shall require each case manager and case manager supervisor, prior to providing MH case management services, to:

(1) demonstrate the competencies described in subsection (a) of this section; and

(2) ensure that documentation verifying competencies is maintained in the personnel record of each case manager and case manager supervisor.

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 22, 2024.

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Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: January 5, 2025

For further information, please call: (512) 221-9021



CHAPTER 330. LIDDA ROLE AND RESPONSIBILITIES

26 TAC §330.17

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §330.17, concerning LIDDA Administrative Functions.

BACKGROUND AND PURPOSE

House Bill 4611, 88th Legislature, Regular Session, 2023, made certain non-substantive revisions to Subtitle I, Title 4, Texas Government Code, which governs HHSC, Medicaid, and other social services as part of the legislature's ongoing statutory revision program. This proposal is necessary to update a citation in the rule to a Texas Government Code section that becomes effective on April 1, 2025. The proposed amendment updates the affected citation to Texas Government Code.

FISCAL NOTE

Trey Wood, HHSC 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

HHSC 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 HHSC 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 HHSC;
- (5) the proposed rule will not create a new regulation;

(6) the proposed rule will not expand, limit, or repeal existing regulations;

(7) the proposed rule will not change 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

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

The rule does not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rule because the amendment only updates a reference to existing law.

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

Libby Elliott, Deputy Executive Commissioner, Office of Policy and Rules, has determined that for each year of the first five years the rule is in effect, the public will benefit from having a rule that accurately cites the laws governing HHSC, Medicaid, and other social services.

Trey Wood 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 amendment only updates a reference to existing law.

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

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 24R085" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Chapter 526.

The amendment affects Texas Government Code §531.0055 and Chapter 526.

§330.17. *LIDDA Administrative Functions.*

(a) Local planning.

(1) A LIDDA must conduct local planning in accordance with THSC, §533.0352, and ensure involvement of the local advisory committee and other stakeholders.

(2) A LIDDA must participate in the local CRCG when an individual has complex needs and requires multiagency services.

(3) A LIDDA must coordinate with local agencies to build an integrated service delivery system that ensures broad access to and information about community services, identifies the LIDDA's safety net functions, and maximizes the utilization of existing resources while avoiding duplication of effort and gaps in services.

(b) Quality management. A LIDDA must develop a quality management program to monitor the performance of general revenue services providers and the LIDDA's compliance with the performance contract.

(c) Utilization management. A LIDDA must have:

(1) procedures describing how it authorizes general revenue services; and

(2) methods for evaluating the effectiveness of the authorization procedures.

(d) Information systems. A LIDDA must have information systems that:

(1) capture valid and reliable data; and

(2) accurately report required data to funding sources (for example, the Medicaid administration contractor, DADS, and other state and local agencies).

(e) Network management. A LIDDA must develop and manage a network of qualified providers that offer an array of general revenue services described in the performance contract.

(1) If the LIDDA is a provider of general revenue services, the LIDDA must have written procedures describing the qualifications and expectations of staff members.

(2) If a provider of general revenue services is a contractor of the LIDDA, the LIDDA must:

(A) ensure that the contract is procured and complies with the requirements of Subchapter B of this chapter (relating to Contracts Management for Local Authorities);

(B) have a process for resolving complaints from contract providers; and

(C) provide appropriate technical assistance and training to ensure that contract providers understand their contractual obligations (for example, documentation and billing).

(f) Consideration of public input, ultimate cost-benefit, and client care issues. In accordance with THSC §533.035(c), a LIDDA must consider public input, ultimate cost-benefit, and client care issues to ensure individual choice and the best use of public money in:

(1) assembling a network of general revenue services providers;

(2) making recommendations relating to the most appropriate and available treatment alternatives for individuals in the need of services and supports; and

(3) procuring services for a local service area, including a request for proposal or open-enrollment procurement method.

(g) Interest list management.

(1) A LIDDA must contact individuals on the HCS Program interest list and the TxHmL Program interest list as required by and in accordance with the performance contract.

(2) A LIDDA must have policies and procedures for:

(A) registering individuals on the LIDDA's interest list for general revenue services that complies with the requirements set forth in the Texas Government Code §526.0602 [Texas Government Code, §531.0931], related to military members and their dependents; and

(B) periodically contacting the individuals on the interest list.

(h) Qualifications and availability of staff members.

(1) Criminal history and registry clearances. A LIDDA must conduct criminal history and registry clearances for job and volunteer applicants in accordance with Chapter 4, Subchapter K, of this title (relating to Criminal History and Registry Clearances).

(2) Availability of staff members. A LIDDA must ensure the continuous availability of trained and qualified staff members to ensure the provision of service coordination and general revenue services.

(3) Qualifications of a staff member who is a service coordinator. A LIDDA must ensure that a staff member who is a service coordinator meets the qualifications set forth in §2.559 of this chapter (relating to Minimum Qualifications) contained in Subchapter L (relating to Service Coordination for Individuals with an Intellectual Disability).

(4) Qualifications of a staff member other than a service coordinator.

(A) A LIDDA must ensure that a staff member who is not a service coordinator and who directly provides general revenue services is at least 18 years of age and:

(i) has a high school diploma or a certificate recognized by a state as the equivalent of a high school diploma; or

(ii) has documentation of a proficiency evaluation of experience and competence to perform the job tasks that includes:

(I) written competency-based assessment of the ability to document service delivery and observations of an individual; and

(II) at least three personal references from persons not related by blood or marriage that indicate the ability to provide a safe, healthy environment for an individual.

(B) A LIDDA must:

(i) document the required education and work experience for a staff member who is not a service coordinator and who directly provides general revenue services and the supervisor of such staff member by position classification, by position category, or by individual position; and

(ii) ensure that a supervisor of a staff member who is not a service coordinator and who directly provides general revenue services has a minimum of one year experience working directly with people with intellectual disability or other developmental disabilities (for example, work experience, volunteer experience, or personal experience as a family member).

(C) A LIDDA must ensure that a staff member who is not a service coordinator and who directly provides general revenue services and the supervisor of such staff member have required state certification or licensure.

(5) Required competencies and skills relating to health, safety, and support needs of individuals.

(A) A LIDDA must identify in writing the required competencies and skills for a staff member by position classification, position category, or individual position that meet the health, safety, and support needs of individuals and include:

(i) time frames and frequency for the staff member to demonstrate competency; and

(ii) a method for measuring the competency and skills of the staff member.

(B) A LIDDA must maintain documentation that a staff member has demonstrated competencies and skills required by subparagraph (A) of this paragraph.

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 21, 2024.

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Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: January 5, 2025

For further information, please call: (512) 221-9021



CHAPTER 351. CHILDREN WITH SPECIAL HEALTH CARE NEEDS SERVICES PROGRAM

26 TAC §351.2

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §351.2, concerning Definitions.

BACKGROUND AND PURPOSE

House Bill 4611, 88th Legislature, Regular Session, 2023, made certain non-substantive revisions to Subtitle I, Title 4, Texas Government Code, which governs HHSC, Medicaid, and other social services as part of the legislature's ongoing statutory revision program. This proposal is necessary to update a citation in the rule to a Texas Government Code section that becomes effective on April 1, 2025. The proposed amendment updates the affected citation to Texas Government Code.

FISCAL NOTE

Trey Wood, HHSC 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

HHSC 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 HHSC 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 HHSC;

(5) the proposed rule will not create a new regulation;

(6) the proposed rule will not expand, limit, or repeal existing regulations;

(7) the proposed rule will not change 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

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

The rule does not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rule because the amendment only updates a reference to existing law.

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

Libby Elliott, Deputy Executive Commissioner, Office of Policy and Rules, has determined that for each year of the first five years the rule is in effect, the public will benefit from rules that accurately cite the laws governing HHSC, Medicaid, and other social services.

Trey Wood 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 amendment only updates a reference to existing law.

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

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 24R085" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Chapter 546.

The amendment affects Texas Government Code §531.0055 and Chapter 546.

§351.2. Definitions.

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

(1) Act--The Children with Special Health Care Needs Services Act, Health and Safety Code, Chapter 35.

(2) Advanced practice registered nurse--A registered nurse approved by the Texas Board of Nursing to practice as an advanced practice registered nurse.

(3) Applicant--A person making an initial application or re-application for CSHCN Services Program services.

(4) Case management services--Case management services include, but are not limited to:

(A) planning, accessing, and coordinating needed health care and related services for children with special health care needs and their families. Case management services are performed in partnership with the child, the child's family, providers, and others involved in the care of the child and are performed as needed to help improve the well-being of the child and the child's family; and

(B) counseling for the child and the child's family about measures to prevent the transmission of AIDS or HIV and the availability in the geographic area of any appropriate health care services, such as mental health care, psychological health care, and social and support services.

(5) Child with special health care needs--A person who:

(A) is younger than 21 years of age and who has a chronic physical or developmental condition; or

(B) has cystic fibrosis, regardless of the person's age; and

(C) may have a behavioral or emotional condition that accompanies the person's physical or developmental condition. The term does not include a person who has behavioral or emotional condition without having an accompanying physical or developmental condition.

(6) CHIP--The Children's Health Insurance Program administered by the Texas Health and Human Services Commission under Title XXI of the Social Security Act.

(7) Chronic developmental condition--A disability manifested during the developmental period for a child with special health care needs which results in impaired intellectual functioning or deficiencies in essential skills, which is expected to continue for a period longer than one year, and which causes a person to need assistance in the major activities of daily living or in meeting personal care needs. For the purpose of this chapter, a chronic developmental condition must include physical manifestations and may not be solely a delay in intellectual, mental, behavioral, or emotional development.

(8) Chronic physical condition--A disease or disabling condition of the body, of a bodily tissue, or of an organ which will last or is expected to last for at least 12 months, that results, or without treatment, may result in limits to one or more major life activities, and that requires health and related services of a type or amount beyond those required by children generally. Such a condition may exist with accompanying developmental, mental, behavioral, or emotional conditions, but is not solely a delay in intellectual development or solely a mental, behavioral, or emotional condition.

(9) Claim form--The document approved by the CSHCN Services Program for submitting a claim for processing and payment.

(10) Client--A person who has applied for program services and who meets all CSHCN Services Program eligibility requirements and is determined to be eligible for program services.

(A) New client:

(i) a person who has applied to the program for the first time and who is determined to be eligible for program services; or

(ii) a person who has re-applied to the program (after a lapse in eligibility) and who is determined to be eligible for program services.

(B) Ongoing client--A client who currently is not on the program's waiting list.

(C) Waiting list client--A client who currently is on the program's waiting list.

(11) CMS--The Centers for Medicare and Medicaid Services.

(12) Commission--The Texas Health and Human Services Commission.

(13) Commissioner--The Commissioner of the Department of State Health Services.

(14) Co-insurance--A cost-sharing arrangement in which a covered person pays a specified percentage of the charge for a covered service. The covered person may be responsible for payment at the time the health care service is provided.

(15) Co-pay and co-payment--A cost-sharing arrangement in which a client pays a specified charge for a specified service. The client is usually responsible for payment at the time the health care service is provided.

(16) CSHCN Services Program--The services program for children with special health care needs described in §38.1 of this title (relating to Purpose and Common Name).

(17) Date of service (DOS)--The date a service is provided.

(18) Deductible--A cost-sharing arrangement in which a client is responsible for paying a specific amount annually for covered

services before an insurance carrier or plan begins to pay for covered services.

(19) Dentist--An individual licensed by the State Board of Dental Examiners to practice dentistry in the State of Texas.

(20) Department--The Department of State Health Services.

(21) Diagnosis and evaluation services--The process of performing specialized examinations, tests, or procedures to determine whether a CSHCN Services Program applicant for health care benefits has a chronic physical or developmental condition as determined by a physician or dentist participating in the CSHCN Services Program or to help determine whether a waiting list client has an "urgent need for health care benefits" according to the criteria and protocol described in §38.16(e) of this title (relating to Procedures to Address Program Budget Alignment).

(22) Disregards--An amount of money deducted from the family's total income for allowable expenses, such as child care.

(23) Eligibility date for the CSHCN Services Program health care benefits--The effective date of eligibility for the CSHCN Services Program health care benefits is the date of receipt of a complete, approved application except in the following circumstances.

(A) The effective date of eligibility for newborns who are not born prematurely will be the date of birth. Newborn means a child 28 days old or younger.

(B) The effective date of eligibility for an applicant who is born prematurely shall be the day after the applicant has been out of the hospital for 14 consecutive days, but no earlier than the date of receipt of the application.

(C) The effective date of eligibility following traumatic injury shall be the day after the acute phase of treatment ends, but no earlier than the date of receipt of the application.

(D) The effective date of eligibility for applicants with spenddown is the date of receipt of the medical bills which document that spenddown has been met, following the receipt of a complete application. Only medical bills having a DOS within 12 months prior to or 6 months after the date of receipt of the application may be included to satisfy spenddown requirements. Medical bills for any member of the family for which the applicant, parent(s), guardian or managing conservator of the CSHCN Services Program applicant is responsible may be included. Medical bills used to meet spenddown cannot be paid by the CSHCN Services Program.

(E) Excluding applications for clients who are known to be ineligible for Medicaid and the CHIP due to age, citizenship status, or insurance coverage, all applications must include a determination of eligibility from Medicaid and the CHIP. If the CSHCN Services Program application is received without a Medicaid determination, a CHIP determination, or other data or documents needed to process the application, it will be considered incomplete. The applicant will be notified that the application is incomplete and given 60 days to submit the Medicaid determination, CHIP denial or enrollment, or other missing data or documents to the CSHCN Services Program. If the application is made complete within the 60-day time limit, the client's eligibility effective date will be established as the date the CSHCN Services Program application was first received. If the application is made complete more than 60 days after initial receipt, the eligibility effective date will be established as the date the application was made complete.

(24) Emergency--A medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that a prudent person with average knowledge of health and medicine

could reasonably expect that the absence of immediate medical care could result in:

(A) placing the person's health in serious jeopardy;

(B) serious impairment to bodily functions; or

(C) serious dysfunction of any bodily organ or part.

(25) Emotional or behavioral condition--Behavior which varies significantly from normal, that is chronic and does not quickly disappear, and that is unacceptable because of social or cultural expectations. Emotional or behavioral responses which are so different from those of the generally accepted, age-appropriate norms of people with the same ethnic or cultural background as to result in significant impairment in social relationships, self-care, educational progress, or classroom behavior. Examples include but are not limited to the following:

(A) an inability to build or maintain satisfactory age-appropriate interpersonal relationships with peers or adults;

(B) dangerously aggressive, self-destructive, severely withdrawn, or noncommunicative behaviors;

(C) a pervasive mood of unhappiness or depression; or

(D) evidence of excessive anxiety or fears.

(26) Facility--A hospital, psychiatric hospital, rehabilitation hospital or center, ambulatory surgical center, renal dialysis center, specialty center, or outpatient clinic.

(27) Family--For the purpose of determining family size for program eligibility, the family includes the following persons who live in the same residence:

(A) the applicant;

(B) those related to the applicant as a parent, stepparent, or spouse who have a legal responsibility to support the applicant, or guardians or managing conservators who have a duty to provide food, shelter, education, and medical care for the applicant;

(C) children under age 19 or wards of the applicant; and

(D) children under age 19 or wards of a parent, stepparent, or spouse.

(28) Family support services--Disability-related support, resources, or other assistance provided to the family of a child with special health care needs. The term may include services described by Part A of the Individuals with Disabilities Education Act (20 U.S.C. §1400 *et seq.*), as amended, and permanency planning, as that term is defined by Texas Government Code §546.0201 [~~Government Code, §531.151~~].

(29) Federal Poverty Level (FPL)--The minimum income needed by a family for food, clothing, transportation, shelter, and other necessities in the United States, according to the United States Department of Health and Human Services, or its successor agency or agencies. The FPL varies according to family size and after adjustment for inflation, is published annually in the *Federal Register*.

(30) Federally qualified health center--A federally qualified health center is designated by CMS to provide core medical services to a Medically Underserved Population.

(31) Financial independence--A state in which a person currently files his or her own personal U.S. income tax return and is not claimed as a dependent by any other person on his or her U.S. income tax return.

(32) Guardian--A statutory officer appointed under the Texas Probate Code who has a duty to provide food, shelter, education, and medical care for his or her ward.

(33) Health care benefits--CSHCN Services Program benefits consisting of diagnosis and evaluation services, rehabilitation services, medical home care management services, family support services, transportation related services, and insurance premium payment services.

(34) Health insurance and health benefits plan--A policy or plan, individual, group, or government-sponsored, that an individual purchases or in which an individual participates that provides benefits when medical or dental costs are or would be incurred. Sources of health insurance include, but are not limited to, health insurance policies, buy-in programs, health maintenance organizations, preferred provider organizations, employee health welfare plans, union health welfare plans, medical expense reimbursement plans, United States Department of Defense or Department of Veterans Affairs benefit plans, Medicaid, CHIP, and Medicare. Benefits may be in any form, including, but not limited to, reimbursement based upon cost, cash payment based upon a schedule, or access without charge or at minimal charge to providers of medical or dental care. Benefits from a municipal or county hospital, joint municipal-county hospital, county hospital authority, hospital district, county indigent health care programs, or the facilities of a publicly supported medical school shall not constitute health insurance for purposes of this chapter.

(35) Income--The gross income, either earned or unearned, before deductions over a given period of time for each family member.

(36) Managing conservator--A person designated by a court to have daily legal responsibility for a child.

(37) Medicaid--A program of medical care authorized by Title XIX of the Social Security Act and the Human Resources Code.

(38) Medical home--A respectful partnership between a client, the client's family as appropriate, and the client's primary health care setting. A medical home is family centered health care that is accessible, continuous, comprehensive, coordinated, compassionate, and culturally competent. A medical home provides primary care that includes preventive care, care coordination, and appropriate referral and collaboration with specialist and other service providers as required.

(39) Medicare--A federal program that provides medical care for people age 65 or older and the disabled as authorized by Title XVIII of the Social Security Act.

(40) Natural home--The home in which a person lives that is either the residence of his or her parent(s), foster parent(s) or guardian, or extended family member(s), or the home in the community where the person has chosen to live, alone or with other persons. A natural home may utilize natural support systems such as family, friends, co-workers, and services available to the general population as they are available.

(41) Other benefit--A benefit, other than a benefit provided under this chapter, to which a person is entitled for payment of the costs of services included in the scope of coverage of the CSHCN Services Program including, but not limited to, benefits available from:

(A) an insurance policy, group health plan, health maintenance organization, or prepaid medical or dental care plan;

(B) home, auto, or other liability insurance;

(C) Title XVIII, Title XIX, or Title XXI of the Social Security Act (42 U.S.C. §§1395 *et seq.*, 1396 *et seq.*, and 1397aa *et seq.*), as amended;

(D) the United States Department of Veterans Affairs;

(E) the United States Department of Defense;

(F) workers' compensation or any other compulsory employers' insurance program;

(G) a public program created by federal or state law or under the authority of a municipality or other political subdivision of the state, excluding benefits created by the establishment of a municipal or county hospital, a joint municipal-county hospital, a county hospital authority, a hospital district, a county indigent health care program, or the facilities of a publicly supported medical school; or

(H) a cause of action for the cost of care, including medical care, dental care, facility care, and medical supplies, required for a person applying for or receiving services from the department or a settlement or judgment based on the cause of action if the expenses are related to the need for services provided under this chapter.

(42) Otologist--A physician whose specialty is diseases of the ear.

(43) Permanency planning--A planning process undertaken for children with chronic illness or developmental disabilities who reside in institutions or are at risk of institutional placement, with the explicit goal of securing a permanent living arrangement that enhances the child's growth and development, which is based on the philosophy that all children belong in families and need permanent family relationships. Permanency planning is directed toward securing: a consistent, nurturing environment, an enduring, positive adult relationship(s), and a specific person who will be an advocate for the child throughout the child's life. Permanency planning provides supports to enable families to nurture their children, to reunite with their children when they have been placed outside the home, and to place their children in family environments.

(44) Person--An individual, corporation, government or governmental subdivision or agency, business trust, partnership, association, or any other legal entity.

(45) Physician--A person licensed by the Texas Medical Board to practice medicine in this state.

(46) Physician assistant--A person licensed as a physician assistant by the Texas Physician Assistant Board.

(47) Practitioner--A person who is licensed to practice medicine, dentistry, nursing or an allied health profession.

(48) Prematurity or born prematurely--A child born at less than 36 weeks gestational age and hospitalized since birth.

(49) Program--The Children with Special Health Care Needs (CSHCN) Services Program.

(50) Provider--A person or facility as defined in §38.6 of this title (relating to Providers) that delivers services purchased by the CSHCN Services Program for the purpose of implementing the Act.

(51) Rehabilitation services--The process of the physical restoration, improvement, or maintenance of a body function destroyed or impaired by congenital defect, disease, or injury which includes the following acute and chronic or rehabilitative services:

(A) facility care, medical and dental care, and occupational, speech, and physical therapies;

(B) the provision of medications, braces, orthotic and prosthetic devices, durable medical equipment, and other medical supplies; and

(C) other services specified in this chapter.

(52) Respite care--A service provided on a short-term basis for the purpose of relief to the primary care giver in providing care to individuals with disabilities. Respite services can be provided in either in-home or out-of-home settings on a planned basis or in response to a crisis in the family where a temporary caregiver is needed.

(53) Rural health clinic--A rural health clinic is designated by CMS to provide core medical services in a Medically Underserved Area.

(54) Routine child care--Child care for a child who needs supervision while the parent or guardian is at work, in school, or in job training.

(55) Services--The care, activities, and supplies provided under the Act, including but not limited to, both acute and chronic or rehabilitative medical care, dental care, facility care, medications, durable medical equipment, medical supplies, occupational, physical, and speech therapies, family support services, case management services, and other care specified by program rules.

(56) Social service organization--For purposes of this chapter, a for-profit or nonprofit corporation or other entity, not including individual persons, that provides funds for travel, meal, lodging, and family supports expenses in advance to enable CSHCN Services Program clients to obtain program services.

(57) Specialty center--A facility and staff that meet the CSHCN Services Program minimum standards established in this chapter and are designated for use by CSHCN Services Program clients as part of the comprehensive services for a specific medical condition.

(58) Spenddown--A process that allows an applicant to obtain program financial eligibility when the applicant's family income exceeds 200% of the FPL. The family must prove cumulative medical expenses that exceed the difference between the family income and 200% of the FPL income limit.

(59) State--The State of Texas.

(60) Subrogation--Assumption by third party, such as a second creditor or an insurance company, of another person's legal right to collect a debt or damages.

(61) Supplemental Security Income Program (SSI)--Title XVI of the Social Security Act which provides for payments to individuals (including children under age 18) who are disabled and have limited income and resources.

(62) Support--The contribution of money or services necessary for a person's maintenance, including, but not limited to, food, clothing, shelter, transportation, and health care.

(63) Texas resident--A person who:

(A) is physically present within the geographic boundaries of the state;

(B) has an intent to remain within the state;

(C) maintains an abode within the state (i.e., house or apartment, not merely a post office box);

(D) has not come to Texas from another country for the purpose of obtaining medical care with the intent to return to the person's native country;

(E) does not claim residency in any other state or country; and

(i) is a minor child residing in Texas whose parent(s), managing conservator, guardian of the child's person, or caretaker (with whom the child consistently resides and plans to continue to reside) is a Texas resident;

(ii) is a person residing in Texas who is the legally dependent spouse of a Texas resident; or

(iii) is an adult residing in Texas, including an adult whose parent(s), managing conservator, guardian of the adult's person, or caretaker (with whom the adult resides and plans to continue to reside).

(64) Treatment plan--The plan of care for the client (time and treatment specific) as certified by and implemented under the supervision of a physician or other practitioner in the program.

(65) United States Public Health Service price--The average manufacturer price for a drug in the preceding calendar quarter under Title XIX of the Social Security Act, reduced by the rebate percentage, as authorized by the Veterans Health Care Act of 1992 (P.L. 102-585, November 4, 1992).

(66) Urgent need for health care benefits--A need for health care services when the lack of those services would cause a permanent increase in disability, intense pain or suffering, or death.

(67) Ward--An individual placed under the protection of a guardian, or a person who by reason of incapacity is under the protection of a court either directly or through a guardian appointed by the court.

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 21, 2024.

TRD-202405687

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: January 5, 2025

For further information, please call: (512) 221-2921



CHAPTER 358. CHILDREN'S AUTISM PROGRAM

SUBCHAPTER A. GENERAL RULES

26 TAC §358.103

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §358.103, concerning Legal Authority.

BACKGROUND AND PURPOSE

House Bill 4611, 88th Legislature, Regular Session, 2023, made certain non-substantive revisions to Subtitle I, Title 4, Texas Government Code, which governs HHSC, Medicaid, and other social services as part of the legislature's ongoing statutory revision program. This proposal is necessary to update a citation in the rule to a Texas Government Code section that becomes effective

tive on April 1, 2025. The proposed amendment updates the affected citation to Texas Government Code.

FISCAL NOTE

Trey Wood, HHSC 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

HHSC 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 HHSC 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 HHSC;
- (5) the proposed rule will not create a new regulation;
- (6) the proposed rule will not expand, limit, or repeal existing regulations;
- (7) the proposed rule will not change 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

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

The rule does not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rule because the amendment only updates a reference to existing law.

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

Libby Elliott, Deputy Executive Commissioner, Office of Policy and Rules, has determined that for each year of the first five years the rule is in effect, the public will benefit from rules that accurately cite the laws governing HHSC, Medicaid, and other social services.

Trey Wood 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 amendment only updates a reference to existing law.

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

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 24R085" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Chapter 524.

The amendment affects Texas Government Code §531.0055 and Chapter 524.

§358.103. Legal Authority.

The following statutes authorize the funding and rules for this program:

- (1) Texas Human Resources Code, §111.051;
- (2) Texas Human Resources Code, Chapter 117; and
- (3) Texas Government Code, §524.0005[§531.0055].

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 21, 2024.

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Karen Ray

Chief Counsel

Health and Human Services Commission

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CHAPTER 554. NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION SUBCHAPTER X. REQUIREMENTS FOR MEDICAID-CERTIFIED FACILITIES

26 TAC §554.2302

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §554.2302, concerning Requirements for a Contracted Medicaid Facility.

BACKGROUND AND PURPOSE

House Bill 4611, 88th Legislature, Regular Session, 2023, made certain non-substantive revisions to Subtitle I, Title 4, Texas Government Code, which governs HHSC, Medicaid, and other social services as part of the legislature's ongoing statutory revision program. This proposal is necessary to update a citation in the rule to a Texas Government Code section that becomes effective on April 1, 2025. The proposed amendment updates the affected citation to Texas Government Code.

FISCAL NOTE

Trey Wood, HHSC 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

HHSC 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 HHSC 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 HHSC;
- (5) the proposed rule will not create a new regulation;
- (6) the proposed rule will not expand, limit, or repeal existing regulations;
- (7) the proposed rule will not change 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

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

The rule does not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rule because the amendment only updates a reference to existing law.

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

Libby Elliott, Deputy Executive Commissioner, Office of Policy and Rules, has determined that for each year of the first five years the rule is in effect, the public will benefit from rules that accurately cite the laws governing HHSC, Medicaid, and other social services.

Trey Wood 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 amendment only updates a reference to existing law.

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

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 24R085" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Chapter 545.

The amendment affects Texas Government Code §531.0055 and Chapter 545.

§554.2302. Requirements for a Contracted Medicaid Facility.

(a) This section applies to nursing facilities (NFs) that have been licensed and certified as eligible for participation under Title XIX.

(b) Each nursing facility (NF) must comply with the state requirements for participation and the facility's contract on a continuing basis.

(c) Each NF must comply with the Texas Health and Human Services Commission's (HHSC's) utilization review requirements as provided in 1 TAC §371.212 (relating to Minimum Data Set Assessments) and §371.214 (relating to Resource Utilization Group Classification System).

(d) A facility may not participate in the Texas Medical Assistance Program if it has restrictive policies or practices, including:

- (1) requiring the resident to make a will, with the facility named as legatee or devisee;
- (2) requiring the resident to assign his life insurance to the facility;

(3) requiring the resident to transfer property to the facility;

(4) requiring the resident to pay a lump sum entrance fee or make any other payment or concession to the facility beyond the recognized rate for board, room, and care as a condition for entry, departure, or continued stay;

(5) controlling or restricting the resident, the resident's guardian, or responsible party in the use of the resident's personal needs allowance;

(6) restricting the resident from leaving the facility at will except as provided by state law;

(7) restricting the resident from applying for Medicaid for a specified period of time;

(8) denying appropriate care to an individual on the basis of his race, religion, color, national origin, sex, age, disability, marital status, or source of payment; and

(9) preventing terminally ill adult residents from exercising their will in making written or unwritten directives to reject life-sustaining procedures.

(e) If DADS has documentation showing good cause, it reserves the right to reject the facility's participation or to cancel an existing contract if the facility charges the Title XIX resident, any member of his family, or any other source for supplementation or for any item except as allowed within DADS policies and regulations.

(f) If DADS suspends a facility's vendor payments or proposes to terminate a facility's contract, the facility may request an administrative hearing to challenge the action. If a facility requests a hearing, the facility must make the request in accordance with HHSC rules at 1 TAC Chapter 357, Subchapter I.

(g) DADS' interpretations of the requirements for participation or the contract may not be appealed to HHSC's hearings department unless the interpretation has caused an adverse action for the facility.

(h) Facilities must allow representatives of DADS, the Medicaid Fraud Control Unit, and the Department of Health and Human Services to enter the premises at any time to make inspections or to privately interview the residents receiving assistance from DADS.

(i) Facilities must supply DADS complete information according to federal and state requirements about the identity of:

(1) each person who directly or indirectly owns interest of 5% or more in the facility;

(2) each owner (in whole or in part) of any property, assets, mortgage, deed of trust, note, or other obligation secured by the facility;

(3) each officer and director, if the facility is organized as a corporation;

(4) each partner, if the facility is organized as a partnership (A copy of the partnership agreement is required, but the dollar amount of capital contributions of the partners may be omitted); and

(5) any director, officer, agency, or managing employee of the institution, agency, or organization, who has ever been convicted of a criminal offense related to the person's involvement in programs established by Title XVIII, XIX, and XX (Effective dates for disclosure of any convictions are July 1, 1966, for Medicare, and January 1, 1969, for Medicaid.)

(j) If a profit-making corporation operates the facility, a copy of the following material is required:

(1) certificate of incorporation (for Texas corporations only);

(2) certificate of authority to do business in Texas (for out-of-state corporations only);

(3) a resolution from the board of directors authorizing a specific person or officer to sign contracts between DADS and the corporation; and

(4) any management contract for the facility. If no stockholder owns, directly or beneficially, 5.0% or more of the corporate stock, the president and secretary of the corporation should state this on the department form.

(k) If a nonprofit corporation operates the facility, a copy of the following material is required:

(1) certificate of incorporation (for Texas corporations only);

(2) certificate of authority to do business in Texas (for out-of-state corporations only);

(3) a resolution from the board of directors authorizing a specific person or officer to sign contracts with DADS; and

(4) a copy of any management contract for the facility.

(l) Facilities other than those described in subsections (j) and (k) of this section must furnish a copy of:

(1) charter or other legal basis for the organization which owns the facility;

(2) any management contract or agreement for the facility;

(3) by-laws of the organization (if applicable); and

(4) other information required by DADS to determine the status of the legal entity that owns the facility.

(m) Facilities must disclose business transaction information. A facility must send to DADS, within 35 days after the date of a written request, complete information on:

(1) the ownership of a subcontractor with whom the facility has had, during the previous 12 months, business transactions totaling more than \$25,000; and

(2) any business transactions between the facility and any wholly owned supplier, or between the facility and any subcontractor during the five-year period ending on the date of the request.

(n) The facility must report changes in the required information promptly to DADS.

(o) Failure to provide this information may result in suspension, termination, or other contract action, including holding vendor funds. Payment to the facility is denied beginning on the day after the date information was due, and ending on the day before the date the information is received by DADS.

(p) Each facility must comply with Texas Government Code §545.0201 [~~Government Code, §531.116~~]. A facility that furnishes services under the Medicaid program is subject to Occupations Code, Chapter 102. The facility's compliance with that chapter is a condition of the facility's eligibility to participate as a facility under those programs.

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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Karen Ray

Chief Counsel

Health and Human Services Commission

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For further information, please call: (512) 221-9021



CHAPTER 560. DENIAL OR REFUSAL OF LICENSE

26 TAC §560.3

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §560.3, concerning Adverse Licensing Record.

BACKGROUND AND PURPOSE

House Bill 4611, 88th Legislature, Regular Session, 2023, made certain non-substantive revisions to Subtitle I, Title 4, Texas Government Code, which governs HHSC, Medicaid, and other social services as part of the legislature's ongoing statutory revision program. This proposal is necessary to update citations in the rule to a Texas Government Code section that becomes effective on April 1, 2025. The proposed amendment updates the affected citations to Texas Government Code.

FISCAL NOTE

Trey Wood, HHSC 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

HHSC 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 HHSC 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 HHSC;
- (5) the proposed rule will not create a new regulation;
- (6) the proposed rule will not expand, limit, or repeal existing regulations;
- (7) the proposed rule will not change 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

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

The rule does not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rule because the amendment only updates references to existing laws.

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

Libby Elliott, Deputy Executive Commissioner, Office of Policy and Rules, has determined that for each year of the first five years the rule is in effect, the public will benefit from rules that accurately cite the laws governing HHSC, Medicaid, and other social services.

Trey Wood 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 amendment only updates references to existing laws.

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

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 24R085" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Chapter 526.

The amendment affects Texas Government Code §531.0055 and Chapter 526.

§560.3. Adverse Licensing Record.

HHSC may deny an application for a license or refuse to renew a license for a facility described in §560.1(2)(A) - (E) of this chapter (relating to Definitions) if:

(1) any of the following persons are listed in a record maintained by a health and human services agency under Texas Government Code §526.0454 [§531.952]:

- (A) the applicant or facility license holder;
- (B) a person listed on an initial or renewal application;

or

(C) a controlling person of the applicant or facility license holder; and

(2) the health and human services agency's action that resulted in the person being listed in a record maintained under Texas Government Code §526.0454 [§531.952] is based on:

(A) an act or omission that resulted in physical or mental harm to an individual in the care of the person;

(B) a threat to the health, safety, or well-being of an individual in the care of the person;

(C) the physical, mental, or financial exploitation of an individual in the care of the person; or

(D) a determination by the health and human services agency that the person has committed an act or omission that renders the person unqualified or unfit to fulfill the obligations of the license, listing, or registration.

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 21, 2024.

TRD-202405690

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: January 5, 2025

For further information, please call: (512) 221-9021



CHAPTER 566. TEXAS HOME LIVING (TXHML) PROGRAM AND COMMUNITY FIRST CHOICE (CFC) CERTIFICATION STANDARDS

26 TAC §566.3

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §566.3, concerning Definitions.

BACKGROUND AND PURPOSE

House Bill 4611, 88th Legislature, Regular Session, 2023, made certain non-substantive revisions to Subtitle I, Title 4, Texas Government Code, which governs HHSC, Medicaid, and other social services as part of the legislature's ongoing statutory revision program. This proposal is necessary to update a citation in the rule to a Texas Government Code section that becomes effective on April 1, 2025. The proposed amendment updates the affected citation to Texas Government Code.

FISCAL NOTE

Trey Wood, HHSC 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

HHSC 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 HHSC 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 HHSC;

(5) the proposed rule will not create a new regulation;

(6) the proposed rule will not expand, limit, or repeal existing regulations;

(7) the proposed rule will not change 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

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

The rule does not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rule because the amendment only updates a reference to existing law.

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

Libby Elliott, Deputy Executive Commissioner, Office of Policy and Rules, has determined that for each year of the first five years the rule is in effect, the public will benefit from rules that accurately cite the laws governing HHSC, Medicaid, and other social services.

Trey Wood 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 amendment only updates a reference to existing law.

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

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 24R085" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Chapter 543A.

The amendment affects Texas Government Code §531.0055 and Chapter 543A.

§566.3. Definitions.

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

- (1) Abuse--
 - (A) physical abuse;
 - (B) sexual abuse; or
 - (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 CFC ERS equipment to the CFC ERS response center indicating that the individual needs immediate assistance.
- (5) Alleged perpetrator--A person alleged to have committed an act of abuse, neglect, or exploitation of an individual.
- (6) Applicant--A Texas resident seeking services in the TxHmL Program.
- (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).
- (8) Calendar day--Any day, including weekends and holidays.
- (9) CDS option--Consumer directed services option. A service delivery option as defined in §41.103 of this title (relating to Definitions).
- (10) CFC--Community First Choice.
- (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.

(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.

(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.

(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.
- (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.
- (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.
- (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.

(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.

(19) Competitive employment--Employment that pays an individual at least minimum wage if the individual is not self-employed.

(20) Contract--A provisional contract or a standard contract.

(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.

(22) Critical incident--An event listed in the TxHmL Provider User Guide found at www.hhsc.state.tx.us.

(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;

(B) has resulted in actual harm 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.

(26) DFPS--The Department of Family and Protective Services.

(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.

(28) FMS--Financial management services. A service, as defined in §41.103 of this title, that is provided to an individual participating in the CDS option.

(29) FMSA--Financial management services agency. As defined in §41.103 of this title, an entity that provides financial management services to an individual participating in the CDS option.

(30) Follow-up survey--A review by HHSC of a program provider to determine if the program provider has completed corrective action.

(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.

(32) Good cause--As used in §9.578 of this subchapter, (relating to Program Provider Certification Principles: Service Delivery), a reason outside the control of the CFC ERS provider, as determined by HHSC.

(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.

(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.

(35) HHSC--The Texas Health and Human Services Commission.

(36) IADLs--Instrumental activities of daily living. 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.

(37) ICAP--Inventory for Client and Agency Planning.

(38) ICF/IID--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.

(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.

(40) ID/RC Assessment--A form used by HHSC for LOC determination and LON assignment.

(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.

(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.

(43) Individual--A person enrolled in the TxHmL Program.

(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 the certification principles.

(45) Intellectual disability--Significant sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.

(46) Intermittent survey--A review by HHSC of a program provider that is not an initial certification survey, a recertification survey, or a follow-up survey, to determine if the program provider is in compliance with the certification principles.

(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.

(48) IPC cost--Estimated annual cost of program services included on an IPC.

(49) IPC year--A 12-month period of time starting on the date an authorized initial or renewal IPC begins.

(50) Isolated--The scope of a violation that has affected a very limited number of individuals or that has occurred only occasionally.

(51) LAR--Legally authorized representative. A person authorized by law to act on behalf of a person with regard to a matter described in this subchapter, and may include a parent, guardian, or managing conservator of a minor, or the guardian of an adult.

(52) LIDDA--Local intellectual and developmental disability authority. An entity designated by the executive commissioner of HHSC, in accordance with THSC §533A.035.

(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.

(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.

(55) LVN--Licensed vocational nurse. A person licensed to practice vocational nursing in accordance with Texas Occupations Code, Chapter 301.

(56) Managed care organization--This term has the meaning set forth in Texas Government Code §543A.0001 [Texas Government Code, §536.001].

(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.

(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.

(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.

(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.

(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.

(62) Natural supports--Unpaid persons, including family members, volunteers, neighbors, and friends, who assist and sustain an individual.

(63) Neglect--A negligent act or omission that caused physical or emotional injury or death to an individual or placed an individual at risk of physical or emotional injury or death.

(64) Nursing facility--A facility licensed in accordance with THSC, Chapter 242.

(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 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 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.

(66) Pattern--The scope of a violation that is not widespread but represents repeated failures by the program provider to comply with certification 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.

(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.

(68) Performance contract--A written agreement between HHSC and a LIDDA for the performance of delegated functions, including those described in THSC, §533A.035.

(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 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;

(C) the use of a restraint on an individual not in compliance with federal and state laws, rules, and regulations; or

(D) seclusion.

(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.

(71) Plan of correction--A plan documented on the HHSC Plan of Correction form that includes the corrective action that a pro-

gram provider will take for each violation identified on a final survey report.

(72) Plan of removal--A written plan that describes the action a program provider will take to remove an immediate threat that HHSC identifies.

(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.

(74) Post-move monitoring visit--As described in 26 TAC §303.702 (relating to Post-transition Responsibilities), a visit conducted by the service coordinator in the individual's residence and other locations, as determined by the service planning team, for an individual who 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 locations to:

(A) assess whether essential supports identified in the transition plan are in place;

(B) identify gaps in care; and

(C) address such gaps, if any, to reduce the risk of crisis, re-admission to a nursing facility, or other negative outcome.

(75) Pre-move site review--As described in 26 TAC §303.701 (relating to Transition Planning for a Designated Resident), a review conducted by the service coordinator in the planned residence and other locations, as determined 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 essential services and supports described in the applicant's transition plan are in place before the applicant moves to the residence or receives services in the other locations.

(76) Program provider--A person, as defined in §49.102 of this title (relating to Definitions), that has a contract with HHSC to provide TxHmL Program services, excluding an FMSA.

(77) Provisional contract--A contract that HHSC enters into with a program provider in accordance with §49.208 of this title (relating to Provisional Contract Application Approval) that has a term of no more than three years, not including any extension agreed to in accordance with §49.208(e) of this title (relating to Standard Contract).

(78) Public emergency personnel--Personnel of a sheriff's department, police department, emergency medical service, or fire department.

(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 the certification principles and will be certified for a new certification period.

(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.

(81) Repeated violation--A violation that is:

- (A) based on the same certification principle; and
- (B) involves the same TxHmL Program service.

(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.

(83) Responder--A person designated to respond to an alarm call activated by an individual.

(84) Restraint--Any of the following:

- (A) a physical restraint;
- (B) a mechanical restraint; or
- (C) a chemical restraint.

(85) RN--Registered nurse. A person licensed to practice professional nursing in accordance with Texas Occupations Code, Chapter 301.

(86) Seclusion--The involuntary placement of an individual alone in an area from which the individual is prevented from leaving.

(87) Service backup plan--A plan that ensures continuity of a service that is critical to an individual's health and safety if service delivery is interrupted.

(88) Service coordination--A service as defined in Chapter 2, Subchapter L of this title (relating to Service Coordination for Individuals with an Intellectual Disability).

(89) Service coordinator--An employee of a LIDDA who provides service coordination to an individual.

(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 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.

(91) Service provider--A person, who may be a staff member, who directly provides a TxHmL Program service or CFC service to an individual.

(92) Sexual abuse--Any of the following:

- (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.

(95) Specialized services--The services defined in 26 TAC §303.102 (relating to Definitions).

(96) Staff member--An employee or contractor of a TxHmL Program provider.

(97) Standard contract--A contract that HHSC enters into with a program provider in accordance with §49.209 of this title that has a term of no more than five years, not including any extension agreed to in accordance §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.

(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.

(100) Support consultation--A service, as defined in §41.103 of this title, that is provided to an individual participating in the CDS option at the request of the individual or LAR.

(101) Survey--An initial certification survey, a recertification survey, a follow-up survey, and an intermittent survey.

(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.

(103) THSC--Texas Health and Safety Code. Texas statutes relating to health and safety.

(104) Transition plan--As described in 26 TAC §303.102, a written plan developed by the service planning 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.

(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.

(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.

(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.

(109) Violation--A finding by HHSC that a program provider is not or has not been in compliance with a certification principle.

(110) Volunteer--A person who works for a program provider without compensation, other than reimbursement for actual expenses.

(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.

(112) Willfully interfering--Acting or not acting to intentionally prevent, interfere with, or impede, or to attempt to intentionally prevent, interfere with, or impede, or including any extension agreed to in accordance §49.209(d) 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 21, 2024.

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Karen Ray

Chief Counsel

Health and Human Services Commission

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For further information, please call: (512) 221-9021



CHAPTER 711. INVESTIGATIONS OF INDIVIDUALS RECEIVING SERVICES FROM CERTAIN PROVIDERS

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §711.1, concerning What is the purpose of this chapter; §711.3, concerning How are the terms in this chapter defined; §711.1402, concerning How are the terms in this subchapter defined; and §711.1406, concerning How is the term agency defined for the purpose of this subchapter.

BACKGROUND AND PURPOSE

House Bill 4611, 88th Legislature, Regular Session, 2023, made certain non-substantive revisions to Subtitle I, Title 4, Texas Government Code, which governs HHSC, Medicaid, and other social services as part of the legislature's ongoing statutory revision program. This proposal is necessary to update citations in the rules to Texas Government Code sections that become effective on April 1, 2025. The proposed amendments update the affected citations to Texas Government Code.

FISCAL NOTE

Trey Wood, HHSC Chief Financial Officer, has determined that for each year of the first five years that the rules will be in effect, enforcing or administering the rules do 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 not create a new regulation;
- (6) the proposed rules will not expand, limit, or 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

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

The rules do not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rules because the amendments only update references to existing laws.

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 do not impose a cost on regulated persons and are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

PUBLIC BENEFIT AND COSTS

Libby Elliott, Deputy Executive Commissioner, Office of Policy and Rules, has determined that for each year of the first five years the rules are in effect, the public will benefit from rules that accurately cite the laws governing HHSC, Medicaid, and other social services.

Trey Wood has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because the amendments only update references to existing laws.

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

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 24R085" in the subject line.

SUBCHAPTER A. INTRODUCTION

26 TAC §711.1, §711.3

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Chapters 542 and 546.

The amendments affect Texas Government Code §531.0055 and Chapters 542 and 546.

§711.1. *What is the purpose of this chapter?*

The purpose of this chapter is to:

(1) implement Human Resources Code (HRC), Chapter 48, Subchapter F, and Texas Family Code §261.404.

(2) describe:

(A) Adult Protective Services (APS) investigations of allegations of abuse, neglect, and exploitation involving:

(i) adults or children receiving services from a provider, as that term is defined in HRC §48.251(9), if the person alleged or suspected to have committed the abuse, neglect, or exploitation is a provider;

(ii) adults or children who live in a residence that is owned, operated, or controlled by a provider in the home and community-based services (HCS) waiver program described by Texas Government Code §542.0001 [~~§534.001(11)(B)~~, ~~Government Code~~], regardless of whether the individual is receiving services under the home and community-based services (HCS) waiver program; and

(iii) children receiving services from a home and community support services agency licensed under Chapter 142, Health and Safety Code, if the person alleged or suspected to have committed the abuse, neglect, or exploitation is an officer, employee, agent, contractor, or subcontractor of the home and community support services agency; and

(B) that APS does not investigate allegations if the provider alleged or suspected to have committed the abuse, neglect, or exploitation is operated, licensed, or certified, or registered by a state agency that has the authority to investigate a report of abuse, neglect, or exploitation of an individual by the provider;

(3) define abuse, neglect, and exploitation for investigations conducted under Human Resources Code, Chapter 48, Subchapter F and Texas Family Code §261.404;

(4) describe procedures for reporting and investigating allegations; and

(5) implement Human Resources Code, Chapter 48, Subchapter I, relating to the Employee Misconduct Registry maintained by

DADS, as described in Subchapter O of this chapter (relating to Employee Misconduct Registry).

§711.3. How are the terms in this chapter defined?

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

- (1) Adult--An adult is a person:
 - (A) 18 years of age or older; or
 - (B) under 18 years of age who:
 - (i) is or has been married; or
 - (ii) has had the disabilities of minority removed pursuant to the Texas Family Code, Chapter 31.
- (2) APS--Adult Protective Services.
- (3) Agent--An individual (e.g., student, volunteer), not employed by but working under the auspices of a service provider.
- (4) Allegation--A report by an individual that an individual receiving services has been or is in a state of abuse, neglect, or exploitation as defined by this subchapter.
- (5) Allegation type--The type of allegation investigated under this chapter. APS investigates the following allegation types:
 - (A) physical abuse;
 - (B) sexual abuse;
 - (C) verbal/emotional abuse;
 - (D) neglect; and
 - (E) exploitation.
- (6) Alleged perpetrator-- A direct provider alleged to have committed an act of abuse, neglect, or exploitation.
- (7) Child--A person under 18 years of age who:
 - (A) is not and has not been married; or
 - (B) has not had the disabilities of minority removed pursuant to the Texas Family Code, Chapter 31.
- (8) Clinical practice--Relates to the demonstration of professional competence of a licensed professional as described by the appropriate licensing professional board.
- (9) Community center--A community mental health center; community center for individuals with intellectual or developmental disabilities; or community mental health center and community center for individuals with intellectual or developmental disabilities, established under the Health and Safety Code, Title 7, Chapter 534, Subchapter A.
- (10) Consumer Directed Services (CDS) employer--A consumer directed services client or their legally authorized representative.
- (11) DADS--Department of Aging and Disability Services.
- (12) DFPS--Department of Family and Protective Services.
- (13) DSHS--Department of State Health Services.
- (14) Designated Perpetrator--A direct provider who has committed an act of abuse, neglect, or exploitation.
- (15) Direct Provider--A person, employee, agent, contractor, or subcontractor of a service provider responsible for providing services to an individual receiving services.

(16) Emergency order for protective services--A court order for protective services obtained under Human Resources Code, §48.208.

(17) Facility--

(A) DADS and DSHS central offices, state supported living centers, state hospitals, the Rio Grande State Center, the Waco Center for Youth, the El Paso Psychiatric Center, and community services operated by DADS or DSHS;

(B) A person contracting with a health and human services agency to provide inpatient mental health services; and

(C) Intermediate care facilities for individuals with an intellectual disability or related conditions (ICF-IID) licensed under Chapter 252, Health and Safety Code.

(18) HHSC--Health and Human Services Commission.

(19) Home and community-based services--Have the meaning given to them in Human Resources Code §48.251(a)(5) as services provided in the home or community in accordance with 42 U.S.C. §1315, 42 U.S.C. §1315a, 42 U.S.C. §1396a, or 42 U.S.C. §1396n.

(20) Home and community-based services (HCS) waiver program--The Medicaid program authorized under §1915(c) of the federal Social Security Act (42 U.S.C. §1396n(c)) for the provision of services to persons with an intellectual or developmental disability described by Texas Government Code §542.0001 [~~§534.001(11)(B)~~, Government Code].

(21) Home and community support services agency (HCSSA)--An agency licensed under Chapter 142, Health and Safety Code.

(22) ICF-IID--A licensed intermediate care facility for individuals with an intellectual disability or related conditions as described in Chapter 252, Health and Safety Code.

(23) Incitement--To spur to action or instigate into activity; the term implies responsibility for initiating another's actions.

(24) Individual receiving services--

(A) An adult or child who receives services from a provider as that term is defined in §48.251(a)(9), Human Resources Code.

(B) An adult or child who lives in a residence that is owned, operated, or controlled by an HCS waiver program provider regardless of whether the individual is receiving HCS waiver program services; or

(C) A child receiving services from a HCSSA.

(25) Investigator--An employee of Adult Protective Services who has:

(A) demonstrated competence and expertise in conducting investigations; and

(B) received training on techniques for communicating effectively with individuals with a disability.

(26) Limited Service Provider--An entity that contracts with a service provider to provide services.

(27) Local authority-- Either:

(A) a local mental health authority designated by the HHSC executive commissioner in accordance with §533.035, Health and Safety Code, and as defined by §531.002, Health and Safety Code; or

(B) a local intellectual and developmental disability authority designated by the HHSC executive commissioner in accordance with §533A.035, Health and Safety Code, and as defined by §531.002, Health and Safety Code.

(28) Non-serious physical injury--

(A) In state supported living centers and state hospitals only, any injury requiring minor first aid and determined not to be serious by a registered nurse, advanced practice registered nurse (APRN), or physician.

(B) For all other service providers any injury determined not to be serious by the appropriate medical personnel. Examples of non-serious physical injury include:

- (i) superficial laceration;
- (ii) contusion two and one-half inches in diameter or smaller; or
- (iii) abrasion.

(29) Perpetrator--A direct provider who has committed or alleged to have committed an act of abuse, neglect, or exploitation.

(30) Preponderance of evidence--Evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not.

(31) Prevention and management of aggressive behavior (PMAB)--DADS and DSHS' proprietary risk management program that uses the least intrusive, most effective options to reduce the risk of injury for persons served and staff from acts or potential acts of aggression.

(32) Provider--A provider is:

- (A) a facility;
- (B) a community center, local mental health authority, and local intellectual and developmental disability authority;
- (C) a person who contracts with a health and human services agency or managed care organization to provide home and community-based services;
- (D) a person who contracts with a Medicaid managed care organization to provide behavioral health services;
- (E) a managed care organization;
- (F) an officer, employee, agent, contractor, or subcontractor of a person or entity listed in subparagraphs (A)-(E) of this paragraph; and
- (G) an employee, fiscal agent, case manager, or service coordinator of an individual employer participating in the consumer-directed service option, as defined by Texas Government Code §546.0101 [~~§531.051~~, Government Code].

(33) Reporter--The person, who may be anonymous, making an allegation.

(34) Serious physical injury--

(A) In state supported living centers and state hospitals only, any injury requiring medical intervention or hospitalization or any injury determined to be serious by a physician or APRN. Medical intervention is treatment by a licensed medical doctor, osteopath, podiatrist, dentist, physician assistant, or APRN. For the purposes of this subchapter, medical intervention does not include first aid, an exami-

nation, diagnostics (e.g., x-ray, blood test), or the prescribing of oral or topical medication;

(B) For all other service providers, any injury determined to be serious by the appropriate medical personnel. Examples of serious physical injury include:

- (i) fracture;
- (ii) dislocation of any joint;
- (iii) internal injury;
- (iv) contusion larger than two and one-half inches in diameter;
- (v) concussion;
- (vi) second or third degree burn; or
- (vii) any laceration requiring sutures or wound closure.

(35) Service Provider--A provider, HCSSA, or HCS waiver program provider responsible for employing, contracting with, or supervising the direct provider.

(36) Sexually transmitted disease--Any infection with or without symptoms or clinical manifestations that can be transmitted from one person to another by sexual contact.

(37) Texas Home Living (TxHmL) waiver program--The Medicaid program authorized under §1915(c) of the federal Social Security Act (42 U.S.C. §1396n(c)) for the provision of services to persons with an intellectual or developmental disability described by Texas Government Code §542.0001 [~~§534.001(H)(D)~~, Government Code].

(38) Victim--An individual receiving services who is alleged to have been abused, neglected, or exploited.

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 21, 2024.

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Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: January 5, 2025

For further information, please call: (512) 221-9021



SUBCHAPTER L. EMPLOYEE MISCONDUCT REGISTRY

26 TAC §711.1402, §711.1406

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Chapters 542 and 546.

The amendments affect Texas Government Code §531.0055 and Chapters 542 and 546.

§711.1402. *How are the terms in this subchapter defined?*

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

(1) Administrative law judge--An attorney who serves as a hearings examiner and conducts an EMR hearing.

(2) Agency--An entity, person, facility, or provider, as defined in §711.1406 of this subchapter (relating to How is the term agency defined for the purpose of this subchapter?).

(3) APS--The Adult Protective Services division within the Department of Family and Protective Services, which is authorized to conduct investigations of alleged abuse, neglect, or exploitation of certain adults under Chapter 48, Human Resources Code, and certain children under §261.404, Family Code.

(4) Designated perpetrator--A person determined by Provider Investigations (PI) to have committed abuse, neglect, or exploitation who may be eligible for inclusion on the Employee Misconduct Registry, when the abuse, neglect or exploitation meets the definition of reportable conduct.

(5) DFPS--The Department of Family and Protective Services.

(6) Employee--A person who:

(A) works for:

(i) an agency, whether as an employee contractor, volunteer or agent; or

(ii) an individual employer participating in the consumer-directed service option, as defined by Texas Government Code §546.0101 [Government Code §531.051];

(B) provides personal care services, active treatment, or any other services to an individual receiving agency services, an individual who is a child for whom an investigation is authorized under Family Code §261.404, or an individual receiving services through the consumer-directed service option, as defined by Texas Government Code §546.0101 [Government Code §531.051]; and

(C) is not licensed by the state to perform the services the person performs for the agency or the individual employer participating in the consumer-directed service option, as defined by Texas Government Code §546.0101 [Government Code §531.051].

(7) EMR--The Employee Misconduct Registry.

(8) EMR hearing--An administrative hearing offered to a person who has been found to have committed reportable conduct for the purpose of appealing the finding of reportable conduct as well as the underlying finding of abuse, neglect, or exploitation.

(9) Executive Commissioner--The executive commissioner of HHSC or the executive commissioner's designee.

(10) HHSC--The Texas Health and Human Services Commission.

(11) Individual receiving services: an individual receiving services as provided in §711.3 of this chapter (relating to How are the terms in this chapter defined?).

(12) In-home investigation--An investigation conducted by DFPS Adult Protective Services (APS) under Title 40, Texas Administrative Code, Chapter 705 (relating to Adult Protective Services).

(13) Provider investigation--An investigation conducted by HHSC Provider Investigations under Chapter 48, Subchapter

F, Human Resources Code, or §261.404, Texas Family Code, as applicable.

(14) PI--The Provider Investigations program within the Regulatory Services Division of HHSC, which is authorized to conduct investigations of alleged abuse, neglect, or exploitation of certain adults under Chapter 48, Human Resources Code, and certain children under §261.404, Family Code.

(15) Reportable conduct--A confirmed or validated finding of abuse, neglect or exploitation that meets the definition in §48.401(5), Human Resources Code, and as further defined in §711.1408 of this subchapter (relating to What is reportable conduct?).

§711.1406. *How is the term agency defined for the purpose of this subchapter?*

(a) For the purpose of this chapter, the term "agency" has the meaning given by §48.401, Human Resources Code, as further clarified in this rule. Any terms used within the definition of "agency" have the meaning given by statute or elaborated upon by this chapter or Title 40, Texas Administrative Code, Chapter 705 (relating to Adult Protective Services). The purpose of this rule is to provide a non-exhaustive list of agencies, the employees of which are subject to being listed on the EMR if they are found to have committed reportable conduct. The list is illustrative and not exclusionary. Employees of agencies not specifically enumerated that are within the meaning of §48.401 continue to be eligible for the EMR without regard to whether the agency is specifically enumerated below.

(b) The term "agency" means:

(1) a home and community support services agency licensed under Chapter 142, Health and Safety Code;

(2) a person exempt from licensure who provides home health, hospice, habilitation, or personal assistance services only to persons receiving benefits under:

(A) the home and community-based services (HCS) waiver program;

(B) the Texas home living (TxHmL) waiver program;

(C) the STAR + PLUS or other Medicaid managed care program under the program's HCS or TxHmL certification; or

(D) Texas Government Code §542.0152 [Section 534.152, Government Code];

(3) an intermediate care facility for individuals with an intellectual disability or related conditions (ICF-IID) licensed under Chapter 252, Health and Safety Code; or

(4) a provider investigated by HHSC under Subchapter F, Human Resources Code or §261.404, Family Code. Such providers include:

(A) a facility as defined in §711.3 of this chapter (relating to How are the terms in this chapter defined?);

(B) a community center, local mental health authority, and local intellectual and developmental disability authority, as defined in §711.3 of this chapter;

(C) a person who contracts with a health and human services agency or managed care organization to provide home and community-based services (HCBS) as that term is defined in §48.251, Human Resources Code and which is the umbrella term for various long-term services and supports within the Medicaid program, whether delivered in a fee-for-service, managed care, or other service delivery model, and which includes but is not limited to:

- (i) Waiver programs including:
 - (I) community living assistance and support services (CLASS);
 - (II) Deaf Blind Multiple Disabilities;
 - (III) HCS;
 - (IV) TxHmL;
 - (V) Medically Dependent Child Program (MDCP); and
 - (VI) Youth Empowerment Services (YES);
- (ii) Community First Choice;
- (iii) Texas Dual Eligible Integrated Care Project;
- (iv) State plan services including:
 - (I) Community attendant services; and
 - (II) Personal attendant services;
- (v) Managed Care Programs including:
 - (I) HCBS - Adult Mental Health;
 - (II) STAR + PLUS Managed Care program; and
 - (III) STAR Kid Managed Care program; and
- (vi) any other program, project, waiver demonstration, or service providing long-term services and supports through the Medicaid program;

(D) a person who contracts with a Medicaid managed care organization to provide behavioral health services as that term is defined in §48.251 and which include but are not limited to:

- (i) Targeted Case Management; and
- (ii) Psychiatric Rehabilitation services;

(E) a managed care organization;

(F) an officer, employee, agent, contractor, or subcontractor of a person or entity listed in subparagraphs (A) - (E) of this paragraph; and

(G) an employee, fiscal agent, case manager, or service coordinator of an individual employer participating in the consumer directed service option, as defined by Texas Government Code §546.0101 [~~§531.051~~, Government Code].

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

Filed with the Office of the Secretary of State on November 21, 2024.

TRD-202405699

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: January 5, 2025

For further information, please call: (512) 221-9021



CHAPTER 745. LICENSING

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §745.907, concerning What are the consequences of Licensing designating me as a controlling person; §745.911, concerning In what other circumstances may a person not serve as a controlling person at my operation; and §745.8605, concerning When can Licensing recommend or impose an enforcement action against my operation.

BACKGROUND AND PURPOSE

House Bill 4611, 88th Legislature, Regular Session, 2023, made certain non-substantive revisions to Subtitle I, Title 4, Texas Government Code, which governs HHSC, Medicaid, and other social services as part of the legislature's ongoing statutory revision program. This proposal is necessary to update citations in the rules to Texas Government Code Chapter 526 that becomes effective on April 1, 2025. The proposed amendments update the affected citations to Texas Government Code.

FISCAL NOTE

Trey Wood, HHSC Chief Financial Officer, has determined that for each year of the first five years that the rules will be in effect, enforcing or administering the rules do 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 not create a new regulation;
- (6) the proposed rules will not expand, limit, or 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

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

The rules do not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rules because the amendments only update references to existing laws.

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 do not impose a cost on regulated per-

sons and are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

PUBLIC BENEFIT AND COSTS

Libby Elliott, Deputy Executive Commissioner, Office of Policy and Rules, has determined that for each year of the first five years the rules are in effect, the public will benefit from rules that accurately cite the laws governing HHSC, Medicaid, and other social services.

Trey Wood has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because the amendments only update references to existing laws.

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

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 24R085" in the subject line.

SUBCHAPTER G. CONTROLLING PERSONS

26 TAC §745.907, §745.911

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Chapter 526.

The amendments affect Texas Government Code §531.0055 and Chapter 526.

§745.907. What are the consequences of Licensing designating me as a controlling person?

(a) If we designate you as a controlling person:

(1) We may not issue you a permit to operate a child-care operation for five years after our designation is sustained; and

(2) You may not be the controlling person at a child-care operation for five years after the designation is sustained.

(b) Our designation of you as a controlling person is sustained when the revocation or voluntary closure described in §745.905 of this title (relating to When will Licensing designate someone at my child-care operation as a controlling person?) is final and:

(1) You have waived your due process rights regarding the designation; or

(2) The designation is upheld after you have exhausted your due process rights.

(c) Another state agency may deny your application for a permit based on information obtained from us, as outlined in Texas Government Code Chapter 526, Subchapter J [Chapter 531 of the Government Code, Subchapter W (relating to Adverse Licensing, Listing, or Registration Decisions)].

§745.911. In what other circumstances may a person not serve as a controlling person at my operation?

A person may not serve as a controlling person in a child-care operation if:

(1) We sustained the person as a controlling person within the previous five years;

(2) The person is ineligible to apply for a permit because of an adverse action that was sustained during the previous five years; or

(3) The person was a permit holder, controlling person, or otherwise listed on the application for a permit for a facility that had its permit denied, revoked, suspended, or terminated by a state health and human services agency in the last 10 years, as outlined in Texas Government Code Chapter 526, Subchapter J (relating to Licensing, Listing, or Registration of Certain Entities) [Chapter 531 of the Government Code, Subchapter W (relating to Adverse Licensing, Listing, or Registration Decisions)]. Depending upon the circumstances that led to the previous permit denial, suspension, revocation, or termination and the person's relationship to that facility, we may determine that this person may not serve as a controlling person for your child-care operation.

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 21, 2024.

TRD-202405695

Karen Ray
Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: January 5, 2025

For further information, please call: (512) 291-9021



SUBCHAPTER L. ENFORCEMENT ACTIONS

DIVISION 1. OVERVIEW OF ENFORCEMENT ACTIONS

26 TAC §745.8605

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Chapter 526.

The amendment affects Texas Government Code §531.0055 and Chapter 526.

§745.8605. *When can Licensing recommend or impose an enforcement action against my operation?*

We can recommend or impose an enforcement action any time we find one of the following:

- (1) You supplied false information or made false statements during the application process;
- (2) You falsified or permitted to be falsified any record or other materials that are required to be maintained by minimum standards;
- (3) You do not have an acceptable reason for not having the required liability insurance in §745.251 of this chapter (relating to What are the acceptable reasons not to have liability insurance?);
- (4) You do not pay the required fees;
- (5) A single serious deficiency of a minimum standard, rule, or statute, including a finding of abuse or neglect or background check matches;
- (6) Several deficiencies that create an endangering situation;
- (7) A repetition or pattern of deficiencies;
- (8) An immediate threat or danger to the health or safety of children;
- (9) You or someone working at your operation refuses, prevents, or delays our ability to conduct an inspection or investigation, or the ability of the Department of Family and Protective Services to conduct an investigation of an allegation of abuse, neglect, or exploitation;
- (10) A failure to timely report necessary changes to Licensing;
- (11) A failure to comply with any restrictions or limits placed on your permit;
- (12) A failure to meet the terms and conditions of your probation;
- (13) A failure to comply with minimum standards, rules, or statutes at the end of the suspension period;
- (14) A failure to submit information to us within two days of a change in your controlling persons, as required in §745.903 of this chapter (relating to When and how must an operation submit controlling-person information to Licensing?);
- (15) You fail to correct by the compliance date any deficiency that is not pending due process;
- (16) You apply for a permit after we designate you as a controlling person, but before the designation is sustained;
- (17) It is within five years since your designation as a controlling person has been sustained;
- (18) You apply for a permit to operate a child care operation, and you are barred from operating a child care operation in another state;
- (19) You apply for a permit to operate a child care operation, and your permit to operate a child care operation in another state was revoked;
- (20) You apply for a permit to operate a child care operation, and your permit to operate was revoked, suspended, or terminated by another Texas state agency as outlined in Texas Government Code Chapter 526, Subchapter J [Texas Government Code, Chapter

531, Subchapter W (relating to Adverse Licensing, Listing, or Registration Decisions)];

(21) You apply for a permit to operate a child care operation and:

(A) You fail to comply with public notice and hearing requirements as set forth in §745.277 of this chapter (relating to What will happen if I fail to comply with public notice and hearing requirements?); or

(B) The results of the public hearing meet one of the criteria set forth in §745.340(b) of this chapter (relating to What factors will we consider when evaluating an application for a permit?).

(22) You operate a child care operation, and that operation discharges or retaliates against an employee, client, resident, or other person because the person or someone on behalf of the person files a complaint, presents a grievance, or otherwise provides in good faith, information relating to the misuse of restraint or seclusion at the operation;

(23) A reason set forth in Texas Human Resources Code, §42.078;

(24) A failure to pay an administrative penalty under Texas Human Resources Code, §42.078;

(25) A failure to follow conditions or restrictions placed on a person's presence at an operation;

(26) During the application process you were exempt from the public notice and hearing requirements under §745.273(b) of this chapter (relating to Which residential child-care operations must meet the public notice and hearing requirements?), but you never provide or cease to provide trafficking victim services and fail to meet the public notice and hearing requirements; or

(27) You provide care to an unlawfully present individual in violation of Chapter 748, Subchapter B, Division 3 of this title (relating to Care of Unlawfully Present Individuals).

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 21, 2024.

TRD-202405692

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: January 5, 2025

For further information, please call: (512) 291-9021



CHAPTER 926. STATE FACILITY
REQUIREMENTS TO ENHANCE THE
SAFETY OF INDIVIDUALS RECEIVING
SERVICES
SUBCHAPTER B. CRIMINAL HISTORY
CHECKS AND REGISTRY CLEARANCES AT
STATE FACILITIES

26 TAC §926.51

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §926.51, concerning Definitions.

BACKGROUND AND PURPOSE

House Bill 4611, 88th Legislature, Regular Session, 2023, made certain non-substantive revisions to Subtitle I, Title 4, Texas Government Code, which governs HHSC, Medicaid, and other social services as part of the legislature's ongoing statutory revision program. This proposal is necessary to update a citation in the rule to Texas Government Code Chapter 546 that becomes effective on April 1, 2025. The proposed amendment updates the affected citation to Texas Government Code.

FISCAL NOTE

Trey Wood, HHSC 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

HHSC 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 HHSC 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 HHSC;
- (5) the proposed rule will not create a new regulation;
- (6) the proposed rule will not expand, limit, or repeal existing regulations;
- (7) the proposed rule will not change 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

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

The rule does not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rule because the amendment only updates a reference to existing law.

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

Libby Elliott, Deputy Executive Commissioner, Office of Policy and Rules, has determined that for each year of the first five

years the rule is in effect, the public will benefit from rules that accurately cite the laws governing HHSC, Medicaid, and other social services.

Trey Wood 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 amendment only updates a reference to existing law.

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

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 24R085" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Chapter 546.

The amendment affects Texas Government Code §531.0055 and Chapter 546.

§926.51. Definitions.

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

(1) Abuse--An act or failure to act that, with regard to an individual, meets the definition of "physical abuse," "sexual abuse," or "verbal/emotional abuse" in Chapter 711, Subchapter A of this title (relating to Introduction), or the definition of "abuse," "physical abuse," "sexual abuse," "verbal abuse," "psychological abuse," or "threat" in the Centers for Medicare & Medicaid Services (CMS) State Operations Manual, Appendix J, Guidance to Surveyors: Intermediate Care Facilities for Individuals with Intellectual Disabilities, available at www.cms.gov.

(2) Administrative death review--An administrative, quality-assurance activity related to the death of an individual to identify non-clinical problems requiring correction and opportunities to improve the quality of care at a facility.

(3) Allegation--A report by a person suspecting or having knowledge that an individual has been or is in a state of abuse, neglect, or exploitation as defined in this chapter.

(4) Alleged offender--An individual who was committed or transferred to a facility:

(A) under Texas Code of Criminal Procedure, Chapters 46B or 46C, as a result of being charged with or convicted of a criminal offense; or

(B) under Texas Family Code, Chapter 55, as a result of being alleged by petition or having been found to have engaged in delinquent conduct constituting a criminal offense.

(5) Applicant--A person who has applied to be an employee, volunteer, or unpaid professional intern.

(6) Attending physician--The physician who has primary responsibility for the treatment and care of an individual.

(7) Bedroom--The room at a facility in which an individual usually sleeps.

(8) Behavioral crisis--An imminent safety situation that places an individual or others at serious risk of violence or injury if no intervention occurs.

(9) CANRS--The client abuse and neglect reporting system maintained by DADS Consumer Rights and Services.

(10) Capacity--An individual's ability to:

(A) understand the nature and consequences of a proposed treatment, including the benefits, risks, and alternatives to the proposed treatment; and

(B) make a decision whether to undergo the proposed treatment.

(11) Chemical restraint--Any drug prescribed or administered to sedate an individual or to temporarily restrict an individual's freedom of movement for the purpose of managing the individual's behavior.

(12) Child--An individual less than 18 years of age who is not and has not been married and who has not had the disabilities of minority removed pursuant to Texas Family Code, Chapter 31.

(13) Clinical death review--A clinical, quality-assurance, peer review activity related to the death of an individual and conducted in accordance with statutes that authorize peer review in Texas to identify clinical problems requiring correction and opportunities to improve the quality of care at a facility.

(14) Clinical practice--The demonstration of professional competence in nursing, dental, pharmacy, or medical practice as described in the relevant chapter of the Texas Occupations Code.

(15) Confirmed--Term used to describe an allegation that DFPS determines is supported by a preponderance of the evidence.

(16) Contractor--A person who contracts with a facility to provide services to an individual, including an independent school district that provides educational services at the facility.

(17) Conviction--The adjudication of guilt for a criminal offense.

(18) Covert electronic monitoring--Electronic monitoring that is not open and obvious, and that is conducted when the director of the facility in which the monitoring is being conducted has not been informed about the device by the individual, by a person who placed the device in the bedroom, or by a person who uses the device.

(19) Crisis intervention--The use of interventions, including physical, mechanical, or chemical restraint, in a behavioral crisis,

after less restrictive measures have been determined to be ineffective or not feasible.

(20) Crisis intervention plan--A component of the individual support plan (ISP) action plan that provides instructions for staff on how to effectively and safely use restraint procedures, as long as they are needed to prevent imminent physical injury in a behavioral crisis when less restrictive prevention or de-escalation procedures have failed and the individual's behavior continues to present an imminent risk of physical injury. The plan is developed with input from the PCP and direct support professionals familiar with the individual and the individual and LAR and includes a description of how the individual behaves during a behavioral crisis, along with information about the types of restraints that have been most effective with the individual, staff actions to be avoided because they have been ineffective in the past in preventing or reducing the need for restraints, the restraint's maximum duration, a description of the behavioral criteria for determining when the imminent risk of physical injury abates, and reporting requirements. A crisis intervention plan is not considered a therapeutic intervention. It is implemented only to ensure that restraint procedures are carried out effectively and safely and may be adjusted depending upon the individual's progress in the ISP action plan.

(21) DADS--Department of Aging and Disability Services or its successor agency.

(22) DADS Commissioner--The commissioner of DADS or a position at the Health and Human Services Commission that assumes a duty of the commissioner of DADS described in this chapter.

(23) Deferred adjudication--Has the meaning given to "community supervision" in Texas Code of Criminal Procedure, Article 42.12, §2.

(24) Designated representative--A person designated by an individual or an individual's LAR to be a spokesperson or advocate for the individual.

(25) DFPS--Department of Family and Protective Services or its successor agency.

(26) Director--The director of a facility or the director's designee.

(27) Direct support professional--An unlicensed employee who directly provides services to an individual.

(28) Electronic monitoring--The placement of an electronic monitoring device in an individual's bedroom and making a tape or a recording with the device.

(29) Electronic monitoring device (EMD)--A device that:

(A) includes:

(i) a video surveillance camera; and

(ii) an audio device designed to acquire communications or other sounds; and

(B) does not include an electronic, mechanical, or other device that is specifically used for the nonconsensual interception of wire or electronic communications.

(30) Employee--A person employed by DADS whose assigned duty station is at a facility.

(31) Exploitation--An act or failure to act that, with regard to an individual, meets the definition of "exploitation" in Chapter 711, Subchapter A of this title (relating to Introduction), or the definition of "mistreatment" in the CMS State Operations Manual, Appendix J,

Guidance to Surveyors: Intermediate Care Facilities for Individuals with Intellectual Disabilities, available at www.cms.gov.

(32) Facility--A state supported living center or the intermediate care facility for individuals with an intellectual disability component of the Rio Grande State Center.

(33) Family member--An individual's parent, spouse, children, or siblings.

(34) Forensic facility--A facility designated under Texas Health and Safety Code (THSC), §555.002(a) for the care of high-risk alleged offenders.

(35) Guardian--An individual appointed and qualified as a guardian of the person under Texas Estates Code, Title 3.

(36) High-risk alleged offender--An alleged offender who has been determined to be at risk of inflicting substantial physical harm to another person in accordance with THSC §555.003.

(37) Inconclusive--Term used to describe an allegation when there is not a preponderance of credible evidence to indicate that abuse, neglect, or exploitation did or did not occur due to lack of witnesses or other available evidence.

(38) Independent mortality review organization--An independent organization designated in accordance with Texas Government Code Chapter 546, Subchapter O [Texas Government Code, Chapter 531, Subchapter U], to review the death of an individual.

(39) Individual--A person with an intellectual disability or a condition related to an intellectual disability who is receiving services from a facility.

(40) Individual support plan (ISP)--An integrated, coherent, person-directed plan that reflects an individual's preferences, strengths, needs, and personal vision, as well as the protections, supports, and services the individual will receive to accomplish identified goals and objectives.

(41) Interdisciplinary team (IDT)--A team consisting of an individual, the individual's legally authorized representative (LAR) and qualified developmental disability professional, other professionals dictated by the individual's strengths, preferences, and needs, and staff who regularly and directly provide services and supports to the individual. The team is responsible for assessing the individual's treatment, training, and habilitation needs and making recommendations for services based on the personal goals and preferences of the individual using a person-directed planning process, including recommendations on whether the individual is best served in a facility or community setting.

(42) Legally adequate consent--Consent from a person who:

(A) is not a minor and has not been adjudicated incompetent to manage the person's personal affairs by an appropriate court of law;

(B) has been informed of and understands:

(i) the nature, purpose, consequences, risks, and benefits of the medication, treatment, or procedure for which the consent is given;

(ii) alternatives to the medication, treatment, or procedure for which the consent is given;

(iii) that withdrawing or refusing to give consent will not prejudice the future provision of care and services; and

(iv) the method of administration, if the person is giving consent for an unusual or hazardous treatment procedure, experimental research, organ transplantation, or nontherapeutic surgery; and

(C) consents voluntarily, free from coercion or undue influence.

(43) Legally authorized representative (LAR)--A person authorized by law to act on behalf of an individual, including a parent, guardian, or managing conservator of a minor individual, or a guardian of an adult individual.

(44) Life-sustaining medical treatment--Treatment that, based on reasonable medical judgment, sustains the life of an individual and without which the individual will die. The term includes both life-sustaining medications and artificial life support such as mechanical breathing machines, kidney dialysis treatment, and artificial nutrition and hydration. The term does not include the administration of pain management medication or the performance of a medical procedure considered necessary to provide comfort care or any other medical care provided to alleviate an individual's pain.

(45) Mechanical restraint--Any device attached or adjacent to an individual's body that he or she cannot easily remove that restricts freedom of movement or normal access to his or her body. The term does not include a protective device.

(46) Medical emergency--Any illness or injury that requires immediate assessment and treatment by medical staff for conditions considered to be life threatening, including, but not limited to, respiratory or cardiac arrest, choking, extreme difficulty in breathing, status epilepticus, allergic reaction to an insect sting, snake bite, extreme pain in the chest or abdomen, poisoning, hemorrhage, loss of consciousness, sudden loss of function of a body part, injuries resulting in broken bones, possible neck or back injuries, or severe burns.

(47) Medical intervention--Treatment by a licensed medical doctor, osteopath, podiatrist, dentist, physician assistant, or advanced practice registered nurse in accordance with general acceptable clinical practice.

(48) Medical restraint--A health-related protection prescribed by a primary care provider (PCP) or dentist that is necessary for the conduct of a specific medical or dental procedure, or is only necessary for protection during the time that a medical or dental condition exists, for the purpose of preventing an individual from inhibiting or undoing medical or dental treatment. Medical restraint includes pre-treatment sedation.

(49) Medical restraint plan--A component of the ISP action plan that provides instructions for staff on how to effectively and safely carry out medical restraint procedures. The plan is developed with input from the PCP or dentist and meaningful input from the individual and LAR and includes a description of the individual's behaviors that do not allow for a safe and effective implementation of needed medical or dental procedures, information about the types of restraints that have been most effective with the individual, a description of the criteria for releasing the restraint, and reporting requirements. A medical restraint plan is not considered a therapeutic intervention and may be adjusted depending upon the individual's progress in the ISP action plan.

(50) Medication-related emergency--A situation in which it is immediately necessary to administer medication to an individual to prevent:

(A) imminent probable death or substantial bodily harm to the individual because the individual:

(i) overtly or continually is threatening or attempting to commit suicide or serious bodily harm; or

(ii) is behaving in a manner that indicates that the individual is unable to satisfy the individual's need for nourishment, essential medical care, or self-protection; or

(B) imminent physical or emotional harm to another because of threats, attempts, or other acts the individual overtly or continually makes or commits.

(51) Mental health services provider--Has the meaning assigned in Texas Civil Practice and Remedies Code, Chapter 81.

(52) Neglect--An act or failure to act that, with regard to an individual, meets the definition of "neglect" in Chapter 711, Subchapter A of this title (relating to Introduction), or the definition of "neglect" in the CMS State Operations Manual, Appendix J, Guidance to Surveyors: Intermediate Care Facilities for Individuals with Intellectual Disabilities, available at www.cms.gov.

(53) Peer review--A review of clinical or professional practice of a doctor, pharmacist, licensed vocational nurse, or registered nurse conducted by his or her professional peers.

(54) Perpetrator--A person who has committed abuse, neglect, or exploitation.

(55) Person--Includes a corporation, organization, governmental subdivision or agency, or any other legal entity.

(56) Physical restraint--Any manual method that restricts freedom of movement or normal access to one's body, including hand or arm holding to escort an individual over his or her resistance to being escorted. Physical restraint does not include brief and limited use of physical guidance, positioning, or prompting techniques used to redirect an individual or assist, support, or protect the individual during a functional therapeutic or physical exercise activity; response blocking and brief redirection used to interrupt an individual's limbs or body without the use of force so that the occurrence of challenging behavior is prevented; holding an individual, without the use of force, to calm or comfort, or hand holding to escort an individual from one area to another without resistance from the individual; and response interruption used to interrupt an individual's behavior, using facility-approved techniques.

(57) Physician on duty--The physician designated by the facility's medical director to provide medical care or respond to emergencies outside regular working hours.

(58) Positive behavior support plan (PBS)--A comprehensive, individualized plan that contains intervention strategies designed to modify the environment, teach or increase adaptive skills, and reduce or prevent the occurrence of target behaviors through interventions that build on an individual's strengths and preferences, without using aversive or punishment contingencies.

(59) Preponderance of the evidence--Evidence that is of greater weight or more convincing than the evidence that is offered in opposition to it; that is, evidence that, as a whole, shows that the fact sought to be proved is more probable than not.

(60) Primary care provider (PCP)--A physician, advanced practice registered nurse, or physician assistant who provides primary care to a defined population of patients. The PCP is involved in health promotion, disease prevention, health maintenance, and diagnosis and treatment of acute and chronic illnesses.

(61) Prone restraint--Any physical or mechanical restraint that places the individual in a face-down position. Prone restraint does

not include when an individual is placed in a face-down position as a necessary part of a medical intervention, or when an individual moves into a prone position during an incident of physical restraint, if staff immediately begin an adjustment to restore the individual to a standing, sitting, or side-lying position or, if that is not possible, immediately release the person. Prone restraint is prohibited.

(62) Protection and advocacy organization--The protection and advocacy system for Texas designated in accordance with the Code of Federal Regulations, Title 45, §1326.20.

(63) Protective mechanical restraint for self-injurious behavior--A type of mechanical restraint applied before an individual engages in self-injurious behavior, for the purpose of preventing or mitigating the danger of the self-injurious behavior because there is evidence that the targeted behavior can result in serious self-injury when it occurs and intensive, one-to-one supervision and treatment have not yet reduced the danger of self-injury. Examples include, but are not limited to, protective head gear for head banging, arm splints for eye gouging, or mittens for hand-biting. The term does not include medical restraints or protective devices.

(64) Protective mechanical restraint plan for self-injurious behavior--A component of the ISP action plan that provides instructions for staff on how to effectively and safely apply the protective mechanical restraint that is used to prevent or mitigate the effects of serious self-injurious behavior. The plan is developed with input from direct support professionals familiar with the individual and meaningful input from the individual and LAR, and includes a description of the individual's self-injurious behaviors, the type of restraint to be used, the restraint's maximum duration, and the circumstances to apply and remove the restraint. The plan must identify any low-risk situations when the restraint may be safely removed, what staff should do during those situations to continue to protect the individual from harm, and adjustments in staff instructions as progress is made for gradually eliminating the use of the restraints, including details on any specialized staff training and reporting. The plan is not considered a therapeutic intervention and is adjusted depending upon the individual's progress in the ISP action plan and an evaluation by the PCP that the individual's behavior is no longer at the dangerous level that is producing serious self-injury.

(65) Psychotropic medication--A medication that is prescribed for the treatment of symptoms of psychosis or other severe mental or emotional disorder and that is used to exercise an effect on the central nervous system to influence and modify behavior, cognition, or affective state when treating the symptoms of mental illness. Psychotropic medication, sometimes referred to as "psychoactive medication," includes the following categories of medication:

- (A) antipsychotics or neuroleptics;
- (B) antidepressants;
- (C) agents for control of mania or depression;
- (D) antianxiety agents;
- (E) sedatives, hypnotics, or other sleep-promoting drugs; and
- (F) psychomotor stimulants.

(66) Registered nurse--A nurse licensed by the Texas Board of Nursing to practice professional nursing in Texas.

(67) Registries--

(A) The Nurse Aide Registry maintained by DADS in accordance with §94.12 of this title (relating to Findings and Inquiries); and

(B) The Employee Misconduct Registry maintained by DADS in accordance with Chapter 93 of this title (relating to Employee Misconduct Registry (EMR)).

(68) Reporter--A person who reports an allegation of abuse, neglect, or exploitation.

(69) Restraint monitor--A designated facility employee who has received competency-based training and demonstrated proficiency in the application and assessment of restraints, who has experience working directly with individuals with developmental disabilities, and who is trained to conduct a face-to-face assessment of the individual who was restrained and the staff involved in the restraint to review the application and results of the restraint.

(70) Retaliation--An action intended to inflict emotional or physical harm or inconvenience on a person including harassment, disciplinary action, discrimination, reprimand, threat, and criticism.

(71) SSLC--A state supported living center.

(72) State office mortality review--A quality assurance activity to review data related to the death of an individual to identify trends, best practices, training needs, policy changes, or facility or systemic issues that need to be addressed to improve services at facilities.

(73) Supine restraint--Any physical or mechanical restraint that places the individual on his or her back. Supine restraint does not include when an individual is placed in a supine position as a necessary part of a medical restraint, or when an individual moves into a supine position during an incident of physical restraint, if staff immediately begin an adjustment to restore the individual to a standing, sitting, or side-lying position or, if that is not possible, immediately release the person. Supine restraint does not include persons who have freedom of movement in a hospital bed or dental chair that is at a reclined position. Supine restraint is prohibited.

(74) THSC--Texas Health and Safety Code.

(75) Treating physician--A physician who has provided medical or psychiatric treatment or evaluation and has an ongoing treatment relationship with an individual.

(76) Unconfirmed--Term used to describe an allegation in which a preponderance of evidence exists to prove that it did not occur.

(77) Unfounded--Term used to describe an allegation that DFPS determines is spurious or patently without factual basis.

(78) Unusual incident--An event or situation that seriously threatens the health, safety, or life of an individual.

(79) Victim--An individual who has been or is alleged to have been abused, neglected, or exploited.

(80) Volunteer--A person who is not part of a visiting group, who has active, direct contact with an individual, and who does not receive compensation from DADS other than reimbursement for actual expenses.

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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Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: January 5, 2025
For further information, please call: (512) 221-9021

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CHAPTER 967. CLIENT CARE OF INDIVIDUALS RECEIVING SERVICES AT STATE SUPPORTED LIVING CENTERS SUBCHAPTER A. STATE SUPPORTED LIVING CENTER INDEPENDENT MORTALITY REVIEW

26 TAC §967.1

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §967.1, concerning Independent Mortality Review.

BACKGROUND AND PURPOSE

House Bill 4611, 88th Legislature, Regular Session, 2023, made certain non-substantive revisions to Subtitle I, Title 4, Texas Government Code, which governs HHSC, Medicaid, and other social services as part of the legislature's ongoing statutory revision program. This proposal is necessary to update a citation in the rule to Texas Government Code Chapter 546 that becomes effective on April 1, 2025. The proposed amendment updates the affected citation to Texas Government Code.

FISCAL NOTE

Trey Wood, HHSC 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

HHSC 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 HHSC 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 HHSC;
- (5) the proposed rule will not create a new regulation;
- (6) the proposed rule will not expand, limit, or repeal existing regulations;
- (7) the proposed rule will not change 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

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

The rule does not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rule because the amendment only updates a reference to existing law.

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

Libby Elliott, Deputy Executive Commissioner, Office of Policy and Rules, has determined that for each year of the first five years the rule is in effect, the public will benefit from rules that accurately cite the laws governing HHSC, Medicaid, and other social services.

Trey Wood 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 amendment only updates a reference to existing law.

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

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 24R085" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Chapter 546.

The amendment affects Texas Government Code §531.0055 and Chapter 546.

§967.1. *Independent Mortality Review.*

The Texas Health and Human Services Commission contracts with an independent mortality review organization pursuant to Texas Government Code Chapter 546, Subchapter O [§531.851(e)]. A state supported living center (SSLC) must report the death of a person with an intellectual or developmental disability who, at the time of the person's death or at any time during the 24-hour period before the person's death, resided in or received services from the SSLC. The death must be reported to the independent mortality review organization within 72 hours after the pronouncement of death.

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 21, 2024.

TRD-202405697

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: January 5, 2025

For further information, please call: (512) 221-9021

TITLE 28. INSURANCE

PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

CHAPTER 133. GENERAL MEDICAL PROVISIONS

SUBCHAPTER B. HEALTH CARE PROVIDER BILLING PROCEDURES

28 TAC §133.30

INTRODUCTION. The Texas Department of Insurance, Division of Workers' Compensation (DWC) proposes to amend 28 TAC §133.30, concerning telemedicine, telehealth, and teledentistry services. Section 133.30 implements Texas Labor Code §413.011. The DWC medical advisor recommends the amendments to the commissioner of workers' compensation under Labor Code §413.0511(b).

EXPLANATION. The amendments to §133.30 allow a treating doctor to use telemedicine or telehealth to certify maximum medical improvement (MMI) under §§130.1 and 130.2 of this title, concerning certification of maximum medical improvement and evaluation of permanent impairment, under the following conditions. The injured employee must have been examined by the treating doctor for the condition in question at least once before the examination to certify MMI. The injured employee must consent to the examination to certify MMI by telemedicine or telehealth. The condition in question must qualify as a minor injury, such as §130.2(a)(2) of this title contemplates, that requires no additional treatment, and has resulted in no impairment. A minor injury does not require application of the AMA Guides, so under §130.1 of this title, the treating doctor is allowed to certify MMI with no impairment.

The amendments specify that such an evaluation must be billed in compliance with the MMI billing requirements in §134.250 of this title, concerning maximum medical improvement evaluations and impairment rating examinations by treating doctors. The treating doctor's billing and reimbursement are the same for an in-person MMI evaluation and a telemedicine MMI evaluation. They do not expand the scope of practice or authorize new treatments. Health care providers should refer to their licensing boards' rules for practicing telemedicine and telehealth. The amendments do not allow a doctor to assign an impairment rating by a telemedicine or telehealth examination. The amendments are proposed to be effective for examinations conducted by treating doctors to certify MMI by telemedicine or telehealth conducted on or after January 1, 2025.

Amending §133.30 is necessary to ensure better and more convenient access to evaluations necessary to certify MMI, to ensure that more required MMI evaluations are conducted on time, and to clarify how doctors must bill and be reimbursed for MMI evaluations conducted by telemedicine or telehealth. For example, when a treating doctor treats and releases an injured employee for a minor injury, such as a scrape or a bruise, and does not anticipate that the injured employee will need additional treatment, the amendments allow the treating doctor to use telemedicine or telehealth to determine that the injured employee has reached MMI but has no permanent impairment. Treating doctors can certify MMI under current rules, and the amendments just allow them to do so by telemedicine or telehealth under specific conditions. In addition, the number of disputes from treating doctor certifications of MMI under current rules is very low. Based on medical billing data reported to DWC, treating doctors submitted over 36,000 bills in calendar year 2023 for these MMI examinations. Over 34,000 claims were associated with those bills containing CPT code 99455, and of those claims, only 259 were associated with an MMI or impairment rating dispute.

Labor Code §413.011 requires the commissioner to adopt health care reimbursement policies and guidelines that reflect the standardized reimbursement structures found in other health care delivery systems with minimal modifications to those reimbursement methodologies as necessary to meet occupational injury requirements. It also requires that the commissioner's adopted medical policies or guidelines be designed to ensure the quality of medical care and achieve medical cost control, and to enhance a timely and appropriate return to work. Amending §133.30 to allow a treating doctor to use telemedicine or telehealth to certify MMI and to ensure that billing and reimbursement for that evaluation are consistent with the billing requirements in §134.250 meets the requirements in Labor Code §413.011.

DWC invited public comments on an informal draft posted on DWC's website in July 2024 and revised the text to be more specific about the conditions under which a treating doctor may perform a telemedicine or telehealth examination to certify MMI.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Deputy Commissioner for Health and Safety Mary Landrum has determined that during each year of the first five years the proposed amendments are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the section, other than that imposed by the statute. This determination was made because the proposed amendments do not add to or decrease state revenues or expenditures, and because local and state government entities

are only involved in enforcing or complying with the proposed amendments when acting in the capacity of a workers' compensation insurance carrier. Those entities will be impacted in the same way as an insurance carrier and will realize the same benefits from the proposed amendments.

Deputy Commissioner Landrum does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendments are in effect, Deputy Commissioner Landrum expects that enforcing and administering the proposed amendments will have the public benefit of ensuring better and more convenient access to evaluations necessary to certify MMI. Injured employees and health care providers will benefit from being able to attend those MMI evaluations remotely and being able to schedule them at less disruptive times, without having to travel. The proposed amendments will also have the public benefit of ensuring that DWC's rules conform to Labor Code §413.011 and are current and accurate, which promotes transparent and efficient regulation.

Deputy Commissioner Landrum expects that the proposed amendments will not increase the cost to comply with Labor Code §413.011 because they do not impose requirements beyond those in the statute. Labor Code §413.011 requires the commissioner to adopt health care reimbursement policies and guidelines that reflect the standardized reimbursement structures found in other health care delivery systems with minimal modifications to those reimbursement methodologies as necessary to meet occupational injury requirements. It also requires that the commissioner's adopted medical policies or guidelines be designed to ensure the quality of medical care and achieve medical cost control, and enhance a timely and appropriate return to work. As a result, any cost associated with amending §133.30 to allow a treating doctor to use telemedicine or telehealth to certify MMI and ensure that billing and reimbursement for that evaluation are consistent with the billing requirements in §134.250 does not result from the enforcement or administration of the proposed amendments.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. DWC has determined that the proposed amendments will not have an adverse economic effect or a disproportionate economic impact on small or micro businesses, or on rural communities because the proposed amendments allow a treating doctor to use telemedicine or telehealth to certify MMI and ensure that billing and reimbursement for that evaluation are consistent with the billing requirements in §134.250. They do not change the people the rule affects or impose additional costs. As a result, and in accordance with Government Code §2006.002(c), DWC is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. DWC has determined that this proposal does not impose a possible cost on regulated persons. As a result, no additional rule amendments are required under Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT. DWC has determined that for each year of the first five years that the proposed amendments are in effect, the proposed rule:

- will not create or eliminate a government program;

- will not require the creation of new employee positions or the elimination of existing 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 create a new regulation;
- will expand, limit, or repeal an existing regulation;
- will not increase or decrease the number of individuals subject to the rule's applicability; and
- will not positively or adversely affect the Texas economy.

DWC made these determinations because the proposed rule enhances efficiency and access to MMI evaluations by allowing a treating doctor to use telemedicine or telehealth to evaluate whether an injured employee has reached MMI. The proposed amendments do not change the people the rule affects or impose additional costs.

TAKINGS IMPACT ASSESSMENT. DWC has determined that no private real property interests are affected by this proposal, and this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. DWC will consider any written comments on the proposal that DWC receives no later than 5:00 p.m., Central time, on January 13, 2025. Send your comments to RuleComments@tdi.texas.gov; or to Texas Department of Insurance, Division of Workers' Compensation, Legal Services, MC-LS, P.O. Box 12050, Austin, Texas 78711-2050.

DWC will also consider written and oral comments on the proposal at a public hearing at 10 a.m., Central time, on January 8, 2025. The hearing will take place remotely. DWC will publish details of how to view and participate in the hearing on the agency website at www.tdi.texas.gov/alert/event/index.html.

STATUTORY AUTHORITY. DWC proposes §133.30 under Labor Code §§413.011, 413.0511, 402.00111, 402.00116, and 402.061.

Labor Code §413.011 requires the commissioner to adopt health care reimbursement policies and guidelines that reflect the standardized reimbursement structures found in other health care delivery systems with minimal modifications to those reimbursement methodologies as necessary to meet occupational injury requirements. It also requires that the commissioner's adopted medical policies or guidelines be designed to ensure the quality of medical care and achieve medical cost control, and to enhance a timely and appropriate return to work.

Labor Code §413.0511 requires DWC to employ or contract with a medical advisor. The medical advisor must be a doctor, as defined in §401.011. The medical advisor's duties include making recommendations about the adoption of rules and policies to: develop, maintain, and review guidelines as provided by §413.011, including rules about impairment ratings; review compliance with those guidelines; regulate or perform other acts related to medical benefits as required by the commissioner; and determine minimal modifications to the reimbursement method-

ology and model used by the Medicare system as needed to meet occupational injury requirements.

Labor Code §402.00111 provides that the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority under Title 5 of the Labor Code.

Labor Code §402.00116 provides that the commissioner of workers' compensation shall administer and enforce this title, other workers' compensation laws of this state, and other laws granting jurisdiction to or applicable to DWC or the commissioner.

Labor Code §402.061 provides that the commissioner of workers' compensation shall adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

CROSS-REFERENCE TO STATUTE. Section 133.30 implements Labor Code §413.011, enacted by House Bill 752, 73rd Legislature, Regular Session (1993), and last amended in 2007.

§133.30. *Telemedicine, Telehealth, and Teledentistry Services.*

(a) (No change.)

(b) For the purposes of this section:

(1) "Telemedicine [~~telemedicine~~] services" means telemedicine medical services as defined in Occupations Code §111.001.~~;~~[;]

(A) The term includes an examination by a treating doctor to certify maximum medical improvement (MMI), conducted on or after January 1, 2025, under §§130.1 and 130.2 of this title (relating to Certification of Maximum Medical Improvement and Evaluation of Permanent Impairment) to determine whether an injured employee has reached MMI, that meets the following conditions:

(i) the injured employee has been examined by the treating doctor for the condition in question at least once before the examination to certify MMI;

(ii) the injured employee consents to the examination to certify MMI by telemedicine; and

(iii) the condition in question qualifies as a minor injury, such as §130.2(a)(2) of this title contemplates, requires no additional treatment, and has resulted in no impairment.

(B) The term does not include an examination to assign an impairment rating conducted under §130.1 of this title.

(2) "Telehealth [~~telehealth~~] services" means telehealth services as defined in Occupations Code §111.001.~~;~~[;] ~~and~~

(A) The term includes an examination by a treating doctor to certify MMI, conducted on or after January 1, 2025, under §§130.1 and 130.2 of this title (relating to Certification of Maximum Medical Improvement and Evaluation of Permanent Impairment) to determine whether an injured employee has reached MMI, that meets the following conditions:

(i) the injured employee has been examined by the treating doctor for the condition in question at least once before the examination to certify MMI;

(ii) the injured employee consents to the examination to certify MMI by telehealth; and

(iii) the condition in question qualifies as a minor injury, such as §130.2(a)(2) of this title contemplates, requires no additional treatment, and has resulted in no impairment.

(B) The term does not include an examination to assign an impairment rating conducted under §130.1 of this title.

(3) "~~Teledentistry~~ [~~teledentistry~~] services" means teledentistry dental services as defined in Occupations Code §111.001.~~[§]~~

(c) Except as provided in subsection (d) of this section, a health care provider must bill for telemedicine, telehealth, and teledentistry services according to applicable:

(1) Medicare payment policies, as defined in §134.203 of this title (relating to Medical Fee Guideline for Professional Services);

(2) Medicaid payment policies, in accordance with the dental fee guideline in §134.303 of this title (relating to 2005 Dental Fee Guideline); ~~and~~

(3) MMI billing requirements in §134.250 of this title (relating to Maximum Medical Improvement Evaluations and Impairment Rating Examinations by Treating Doctors); and

(4) ~~[(3)]~~ provisions of Chapter 133 of this title.

(d) (No change.)

(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.

Filed with the Office of the Secretary of State on November 21, 2024.

TRD-202405667

Kara Mace

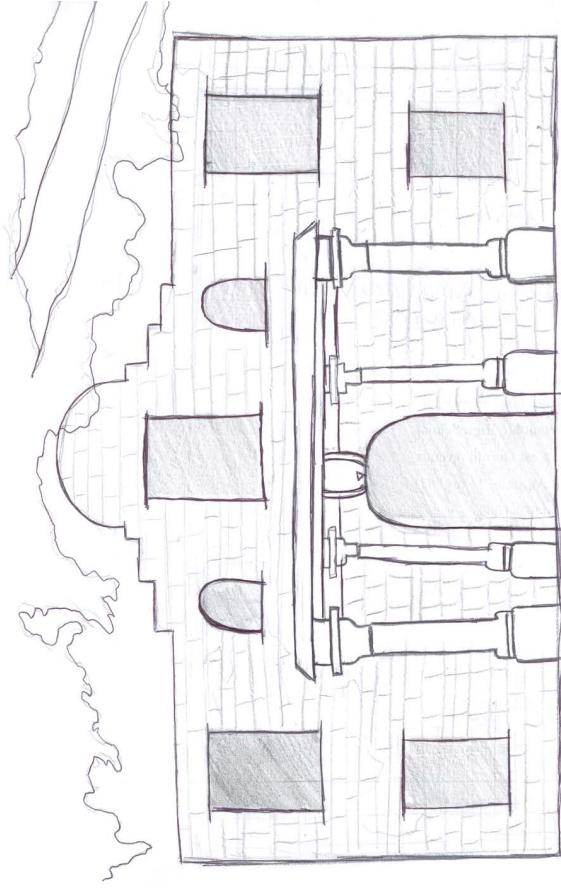
General Counsel

Texas Department of Insurance, Division of Workers' Compensation

Earliest possible date of adoption: January 5, 2025

For further information, please call: (512) 804-4703





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 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 14. [~~PERISHABLE COMMODITIES~~] HANDLING AND MARKETING OF ~~PERISHABLE COMMODITIES~~ [PROGRAM]

SUBCHAPTER A. GENERAL PROVISIONS

4 TAC §§14.1 - 14.4

Proposed amended §§14.1 - 14.4, published in the May 17, 2024, issue of the *Texas Register* (49 TexReg 3435), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Published by the Office of the Secretary of State on November 21, 2024.

TRD-202405676



SUBCHAPTER B. PRODUCE RECOVERY FUND CLAIMS

4 TAC §§14.10 - 14.14

Proposed amended §§14.10 - 14.14, published in the May 17, 2024, issue of the *Texas Register* (49 TexReg 3435), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Published by the Office of the Secretary of State on November 21, 2024.

TRD-202405677



SUBCHAPTER C. PRODUCE RECOVERY FUND BOARD

4 TAC §§14.20 - 14.26

Proposed amended §§14.20 - 14.26, published in the May 17, 2024, issue of the *Texas Register* (49 TexReg 3435), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Published by the Office of the Secretary of State on November 21, 2024.

TRD-202405678



PART 2. TEXAS ANIMAL HEALTH COMMISSION

CHAPTER 51. ENTRY REQUIREMENTS

4 TAC §51.12

The Texas Animal Health Commission withdraws proposed amendments to 4 TAC §51.12 which appeared in the June 14, 2024, issue of the *Texas Register* (49 TexReg 4122).

Filed with the Office of the Secretary of State on November 20, 2024.

TRD-202405658

Jeanine Coggeshall

General Counsel

Texas Animal Health Commission

Effective date: November 20, 2024

For further information, please call: (512) 839-0511



CHAPTER 60. SCRAPIE

4 TAC §60.1

The Texas Animal Health Commission withdraws proposed amendments to 4 TAC §60.1 which appeared in the June 14, 2024, issue of the *Texas Register* (49 TexReg 4123).

Filed with the Office of the Secretary of State on November 20, 2024.

TRD-202405659

Jeanine Coggeshall

General Counsel

Texas Animal Health Commission

Effective date: November 20, 2024

For further information, please call: (512) 839-0511



TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 135. AMBULATORY SURGICAL CENTERS

SUBCHAPTER A. OPERATING REQUIREMENTS FOR AMBULATORY SURGICAL CENTERS

25 TAC §§135.21, 135.24, 135.25

The Department of State Health Services withdraws the adopted repeal of §§135.21, 135.24, and 135.25 which appeared in the November 15, 2024, issue of the *Texas Register* (49 TexReg 9238).

Filed with the Office of the Secretary of State on November 20, 2024.

TRD-202405663

Karen Ray

Chief Counsel

Department of State Health Services

Effective date: November 20, 2024

For further information, please call: (512) 834-4591



25 TAC §135.22

The Department of State Health Services withdraws adopted amendments to §135.22 which appeared in the November 15, 2024, issue of the *Texas Register* (49 TexReg 9238).

Filed with the Office of the Secretary of State on November 20, 2024.

TRD-202405664

Karen Ray

Chief Counsel

Department of State Health Services

Effective date: November 20, 2024

For further information, please call: (512) 834-4591



SUBCHAPTER D. INSPECTION, INVESTIGATION, AND ENFORCEMENT PROCEDURES

25 TAC §§135.61 - 135.67

The Department of State Health Services withdraws adopted new §§135.61 - 135.67 which appeared in the November 15, 2024, issue of the *Texas Register* (49 TexReg 9238).

Filed with the Office of the Secretary of State on November 20, 2024.

TRD-202405665

Karen Ray

Chief Counsel

Department of State Health Services

Effective date: November 20, 2024

For further information, please call: (512) 834-4591



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 15. TEXAS FORENSIC SCIENCE COMMISSION

CHAPTER 651. DNA, CODIS, FORENSIC ANALYSIS, AND CRIME LABORATORIES

SUBCHAPTER E. NOTICE TO AND APPEALS BY LICENSE HOLDERS AND CRIME LABORATORIES

37 TAC §651.402

The proposed repeal of §651.402, published in the May 17, 2024, issue of the *Texas Register* (49 TexReg 3504), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Published by the Office of the Secretary of State on November 21, 2024.

TRD-202405675



ADOPTED RULES

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

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 19. QUARANTINES AND NOXIOUS AND INVASIVE PLANTS

The Texas Department of Agriculture (Department) adopts amendments to Texas Administrative Code (TAC), Title 4, Part 1, Chapter 19 (Quarantines and Noxious and Invasive Plants), Subchapter A (General Quarantine Provisions), §19.1 (Definitions), §19.2 (Inspection Certificates), §19.3 (Inspection and Testing Fees), and §19.5 (Phytosanitary Growing Season Inspection); Subchapter E (Date Palm Lethal Decline Quarantine), §19.50 (Quarantined Pest), §19.51 (Geographical Areas Subject to the Quarantine) and §19.52 (Quarantined Articles); Subchapter F (Lethal Yellowing Quarantine), §19.60 (Quarantined Pest), §19.61 (Quarantined Areas), and §19.62 (Quarantined Articles); Subchapter G (European Brown Garden Snail Quarantine), §19.73 (Restrictions); Subchapter H (Gypsy Moth Quarantine), §19.81 (Adoption of Federal Quarantine); Subchapter J (Red Imported Fire Ant Quarantine), §19.101 (Quarantined Areas) and §19.103 (Restrictions); Subchapter K (European Corn Borer Quarantine), §19.113 (Restrictions); Subchapter M (Sweet Potato Weevil Quarantine), §19.133 (Restrictions); Subchapter Q (Sapote Fruit Fly Quarantine), §19.170 (Basis for Quarantine - Dangerous Insect Pest or Plant Disease (Proscribed Biological Entity)), §19.171 (Duration of the Quarantine), §19.172 (Infested Areas), §19.173 (Non-Infested Areas), §19.174 (Articles Subject to the Quarantine), §19.175 (Restrictions on Movement of Articles Subject to the Quarantine) and §19.176 (Monitoring and Eradication of the Dangerous Pest or Plant Disease); and Subchapter X (Citrus Greening Quarantine), §19.616 (Infested Geographical Areas Subject to the Quarantine) and §19.622 (Mandatory Treatment of Citrus Nursery Plants in the Citrus Zone). The amendments are adopted without changes to the proposed text as published in the May 24, 2024, issue of the *Texas Register* (49 TexReg 3669) and will not be republished. Section 19.23 is being adopted with changes due to grammar corrections, It will be republished.

The Department also adopts the repeal of Subchapter I (Pine Shoot Beetle Quarantine), §19.91 (Adoption of Federal Quarantine); and Subchapter Q (Sapote Fruit Fly Quarantine), §19.177 (Consequences for Failure to Comply with Quarantine Restrictions) and §19.178 (Appeal of Department Action Taken for Failure to Comply with Quarantine Restrictions), as published in the May 24, 2024, issue of the *Texas Register* (49 TexReg 3669).

The Department further adopts new Subchapter Y (Cottonseed Bug Quarantine), §§19.623 - 19.626, concerning a quarantine for a dangerous plant pest, the cottonseed bug, *Oxycarenus*

hyalinipennis. The amendments are adopted without changes to the proposed text as published in the May 24, 2024, issue of the *Texas Register* (49 TexReg 3669) and will not be republished.

The amendments; addition of new Subchapter Y (Cottonseed Bug Quarantine); and repeal of Subchapter I (Pine Shoot Beetle Quarantine), §19.91 (Adoption of Federal Quarantine); and Subchapter Q (Sapote Fruit Fly Quarantine), §19.177 (Consequences for Failure to Comply with Quarantine Restrictions) and §19.178 (Appeal of Department Action Taken for Failure to Comply with Quarantine Restrictions) are adopted without changes to the proposed text as published in the Proposed Rules section of the May 24, 2024, issue of the *Texas Register* (47 TexReg 3669) and will not be republished.

The amendments include a change to Subchapter E's title from "Date Palm Lethal Decline" to "Lethal Bronzing of Palms Quarantine" to account for the new common name for the quarantined organism.

The amendments to §19.1 remove definitions for "certified regulated article," "non-certified regulated article," and "insect exclusionary cover," because these terms do not appear in this chapter; remove definitions for "Mediterranean fruit fly," "Oriental fruit fly," and "peach fruit fly" because these insects are not addressed in this chapter; remove the term "Mediterranean fruit fly" from the definition of "fruit fly" and add the term "Caribbean fruit fly" to the definition of "fruit fly" to address the specific types of fruit flies regulated in this chapter; remove a duplicative definition for "West Indian fruit fly;" and make the terms "phytosanitary certificate," "phytosanitary growing season inspection certificate," "quarantined area," "quarantined article," "quarantined pest," and "regulated article" lower-case because they appear as such in this chapter.

The amendments to §19.2 remove unnecessary language about the U.S. Domestic Japanese Beetle Harmonization Plan, update Department contact information, correct grammatical errors, and make editorial changes to language to improve the rule's readability.

The amendments to §19.3 make references to the United States Department of Agriculture the same as its definition in §19.1 and update Department contact information.

The amendments to §19.5 add Department contact information for those wanting to obtain applications for phytosanitary growing season inspections.

The amendments to §19.23 make grammatical changes to language to improve the rule's readability.

Consistent with the change to Subchapter E's title, the amendment to §19.50 updates the name of the quarantined organism to "Lethal Bronzing of Palms" to account for its new name.

The amendments to §19.51 update out-of-state areas to the quarantined areas for lethal bronzing of palms and, consistent with the change to Subchapter E's title, update the name of the quarantined organism to "Lethal Bronzing of Palms" to account for its new name.

The amendments to §19.52 clarify that the definition of a quarantined article includes any species determined to be a vector of disease, updates the list and names of palms that are quarantined, and adds quarantined areas based on current information available.

The amendments to §19.60 clarify that the quarantined pest is a disease caused by *Candidatus Phytoplasma palmae* or phytoplasma 16SrIV-A.

The amendments to §19.61 update the out-of-state quarantined areas for Date Palm Lethal Decline.

The amendments to §19.62 clarify that the definition of a quarantined article includes any species determined to be a vector of disease, updates the list and names of palms that are quarantined, and adds quarantined areas based on current information available.

The amendments to §19.73 make a reference to the Department as "department" because the term "department" is generally used throughout Title 4, Part 1 and correct grammatical errors.

The amendments to §19.81 update Department contact information and a citation to the regulation of gypsy moths in the Code of Federal Regulations as well as make editorial changes to language to improve the rule's readability.

The amendments to §19.101 remove subsection (b) because the most recent list of quarantines areas provided through Code of Federal Regulations (CFR), Title 7, §301.81-3 includes all areas listed in that subsection, update a citation to 7 CFR §301.81-3, change the term "regulated areas" to "quarantined areas," as the former is the term found in 7 CFR §301.81-3, provide an additional means to access the federal imported fire ant quarantine, update contact information for the Department, and remove unnecessary language.

The amendments to §19.103 correct grammatical errors and make editorial changes to language to improve the rule's readability.

The amendments to §19.113 remove unnecessary language, correct grammatical errors, and make editorial changes to language to improve the rule's readability.

The amendments to §19.133 make header information in a subsection lower-case, as this is how such information generally appears in rules throughout Title 4, Part 1; add language clarifying time restrictions on planting sweet potatoes; update Department contact information; correct grammatical errors; and make editorial changes to language to improve the rule's readability.

The amendments to §19.170 remove unnecessary language; change an internal reference to this chapter from "title" to "chapter" as the former is generally used throughout Title 4, Part 1; and update a citation to the Code.

The amendments to §19.171 remove unnecessary language and make editorial changes to language to improve the rule's readability.

The amendments to §19.172 make the rule's title more concise, remove unnecessary and inapplicable language on sources of

information on quarantined infested areas and core areas, make editorial changes to language to improve the rule's readability, specify a reference to the sapote fruit fly, correct grammatical and mathematical errors, and make all mentions of quarantined infested areas as "quarantined infested areas."

The amendments to §19.173 make the rule's title more concise, specify a reference to the sapote fruit fly, remove unnecessary language, and make editorial changes to language to improve the rule's readability.

The amendments to §19.174 specify a reference to the sapote fruit fly and correct a grammatical error.

The amendments to §19.175 change the language of the rule to align with §19.504 of this chapter (relating to Restrictions on Movement of Articles Subject to the Quarantine); remove unnecessary, inapplicable provisions for quarantined non-infested areas; and delete obsolete provisions involving fumigation protocols no longer in existence. The amendments further clarify and incorporate additional provisions requiring those who transport regulated articles to ensure that they do not become infested and that the quarantined pest is not spread.

The amendments to §19.176 update a reference to the United States Department of Agriculture.

The amendments to §19.616 correct the address of the Department's Valley Regional Office and remove reference of the citrus greening quarantine map being posted on the department's website.

The amendments to §19.622 correct the address of the Department's Valley Regional Office and remove unnecessary language.

The repeal of §19.91 is adopted to conform with 85 Fed. Reg. 61806 and the United States Department of Agriculture's (USDA) removal of its regulations pertaining to domestic pine shoot beetle quarantines and restrictions applying to the importation of pine shoot beetle host material from Canada, which include the regulations referred to in this rule.

The repeal of §19.177 is adopted to remove redundant language, which is identical to state statute namely, Sections 12.020, 71.009, 71.012, 71.013, 71.009, and 71.0092 of the Texas Agriculture Code (Code).

The repeal of §19.178 is adopted to remove redundant language identical to Section 71.010 of the Code.

The Department adopts new 4 TAC Part 1, Chapter 19, Subchapter Y, Cottonseed Bug Quarantine comprised of §§19.623-19.626 to establish requirements and restrictions necessary to address dangers posed by the potential introduction of cottonseed bug in Texas.

New §19.623 defines the quarantined pest as the cottonseed bug.

New §19.624 defines the quarantined areas and outlines when the Department may designate additional or expanded quarantined areas.

New §19.625 defines what constitutes quarantined articles.

New §19.626 defines the travel restrictions for quarantined articles.

Public Comment

The Department received no comments regarding the proposed amendments, the proposed repeal, and the proposed new subchapter.

SUBCHAPTER A. GENERAL QUARANTINE PROVISIONS

4 TAC §§19.1 - 19.3, 19.5

The amendments are adopted under Chapter 71 of the Texas Agriculture Code, which allows the Department to adopt rules necessary to administer this chapter.

The amendments are adopted under the Department's authority in Code, Section 12.016, which authorizes the Department to adopt rule to administer its powers and duties under the Code. The amendments are further adopted under Section 12.021 of the Code, which requires the Department to collect inspection fees for phytosanitary inspections required by other states and foreign countries for agricultural products, processed products, or equipment exported from Texas; Section 71.005 of the Code, which requires the Department to prevent the movement, from a quarantined area into an unquarantined area or pest-free area, of any plant, plant product, or substance capable of disseminating the pest or disease that is the basis for the quarantine; and Section 71.007 of the Code, which allows the Department to adopt rules as necessary to protect agricultural and horticultural interests, including rules preventing the selling, moving, or transporting of any plant, plant product, or substance that is found to be infested or found to be from a quarantined area, and preventing entry into a pest-free zone of any plant, plant product, or substance found to be dangerous to the agricultural and horticultural interests of the zone.

The code affected by the adoptions are Chapters 12 and 71 of the Texas Agriculture Code.

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

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SUBCHAPTER B. BURROWING NEMATODE QUARANTINE

4 TAC §19.23

The amendments are adopted under the Department's authority in Code, Section 12.016, which authorizes the Department to adopt rules to administer its powers and duties under the Code. The amendments are further adopted under Code, Section 71.005, which requires the Department to prevent the movement, from a quarantined area into an unquarantined area or pest-free area, of any plant, plant product, or substance capa-

ble of disseminating the pest or disease that is the basis for the quarantine; and Section 71.007 of the Code, which allows the Department to adopt rules as necessary to protect agricultural and horticultural interests, including rules preventing the selling, moving, or transporting of any plant, plant product, or substance that is found to be infested or found to be from a quarantined area, and preventing entry into a pest-free zone of any plant, plant product, or substance found to be dangerous to the agricultural and horticultural interests of the zone.

The code affected by the adoptions is Chapter 71 of the Texas Agriculture Code.

§19.23. Restrictions.

(a) General. Plants, plant parts for propagation, and growing media originating from quarantined areas are prohibited entry into or through Texas, except as provided in subsections (b) and (c) of this section.

(b) Exemptions. Plants produced from seed, planted and grown in sterile media or other suitable material determined by laboratory assay to be free of plant parasitic nematodes and protected from nematode infestation until shipped, are exempt from the provisions of this subchapter.

(c) Exceptions. Shipments from quarantined areas may enter Texas if each package or bundle is accompanied by a phytosanitary certificate issued by an authorized representative of the state or commonwealth of origin that:

(1) specifies the state or commonwealth of origin; and

(2) certifies that the quarantine plants, propagative plant parts, and growing media have been sampled and determined by laboratory assay to be free of burrowing nematodes not more than two months prior to shipment and protected from nematode infestation until shipped. A laboratory analysis report should accompany the shipment. Comingling of plant material from any other origin or source is prohibited unless the plant roots and growing media have been sampled and determined by laboratory assay to be free of burrowing nematodes.

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 E. LETHAL BRONZING OF PALMS QUARANTINE

4 TAC §§19.50 - 19.52

The amendments are adopted under the Department's authority in Code, Section 12.016, which authorizes the Department to adopt rules to administer its powers and duties under the Code. The amendments are further adopted under Section 71.001 of the Code, which allows the Department to quarantine at the

boundaries of Texas an insect pest or plant disease the Department determines as dangerous that is new to and not widely distributed in Texas existing in any areas outside Texas; Section 71.002 of the Code, which allows the Department to quarantine an insect pest or plant disease the Department determines as dangerous that is not widely distributed in Texas; Section 71.005 of the Code, which requires the Department to prevent the movement, from a quarantined area into an unquarantined area or pest-free area, of any plant, plant product, or substance capable of disseminating the pest or disease that is the basis for the quarantine; and Section 71.007 of the Code, which allows the Department to adopt rules as necessary to protect agricultural and horticultural interests, including rules preventing the selling, moving, or transporting of any plant, plant product, or substance that is found to be infested or found to be from a quarantined area, providing for the destruction of trees or fruits, and preventing entry into a pest-free zone of any plant, plant product, or substance found to be dangerous to the agricultural and horticultural interests of the zone.

The code affected by the adoptions is Chapter 71 of the Texas Agriculture Code.

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

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SUBCHAPTER F. LETHAL YELLOWING QUARANTINE

4 TAC §§19.60 - 19.62

The amendments are adopted under the Department's authority in Code, Section 12.016, which authorizes the Department to adopt rules to administer its powers and duties under the Code. The amendments are further adopted under Section 71.002 of the Code, which allows the Department to quarantine an insect pest or plant disease the Department determines as dangerous that is not widely distributed in Texas; Section 71.005 of the Texas Agriculture Code (Code), which requires the Department to prevent the movement, from a quarantined area into an unquarantined area or pest-free area, of any plant, plant product, or substance capable of disseminating the pest or disease that is the basis for the quarantine; and Section 71.007 of the Code, which allows the Department to adopt rules as necessary to protect agricultural and horticultural interests, including rules preventing the selling, moving, or transporting of any plant, plant product, or substance that is found to be infested or found to be from a quarantined area, providing for the destruction of trees or fruits, and preventing entry into a pest-free zone of any plant, plant product, or substance found to be dangerous to the agricultural and horticultural interests of the zone.

The code affected by the adoptions is Chapter 71 of the Texas Agriculture Code.

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SUBCHAPTER G. EUROPEAN BROWN GARDEN SNAIL QUARANTINE

4 TAC §19.73

The amendments are adopted under the Department's authority in Code, Section 12.016, which authorizes the Department to adopt rules to administer its powers and duties under the Code. The amendments are further adopted under Section 71.005 of the Code, which requires the Department to prevent the movement, from a quarantined area into an unquarantined area or pest-free area, of any plant, plant product, or substance capable of disseminating the pest or disease that is the basis for the quarantine; and Section 71.007 of the Code, which allows the Department to adopt rules as necessary to protect agricultural and horticultural interests, including rules preventing the selling, moving, or transporting of any plant, plant product, or substance that is found to be infested or found to be from a quarantined area, and preventing entry into a pest-free zone of any plant, plant product, or substance found to be dangerous to the agricultural and horticultural interests of the zone.

The code affected by the adoptions is Chapter 71 of the Texas Agriculture Code.

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SUBCHAPTER H. GYPSY MOTH QUARANTINE

4 TAC §19.81

The amendments are adopted under the Department's authority in Code, Section 12.016, which authorizes the Department to adopt rules to administer its powers and duties under the Code. The amendments are further adopted under Section 71.005 of the Code, which requires the Department to prevent the movement, from a quarantined area into an unquarantined area or pest-free area, of any plant, plant product, or substance capable of disseminating the pest or disease that is the basis for the quarantine; and Section 71.007 of the Code, which allows the Department to adopt rules as necessary to protect agricultural and horticultural interests, including rules preventing the selling, moving, or transporting of any plant, plant product, or substance that is found to be infested or found to be from a quarantined area, and preventing entry into a pest-free zone of any plant, plant product, or substance found to be dangerous to the agricultural and horticultural interests of the zone.

The code affected by the adoptions is Chapter 71 of the Texas Agriculture Code.

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

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SUBCHAPTER I. PINE SHOOT BEETLE QUARANTINE

4 TAC §19.91

The repeal is under the Department's authority in Code, Section 12.016, which authorizes the Department to adopt rules to administer its powers and duties under the Code, as necessary. The repeal is further authorized under Section 71.005 of the Texas Agriculture Code (Code), which requires the Department to prevent the movement, from a quarantined area into an unquarantined area or pest-free area, of any plant, plant product, or substance capable of disseminating the pest or disease that is the basis for the quarantine; and Section 71.007 of the Code, which allows the Department to adopt rules as necessary to protect agricultural and horticultural interests, including rules preventing the selling, moving, or transporting of any plant, plant product, or substance that is found to be infested or found to be from a quarantined area, and preventing entry into a pest-free zone of any plant, plant product, or substance found to be dangerous to the agricultural and horticultural interests of the zone.

The code affected by the repeal is Chapter 71 of the Texas Agriculture Code.

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

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SUBCHAPTER J. RED IMPORTED FIRE ANT QUARANTINE

4 TAC §19.101, §19.103

The amendments are adopted under the Department's authority in Code, Section 12.016, which authorizes the Department to adopt rules to administer its powers and duties under the Code. The amendments are further adopted under Section 71.001 of the Code, which allows the Department to establish quarantines within Texas against out-of-state insect pests or plant diseases new to and not widely distributed in Texas; Section 71.005 of the Code, which requires the Department to prevent the movement, from a quarantined area into an unquarantined area or pest-free area, of any plant, plant product, or substance capable of disseminating the pest or disease that is the basis for the quarantine; and Section 71.007 of the Code, which allows the Department to adopt rules as necessary to protect agricultural and horticultural interests, including rules preventing the selling, moving, or transporting of any plant, plant product, or substance that is found to be infested or found to be from a quarantined area, and preventing entry into a pest-free zone of any plant, plant product, or substance found to be dangerous to the agricultural and horticultural interests of the zone.

The code affected by the adoptions is Chapter 71 of the Texas Agriculture Code.

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

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SUBCHAPTER K. EUROPEAN CORN BORER QUARANTINE

4 TAC §19.113

The amendments are adopted under the Department's authority in Code, Section 12.016, which authorizes the Department to adopt rules to administer its powers and duties under the Code.

The amendments are further adopted under Section 71.005 of the Code, which requires the Department to prevent the movement, from a quarantined area into an unquarantined area or pest-free area, of any plant, plant product, or substance capable of disseminating the pest or disease that is the basis for the quarantine; and Section 71.007 of the Code, which allows the Department to adopt rules as necessary to protect agricultural and horticultural interests, including rules preventing the selling, moving, or transporting of any plant, plant product, or substance that is found to be infested or found to be from a quarantined area, and preventing entry into a pest-free zone of any plant, plant product, or substance found to be dangerous to the agricultural and horticultural interests of the zone.

The code affected by the adoptions is Chapter 71 of the Texas Agriculture Code.

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**SUBCHAPTER M. SWEET POTATO WEEVIL
QUARANTINE**

4 TAC §19.133

The amendments are adopted under the Department's authority in Code, Section 12.016, which authorizes the Department to adopt rules to administer its powers and duties under the Code. The amendments are further adopted under Section 71.005 of the Code, which requires the Department to prevent the movement, from a quarantined area into an unquarantined area or pest-free area, of any plant, plant product, or substance capable of disseminating the pest or disease that is the basis for the quarantine; and Section 71.007 of the Code, which allows the Department to adopt rules as necessary to protect agricultural and horticultural interests, including rules preventing the selling, moving, or transporting of any plant, plant product, or substance that is found to be infested or found to be from a quarantined area, and preventing entry into a pest-free zone of any plant, plant product, or substance found to be dangerous to the agricultural and horticultural interests of the zone.

The code affected by the adoptions is Chapter 71 of the Texas Agriculture Code.

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

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**SUBCHAPTER Q. SAPOTE FRUIT FLY
QUARANTINE**

4 TAC §§19.170 - 19.176

The amendments are adopted under the Department's authority in Code, Section 12.016, which authorizes the Department to adopt rules to administer its powers and duties under the Code. The amendments are further adopted under Section 71.001 of the Code, which allows the Department to quarantine an area if it determines that a dangerous insect pest or plant disease new to and not widely distributed in this state exists in any area outside the state; Section 71.002 of the Code, which allows the Department to quarantine an area if it determines that a dangerous insect pest or plant disease not widely distributed in this state exists within an area of the state; and Section 71.007 of the Code, which allow the Department to adopt rules necessary for the protection of the state's agricultural and horticultural interests.

The code affected by the adoptions is Chapter 71 of the Texas Agriculture Code.

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

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4 TAC §19.177, §19.178

The repeals are under the Department's authority in Code, Section 12.016, which authorizes the Department to adopt rules to administer its powers and duties under the Code, as necessary. The repeals are further authorized under Section 71.005 of the Code, which requires the Department to prevent the movement, from a quarantined area into an unquarantined area or pest-free area, of any plant, plant product, or substance capable of disseminating the pest or disease that is the basis for the quarantine; and Section 71.007 of the Code, which allows the Department to adopt rules as necessary to protect agricultural and horticultural interests, including rules preventing the selling, moving, or transporting of any plant, plant product, or substance that is found to be infested or found to be from a quarantined area, and preventing entry into a pest-free zone of any plant, plant prod-

uct, or substance found to be dangerous to the agricultural and horticultural interests of the zone.

The code affected by the adopted repeals is Texas Agriculture Code, Chapter 71.

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 X. CITRUS GREENING
QUARANTINE**

4 TAC §19.616, §19.622

The amendments are adopted under the Department's authority in Code, Section 12.016, which authorizes the Department to adopt rules to administer its powers and duties under the Code. The amendments are further adopted under 71.002 of the Code, which allows the Department to quarantine an insect pest or plant disease the Department determines as dangerous that is not widely distributed in Texas; Section 71.005 of the Code, which requires the Department to prevent the movement, from a quarantined area into an unquarantined area or pest-free area, of any plant, plant product, or substance capable of disseminating the pest or disease that is the basis for the quarantine; and Section 71.007 of the Code, which allows the Department to adopt rules as necessary to protect agricultural and horticultural interests, including rules preventing the selling, moving, or transporting of any plant, plant product, or substance that is found to be infested or found to be from a quarantined area, and preventing entry into a pest-free zone of any plant, plant product, or substance found to be dangerous to the agricultural and horticultural interests of the zone.

The code affected by the adoptions is Chapter 71 of the Texas Agriculture Code.

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

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**SUBCHAPTER Y. COTTONSEED BUG
QUARANTINE**

4 TAC §§19.623 - 19.626

The new rules in Subchapter Y are adopted under the Department's authority in Code, Section 12.016, which authorizes the Department to adopt rules to administer its powers and duties under the Code, as necessary, and Code, §§71.001 and 71.002, which authorizes the Department to establish quarantines against in-state and out-of-state diseases and pests; and §71.007, which authorizes the Department to adopt rules as necessary to protect agricultural and horticultural interests, including rules to provide for specific treatment of quarantined articles.

Chapter 71 of the Texas Agriculture Code is affected by the 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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**PART 2. TEXAS ANIMAL HEALTH
COMMISSION**

CHAPTER 40. CHRONIC WASTING DISEASE

4 TAC §40.6

The Texas Animal Health Commission (Commission) in a duly noticed meeting on November 12, 2024, adopted amendments to §40.6, concerning CWD Movement Restriction Zones. Section 40.6 is adopted without changes to the proposed text published in the August 23, 2024, issue of the *Texas Register* (49 TexReg 6345) and will not be republished.

JUSTIFICATION FOR RULE ACTION

The purpose of this chapter is to prevent and control the incidence of chronic wasting disease (CWD) in Texas by seeking to reduce the risk of interstate and intrastate transmission of CWD in susceptible cervid species. The Commission adopts amendments to §40.6 to eliminate surveillance zones and add two new containment zones based on high-risk CWD exposure. These amendments will provide more targeted surveillance and reduce the risk of CWD being spread from areas where it may exist while eliminating unnecessary restrictions from other areas.

CWD is a degenerative and fatal neurological communicable disease recognized by the veterinary profession that affects susceptible cervid species. CWD poses a serious threat to live-

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

The purpose of the movement restriction zones is to both increase surveillance and reduce the risk of CWD being spread from areas of high risk where it may exist. As required by §40.6(g), the Commission reviewed the movement restriction zones and recommends the modifications as stated herein.

HOW THE RULES WILL FUNCTION

The amendments to §40.6(a) eliminate the definition of "CWD Surveillance Zone (SZ)" and other references to surveillance zone throughout the definitions.

The amendment to §40.6(b)(1)(I) would add a new containment zone in Coleman County in response to the detection of CWD in a free-range white-tailed deer in that county.

The amendments to §40.6(b)(1)(J) would add a new containment zone in Collingsworth County in response to high-risk elk from an adjacent farm.

The amendments to §40.6(b)(2) would eliminate all surveillance zones.

The amendments to §40.6(d) would eliminate requirements associated with surveillance zones.

The amendments to §40.6(e) would eliminate carcass movement requirements for surveillance zones.

SUMMARY OF COMMENTS RECEIVED AND COMMISSION RESPONSE

The 30-day comment period ended September 22, 2024.

During this period, the Commission received comments from five individuals and a comment from the Texas Deer Association. A summary of comments relating to the rules and the Commission's responses follows.

Comment: Five individual commenters were generally supportive of the Commission's proposal to remove surveillance zones. One commenter noted that more targeted surveillance is still needed. Another commenter expressed that containment zones should be made as small as possible.

Comment: Texas Deer Association commented it supports elimination of surveillance zones but opposes the size of the proposed containment zones in Coleman and Collingsworth counties. TDA suggested the containment zone should be limited to the size of the property of detection.

Response: The Commission thanks the commenters and TDA for the feedback. The Commission declines to further amend the rule. No changes were made as a result of these comments.

STATUTORY AUTHORITY

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

The Commission is vested by statute, §161.041(a), titled "Disease Control," to protect all livestock, exotic livestock, domestic fowl, and exotic fowl from disease. The Commission is authorized, through §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects 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 §161.0415, titled "Disposal of Diseased or Exposed Livestock or Fowl," the Commission may require by order the slaughter of livestock, domestic fowl, or exotic fowl exposed to or infected with certain diseases.

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

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

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

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

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

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

Pursuant to §161.0541, titled "Elk Disease Surveillance Program," the Commission, by rule, may establish a disease surveillance program for elk. Such rules include the requirement for persons moving elk in interstate commerce to test the elk for

chronic wasting disease. Additionally, provisions must include testing, identification, transportation, and inspection under the disease surveillance program.

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

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

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

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

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

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

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

Pursuant to §161.065, titled "Movement from Quarantined Area; Movement of Quarantined Animals," the Commission may provide a written certificate or written permit authorizing the movement of animals from quarantined places. If the Commission finds animals have been moved in violation of an established

quarantine or in violation of any other livestock sanitary law, the Commission shall quarantine the animals until they have been properly treated, vaccinated, tested, dipped, or disposed of in accordance with the rules of the Commission.

Pursuant to §161.081, titled "Importation of Animals," the Commission may regulate the movement of livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl into this state from another state, territory, or country. The Commission, by rule, may provide the method for inspecting and testing animals before and after entry into this state, and for the issuance and form of health certificates and entry permits.

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

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

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

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 20, 2024.

TRD-202405657

Jeanine Coggeshall

General Counsel

Texas Animal Health Commission

Effective date: December 10, 2024

Proposal publication date: August 23, 2024

For further information, please call: (512) 839-0511



TITLE 10. COMMUNITY DEVELOPMENT

PART 8. TEXAS SPACE COMMISSION

CHAPTER 321. GRANTS

10 TAC §321.1 - 321.16

The Texas Space Commission ("Commission") adopts without changes new 10 TAC §§321.1 - 321.16, relating to Grants. The Commission adopts new §321.1, concerning Definitions, §321.2, concerning Authority, §321.3, concerning Applicability, §321.4, concerning Funding; Availability of Funds, §321.5, concerning Notices, §321.6, concerning Eligible Recipients; Eligible Activities, §321.7, concerning Established Presence in the State, §321.8, concerning Application Process Generally, §321.9, concerning Application Requirements, §321.10, concerning Grant Evaluation, §321.11, concerning Amount of Grant Award; Payment Procedures, §321.12, concerning Reporting, §321.13, concerning Records Retention, §321.14, concerning Requests for Records; Audit, §321.15, concerning Noncompli-

ance; Failure to Perform, and §321.16, concerning Direct Award (49 TexReg 8448). These rules will not be republished.

REASONED JUSTIFICATION

House Bill 3447 (88-R) directed the Board of Directors ("Board") of the Commission to adopt rules regarding the procedure for awarding grants to an applicant under Chapter 482, Texas Government Code. In accordance with that directive, the Board unanimously voted to adopt the grant-making procedures detailed in this rulemaking.

Adopted new §321.1 establishes definitions the Commission and Board will utilize in its grant making process.

Adopted new §321.2 describes the authority under which the Commission may award grants.

Adopted new §321.3 describes the purposes for which grants may be awarded.

Adopted new §321.4 describes the sources of funding for grants and establishes that all grants are subject to the availability of funds and approval by the Commission. The rule also establishes that neither the rules in Title 10, Chapter 321, Texas Administrative Code, nor any grant agreement the Commission may enter with a grantee creates in a grantee any entitlement or right to grant funds.

Adopted new §321.5 establishes notice requirements, allowing for electronic notice.

Adopted new §321.6 establishes eligibility requirements related to eligible recipients and eligible activities.

Adopted new §321.7 requires grant recipients to be engaged in business in Texas.

Adopted new §321.8 establishes process requirements for grant applicants, including electronic submission.

Adopted new §321.9 establishes requirements for grant applications, including acceptable signatures.

Adopted new §321.10 establishes grant review process for the Board to consider an application.

Adopted new §321.11 establishes the Board as the sole entity permitted to set the grant award amount and establishes that the Commission is not required to fund any grant at the amount the grant applicant requests.

Adopted new §321.12 requires grant recipients to submit periodic reports and documentation in accordance with the grant agreement. This section also authorizes the Commission, upon reasonable notice, to request any additional information necessary to show that grant funds are being used for the intended purpose and that the grant recipient has complied with the grant agreement.

Adopted new §321.13 requires grant recipients to maintain all records regarding the grant project and provides records retention requirements.

Adopted new §321.14 describes requirements for providing records, documentation, or other information required by the Commission and authorizes the Commission, upon reasonable notice, to audit the activities of a grantee as necessary to ensure that grant funds are used for the intended purpose of the reimbursement award and that the grantee has complied with the terms, conditions, and requirements of the reimbursement award.

Adopted new §321.15 describes the process for addressing a grantee's noncompliance with any term or condition of a reimbursement award or any applicable laws, rules, regulations, or guidance relating to the reimbursement award, and the remedies that could result from such noncompliance.

Adopted new §321.16 establishes the circumstances under which a grant may be directly awarded.

SUMMARY OF COMMENTS AND AGENCY RESPONSES

The Commission did not receive any comments in response to the proposed rulemaking.

STATUTORY AUTHORITY.

Section 482.501, Texas Government Code, directs the Commission to adopt rules regarding the procedure for awarding grants to an applicant under this chapter.

CROSS REFERENCE TO STATUTE

Chapter 482, Texas Government Code. No other statutes, articles, or codes are affected by the adopted rules.

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 18, 2024.

TRD-202405603

Norman Garza

Executive Directors

Texas Space Commission

Effective date: December 8, 2024

Proposal publication date: October 18, 2024

For further information, please call: (512) 463-8575



TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 3. OIL AND GAS DIVISION

16 TAC §3.70

The Railroad Commission of Texas (Commission) adopts amendments to §3.70, relating to Pipeline Permits Required, without changes to the proposed text published in the August 30, 2024, issue of the *Texas Register* (49 TexReg 6559) and will not be republished. The Commission adopts the amendments in §3.70 to align with changes concurrently adopted in Chapter 8, relating to Pipeline Safety Regulations, which incorporate federal requirements. The amendments to §3.70 also remove dates from the rule that no longer apply and incorporate a procedure related to the Form T-4B.

The Commission received six comments, five of which were from associations (Permian Basin Petroleum Association (PBPA), Pipeline Safety Trust, Sierra Club Lone Star Chapter (Sierra Club), Texas Industry Project, and Texas Oil and Gas Association (TXOGA)). One company, Atmos Energy Corporation's Mid-Texas Division and West Texas Division (Atmos) also commented. The Commission appreciates these comments.

Generally, Atmos commented that it supports the changes to §3.70, as they effectively remove outdated language, properly update the language regarding gathering lines, and provide a straightforward process for filing Form T-4B.

The Commission appreciates the comments from Atmos.

Regarding §3.70(i)(1)(A), TXOGA and PBPA sought clarity that Group A fees only apply to transmission and gathering pipelines, as defined by the Pipeline and Hazardous Materials Safety Administration (PHMSA), and would not include production lines defined in §8.1(a)(1)(B) of this title, relating to General Applicability and Standards.

The Commission notes that production pipelines covered under §8.1(a)(1)(B) currently fall under Group A, as defined by §3.70(i)(1)(A), and will continue to fall under Group A after these amendments.

The Commission received one comment from Sierra Club regarding increasing mileage fees for Group B operators under §3.70(i)(3), as well as the permit processing fee for all permitted pipelines under §3.70(j). Sierra Club suggested increasing the fee for Group B pipelines from \$10 per mile to \$15 per mile, and the permit processing fee from \$500 to \$1,000.

The Commission appreciates the comments from Sierra Club but acknowledges that the suggested fee increases are outside the scope of these amendments. The Commission did not propose changing Group B per mile fees, nor permit processing fees, and would need to propose these fee changes and allow public comments before considering any changes to either fee.

Regarding changes to §3.70(o), Sierra Club agrees with the Commission and supports the requirement of having both the transferor and transferee sign for ownership transfer, with some flexibility where the transferor operator failed to do so.

The Commission appreciates Sierra Club's comments.

Regarding §3.70(r)(1), the Commission received similar comments from TXOGA, PBPA, and Texas Industry Project. These associations proposed extending the deadline for amending T-4 permits to December 31, 2025, noting that it will be challenging for operators to file by March 31, 2025. PBPA also suggested that any future proposals to shapefile submission include opportunity for public comment and stakeholder feedback.

The Commission disagrees with the proposal to extend the deadline to December 31, 2025. The federal gathering line rule required all operators to begin filing annual reports starting in March 2023. As such, operators should have all necessary information. This data is needed to accurately enter new Type C gathering line systems into the Pipeline Inspection System (PIPES). Additionally, the Commission released a Notice to Operators on February 29, 2024 to make operators aware of the new shapefile requirements.

Additionally, regarding §3.70(r), PBPA proposed to revise the amended rule to exclude Type R pipeline operators from submitting shapefiles with T-4 permit requests, noting that this goes beyond PHMSA's requirements, many operators have stated that they utilize other methods, and may not have GIS centerline data.

The Commission disagrees with PBPA's proposal to exclude Type R operators from shapefile requirements under §3.70(r). The data requested in the shapefile submissions is required for operators to differentiate between Type C and Type R pipelines. Thus, §3.70(r) will be adopted as proposed.

The Commission appreciates the input received from commenters. The Commission makes no changes in response to these comments. The adopted rule language is summarized in the paragraphs below.

The Commission adopts amendments in §3.70(i)(1)(A) and (B) to incorporate federal categories of pipelines and to clarify reporting requirements. In the Commission's rulemaking to amend §8.1 of this title (relating to General Applicability and Standards), which is adopted concurrently with these amendments to §3.70, the Commission incorporates minimum safety standards from PHMSA. PHMSA's standards extend reporting requirements to all gas gathering operators and apply a set of minimum safety requirements to certain gas gathering pipelines with large diameters and high operating pressures. The amendments to §3.70(i) incorporate federal pipeline classifications and ensure gas gathering lines are regulated consistent with PHMSA's requirements.

The adopted amendments in subsection (i)(2) and (3) and subsection (j) remove dates that were included in the rule when the fees were first adopted.

The Commission adopts amendments in subsection (o) to clarify the procedure for filing Form T-4B when the transferee operator is unable to obtain the signature of the transferor operator. This situation is addressed in the oil and gas context in §3.58 of this title (relating to Certificate of Compliance and Transportation Authority; Operator Reports) and the related Single-Signature Form P-4 process. The Commission adopts a similar process in subsection (o) because this situation also occurs with pipeline transfers.

The Commission adopts new subsection (r) to require updates in the permitting system related to gas gathering pipelines, indicating the federal categories as adopted in subsection (i). The amendments state that, beginning December 9, 2024, operators shall amend gas permits to include all gas gathering pipelines defined as Type A, Type B, Type C, or Type R in 49 CFR §192.8. The permit amendments shall be filed on the Commission's on-line permitting system by March 31, 2025.

The Commission adopts the amendments pursuant to Texas Natural Resources Code, §81.071, which authorizes the Commission to establish pipeline safety and regulatory fees to be assessed for permits or registrations for pipelines under the jurisdiction of the Commission's pipeline safety and regulatory program. Additionally, the Commission adopts the amendments pursuant to Texas Natural Resources Code §81.051 and §81.052, which provide the Commission with jurisdiction over all persons owning or operating pipelines in Texas and the authority to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission; Texas Natural Resources Code §86.041 and §86.042, which allow the Commission broad discretion in adopting rules to prevent waste in the piping and distribution of gas, require records to be kept and reports made, and provide for the issuance of permits and other evidences of permission; Texas Natural Resources Code §111.131 and §111.132, which authorize the Commission to promulgate rules for the government and control of common carriers and public utilities; and Texas Utilities Code §§121.201 - 121.210, which authorize the Commission to adopt safety standards and practices applicable to the transportation of gas and associated pipeline facilities within Texas to the maximum degree permissible under, and to take any other requisite action in accordance with, 49 United States Code Annotated, §§60101, et seq. Texas Natural Resources Code §§81.051, 81.052, 86.041, 86.042, 111.131, and

111.132; Texas Utilities Code, §§121.201 - 121.210; and 49 United States Code Annotated, §§60101, et seq.

Cross-reference to statute: Texas Natural Resources Code, Chapter 81, Chapter 86, and Chapter 111, and Texas Utilities Code, Chapter 121; and 49 United States Code Annotated, Chapter 601.

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 19, 2024.

TRD-202405612

Haley Cochran

Assistant General Counsel, Office of General Counsel

Railroad Commission of Texas

Effective date: December 9, 2024

Proposal publication date: August 30, 2024

For further information, please call: (512) 475-1295



CHAPTER 8. PIPELINE SAFETY REGULATIONS

The Railroad Commission of Texas adopts amendments to §§8.1, 8.101, 8.110, 8.115, 8.125, 8.201, 8.208, 8.209, and 8.210, relating to General Applicability and Standards; Pipeline Integrity Assessment and Management Plans for Natural Gas and Hazardous Liquids Pipelines; Gathering Pipelines; New Construction Commencement Report; Waiver Procedure; Pipeline Safety and Regulatory Program Fees; Mandatory Removal and Replacement Program; Distribution Facilities Replacements; and Reports. Sections 8.1, 8.115, and 8.209 are adopted with changes to the proposed text published in the August 30, 2024, issue of the *Texas Register* (49 TexReg 6652) and will be republished. The remaining rules are adopted without changes and will not be republished. The Commission adopts these amendments to capture the federal Pipeline and Hazardous Materials Safety Administration (PHMSA) latest standards, to clarify areas of the rules that staff receives regular inquiries on, and to clarify how pipeline operators should report and file with Commission.

The Commission received six comments, four of which were from associations (Permian Basin Petroleum Association (PBPA), Pipeline Safety Trust, Sierra Club Lone Star Chapter (Sierra Club), and Texas Oil and Gas Association (TXOGA)). Two companies, Atmos Energy Corporation's Mid-Texas Division and West Texas Division (Atmos) and Texas Gas Service (TGS) also commented. The Commission appreciates these comments.

Regarding the amendments proposed in §8.1(a)(1)(B), PBPA and TXOGA commented that PHMSA regulations in 49 CFR §192.8 associate Type C facilities only with Class 1 locations. Thus, the Commission should remove Type C from §8.1(a)(1)(B).

The Commission agrees and adopts §8.1(a)(1)(B) with a change to remove "Type C."

In addition, PBPA and TXOGA requested clarification regarding the meaning of "first point of measurement" in §8.1(a)(1)(B). TX-

OGA suggested that "first point of measurement" be defined as a measurement which occurs after final processing, before transportation to a third party for sales. TXOGA also suggested that the Commission exempt measurement methods utilizing allocation meters, multi-phase flow meters, bulk separation/test meters, and well performance surveillance meters associated with production operations and prior to final separation and processing at central tank batteries.

The Commission notes that "first point of measurement" is the first point of measurement required under §3.27 of this title, relating to Gas to be Measured and Surface Commingling of Gas. The Commission disagrees that the definition should exempt the measurement methods proposed by TXOGA. Section 8.1(a)(1)(B) was added to the chapter in 2009 to address the regulation of production pipelines located in more populated areas (Class 2, 3, and 4 locations). This section continues to apply only to production pipelines in Class 2, 3, and 4 locations and includes the entirety of the pipeline that is located in a Class 2, 3, or 4 location.

PBPA requested clarification regarding whether "Group A" fees are only applicable to PHMSA-defined transmission and gathering pipelines and do not apply to production lines defined in §8.1(a)(1)(B).

The Commission makes no change in response to this comment. Production pipelines covered under §8.1(a)(1)(B) are subject to the regulations in 49 CFR Part 192 and require inspections. They are currently subject to Group A fees and Group A fees will continue to apply.

The Commission received three comments on its proposed changes to §8.1(b), which update the minimum safety standards and adopt by reference the Department of Transportation (DOT) pipeline safety standards found in 49 CFR Part 191, Transportation of Natural and Other Gas by Pipeline; Annual Reports, Incident Reports, and Safety-Related Condition Reports; 49 CFR Part 192, Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards; and 49 CFR Part 195, Transportation of Hazardous Liquids by Pipeline. PBPA expressed support for the proposed amendments. Sierra Club also expressed support but noted the Commission should have acted sooner to incorporate the federal standards. Atmos requested clarification regarding whether the change will incorporate rules finalized by PHMSA by December 9, 2024, but not effective by December 9, 2024, such as the leak detection and repair rulemaking.

The Commission confirms that the leak detection and repair (LDAR) rulemaking is not incorporated by reference. The federal rules that are incorporated into §8.1(b) as of December 9, 2024 (the effective date of these rule amendments) are the rules resulting from the rulemakings listed in the Commission's preamble to the proposed amendments published in the August 30, 2024, issue of the *Texas Register* (49 TexReg 6652). Those rulemakings are also listed below in the paragraph summarizing the amendments to §8.1(b).

In §8.101, the Commission proposed changes to clarify which pipelines referenced in 49 CFR Part 195 are subject to the rule's requirements. The amendments also align Texas integrity rules with the federal requirements and state that operators of pipelines subject to 49 CFR §192.710 shall follow the remediation requirements.

Atmos commented in support of the proposed amendments to §8.101. The Commission appreciates this comment.

PBPA and TXOGA requested that the title of Figure 2 in §8.101(b)(2) be revised from "Liquid Pipelines" to "Liquid Pipelines Subject to 49 CFR Part 195 Requirements." The commenters noted that the Commission generally requires that interstate, rural, non-regulated systems be permitted. Non-regulated systems that are permitted should not also be subject to Pipeline Integrity Assessment and Management Plans in §8.101. This is stated in proposed rule language and for consistency should also be clearly referenced in the title of Figure 2.

The Commission declines to make this change. The applicability of the section to pipeline facilities used in the transportation of hazardous liquids or carbon dioxide subject to 49 CFR Part 195 is stated in subsection (b) and an additional change to the figure is unnecessary. In addition, updating the title of this figure would create inconsistency with other figures in Chapter 8, some of which were not included in this proposal.

The Pipeline Safety Trust commented that the reassessment interval of ten years for natural gas and hazardous liquids pipelines is too long. Conditions can change quickly over a decade, and frequent assessment is needed to ensure operators are repairing and monitoring their pipelines effectively. The Pipeline Safety Trust suggested that the Commission change the requirement for reassessment intervals to not exceed five years for both §8.101(b)(1)(F)(i) and (ii).

The Commission declines to make the requested change because the Commission does not support decreasing the interval to five years without first seeking input from affected operators. Changing the interval from every ten years to every five years would create a significant cost for operators, and they should have an opportunity to comment. The Commission will consider the Pipeline Safety Trust's suggestion in assessing future changes to §8.101.

Regarding amendments proposed in §8.115, Atmos commented that it has worked with the Pipeline Safety Division since 2020 to improve reporting on construction projects. Based on those filings, Atmos believes the intent of new subsection §8.115(a)(6) is to require reporting on projects less than three miles in length only if the project results in a new distribution system ID. To clarify the language further, Atmos suggested that "10" be replaced with "3" in subsection (a)(6) and the language relating to a new subdivision be removed. Also, Atmos suggested a change to §8.115(b) to clarify that extension requests should be made by emailing PS-48Reports@rrc.texas.gov.

The Commission agrees with Atmos's suggestions and adopts §8.115 with changes based on Atmos's comments. The Commission incorporates Atmos's suggestions into §8.115(a)(5) and moves existing language from subsection (a)(5) relating to systems at least three miles in length but less than ten miles in length to subsection (a)(6). With this change, adopted subsection (a)(5) will address systems less than three miles in length and subsection (a)(6) will address those at least three miles but less than ten miles.

Sierra Club also commented on the proposed amendments to §8.115. Sierra Club expressed support for the requirement for a new liquefied natural gas (LNG) plant or LNG facility construction to notify the Commission not later than 60 days before beginning construction. Sierra Club disagreed that a reporting exemption should be provided to facilities less than three miles in length and recommended this exemption be removed.

The Commission disagrees and declines to remove the exemption. The Commission notes that due to the clarifying changes

adopted in §8.115(a)(5) and (a)(6), if construction of a new liquefied petroleum gas distribution system, natural gas distribution system, or master meter system less than three miles in length results in a new distribution system ID, the operator is subject to a reporting requirement. Thus, the exemption only applies when construction is less than three miles in length and does not result in a new distribution system ID. The requirements in §8.115 are intended to ensure the Commission receives notification of large replacement projects for inspection. While operators are not required to report smaller replacement projects, the Commission still performs inspections for smaller replacement projects.

Atmos commented in support of the amendments to §8.125. The Commission appreciates this comment.

Atmos also commented in support of the amendments to §8.201, as long as the payment system can capture large amounts.

The Commission performed testing to ensure the payment portal can capture large amounts.

The Sierra Club commented expressing support for the updates in §8.208. However, Sierra Club opposes the removal of a mandatory reporting requirement in favor of a requirement to maintain records. Sierra Club stated it believes it is better public policy for the operators to report annually to the division on their efforts to replace compression couplings.

The Commission declines to make changes in response to this comment. Since the implementation of §8.208, operators have completed the replacement of all known compression couplings that required removal. However, the Commission will still inspect facilities for compliance with §8.208 during standard comprehensive inspections.

Atmos and TGS commented regarding the proposed amendments to §8.209(j), which were intended to clarify how an operator of a gas distribution system that is subject to the requirements of §7.310 of this title (relating to System of Accounts) may account for the investment and expense incurred to comply with the requirements of §8.209. The comments state that operators have calculated and applied interest in accordance with the rule and on a consistent basis since the rule's original adoption. Atmos provided more information regarding the methodology of the calculation, which records simple interest on the balance of the designated regulatory asset accounts using a monthly interest rate equal to one twelfth of the pre-tax weighted average cost of capital last approved by the Commission for each division. Atmos expressed support for a modification to the proposed language to clarify that methodology.

The Commission adopts §8.209 with changes to address these concerns. The language adopted in subsection (j)(1)(C) will allow the operator to record simple interest on the balance in the designated distribution facility replacement accounts using a monthly interest rate equal to one-twelfth of the pre-tax weighted average cost of capital last approved for the utility by the Commission.

Atmos and the Pipeline Safety Trust commented in support of the proposed amendments to §8.210(e). Sierra Club also expressed support, stating the amendment was a welcome and needed change. The Commission appreciates these comments.

The Pipeline Safety Trust commented suggesting the Commission include additional reporting requirements for estimated leak volume. The comment stated including estimated leak volume will allow the Commission to obtain more information regarding the impact of the leaks, and may help inform other state agen-

cies, such as the Texas Commission on Environmental Quality, on leak impacts.

The Commission declines to include estimated leak volume at this time. PHMSA's pending leak detection and repair rule may impact Commission requirements in §8.210. Thus, the Commission will wait to consider further changes to §8.210 until PHMSA's rule is finalized.

The Commission appreciates the input from all those who submitted comments.

The adopted rule language is summarized in the paragraphs below.

The Commission adopts amendments to §8.1(a)(1)(B) to clarify the requirements for gas production lines located in populated areas. As stated above, the Commission adopts §8.1(a)(1)(B) with a change to remove Type C pipelines based on the comments. The amendments in §8.1(a)(1)(B) also impact current requirements under §3.70, relating to Pipeline Permits Required. The Commission adopts amendments to §3.70 concurrently to these amendments to rules in Chapter 8.

The Commission adopts an amendment in §8.1(a)(1)(D) to clarify that all offshore pipelines (both production and gathering) located in Texas waters shall follow 49 CFR 192 and 49 CFR 195.

The Commission adopts an amendment to §8.1(b) to update the minimum safety standards and to adopt by reference the Department of Transportation (DOT) pipeline safety standards found in 49 CFR Part 191, Transportation of Natural and Other Gas by Pipeline; Annual Reports, Incident Reports, and Safety-Related Condition Reports; 49 CFR Part 192, Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards; and 49 CFR Part 195, Transportation of Hazardous Liquids by Pipeline. Current subsection (b) adopted the federal pipeline safety standards as of September 6, 2021. The amendment changes the date to December 9, 2024, the effective date of the rule amendments, to capture the following federal PHMSA pipeline safety rule amendments: Docket No. PHMSA-2011-0023: Amdt. Nos. 191-30 and 192-129, revising the Federal Pipeline Safety Regulations to improve the safety of onshore gas gathering pipelines effective May 16, 2022; Docket No. PHMSA-2011-0023: Amdt. Nos. 191-31 and 192-131, effective May 16, 2022, denying a petition for reconsideration of the final rule titled "Safety of Gas Gathering Pipelines: Extension of Reporting Requirements, Regulation of Large, High-Pressure Lines, and Other Related Amendments" and making clarifications and two technical corrections to that rulemaking; Docket No. PHMSA-2013-0255: Amdt. Nos. 192-130 and 195-105, revising the Federal Pipeline Safety Regulations applicable to most newly constructed and entirely replaced onshore gas transmission, Type A gas gathering, and hazardous liquid pipelines with diameters of six inches or greater, effective October 5, 2022; Docket No. PHMSA-2013-0255: Amdt. Nos. 192-134 and 195-106, effective August 1, 2023, making editorial and technical corrections clarifying the regulations promulgated in its April 8, 2022, final rule titled "Pipeline Safety: Requirement of Valve Installation and Minimum Rupture Detection Standards" for certain gas, hazardous liquid, and carbon dioxide pipelines; Docket No. PHMSA-2011-0023: Amdt. No. 192-132, amending the federal pipeline safety regulations in 49 CFR Part 192 to improve the safety of onshore gas transmission pipelines effective May 24, 2023; Docket No. PHMSA-2011-0023: Amdt. No. 192-133, also effective May 24, 2023, making necessary technical corrections in 49 CFR Part 192 to ensure consistency

within, and the intended effect of, a recently issued final rule titled "Safety of Gas Transmission Pipelines: Repair Criteria, Integrity Management Improvements, Cathodic Protection, Management of Change, and Other Related Amendments"; and Docket No. PHMSA-2016-0002, Amdt. Nos. 192-135, 195-107, amending 49 CFR Parts 192 and 195 regarding periodic updates of regulatory references to technical standards and miscellaneous amendments which amended the Federal pipeline safety regulations (PSRs) to incorporate by reference all or parts of more than 20 new or updated voluntary, consensus industry technical standards, effective June 28, 2024.

The Commission adopts amendments in §8.1(b)(3) to align the rule text with federal exemptions allowed under 49 CFR §199.2(c)(1).

The Commission adopts several amendments in §8.101. First, the amendments in subsection (b) clarify which pipelines referenced in 49 CFR Part 195 are subject to subsection (b)'s requirements - pipeline facilities used in the transportation of hazardous liquids or carbon dioxide. The current rule's figure clarified which pipelines were subject to the requirements but the rule language was unclear. The Commission also adopts amendments in §8.101(b)(1)(C) and (b)(1)(F) to align state integrity rules with the federal requirements. Amendments in §8.101(d) state that operators of pipelines subject to 49 CFR §192.710 shall follow the remediation requirements required by 49 CFR §192.710(f). Corresponding changes are made to a Figure in the section.

The Commission adopts amendments in §8.110 to incorporate PHMSA definitions of types of gathering lines. For gas, the amendments incorporate new terms "Type C" and "Type R"; for liquid, the amendments incorporate the designation "reporting-regulated-only" gathering lines. These amendments incorporate the newer terminology consistent with federal rules.

The Commission adopts amendments to §8.115 with changes from the proposal. Section 8.115 requires operators of liquefied natural gas (LNG) facilities to report the construction of a new LNG plant or LNG facility to the Commission. The Commission adopts amendments in current §8.115(a)(4), renumbered as paragraph (5), to clarify that for new, relocated, or replacement construction on liquefied petroleum gas distribution systems, natural gas distribution systems, or master meter systems less than three miles in length, no construction notification is required. However, new construction for systems less than three miles in length is required to be reported if the construction results in a new distribution system ID. The Commission adopts paragraphs (5) and (6) with changes to better reflect the intent of reporting requirements. Amendments in current subsection (a)(7), renumbered as paragraph (8), exempt Type R gas gathering pipelines and the "reporting-regulated-only" liquid gathering pipelines from the construction notification requirement. Type C pipelines must still comply with this requirement. The other amendments in §8.115 allow electronic filing of required forms and reports either through email or using the Commission's online application for inspections and permits, which is currently called the Pipeline Inspection Permitting System (PIPES) and is available on the Commission's website. Section 8.115 is adopted with another change to specify how to file a request for an extension.

The Commission adopts amendments to §8.125(e) to change terminology to align with the Commission's online filing system called CASES. Applications previously referred to as "dockets" are now called "cases." In addition, amendments in subsection (e) require that a notice of a waiver application include the divi-

sion's email address in addition to other required contents. Similarly, amendments in subsection (f) allow affected persons who have received notice of a waiver application to object to, support, or request a hearing via email.

The Commission adopts amendments to §8.201(b)(2) and (c)(1) to require payments through the Commission's online application for inspections and permits, PIPES.

The Commission adopts amendments in §8.208(j) to change reporting requirements. Commission staff states operators no longer need to file these reports with the Commission. Instead, they should maintain a progress report annually and provide to the Commission upon request.

The Commission adopts an amendment in §8.209(a) to clarify that 49 CFR §192.1003(b) may provide an exemption. The Commission also adopts amendments in subsection (j) to clarify how an operator of a gas distribution system that is subject to the requirements of §7.310 of this title (relating to System of Accounts) may account for the investment and expense incurred to comply with the requirements of §8.209. The Commission adopts §8.209 with changes based on comments from Atmos and TGS. The language adopted in subsection (j)(1)(C) will allow the operator to record simple interest on the balance in the designated distribution facility replacement accounts using a monthly interest rate equal to one-twelfth of the pre-tax weighted average cost of capital last approved for the utility by the Commission.

The Commission adopts amendments in §8.210(e) to require an operator to submit the PS-95 even if there are no leaks discovered. Additional amendments add references to the Commission's online permit application.

The Commission adopts the amendments under Texas Natural Resources Code, §81.051 and §81.052, which give the Commission jurisdiction over all common carrier pipelines in Texas, persons owning or operating pipelines in Texas, and their pipelines and oil and gas wells, and authorize the Commission to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission, including such rules as the Commission may consider necessary and appropriate to implement state responsibility under any federal law or rules governing such persons and their operations; Texas Natural Resources Code, §§117.001-117.101, which give the Commission jurisdiction over all pipeline transportation of hazardous liquids or carbon dioxide and over all hazardous liquid or carbon dioxide pipeline facilities as provided by 49 U.S.C. Section 60101, et seq.; and Texas Utilities Code, §§121.201-121.210, 121.213-121.214, which authorize the Commission to adopt safety standards and practices applicable to the transportation of gas and to associated pipeline facilities within Texas to the maximum degree permissible under, and to take any other requisite action in accordance with, 49 United States Code Annotated, §§60101, et seq.

SUBCHAPTER A. GENERAL REQUIREMENTS AND DEFINITIONS

16 TAC §8.1

Statutory authority: Texas Natural Resources Code, §81.051, §81.052, and §§117.001-117.101; Texas Utilities Code, §§121.201-121.211; §§121.213-121.214; §121.251 and §121.253, §§121.5005-121.507; and 49 United States Code Annotated, §§60101, et seq.

Cross-reference to statute: Texas Natural Resources Code, Chapter 81 and Chapter 117; Texas Utilities Code, Chapter 121; and 49 United States Code Annotated, Chapter 601.

§8.1. General Applicability and Standards.

(a) Applicability.

(1) The rules in this chapter establish minimum standards of accepted good practice and apply to:

(A) all gas pipeline facilities and facilities used in the intrastate transportation of gas, including LPG distribution systems and master metered systems, as provided in 49 United States Code (U.S.C.) §§60101, et seq.; and Texas Utilities Code, §§121.001 - 121.507;

(B) onshore production pipelines and production facilities, in Class 2, 3, or 4 locations as defined by 49 CFR §192.5, beginning after the first point of measurement and ending as defined by 49 CFR Part 192 as the beginning of an onshore gathering line. These production pipelines and production facilities shall be subject to 49 CFR §192.8(c) in determining if these pipelines and facilities are Type A or Type B and are subject to the rules in 49 CFR §192.9 for Type A or Type B pipelines;

(C) the intrastate pipeline transportation of hazardous liquids or carbon dioxide and all intrastate pipeline facilities as provided in 49 U.S.C. §§60101, et seq.; and Texas Natural Resources Code, §117.011 and §117.012; and

(D) all pipeline facilities originating in Texas waters (three marine leagues and all bay areas). These pipeline facilities include those production and flow lines originating at the well. These facilities shall be subject to 49 CFR Part 192 for natural gas pipelines and 49 CFR Part 195 for hazardous liquid pipelines.

(2) The regulations do not apply to those facilities and transportation services subject to federal jurisdiction under: 15 U.S.C. §§717, et seq.; or 49 U.S.C. §§60101, et seq.

(b) Minimum safety standards. The Commission adopts by reference the following provisions, as modified in this chapter, effective December 9, 2024.

(1) Natural gas pipelines, including LPG distribution systems and master metered systems, shall be designed, constructed, maintained, and operated in accordance with 49 U.S.C. §§60101, et seq.; 49 Code of Federal Regulations (CFR) Part 191, Transportation of Natural and Other Gas by Pipeline; Annual Reports, Incident Reports, and Safety-Related Condition Reports; 49 CFR Part 192, Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards; and 49 CFR Part 193, Liquefied Natural Gas Facilities: Federal Safety Standards.

(2) Hazardous liquids or carbon dioxide pipelines shall comply with 49 U.S.C. §§60101, et seq.; and 49 CFR Part 195, Transportation of Hazardous Liquids by Pipeline.

(3) All operators of pipelines and/or pipeline facilities, except operators that only operate one or more master meter systems, as defined in 49 CFR §191.3, shall comply with 49 CFR Part 199, Drug and Alcohol Testing, and 49 CFR Part 40, Procedures for Transportation Workplace Drug and Alcohol Testing Programs.

(4) All operators of pipelines and/or pipeline facilities regulated by this chapter, other than master metered systems and distribution systems, shall comply with §3.70 of this title (relating to Pipeline Permits Required).

(c) Special situations. Nothing in this chapter shall prevent the Commission, after notice and hearing, from prescribing more stringent

standards in particular situations. In special circumstances, the Commission may require the following:

(1) Any operator which cannot determine to its satisfaction the standards applicable to special circumstances may request in writing the Commission's advice and recommendations. In a special case, and for good cause shown, the Commission may authorize exemption, modification, or temporary suspension of any of the provisions of this chapter, pursuant to the provisions of §8.125 of this title (relating to Waiver Procedure).

(2) If an operator transports gas and/or operates pipeline facilities which are in part subject to the jurisdiction of the Commission and in part subject to the Department of Transportation pursuant to 49 U.S.C. §§60101, et seq.; the operator may request in writing to the Commission that all of its pipeline facilities and transportation be subject to the exclusive jurisdiction of the Department of Transportation. If the operator files a written statement under oath that it will fully comply with the federal safety rules and regulations, the Commission may grant an exemption from compliance with this chapter.

(d) Retention of DOT filings. A person filing any document or information with the Department of Transportation pursuant to the requirements of 49 CFR Parts 190, 191, 192, 193, 195, or 199 shall retain a copy of that document or information. Such person is not required to concurrently file that document or information with the Division unless another rule in this chapter requires the document or information to be filed with the Division or unless the Division requests a copy.

(e) Penalties. A person who submits incorrect or false information with the intent of misleading the Commission regarding any material aspect of an application or other information required to be filed at the Commission may be penalized as set out in Texas Natural Resources Code, §§117.051 - 117.054, and/or Texas Utilities Code, §§121.206 - 121.210, and the Commission may dismiss with prejudice or reject an application containing incorrect or false information or reject any other filing containing incorrect or false information.

(f) Retroactivity. Nothing in this chapter shall be applied retroactively to any existing intrastate pipeline facilities concerning design, fabrication, installation, or established operating pressure, except as required by the Office of Pipeline Safety, Department of Transportation. All intrastate pipeline facilities shall be subject to the other safety requirements of this chapter.

(g) Compliance deadlines. Operators shall comply with the applicable requirements of this section according to the following guidelines.

(1) Each operator of a pipeline and/or pipeline facility that is new, replaced, relocated, or otherwise changed shall comply with the applicable requirements of this section at the time the pipeline and/or pipeline facility goes into service.

(2) An operator whose pipeline and/or pipeline facility was not previously regulated but has become subject to regulation pursuant to the changed definition in 49 CFR Part 192 and subsection (a)(1)(B) of this section shall comply with the applicable requirements of this section no later than the stated date:

- (A) for cathodic protection (49 CFR Part 192), March 1, 2012;
- (B) for damage prevention (49 CFR 192.614), September 1, 2010;
- (C) to establish an MAOP (49 CFR 192.619), March 1, 2010;

(D) for line markers (49 CFR 192.707), March 1, 2011;

(E) for public education and liaison (49 CFR 192.616), March 1, 2011; and

(F) for other provisions applicable to Type A gathering lines (49 CFR 192.8(c)), March 1, 2011.

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 19, 2024.

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For further information, please call: (512) 475-1295



SUBCHAPTER B. REQUIREMENTS FOR ALL PIPELINES

16 TAC §§8.101, 8.110, 8.115, 8.125

The Commission adopts the amendments under Texas Natural Resources Code, §81.051 and §81.052, which give the Commission jurisdiction over all common carrier pipelines in Texas, persons owning or operating pipelines in Texas, and their pipelines and oil and gas wells, and authorize the Commission to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission, including such rules as the Commission may consider necessary and appropriate to implement state responsibility under any federal law or rules governing such persons and their operations; Texas Natural Resources Code, §§117.001-117.101, which give the Commission jurisdiction over all pipeline transportation of hazardous liquids or carbon dioxide and over all hazardous liquid or carbon dioxide pipeline facilities as provided by 49 U.S.C. Section 60101, et seq.; and Texas Utilities Code, §§121.201-121.210, 121.213-121.214, which authorize the Commission to adopt safety standards and practices applicable to the transportation of gas and to associated pipeline facilities within Texas to the maximum degree permissible under, and to take any other requisite action in accordance with, 49 United States Code Annotated, §§60101, et seq.

Statutory authority: Texas Natural Resources Code, §81.051, §81.052, and §§117.001-117.101; Texas Utilities Code, §§121.201-121.211; §§121.213-121.214; §121.251 and §121.253, §§121.5005-121.507; and 49 United States Code Annotated, §§60101, et seq.

Cross-reference to statute: Texas Natural Resources Code, Chapter 81 and Chapter 117; Texas Utilities Code, Chapter 121; and 49 United States Code Annotated, Chapter 601.

§8.115. *New Construction Commencement Report.*

(a) An operator shall notify the Commission before the construction of pipelines and other facilities as follows.

(1) For construction of a new, relocated, or replacement pipeline 10 miles in length or longer including liquified petroleum gas distribution systems, natural gas distribution systems, and master meter systems 10 miles in length or longer, an operator shall notify the Commission not later than 60 days before construction.

(2) For construction of a new LNG plant or LNG facility, an operator shall notify the Commission not later than 60 days before construction.

(3) Except as provided in paragraphs (5) and (6) of this subsection, for construction of a new, relocated, or replacement pipeline at least one mile in length but less than 10 miles, an operator shall notify the Commission not later than 30 days before construction.

(4) For installation of any permanent breakout tank, an operator shall notify the Commission not later than 30 days before installation. For installation of mobile, temporary, or prefabricated breakout tanks, an operator shall notify the Commission upon placing the mobile, temporary, or prefabricated breakout tank in service.

(5) For new, relocated, or replacement construction on liquified petroleum gas distribution systems, natural gas distribution systems, or master meter systems less than three miles in length, no construction notification is required unless new construction results in a new distribution system ID. If the construction results in a new distribution system ID, the operator shall either:

(A) notify the Commission not later than 30 days before construction by filing a Form PS-48 New Construction Report for every initial construction; or

(B) provide to the Commission a monthly report that reflects all known projects planned to be completed in the following 12 months, all projects that are currently in construction, and all projects completed since the prior monthly report. The report should provide the status of each project, the city and county of each project, a description of each project, and the estimated starting and ending date. These monthly reports shall be filed by email to PS-48Reports@rrc.texas.gov.

(6) For new, relocated, or replacement construction on liquified petroleum gas distribution systems, natural gas distribution systems, or master meter systems at least three miles in length but less than 10 miles in length, an operator shall either:

(A) notify the Commission not later than 30 days before construction by filing a Form PS-48 New Construction Report for every relocated or replacement construction; or

(B) provide to the Commission a monthly report that reflects all known projects planned to be completed in the following 12 months, all projects that are currently in construction, and all projects completed since the prior monthly report. The report should provide the status of each project, the city and county of each project, a description of each project, and the estimated starting and ending date. These monthly reports shall be filed by email to PS-48Reports@rrc.texas.gov.

(7) For construction of a sour gas pipeline and/or pipeline facilities, as defined in §3.106 of this title (relating to Sour Gas Pipeline Facility Construction Permit), an operator shall notify the Commission not later than 30 days before construction by filing Form PS-48 and Form PS-79.

(8) Pipelines subject to §8.110(a)(2) and (3) of this title (relating to Gathering Pipelines) are exempt from the construction notification requirement.

(b) Any of the notifications required by subsection (a) of this section, unless an operator elects to use the alternative notification allowed by subsection (a)(5) or (a)(6) of this section, shall be made by

filing a Form PS-48 New Construction Report using the Commission's online application available on the Commission's website. The report shall include the proposed originating and terminating points for the pipeline, counties to be traversed, size and type of pipe to be used, type of service, design pressure, and length of the proposed line. If a notification is not feasible because of an emergency, an operator must notify the Commission as soon as practicable. A Form PS-48 that has been filed with the Commission shall expire if construction is not commenced within eight months of date the report is filed. An operator may submit one extension, which will keep the report active for an additional six months. Extension requests shall be made by emailing PS-48Reports@rrc.texas.gov. After one extension, the Form PS-48 will expire.

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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For further information, please call: (512) 475-1295



SUBCHAPTER C. REQUIREMENTS FOR GAS PIPELINES ONLY

16 TAC §§8.201, 8.208 - 8.210

The Commission adopts the amendments under Texas Natural Resources Code, §81.051 and §81.052, which give the Commission jurisdiction over all common carrier pipelines in Texas, persons owning or operating pipelines in Texas, and their pipelines and oil and gas wells, and authorize the Commission to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission, including such rules as the Commission may consider necessary and appropriate to implement state responsibility under any federal law or rules governing such persons and their operations; Texas Natural Resources Code, §§117.001-117.101, which give the Commission jurisdiction over all pipeline transportation of hazardous liquids or carbon dioxide and over all hazardous liquid or carbon dioxide pipeline facilities as provided by 49 U.S.C. Section 60101, et seq.; and Texas Utilities Code, §§121.201-121.210, 121.213-121.214, which authorize the Commission to adopt safety standards and practices applicable to the transportation of gas and to associated pipeline facilities within Texas to the maximum degree permissible under, and to take any other requisite action in accordance with, 49 United States Code Annotated, §§60101, et seq.

Statutory authority: Texas Natural Resources Code, §81.051, §81.052, and §§117.001-117.101; Texas Utilities Code, §§121.201-121.211; §§121.213-121.214; §121.251 and §121.253, §§121.5005-121.507; and 49 United States Code Annotated, §§60101, et seq.

Cross-reference to statute: Texas Natural Resources Code, Chapter 81 and Chapter 117; Texas Utilities Code, Chapter 121; and 49 United States Code Annotated, Chapter 601.

§8.209. *Distribution Facilities Replacements.*

(a) Unless exempted by 49 CFR §192.1003(b), this section applies to each operator of a gas distribution system that is subject to the requirements of 49 CFR Part 192. This section prescribes the minimum requirements by which all operators will develop and implement a risk-based program for the removal or replacement of distribution facilities, including steel service lines, in such gas distribution systems. The risk-based program will work in conjunction with the Distribution Integrity Management Program (DIMP) using scheduled replacements to manage identified risks associated with the integrity of distribution facilities.

(b) Each operator must make joints on below-ground piping that meets the following requirements:

(1) Joints on steel pipe must be welded or designed and installed to resist longitudinal pullout or thrust forces per 49 CFR §192.273.

(2) Joints on plastic pipe must be fused or designed and installed to resist longitudinal pullout or thrust forces per ASTM D2513-Category 1.

(c) Each operator must establish written procedures for implementing the requirements of this section. Each operator must develop a risk-based program to determine the relative risks and their associated consequences within each pipeline system or segment. Each operator that determines that steel service lines are the greatest risk must conduct the steel service line leak repair analysis set forth in subsection (d) of this section and use the prescriptive model in subsection (f) of this section for the replacement of those steel service lines.

(d) In developing its risk-based program, each operator must develop a risk analysis using data collected under its DIMP and the data submitted on the PS-95 to determine the risks associated with each of the operator's distribution systems and establish its own risk ranking for pipeline segments and facilities to determine a prioritized schedule for service line or facility replacement. The operator must support the analysis with data, collected to validate system integrity, that allow for the identification of segments or facilities within the system that have the highest relative risk ranking or consequence in the event of a failure. The operator must identify in its risk-based program the distribution piping, by segment, that poses the greatest risk to the operation of the system. In addition, each operator that determines that steel service lines are the greatest risk must conduct a steel service line leak repair analysis to determine the leak repair rate for steel service lines. The leak repair rate for below-ground steel service lines is determined by dividing the annualized number of below-ground leaks repaired on steel service lines (excluding third-party leaks and leaks on steel service lines removed or replaced under this section) by the total number of steel service lines as reported on PHMSA Form F 7100.1-1, the Gas Distribution System Annual Report. Each operator that determines that steel service lines are the greatest risk must conduct the steel service line leak repair analysis using the most recent three calendar years of data reported to the Commission on Form PS-95.

(e) Each operator must create a risk model that will identify by segment those lines that pose the highest risk ranking or consequence of failure. The determination of risk is based on the degree of hazard associated with the risk factors assigned to the pipeline segments or facilities within each of the operator's distribution systems. The priority of service line or facility replacement is determined by classifying each pipeline segment or facility based on its degree of hazard associated with each risk factor. Each operator must establish its own risk

ranking for pipeline segments or facilities to determine the priority for necessary service line or facility replacements. Each operator should include the following factors in developing its risk analysis:

(1) pipe location, including proximity to buildings or other structures and the type and use of the buildings and proximity to areas of concentrations of people;

(2) composition and nature of the piping system, including the age of the pipe, materials, type of facilities, operating pressures, leak history records, prior leak grade repairs, and other studies;

(3) corrosion history of the pipeline, including known areas of significant corrosion or areas where corrosive environments are known to exist, cased crossings of roads, highways, railroads, or other similar locations where there is susceptibility to unique corrosive conditions;

(4) environmental factors that affect gas migration, including conditions that could increase the potential for leakage or cause leaking gas to migrate to an area where it could create a hazard, such as extreme weather conditions or events (significant amounts or extended periods of rainfall, extended periods of drought, unusual or prolonged freezing weather, hurricanes, etc.); particular soil conditions; unstable soil; or areas subject to earth movement, subsidence, or extensive growth of tree roots around pipeline facilities that can exert substantial longitudinal force on the pipe and nearby joints; and

(5) any other condition known to the operator that has significant potential to initiate a leak or to permit leaking gas to migrate to an area where it could result in a hazard, including construction activity near the pipeline, wall-to-wall pavement, trenchless excavation activities (e.g., boring), blasting, large earth-moving equipment, heavy traffic, increase in operating pressure, and other similar activities or conditions.

(f) This subsection applies to operators that determine under subsection (c) of this section that steel service lines are the greatest risk. Based on the results of the steel service line leak repair analysis under subsection (d) of this section, each operator must categorize each segment and complete the removal and replacement of steel service lines by segment according to the risk ranking established pursuant to subsection (e) of this section as follows:

(1) a segment with an annualized steel service line leak rate of 5% or greater but less than 7.5% is a Priority 1 segment and an operator must remove or replace no less than 10% of the original inventory per year; and

(2) a segment with an annualized steel service line leak rate of less than 5% is a Priority 2 segment. An operator is not required to remove or replace any Priority 2 segments; however, upon discovery of a leak on a Priority 2 segment, the operator must remove or replace rather than repair those lines except as outlined in subsection (g) of this section.

(g) For those steel service lines that must remain in service because of specific operational conditions or requirements, each operator must determine if an integrity risk exists on the segment, and if so, must replace the segment with steel as part of the integrity management plan.

(h) All replacement programs require a minimum annual replacement of 8% of the pipeline segments or facilities posing the greatest risk in the system and identified for replacement pursuant to this section. Each operator with steel service lines subject to subsection (f) of this section must establish a schedule for the replacement of steel service lines or other distribution facilities according to the risk ranking established as part of the operator's risk-based program and must

submit the schedule to the Division for review and approval or amendment under subsection (c) of this section.

(i) In conjunction with the filing of the pipeline safety and regulatory program fee pursuant to §8.201 of this title (relating to Pipeline Safety and Regulatory Program Fees) and no later than March 15 of each year, each operator must file with the Division:

(1) by System ID, a list of the steel service line or other distribution facilities replaced during the prior calendar year; and

(2) the operator's proposed work plan for removal or replacement for the current calendar year, the implementation of which is subject to review and amendment by the Division. Each operator must notify the Division of any revisions to the proposed work plan and, if requested, provide justification for such revision. Within 45 days after receipt of an operator's proposed revisions to its risk-based plan and work plan, the Division will notify the operator either of the acceptance of the risk-based program and work plan or of the necessary modifications to the risk-based program and work plan.

(j) Each operator of a gas distribution system that is subject to the requirements of §7.310 of this title (relating to System of Accounts) may use the provisions of this subsection to account for the investment and expense incurred by the operator to comply with the requirements of this section.

(1) The operator may:

(A) establish one or more designated regulatory asset accounts in which to record any expenses incurred by the operator in connection with acquisition, installation, or operation (including related depreciation) of facilities that are subject to the requirements of this section;

(B) record in one or more designated plant accounts capital costs incurred by the operator for the installation of facilities that are subject to the requirements of this section;

(C) record interest on the balance in the designated distribution facility replacement accounts using a monthly interest rate equal to one-twelfth of the pretax weighted average cost of capital last approved for the utility by the Commission;

(D) reduce balances in the designated distribution facility replacement accounts by the amounts that are included in and recovered through rates established in a subsequent Statement of Intent filing or other rate adjustment mechanism; and

(E) use the presumption set forth in §7.503 of this title (relating to Evidentiary Treatment of Uncontroverted Books and Records of Gas Utilities) with respect to investment and expense incurred by a gas utility for distribution facilities replacement made pursuant to this section.

(2) This subsection does not render any final determination of the reasonableness or necessity of any investment or expense.

(k) A distribution gas pipeline facility operator shall not install as a part of the operator's underground system a cast iron, wrought iron, or bare steel pipeline. A distribution gas pipeline facility operator shall replace any known cast iron pipelines installed as part of the operator's underground system not later than December 31, 2021.

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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**PART 2. PUBLIC UTILITY
COMMISSION OF TEXAS**

**CHAPTER 25. SUBSTANTIVE RULES
APPLICABLE TO ELECTRIC SERVICE
PROVIDERS**

**SUBCHAPTER E. CERTIFICATION,
LICENSING AND REGISTRATION**

16 TAC §25.114

The Public Utility Commission of Texas (commission) adopts new §25.114, relating to Registration of Virtual Currency Mining Facilities, with changes to the proposed text as published in the September 13, 2024, issue of the *Texas Register* (49 TexReg 7173). The adopted rule implements Public Utility Regulatory Act (PURA) §39.360 as enacted by Senate Bill (SB) 1929 from the 88th Texas Legislature (R.S.). The new rule establishes a process for the registration of virtual currency mining facilities in the Electric Reliability Council of Texas (ERCOT) region. Specifically, the rule requires a registrant to provide information to the commission annually about its virtual currency mining facility's location, owners, form of business, and demand for electricity. Additionally, the adopted rule provides that the commission will share the registrants' information with ERCOT. The rule is adopted in Project No. 56962. The rule will be republished.

The commission received comments on proposed new §25.114 from ERCOT, MARA Holdings, Inc. (MARA), Satoshi Energy, Texas Blockchain Council (TBC), Texas Electric Cooperatives, Inc., (TEC), Texas Industrial Energy Consumers, (TIEC), and Vistra Corp. (Vistra).

General comments

MARA requested the commission develop a standardized form for registration.

Commission Response

The commission agrees and will make a standardized online registration form available on its website.

Vistra recommended that the commission restart the rulemaking process and withdraw the proposed rulemaking. Vistra claimed that the proposed rule fails to give effect to PURA §39.360, which requires the commission to establish generally applicable large flexible load registration requirements.

Commission Response

The commission disagrees that the rule fails to give effect to PURA §39.360. Although the statute requires the registration of a virtual currency mining facility as a large flexible load, the statute is silent on the characteristics of a large flexible load and whether other entities should be required to register as such

at this time. However, the statute unambiguously requires the registration of virtual currency mining facilities. Accordingly, the commission declines to withdraw the proposed rule, as recommended by *Vistra*.

Satoshi Energy recommended the addition of three items into the registration rule. First, the commission should develop rules to ensure there is a process for attributing how much of a load is dedicated to virtual currency mining, allowing for updates at regular intervals. Second, a load should not be required to register as a virtual currency mine unless its electric consumption constitutes a substantial portion (equal to or more than 50 percent) of the total load consumption of the load facility. Third, a deregistration process should be established for virtual currency mining loads that are repurposed for other types of consumption.

Commission Response

The commission declines to modify the rule to establish a process for determining how much of a load is dedicated to virtual currency mining or to only require registration of facilities with a substantial portion of load dedicated to virtual currency mining. As required by PURA §39.360, registration is required for virtual currency mining facilities that have a total load of more than 75 megawatts (MWs) and that have an interruptible facility load. Further, PURA defines a virtual currency mining facility as "a facility that uses electronic equipment to add virtual currency transactions to a distribution ledger." Since it is the statute, not commission rule, that establishes this registration requirement, the commission cannot, by rule, exempt a facility that meets that definition from the commission's registration requirement.

However, because the commission recognizes that the purpose of the statute is to provide the commission and ERCOT with information for reliability purposes, the commission interprets interruptible facility load to mean that a facility must have at least 10 percent interruptible load to be required to register - it is the interruptibility of the load that is directly relevant for reliability. While not all interruptible load is necessarily related to virtual currency mining, this at least ensures that a small amount of virtual currency mining would not result in a facility that is largely not interruptible having to register.

The commission also declines to modify the rule to include a deregistration process. If a virtual currency mining load is repurposed for another type of consumption, then the facility operator may allow its registration as a virtual currency mining facility to lapse, and it would then no longer be registered. An entity may also be able to relinquish its registration as an "update" under the rule, depending upon the functionality of the online registration tool. However, this is a practical question that is not appropriately addressed in codified rule text.

TIEC recommended the addition of a new subsection that would require ERCOT to issue a market notice concerning the registration requirements under proposed §25.114 to all load serving entities (LSEs) within ten days of the rule's effective date. Additionally, TIEC's new subsection (g) would require LSEs to notify any new or existing customers that have a load of greater than 50 MWs, or may otherwise qualify as a virtual currency mining facility, of the new registration requirements.

Commission Response

The commission declines to modify the rule to require ERCOT to issue a market notice alerting LSEs of the new registration requirements. The commission may direct commission staff to work with ERCOT to issue a market notice without codifying the

requirement in rule. The commission also declines to modify the rule to require LSEs to notify customers with a load of greater than 50 MWs of these requirements because this would impose burdens on entities to which this rule does not apply. LSEs were also not provided notice and an opportunity to comment on this potential burden in this rulemaking proceeding. Customers with a load of 50 MWs or greater are sophisticated entities that can reasonably be expected to monitor potential upcoming requirements - especially those that are directly required by legislation and were implemented as part of a rulemaking that was properly noticed under the Texas Government Code and on the commission's website.

MARA and TBC expressed concern for the safeguarding of confidential and proprietary information required in the registration. Both requested that the rule be amended to explicitly identify the information provided as confidential and proprietary while also providing robust protection of this information.

Commission Response

The commission declines to modify the rule in response to address confidentiality, as requested by MARA and TBC. The registration information will be collected via an internal-facing online tool that will not be accessible to the public. Furthermore, the majority of information being collected is already publicly available in various locations. However, neither the commission nor ERCOT will disclose competitively sensitive or proprietary information unless legally required to do so.

Proposed §25.114(a) - Registration required

Proposed subsection (a) requires a virtual currency mining facility to register as a large flexible load if it requires a total load of more than 75 MW and the facility's interruptible load equals 10 percent or more of the actual or anticipated annual peak demand of the facility with ERCOT. Proposed subsection (a) also requires registration for any virtual currency mining facility that meets the requirements and that began receiving retail electric service prior to the effective date of this rule. Proposed subsection (a) requires registration by February 1, 2025, for a facility that began receiving retail electric service prior to the effective date of this rule.

Sierra Club recommended that the commission encourage virtual currency mining facilities under 75 MW to register as additional facilities would provide important additional information to the commission. MARA disagreed with *Sierra Club*'s recommendation and requested that proposed §25.114 not be changed to add this language.

Commission Response

The commission declines to modify the rule to require or encourage registration of virtual currency mining facilities with fewer than 75 MWs of load, as requested by *Sierra Club*. The statute does not contemplate the inclusion of a facility with a load below 75 MWs, and it would be administratively cumbersome for commission staff to manage additional, patchwork data that is not required to be regularly updated. Furthermore, since the statute requires registration as "large flexible load," having smaller loads in the dataset may lead to confusion in the future.

MARA requested that the registration requirement for facilities with at least 10 percent interruptible load be deleted from the rule because such a threshold exceeds the authority granted by PURA §39.360 and "complicates the straightforward statutory framework." MARA argued that the statute only requires regis-

tration for facilities "that have a total load of more than 75 MW of interruptible load."

Commission Response

The commission disagrees with MARA's assertion that including the 10 percent interruptible load threshold as a registration criterion exceeds the commission's statutory authority. The statute requires the commission to "adopt criteria for determining whether a load is interruptible for the purposes of this section based on whether it is possible for the facility operator to choose to interrupt the load" and requires the operator to register a facility if "the facility load is interruptible." The commission gives effect to these requirements by adopting a definition of interruptible load that applies specifically to the portion of a facility's load that is interruptible because it is only this portion of the load that a facility operator can choose to interrupt. Very few, if any, facilities are completely interruptible, so to distinguish whether a "facility load is interruptible," the commission determines that a facility with 10 percent interruptible load is interruptible for purposes of the registration requirements under this rule.

The commission disagrees with MARA's assertion that the statute only requires registration of facilities "that have a total load of more than 75 MW of interruptible load." The issue with this statutory interpretation is evident from the ambiguity of MARA's own phrasing. Does the 75 MW threshold apply to the "total load" of the facility or the "interruptible load"? If the legislature had intended it to apply to the interruptible load, it could have easily expressed this intent by requiring registration of facilities "with 75 MWs of interruptible load." Instead, it established two separate requirements. First, that the total load of the facility be 75 MWs, and second, that the facility load be interruptible. Accordingly, it is appropriate - and in fact necessary - for the commission to determine how much of a facility's load is interruptible for purposes of this statute. The commission sets that threshold at 10 percent.

Additionally, MARA asserted that proposed §25.114 requires "retroactive registration" because the rule requires registration of any virtual currency mining facility that began receiving retail electric service prior to the effective date of this rule, and that retroactive application of the law would raise significant contractual and constitutional concerns. Accordingly, MARA requested that the portion of the rule that requires registration for any facility in operation prior to the effective date of the rule be removed.

Commission Response

The commission declines to modify the rule to remove the requirement for existing facilities to register under the rule, as requested by MARA. No contractual relationships will be affected by adoption of this rule. The rule only requires that virtual currency mining facilities, many of which are already in operation and have an impact on reliability in this state, register with the commission as large flexible loads. No other requirements are imposed on these entities and, in fact, failure to register does not even impede a virtual currency mining facility's ability to operate. It merely subjects the entity to an administrative penalty for failure to register.

Vistra recommended that proposed subsection (a) be modified to extend the registration deadline for registrants that began receiving retail electric service prior to the effective date of this rule to 90 days after the effective date of the rule.

Commission Response

The commission declines to extend the deadline to register, as requested by Vistra. The registration requirements under this rule are not burdensome and should not be difficult to comply with in a timely fashion. ERCOT recommended that subsection (a) be modified to specify that virtual currency mining facilities operating in the ERCOT region "at either transmission or distribution voltage" are required to register with the commission as large flexible loads.

Commission Response

The commission agrees with ERCOT's recommendation and modifies the rule accordingly. This addition clarifies the intent to capture all applicable virtual currency mining facilities, regardless of whether the load is interconnected at transmission- or distribution-level voltage.

Proposed §25.114(b) - Definitions

The proposed language for subsection (b) defines "interruptible load" as "the portion of the facility's load that the facility operator can choose to interrupt due to locational marginal prices, load zone prices, response to the ERCOT coincident peak demand for the months of June, July, August and September (4CP), or due to external grid conditions."

MARA requested that the proposed definition of "interruptible load" be modified and instead defined as load that can be ramped up or down by a facility's operator within 15 minutes, or at ERCOT's request, without violating any existing agreements or contracts.

Commission Response

The commission disagrees and declines to modify the rule as requested by MARA. The proposed definition is based on the statutory requirement that interruptibility be based on whether it is possible for the facility operator to choose to interrupt the load. The commission consulted with ERCOT to enhance the statutory definition by reflecting the circumstances in which virtual currency mining facilities interrupt their load, based on observed consumption and known business models. This definition of interruptible load provides reasonable and objective criteria for identifying the characteristics of virtual currency mining facilities that should trigger the statutory registration requirement.

Sierra Club requested that a definition of "controllable load resource" (CLR) be added to the rule.

Commission Response

The commission disagrees and declines to modify the proposed rule to include a definition of CLR, as requested by Sierra Club, because that term does not appear in the rule. Sierra Club's requested language that would use this term is addressed below.

Proposed §25.114(c) - Registration requirements

Proposed subsection (c) states the information that registrants must provide to the commission, including legal business name, mailing address, electronic mailing address, and form of business.

Sierra Club recommended modifying proposed subsection (c) to add the following requirements: whether the facility has registered as a resource entity with ERCOT, whether it has registered as a CLR, and whether it has participated or expects to participate in ancillary services available to loads.

Commission Response

The commission disagrees and declines to modify the proposed rule as recommended by Sierra Club because the suggested additions are unnecessary. ERCOT already has information about which entities have registered as a resource entity or CLR with ERCOT and which entities are eligible to participate in ancillary services programs. Furthermore, the commission does not need, for its own purposes, this information at the time a virtual currency mining facility registers as a large flexible load. The commission can obtain this information from ERCOT as needed.

MARA requested that all references to "virtual currency mining facility" be replaced with "large flexible load" in all of subsection (c).

Commission Response

The commission disagrees and declines to modify the rule as requested by MARA because the language in the proposed rule follows the statutory language, which refers to "virtual currency mining facilities," not all "large flexible loads."

Proposed §25.114(c)(1)

Proposed subsection (c)(1) requires a registrant to provide its legal business name, corporate parent, the registrant's principals, and all business names used by the facility.

MARA asserted that several of the registration requirements under proposed subsection (c)(1) were excessive or redundant. Specifically, MARA commented that requiring a registrant to disclose all business names is excessive, especially if the registrant operates under multiple business names. Additionally, MARA asserted that requiring a registrant to list the names of its principals is redundant because proposed subsection (c)(3) requires a regulatory contact.

Commission Response

The commission disagrees with MARA's comment that the proposed registration requirements are excessive and declines to modify the rule. To adequately identify virtual currency mining facilities, this identifying information is necessary. Historically, the information provided to ERCOT regarding virtual currency mining facilities has been limited to a subset of large virtual currency mining facilities and has resulted in a lack of visibility around ownership or operation of these facilities being transferred to another entity. This part of the registration requirement will assist ERCOT in identifying these operators more readily. Furthermore, PURA requires the commission to ensure compliance with these registration requirements. Having access to information such as active business names will allow the commission to quickly identify whether an identified business has already registered without having to actively attempt to identify the entity associated with a name to determine if it has registered and in the commission's records.

Proposed §25.114(c)(5)

Proposed subsection (c)(5) requires registrants to provide the commission with information that is on file with the Texas Secretary of State.

MARA stated that the requested information in proposed subsection (c)(5) is burdensome and of "questionable value" to the commission. MARA recommended that the commission work directly with the Texas Secretary of State to confirm a registrant's business standing, rather than requiring that the registrant submit information to the commission that they have already submitted to the Texas Secretary of State. MARA recommended that

proposed subsection (c)(5) be deleted entirely but also provided alternative redlines to modify the language instead.

Commission Response

The commission disagrees with MARA's assertion that the requested information in proposed subsection (c)(5) is of "questionable value" to the commission. To fully and efficiently identify virtual currency mining facilities, an evaluation of business standing in the state of Texas is necessary. Historically, the information available to the commission and ERCOT regarding virtual currency mining facilities has been limited to a subset of large virtual currency mining facilities and has resulted in a lack of visibility when ownership and operation of these facilities is transferred between entities. In addition, given the many possible names under which a facility operator could be operating, the registrant has much easier access to information it has submitted to the Texas Secretary of State than the commission does.

Proposed §25.114(c)(6)

Proposed subsection (c)(6) lists the information that a registrant must provide for each virtual currency mining facility it operates.

MARA requested that every requirement under proposed subsection (c)(6) be deleted from the rule, except for (A) and a slightly modified version of (F). Specifically, MARA's redlines would remove the following disclosure requirements: the identity of the property owner and lessor or facility host; the size of the facility and an infrastructure description; the names of the facility's transmission and distribution service providers; the percentage of site load that constitutes interruptible load under the section; the actual peak load and total power consumption for the prior year; and if applicable, details on the facility's on-site backup generation. MARA stated that the listed requirements are too detailed, go beyond the requirements of SB 1929, and offer "little information of value" to the commission.

Commission Response

The commission declines to modify the rule to remove detailed registration requirements, as requested by MARA. The proposed rule requires provision of registration information necessary for the commission and ERCOT to adequately identify, communicate with, and understand consumption and anticipated load growth attributable to large virtual currency mining facilities. The proposed rule is consistent with the purpose and the scope of the statute.

ERCOT recommended that proposed subsection (c)(6)(H) be amended to clarify that the disclosure requirement for actual peak load applies if a facility took retail electric service at any time in the previous calendar year.

Commission Response

The commission agrees that the applicability of proposed (c)(6)(H) could be clarified with the language suggested by ERCOT and modifies the rule accordingly.

Vistra recommended editing proposed subsection (c)(6)(I) to include self-generators, those served directly by a power generation company inside of a private-use network or other co-located netting arrangement.

Commission Response

The commission declines to modify the proposed rule, as requested by Vistra, to include self-generators and those served directly by a power generation company inside of a private use network or other co-located netting arrangement. Instead, the com-

mission removes subsection (c)(6)(I) to more closely align the required information with the statutory text and reduce the burden of compliance on registrants. Proposed §25.114(c)(7)(A)-(C) Proposed paragraph (c)(7) requires registrants to include an affidavit signed by a representative with binding authority over the registrant asserting that the registrant is authorized to conduct business in Texas, the statements made in the registration are true and accurate, material changes will be reflected in a timely manner, and that the registrant understands and will comply with Texas law.

MARA recommended modifying proposed subsection (c)(7) to only require an affidavit signed by a representative, officer, or other authorized person with binding authority over the registrant, to affirm that "the information provided in the registration is accurate to the best of their knowledge."

Commission Response

The commission disagrees and declines to modify the proposed rule to only require a general affirmation by an authorized individual that the registration is accurate to the best of their knowledge. The requirement that affiants affirm that the registration details are "complete and correct" is consistent with other commission rules, such as §25.112, relating to Registration of Brokers, which requires an affirmation that all statements in the application are "true, correct, and complete." Moreover, the nature of the information required for this registration is objective and should not be difficult to verify.

The other required affidavit contents are neither redundant nor excessive and facilitate the implementation of the registration program required by statute. For instance, updated information is important, and requiring an affirmation that updated information will be provided in a timely manner is necessary to ensure that an authorized representative of the registrant is actively aware of this requirement and acknowledges that these updates will occur. The broker registration rule contains a similar provision. Furthermore, customers with large loads often have interactions their transmission and distribution service providers. Given that registrants are facilities with a total load exceeding 75 MWs, requiring the registrant to communicate its compliance with the rule to its service provider is reasonable. Such notice would benefit large load planning and integration processes in the ERCOT region by ensuring that registrant information is complete and up to date.

Proposed §25.114(c)(7)(D)

Proposed subsection (c)(7)(D) requires the registrant to swear or affirm that it has notified its transmission and distribution service provider of its compliance with this section. Vistra recommended modifying proposed subsection (c)(7)(D) to require registrants to also notify retail electric providers (REPs) and any power generation company inside of a private-use network or other co-located netting arrangement. Vistra asserted that an entity, or entities, with a direct contractual relationship with a virtual currency mining facility has a vested interest in understanding whether their customer is compliant with commission requirements.

Commission Response

The commission disagrees with Vistra's assertion that proposed subsection (c)(7)(D) should be expanded to require contact between virtual currency mining facilities and their contracted business partners and declines to modify the rule accordingly. The purposes of the statute and this rule are to create and maintain a registry of virtual currency mining facilities at the commission and

for the associated registration information to be shared with ERCOT. Notice to transmission and distribution service providers is also appropriate for reliability purposes. If REPs or other entities with contractual relationships with the virtual currency mining facility are interested in this information, they can seek to obtain it directly from their business partners.

Proposed §25.114(d) - Update of registration

Proposed subsection (d) requires a registrant to file an updated registration with the commission within 30 days of a change to the information required by subsection (c).

MARA suggested that all references to "virtual currency mining facility" in this subsection be replaced with "large flexible load" and suggested modifying the provision to only require updates when there is a "material change," rather than any change. MARA recommended that material changes include changes to contact information, "significant" expansions of load beyond that originally registered, and changes to the facility's ability to curtail or interrupt load.

Commission Response

The commission disagrees and declines to modify the rule to refer to "large flexible loads" because the language in the adopted rule follows the statutory language, which refers specifically to "virtual currency mining facilities." Regarding only requiring updates for material changes, "material change" is an imprecise term that could lead to confusion as to which changes are material (e.g., what constitutes a "significant" expansion of load). Furthermore, the nature of the information required should not change frequently enough to be unduly burdensome on registrants.

To provide internal consistency throughout the rule, the commission revises subsection (c)(7)(C) to require an affidavit affirming that any changes, rather than material changes, will be provided in a timely manner.

Proposed §25.114(e) - Registration renewal

Proposed subsection (e) requires a registrant to renew its registration on or before March 1 of every calendar year. A registrant must update its information either by submitting all of the information required by subsection (c) or by submitting a statement that all of its information on file with the commission is correct.

The commission modifies the rule for clarity. Subsection (e)(1) and (2) are modified and (3) is deleted to clarify the expiration of registration upon failure to renew. March 1, is the date by which registration expires and the registrant is out of compliance with the rule. After March 1, commission staff may attempt to contact registrants to inform a facility of its failure to renew.

TEC observed that the requirements of proposed subsections (c)(6)(F) and (H) require annual information, making it impossible for all of a registrant's information on file to be correct year over year (e.g., (H) requires the facility's actual peak load for the prior year). TEC recommended allowing a registrant to update the information for those two provisions alone, along with a statement that all of its information on file with the commission is correct.

Commission Response

The commission agrees that the information about anticipated and actual peak load required in proposed subsection (c)(6)(F) and (H) must be updated by March 1 each year. The commission modifies the rule to allow a registrant to update only that

information along with a statement that the rest of its information is up to date, as recommended by TEC.

MARA opposed the annual reporting requirement and instead recommended requiring updates only upon material change.

Commission Response

"Material change" is an imprecise term that could lead to confusion as to which changes are material. To avoid this confusion and ensure that each registrant submits updated information at predictable intervals, the commission declines to modify the rule.

ERCOT recommended editing subsection (e)(1) so that commission staff gives notice before the deadline, not after.

Commission Response

Subsection (e)(1), as commented on by ERCOT, was a misprint in a version of the draft filed on the commission's website. The official proposed rule published in the *Texas Register* does not contain this provision. Accordingly, the commission does not modify the rule in response to ERCOT's comment.

Proposed §25.114(f) - Administrative penalty

Proposed subsection (f) categorizes a failure to comply with the rule as a Class A violation. MARA recommended removing the penalty subsection or, in the alternative, making any violation of subsection (f) a Class C violation. Vistra also recommended modifying subsection (f) to make any violation of the rule a Class C violation.

Commission Response

The commission declines to modify the rule to make a violation of the rule a Class C violation. PURA §39.360(d)(2) states that the commission by rule shall establish a method to ensure compliance with these requirements. The statute does not provide the commission with any additional authority or tools with which to ensure compliance, leaving a heightened administrative penalty as the only means by which the commission can comply with this statutory mandate. Moreover, in practical terms, a Class C violation, which is limited to 1,000 dollars per violation per day, may not be a sufficient incentive to ensure the compliance of such large entities. The proposed Class A violation accurately reflects the importance of this requirement to grid reliability and the size of the entities to which these requirements apply. Furthermore, many violations of this section would already be classified as Class A violations - or are similar to existing Class A violations - under §25.8(b)(3), such as conducting business without proper registration or one of the several provisions related to reliability. Finally, under §22.246(c)(3), related to Administrative Penalties, the commission will consider many variables, including the seriousness of the violation and the surrounding facts and circumstances, in determining an appropriate penalty for violations of this rule.

All comments, including any not specifically referenced herein, were fully considered by the commission. In adopting this section, the commission makes other minor modifications for the purpose of clarifying its intent.

STATUTORY AUTHORITY

The new section is adopted under the following provisions of PURA: §14.001, which grants 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 this title that is necessary and convenient to the exercise of that power and jurisdiction; §14.002, which

authorizes the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; and §39.360, which requires certain virtual currency mining facilities to register with the commission, directs the commission to adopt criteria for determining whether a load is interruptible and establish a method to ensure compliance with the statutory registration requirements, and authorizes the commission to share the registration information with ERCOT.

§25.114. Registration of Virtual Currency Mining Facilities.

(a) Registration required. A person operating a virtual currency mining facility receiving retail electric service in the Electric Reliability Council of Texas (ERCOT) region at either transmission or distribution voltage must, not later than one working day after the date the facility begins receiving retail electric service, register the facility as a large flexible load if the facility requires a total load of more than 75 megawatts (MW) and the facility's interruptible load equals 10 percent or more of the actual or anticipated annual peak demand of the facility. A person operating a virtual currency mining facility that is required to register as a large flexible load under this section and began receiving retail electric service prior to the effective date of this rule must register no later than February 1, 2025.

(b) Definitions. The following terms, when used in this section, have the following meanings.

(1) Virtual currency--has the meaning assigned by Section 12.001, Business & Commerce Code.

(2) Virtual currency mining facility--a facility that uses electronic equipment to add virtual currency transactions to a distributed ledger.

(3) Interruptible load--the portion of the facility's load that the facility operator can choose to interrupt due to locational marginal prices, load zone prices, response to the ERCOT coincident peak demand for the months of June, July, August and September (4CP), or due to external grid conditions.

(c) A registrant must provide the information listed in this subsection in a format established by the commission.

(1) The registrant's legal business name, the name of the registrant's corporate parent or parents, the name of the registrant's principals, and all business names of the registrant.

(2) A mailing address, telephone number, and e-mail address of the principal place of business of the registrant.

(3) The current name, title, business mailing address, telephone number, and e-mail address for the registrant's regulatory contact person, and whether the regulatory contact is an internal staff member of the registrant.

(4) The form of business being registered (e.g., corporation, partnership, or sole proprietor).

(5) Applicable information on file with the Texas Secretary of State, including, the registrant's endorsed certificate of incorporation certified by the Texas Secretary of State, a copy of the registrant's certificate of fact - status or other business registration on file with the Texas Secretary of State.

(6) For each virtual currency mining facility operated by the registrant:

(A) the name, address, and county of operation of each facility;

(B) the identity of the property owner and lessor or facility host;

(C) the size of the facility in square feet and a description of the infrastructure, including whether it is fixed or movable, open or enclosed;

(D) the names of the transmission and distribution service providers serving the facility and the load zone the facility is located in;

(E) the Electric Service Identifier (ESIID) or equivalent unique premise identifier assigned to the facility;

(F) the anticipated peak load, in MWs, from the facility for each year of the five-year period beginning on the date of the registration;

(G) the percentage of the site load that meets the definition of interruptible load in subsection (b)(3) of this section; and

(H) the actual peak load in MWs and total power consumption in MWhs for the prior calendar year, if the facility took retail electric service at any time during the prior calendar year.

(7) An affidavit signed by a representative, official, officer, or other authorized person with binding authority over the registrant affirming that:

(A) the registrant is authorized to do business in Texas under all applicable laws and is in good standing with the Texas Secretary of State;

(B) that all statements made in the registration submission are true, correct, and complete;

(C) that any changes in the information will be provided in a timely manner;

(D) that the registrant has provided notice of its compliance with this rule to transmission distribution service providers serving its registered facilities; and

(E) that the registrant understands and will comply with all applicable law and rules.

(d) Update of registration. A registrant must amend its registration with the commission within 30 days of a change to the information required by subsection (c) of this section.

(e) Renewal of registration. A virtual currency mining facility registration expires and must be renewed on or before March 1 of every calendar year by either submitting the information required by subsection (c) of this section or by submitting updated information required by subsections (c)(6)(F) and (H) of this section and a statement that the rest of the facility's registration information on file with the commission is current and correct.

(1) By December 31 of each calendar year, commission staff must identify each virtual currency mining facility registration that has not been renewed.

(2) Commission staff will provide ERCOT a list of each virtual currency mining facility that has been identified under paragraph (1) of this subsection by January 31 each year.

(f) Administrative penalty. The commission may impose an administrative penalty on a person for a violation of the Public Utility Regulatory Act, commission rules, or rules adopted by an independent organization, including failure to timely respond to commission or commission staff inquiries. A violation of this section is a Class A violation under §25.8 of this title, relating to Classification System for Violations of Statutes, Rules, and Orders Applicable to Electric Service Providers.

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 21, 2024.

TRD-202405694

Adriana Gonzales

Rules Coordinator

Public Utility Commission of Texas

Effective date: December 11, 2024

Proposal publication date: September 13, 2024

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

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS

SUBCHAPTER EE. COMMISSIONER'S RULES ON PREVENTION, AWARENESS, AND REPORTING OF CHILD ABUSE OR NEGLECT, INCLUDING TRAFFICKING OF A CHILD

19 TAC §61.1051, §61.1053

The Texas Education Agency (TEA) adopts the repeal of §61.1051 and §61.1053, concerning prevention, awareness, and reporting of child abuse or neglect, including trafficking of a child. The repeal is adopted without changes to the proposed text as published in the August 16, 2024 issue of the *Texas Register* (49 TexReg 6139) and will not be republished. The repeal relocates the existing requirements relating to school district policies on reporting child abuse and neglect and required signage pertaining to criminal offenses of human trafficking to new 19 TAC Chapter 103, Subchapter EE. The adopted new rules include updates to align with legislation from the 88th Texas Legislature, Regular Session, 2023.

REASONED JUSTIFICATION: Section 61.1051 relates to the reporting of child abuse and neglect and related training requirements for school districts and open-enrollment charter schools.

Section 61.1053 relates signage requirements for posting the offenses of human trafficking on public school premises.

In order to align the rules with other provisions on health and safety, the repeal relocates the requirements from §61.1051 and §61.1053 to new 19 TAC Chapter 103, Health and Safety, Subchapter EE, Commissioner's Rules on Prevention, Awareness, and Reporting of Child Abuse or Neglect, Including Trafficking of a Child. The new sections incorporate legislative updates from the 88th Texas Legislature, Regular Session, 2023. A separate rule action for adopted new 19 TAC Chapter 103, Subchapter EE, provides a detailed description of the changes from the existing rules.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began August 16, 2024, and ended September 16, 2024. No public comments were received.

STATUTORY AUTHORITY. The repeal is adopted under Texas Education Code (TEC), §37.086, as amended by Senate Bill 2069, 88th Texas Legislature, Regular Session, 2023, which requires each public school to post warning signs describing the increased penalties for trafficking of persons under Texas Penal Code, §20A.02(b-1); TEC, §38.004, which requires the agency to develop a policy governing the reports of child abuse or neglect; TEC, §38.0041, which requires school districts and open-enrollment charter schools to adopt and implement policies addressing sexual abuse, sex trafficking, and other maltreatment of children; TEC, §38.0042, which authorizes the commissioner to adopt rules relating to the size and location of the required posting of the child abuse hotline telephone number; Texas Family Code, §261.001, which defines child abuse and neglect, which includes knowingly causing, permitting, encouraging, engaging in, or allowing a child to be trafficked in a manner punishable as an offense under Texas Penal Code, §20A.02(a)(5)-(8); and Texas Penal Code, §20A.02(a)(5)-(8), which provides a person commits an offense if the person knowingly: traffics a child with the intent that the trafficked child engage in forced labor or services; receives a benefit from participating in such a venture; traffics a child and by any means causes the trafficked child to engage in, or become a victim of, conduct prohibited by §20A.02(a)(7)(A)-(K); or receives a benefit from participating in such a venture or engages in sexual conduct with a child trafficked in this manner.

CROSS REFERENCE TO STATUTE. The repeal implements Texas Education Code, §§37.086, as amended by Senate Bill 2069, 88th Texas Legislature, Regular Session, 2023; 38.004; 38.0041; and 38.0042; Texas Family Code, §261.001; and Texas Penal Code, §20A.02(a)(5)-(8).

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 21, 2024.

TRD-202405671

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: December 11, 2024

Proposal publication date: August 16, 2024

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



CHAPTER 103. HEALTH AND SAFETY SUBCHAPTER EE. COMMISSIONER'S RULES ON PREVENTION, AWARENESS, AND REPORTING OF CHILD ABUSE OR NEGLECT, INCLUDING TRAFFICKING OF A CHILD

19 TAC §103.1401, §103.1403

The Texas Education Agency adopts new §103.1401 and §103.1403, concerning prevention, awareness, and reporting of child abuse or neglect, including trafficking of a child. New §103.1401 is adopted with changes to the proposed text as published in the August 16, 2024, issue of the *Texas Register* (49 TexReg 6139) and will be republished. New §103.1403 is

adopted without changes to the proposed text as published in the August 16, 2024, issue of the *Texas Register* (49 TexReg 6139) and will not be republished. The adopted new sections relocate existing requirements from 19 TAC Chapter 61, Subchapter EE, relating to school district policies on reporting child abuse and neglect and required signage pertaining to criminal offenses of human trafficking. Adopted new §103.1401 includes updates to school district policy requirements to align with Texas Family Code, §261.104, as amended by House Bill (HB) 63, 88th Texas Legislature, Regular Session, 2023. Adopted new §103.1403 includes updates to signage requirements to align with Senate Bill (SB) 2069, HB 3553, and HB 3554, 88th Texas Legislature, Regular Session, 2023. This rule will be republished.

REASONED JUSTIFICATION: Adopted new §103.1401 includes existing requirements from 19 TAC §61.1051, which relates to the reporting of child abuse and neglect and related training requirements for school districts and open-enrollment charter schools. The following updates align the new section with HB 63, 88th Texas Legislature, Regular Session, 2023. Adopted new §103.1401(b)(2)(D) requires local policies for reporting to include notice that oral reports made to the Texas Department of Family and Protective Services are recorded. Adopted new §103.1401(b)(2)(E) requires local policies to include notice that an individual making a report must provide his or her name, telephone number, and address and include an explanation of the limited circumstances under which the identity of an individual making a report may be disclosed. Based on public comment, §103.1401(b)(2)(H) has been added at adoption to clarify that the Department of Family and Protective Services cannot accept anonymous reports of abuse or neglect, and §103.1401(d) has been modified to remove the training requirement for existing employees to align with SB 1267, 87th Texas Legislature, Regular Session, 2021.

Adopted new §103.1403 includes existing requirements from 19 TAC §61.1053, which relates to signage requirements for posting the offenses of human trafficking on public school premises. To align with SB 2069, 88th Texas Legislature, Regular Session, 2023, adopted new §103.1403(a) is updated to remove the definition of "premises" and modify the definition of "school." Adopted new §103.1403(b) also aligns with SB 2069 by updating the required location of signage. Adopted new §103.1403(c)(1)(A) updates the information related to penalties for trafficking of persons to align with changes to Texas Penal Code, §20A.02, made by HB 3553 and HB 3554, 88th Texas Legislature, Regular Session, 2023.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began August 16, 2024, and ended September 16, 2024. Following is a summary of public comments received and agency responses.

Comment: The Texas Classroom Teachers Association (TCTA) requested to add language making it clear that the Department of Family and Protective Services is not authorized to accept anonymous reports of abuse and neglect, according to HB 63, 88th Texas Legislature, Regular Session, 2023.

Response: The agency agrees. New §103.1401(b)(2)(H) has been added at adoption to read "the Department of Family and Protective Services is not authorized to accept an anonymous report of abuse or neglect."

Comment: TCTA requested to have language stricken from §103.1401(d) referencing training on recognition and prevention

of sexual abuse, trafficking, and other maltreatment of children for existing school employees who had not been previously trained. TCTA explained that the change is necessary to align the rule with changes made by SB 1267, 87th Texas Legislature, Regular Session, 2021.

Response: The agency agrees. The language referencing existing employees not previously trained has been removed at adoption from §103.1401(d).

STATUTORY AUTHORITY. The new sections are adopted under Texas Education Code (TEC), §37.086, as amended by Senate Bill 2069, 88th Texas Legislature, Regular Session, 2023, which requires each public school to post warning signs describing the increased penalties for trafficking of persons under Texas Penal Code, §20A.02(b-1); TEC, §38.004, which requires the agency to develop a policy governing the reports of child abuse or neglect; TEC, §38.0041, which requires school districts and open-enrollment charter schools to adopt and implement policies addressing sexual abuse, sex trafficking, and other maltreatment of children; TEC, §38.0042, which authorizes the commissioner of education to adopt rules relating to the size and location of the required posting of the child abuse hotline telephone number; Texas Family Code, §261.001, which defines child abuse and neglect, which includes knowingly causing, permitting, encouraging, engaging in, or allowing a child to be trafficked in a manner punishable as an offense under Texas Penal Code, §20A.02(a)(5)-(8); and Texas Penal Code, §20A.02(a)(5)-(8), which provides a person commits an offense if the person knowingly: traffics a child with the intent that the trafficked child engage in forced labor or services; receives a benefit from participating in such a venture; traffics a child and by any means causes the trafficked child to engage in, or become a victim of, conduct prohibited by §20A.02(a)(7)(A)-(K); or receives a benefit from participating in such a venture or engages in sexual conduct with a child trafficked in this manner.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code, §§37.086, as amended by Senate Bill 2069, 88th Texas Legislature, Regular Session, 2023; 38.004; 38.0041; and 38.0042; Texas Family Code, §261.001; and Texas Penal Code, §20A.02(a)(5)-(8).

§103.1401. *Reporting Child Abuse or Neglect, Including Trafficking of a Child.*

(a) The following words and terms, when used in this subchapter, have the following meanings.

(1) Child abuse or neglect--The definition of child abuse or neglect includes the trafficking of a child in accordance with Texas Education Code (TEC), §38.004.

(2) Other maltreatment--This term has the meaning assigned by Human Resources Code, §42.002.

(3) Trafficking of a child--This term has the meaning assigned by Texas Penal Code, §20A.02(a)(5), (6), (7), or (8).

(b) The board of trustees of a school district or governing body of an open-enrollment charter school shall adopt and annually review policies for reporting child abuse and neglect. The policies shall follow the requirements outlined in Texas Family Code, Chapter 261.

(1) The policies must require that every school employee, agent, or contractor who suspects a child's physical or mental health or welfare has been adversely affected by abuse or neglect submit a written or oral report to at least one of the following authorities within 48 hours or less, as determined by the board of trustees, after learning of facts giving rise to the suspicion:

(A) a local or state law enforcement agency;

(B) the Texas Department of Family and Protective Services, Child Protective Services Division;

(C) a local office of Child Protective Services, where available; or

(D) the state agency that operates, licenses, certifies, or registers the facility in which the alleged child abuse or neglect occurred.

(2) The policies must require a report to the Texas Department of Family and Protective Services if the alleged abuse or neglect involves a person responsible for the care, custody, or welfare of the child and must notify school personnel of the following:

(A) penalties under Texas Penal Code, §39.06; Texas Family Code, §261.109; and Chapter 249 of this title (relating to Disciplinary Proceedings, Sanctions, and Contested Cases) for failure to submit a required report of child abuse or neglect;

(B) applicable prohibitions against interference with an investigation of a report of child abuse or neglect, including the following:

(i) Texas Family Code, §261.302 and §261.303, prohibiting school officials from denying an investigator's request to interview a student at school; and

(ii) Texas Family Code, §261.302, prohibiting school officials from requiring the presence of a parent or school administrator during an interview by an investigator;

(C) immunity provisions applicable to a person who reports child abuse or neglect or otherwise assists an investigation in good faith;

(D) oral reports made to the Texas Department of Family and Protective Services are recorded;

(E) confidentiality provisions relating to reports of suspected child abuse or neglect, including the following:

(i) the requirement for the individual making the report to provide his or her name and telephone number;

(ii) the requirement for the individual making the report to provide his or her home address or, if the individual making the report is a school employee, agent, or contractor, provide his or her business address and profession; and

(iii) the limited circumstances under which the identity of the individual making a report may be disclosed;

(F) any disciplinary action that may result from non-compliance with the district's reporting policy;

(G) the prohibition under TEC, §26.0091, against using or threatening to use the refusal to consent to administration of a psychotropic drug to a child or to any other psychiatric or psychological testing or treatment of a child as the sole basis for making a report of neglect, except as authorized by TEC, §26.0091; and

(H) the Department of Family and Protective Services is not authorized to accept an anonymous report of abuse or neglect.

(3) Each school district and open-enrollment charter school shall adopt and implement a policy addressing sexual abuse, trafficking, and other maltreatment of children. The policy must be included in any informational handbook provided to students and parents and must address the following:

(A) methods for increasing staff, student, and parent awareness of issues regarding sexual abuse, trafficking, and other forms of maltreatment of children, including prevention techniques and knowledge of likely warning signs indicating that a child may be a victim;

(B) actions a child who is a victim of sexual abuse, trafficking, or other maltreatment should take to obtain assistance and intervention; and

(C) available counseling options for students affected by sexual abuse, trafficking, or other maltreatment.

(4) The policies must be consistent with Texas Family Code, Chapter 261, and 40 TAC Chapter 700 (relating to Child Protective Services) regarding investigations by the Texas Department of Family and Protective Services, including regulations governing investigation of abuse by school personnel and volunteers.

(5) The policies may not require that school personnel report suspicions of child abuse or neglect to a school administrator prior to making a report to one of the agencies identified in paragraph (1) of this subsection.

(6) The policies must include the current toll-free telephone number of the Texas Department of Family and Protective Services.

(7) The policies must provide for cooperation with law enforcement child abuse investigations without the consent of the child's parent, if necessary, including investigations by the Texas Department of Family and Protective Services.

(8) The policies must include child abuse anti-victimization programs in elementary and secondary schools consisting of age-appropriate, research-based prevention designed to promote self-protection and prevent sexual abuse and trafficking.

(c) The policies required by this section and adopted by the board of trustees shall be distributed to all school personnel at the beginning of each school year. The policies shall be addressed in staff development programs at regular intervals determined by the board of trustees.

(d) Training concerning prevention techniques for, and recognition of, sexual abuse, trafficking, and all other maltreatment of children, including the sexual abuse, trafficking, and other maltreatment of children with significant cognitive disabilities, must be provided as a part of new employee orientation to all new school district and open-enrollment charter school employees as required by TEC, §38.0041.

(1) The training must include:

(A) factors indicating a child is at risk for sexual abuse, trafficking, or other maltreatment;

(B) warning signs indicating a child may be a victim of sexual abuse, trafficking, or other maltreatment;

(C) internal procedures for seeking assistance for a child who is at risk for sexual abuse, trafficking, or other maltreatment, including referral to a school counselor, a social worker, or another mental health professional;

(D) techniques for reducing a child's risk for sexual abuse, trafficking, or other maltreatment; and

(E) information on community organizations that have relevant research-based programs that are able to provide training or other education for school district or open-enrollment charter school staff, students, and parents.

(2) Each school district and open-enrollment charter school must maintain records that include the name of each staff member who participated in training.

(3) To the extent that resources are not yet available from the Texas Education Agency or commissioner of education, school district and open-enrollment charter schools shall implement the policies and trainings with existing or publicly available resources. The school district or open-enrollment charter school may also work in conjunction with a community organization to provide the training at no cost to the district or charter school.

(e) Using a format and language that is clear, simple, and understandable to students, each public school and open-enrollment charter school shall post, in English and in Spanish:

(1) the current toll-free Texas Department of Family and Protective Services Abuse Hotline telephone number;

(2) instructions to call 911 for emergencies; and

(3) directions for accessing the Texas Department of Family and Protective Services website (www.txabusehotline.org) for more information on reporting abuse, neglect, and exploitation.

(f) School districts and open-enrollment charter schools shall post the information specified in subsection (e) of this section at each school campus in at least one high-traffic, highly and clearly visible public area that is readily accessible to and widely used by students. The information must be on a poster (11x17 inches or larger) in large print and placed at eye-level to the student for easy viewing. Additionally, the current toll-free Texas Department of Family and Protective Services Abuse Hotline telephone number should be in bold print.

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 21, 2024.

TRD-202405672

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: December 11, 2024

Proposal publication date: August 16, 2024

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



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 §153.24

The Texas Appraiser Licensing and Certification Board (TALCB) adopts amendments to 22 TAC §153.24, Complaint Processing.

The amendments are adopted without changes to the proposed text as published in the September 6, 2024, issue of the *Texas Register* (49 TexReg 6953) and will not be republished.

The amendments to §153.24 clarify the preliminary investigative review process and corrects references within the rule to another section and another rule.

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 for certifying or licensing an appraiser or appraiser trainee and §1103.154, which authorizes TALCB to adopt rules relating to professional conduct.

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

Filed with the Office of the Secretary of State on November 20, 2024.

TRD-202405620
Kathleen Santos
General Counsel
Texas Appraiser Licensing and Certification Board
Effective date: December 10, 2024
Proposal publication date: September 6, 2024
For further information, please call: (512) 936-3088



CHAPTER 157. RULES RELATING TO PRACTICE AND PROCEDURE

SUBCHAPTER B. CONTESTED CASE HEARINGS

22 TAC §§157.9 - 157.11

The Texas Appraiser Licensing and Certification Board (TALCB) adopts amendments to 22 TAC §§157.9, Notice of Hearing; 157.10, Right to Counsel; Right to Participate; and 157.11, Contested Cases; Entry of Appearance; Continuance.

The amendments are adopted without changes to the proposed text as published in the September 6, 2024, issue of the *Texas Register* (49 TexReg 6955) and will not be republished.

The amendments are made following TALCB's quadrennial rule review for this Chapter, to better reflect current TALCB procedures, and to simplify and clarify where needed.

The amendments to §157.9 simplify the language and make the section more readable.

The amendments to §157.10 provide more detail to the section title and clarify the applicability of SOAH rules related to translations.

The amendments to §157.11 more consistently utilizes abbreviations used through the chapter.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Occupations Code 1103.151, Rules Relating to Certificates and Licenses,

§1103.154, which authorizes TALCB to adopt rules related to professional conduct, and §1104.051, which authorizes TALCB to adopt rules necessary to administer the provisions of Chapter 1104.

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 19, 2024.

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Kathleen Santos
General Counsel
Texas Appraiser Licensing and Certification Board
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For further information, please call: (512) 936-3088



SUBCHAPTER C. POST HEARING

22 TAC §157.17, §157.18

The Texas Appraiser Licensing and Certification Board (TALCB) adopts amendments to 22 TAC §157.17, Final Decisions and Orders, and §157.18, Motions for Rehearing.

The amendments are adopted without changes to the proposed text as published in the September 6, 2024, issue of the *Texas Register* (49 TexReg 6956) and will not be republished.

The amendments are made following TALCB's quadrennial rule review for this Chapter, to better reflect current TALCB procedures, and to simplify and clarify where needed.

The amendments to §157.17 simplify the language. The amendments to §157.18 add a reference a specific section in 1103, for clarity and consistency.

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 for certifying or licensing an appraiser or appraiser trainee and §1103.154, which authorizes TALCB to adopt rules relating to professional conduct, and §1104.051, which authorizes TALCB to adopt rules necessary to administer the provisions of Chapter 1104.

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 20, 2024.

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Kathleen Santos
General Counsel
Texas Appraiser Licensing and Certification Board
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For further information, please call: (512) 936-3088



SUBCHAPTER D. PENALTIES AND OTHER ENFORCEMENT PROVISIONS

22 TAC §157.25

The Texas Appraiser Licensing and Certification Board (TALCB) adopts amendments to 22 TAC §157.25, Temporary Suspension.

The amendments are adopted without changes to the proposed text as published in the September 6, 2024, issue of the *Texas Register* (49 TexReg 6958) and will not be republished.

The amendments are made following TALCB's quadrennial rule review for this Chapter, to better reflect current TALCB procedures, and to simplify and clarify where needed.

The amendments utilize an abbreviated term for consistency in the chapter.

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 for certifying or licensing an appraiser or appraiser trainee; §1103.154, which authorizes TALCB to adopt rules relating to professional conduct; and 1104.051, which authorizes TALCB to adopt rules necessary to administer 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 20, 2024.

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Kathleen Santos
General Counsel

Texas Appraiser Licensing and Certification Board
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For further information, please call: (512) 936-3088



SUBCHAPTER E. ALTERNATIVE DISPUTE RESOLUTION

22 TAC §157.31

The Texas Appraiser Licensing and Certification Board (TALCB) adopt amendments to 22 TAC §157.31, Investigative Conference.

The amendments are adopted without changes to the proposed text as published in the September 6, 2024, issue of the *Texas Register* (49 TexReg 6960) and will not be republished.

The amendments are made following TALCB's quadrennial rule review for this Chapter, to better reflect current TALCB procedures, and to simplify and clarify where needed.

The amendments to §157.31 clarify the timing of when an acknowledgement form may be submitted to the Board.

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 for certifying or licensing an appraiser or appraiser trainee and §1103.154, which authorizes TALCB to adopt rules relating to professional conduct.

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

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Kathleen Santos
General Counsel

Texas Appraiser Licensing and Certification Board
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For further information, please call: (512) 936-3088



TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 115. CONTROL OF AIR POLLUTION FROM VOLATILE ORGANIC COMPOUNDS

SUBCHAPTER E. SOLVENT-USING PROCESSES

DIVISION 7. MISCELLANEOUS INDUSTRIAL ADHESIVES

30 TAC §§115.470, 115.471, 115.473

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts amendments to 30 Texas Administrative Code (TAC) §§115.470, 115.471, and 115.473.

Amended §§115.470, 115.471, and 115.473 are adopted without changes to the proposed text as published in the July 19, 2024, issue of the *Texas Register* (49 TexReg 5320) and therefore will not be republished.

The amended sections will be submitted to the United States Environmental Protection Agency (EPA) as revisions to the State Implementation Plan (SIP).

Background and Summary of the Factual Basis for the Adopted Rules

Effective November 7, 2022, EPA reclassified nonattainment areas under the 2008 ozone National Ambient Air Quality Standards (NAAQS) (87 *Federal Register* (FR) 60926). A 10-county Dallas-Fort Worth (DFW) area (Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise Counties) and an eight-county Houston-Galveston-Brazoria (HGB) area (Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties) were reclassified from serious to severe nonattainment with a 2026 attainment year and an attainment deadline of July 20, 2027. Reclassification

to severe nonattainment triggered emission control evaluation, emission reduction quantification, rule writing, and SIP submission requirements for the DFW and HGB 2008 ozone NAAQS nonattainment areas that were submitted to EPA on May 7, 2024, to meet the deadline established in EPA's reclassification action for the 2008 ozone NAAQS.

The adopted rule revisions address federal Clean Air Act (CAA) contingency measure requirements for the DFW and HGB ozone nonattainment areas. Contingency measures are control requirements that will take effect and result in emissions reductions if an area fails to attain a NAAQS by the applicable attainment date or fails to demonstrate reasonable further progress (RFP). Requirements for SIP contingency measures are established under CAA, §172(c)(9) and §182(c)(9). This rule adoption specifically addresses the requirement for contingency measures that will take effect if either or both of the DFW and HGB nonattainment areas fail to attain or fail to demonstrate RFP under the 2008 eight-hour ozone NAAQS. Contingency measures for the DFW and HGB 2008 eight-hour ozone nonattainment areas were developed and submitted to EPA in a 30 TAC Chapter 115 rulemaking (Project No. 2023-116-115-AI) and three SIP revisions adopted April 24, 2024: the DFW 2008 Ozone NAAQS Severe Attainment Demonstration (AD) SIP Revision (Project No. 2023-107-SIP-NR), the HGB 2008 Ozone NAAQS Severe AD SIP Revision (Project No. 2023-110-SIP-NR), and the DFW-HGB 2008 Ozone NAAQS Severe RFP SIP Revision (Project No. 2023-108-SIP-NR). The contingency measures included in this rulemaking were inadvertently omitted from the Chapter 115 rulemaking adopted April 24, 2024.

Prior to adoption of the previous Chapter 115 rulemaking (Project No. 2023-116-115-AI), TCEQ staff determined there were omissions and incorrect limits in 30 TAC Chapter 115, Subchapter E, Division 7 rule revisions relating to Miscellaneous Industrial Adhesives. Omissions and incorrect limits in the rulemaking for the industrial adhesive volatile organic compounds (VOC) category resulted in an adopted industrial adhesive contingency measure that was insufficient to achieve the intended emission reductions in the associated SIP revisions. The industrial adhesives contingency measure was developed and intended to achieve VOC emissions reductions of 3.31 tons per day (tpd) in the DFW area and 3.12 tpd in the HGB area. However, the April 24, 2024, rulemaking implemented a measure that would only achieve 1.05 tpd in the DFW area and 0.99 tpd in the HGB area. The adopted rules, if triggered for contingency, will result in additional VOC emissions reductions of 2.26 tpd in the DFW area and 2.13 tpd in the HGB area. These additional SIP contingency emissions reductions, together with the previously adopted measures (Project No. 2023-116-115-AI), achieve the total contingency emissions reductions originally intended, 3.31 tpd in the DFW area and 3.12 tpd in the HGB area. Therefore, this rulemaking restores the emissions reductions to the amounts described in the contingency plan narratives in the adopted DFW AD SIP revision (Project No. 2023-107-SIP-NR), the HGB AD SIP revision (Project No. 2023-110-SIP-NR), and the DFW-HGB RFP SIP revision (Project No. 2023-108-SIP-NR).

The adopted contingency measures apply independently and separately for the DFW and HGB 2008 ozone NAAQS nonattainment areas. Implementation of a contingency measure will be triggered upon EPA publication of a notice in the *Federal Register* that the specified area(s) failed to meet the applicable ozone NAAQS by the applicable attainment date or demonstrate RFP and the commission's subsequent publication in the *Texas Reg-*

ister that compliance with the contingency measure is required. Affected sources will be required to comply with the contingency rules by no later than 270 days after *Texas Register* publication.

Demonstrating Noninterference under Federal Clean Air Act, §110(l)

Under CAA, §110(l), EPA cannot approve a SIP revision if it "would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of." The commission provides the following information to demonstrate why the adopted changes to the Chapter 115, Subchapter E, Division 7 rules in §115.470 (relating to Applicability and Definitions) and §115.473 (relating to Control Requirements) will not negatively impact the state's progress towards attainment, interfere with control measures, or prevent reasonable further progress toward attainment of the ozone NAAQS in the DFW or HGB nonattainment areas.

The commission adopts changes to Subchapter E, Division 7, Miscellaneous Industrial Adhesives, to implement a SIP contingency measure, as required by CAA, §172(c)(9) and §182(c)(9). This measure, if triggered, will reduce VOC emissions in the DFW and/or HGB areas by revising VOC content limits on various types of industrial adhesives. The changes add new and revised VOC content limits in 30 TAC §115.473(e) and (f) that will apply if the contingency measure is triggered for the DFW or HGB area, respectively. These limits will, upon triggering, replace the current Chapter 115 VOC content limits in §115.473(a) for the DFW and/or HGB areas with limits taken from South Coast Air Quality Management District (SCAQMD) Rule 1168, as amended November 4, 2022.

Existing limits for industrial adhesives in 30 TAC §115.473(a) were developed to meet reasonably available control technology (RACT) requirements established by the 2008 EPA Control Techniques Guidelines (CTG) for Miscellaneous Industrial Adhesives. The emission limit recommended in the CTG is based on the 2005 version of SCAQMD Rule 1168. Since 2005, SCAQMD Rule 1168 has been amended to establish emission limits for bonding specific substrates. After the 2005 amendment of SCAQMD Rule 1168, several industry groups commented that no available adhesives could meet the VOC content limits for several categories of materials, and SCAQMD amended the rule in 2005 to allow higher interim VOC content adhesives while lower VOC content adhesives were being developed. This process continued through 2022, with multiple studies, interim limits, and revised lower VOC content limits once compliant adhesives were developed.

The six VOC content limits reduced in this rule adoption are beyond the limits in the rulemaking adopted April 24, 2024, (Project No. 2023-116-115-AI), which were set at the interim limits for those materials categories in SCAQMD Rule 1168. The adopted limits will replace the Rule 1168 interim limits previously adopted April 24, 2024, with the SCAQMD Rule 1168 final limits for those materials categories. Changes in SCAQMD Rule 1168 since 2005 for pressure sensitive adhesive primers, adhesives to join two specialty plastics, adhesives used in the manufacturing of computer diskettes, and adhesives for structural wood components have increased VOC content limits beyond the VOC content in §115.473(a). The adhesive applications in these categories were new subcategories of previous SCAQMD Rule 1168 and TCEQ adhesive rule categories. TCEQ chose its industrial adhesive contingency measure VOC content limits to equal the SCAQMD Rule 1168 limits adopted November 4, 2022, because TCEQ agrees with SCAQMD's analysis on technological

feasibility for these limits. SCAQMD's analysis can be found in SCAQMD's *Preliminary Draft Staff Report for Rule 1168 - Adhesive and Sealant Applications*, dated August 2022.

Calculated emissions reductions for this measure sum the reductions in some adhesive categories and the increases in other categories to produce net emission reductions. In this adopted rulemaking, TCEQ provides the contingency measure emission reductions in a manner that avoids negatively impacting the status of the state's progress towards attainment or preventing reasonable further progress toward attainment of the ozone NAAQS in the DFW and HGB nonattainment areas or any other applicable requirement of the FCAA.

Section by Section Discussion

In addition to the information provided above for a background and summary of the adopted rules, including a demonstration of noninterference with §110(l) of the FCAA, the commission also adopts non-substantive changes to update the rules in accordance with current *Texas Register* style and format requirements, improve readability, establish consistency in the rules, and conform to the standards in the Texas Legislative Council Drafting Manual, September 2020. The specific substantive changes are discussed in greater detail in this Section by Section Discussion in the corresponding portions related to the affected rule sections.

Subchapter E: Solvent-Using Processes

Division 7. Miscellaneous Industrial Adhesives

The commission adopts amendments to Subchapter E, Division 7 to establish lower contingency VOC content limits for some existing industrial adhesive source categories, to add new subcategories of industrial adhesives with associated contingency measure VOC content limits, and to specify that the contingency VOC content limits, if triggered, will apply to adhesives used in the field. All contingency measure VOC content limits adopted in this rulemaking are the same or lower than the contingency measure limits added in the rulemaking adopted April 24, 2024, (Project No. 2023-116-115-AI). These amendments will be implemented in the DFW and/or HGB 2008 ozone NAAQS nonattainment areas if triggered for SIP contingency purposes.

In the rulemaking adopted April 24, 2024, (Project No. 2023-116-115-AI), staff inadvertently used interim higher VOC content limits from SCAQMD Rule 1168 for six industrial adhesive categories in Figures 30 TAC §115.473(e) and §115.473(f): acrylonitrile-butadiene-styrene (ABS) to polyvinyl chloride (PVC) Transition Cement, chlorinated polyvinyl chloride (CPVC) Welding Cement, Higher Viscosity CPVC, PVC Welding Cement, Rubber Vulcanization Adhesive, and Top and Trim Adhesive. This rulemaking corrects each of these unintended VOC content limits with limits that are more stringent, as previously intended. The rulemaking specifies that the contingency VOC content limits, if triggered, will apply to adhesives used in the field. The adopted VOC content limits and applicability specification align the SIP contingency rules in Chapter 115 with the limits used to calculate SIP contingency measure VOC emission reductions in the SIP revisions adopted April 24, 2024: the DFW AD SIP revision (Project No. 2023-107-SIP-NR), the HGB AD SIP revision (Project No. 2023-110-SIP-NR), and the DFW-HGB RFP SIP revision (Project No. 2023-108-SIP-NR).

Four of the contingency VOC content limits included in the Chapter 115 rulemaking adopted April 24, 2024, (Project No. 2023-116-115-AI) are revised in this rulemaking to be higher

than the associated non-contingency VOC content limits in existing §115.473(a): ABS to PVC Transition Cement, PVC Welding Cement, Rubber Vulcanization Adhesive, and Top and Trim Adhesive. These changes will not interfere with meeting FCAA requirements in the DFW or HGB areas, as described elsewhere in this preamble, with all changes collectively producing net emission reductions.

This rulemaking also adds 20 industrial adhesive subcategories and establishes industrial adhesive VOC content limits that, if triggered for SIP contingency purposes, will achieve VOC emissions reductions consistent with the limits used to calculate VOC emissions reductions in the SIP revisions adopted April 24, 2024: the DFW AD SIP revision (Project No. 2023-107-SIP-NR), the HGB AD SIP revision (Project No. 2023-110-SIP-NR), and the DFW-HGB RFP SIP revision (Project No. 2023-108-SIP-NR). The 20 industrial adhesive category VOC content limits were inadvertently omitted from the Chapter 115 rulemaking adopted April 24, 2024, (Project No. 2023-116-115-AI).

§115.470 Applicability and Definitions

The commission adopts this rulemaking to add a provision to §115.470(a) which, upon triggering for SIP contingency purposes for either the DFW or HGB area, or both, will make adhesives and adhesive primers applied for compensation subject to this rule division. This is intended to exclude consumer use while including institutional, commercial, and industrial uses. It will also exclude use by volunteers such as Habitat for Humanity home builders or volunteers repairing homes without compensation. Home building and remodeling contractors will be included since they are compensated for their work applying adhesives. Adhesive use in commercial, institutional, and industrial settings is included because those uses are assumed to be for compensation. Emissions from consumer use were not included in the emissions reduction calculations for this contingency measure. Affected entities are required by §115.478(b)(1) to maintain records of VOC content to demonstrate compliance with the applicable VOC limits in §115.473(a), (e), or (f). Prior to triggering for contingency, field use of adhesives will continue not to be subject to the division.

The commission adopts this rulemaking to add 43 new definitions and to amend three existing definitions in §115.470(b). The new definitions were inadvertently omitted from the Chapter 115 rulemaking adopted April 24, 2024, (Project No. 2023-116-115-AI) and are necessary to implement VOC content limits for the industrial adhesive source categories. New definitions differentiate the new application-specific adhesives VOC content limits in adopted §115.473(e) and (f); to clarify the lower VOC content limits for existing application-specific adhesive content limits in adopted §115.473(e) and (f); to clarify the applicability of existing control requirements in §115.473(b); and to clarify the applicability of exemptions in existing §115.471(d)(2)(A), §115.471(d)(2)(G), and §115.471(d)(2)(I).

New definitions are adopted for architectural application; building envelope; building envelope membrane adhesive; carpet pad adhesive; chlorinated polyvinyl chloride (CPVC) welding or CPVC welding cement for life safety systems; computer diskette manufacturing; dry wall adhesive; ethylene propylene diene terpolymer (EPDM) and thermoplastic polyolefin (TPO) single-ply roof membrane adhesive; glass, porcelain, and stone tile adhesive; hot applied modified bitumen or built up roof adhesive; modified bituminous material; modified bituminous primer; panel adhesive; roof adhesive primer; rubber flooring adhesive; rubber vulcanization adhesive; shingle laminating

adhesive; structural glazing adhesive; structural wood member adhesive; subfloor adhesive; vinyl compositions tile (VCT); vinyl compositions tile or VCT adhesive; and wood flooring adhesive. The adopted definitions in §115.470(b) specify the meaning of VOC limits for the application-specific adhesives included in the tables in adopted §115.473(e) and §115.473(f).

The commission also adopts new definitions in §115.470(b) for acrylonitrile-butadiene-styrene (ABS); acrylonitrile-butadiene-styrene or ABS to polyvinyl chloride (PVC) transition cement; acrylonitrile-butadiene-styrene or ABS welding cement; edge glue; fiberglass; higher viscosity CPVC welding cement; pressure sensitive adhesive; tire tread adhesive; top and trim adhesive; traffic marking tape; and vehicle glass adhesive primer. The adopted definitions clarify which adhesives and primers will be subject to the lower VOC content limits in adopted §115.473(e) and (f) if triggered for contingency purposes.

The commission also adopts new definitions in §115.470(b) for dip coat; electrostatic spray; flow coat; hand application methods; high volume low-pressure (HVLP) spray; and transfer efficiency. The adopted definitions clarify the applicability of control requirements in existing §115.473(b).

The commission also adopts new terms and definitions for adhesive tapes; shoe repair, luggage, and handbag adhesive; and solvent welding in §115.470(b). The adopted terms and definitions clarify the applicability of exemptions in existing §115.471(d)(2)(A), §115.471(d)(2)(G), and §115.471(d)(2)(I).

The commission adopts amendments to three existing definitions in §115.470(b). Language is added to the definition for chlorinated polyvinyl chloride or CPVC welding to clarify that the VOC content limit in §115.473 (e) and (f) applies to adhesives used in CPVC components for shower pan liner, drain, closet flange, and backwater valve systems as well as CPVC pipe and fittings. The commission also adopts amendments to the definitions for the existing terms indoor floor covering installation adhesive and multipurpose construction adhesive. The commission adopts amendments to each of these two definitions that maintain the existing definitions for use with the existing exemption provisions in §115.471(a) - (c) and add revised definitions for use with the exemption provisions in §115.471(d) and the control requirements in §115.473(e) and (f) if a contingency scenario is triggered in the DFW area, the HGB area, or both areas. Existing definitions in §115.470 are renumbered and reordered accordingly but are not otherwise substantively changed.

§115.471 Exemptions

The commission adopts an amendment to the last sentence of §115.471(d) to reference §115.479(c) or (d), rather than §115.479(c) or (e). This amendment correctly stipulates the compliance schedule for a contingency scenario in either the DFW or HGB area, or both areas.

§115.473 Control Requirements

The commission adopts adjustments to the VOC content limits associated with the miscellaneous industrial adhesives to correct contingency measure deficiencies in existing subsection §115.473(e) for the DFW area and §115.473(f) for the HGB area. The existing contingency control requirements are the same for both areas and specify that the limits must be met by applying low-VOC adhesives or adhesive primers. Adopted changes correct some VOC content limits included in a Chapter 115 rulemaking adopted April 24, 2024, and add VOC content limits meant to be included in that previous rulemaking. The

adopted revisions establish emissions limits in §115.473(e) and §115.473(f) that are consistent with the current SCAQMD Rule 1168, as originally intended for the previously adopted rulemaking.

Adopted VOC content limits in the architectural applications category consist of building envelope membrane adhesive; carpet pad adhesive; ceramic tile installation adhesive; cove base installation adhesive, dry wall adhesive, glass, porcelain, and stone tile adhesive; multipurpose construction adhesives; and panel adhesive.

Adopted VOC content limits in the roofing category consist of hot applied modified bitumen or built up roof adhesive, ethylene propylene diene terpolymer (EPDM) and thermoplastic polyolefin (TPO) single-ply roof membrane adhesive, single-ply roof installation and repair membrane adhesive (except EPDM and TPO), shingle laminating adhesive, and all other roof adhesives.

Other individual VOC content limits for application-specific adhesives are adopted for rubber floor adhesive, structural glazing adhesive, structural wood member adhesive, subfloor adhesive, vinyl compositions tile (VCT) and asphalt tile adhesive, wood flooring adhesive, all other indoor floor covering adhesives, and all other outdoor floor covering adhesives.

Final Regulatory Impact Determination

The commission reviewed the rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking does not meet the definition of a "Major environmental rule" as defined in that statute, and in addition, if it did meet the definition, is not subject to the requirement to prepare a regulatory impact analysis. A "Major environmental rule" means 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. Additionally, the adopted rules do not meet any of the four applicability criteria for requiring a regulatory impact analysis for a "Major environmental rule", which are listed in Tex. Gov't Code Ann., § 2001.0225(a). Section 2001.0225 of the Texas Government Code applies only 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.

The specific intent of these adopted rules is to comply with federal requirements for the implementation of control strategies necessary to attain and maintain the National Ambient Air Quality Standards (NAAQS) for ozone mandated by 42 United States Code (USC), 7410, Federal Clean Air Act (FCAA), §110, and required to be included in operating permits by 42 USC, §7661a, FCAA, §502, as specified elsewhere in this preamble. The rulemaking addresses contingency measure requirements for the DFW and HGB 2008 eight-hour ozone nonattainment areas, as discussed elsewhere in this preamble. States are required to adopt State Implementation Plans (SIPs) with enforceable emission limitations and other control measures, means, or techniques, as well as schedules and timetables for compliance, as

may be necessary or appropriate to meet the applicable requirements of the FCAA. As discussed in the FISCAL NOTE portion of the proposal preamble, the adopted rules are not anticipated to add any significant additional costs to affected individuals or businesses, beyond what is necessary to attain the ozone NAAQS, on 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.

If a state does not comply with its obligations under 42 USC, §7410, FCAA, §110 to submit SIPs, states are subject to discretionary sanctions under 42 USC, §7410(m) or mandatory sanctions under 42 USC, §7509, FCAA, §179; as well as the imposition of a federal implementation plan (FIP) under 42 USC, §7410, FCAA, §1101. Under 42 USC, §7661a, FCAA, §502, states are required to have federal operating permit programs that provide authority to issue permits and assure compliance with each applicable standard, regulation, or requirement under the FCAA, including enforceable emission limitations and other control measures, means, or techniques, which are required under 42 USC, §7410, FCAA, §110. Similar to requirements in 42 USC, §7410, FCAA, §110, states are not free to ignore requirements in 42 USC, §7661a, FCAA, §502 and must develop and submit programs to provide for operating permits for major sources that include all applicable requirements of the FCAA. Lastly, states are also subject to the imposition of sanctions under 42 USC, §7661a(d) and (i), FCAA, §502(d) and (i) for failure to submit an operating permits program, the disapproval of any operating permits program, or failure to adequately administer and enforce the approved operating permits program.

The requirement to provide a fiscal analysis of regulations in the Texas Government Code was amended by Senate Bill (SB) 633 during the 75th legislative session in 1997. The intent of SB 633 was to require agencies to conduct a regulatory impact analysis of extraordinary rules. These are identified in the statutory language as "Major environmental rules" that will have a material adverse impact and will exceed a requirement of state law, federal law, or a delegated federal program, or are adopted solely under the general powers of the agency. With the understanding that this requirement would seldom apply, the commission provided a cost estimate for SB 633 that concluded "based on an assessment of rules adopted by the agency in the past, it is not anticipated that the bill will have significant fiscal implications for the agency due to its limited application." The commission also noted that the number of rules that would require assessment under the provisions of the bill was not large. This conclusion was based, in part, on the criteria set forth in the bill that exempted rules from the full analysis unless the rule was a "Major environmental rule" that exceeds a federal law. Because of the ongoing need to meet federal requirements, the commission routinely proposes and adopts rules incorporating or designed to satisfy specific federal requirements. The legislature is presumed to understand this federal scheme. If each rule proposed by the commission to meet a federal requirement was considered to be a "Major environmental rule" that exceeds federal law, then each of those rules would require the full regulatory impact analysis (RIA) contemplated by SB 633. Requiring a full RIA for all federally required rules is inconsistent with the conclusions reached by the commission in its cost estimate and by the Legislative Budget Board (LBB) in its fiscal notes. Since the legislature is presumed to understand the fiscal impacts of the bills it passes, and that presumption is based on information provided by state agencies and the LBB, the intent of SB 633 was only to require the full RIA for rules that are extraordinary in

nature. While the adopted rules may have a broad impact, that impact is no greater than is necessary or appropriate to meet the requirements of the FCAA, and in fact creates no additional impacts since the adopted rules do not impose burdens greater than required to demonstrate attainment of the ozone NAAQS as discussed elsewhere in this preamble. For these reasons, the adopted rules fall under the exception in Texas Government Code, §2001.0225(a), because they are required by, and do not exceed, federal law.

The commission has consistently applied this construction to its rules since this statute was enacted in 1997. Since that time, the legislature has revised the Texas Government Code, but left this provision substantially unamended. It is presumed that "when an agency interpretation is in effect at the time the legislature amends the laws without making substantial change in the statute, the legislature is deemed to have accepted the agency's interpretation." (*Central Power & Light Co. v. Sharp*, 919 S.W.2d 485, 489 (Tex. App. Austin 1995), writ denied with per curiam opinion respecting another issue, 960 S.W.2d 617 (Tex. 1997); *Bullock v. Marathon Oil Co.*, 798 S.W.2d 353, 357 (Tex. App. Austin 1990, no writ). Cf. *Humble Oil & Refining Co. v. Calvert*, 414 S.W.2d 172 (Tex. 1967); *Dudney v. State Farm Mut. Auto Ins. Co.*, 9 S.W.3d 884, 893 (Tex. App. Austin 2000); *Southwestern Life Ins. Co. v. Montemayor*, 24 S.W.3d 581 (Tex. App. Austin 2000, pet. denied); and *Coastal Indust. Water Auth. v. Trinity Portland Cement Div.*, 563 S.W.2d 916 (Tex. 1978).) The commission's interpretation of the RIA requirements is also supported by a change made to the Texas Administrative Procedure Act (APA) by the legislature in 1999. In an attempt to limit the number of rule challenges based upon APA requirements, the legislature clarified that state agencies are required to meet these sections of the APA against the standard of "substantial compliance" (Texas Government Code, §2001.035). The legislature specifically identified Texas Government Code, §2001.0225 as falling under this standard.

As discussed in this analysis and elsewhere in this preamble, the commission has substantially complied with the requirements of Texas Government Code, §2001.0225. The adopted rules implement the requirements of the FCAA as discussed in this analysis and elsewhere in this preamble. The adopted rules were determined to be necessary meet FCAA SIP requirements to attain the ozone NAAQS and are required to be included in permits under 42 USC, §7661a, FCAA, §502, and will not exceed any standard set by state or federal law. These adopted rules are not an express requirement of state law. The adopted rules do not exceed a requirement of a delegation agreement or a contract between state and federal government, as the adopted rules, if approved by EPA, will become federal law as part of the approved SIP required by 42 U.S.C. §7410, FCAA, §110. The adopted rules were not developed solely under the general powers of the agency but are authorized by specific sections of Texas Health and Safety Code, Chapter 382 (also known as the Texas Clean Air Act), and the Texas Water Code, which are cited in the STATUTORY AUTHORITY section of this preamble, including Texas Health and Safety Code, §§382.011, 382.012, and 382.017. Therefore, this rulemaking action is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

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

Takings Impact Assessment

Under Texas Government Code, §2007.002(5), taking means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or §17 or §19, Article I, Texas Constitution; or a governmental action that affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action; and is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect. The commission completed a takings impact analysis for the rulemaking action under the Texas Government Code, §2007.043.

The primary purpose of this rulemaking action, as discussed elsewhere in this preamble, is to meet federal requirements for the implementation of control strategies necessary to attain and maintain the NAAQS for ozone mandated by 42 United States Code (USC), §7410, FCAA, §110, and required to be included in operating permits by 42 USC, §7661a, FCAA, §502. The rulemaking addresses contingency measure requirements for the DFW and HGB 2008 eight-hour ozone nonattainment areas, as discussed elsewhere in this preamble. States are required to adopt SIPs with enforceable emission limitations and other control measures, means, or techniques, as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of the FCAA. If a state does not comply with its obligations under 42 USC, §7410, FCAA, §110 to submit SIPs, states are subject to discretionary sanctions under 42 USC, §7410(m) or mandatory sanctions under 42 USC, §7509, FCAA, §179; as well as the imposition of a federal implementation plan under 42 USC, §7410, FCAA, §110(c). Under 42 USC, §7661a, FCAA, §502, states are required to have federal operating permit programs that provide authority to issue permits and assure compliance with each applicable standard, regulation, or requirement under the FCAA, including enforceable emission limitations and other control measures, means, or techniques, which are required under 42 USC, §7410, FCAA, §110. Similar to requirements in 42 USC, §7410, FCAA, §110, regarding the requirement to adopt and implement plans to attain and maintain the national ambient air quality standards, states are not free to ignore requirements in 42 USC, §7661a, FCAA, §502 and must develop and submit programs to provide for operating permits for major sources that include all applicable requirements of the FCAA. Lastly, states are also subject to the imposition of sanctions under 42 USC, §7661a(d) and (i), FCAA, §502(d) and (i) for failure to submit an operating permits program, the disapproval of any operating permits program, or failure to adequately administer and enforce the approved operating permits program.

The adopted rules will not create any additional burden on private real property beyond what is required under federal law as the rules, if approved by EPA, will become federal law as part of the approved SIP required by 42 U.S.C. §7410, FCAA, §110. The adopted rules will not affect private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. The adopted rules also will not affect private real property in a

manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the rulemaking will not cause a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the rulemaking and found that it is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 et seq., and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the rule adoption in accordance with Coastal Coordination Act Implementation Rules, 31 TAC §29.22 and found the rulemaking is consistent with the applicable CMP goals and policies. The CMP goal applicable to the rulemaking is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §26.12(l)). The CMP policy applicable to the rulemaking is the policy that commission rules comply with federal regulations in 40 CFR, to protect and enhance air quality in the coastal areas (31 TAC §26.32). The rulemaking will not increase emissions of air pollutants and is therefore consistent with the CMP goal in 31 TAC §26.12(l) and the CMP policy in 31 TAC §26.32. Promulgation and enforcement of these rules will not violate or exceed any standards identified in the applicable CMP goals and policies because the adopted rules are consistent with these CMP goals and policies and because these rules do not create or have a direct or significant adverse effect on any coastal natural resource areas. Therefore, in accordance with 31 TAC §29.22(e), the commission affirms that this rulemaking action is consistent with CMP goals and policies.

The commission invited public comment regarding consistency with the CMP during the public comment period. No comments were received regarding the CMP.

Effect on Sites Subject to the Federal Operating Permits Program

Chapter 115 is an applicable requirement under 30 TAC Chapter 122, Federal Operating Permits Program. If the rulemaking is adopted, owners or operators of affected sites subject to the federal operating permit program must, consistent with the revision process in Chapter 122, upon the effective date of the rulemaking, revise their operating permit to include the new Chapter 115 requirements.

Public Comment

The public comment period for the proposed rulemaking opened June 14, 2024, and closed July 29, 2024. TCEQ offered a virtual public hearing on July 25, 2024, at 10:00 a.m.; however, no individuals registered to provide testimony, and the hearing was not opened. During the comment period, the commission received comments from Texans for Environmental Awareness (TEA) recommending changes to the rule revision.

In this response to comments, the commission uses "HGB area" to refer to the 2008 eight-hour ozone nonattainment area, consisting of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties, unless otherwise specified. "DFW area" refers to the 2008 eight-hour ozone nonattainment area consisting of Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise Counties, unless otherwise indicated.

Response to Comments

Comment

TEA recommended that the commission implement limits that align with EPA's *Control Techniques Guidelines for Miscellaneous Industrial Adhesives* and provided example limits from those guidelines: general adhesives limits of 30 grams/liter (g/l) or lower; contact adhesives limits of 70 g/l or lower; and adhesive primer limits of 250 g/l or lower.

Response

TCEQ's existing industrial adhesive VOC limits in 30 TAC §115.473(a) mirror EPA's *Control Techniques Guidelines for Miscellaneous Industrial Adhesives* Reasonably Available Control Technology (RACT) limits. The industrial adhesive contingency measure VOC content limits in this rulemaking parallel the South Coast Air Quality Management District's (SCAQMD's) most recent (2023) limits. The SCAQMD's limits produce lower emissions from this sector than EPA's *Control Techniques Guidelines for Miscellaneous Industrial Adhesives*. Changes made to the VOC content limits do not adversely affect emission reductions and are intended to produce net emission reductions for the DFW and HGB areas when triggered for SIP contingency purposes, as described in the rule preamble.

Two of the three example CTG limits TEA provided are not consistent with EPA's *Control Techniques Guidelines for Miscellaneous Industrial Adhesives*. TEA correctly stated EPA's CTG limit for general adhesives primers, which is also the contingency limit at existing §115.473(e) and (f), the limit in adopted §115.473(e) and (f), and is consistent with the existing non-contingency limit at §115.473(a). TEA's example limit for general adhesives, 30 g/l or lower, does not correspond to EPA's CTG limit for general adhesives of 250 g/l. The contingency general adhesive limits in existing and adopted §115.473(e) and (f) match the CTG, and the non-contingency limit at existing §115.473(a) is also consistent with the CTG limit. This matches the SCAQMD limit, and TCEQ agrees that this is the lowest VOC content currently feasible for general adhesives.

TEA's recommended 70 g/l or lower limit for contact adhesives is also not the limit included in EPA's CTG, which is 250 g/l. The non-contingency limit at §115.473(a) is consistent with the CTG limit, but the contingency limit in existing and adopted §115.473(e) and (f) will lower that limit to 80 g/l if triggered for SIP contingency purposes. This matches the SCAQMD limit, and TCEQ agrees that this is the lowest VOC content currently feasible for general contact adhesives.

No changes were made in response to this comment.

Comment

TEA recommended the use of application methods and equipment to minimize VOC emissions, including systems that use brush, roll coat, and automated spray application methods.

Response

Existing control requirements for industrial adhesives require use of high transfer efficiency application methods that limit VOC emissions. These methods, outlined in §115.473(b), include electrostatic spray, high-volume, low-pressure spray (HVLP), flow coat, roll coat, hand application (including brush coat), dip coat, airless spray, and air-assisted airless spray. Other application methods must be equivalent or more efficient than HVLP spray applications.

No changes were made in response to these comments.

Comment

TEA recommended the implementation of monitors and detectors such as the Continuous Emissions Monitoring Systems (CEMS), photoionization detectors, and flame ionization detectors, to measure VOC concentrations continuously and accurately. TEA also commented that regular performance tests should be required to ensure properly functioning monitoring equipment.

Response

Applicable testing and monitoring requirements for miscellaneous industrial adhesives are specified in §115.475 and §115.478, which are not included in this rulemaking. This comment is outside the scope of the rulemaking.

No changes were made in response to this comment.

Comment

TEA commented that proper ventilation, maintenance of equipment, and covered storage for VOC-containing materials should be part of required work practices.

Response

Existing work practice requirements for miscellaneous industrial adhesives are outlined in §115.473(c), wherein closed containers are required for VOC-containing materials during storage and mixing. VOC-containing materials must also be transported in closed containers or pipes. If a vapor control system is in place, owner/operators must maintain and test the equipment to comply with the required capture and control efficiencies outlined in existing §115.475(3) and (4). The reductions in VOC emissions associated with the adopted rules are intended to be achieved from lowering the VOC content of industrial adhesives with the current work practices.

Comment

TEA recommended that low-VOC or VOC-free adhesives or spray equipment that meets high-efficiency transfer standards be used.

Response

Use of low-VOC adhesives are required by existing §115.473(a)(1) according to the limits in Figure: 30 TAC §115.473(a). Provisions for spray equipment that meets high-efficiency transfer standards are currently required under §115.473(b). Under a contingency triggering scenario, VOC content limits in §115.473(e) and (f) would apply, as listed in Figure: 30 TAC §115.473(e) for the DFW area and Figure: 30 TAC §115.473(f) for the HGB area. These new limits are lower for some applications and include more categories of adhesives.

No changes were made in response to this comment.

Comment

TEA recommended that detailed logs of VOC use, emissions, and maintenance be required for full transparency and accountability.

Response

Applicable monitoring and recordkeeping requirements for miscellaneous industrial adhesives sufficient to assure compliance are specified in §115.478, which was not included in this rulemaking. This comment is outside the scope of the rulemaking.

No changes were made in response to this comment.

Comment

TEA commented on the need to implement more stringent regulations for emergency releases.

Response

Establishing stricter regulations for VOC emissions during emergency releases and requiring mandatory reporting and immediate corrective actions for emergency releases are considered outside the scope of this rule revision. Emergency release reporting and corrective action provisions are found in 30 TAC Chapter 101, Subchapter F.

No changes were made in response to this comment.

Comment

TEA recommended that the commission remove or minimize the exemptions for industrial processes currently allowed to emit significant amounts of VOC without regulation. TEA commented on small facility exemptions, recommending that small facilities contributing to VOC emissions be subject to monitoring and control techniques. TEA also commented that regulations should be applicable to all regions in Texas without exemptions.

Response

The purpose of this rulemaking is to amend/add provisions intended to be included in the previous rulemaking (Project Number 2023-116-115-AI) to implement contingency plans for the 2008 ozone NAAQS nonattainment areas. The current rule, with amendments recently adopted April 24, 2024, removed the 3.0 ton per year small facility exemption to generate emission reductions needed for SIP contingency purposes. Non-exempt sites would be subject to control and other applicable requirements if the contingency measure is triggered, as requested by TEA. Additional controls beyond those needed to achieve a complete contingency plan in the DFW and HGB areas, as included in the three SIP revisions adopted April 24, 2024, the DFW 2008 Ozone NAAQS Severe Attainment Demonstration (AD) SIP Revision (Project No. 2023-107-SIP-NR), the HGB 2008 Ozone NAAQS Severe AD SIP Revision (Project No. 2023-110-SIP-NR), and the DFW-HGB 2008 Ozone NAAQS Severe RFP SIP Revision (Project No. 2023-108-SIP-NR) are outside the scope of this rulemaking. If emission reductions are needed in other areas of Texas for other purposes, the commission may consider expanding the geographic applicability of these reduced VOC content limits and remove exemptions in subsequent rulemaking.

No changes were made in response to this comment.

Comment

TEA recommended that the commission involve communities in both monitoring and decision-making processes as well as in educational initiatives.

Response

TCEQ offers several opportunities for engaging with the local community and also provides educational outreach. For example, with regard to engagement of the public in the air monitoring area, the public can comment on TCEQ's annual air monitoring network plans and five year assessments, which are posted for 30 days to gather feedback from the public before submission to EPA. TCEQ also offers educational outreach related to air quality and pollution prevention through programs like "Take

Care of Texas." TCEQ strives to offer engagement opportunities to all persons, including those in vulnerable communities, and strives to ensure that all persons can participate meaningfully in TCEQ programs and activities through public participation, including appropriate accommodations when needed to ensure language access needs and Title VI of the Civil Rights Act of 1964 requirements are met.

Opportunities for local communities to engage in and provide input on this rulemaking were offered to the public by means of a virtual public hearing on July 25, 2024, at 10:00 a.m., accessible to all populations. Hearing notices were published in *The Dallas Morning News* and the *Houston Chronicle* newspapers in English and in *Al Dia* and *La Voz* newspapers in Spanish. Additionally, two Spanish language interpreters were present during the public hearing and provided interpretation services to be inclusive of persons with limited English proficiency. Various methods were made available for the public to provide comments on the rulemaking. Methods included providing comments in writing by mail, fax, e-mail, and online during the comment period, which closed on July 29, 2024.

No changes were made in response to this comment.

Comment

TEA recommended that the commission provide incentives and technical assistance to facilities that transition to low-VOC adhesives and technologies.

Response

The commission offers free technical assistance to small businesses from the section, including the EnviroMentor programs. Alongside others, these programs offered by the commission may assist facilities transitioning to low-VOC adhesives and new technologies.

No changes were made in response to this comment.

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), §5.102, concerning general powers; §5.103, concerning Rules; TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §7.002, concerning Enforcement Authority, which authorizes the commission to enforce the provisions of the Water Code and the Health and Safety Code within the commission's jurisdiction; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The amendments are also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning the State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants; and THSC, §382.021, concerning Sampling Methods and Procedures.

The adopted amendments implement TWC, §§5.102, 5.103, and 7.002; and THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021.

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 230. GROUNDWATER AVAILABILITY CERTIFICATION FOR PLATTING

30 TAC §§230.1 - 230.11

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts amendments to 30 Texas Administrative Code (TAC) §§230.1 - 230.11.

Sections 230.1, 230.3, 230.4, 230.5, 230.8, 230.10, and 230.11 are adopted *with changes* to the proposed text as published in the May 24, 2024, issue of the *Texas Register* (49 TexReg 3696) and will be republished. Sections 230.2, 230.6, 230.7, and 230.9 are adopted *without changes* to the proposed text and will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

The purpose of this rulemaking adoption is to implement the provisions of Senate Bill (SB) 2440, passed during the 88th Texas Legislature's Regular Session in 2023. Local Government Code (LGC) §212.0101 and §232.0032 establish requirements for groundwater availability certification in the municipal and county plat application and approval process for proposed subdivisions when the groundwater beneath the land serves as the source of water supply. SB 2440 amended §212.0101(a) and §232.0032(a) to make groundwater availability certification a mandatory component of the plat application and approval process. SB 2440 also established specific circumstances under which a municipal or county authority may waive the certification requirement by adding §§212.0101(a)(1) and (a)(2) and §§232.0032(a)(1) and (a)(2). SB 2440 became effective on January 1, 2024, and requires that existing commission rules are continued in effect for plat applications filed before January 1, 2024.

The charge to TCEQ under LGC, §§212.0101(b) and (c) and §§232.0032(b) and (c) is limited to adopting rules that establish the form and content of a groundwater availability certification and require transmittal of specific information to the Texas Water Development Board and the applicable groundwater conservation district. Currently, 30 TAC §230.1 and §§230.3 - 230.11 include references to applicability and have embedded forms. Since applicability is addressed by LGC §§212.0101(a), (a)(1)

and (a)(2) and §§232.0032(a), (a)(1) and (a)(2) and TCEQ is not charged by statute with further defining applicability, the adopted rulemaking replaces applicability provisions with general provisions that identify the purpose of the rule. And since the current rules specify transmittal requirements and groundwater availability certification contents, the adopted rulemaking removes the embedded forms and replace those with references to TCEQ forms so that the format of the forms can be updated as technology changes.

During rule proposal, the commission received several comments relating to waiver requirements. Specifically, stakeholders recommended the commission define the term "credible evidence" in rule. After further evaluation of the statute, the commission concluded that the statute does not charge TCEQ with defining applicability or waiver requirements. Because the statute defines applicability and waiver requirements and "credible evidence" is a part of waiver requirements as defined by LGC §§212.0101(a-1)(1) and 232.0032(a-1)(1), a definition was not included in the rule adoption.

Many comments were received that requested amendments or additions to the rules that are outside of the scope of this rulemaking. Although changes to the rule cannot be made based on these comments, the commission reviewed the merits of the comments, and provided responses where appropriate.

Some commentors requested amendments requiring groundwater district contact information to be submitted as part of the groundwater availability certification. Other comments were received requesting non-substantive clarifications of proposed and existing rule language. Changes to the rules were made in response to these comments.

Some comments supported the removal of embedded forms from the rule and replacing those with references to TCEQ forms so that the format of the forms can be updated as technology changes. Comments on the new TCEQ forms were also received and, where appropriate, changes to those forms were made in response to those comments.

Section by Section Discussion

§230.1, Applicability

LGC, §§212.0101(b) and (c) and §§232.0032(b) and (c) charge the commission with adopting rules that establish the form and content of a groundwater availability certification and require plat applicants to transmit specific information to the Texas Water Development Board and any applicable groundwater conservation district. TCEQ adopts amendments to this section that eliminate the applicability provisions because those are established by LGC, §§212.0101(a), (a)(1), and (a)(2) and §§232.0032(a), (a)(1), and (a)(2). The adopted rule replaces applicability provisions with general provisions that identify the purpose of the rule consistent with LGC, §§212.0101(b) and (c) and §§232.0032(b) and (c).

The commission also adopts amendments to remove the form embedded at §230.1(c)(2) and instead require submittal of Plat Attesting Form (TCEQ-20983). Removing the form from the rule allows for the format to change with technology over time. Conforming changes are adopted throughout 30 TAC §230.1.

§230.1(a) is adopted with changes to the proposed text to add new language at the end of the paragraph to clarify the purpose of the rule: ", which requires certification that adequate groundwater is available for a proposed subdivision if groundwater under that land is to be the source of water supply."

§230.2, Definitions

The adopted amendment removes the definition of "executive administrator" at §230.2(6), because "executive administrator" is not used independently from "of the Texas Water Development Board" within the chapter and, therefore, the definition is not necessary.

§230.3, Certification of Groundwater Availability for Platting

The adopted amendment makes conforming changes where these sections reference the provisions modified at §230.1. The adopted amendment also removes the form embedded at §230.3(c) and instead requires submittal of Certification of Groundwater Availability for Platting Form (TCEQ-20982). Removing the form from the rule allows for the format to change with technology over time. Conforming changes are adopted throughout 30 TAC §230.3.

Section 230.3(c) is adopted with changes to the proposed text to add clarifying language following the word "certification": "...of adequacy of groundwater under the subdivision required by this chapter..."

§230.4, Administrative Information

The commission adopts amendments to §230.4 to make a conforming citation where the plat applicant "must" now follow 30 TAC Chapter 230 rules, rather than "may" or "shall" follow 30 TAC Chapter 230 rules. The word "must," now replaces "may" and "shall," throughout §230.4. Additionally, amendments are adopted that make conforming changes where these sections reference the provisions modified at §230.1 and §230.3.

The commission adopts amendments to require an email address along with the existing contact information required by this section.

Section 230.4 is adopted with changes to the proposed text to add new §230.4(8) to require the name, address, phone number, email address, and facsimile number of the applicable groundwater conservation district(s).

§§230.5 - 230.11

The commission adopts amendments to §§230.5 - 230.11 to make a conforming citation where the plat applicant "must" now follow 30 TAC Chapter 230 rules, rather than "may" or "shall" follow 30 TAC Chapter 230 rules. The word "must," now replaces "may" and "shall," throughout §§230.5 - 230.11. Additionally, the commission adopts amendments that make conforming changes where these sections reference the provisions modified at §230.1 and §230.3.

Section 230.5(6) is adopted with changes to the proposed text to replace "which" with "must."

§230.8(a) is adopted with changes to the proposed text to add the TCEQ form number after the form title.

§230.10(c) is adopted with changes to the proposed text to clarify the information needed to determine the parameters of the aquifer(s) being considered to supply water to the proposed subdivision.

§230.11(b) is adopted with changes to the proposed text to replace "basis" with "conditions."

Final Regulatory Impact Determination

The commission reviewed the adopted rulemaking in consideration of the regulatory analysis requirements of Texas Govern-

ment Code (TGC), §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "Major environmental rule" as defined in the Texas Administrative Procedure Act. A "Major environmental rule" is a rule that is specifically intended to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

This rulemaking does not meet the statutory definition of a "Major environmental rule" because it is not the specific intent of the rule to protect the environment or reduce risks to human health from environmental exposure. The specific intent of the adopted rulemaking is to implement legislative changes enacted by SB 2440, which requires groundwater certification during the platting process.

In addition, the rulemaking does not meet the statutory definition of a "Major environmental rule" because the adopted rule will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, nor the public health and safety of the state or a sector of the state. The cost of complying with the adopted rule is not expected to be significant with respect to the economy.

Furthermore, the adopted rulemaking is not subject to TGC, §2001.0225 because it does not meet any of the four applicability requirements listed in TGC, §2001.0225(a). There are no federal standards governing groundwater certification in the plat application and approval process. Second, the adopted rulemaking does not exceed an express requirement of state law. Third, the adopted rulemaking 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. Finally, the adopted rulemaking is not an adoption of a rule solely under the general powers of the commission, as SB 2440 requires the adopted rules.

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received on the Draft Regulatory Impact Analysis Determination.

Takings Impact Assessment

The commission evaluated the rulemaking adoption and performed an assessment of whether the adopted rule constitutes a taking under Texas Government Code, Chapter 2007. The specific intent of the adopted rulemaking is to implement legislative changes enacted by SB 2440, which requires groundwater certification during the platting process, with certain exceptions. The adopted rulemaking substantially advances this purpose by amending the Chapter 230 rules to incorporate the new statutory requirements.

Promulgation and enforcement of this adopted rule will be neither a statutory nor a constitutional taking of private real property. The adopted rule does not affect a landowner's rights in private real property because this rulemaking does not relate to nor have any impact on an owner's rights to property. The adopted rule will primarily affect landowners who plan to use only groundwater to supply water for subdivisions. This will not be an effect on real property. Therefore, the adopted rulemaking will not constitute a taking under TGC, Chapter 2007.

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 regarding the Consistency with the Coastal Management Program during the public comment period. No comments were received on the Consistency with the Coastal Management Program.

Public Comment

The commission held a public hearing on June 24, 2024 and the comment period closed on June 25, 2024. The commission received comments from Approach Environmental (Approach), Bluebonnet Groundwater Conservation District (GCD), CenterPoint Committee for Growth and Progress (CPCGP), Clearwater Underground Water Conservation District (CUWCD), Environmental Defense Fund (EDF), Greater Edwards Aquifer Alliance (GEAA), Headwaters GCD, Hill Country Alliance (HCA), Kerr County Engineering (Kerr County), Middle Trinity GCD (MTGCD), Northern Trinity GCD (NTGCD), Parker County Commissioners Court (Parker County), Prairielands GCD, Texas Alliance of Groundwater Districts (TAGD), Texas Association of Builders (TAB), Texas Groundwater Association (TGWA), Texas Rural Water Association (TRWA), Upper Trinity GCD (UTGCD), and Wise County Commissioners Court (Wise County).Response to Comments

Miscellaneous

Comment 1

TAGD, Upper Trinity GCD, and Prairielands GCD expressed their support for removing the form content language from the rule and providing a separate form that can be updated.

Response 1

The commission acknowledges this comment.

Comment 2

Prairielands GCD requested the rule set out the waiver criteria within the language of the rule, commenting that many platting authorities, applicants, and technical professionals will only look at the rule for guidance rather than the statute.

Response 2

The commission disagrees with this comment. The commission amended this section to eliminate the applicability provisions because those are established by Local Government Code (LGC), §§212.0101(a), (a)(1), and (a)(2) and §§232.0032(a), (a)(1), and (a)(2). The statute only identifies two charges for TCEQ: develop rules to establish the form and content of a certification to be attached to a plat application; and require a plat applicant to transmit certain information to the Texas Water Development Board and any applicable groundwater conservation district(s). Therefore, it is appropriate to reference the LGC in the rule rather than including specific applicability criteria in the rule. Additionally, since the waiver criteria are set out in the statute, it is appropriate that the rule reference the LGC rather than include specific criteria. No change was made in response to this comment.

Comment 3

Prairielands GCD commented that the rule should clarify that a waiver for subdivisions supplied with groundwater from the Gulf Coast Aquifer or the Carrizo-Wilcox Aquifer must be determined based on the boundaries of those aquifers as delineated by TWDB.

Response 3

The commission disagrees with this comment. As discussed in Response 2, the waiver requirements in the statute are part of the applicability requirements that were removed from the rule, as the statute only directs the commission to develop a rule establishing the form and content of the groundwater availability certification form. No change was made in response to this comment.

Comment 4

UTGCD requested that TCEQ correct a statement in the "Background and Summary of the Factual Basis for the Proposed Rules" section of the rulemaking to remove the term "primary" from the phrase "when the groundwater beneath the land serves as the primary source of water supply."

Response 4

The commission agrees with this comment and removed the word "primary" to be consistent with the language in LGC §§212.0101(a) and 232.0032(a).

Comment 5

Approach Environmental requested TCEQ add the constant drawdown pumping test method to the rule, which currently includes only a constant rate pumping test. The commenter stated that the constant drawdown method may be especially useful in low yield formations, fractured rock, or where the available drawdown is limited.

Response 5

Modification of this technical requirement is outside of the scope of this rulemaking. No changes were made in response to this comment. However, the commission did review the references provided and notes that in a constant drawdown aquifer test, the transmissivity estimate is within an order of magnitude; and the determination of the coefficient of storage cannot be accepted as it is highly sensitive to experimental error. The constant drawdown aquifer test would not be an appropriate method to add to the rule.

Comment 6

Bluebonnet GCD and GEAA requested the rule incorporate the latest TWDB-approved groundwater availability model. Bluebonnet GCD stated that the recent models incorporate the best available science and are beneficial because they account for a longer time span of 50 years, as opposed to 30 years described in 30 TAC Chapter 230. In addition, the Bluebonnet GCD stated that these models should be recognized within the rule or on the Groundwater Availability Certification form. GEAA stated they strongly support using the best available science within the Groundwater Availability Certification process and recommended TCEQ insert language requiring the use of the most current TWDB-approved groundwater availability model during the certification process, prior to approval.

Response 6

Adding this technical requirement is outside of the scope of this rulemaking. No changes were made in response to this

comment. When developing the Groundwater Availability Certification, the licensed professional engineer or licensed professional geoscientist should determine which available information should be included.

Comment 7

Two commentors requested changes to the rule to assess cumulative impacts to groundwater:

Bluebonnet GCD requested that the rule require applicants to identify the cumulative impact of single wells on multiple subdivision lots as part of the Groundwater Availability Certification. Examples of cumulative impacts include drawdown, well interference, and subsidence, which could result in a need to tie into a PWS or find a new water supply. The commentor mentioned the Wilmeth Plat Analysis as an example that could be used on any scale of subdivision, stating that it includes common practices and techniques of professional engineers and professional geoscientists and relies on readily available data from groundwater availability models, which are not recognized in the current rule.

GEAA recommended TCEQ require a cumulative impacts assessment during the Groundwater Availability Certification process, prior to approval. GEAA stated that this impacts assessment should include an analysis of the cumulative impact of single wells across multiple subdivision lots and the impact of residential and non-residential development outside of the proposed subdivision on the availability of groundwater supplies.

Response 7

Adding this technical requirement is outside of the scope of this rulemaking. No changes were made in response to this comment. The commission recognizes that cumulative impacts are a concern and encourages GCDs and TWDB to monitor incoming Groundwater Availability Certifications submitted by licensed professional engineers (PEs) or licensed professional geoscientists (PGs).

Comment 8

Clearwater UWCD requested TCEQ remove the requirement for drilling and completing an observation well from §230.8(c).

Response 8

Removing this requirement from the rule is outside of the scope of this rulemaking. No change was made in response to this comment. The commission disagrees with this requested amendment because an observation well is needed to determine the coefficient of storage. Estimating the coefficient of storage for a Groundwater Availability Certification is not sufficient.

Comment 9

EDF and HCA commented that given the increased pressure on groundwater resources in rural Texas and the fact that groundwater is often the only source of water for many rural communities as well as for agriculture, it is critical that the Groundwater Availability Certification rules be strengthened to provide local governments and developers with accurate groundwater data and information to make informed decisions about whether there is sufficient groundwater to accommodate development.

Response 9

The scope of this rulemaking was limited to the implementation of SB 2440, 88th Texas Legislature, and these comments are outside of the scope of this rulemaking. No changes were made in response to this comment. The commission recognizes the

importance of groundwater in rural Texas and asserts that the existing requirements are sufficient for the licensed professional engineer or geoscientist to determine if sufficient groundwater is available. The commission encourages platting authorities and developers to work with applicable local groundwater conservation districts, TWDB, the licensed PE or PG, and other professionals to determine whether there is sufficient groundwater available for the subdivision.

Comment 10

EDF recommended that counties, especially those in PGMA, be allowed in this rule to require new developments to prove long-term groundwater sustainability, not just 30-year water availability, so that the groundwater resources of Texas, and the unique communities that rely on them, can be preserved for multiple generations to come.

Response 10

Adding this technical requirement is outside of the scope of this rulemaking. No changes were made in response to this comment.

Comment 11

Several commentors requested changes to the existing rule to reflect that the rule is no longer optional but required. Examples are to replace "shall" with "must," where appropriate; and to remove the phrase "if required by the municipal or county authority" when referring to delivery of the groundwater availability certification or supporting data.

Response 11

The commission acknowledges these comments and notes that the proposed rule package replaced "shall" with "must" throughout. No additional changes were made to the adopted rule package.

Comment 12

EDF suggested clarifying that all data, calculations, and information shall be provided in a format that allows for the replication of results (§§230.1(c), 230.6(d), and §230.8(d)).

Response 12

Adding this requirement is outside of the scope of this rulemaking. No changes were made in response to this comment. The rule (§230.3) requires that a licensed professional geoscientist or licensed professional engineer prepare and sign the Certification of Groundwater Availability for Platting, which effectively attests to the accuracy and replicability of the information.

Comment 13

CPCGP commented that "full build out" assumptions are likely to be inadequate if focused only on the new subdivision and not the broader existing subdivision in which the new subdivision is located. For example, if every owner in an existing subdivision were to further subdivide their lots, then "full build out" would look quite different. At a minimum, CPCGP stated that this should be addressed in the assumptions where new development is the result of subdividing existing development.

Response 13

Adding this technical requirement is outside of the scope of this rulemaking. No changes were made in response to this comment. The commission understands that in some cases the full build-out assumptions may be inadequate for the reasons listed.

However, this issue is site-specific and should be resolved by the applicant, the platting authority, and the licensed professional engineer or licensed professional geoscientist who certifies the Groundwater Availability Certification.

Comment 14

CPCGP requested that TCEQ clarify how the proposed rules relate to a public water system (PWS). The commentor stated that some developers are avoiding the requirements with "workarounds," using historical, non-site specific, and irrelevant data; and stated that a groundwater availability study under 30 TAC Chapter 230 should be prepared for all PWSs.

Response 14

A change to this requirement is outside of the scope of this rule-making. No changes were made in response to this comment.

To clarify, 30 TAC §230.10(c), requires subdivisions utilizing individual water wells on individual lots to meet the requirements described in §230.8, relating to Obtaining Site-Specific Groundwater Data; but §230.8 also states that if the proposed method of water distribution is expansion of an existing PWS or installation of a new PWS, then site specific groundwater data must be developed under the requirements of 30 TAC Chapter 290, Subchapter D. The requirement to follow 30 TAC Chapter 290, Subchapter D rules for PWSs are in lieu of - and not in addition to - 30 TAC Chapter 230.

Regarding the request to require a study under 30 TAC Chapter 230 for all public water systems, the commission recognizes that PWSs have different requirements than private well owners. 30 TAC Chapter 290 requires that PWS wells meet strict well construction guidelines. In addition, the rules require each proposed new PWS to submit an engineering report describing the project and how the PWS plans to meet TCEQ's required minimum water system capacities. PWSs are also subject to periodic inspections by TCEQ, which includes verifying well conditions and capacity.

Comment 15

CPCGP commented that TCEQ could ask TWDB to keep a database of all groundwater availability studies, which could be used for planning and for use by developers to support new subdivisions where relevant provisions apply.

Response 15

This request is outside of the scope of this rulemaking. No changes were made in response to this comment. TCEQ forwarded this comment and request to TWDB.

§230.1.

Comment 16

TAGD, Middle Trinity GCD, and Northern Trinity GCD suggested TCEQ add language to this subsection regarding obtaining a waiver.

Response 16

See Response 2. No change was made in response to this comment.

Comment 17

Middle Trinity GCD requested TCEQ add "Purpose and.." before the word "Applicability" to the title of this section.

Response 17

In the rule proposal, the commission removed the specific applicability requirements and updated the title of this section to be "General." A subsection entitled "Purpose" was added to §230.1(a) during the rule proposal. No changes were made in response to this comment.

Comment 18

CPCGP recommended that in §230.1, the following language be used:

"(a) Purpose. This chapter establishes the form and content of a certification to be attached to a plat application that requires certification that adequate groundwater is available for a proposed subdivision if groundwater under that land is to be the source of water supply."

Response 18

The commission agrees that adding language from the statute in this introductory paragraph would add clarity, and has updated §230.1(a) as follows:

"(a) Purpose. This chapter establishes the form and content of a certification to be attached to a plat application under Texas Local Government Code, §212.0101 or §232.0032, which requires certification that adequate groundwater is available for a proposed subdivision if groundwater under that land is to be the source of water supply."

Comment 19

Texas Rural Water Association (TRWA) requested that §230.1(b) be revised to add §230.1(b)(3), to require that copies of any information provided to TWDB and applicable GCD(s) must also be provided to the applicable water utility. TRWA comments that developers do not routinely consult with the water utilities regarding groundwater availability and accessibility, and that the utilities need sufficient notice of a possible increase in groundwater demand. TRWA also requested that TCEQ add §230.1(c)(3) to require the plat attesting form be submitted to the applicable water utility.

Response 19

Adding this requirement is outside of the scope of this rulemaking. No changes were made in response to this comment. The commission encourages the commentor to work with TWDB, applicable groundwater conservation districts, platting authorities, and utilities to share information.

Comment 20

TAGD requested edits to §230.1(b), relating to "Use of this chapter," including removing the phrase "If required by the municipal or county authority," from the first sentence and adding to the end of the last sentence the phrase "which may include, among other things, production limitations and well spacing requirements."

Response 20

In the rule proposal, the commission removed the applicability provisions described in §230.1(b) and instead referred to the LGC. No changes were made in response to this comment.

Comment 21

TAGD requested that TCEQ revise §230.1(c) (§230.1(b)) in the proposed rule) to include "Verification and" before the phrase "Transmittal of data."

Response 21

The commission disagrees with this comment. The commission asserts that adding the phrase "verification and" does not add clarity to the rule and therefore no change was made.

Comment 22

TAGD, Middle Trinity GCD, and Northern Trinity GCD requested that §230.1(c)(2) (§230.1(b)(2) in the proposed rule) be revised to require the plat applicant to attest that the information provided to meet the rule requirements is accurate and that a completed copy of the form must be submitted as part of an applicant's plat application and submitted to the platting authority prior to approval of the plat application.

Response 22

The commission disagrees with this comment. The rule at §230.1(c) requires the Plat Attesting Form (TCEQ-20983) be submitted with the groundwater availability certification. The current form requires the plat applicant to attest that the required information has been provided in accordance with 30 TAC Chapter 230. This form does not currently have a location for a signature, so for clarity the Plat Attesting Form (TCEQ-20983) will be updated to include a location for the plat applicant's signature following the certification statement. The commission notes that a Texas licensed professional engineer or licensed professional geoscientist must sign the Groundwater Availability Certification for Platting form (TCEQ-20982), which effectively attests to the accuracy of the information. No additional changes were made in response to the comment.

§230.2.

Comment 23

Middle Trinity GCD and Northern Trinity GCD requested TCEQ revise the definition of "Applicable groundwater conservation district or districts" to remove (A) related to having authority to regulate well spacing.

Response 23

The commission disagrees with this comment. The definition for "applicable groundwater conservation district or districts" used in the rule is consistent with the definition for "district" in the Texas Water Code (TWC), Chapter 36, related to Groundwater Conservation Districts. The statute, TWC §36.001(1), defines "District" as "any district or authority created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, that has the authority to regulate the spacing of water wells, the production from water wells, or both." No changes were made in response to this comment.

Comment 24

TRWA requested TCEQ add the following definition, as part of their general comment to require applicants to submit the groundwater platting application to TWDB and applicable GCDs:

"(2) Applicable Water Utility - any entity that has the authority to provide retail water service to any part of the plat applicant's proposed subdivision."

Response 24

See response to comment 19. No change was made in response to this comment.

Comment 25

TAGD requested that the following language be added to the end of the definition for "Aquifer test" at §230.2(3):

"(3) ... All aquifer tests required under this chapter, including the drilling, construction, operation and conversion or closure of any wells used to conduct such aquifer test, must be completed in accordance with the rules of the Texas Department of Licensing and Regulation and the applicable groundwater conservation district or districts."

Middle Trinity GCD and Northern Trinity GCD also requested TCEQ revise this definition, and requested the following addition:

"(3) ... All aquifer tests required under this chapter must be completed in accordance with the rules of the applicable groundwater conservation district or districts."

Response 25

Modifying this definition is outside of the scope of this rulemaking. No changes were made in response to this comment. Applicants must follow any relevant rules, including those of the Texas Department of Licensing and Regulation and the applicable GCD(s); but it is not necessary to include such statements in this rule.

Comment 26

The following commentors provided specific language for TCEQ to consider as a definition for credible evidence related to obtaining a waiver, referencing §230.1 of the proposed rule: Middle Trinity GCD, Texas Alliance of Groundwater Districts (TAGD), Bluebonnet GCD, Environmental Defense Fund (EDF); Greater Edwards Aquifer Alliance (GEAA), Hill Country Alliance (HCA), Clearwater UWCD, Prairielands GCD, and Northern Trinity GCD.

TAGD, Bluebonnet GCD, EDF, GEAA, HCA, and Northern Trinity GCD requested TCEQ add the following definition:

"at a minimum the results of an aquifer test demonstrating sufficient groundwater availability that was completed no more than 3 years before the date of the plat application within a ¼-mile radius of the proposed subdivision and was conducted in compliance with any applicable rules of any groundwater conservation district in which the proposed subdivision will be located, and any other information required under the rules of such groundwater conservation district and the municipal or county authority, the municipal or county authority determines that sufficient groundwater is available and will continue to be available to the subdivision tract of land."

In addition, TAGD commented that the proposed definition would ensure the evidence presented for a waiver would be recent and relevant to the specific location of the subdivision. Bluebonnet GCD requested that in the absence of adding a definition for credible evidence, TCEQ provide a list of factors or characteristics that could be considered in determining whether evidence provided by plat applicants is credible. Bluebonnet GCD commented that even a general outline would be useful but maintains some type of framework is important. EDF and HCA also commented that without guidance, counties and municipalities do not have the experience or expertise to evaluate what may constitute credible evidence.

Clearwater UWCD requested TCEQ add the following definition of credible evidence:

"A written statement from the applicable groundwater conservation district stating "sufficient groundwater is available and will continue to be available to the subdivided tract of land." If the tract is not within a groundwater conservation district, a report

on the local groundwater availability prepared by a licensed professional engineer or geoscientist with a conclusion stating "sufficient groundwater is available and will continue to be available to the subdivided tract of land."

Middle Trinity GCD requested that credible evidence be defined as follows:

"A written statement from the applicable groundwater conservation district confirming that "sufficient groundwater is available and will continue to be available to the subdivided tract of land." If the tract is outside a groundwater conservation district, a report on local groundwater availability prepared by a licensed professional engineer or geoscientist must conclude that "sufficient groundwater is available and will continue to be available to the subdivided tract of land."

Prairielands GCD requested that the rule establish a minimum statewide standard for credible evidence and commented that without such a standard, counties and municipalities may be lobbied by plat applicants to bypass costly Groundwater Availability Certification requirements, possibly leaving homeowners without adequate groundwater supplies. They assert that during the legislative process for this rule, the language in the statute was left open-ended to gain consensus, with the expectation that the rulemaking would address such outstanding issues. Prairielands GCD also commented that credible evidence should require, at a minimum, a pump test, conducted on the tract proposed to be subdivided, utilizing a well that is no more than six months old. Similar to the parameters established in §230.8 for conducting aquifer testing, the district stated the rule should establish certain parameters for conducting pump tests and allow the results to be considered as credible evidence of sufficient groundwater availability.

Response 26

The commission disagrees with these comments. No changes were made in response to this comment. The LGC §§212.0101(a) and 232.0032(a) establish the requirement for plat applicants to include information on groundwater availability as part of their application. LGC §§ 212.0101(a-1) and 232.0032(a-1) provide an option for the platting authority (municipality or county) to waive the Groundwater Availability Certification requirements in certain cases if, based on credible evidence of groundwater availability in the vicinity of the proposed subdivision, the municipal authority or commissioner's court determines that sufficient groundwater is available and will continue to be available to the subdivided tract of land.

The charge to the commission under LGC §§212.0101(b) and (c) and §§232.0032(b) and (c) is limited to adopting rules that establish the form and content of a Groundwater Availability Certification and that require transmittal of specific information to the Texas Water Development Board and any applicable groundwater conservation district. The statute does not charge the commission with further defining either applicability or waiver requirements, and "credible evidence" is a part of waiver requirements. The platting authority must determine whether a waiver is appropriate, including what constitutes credible evidence.

Comment 27

Upper Trinity GCD, Parker County Commissioners Court (PCCC), and Wise County Commissioners Court (WCCC) requested TCEQ provide guidance on how to consider "credible evidence" for the purpose of obtaining a waiver. Upper Trinity GCD additionally encouraged TCEQ to at least outline a few

items that could be submitted as credible evidence, believing it would help many people make decisions and would help landowners exercise their property rights and develop their property with the assurance to future purchaser there still is water below the property.

Response 27

See Response 26. No changes were made in response to this comment.

Comment 28

Texas Groundwater Association (TGWA) commented that any statements of credible evidence be addressed by the local GCD, or by TWDB in jurisdictions which do not have a GCD. TGWA commented that they recognize the need for effective groundwater management to ensure future availability and desire that access to groundwater be treated fairly and with minimal government intervention.

Response 28

See Response 26. No change was made in response to this comment.

Comment 29

TAB commented that they oppose including a definition for "credible evidence" and that it is beyond the scope of Texas statutes.

Response 29

See Response 26. No change was made in response to this comment.

Comment 30

Kerry County Engineering requested TCEQ add definitions for "expansion of an existing public water supply system" and "groundwater under the subdivision."

Response 30

Adding definitions for "expansion of an existing public water supply system" and "groundwater under the subdivision" is outside of the scope of this rulemaking. No changes were made in response to this comment. 30 TAC Chapter 290, Subchapter D defines public water system (PWS). The commission maintains that an "expansion" of a PWS as well as "groundwater under the subdivision" are self-evident and do not require further definition.

Comment 31

Prairielands GCD requested TCEQ add a definition for pump test to the rule:

"Pump test - a test in which a well, drilled within 6 months of the date of the plat application on the tract proposed to be subdivided, is pumped at a controlled rate to assess hydraulic properties of an aquifer system, the results of which shall include water-levels prior to pumping and flow rate, drawdown, and recovery conditions at 5 minute increments (or less) for the entirety of the pump test and until water-levels have recovered to at least 95% of static water-levels."

Response 31

Adding a definition for "pump test" is outside of the scope of this rulemaking. No changes were made in response to this comment. The commission asserts that adding and defining the term "pump test" to the current rule is not necessary. The rule includes a definition for aquifer test, which is sufficient for the purpose of this rulemaking.

§230.3.

Comment 32

CPCGP recommended the following update to §230.3(c):

"Submission of information. The certification of adequacy of groundwater under the subdivision required by this chapter must be submitted to the following..."

Response 32

The commission agrees and has added the requested language to §230.3(c).

Comment 33

Bluebonnet GCD requested that TCEQ update the Groundwater Availability Certification for Platting form to add "Groundwater Management Area Desired Future Condition adoption, and groundwater availability model" to the note on number 18 of the form: "General Groundwater Resource Information (30 TAC §230.7)."

Response 33

The Groundwater Availability Certification for Platting form is no longer incorporated into the rule. However, this question on the Groundwater Availability Certification for Platting form includes information that a user may refer to for obtaining aquifer information. The commission agrees that the requested reference could be helpful and therefore it was added as a reference to the note on number 18 of the Groundwater Availability Certification for Platting form (TCEQ-20982). No change was made to the rule in response to this comment.

Comment 34

Bluebonnet GCD commented that the general principles in the following sentence from §230.8(c) could be applied within the Groundwater Availability Certification for Platting form: "The aquifer test must provide sufficient information to allow evaluation of each aquifer that is being considered as a source of residential and non-residential water supply for the proposed subdivision." Bluebonnet GCD encouraged emphasizing and focusing on the evaluation of potential impacts such as draw-down (individually and cumulatively), subsidence, and spring flow; and states that the collection and review of this information in the planning state should provide clarity on the best practice to implement, individual wells and their minimum well depth or centralized distribution system and minimize costly alternative supply installation after the fact.

Response 34

The Groundwater Availability Certification for Platting form is no longer incorporated into the rule. However, the commission agrees that including the referenced sentence from §230.8(c) may be helpful to include on the form and will update the form to include this information. No change was made to the rule in response to this comment.

Comment 35

Related to §230.8(c)(8), Bluebonnet GCD stated that it is critical to adequately review and analyze potential impacts of the proposed subdivision in order to demonstrate groundwater availability. Bluebonnet GCD suggested that their district's guidance documents could provide standards and expectations for the investigations and reports to inform review and analysis. The district commented that these general principles could be applicable and applied within the TCEQ form.

Response 35

Adding the district's documents is outside the scope of this rule-making. No change was made to the form or the rule in response to the comment. TCEQ may develop a list of resources that can be included on its webpage, which could include evaluating and linking existing guidance documents such as the district's.

Comment 36

CPCGP and Headwaters GCD commented on the choice of "Yes," "No," and "Not applicable" on the Groundwater Availability Certification for Platting Form (TCEQ-20982). CPCGP noted that in Questions 29 through 35 of the form, a certifying engineer is given the choice to claim either "yes" or "no" (or N/A) when asked if the required aquifer parameters under §230.10(c) have been determined; and commented that the "No" and "N/A" choices should be removed from the form given their comments on §230.10(c), the changes made by TCEQ at §230.7(b), and the groundwater availability requirement that must be determined under §230.10(d) for both individual and PWS. Similarly, Headwaters GCD stated they have seen Table 8 (§230.3) included in water availability studies where the boxes are filled in "not applicable," and state that more site specific and current data is needed on both existing and new PWSs.

Response 36

The Groundwater Availability Certification for Platting form is no longer incorporated into the rule. However, the commission agrees that the licensed professional engineer or licensed professional geoscientist responsible for the Groundwater Availability Certification should provide an explanation for any question on the form where they answered "No" or "Not Applicable." In response to the comment, the commission will update the Certification of Groundwater Availability Form (TCEQ-20982) to require the answer "No" or "Not Applicable" be explained where appropriate. No changes were made to the rule in response to this comment.

Comment 37

CPCGP states that the prior version of the Certification of Groundwater Availability for Platting form asked: "34. Has the anticipated method of water delivery, the annual groundwater demand estimates at full build out, and geologic and groundwater information been considered in making these determinations? Yes/No" and notes that this provision is not included on the new form.

Response 37

The Groundwater Availability Certification for Platting form is no longer incorporated into the rule. However, the commission acknowledges that this item was unintentionally omitted and has corrected the form to include the original item 34. No changes were made to the rule in response to this comment.

Comment 38

CPCGP notes that a correction should be made to question 30 of the form, as it refers to items "a. through i. below;" however, the form's questions only go through "h."

Response 38

The Groundwater Availability Certification for Platting form is no longer incorporated into the rule. However, the commission acknowledges this typographical error and has made the noted correction to question 30 of the Groundwater Availability for Platting

Form (TCEQ-20982). No changes were made to the rule in response to this comment.

Comment 39

Bluebonnet GCD commented that with respect to §230.10(b), a critical consideration in groundwater availability determinations is the cumulative impact of wells over time and after full build out. Bluebonnet GCD stated that recommending minimum well depth and considering the cumulative impact will minimize the likelihood of well interference, localized drawdown, subsidence, and the need of a centralized distribution system to resolve these impacts in the future. The district also stated that addressing pumping concentration prior to construction would significantly alleviate stress and pressure on the property owner and stated that these general principles could be applicable and applied within the TCEQ form.

Response 39

Adding these technical requirements is outside of the scope of this rulemaking, and therefore the requirements cannot be included in the form. No changes were made in response to this comment. Also see Response 7.

Comment 40

In reference to §§230.10(c) & (d), Bluebonnet GCD commented that defining aquifer parameters is important, both to understanding the susceptibility to impacts in the project area and to assist the municipal or county authority in understanding groundwater availability. Bluebonnet GCD stated that their district guideline documents for preparing hydrogeologic reports could be used as a resource and noted that such an analysis would provide the extent that drawdown would affect all wells and would provide guidance on minimum well depth. Bluebonnet GCD commented that these general principles could be applied within the TCEQ form.

Response 40

Adding the district's documents is outside the scope of this rulemaking. No change was made to the form or the rule in response to the comment. TCEQ may develop a list of resources that can be included on its webpage, which could include evaluating and linking existing guidance documents such as the district's.

Comment 41

Bluebonnet GCD noted the importance of groundwater availability determination, referencing §230.11(b), and stating that properly determining these conditions is very important and reviewing criteria to understand the potential impacts at the plat design phase can significantly reduce time, effort, and costs for construction and application. Bluebonnet GCD also stated that recommending minimum well depth is appropriate and helpful and provided information on their district guidelines on preparing hydrologic reports as a resource for both the platting authority and the developer. The commentator recommended that these general principles could be applied within the TCEQ form.

Response 41

Adding the district's documents to the form is outside the scope of this rulemaking. No change was made to the form or the rule in response to the comment. The commission notes that the comment appears to be addressing §230.11(a) and recognizes that sensible project development and best management practices are useful to understanding potential impacts of the plat design. TCEQ may develop a list of resources that can be included on

its webpage, which could include evaluating and linking existing guidance documents such as the district's. Also see Response 78 related to a clarification made to the adopted rule language.

§230.4.

Comment 42

TAGD, Middle Trinity GCD, and Northern Trinity GCD suggested adding contact information for the GCD to the list of general information that must be provided for a proposed subdivision under this chapter:

"(8) the name, address, phone number, and facsimile number of the applicable groundwater conservation district or districts and the name and email address of the general manager(s) of the district(s)."

Response 42

The commission agrees to add GCD contact information to the list of general information to be provided, and added the following language to §230.4(8), which differs slightly from the requested language:

"(8) the name, address, phone number, email address, and facsimile number of the applicable groundwater conservation district or districts."

Comment 43

Related to §§230.4(3)-(5), Kerr County questions the necessity of obtaining facsimile (fax) numbers as the industry standard currently is email.

Response 43

The commission acknowledges that email is a more common communication method and added email addresses in the proposed rule. However, the commission disagrees that facsimile numbers should be removed. The commission acknowledges that communication by fax is infrequent, but the commission will continue to receive such communications and notes that there may be occasion for a platting authority to send or receive information from an applicant by fax. No change was made in response to this comment.

§230.5.

Comment 44

Kerr County commented that the word "which" should be deleted from §230.5(6).

Response 44

The commission agrees and has removed "which" from the sentence in §230.5(6). A comma was also added after "provided."

Comment 45

TAGD requested TCEQ add a new §230.5(7) to the list of information that must be provided under this subchapter, and then move the paragraph to a new §230.5(8):

"(7) if the anticipated method of water distribution for the proposed subdivision requires a permit or permit amendment under the rules of the applicable groundwater conservation district, a description of how the proposed water supply and method of water distribution complies with Chapter 36, Texas Water Code, and the rules of the applicable groundwater conservation district or districts; and

(8) any additional information required by the municipal or county authority as part of the plat application."

Response 45

Adding this requirement is outside of the scope of this rulemaking. No changes were made in response to this comment. The commission agrees that applicants must follow any relevant rules, including those of GCDs. However, as stated in Response 25, the commission maintains that it is not necessary to include such statements in this rule.

§230.6

Comment 46

TAGD requested that TCEQ revise §230.6(d) to require that "sources of information used, and calculations performed to determine the groundwater demand estimates as required by this section" be provided to the platting authority rather than just making the information available if requested. Middle Trinity GCD also asked that the phrase "if requested" be removed.

Response 46

Adding this requirement is outside of the scope of this rulemaking. No changes were made in response to this comment.

§230.7.

Comment 47

TAGD requested that the following sentence be added to the beginning of §230.7(b), related to "Geologic and groundwater information:"

"The current groundwater availability model approved by the Texas Water Development Board provides baseline geologic and groundwater information and shall be included, as supplemented by site-specific data, for consideration."

Response 47

Adding this requirement is outside of the scope of this rulemaking. No changes were made in response to this comment. While TWDB groundwater availability models have relevant data that could be used in preparing the Groundwater Availability Certification, the licensed professional engineer or licensed professional geoscientist who certifies the availability of groundwater should determine which available information should be included.

Comment 48

Bluebonnet GCD commented on §§230.7(b)(1) - (4) that geologic and groundwater information used in planning and designing the aquifer test should address potential impacts such as drawdown (individually and cumulatively), subsidence, and spring flow where applicable. Bluebonnet GCD recommended a source of this information and impact analysis in the district's *Guidelines for Submitting Data and Information and the Preparation of Hydrogeologic Reports in Support of Applications for the Permitted Use of Groundwater*, which describe a Phase I report that evaluates the impacts of pumping using existing data and the existing regional groundwater flow model of the area for the aquifer in which the well(s) is to be completed.

Response 48

Adding the district's documents is outside the scope of this rulemaking. No change was made to the rule in response to the comment. TCEQ may develop a list of resources that can be included on its webpage, which could include evaluating and link-

ing existing guidance documents such as the district's. Also see Response 7.

§230.8.

Comment 49

Kerr County requested that "(TCEQ-20982)" be added as the second word of §230.8(a) for clarification purposes.

Response 49

The commission agrees with the comment and added a reference to the form number in §230.8(a).

Comment 50

Kerr County asked TCEQ's intent in requiring site-specific groundwater data to be developed under Chapter 290, Subchapter D when an expansion of an existing public water supply system or installation of a new public water supply system is the proposed method of water distribution for the proposed subdivision. The commenter noted that 30 TAC Chapter 290 does not require an observation well, nor are there requirements regarding previous pump tests. Kerr County also stated that while site-specific data generated from a Chapter 290 pump test allows one to calculate a transmissivity value, a storativity value cannot be calculated without an observation well.

Response 50

The commission acknowledges that the requirements of Chapters 230 and 290 are different; however, making this type of change is outside of the scope of this rulemaking. No changes were made in response to this comment. Also see Response 14.

Comment 51

Headwaters GCD commented that groundwater availability has become critical in Kerr County and the county is identified by TCEQ as a Priority Groundwater Management Area (PGMA). As a result, Headwaters GCD requests clarification on the form and content needed regarding existing and new PWSs. Headwaters GCD states that §230.8(a) is not clear as written and asks for confirmation whether the intent is to allow Section 290 Subchapter D in lieu of §230.8, or in addition to it. Headwaters GCD commented that bypassing §230.8 will potentially have a negative effect on Kerr County's groundwater resources.

Response 51

30 TAC §230.10(c) requires that aquifer parameters be determined under §§230.7 and 230.8 unless the development is going to be a part of a new or existing PWS, in which case 30 TAC Chapter 290 must be met. Also see Response 14. No change was made in response to this comment.

Comment 52

TAGD requested TCEQ add language to §230.8(a) as follows:

"(a) Applicability of section. This section is applicable only if the proposed method of water distribution for the proposed subdivision is individual water wells on individual lots. If expansion of an existing public water supply system or installation of a new public water supply system is the proposed method of water distribution for the proposed subdivision, site-specific groundwater data shall be developed under the requirements of Chapter 290, Subchapter D of this title (relating to Rules and Regulations for Public Water Systems), rules of any applicable groundwater conservation district, and the information developed in meeting these re-

quirements shall be attached to the form required under §230.3 of this title (relating to Certification of Groundwater Availability for Platting)."

Response 52

See Response 25. No change was made in response to this comment.

Comment 53

In §230.8(b), related to the location of existing wells, TAGD requested to remove the word "known" before "existing, abandoned, ..." and requested that the following language be added to the end of the paragraph:

"All existing, abandoned, and inoperative wells within the proposed subdivision shall be identified, located, and mapped by on-site surveys. Existing well locations shall be illustrated on the plat required by the municipal or county authority. Such wells shall be identified with applicable well permit numbers from the applicable groundwater conservation district shall be provided. Any abandoned or inoperative wells must be reported to TDLR."

Response 53

Adding this requirement is outside of the scope of this rulemaking. No changes were made in response to this comment.

Comment 54

In §230.8(c)(1), related to test well and observation well(s): TAGD requested that the following sentence be added to the end of the paragraph:

"Test and observation well(s) must be constructed, operated, and subsequently closed or converted in accordance with applicable rules of TDLR and any applicable groundwater conservation district."

Response 54

See Response 25. No change was made in response to this comment.

Comment 55

In §230.8(c)(3)(B), TAGD requested TCEQ add the following sentence to the end of the paragraph:

"The municipal or county authority may require additional log types to characterize the aquifer(s) for testing purposes."

Response 55

The commission notes that the existing paragraph includes the minimum requirements for a geophysical log, and that the licensed professional engineer or licensed professional geoscientist will be able to determine if additional logs are needed to properly characterize the aquifer. No change was made in response to this comment.

Comment 56

In §230.8(c)(4), related to well development and performance, TAGD and EDF requested TCEQ add the following sentence to the end of the paragraph:

"Test and observation well(s) must be constructed, operated, and subsequently closed or converted in accordance with the applicable rules of TDLR and any applicable groundwater conservation district."

Response 56

The commission agrees that applicants should comply with relevant rules, including those of TDLR and GCDs. As stated in Response 25, the commission maintains that it is not necessary to include such statements in this rule. No change was made in response to this comment.

Comment 57

In §230.8(c)(6), related to the duration of an aquifer test and recovery, TAGD and EDF requested the following sentences added before the final sentence of the paragraph:

"Aquifer tests shall be prohibited while nearby wells are pumping and during significant rain or recharge events. To ensure water levels are static, pre-test water-level measurements shall be conducted for at least 7 days prior to commencing an aquifer test under this section."

Response 57

Adding this technical requirement is outside of the scope of this rulemaking. No changes were made in response to this comment.

Comment 58

TAGD requested to add the following phrase to the beginning of §230.8(c)(6)(A), related to the duration of aquifer test and recovery: *"Unless expressly provided otherwise by rules of the applicable groundwater conservation district."* In §§230.8(c)(7)(A) and (B), related to the use of existing wells and aquifer test data, TAGD requested to add the following phrase to the beginning of each paragraph: *"Unless expressly prohibited by rules of the applicable groundwater conservation district."*

Response 58

See Response 25. No change was made in response to this comment.

Comment 59

EDF, CPCGP, and TAGD provided comments regarding the use of existing aquifer tests:

EDF requested TCEQ add the following language to §230.8(c)(7):

"Use of existing aquifer tests and data should be time limited: (i) the previous test was performed no more than 3 years before the date of the plat application;" and (vi) aquifer test data from the pumping well and observation well(s) from the previous test are available and calculations of hydraulic properties can be repeated and verified, which data and calculations shall be provided with the submission in accordance with 230.1(c)."

CPCGP requested that a new condition be added to the rule to prevent outdated information from being used, and suggested the following language be added as a new item §230.8(c)(7)(v):

"(v) the previous date of the TAC 230 test used is no older than 5 years from the anticipated certification date of the current TAC 230 groundwater availability study."

TAGD requested the following language be added as a new item (ii) under §230.8(c)(7):

"(ii) the previous test was performed no more than 3 years before the date of the plat application;"

Response 59

Adding these technical requirements is outside of the scope of this rulemaking. No changes were made in response to this com-

ment. The commission recognizes that in most cases, recent tests are necessary to determine groundwater availability. The licensed professional geoscientist or licensed professional engineer is encouraged to use data that matches current groundwater conditions.

Comment 60

TAGD requested that TCEQ add a new item §230.8(c)(7)(B)(vi), relating to the use of existing wells and aquifer test data:

"(vi) aquifer test data from the pumping well and observation well(s) from the previous test are available and calculations of hydraulic properties can be repeated and verified, which data and calculations shall be provided with the submission in accordance with 230.1(c)."

Response 60

Adding this technical requirement is outside of the scope of this rulemaking. No changes were made in response to this comment. The commission understands the benefit of demonstrating why a previous aquifer test may be appropriate but asserts that the licensed professional geoscientist or licensed professional engineer should take the appropriate information into account when preparing the groundwater availability certification for platting.

Comment 61

In §230.8(c), TAGD requested that the following language be added to the paragraph on aquifer testing:

A municipal or county authority responsible for approving plats is encouraged to consult with any applicable groundwater conservation district in establishing any site-specific aquifer test requirements.

EDF provided similar comments to encourage applicants to consult with GCDs, noting that GCDs can often provide support.

Response 61

TCEQ encourages platting authorities to communicate with GCDs and others who may have useful information on reviewing applications related to the certification of groundwater availability; but asserts that it is not necessary to include such statements in this rule. No change was made in response to this comment.

Comment 62

TAGD and EDF requested to add the following sentence to the end of §230.8(c)(7):

"A municipal or county authority responsible for approving plats is encouraged to consult with any applicable groundwater conservation district, or the TWDB if there is no groundwater conservation district, to determine the suitability of accepting the results of a previous aquifer test in lieu of a new test."

Response 62

See Response 61. No change was made in response to this comment.

Comment 63

TAGD, Middle Trinity GCD, and Northern Trinity GCD requested TCEQ update 30 TAC 230.8(c)(7)(A) and (B) to add the following phrase to the beginning of this paragraph:

Unless expressly prohibited by rules of the applicable groundwater conservation district...

Response 63

See Response 25. No change was made in response to this comment.

Comment 64

Regarding §230.8(c)(8), TAGD, Middle Trinity GCD, and Northern Trinity GCD requested TCEQ add a phrase to ensure applicants coordinate with applicable GCDs to determine if additional information is needed. Specifically, the commentors requested the edits to the final sentence of this paragraph as follows:

"...To determine if additional information is needed, in coordination with the applicable groundwater conservation district or districts, best professional judgement must be used to consider these assumptions, the site-specific information derived from the aquifer test required by this section, the size of the proposed subdivision, and the proposed method of water delivery."

Response 64

See Response 61. No change was made in response to this comment.

Comment 65

TAGD, Northern Trinity GCD, Middle Trinity GCD, and EDF requested that §230.8(d) be revised to replace the phrase "made available" with "provided" and to delete the phrase "if requested."

Response 65

Adding this requirement is outside of the scope of this rulemaking. No changes were made in response to this comment.

§230.9.

Comment 66

TAGD requested TCEQ add volatile organic compounds and radionuclides, in counties where testing for naturally occurring radionuclides is required under 30 TAC Chapter 290. Middle Trinity GCD requested TCEQ add testing for total coliform bacteria, benzene, and Northern Trinity GCD asked that benzene be added. In addition, TAGD, Middle Trinity GCD, and Northern Trinity GCD requested TCEQ add testing for radionuclides in counties where testing for naturally occurring radionuclides is required under 30 TAC Chapter 290.

Response 66

Adding these technical requirements is outside of the scope of this rulemaking. No changes were made in response to this comment.

Comment 67

TAGD, Middle Trinity GCD, and Northern Trinity GCD requested the rule include specific wording as a new §230.9(a)(4) regarding how sampling information should be submitted: including the sample date, collection entity, statement of reliability, and the name of the testing laboratory, if applicable. TAGD requested that the information be submitted in a spreadsheet or table format.

Response 67

Adding this requirement is outside of the scope of this rulemaking. No changes were made in response to this comment. The commission recognizes that an organized format for the submitted water quality data may assist platting authorities in reviewing applications, and recommends applicants communicate with the

platting authority prior to submitting an application to determine how best to submit the required information.

Comment 68

TAGD, Northern Trinity GCD, and EDF requested that §230.9(b) be revised to require that the information, data, and calculations required in this section be provided to the platting authority rather than just making the information available if requested.

Response 68

Adding this requirement is outside of the scope of this rulemaking. No changes were made in response to this comment.

§230.10.

Comment 69

TAGD requested that §230.10(a) be revised to add the underlined phrase to the last sentence of the paragraph:

"Groundwater availability shall be determined for ten years, 30 years, the joint planning period for the current adopted desired future conditions for aquifers under Section 36.108 of the Texas Water Code, and for any other time frame(s) required by the municipal or county authority."

Response 69

Adding this technical requirement is outside of the scope of this rulemaking. No changes were made in response to this comment.

Comment 70

TAGD and Northern Trinity GCD requested that §230.10(c) require the listed aquifer parameters to be provided in a spreadsheet format, and Middle Trinity GCD requested that the information be provided in a spreadsheet or a tabular format.

Response 70

Adding this requirement is outside of the scope of this rulemaking. No changes were made in response to this comment. The commission recognizes the usefulness of a common format to report aquifer parameters to different entities and encourages the platting authority and licensed professional engineer or licensed professional geoscientist to work with the GCDs and TWDB to determine the best format. The commission also encourages TAGD to work with member districts to develop a format that could be used to report Groundwater Availability Certification data.

Comment 71

CPCGP commented that the rule should require current and site-specific data through drilling to determine the status of the aquifer underlying the new subdivision for both individual wells and for PWS. CPCGP stated that they understand developers may desire to avoid drilling a new well but maintains that the rule is a minimum standard requirement that should be applied for development to proceed. CPCGP requests the following clarification to §230.10(c):

"Determination of aquifer parameters. The parameters of the aquifer(s) being considered to supply water to the proposed subdivision must be determined utilizing the information considered under 230.7 of this title (relating to General Groundwater Resource Information) and data obtained during the aquifer test required (1) under §230.8 of this title (relating to Obtaining Site-Specific Groundwater Data) for individual water wells or (2) under Chapter 290, Subchapter D of this title (relating to Rules and

Regulations for Public Water Systems) for new and existing public water systems; and reported on or attached to the Certification of Groundwater Availability Form (TCEQ-20982)..."

Response 71

The commission agrees that updating the referenced paragraph would clarify that determination of aquifer parameters must be made under §§230.7 and 230.8 unless the development is going to be a part of a new or existing PWS. The language of §230.10 was updated as provided, with one change. The commission added the phrase "one of the following" to clarify there are different requirements for subdivisions using individual water wells for each lot versus PWSs. Section §230.10(c) was revised as follows:

"Determination of aquifer parameters. The parameters of the aquifer(s) being considered to supply water to the proposed subdivision must be determined utilizing the information considered under §230.7 of this title (relating to General Groundwater Resource Information) and data obtained during the aquifer test required under one of the following: (1) §230.8 of this title (relating to Obtaining Site-Specific Groundwater Data) for individual water wells or (2) Chapter 290, Subchapter D of this title (relating to Rules and Regulations for Public Water Systems) for new and existing public water systems. The parameters must be reported on or attached to the Certification of Groundwater Availability Form (TCEQ-20982)..."

Comment 72

CPCGP commented that §230.10(c) is not clear on what "or acceptable modifications thereof" means regarding the determination of aquifer parameters. CPCGP requested the phrase be further clarified or removed.

Response 72

The commission disagrees with this comment. Licensed professional engineers and licensed professional geoscientists should be aware of groundwater industry standards and the commission asserts that the rule is clear about how and which methods should be used. No changes were made in response to this comment.

Comment 73

TAGD requested TCEQ add the underlined language to §230.10(d)(3)(B) related to well interference:

"(B) determine a recommended minimum spacing limit between individual wells, minimum well depth, and minimum well yields from the wells that will allow for the continued use of the wells for the time frames identified under subsection (a) of this section."

Response 73

Adding this technical requirement is outside of the scope of this rulemaking. No changes were made in response to this comment. The commission agrees that finding and providing the recommended minimum well depth is an important part of designing an efficient well, and that the licensed professional engineer or licensed professional geoscientist preparing the groundwater availability certification should utilize appropriate resources to prevent well interference.

Comment 74

TAGD, Middle Trinity GCD, and Northern Trinity GCD requested TCEQ add the following language as a new paragraph §230.10(f):

"(f) Determination of regulatory parameters. Groundwater availability determinations shall take into account the rules of the applicable groundwater conservation district or districts, including but not limited to rules regulating certain aquifer formations, well depth, well spacing, and well permitting to reliably determine whether the available groundwater is in fact accessible under the rules of the applicable groundwater conservation district or districts. If the proposed subdivision is to be located within a designated priority groundwater management area under Chapter 35 of the Texas Water Code, then groundwater availability determinations shall take into account any water availability requirements adopted by the county to prevent current or projected water use in the county from exceeding the safe sustainable yield of the county's water supply pursuant to §35.019 of the Texas Water Code (Water Availability)."

Response 74

See Response 25. No change was made in response to this comment.

Comment 75

TAGD, Upper Trinity Groundwater Authority, Middle Trinity GCD, EDF, and Northern Trinity GCD requested that §230.10(f) be revised to replace the phrase "made available" with "provided" and to delete the phrase "if requested."

Response 75

Adding this requirement is outside of the scope of this rulemaking. No changes were made in response to this comment.

§230.11.

Comment 76

TAGD requested §230.11(a) be revised by adding the following underlined language to the existing text:

"(a) Groundwater availability and usability statements. Based on and citing to the information developed under § 230.10 of this title (relating to Determination of Groundwater Availability), the following information shall be provided as specified in § 230.3(c) of this title (relating to Certification of Groundwater Availability for Platting):"

Response 76

The commission disagrees with this comment. The commission notes that the Groundwater Availability Certification is based on information developed under §230.10, which must be provided to the platting authority as part of the report from the licensed professional engineer or licensed professional geoscientist. The phrase "and citing to" does not provide added clarity. No change was made in response to this comment.

Comment 77

TAGD, Northern Trinity GCD, and Middle Trinity GCD suggested specific language be added as a new §230.11(a)(6):

"(6) other parameters necessary to ensure compliance with the rules of the applicable groundwater conservation district(s) or groundwater availability rules adopted by a county in a designated priority groundwater management area."

Response 77

See Response 25. No change was made in response to this comment.

Comment 78

CPCGP recommends that §230.11(b) be revised with the following language in order that engineers specifically address development from an area outside the small new subdivision that cannot be predicted that will affect the storage of water in the aquifer, as well as short-term and long-term impacts from climatic variations (e.g., droughts, severity of droughts, etc.) on the aquifer:

"These basis must include, but are not limited to, uncontrollable and unknown factors such as:"

Response 78

The commission asserts that the licensed professional engineer or licensed professional geoscientist preparing and certifying the Groundwater Availability Certification would be able to make the proper determinations. No change was made in response to this comment; however, the term "basis" was changed to "conditions" for clarification.

Comment 79

TAGD, Northern Trinity GCD, and Middle Trinity GCD requested TCEQ revise the last paragraph, §230.11(c), related to Certification, to add the underlined language:

"(c) Certification. Based on best professional judgement, current groundwater conditions, applicable groundwater conservation district regulations, and the information developed and presented in the form specified by §230.3(c) of this title, the licensed professional engineer or licensed professional geoscientist certifies by signature, seal, and date that adequate groundwater is available from the underlying aquifer(s) and accessible under the rules of the groundwater conservation district(s), if applicable, to supply the estimated demand of the proposed subdivision."

Response 79

See Response 25. No change was made in response to this comment.

Statutory Authority

These amendments are adopted under Texas Water Code (TWC), §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; TWC, §5.103, which establishes the commission's general authority to adopt rules; and TWC, §5.105, which establishes the commission's authority to set policy by rule. In addition, Local Government Code, §212.0101(b) and §232.0032(b) require the commission to promulgate rules that establish the appropriate form and content of a certification to be attached to a plat application.

The adopted amendments implement the language set forth in Senate Bill 2440 from the 88th Texas Legislature.

§230.1. *General.*

(a) Purpose. This chapter establishes the form and content of a certification to be attached to a plat application under Texas Local Government Code, §212.0101 or §232.0032, which requires certification that adequate groundwater is available for a proposed subdivision if groundwater under that land is to be the source of water supply. These rules do not replace:

- (1) other state and federal requirements applicable to public drinking water supply systems;
- (2) the authority of counties within designated priority groundwater management areas under Texas Water Code, §35.019; or
- (3) the authority of groundwater conservation districts under Texas Water Code, Chapter 36.

(b) Transmittal of data. Copies of the information, estimates, data, calculations, determinations, statements, and certification required by §230.8 of this title (relating to Obtaining Site-Specific Groundwater Data), §230.9 of this title (relating to Determination of Groundwater Quality), §230.10 of this title (relating to Determination of Groundwater Availability), and §230.11 of this title (relating to Groundwater Availability and Usability Statements and Certification) must be provided with the certification to:

- (1) the executive administrator of the Texas Water Development Board, and
- (2) the applicable groundwater conservation district or districts.

(c) Plat Attesting Form. The Plat Attesting Form (TCEQ-20983) must be submitted with the certification, attesting that copies of the information, estimates, data, calculations, determinations, statements, and the certification have been provided to:

- (1) the executive administrator of the Texas Water Development Board, and
- (2) the applicable groundwater conservation district or districts.

§230.3. *Certification of Groundwater Availability for Platting.*

(a) Preparation of the certification. The certification required by this chapter must be prepared by a Texas licensed professional engineer or a Texas licensed professional geoscientist.

(b) Certification Requirements. The certification must meet the requirements of §§230.4 - 230.11 (relating to Certification of Groundwater Availability for Platting, Administrative Information, Proposed Subdivision Information, Projected Water Demand Estimate, General Groundwater Resource Information, Obtaining Site-Specific Groundwater Data, Determination of Groundwater Quality, Determination of Groundwater Availability, and Groundwater Availability and Usability Statements and Certification) of this chapter.

(c) Submission of information. The certification of adequacy of groundwater under the subdivision required by this chapter must be submitted to the following:

- (1) the municipal or county authority,
- (2) the executive administrator of the Texas Water Development Board, and
- (3) the applicable groundwater conservation district or districts.

(d) Form required. The certification required by this chapter must be submitted on the Certification of Groundwater Availability for Platting Form (TCEQ-20982).

§230.4. *Administrative Information.*

At a minimum, the following general administrative information must be provided for a proposed subdivision for which groundwater under the land will be the source of water supply:

- (1) the name of the proposed subdivision;
- (2) any previous or other name(s) which identifies the tract of land;
- (3) the name, address, phone number, email address, and facsimile number of the property owner or owners;
- (4) the name, address, phone number, email address, and facsimile number of the person submitting the plat application;

(5) the name, address, phone number, email address, facsimile number, and registration number of the licensed professional engineer or the licensed professional geoscientist preparing the certification as required in this chapter;

(6) the location and property description of the proposed subdivision;

(7) the tax assessor parcel number(s) by book, map, and parcel; and

(8) the name, address phone number, email address, and facsimile number of the applicable groundwater conservation district or districts.

§230.5. *Proposed Subdivision Information.*

At a minimum, the following information pertaining to the proposed subdivision must be provided:

(1) the purpose of the proposed subdivision, for example, single family residential, multi-family residential, non-residential, commercial, or industrial;

(2) the size of the proposed subdivision in acres;

(3) the number of proposed lots within the proposed subdivision;

(4) the average size (in acres) of the proposed lots in the proposed subdivision;

(5) the anticipated method of water distribution to the proposed lots in the proposed subdivision including, but not limited to:

(A) an expansion of an existing public water supply system to serve the proposed subdivision (if groundwater under the subdivision is to be the source of water supply);

(B) a new public water supply system for the proposed subdivision;

(C) individual water wells to serve individual lots; or

(D) a combination of methods;

(6) if the anticipated method of water distribution for the proposed subdivision is from an expansion of an existing public water supply system or from a proposed public water supply system, evidence required under §290.39(c)(1) of this title (relating to Rules and Regulations for Public Water Systems) must be provided demonstrating that written application for service was made to the existing water providers within a 1/2-mile radius of the subdivision; and

(7) any additional information required by the municipal or county authority as part of the plat application.

§230.8. *Obtaining Site-Specific Groundwater Data.*

(a) Applicability of section. This section is applicable only if the proposed method of water distribution for the proposed subdivision is individual water wells on individual lots. If expansion of an existing public water supply system or installation of a new public water supply system is the proposed method of water distribution for the proposed subdivision, site-specific groundwater data must be developed under the requirements of Chapter 290, Subchapter D of this title (relating to Rules and Regulations for Public Water Systems) and the information developed in meeting these requirements must be attached to the Certification of Groundwater Availability for Platting Form (TCEQ-20982).

(b) Location of existing wells. All known existing, abandoned, and inoperative wells within the proposed subdivision must be identified, located, and mapped by on-site surveys. Existing well locations must be illustrated on the plat required by the municipal or county authority.

(c) Aquifer testing. Utilizing the information considered under §230.7(b) of this title (relating to General Groundwater Resource Information), an aquifer test must be conducted to characterize the aquifer(s) underlying the proposed subdivision. The aquifer test must provide sufficient information to allow evaluation of each aquifer that is being considered as a source of residential and non-residential water supply for the proposed subdivision. Appropriate aquifer testing must be based on typical well completions. An aquifer test conducted under this section utilizing established methods must be reported and must include, but not be limited to, the following items.

(1) Test well and observation well(s). At a minimum, one test well (i.e., pumping well) and one observation well, must be required to conduct an adequate aquifer test under this section. Additional observation wells must be used for the aquifer test if it is practical or necessary to confirm the results of the test. The observation well(s) must be completed in the same aquifer or aquifer production zone as the test well. The locations of the test and observation well(s) must be shown on the plat required by the municipal or county authority.

(2) Location of wells. The test and observation well(s) must be placed within the proposed subdivision and must be located by latitude and longitude. The observation well(s) must be located at a radial distance such that the time-drawdown data collected during the planned pumping period fall on a type curve of unique curvature. In general, observation wells in unconfined aquifers should be placed no farther than 300 feet from the test well, and no farther than 700 feet in thick, confined aquifers. The observation well should also be placed no closer to the test well than two times the thickness of the aquifer's production zone. The optimal location for the observation well(s) can be determined by best professional judgement after completion and evaluation of the test well as provided in paragraph (4) of this subsection.

(3) Lithologic and geophysical logs. The test and observation wells must be lithologically and geophysically logged to map and characterize the geologic formation(s) and the aquifer(s) in which the aquifer test(s) is to be performed.

(A) A lithologic log must be prepared showing the depth of the strata, their thickness and lithology (including size, range, and shape of constituent particles as well as smoothness), occurrence of water bearing strata, and any other special notes that are relevant to the drilling process and to the understanding of subsurface conditions.

(B) Geophysical logs must be prepared which provide qualitative information on aquifer characteristics and groundwater quality. At a minimum, the geophysical logs must include an electrical log with shallow and deep-investigative curves (e.g., 16-inch short normal/64-inch long normal resistivity curves or induction log) with a spontaneous potential curve.

(C) The municipal or county authority may, on a case-by-case basis, waive the requirement of geophysical logs as required under this section if it can be adequately demonstrated that the logs are not necessary to characterize the aquifer(s) for testing purposes.

(4) Well development and performance. The test and observation well(s) must be developed prior to conducting the aquifer test to repair damage done to the aquifer(s) during the drilling operation. Development must ensure that the hydraulic properties of the aquifer(s) are restored as much as practical to their natural state.

(A) Well development procedures applied to the well(s) may vary depending on the drilling method used and the extent of the damage done to the aquifer(s).

(B) During well development, the test well must be pumped for several hours to determine the specific capacity of the well, the maximum anticipated drawdown, the volume of water

produced at certain pump speeds and drawdown, and to determine if the observation well(s) are suitably located to provide useful data.

(C) Water pumped out of the well during well development must not be allowed to influence initial well performance results.

(D) Aquifer testing required by this section must be performed before any acidization or other flow-capacity enhancement procedures are applied to the test well.

(5) Protection of groundwater. All reasonably necessary precautions must be taken during construction of test and observation wells to ensure that surface contaminants do not reach the subsurface environment and that undesirable groundwater (water that is injurious to human health and the environment or water that can cause pollution to land or other waters) if encountered, is sealed off and confined to the zone(s) of origin.

(6) Duration of aquifer test and recovery. The duration of the aquifer test depends entirely on local and geologic conditions. However, the test must be of sufficient duration to observe a straight-line trend on a plot of water level versus the logarithm of time pumped. Water pumped during the test must not be allowed to influence the test results. Aquifer testing must not commence until water levels (after well development) have completely recovered to their pre-development level or at least to 90% of that level.

(A) At a minimum, a 24-hour uniform rate aquifer test must be conducted. Testing must continue long enough to observe a straight-line trend on a plot of water level versus the logarithm of time pumped. If necessary, the duration of the test should be extended beyond the 24-hour minimum limit until the straight-line trend is observed.

(i) If it is impractical to continue the test until a straight-line trend of water level versus the logarithm of time pumped is observed within the 24-hour limit, the test must continue at least until a consistent pumping-level trend is observed. In such instances, failure to observe the straight-line trend must be recorded.

(ii) If the pumping rates remain constant for a period of at least four hours and a straight-line trend is observed on a plot of water level versus the logarithm of time pumped before the 24-hour limit has been reached, the pumping portion of the test may be terminated.

(iii) The frequency of water level measurements during the aquifer test must be such that adequate definition of the time-drawdown curve is made available. As much information as possible must be obtained in the first ten minutes of testing (i.e., pumping).

(B) Water-level recovery data must be obtained to verify the accuracy of the data obtained during the pumping portion of the test. Recovery measurements must be initiated immediately at the conclusion of the pumping portion of the aquifer test and must be recorded with the same frequency as those taken during the pumping portion of the aquifer test. Time-recovery measurements must continue until the water levels have recovered to pre-pumping levels or at least to 90% of that level. If such recovery is not possible, time-recovery measurements should continue until a consistent trend of recovery is observed.

(7) Use of existing wells and aquifer test data.

(A) An existing well may be utilized as an observation well under this section if sufficient information is available for that well to demonstrate that it meets the requirements of this section.

(B) The municipal or county authority may accept the results of a previous aquifer test in lieu of a new test if:

(i) the previous test was performed on a well located within a 1/4-mile radius of the subdivision;

(ii) the previous test fully meets all the requirements of this section;

(iii) the previous test was conducted on an aquifer which is being considered as a source of water supply for the proposed subdivision; and

(iv) aquifer conditions (e.g., water levels, gradients, etc.) during the previous test were approximately the same as they are presently.

(8) Need for additional aquifer testing and observation wells. Best professional judgement must be used to determine if additional observation wells or aquifer tests are needed to adequately demonstrate groundwater availability. The Theis and Cooper-Jacob nonequilibrium equations, and acceptable modifications thereof, are based on well documented assumptions. To determine if additional information is needed, best professional judgement must be used to consider these assumptions, the site-specific information derived from the aquifer test required by this section, the size of the proposed subdivision, and the proposed method of water delivery.

(d) Submission of information. The information, data, and calculations required by this section must be made available to the municipal or county authority, if requested, to document the requirements of this section as part of the plat application.

§230.10. *Determination of Groundwater Availability.*

(a) Time frame for determination of groundwater availability. At a minimum, both a short- and long-term determination of groundwater availability must be made, each considering the estimated total water demand at full build out of the proposed subdivision. Groundwater availability must be determined for ten years and 30 years and for any other time frame(s) required by the municipal or county authority.

(b) Other considerations in groundwater availability determination. Groundwater availability determinations must take into account the anticipated method of water delivery as identified under §230.5 of this title (relating to Proposed Subdivision Information) and will be compared to annual demand estimates at full build out as determined under §230.6 of this title (relating to Projected Water Demand Estimate).

(c) Determination of aquifer parameters. The parameters of the aquifer(s) being considered to supply water to the proposed subdivision must be determined utilizing the information considered under §230.7 of this title (relating to General Groundwater Resource Information) and data obtained during the aquifer test required under one of the following: (1) §230.8 of this title (relating to Obtaining Site-Specific Groundwater Data) for individual water wells or (2) Chapter 290, Subchapter D of this title (relating to Rules and Regulations for Public Water Systems) for new and existing public water systems. The parameters must be reported on or attached to the Certification of Groundwater Availability Form (TCEQ-20982). The time-drawdown and time-recovery data obtained during the aquifer test must be used to determine aquifer parameters utilizing the nonequilibrium equations developed by Theis or Cooper-Jacob, or acceptable modifications thereof. The following aquifer parameters must be determined:

- (1) rate of yield and drawdown;
- (2) specific capacity;
- (3) efficiency of the pumped (test) well;
- (4) transmissivity;
- (5) coefficient of storage;

(6) hydraulic conductivity;

(7) recharge or barrier boundaries, if any are present; and

(8) thickness of the aquifer(s).

(d) Determination of groundwater availability. Using the information and data identified and determined in subsections (b) and (c) of this section, the following calculations must be made.

(1) Time-drawdown. The amount of drawdown at the pumped well(s) and at the boundaries of the proposed subdivision must be determined for the time frames identified under subsection (a) of this section.

(2) Distance-drawdown. The distance(s) from the pumped well(s) to the outer edges of the cone(s)-of-depression must be determined for the time frames identified under subsection (a) of this section.

(3) Well interference. For multiple wells in a proposed subdivision, calculations must be made to:

(A) determine how pumpage from multiple wells will affect drawdown in individual wells for the time frames identified under subsection (a) of this section; and

(B) determine a recommended minimum spacing limit between individual wells and well yields from the wells that will allow for the continued use of the wells for the time frames identified under subsection (a) of this section.

(e) Determination of groundwater quality. The water quality analysis required under §230.9 of this title (relating to Determination of Groundwater Quality) must be compared to primary and secondary public drinking water standards and the findings documented on or attached to the Certification of Groundwater Availability Form (TCEQ-20982).

(f) Submission of information. The information, data, and calculations required by this section must be made available to the municipal or county authority, if requested, to document the requirements of this section as part of the plat application.

§230.11. *Groundwater Availability and Usability Statements and Certification.*

(a) Groundwater availability and usability statements. Based on the information developed under §230.10 of this title (relating to Determination of Groundwater Availability), the following information must be provided on or attached to the Certification of Groundwater Availability Form (TCEQ-20982):

(1) the estimated drawdown of the aquifer at the pumped well(s) over a ten-year period and over a 30-year period;

(2) the estimated drawdown of the aquifer at the subdivision boundary over a ten-year period and over a 30-year period;

(3) the estimated distance from the pumped well(s) to the outer edges of the cone(s)-of-depression over a ten-year period and over a 30-year period;

(4) the recommended minimum spacing limit between wells and the recommended well yield; and

(5) the sufficiency of available groundwater quality to meet the intended use of the platted subdivision.

(b) Groundwater availability determination conditions. The assumptions and uncertainties that are inherent in the determination of groundwater availability must be clearly identified. These conditions must be identified to adequately define the basis for the availability and usability statements. These conditions may include, but are not limited to, uncontrollable and unknown factors such as:

(1) future pumpage from the aquifer or from interconnected aquifers from area wells outside of the subdivision or any other factor that cannot be predicted that will affect the storage of water in the aquifer;

(2) long-term impacts to the aquifer based on climatic variations; and

(3) future impacts to usable groundwater due to unforeseen or unpredictable contamination.

(c) Certification. Based on best professional judgement, current groundwater conditions, and the information developed and presented on or attached to the Certification of Groundwater Availability Form (TCEQ-20982), the licensed professional engineer or licensed professional geoscientist must certify by signature, seal, and date that adequate groundwater is available from the underlying aquifer(s) to supply the estimated demand of the proposed subdivision.

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 21, 2024.

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



CHAPTER 336. RADIOACTIVE SUBSTANCE RULES

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts amendments to 30 TAC §§336.2, 336.102, 336.105, 336.208, 336.329, 336.331, 336.332, 336.336, 336.341, 336.351, 336.357, 336.625, 336.701, and 336.1215 without changes to the proposed text as published in the June 28, 2024, issue of the *Texas Register* (49 TexReg 4710) and, therefore, will not be republished.

Background and Summary of the Factual Basis for the Adopted Rule

The commission adopts changes to Chapter 336, Subchapter D to correct a reference to Department of Transportation rules, remove an obsolete January 31, 2009 deadline for licensees to report their initial inventory of Category 1 or Category 2 nationally tracked sources, and correct an error in an equation for the "sum of fractions" methodology to ensure compatibility with federal regulations promulgated by the Nuclear Regulatory Commission (NRC) which is necessary to preserve the status of Texas as an Agreement State under Title 10 Code of Federal Regulations (CFR) Part 150 and under the "Articles of Agreement between the United States Atomic Energy Commission and the State of Texas for Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended." Rules which are designated by NRC as compatibility items must be adopted by an Agreement State within three years of the effective date of the NRC rules, in most cases.

The commission adopts changes to Subchapters A, D, G, and H to change the spelling of "byproduct" to "by-product" to be consistent with Texas Health and Safety Code (THSC), Chapter 401. The commission adopts changes to Subchapter H to correct the reference to a rule to correct errors. The commission adopts changes to Subchapter B to add a definition of "closure" specific to Subchapter B and add a reference to THSC, §401.271 regarding fees for commercial radioactive waste disposal for clarity. The commission adopts changes to Subchapter B to remove instructions about the annual fee for when a licensee remitted a biennial licensing fee to the Texas Department of State Health Services during the one-year period prior to June 17, 2007, to remove obsolete text. The commission adopts changes to Subchapter C and M to modify the training requirements for the Radiation Safety Officer (RSO) to provide the commission flexibility in determining adequate training for the RSO at different licensed facilities.

Section by Section Discussion

The commission adopts administrative changes throughout this rulemaking to be consistent with *Texas Register* requirements and agency rules and guidelines.

§336.2, *Definitions*

The commission adopts this rulemaking to amend §§336.2(20), 336.2(20)(B), 336.2(89)(B)(iv), 336.2(99), 336.2(126), and 336.2(170) to change the spelling of "byproduct" to "by-product" to be consistent with THSC, Chapter 401.

§336.102, *Definitions*

The commission adopts this rulemaking to add a definition of closure specific to Subchapter B for clarity since licensing fees are different when a license is in closure. The adopted definition mirrors the definition of closure found in 30 Texas Administrative Code (TAC) §37.9035. The commission rulemaking adoption will increase the numbering of the subsequent definitions by one.

§336.105, *Schedule of Fees for Other Licenses*

The commission adopts this rulemaking to remove 30 TAC §336.105(g) to remove obsolete text regarding instructions for when a licensee remitted a biennial licensing fee to the Texas Department of State Health Services prior to June 17, 2007, and amend §336.105(i) and §336.105(j) to add a reference to THSC, §401.271 regarding fees for commercial radioactive waste disposal for clarity. The commission rulemaking adoption will adjust the numbering of the remaining rules accordingly.

§336.208, *Radiation Safety Officer*

The commission adopts the rulemaking to amend §336.208(a)(3) to modify the training requirements for the RSO from requiring at least four weeks of specialized additional training from a course provider that has been evaluated and approved by the agency to requiring additional training as determined by the Executive Director. This modification provides the commission flexibility in determining adequate training for the RSO at different licensed facilities.

§336.329, *Exemptions to Labeling Requirements*

The commission adopts the rulemaking to amend the reference to Department of Transportation rules in 30 TAC §336.329(4). This rule amendment is adopted to ensure compatibility with federal regulations promulgated by the NRC.

§336.331, *Transfer of Radioactive Material*

The commission adopts this rulemaking to amend §§336.331(a), 336.331(b), 336.331(c), 336.331(d)(5), 336.331(f), and 336.331(i) to change the spelling of "byproduct" to "by-product" to be consistent with THSC, Chapter 401.

§336.332, *Preparation of Radioactive Material for Transport*

The commission adopts this rulemaking to amend §336.332(a) to change the spelling of "byproduct" to "by-product" to be consistent with THSC, Chapter 401.

§336.336, *Tests*

The commission adopts this rulemaking to amend §336.336(a)(1) and §336.336(a)(4) to change the spelling of "byproduct" to "by-product" to be consistent with THSC, Chapter 401.

§336.341, *General Recordkeeping Requirements for Licensees*

The commission adopts this rulemaking to amend §336.341(e) to change the spelling of "byproduct" to "by-product" to be consistent with THSC, Chapter 401.

§336.351, *Reports of Transactions Involving Nationally Tracked Sources*

The commission adopts this rulemaking to remove 30 TAC §336.351(a)(8) to remove an obsolete January 31, 2009 deadline for licensees to report their initial inventory of Category 1 or Category 2 nationally tracked sources. This rule amendment is adopted to ensure compatibility with federal regulations promulgated by the NRC.

§336.357, *Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material*

The commission adopts this rulemaking to amend the figure in 30 TAC §336.357(z) by correcting an error in the equation for the "sum of fractions" methodology. This rule amendment is adopted to ensure compatibility with federal regulations promulgated by the NRC.

§336.625, *Expiration and Termination of Licenses*

The commission adopts this rulemaking to amend §§336.625(c), 336.625(c)(1), and 336.625(i)(1) to change the spelling of "byproduct" to "by-product" to be consistent with THSC, Chapter 401.

§336.701, *Scope and General Provisions*

The commission adopts this rulemaking to amend §336.701(b)(2) to change the spelling of "byproduct" to "by-product" to be consistent with THSC, Chapter 401 and change the reference to §336.2(13)(B) to §336.2(20)(B) to correct an error.

§336.1215, *Issuance of Licenses*

The commission adopts this rulemaking to amend §336.1215(a)(5) by referring to 30 TAC §336.208 for the training requirements for a RSO and removing the additional requirements in §336.1215(a)(5)(A) and (B) since these requirements are also stated in 30 TAC §336.208. The commission amends §336.1215(a)(5)(C) to remove the training requirements that the RSO have at least four weeks of specialized additional training from a course provider that has been evaluated and approved by the agency to provide the commission flexibility in determining adequate training for the RSO at different licensed facilities.

Final Regulatory Impact Analysis Determination

The commission reviewed the rulemaking adoption in light of the regulatory analysis requirements of the Texas Government Code (TGC), §2001.0225. The commission determined that the action is not subject to TGC, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that statute. A "Major environmental rule" is 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 specific intent of the adopted rule is not to protect the environment or to reduce risks to human health from environmental exposure. The intent of the adopted amendments is to remove obsolete text, correct errors, add clarity, and provide flexibility in determining adequate training for the radiation safety officer at different licensed facilities. Additionally, some of these adopted amendments are required for TCEQ to maintain compatibility with the NRC for these licensing programs. Therefore, the rulemaking adoption is not a major environmental rule.

Furthermore, even if the rulemaking adoption does meet the definition of a "Major environmental rule", the adopted rules do not meet any of the four applicability requirements listed in TGC, §2001.0225. Section 2001.0225 applies to a "Major environmental rule", the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general powers of the agency instead of under a specific state law. The rulemaking adoption does not meet any of the four applicability requirements listed in TGC, §2001.0225.

First, the rulemaking does not exceed a standard set by federal law because the commission is adopting this rulemaking, in part, to ensure compatibility with federal regulations promulgated by the NRC. The State of Texas is an "Agreement State" authorized by the NRC to administer a radiation control program under the Atomic Energy Act of 1952, as amended (Atomic Energy Act).

Second, the rulemaking does not adopt requirements that are more stringent than existing state laws. THSC, Chapter 401, authorizes the commission to regulate the licensing and disposal of radioactive substances, source material recovery, and commercial radioactive substances storage and processing. The rulemaking adoption seeks to make corrections and provide clarity and flexibility consistent with state law.

Third, the rulemaking adoption does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government, where the delegation agreement or contract is to implement a state and federal program. The State of Texas has been designated as an "Agreement State" by the NRC under the authority of the Atomic Energy Act. The Atomic Energy Act requires that the NRC find that the state radiation control program is compatible with the NRC requirements for the regulation of radioactive materials and is adequate to protect health and safety. Under the *Agreement Between the United States Nuclear Regulatory Commission and the State of Texas for Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended*, NRC requirements must be implemented to main-

tain a compatible state program for protection against hazards of radiation. The rulemaking adoption does not exceed the NRC requirements nor exceed the requirements for retaining status as an "Agreement State."

Fourth, this rulemaking does not seek to adopt a rule solely under the general powers of the agency. Rather, sections of THSC, Chapter 401, authorize this rulemaking, which are cited in the Statutory Authority section of this preamble.

The commission invited public comments regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received on the Draft Regulatory Impact Analysis Determination.

Takings Impact Assessment

The commission evaluated the adopted rules and performed analysis of whether the adopted rules constitute a taking under TGC, Chapter 2007. The specific purpose of the adopted rules is to remove obsolete text, correct errors, add clarity, and provide flexibility in determining adequate training for the radiation safety officer at different licensed facilities. The adopted rules will substantially advance this stated purpose by correcting references to rules, correcting misspellings, adding a definition of "closure," removing obsolete language, correcting errors to ensure compatibility with federal regulations, and modifying training requirements.

Promulgation and enforcement of these adopted rules will be neither a statutory nor a constitutional taking of private real property. Specifically, the subject adopted regulations do not affect a landowner's rights in private real property because this rulemaking does not burden (constitutionally); nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. In other words, the adopted rules will not burden private real property because they remove obsolete text, correct errors, add clarity, and provide flexibility in training requirements at licensed facilities.

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 regarding the consistency with the coastal management program during the public comment period. No comments were received on the CMP.

Public Comment

The commission offered a public hearing on July 29, 2024. The comment period closed on July 30, 2024. The commission received no comments.

SUBCHAPTER A. GENERAL PROVISIONS

30 TAC §336.2

Statutory Authority

The rule change is adopted under Texas Water Code (TWC), §5.102, concerning general powers of the commission; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out its power and duties; TWC, §5.105, which authorizes the commission to establish and approve all general

policies of the commission by rule; Texas Health and Safety Code (THSC), §401.011, which authorizes the commission to regulate and license the disposal of radioactive substances, the processing and storage of low-level radioactive waste or naturally occurring radioactive material waste, the recovery and processing of source material, and the processing of by-product material; THSC, §401.051, which authorizes the commission to adopt rules and guidelines relating to control of sources of radiation; THSC, §401.103, which authorizes the commission to adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation; THSC, §401.104, which requires the commission to provide rules for licensing for the disposal of radioactive substances; THSC §401.202, which authorizes the commission to regulate commercial processing and disposal of low-level radioactive waste; THSC, §401.262, which authorizes the commission to regulate by-product storage and processing facilities; THSC, §401.301, which authorizes the commission to set fees by rule; and THSC, §401.412, which authorizes the commission to issue licenses for the disposal of radioactive substances.

The adopted amendment implements THSC, Chapter 401, and are adopted to meet compatibility standards set by the United States Nuclear Regulatory Commission.

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 21, 2024.

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Charmaine Backens

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

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



SUBCHAPTER B. RADIOACTIVE SUBSTANCE FEES

30 TAC §336.102, §336.105

Statutory Authority

The rule changes are adopted under Texas Water Code (TWC), §5.102, concerning general powers of the commission; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out its power and duties; TWC, §5.105, which authorizes the commission to establish and approved all general policy of the commission by rule; Texas Health and Safety Code (THSC), §401.011, which authorizes the commission to regulate and license the disposal of radioactive substances, the processing and storage of low-level radioactive waste or naturally occurring radioactive material waste, the recovery and processing of source material, and the processing of by-product material; THSC, §401.051, which authorizes the commission to adopt rules and guidelines relating to control of sources of radiation; THSC, §401.103, which authorizes the commission to adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation; THSC, §401.104, which requires the commission to provide rules for licensing for

the disposal of radioactive substances; THSC, §401.202, which authorizes the commission to regulate commercial processing and disposal of low-level radioactive waste; THSC, §401.262, which authorizes the commission to regulate by-product storage and processing facilities; THSC, §401.301, which authorizes the commission to set fees by rule; and THSC, §401.412, which authorizes the commission to issue licenses for the disposal of radioactive substances.

The adopted amendments implement THSC, Chapter 401, and are adopted to meet compatibility standards set by the United States Nuclear Regulatory Commission.

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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Charmaine Backens

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

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



SUBCHAPTER C. GENERAL LICENSING REQUIREMENTS

30 TAC §336.208

Statutory Authority

The rule change is adopted under Texas Water Code (TWC), §5.102, concerning general powers of the commission; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out its power and duties; TWC, §5.105, which authorizes the commission to establish and approved all general policy of the commission by rule; Texas Health and Safety Code (THSC), §401.011, which authorizes the commission to regulate and license the disposal of radioactive substances, the processing and storage of low-level radioactive waste or naturally occurring radioactive material waste, the recovery and processing of source material, and the processing of by-product material; THSC, §401.051, which authorizes the commission to adopt rules and guidelines relating to control of sources of radiation; THSC, §401.103, which authorizes the commission to adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation; THSC, §401.104, which requires the commission to provide rules for licensing for the disposal of radioactive substances; THSC, §401.202, which authorizes the commission to regulate commercial processing and disposal of low-level radioactive waste; THSC, §401.262, which authorizes the commission to regulate by-product storage and processing facilities; THSC, §401.301, which authorizes the commission to set fees by rule; and THSC, §401.412, which authorizes the commission to issue licenses for the disposal of radioactive substances.

The adopted amendments implement THSC, Chapter 401, and are adopted to meet compatibility standards set by the United States Nuclear Regulatory Commission.

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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Charmaine Backens

Deputy Director, Environmental Law Division

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SUBCHAPTER D. STANDARDS FOR PROTECTION AGAINST RADIATION

30 TAC §§336.329, 336.331, 336.332, 336.336, 336.341, 336.351, 336.357

Statutory Authority

The rule changes are adopted under Texas Water Code (TWC), §5.102, concerning general powers of the commission; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out its power and duties; TWC, §5.105, which authorizes the commission to establish and approved all general policy of the commission by rule; Texas Health and Safety Code (THSC), §401.011, which authorizes the commission to regulate and license the disposal of radioactive substances, the processing and storage of low-level radioactive waste or naturally occurring radioactive material waste, the recovery and processing of source material, and the processing of by-product material; THSC, §401.051, which authorizes the commission to adopt rules and guidelines relating to control of sources of radiation; THSC, §401.103, which authorizes the commission to adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation; THSC, §401.104, which requires the commission to provide rules for licensing for the disposal of radioactive substances; THSC, §401.202, which authorizes the commission to regulate commercial processing and disposal of low-level radioactive waste; THSC, §401.262, which authorizes the commission to regulate by-product storage and processing facilities; THSC, §401.301, which authorizes the commission to set fees by rule; and THSC, §401.412, which authorizes the commission to issue licenses for the disposal of radioactive substances.

The adopted amendments implement THSC, Chapter 401, and are adopted to meet compatibility standards set by the United States Nuclear Regulatory Commission.

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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Charmaine Backens
Deputy Director, Environmental Law Division
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SUBCHAPTER G. DECOMMISSIONING STANDARDS

30 TAC §336.625

Statutory Authority

The rule change is adopted under Texas Water Code (TWC), §5.102, concerning general powers of the commission; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out its power and duties; TWC, §5.105, which authorizes the commission to establish and approved all general policy of the commission by rule; Texas Health and Safety Code (THSC), §401.011, which authorizes the commission to regulate and license the disposal of radioactive substances, the processing and storage of low-level radioactive waste or naturally occurring radioactive material waste, the recovery and processing of source material, and the processing of by-product material; THSC, §401.051, which authorizes the commission to adopt rules and guidelines relating to control of sources of radiation; THSC, §401.103, which authorizes the commission to adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation; THSC, §401.104, which requires the commission to provide rules for licensing for the disposal of radioactive substances; THSC, §401.202, which authorizes the commission to regulate commercial processing and disposal of low-level radioactive waste; THSC, §401.262, which authorizes the commission to regulate by-product storage and processing facilities; THSC, §401.301, which authorizes the commission to set fees by rule; and THSC, §401.412, which authorizes the commission to issue licenses for the disposal of radioactive substances.

The adopted amendments implement THSC, Chapter 401, and are adopted to meet compatibility standards set by the United States Nuclear Regulatory Commission.

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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Charmaine Backens
Deputy Director, Environmental Law Division
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SUBCHAPTER H. LICENSING REQUIREMENTS FOR NEAR-SURFACE LAND

DISPOSAL OF LOW-LEVEL RADIOACTIVE WASTE

30 TAC §336.701

Statutory Authority

The rule change is adopted under Texas Water Code (TWC), §5.102, concerning general powers of the commission; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out its power and duties; TWC, §5.105, which authorizes the commission to establish and approved all general policy of the commission by rule; Texas Health and Safety Code (THSC), §401.011, which authorizes the commission to regulate and license the disposal of radioactive substances, the processing and storage of low-level radioactive waste or naturally occurring radioactive material waste, the recovery and processing of source material, and the processing of by-product material; THSC, §401.051, which authorizes the commission to adopt rules and guidelines relating to control of sources of radiation; THSC, §401.103, which authorizes the commission to adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation; THSC, §401.104, which requires the commission to provide rules for licensing for the disposal of radioactive substances; THSC, §401.202, which authorizes the commission to regulate commercial processing and disposal of low-level radioactive waste; THSC, §401.262, which authorizes the commission to regulate by-product storage and processing facilities; THSC, §401.301, which authorizes the commission to set fees by rule; and THSC, §401.412, which authorizes the commission to issue licenses for the disposal of radioactive substances.

The adopted amendments implement THSC, Chapter 401, and are adopted to meet compatibility standards set by the United States Nuclear Regulatory Commission.

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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Charmaine Backens
Deputy Director, Environmental Law Division
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For further information, please call: (512) 239-2678



SUBCHAPTER M. LICENSING OF RADIOACTIVE SUBSTANCES PROCESSING AND STORAGE FACILITIES

30 TAC §336.1215

Statutory Authority

The rule change is adopted under Texas Water Code (TWC), §5.102, concerning general powers of the commission; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out its power and duties; TWC, §5.105, which

authorizes the commission to establish and approved all general policy of the commission by rule; Texas Health and Safety Code (THSC), §401.011, which authorizes the commission to regulate and license the disposal of radioactive substances, the processing and storage of low-level radioactive waste or naturally occurring radioactive material waste, the recovery and processing of source material, and the processing of by-product material; THSC, §401.051, which authorizes the commission to adopt rules and guidelines relating to control of sources of radiation; THSC, §401.103, which authorizes the commission to adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation; THSC, §401.104, which requires the commission to provide rules for licensing for the disposal of radioactive substances; THSC, §401.202, which authorizes the commission to regulate commercial processing and disposal of low-level radioactive waste; THSC, §401.262, which authorizes the commission to regulate by-product storage and processing facilities; THSC, §401.301, which authorizes the commission to set fees by rule; and THSC, §401.412, which authorizes the commission to issue licenses for the disposal of radioactive substances.

The adopted amendments implement THSC, Chapter 401, and are adopted to meet compatibility standards set by the United States Nuclear Regulatory Commission.

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

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TRD-202405712

Charmaine Backens

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

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



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 State Board of Dental Examiners

Title 22, Part 5

The Texas State Board of Dental Examiners (Board) files this Notice of Intent to Review to consider for re-adoption, revision, or repeal the chapters listed below, in their entirety, contained in Title 22, Part 5, of the Texas Administrative Code. This review is being conducted in accordance with Texas Government Code §2001.039.

Rule Chapters Under Review

Chapter 108, Professional Conduct

Chapter 112, Visual Dental Health Inspections

During the review, the Board will assess whether the reasons for adopting or readopting the rules in these chapters continue to exist. The Board will review each rule to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current Board procedures. This review is required every four years.

Written comments regarding the review of these chapters may be submitted to Carol Pepper, Legal Assistant at 1801 Congress Avenue, Suite 8.600, Austin, Texas 78701; by facsimile to (512) 649-2482; or by email to official_rules_comments@tsbde.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

Any proposed changes to the rules in these chapters as a result of the rule review will be published in the Proposed Rules section of the *Texas Register*. The proposed rules will be open for public comment before final adoption by the Board in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

TRD-202405719

Lauren Studdard

General Counsel

Texas State Board of Dental Examiners

Filed: November 22, 2024



Adopted Rule Reviews

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 155, Rules Relating to Standard of Practice,

and Chapter 157, Rules Relating to Practice and Procedure. The notice of proposed rule review was published in the May 31, 2024, issue of the *Texas Register* (49 TexReg 3938).

TALCB has determined that the reasoned justification for adopting 22 TAC 155 and 157 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 157, Subchapters B, C, D, and E as proposed in the September 6, 2024, issue of the *Texas Register* (49 TexReg 6955) and adopted under the Adopted Rules section of this issue of the *Texas Register*.

No comments were received regarding TALCB's notice of review. This notice concludes TALCB's review of 22 TAC Chapter 155, Rules Relating to Standard of Practice, and Chapter 157, Rules Relating to Practice and Procedure.

TRD-202405625

Kathleen Santos

General Counsel

Texas Appraiser Licensing and Certification Board

Filed: November 20, 2024



Texas Commission on Environmental Quality

Title 30, Part 1

The Texas Commission on Environmental Quality (TCEQ) has completed its Rule Review of 30 Texas Administrative Code (TAC) Chapter 11, Contracts, as required by Texas Government Code (TGC), §2001.039. TGC, §2001.039 requires a state agency to review and consider for re adoption, re adoption with amendments, or repeal each of its rules every four years. TCEQ published its Notice of Intent to Review these rules in the July 26, 2024, issue of the *Texas Register* (49 TexReg 5549).

The review assessed whether the initial reasons for adopting the rules continue to exist and TCEQ has determined that those reasons exist. The rules in Chapter 11 provide the general procedures concerning TCEQ's contract operations. The rules define the procedures for vendors to protest procurement selections and provide the procedures for resolving contract claims. For contracts procured pursuant to the methods described in TGC, §2261.001, the rules define the roles and responsibilities for agency staff and establish a procedure to identify contracts that require enhanced monitoring. The rules also adopt by reference the Texas Comptroller of Public Account's rules relating to Historically Underutilized Businesses, Competitive Sealed Bidding, and Competitive Sealed Proposals. The rules in Chapter 11 are necessary to imple-

ment the requirements in the TGC, Chapters 2155, 2156, 2161, 2260, and 2261; and Texas Water Code, Chapter 5

Public Comment

The public comment period closed on September 3, 2024. TCEQ did not receive comments on the rules review of this chapter.

As a result of the review, TCEQ finds that the reasons for adopting the rules in 30 TAC Chapter 11 continue to exist and readopts these sections in accordance with the requirements of TGC, §2001.039. Changes to the rules identified as part of this review process will be addressed in a separate rulemaking action, in accordance with the Texas Administrative Procedure Act.

TRD-202405703

Charmaine Backens

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: November 21, 2024



The Texas Commission on Environmental Quality (TCEQ) has completed its Rule Review of 30 Texas Administrative Code (TAC) Chapter 12, Payment of Fees, as required by Texas Government Code (TGC), §2001.039. TGC, §2001.039, requires a state agency to review and consider for re-adoption, re-adoption with amendments, or repeal each of its rules every four years. TCEQ published its Notice of Intent to Review these rules in the July 26, 2024, issue of the *Texas Register* (49 TexReg 5549).

The review assessed whether the initial reasons for adopting the rules continue to exist and the commission has determined that those reasons exist. The rules in Chapter 12 are required because the rules provide the commission the ability to charge penalties and interest on delinquent fees owed to TCEQ. The rules define the administration of charges on delinquent fees. The primary purpose of the charges is to ensure the agency receives fees owed in a timely manner. These rules provide the timeframe, penalty percentage, and interest rate the commission charges on delinquent fees.

Public Comment

The public comment period closed on August 26, 2024. TCEQ did not receive comments on the rules review of this chapter.

As a result of the review, TCEQ finds that the reasons for adopting the rules in 30 TAC Chapter 12 continue to exist and readopts these sections in accordance with the requirements of TGC, §2001.039. Changes to the rules identified as part of this review process will be addressed in a separate rulemaking action, in accordance with the Texas Administrative Procedure Act.

TRD-202405701

Charmaine Backens

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: November 21, 2024



The Texas Commission on Environmental Quality (TCEQ) has completed its Rule Review of 30 Texas Administrative Code (TAC) Chapter 14, Grants, as required by Texas Government Code (TGC), §2001.039. TGC, §2001.039, requires a state agency to review and consider for re-adoption, re-adoption with amendments, or repeal each of its rules every four years. TCEQ published its Notice of Intent to Review these rules in the July 26, 2024, issue of the *Texas Register* (49 TexReg 5550).

The review assessed whether the initial reasons for adopting the rules continue to exist and TCEQ has determined that those reasons exist. The rules in Chapter 14 are required under Texas Water Code, §5.124(b), Authority to Award Grants. The agency may award grants for one resource conservation or protection purpose. Grants awarded under this chapter may use state or federal funds if it relates directly to a purpose specified in the grant.

Public Comment

The public comment period closed on September 3, 2024. TCEQ did not receive comments on the rules review of this chapter.

As a result of the review, TCEQ finds that the reasons for adopting the rules in 30 TAC Chapter 14 continue to exist and readopts these sections in accordance with the requirements of TGC, §2001.039. Changes to the rules identified as part of this review process will be addressed in a separate rulemaking action, in accordance with the Texas Administrative Procedure Act.

TRD-202405702

Charmaine Backens

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: November 21, 2024



The Texas Commission on Environmental Quality (TCEQ) has completed its Rule Review of 30 Texas Administrative Code (TAC) Chapter 37, Financial Assurance, as required by Texas Government Code (TGC), §2001.039. TGC, §2001.039, requires a state agency to review and consider for re-adoption, re-adoption with amendments, or repeal each of its rules every four years. TCEQ published its Notice of Intent to Review these rules in the July 26, 2024, issue of the *Texas Register* (49 TexReg 5550).

The review assessed whether the initial reasons for adopting the rules continue to exist and TCEQ has determined that those reasons exist. The rules in Chapter 37 are required because the rules specify how financial assurance requirements may be satisfied, including when financial assurance must be provided, the specific financial assurance mechanisms that may be used, wording of the mechanisms, how the amount of financial assurance required may be adjusted, circumstances authorizing TCEQ to draw on financial assurance, and circumstances when financial assurance may be terminated among other requirements. The rules are necessary because they implement several critical provisions of the Texas Water Code and the Texas Health and Safety Code which require financial assurance as well as satisfy financial assurance requirements of federal programs delegated from the United States Environmental Protection Agency to the state of Texas.

Public Comment

The public comment period closed on September 3, 2024. TCEQ did not receive comments on the rules review of this chapter.

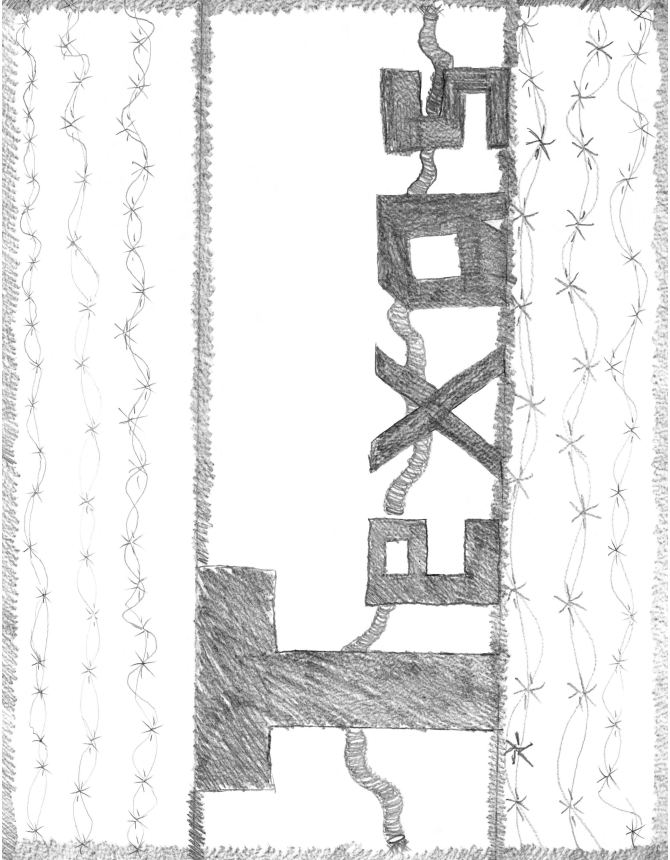
As a result of the review, TCEQ finds that the reasons for adopting the rules in 30 TAC Chapter 37 continue to exist and readopts these sections in accordance with the requirements of TGC, §2001.039.

Changes to the rules identified as part of this review process will be addressed in a separate rulemaking action, in accordance with the Texas Administrative Procedure Act.

TRD-202405704

Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: November 21, 2024





TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word “Figure” followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 16 TAC §401.160(h)

| TEXAS LOTTERY COMMISSION RETAILER REGULATORY VIOLATIONS AND RELATED PENALTIES | | | |
|---|--|---|------------------------------------|
| No. | DESCRIPTION OF VIOLATION | 1st OCCURRENCE | 2nd OCCURRENCE |
| 1st Tier Violations | | | |
| 1. | Licensee engages in telecommunication or printed advertising that the director determines to have been false, deceptive or misleading. | Warning Letter (Notification in writing to the licensee of the detected violation, including a warning that future violations will result in more severe administrative penalties including Suspension and/or revocation of the license.) | 10-90 day Suspension |
| 2. | Licensee conditions redemption of a lottery prize upon the purchase of any other item or service. | Warning Letter | 10-90 day Suspension |
| 3. | Licensee imposes a restriction upon the redemption of a lottery prize not specifically authorized by the director. | Warning Letter | 10-90 day Suspension |
| 4. | Licensee fails to follow instructions and procedures for the conduct of any lottery game, lottery special event or promotion. | Warning Letter | 10-90 day Suspension |
| | | | 30-90 day Suspension to Revocation |
| | | | 30-90 day Suspension to Revocation |
| | | | 30-90 day Suspension to Revocation |

| | | | | |
|-----|---|----------------|----------------------|------------------------------------|
| 5. | Licensee and/or its employee(s) exhibit discourteous treatment including, but not limited to, abusive language toward customers, commission employees or commission vendors. | Warning Letter | 10-90 day Suspension | 30-90 day Suspension to Revocation |
| 6. | Licensee fails to establish or maintain reasonable security precautions regarding the handling of lottery tickets and other materials. | Warning Letter | 10-90 day Suspension | 30-90 day Suspension to Revocation |
| 7. | Licensee fails to deface a validated ticket. | Warning Letter | 10-90 day Suspension | 30-90 day Suspension to Revocation |
| 8. | Licensee sells a draw game ticket for a draw that has already taken place. | Warning Letter | 10-90 day Suspension | 30-90 day Suspension to Revocation |
| 9. | Licensee fails to follow validation procedures, including, but not limited to, paying a claim without validating the ticket, failing to pay a valid prize after validating a customer's winning ticket, or retaining a customer's winning ticket that has not been validated. | Warning Letter | 10-90 day Suspension | 30-90 day Suspension to Revocation |
| 10. | Licensee violates any directive or instruction issued by the director of Lottery Operations. | Warning Letter | 10-90 day Suspension | 30-90 day Suspension to Revocation |
| 11. | Licensee violates any express term or condition of its license not specifically set forth in this subchapter. | Warning Letter | 10-90 day Suspension | 30-90 day Suspension to Revocation |
| 12. | Licensee sells a scratch ticket from a game that has closed after the date designated for the end of the game. | Warning Letter | 10-90 day Suspension | 30-90 day Suspension to Revocation |
| 13. | Licensee refuses to refund or properly cancel a Pick 3 or Daily 4 ticket. | Warning Letter | 10-90 day Suspension | 30-90 day Suspension to Revocation |

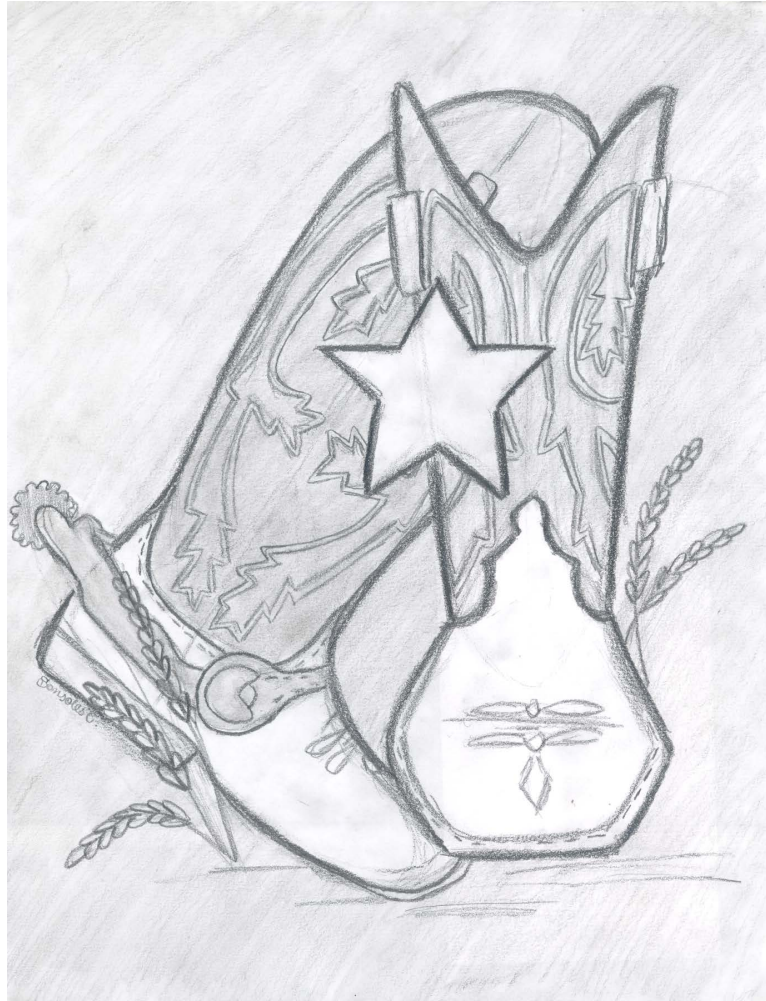
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| 14. | Licensee fails to return an exchange ticket to a prize claimant claiming a prize on a multi-draw ticket if an exchange ticket is produced by the licensee's terminal. | Warning Letter | 10-90 day Suspension | 30-90 day Suspension to Revocation |
| 15. | Licensee fails to keep accurate and complete records of all tickets that have not been sold from confirmed, active, and settled packs. | Warning Letter | 10-90 day Suspension | 30-90 day Suspension to Revocation |
| 16. | Licensee fails to meet any requirement under §401.368, Lottery Ticket Vending Machines rule, if the licensee has been supplied with a self-service lottery ticket vending machine by the commission. | Warning Letter | 10-90 day Suspension | 30-90 day Suspension to Revocation |
| 17. | Licensee fails to take readily achievable measures within the allowed time period to comply with the barrier removal requirements regarding the ADA. | Warning Letter | 10-90 day Suspension | 30-90 day Suspension to Revocation |
| 18. | Licensee fails to prominently post license. | Warning Letter | 10-90 day Suspension | 30-90 day Suspension to Revocation |
| 19. | Licensee sells tickets that were assigned to another licensed location. | Warning Letter | 10-90 day Suspension | 30-90 day Suspension to Revocation |
| 20. | Licensee knowingly sells a ticket or pays a lottery prize to another person who is: (A) an officer or an employee of the commission; (B) an officer, member, or employee of a lottery operator; (C) an officer, member, or employee of a contractor or subcontractor that is excluded by the terms of its contract from playing lottery games; (D) the spouse, child, brother, sister, or parent of a person described by (A), (B), or (C) above who resides within the same household as that person. | Warning Letter | 10-90 day Suspension | 30-90 day Suspension to Revocation |

| 2nd Tier Violations | | | |
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| 21. | Licensee endangers the security and/or integrity of the lottery games operated by the commission. | 10-90 day Suspension to Revocation | 30-90 day Suspension to Revocation |
| 22. | Licensee intentionally or knowingly sells a ticket at a price the licensee knows is greater than the price set by the executive director. | 10-90 day Suspension to Revocation | 30-90 day Suspension to Revocation |
| 23. | Licensee charges a fee for lottery ticket purchases using a debit card, <u>requires an additional purchase with a debit card,</u> and/or requires a minimum dollar amount for debit card purchases of only lottery tickets. | 10-90 day Suspension to Revocation | 30-90 day Suspension to Revocation |
| 24. | Licensee sells tickets at a location that is not licensed. | 10-90 day Suspension to Revocation | 30-90 day Suspension to Revocation |
| 25. | Licensee intentionally or knowingly sells a ticket by extending credit or lends money to enable a person to buy a ticket. | 10-90 day Suspension to Revocation | 30-90 day Suspension to Revocation |
| 26. | Licensee intentionally or knowingly sells a ticket and accepts anything for payment not specifically allowed under the State Lottery Act. | 10-90 day Suspension to Revocation | 30-90 day Suspension to Revocation |
| 27. | Licensee sells tickets over the telephone or <u>internet,</u> or via mail order <u>sales;</u> [sales;] or establishes or promotes a group purchase or pooling arrangement under which tickets are purchased on behalf of the group or pool and any prize is divided among the members of the group or pool, and the licensee intentionally or knowingly: (A) uses any part of the funds solicited or accepted for a purpose other than purchasing tickets on behalf of the group or pool; or (B) retains a share of any prize awarded as | 10-90 day Suspension to Revocation | 30-90 day Suspension to Revocation |

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| | compensation for establishing or promoting the group purchase or pooling arrangement. | | | | |
| 28. | Licensee intentionally or knowingly alters or forges a ticket. | 10-90 day Suspension to Revocation | 30-90 day Suspension to Revocation | Revocation | |
| 29. | Licensee intentionally or knowingly influences or attempts to influence the selection of a winner of a lottery game. | 10-90 day Suspension to Revocation | 30-90 day Suspension to Revocation | Revocation | |
| 30. | Licensee intentionally or knowingly claims a lottery prize or a share of a lottery prize by means of fraud, deceit, or misrepresentation; or aids or agrees to aid another person or persons to claim a lottery prize or a share of a lottery prize by means of fraud, deceit, or misrepresentation. | 10-90 day Suspension to Revocation | 30-90 day Suspension to Revocation | Revocation | |
| 31. | Licensee intentionally or knowingly tampers with, damages, defaces, or renders inoperable any vending machine, electronic computer terminal, or other mechanical device used in a lottery game, or fails to exercise due care in the treatment of commission property. | 10-90 day Suspension to Revocation | 30-90 day Suspension to Revocation | Revocation | |
| 32. | Licensee: (A) induces another person to assign or transfer a right to claim a prize; (B) initiates or accepts an offer to sell the right to claim a prize; (C) initiates or accepts an offer of compensation from another person to claim a lottery prize; or (D) purchases, for anything of value, a lottery ticket from a person who is not a licensed lottery retailer. | 10-90 day Suspension to Revocation | 30-90 day Suspension to Revocation | Revocation | |
| 33. | Licensee intentionally or knowingly makes a statement or entry that the person knows to be false or misleading on a required report. | 10-90 day Suspension to Revocation | 30-90 day Suspension to Revocation | Revocation | |

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| 34. | Licensee fails to maintain or make an entry the licensee knows is required to be maintained or made for a required report. | 10-90 day Suspension to Revocation | 30-90 day Suspension to Revocation | | | | Revocation |
| 35. | Licensee knowingly refuses to permit the director of the Lottery Operations Division, the executive director, commission, the lottery operator, the employees or agents of the lottery operator, or the state auditor to examine the agent's books, records, papers or other objects, or refuses to answer any question authorized under the State Lottery Act. | 10-90 day Suspension to Revocation | 30-90 day Suspension to Revocation | | | | Revocation |
| 36. | Licensee intentionally or knowingly makes a material and false or incorrect, or deceptive statement, written or oral, to a person conducting an investigation under the State Lottery Act or a commission rule. | 10-90 day Suspension to Revocation | 30-90 day Suspension to Revocation | | | | Revocation |
| 37. | Licensee commits an offense of conspiracy as defined in the State Lottery Act. | 10-90 day Suspension to Revocation | 30-90 day Suspension to Revocation | | | | Revocation |
| 38. | Licensee sells or offers for sale any interest in a lottery of another state or state government or an Indian tribe or tribal government, including an interest in an actual lottery ticket, receipt, contingent promise to pay, order to purchase, or other record of the interest. | 10-90 day Suspension to Revocation | 30-90 day Suspension to Revocation | | | | Revocation |
| 3rd Tier Violations | | | | | | | |
| 39. | Licensee intentionally or knowingly sells or offers to sell a ticket to a person that the licensee knows is younger than 18 years. | Revocation | n/a | | | | n/a |
| 40. | Licensee incurs four (4) notices of nonsufficient fund transfers or non-transfer of funds within a 12-month period. | Revocation | n/a | | | | n/a |

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| 41. | Licensee fails to pay the full amount of money owed to the commission after a nonsufficient funds transfer or non-transfer of funds to the commission's account. | Revocation | n/a | n/a |
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ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **January 10, 2025**. TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on **January 10, 2025**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission's enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: Aqua Texas, Incorporated; DOCKET NUMBER: 2023-0976-PWS-E; IDENTIFIER: RN101225977; LOCATION: Pearland, Brazoria County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.41(c)(3)(K), by failing to seal the wellhead by a gasket or sealing compound and provide a well casing vent for Well Number 2 that is covered with 16-mesh or finer corrosion-resistant screen, facing downward, elevated and located so as to minimize the drawing of contaminants into the well; and 30 TAC §290.46(j), by failing to complete a customer service inspection certificate prior to providing continuous water service to new construction or any existing service when the water purveyor has reason to believe a cross-connection or other potential contamination hazard exists, or after any material improvements, corrections, or additions to the private water distribution system; PENALTY: \$4,365; ENFORCEMENT COORDINATOR: Ilia Perez-Ramirez, (713) 767-3743; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: Aqua Texas, Incorporated; DOCKET NUMBER: 2024-0661-PWS-E; IDENTIFIER: RN101213411; LOCATION:

Granbury, Hood County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.45(b)(1)(D)(i), Texas Health and Safety Code, §341.0315(c), and TCEQ Agreed Order Docket Number 2020-1434-PWS-E, Ordering Provision Number 2.a.i, by failing to provide the minimum well capacity; PENALTY: \$9,000; ENFORCEMENT COORDINATOR: Mason DeMasi, (210) 657-8425; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 492-3096.

(3) COMPANY: AUSTIN READY-MIX, LLC dba West Henly Concrete Batch Plant; DOCKET NUMBER: 2024-1412-MLM-E; IDENTIFIER: RN109482141; LOCATION: Johnson City, Blanco County; TYPE OF FACILITY: concrete batch plant; RULES VIOLATED: 30 TAC §205.4(a) and (b)(1)(A) and TWC, §26.121(a)(1), by failing to maintain authorization to discharge plant wastewater and stormwater associated with industrial activities from ready-mixed concrete plants, concrete product plants, and associated facilities; 30 TAC §324.6 and 40 Code of Federal Regulations §279.22(c)(1), by failing to label or clearly mark containers used to store used oil with the words "Used Oil"; and 30 TAC §334.127(a)(1) and TWC, §26.346(a), by failing to register an aboveground storage tank; PENALTY: \$4,200; ENFORCEMENT COORDINATOR: Karolyn Kent, (512) 239-2536; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(4) COMPANY: City of Crandall; DOCKET NUMBER: 2024-0683-PWS-E; IDENTIFIER: RN101384360; LOCATION: Crandall, Kaufman County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(o)(3) and §290.45(h)(1), by failing to adopt and submit to the Executive Director a complete Emergency Preparedness Plan that demonstrates the facility's ability to provide emergency operations; PENALTY: \$50; ENFORCEMENT COORDINATOR: Savannah Jackson, (512) 239-4306; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(5) COMPANY: City of Gustine; DOCKET NUMBER: 2024-0585-MWD-E; IDENTIFIER: RN102178654; LOCATION: Gustine, Comanche County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010841001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: \$15,750; ENFORCEMENT COORDINATOR: Sarah Castillo, (512) 239-1130; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(6) COMPANY: City of Spearman; DOCKET NUMBER: 2024-0759-PWS-E; IDENTIFIER: RN101456374; LOCATION: Spearman, Hansford County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(o)(3) and §290.45(h)(1), by failing to adopt and submit to the Executive Director a complete Emergency Preparedness Plan that demonstrates the facility's ability to provide emergency operations; PENALTY: \$50; ENFORCEMENT COORDINATOR: Taner Hengst, (512) 239-1143; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(7) COMPANY: Ingram Independent School District; DOCKET NUMBER: 2024-0603-PWS-E; IDENTIFIER: RN101281731; LO-

CATION: Ingram, Kerr County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.41(c)(1)(F), by failing to obtain a sanitary control easement covering land within 150 feet of the facility's well; 30 TAC §290.44(h)(4), by failing to have all backflow prevention assemblies tested upon installation and on an annual basis by a recognized backflow assembly tester and certified that they are operating within specifications; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the system's facilities and equipment; 30 TAC §290.46(m)(4), by failing to maintain all water treatment units, storage and pressure maintenance facilities, distribution system lines, and related appurtenances in a watertight condition and free of excessive solids; and 30 TAC §290.46(n)(1), by failing to maintain at the public water system accurate and up-to-date detailed as-built plans or record drawings and specifications for each treatment plant, pump station, and storage tank until the facility is decommissioned; PENALTY: \$2,295; ENFORCEMENT COORDINATOR: Kaisie Hubschmitt, (215) 239-1482; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(8) COMPANY: Lubbock County Water Control and Improvement District Number 1; DOCKET NUMBER: 2024-0743-PWS-E; IDENTIFIER: RN101411908; LOCATION: Buffalo Springs, Lubbock County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(o)(3) and §290.45(h)(1), by failing to adopt and submit to the Executive Director a complete Emergency Preparedness Plan that demonstrates the facility's ability to provide emergency operations; PENALTY: \$50; ENFORCEMENT COORDINATOR: Nick Lohret-Froio, (512) 239-4495; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(9) COMPANY: Recoil Resources Operating, Incorporated; DOCKET NUMBER: 2024-1705-AIR-E; IDENTIFIER: RN106188188; LOCATION: Falls City, Wilson County; TYPE OF FACILITY: oil and gas production plant; RULES VIOLATED: 30 TAC §101.201(a)(1)(B) and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit an initial notification for a reportable emissions event no later than 24 hours after the discovery of an emissions event; and 30 TAC §116.115(c) and §116.615(2), Standard Permit Registration Number 155291, Oil and Gas Handling and Production Facilities, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$3,001; ENFORCEMENT COORDINATOR: Morgan Kopcho, (512) 239-4167; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 492-3096.

(10) COMPANY: REED RV PARK, INCORPORATED; DOCKET NUMBER: 2024-0604-PWS-E; IDENTIFIER: RN105814818; LOCATION: Justiceburg, Garza County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.106(f)(2) and Texas Health and Safety Code, §341.031(a), by failing to comply with the acute maximum contaminant level of ten milligrams per liter for nitrate; PENALTY: \$5,500; ENFORCEMENT COORDINATOR: Miles Caston, (512) 239-4593; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(11) COMPANY: SILVER SAND FARM PROPERTIES, LTD.; DOCKET NUMBER: 2022-1542-PST-E; IDENTIFIER: RN101846889; LOCATION: Muleshoe, Bailey County; TYPE OF FACILITY: temporarily out-of-service underground storage tank (UST) system; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; PENALTY: \$2,872; ENFORCEMENT COORDINATOR: Rachel Murray, (903) 535-5149; REGIONAL

OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(12) COMPANY: SODA WATER SUPPLY CORPORATION; DOCKET NUMBER: 2024-0527-PWS-E; IDENTIFIER: RN101221315; LOCATION: Livingston, Polk County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(j)(1)(A) and Texas Health and Safety Code (THSC), §341.0351, by failing to notify the Executive Director prior to making any significant change or addition where the change in the existing system results in an increase or decrease in the system's production, treatment, storage, or pressure maintenance; 30 TAC §290.46(i), by failing to adopt an adequate plumbing ordinance, regulations, or service agreement with provisions for proper enforcement to ensure that neither cross-connections nor other unacceptable plumbing practices are permitted; 30 TAC §290.46(m)(4), by failing to maintain all water treatment units, storage and pressure maintenance facilities, distribution system lines, and related appurtenances in a watertight condition and free of excessive solids; 30 TAC §290.46(m)(6), by failing to maintain all pumps, motors, valves, and other mechanical devices in good working condition; and 30 TAC §290.121(b), by failing to maintain an up-to-date chemical and microbiological monitoring plan at each water treatment plant and at a central location; PENALTY: \$1,450; ENFORCEMENT COORDINATOR: Ronica Rodriguez Scott, (512) 239-2510; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(13) COMPANY: Staff Water Supply Corporation; DOCKET NUMBER: 2024-0713-PWS-E; IDENTIFIER: RN101193472; LOCATION: Ranger, Eastland County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(d)(2)(B) and §290.110(b)(4) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to maintain a disinfectant residual of at least 0.5 milligrams per liter of chloramine throughout the distribution system at all times; 30 TAC §290.46(e) and THSC, §341.033(a), by failing to use a water works operator who holds an applicable, valid license issued by the executive director (ED); and 30 TAC §290.46(f)(2) and (3)(A)(i)(III), by failing to maintain water works operation and maintenance records and make them readily available for review by the ED upon request; PENALTY: \$536; ENFORCEMENT COORDINATOR: Taner Hengst, (512) 239-1143; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(14) COMPANY: Staff Water Supply Corporation; DOCKET NUMBER: 2024-0789-PWS-E; IDENTIFIER: RN101189918; LOCATION: Ranger, Eastland County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.43(c)(4), by failing to provide all ground storage tanks with a liquid level indicator; 30 TAC §290.46(e) and Texas Health and Safety Code, §341.033(a), by failing to use a water works operator who holds an applicable, valid license issued by the Executive Director; and 30 TAC §290.46(z), by failing to create a nitrification action plan for all systems distributing chloraminated water; PENALTY: \$388; ENFORCEMENT COORDINATOR: Taner Hengst, (512) 239-1143; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(15) COMPANY: Sun Coast Resources, LLC FKA A. J. HURT, JR., INCORPORATED; DOCKET NUMBER: 2024-1057-WQ-E; IDENTIFIER: RN100536655; LOCATION: Houston, Harris County; TYPE OF FACILITY: petroleum products storage facility; RULE VIOLATED: 30 TAC §205.4(a) and Texas Pollutant Discharge Elimination System General Permit Number TXG341628, Part II, Section C.3, by failing to submit a copy of the Notice of Intent to the local Municipal Separate Storm Sewer System prior to discharging facility wastewater, contact stormwater, and stormwater associated with industrial activities from petroleum bulk stations and terminals into or

adjacent to water in the state; PENALTY: \$11,255; ENFORCEMENT COORDINATOR: Mark Gamble, (512) 239-2587; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(16) COMPANY: Texas Water Utilities, L.P.; DOCKET NUMBER: 2024-0493-PWS-E; IDENTIFIER: RN101272433; LOCATION: Whitesboro, Cooke County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(q)(1)(A)(i), by failing to institute special precautions as described in the flowchart found in 30 TAC §290.47(e) in the event of low distribution pressure and water outages; PENALTY: \$2,055; ENFORCEMENT COORDINATOR: Miles Caston, (512) 239-4593; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(17) COMPANY: Town of Providence Village; DOCKET NUMBER: 2024-1212-WQ-E; IDENTIFIER: RN108386319; LOCATION: Providence Village, Denton County; TYPE OF FACILITY: municipal separate storm sewer system; RULE VIOLATED: 30 TAC §281.25(a)(4) and Texas Pollutant Discharge Elimination System General Permit Number TXR040603, Part III, Section B.5(b)(5)(d), by failing to maintain a log of inspections of pollution prevention measures implemented at permittee owned facilities; PENALTY: \$1,625; ENFORCEMENT COORDINATOR: Kolby kf, (512) 239-2098; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(18) COMPANY: TRI-CON, INCORPORATED dba Exxpress Mart 29; DOCKET NUMBER: 2024-0993-PST-E; IDENTIFIER: RN101905560; LOCATION: Beaumont, Jefferson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously-issued underground storage tanks (UST) delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting a delivery of regulated substance into the USTs; and 30 TAC §334.48(h)(1)(A)(i) and TWC, §26.3475(c)(2), by failing to conduct walkthrough inspections of the spill prevention equipment at least once every 30 days; PENALTY: \$17,234; ENFORCEMENT COORDINATOR: Stephanie McCurley, (512) 239-2607; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(19) COMPANY: TRI-CON, INCORPORATED dba Exxpress Mart 6; DOCKET NUMBER: 2024-0629-PST-E; IDENTIFIER: RN101806842; LOCATION: Port Neches, Jefferson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued underground storage tanks (USTs) delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the regulated USTs; 30 TAC §334.48(e)(1) and TWC, §26.3475(c)(1), by failing to conduct a test of the proper operation of the release detection equipment at least annually; and 30 TAC §334.49(a)(2) and TWC, §26.3475(d), by failing to ensure that the UST corrosion protection system is operated and maintained in a manner that will provide continuous corrosion protection to all underground metal components of the UST system; PENALTY: \$10,975; ENFORCEMENT COORDINATOR: Amy Lane, (512) 239-2614; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(20) COMPANY: Walker County Special Utility District; DOCKET NUMBER: 2024-0747-PWS-E; IDENTIFIER: RN101406650; LOCATION: Walker, Walker County; TYPE OF FACILITY: public water

supply; RULES VIOLATED: 30 TAC §290.39(o)(3) and 290.45(h)(1), by failing to adopt and submit to the Executive Director a complete Emergency Preparedness Plan that demonstrates the facility's ability to provide emergency operations; PENALTY: \$50; ENFORCEMENT COORDINATOR: Mason DeMasi, (210) 657-8425; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 492-3096.

TRD-202405666

Gitanjali Yadav

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: November 21, 2024



Minor Amendment - WQ0002496000

The following notice was issued on October 10, 2024:

The following notice does not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin Texas 78711-3087 WITHIN (30) DAYS FROM THE DATE THIS NOTICE IS ISSUED.

INFORMATION SECTION

Southwestern Electric Power Company, which operates Henry W Pirkey Power Plant, a lignite-fired steam electric power generation plant, has applied for a minor amendment without renewal to Texas Pollutant Discharge Elimination System Permit No. WQ0002496000 to authorize the change to the effluent monitoring sample location for Outfall 007. The draft permit authorizes the discharge of once-through cooling water and previously monitored effluents (PME) (low-volume waste sources via internal Outfall 102, domestic wastewater via internal Outfall 302, and effluent from East Ash Pond via internal Outfall 402) at a daily average flow not to exceed 600,000,000 gallons per day via Outfall 002; stormwater from the Lignite Runoff Pond (coal pile runoff) on an intermittent and flow-variable basis via Outfall 003; stormwater from the Limestone Runoff Pond on an intermittent and flow-variable basis via Outfall 005; and stormwater and landfill leachate from the flue gas desulfurization (FGD)/Fly Ash Landfill Retention Pond and stormwater from the Lignite Runoff Pond (coal pile runoff) on an intermittent and flow-variable basis via Outfall 007. The facility is located at 2400 Farm-to-Market Road 3251, southwest of the City of Hallsville, Harrison County, Texas 75650.

TRD-202405751

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: November 22, 2024



Minor Amendment - WQ0010795001

The following notice was issued on October 15, 2024:

The following notice does not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin Texas 78711-3087 WITHIN (30) DAYS FROM THE DATE THIS NOTICE IS ISSUED.

INFORMATION SECTION

The Texas Commission on Environmental Quality has initiated a minor amendment of the Texas Pollutant Discharge Elimination System Per-

mit No. WQ0010795001 issued to Horizon Regional Municipal Utility District, 14100 Horizon Boulevard, Horizon City, Texas 79928. The existing permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 5,000,000 gallons per day. The facility is located at 13223 Berkley Drive in El Paso, County, Texas 79928.

TRD-202405752

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: November 22, 2024



Notice of an Application to Amend a Certificate of Adjudication Application No. 12-5309A

Notice Issued November 21, 2024

The City of Bryan (Applicant), 300 S. Texas Avenue, Bryan, Texas 77803 seeks to amend Certificate of Adjudication No. 12-5309A to increase the capacity of Midtown Lake impounding an additional 47 acre-feet of water for a total capacity of 120 acre-feet of water. The City also seeks to use the bed and banks of unnamed tributaries of Burton Creek, Brazos River Basin, to convey up to 500 acre-feet of groundwater per year from the Sparta aquifer to maintain the increased reservoir capacity for recreational purposes and for subsequent diversion, and to add a use and a place of use for agricultural purposes. More information on the application and how to participate in the permitting process is given below. The application and partial fees were received on April 19, 2022. Additional information and fees were received on June 14, June 21, and December 6, 2022. The application was declared administratively complete and filed with the Office of the Chief Clerk on July 18, 2022.

The Executive Director has completed technical review of the application and prepared a draft amendment. The draft amendment, if granted, would include time limitations to commence and complete modification of Midtown Park Lake Dam and special conditions, including maintenance of an alternate source of water and an accounting plan. The application, technical memoranda, and Executive Director's amendment are available for viewing on the TCEQ webpage at: https://www.tceq.texas.gov/permitting/water_rights/wr-permitting/view-wr-pend-apps

Alternatively, you may request a copy of the documents by contacting the TCEQ Office of the Chief Clerk by phone at (512) 239-3300 or by mail at TCEQ OCC, Notice Team (MC-105), P.O. Box 13087, Austin, Texas 78711.

Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice. A public meeting is intended for the taking of public comment and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application.

The TCEQ may grant a contested case hearing on this application if a written hearing request is filed within 30 days from the date of newspaper publication of this notice. The Executive Director may approve the application unless a written request for a contested case hearing is filed within 30 days after newspaper publication of this notice.

To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and certificate number; (3) the statement "[I/we]

request a contested case hearing;" (4) a brief and specific description of how you would be affected by the application in a way not common to the general public; and (5) the location and distance of your property relative to the proposed activity. You may also submit proposed conditions for the requested amendment which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the Order and will forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments, or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at <https://www14.tceq.texas.gov/epic/eComment/> by entering ADJ 5309 in the search field. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Public Education Program at (800) 687-4040. General information regarding the TCEQ can be found at our website at www.tceq.texas.gov. Si desea información en español, puede llamar al (800) 687-4040 o por el internet al <http://www.tceq.texas.gov>.

TRD-202405753

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: November 22, 2024



Notice of an Application to Amend a Certificate of Adjudication Application No. 13932

Notice Issued November 21, 2024

Thomas S. Erickson (Applicant), 1411 Orchard Drive, Leander, Texas 78641 seeks a temporary water use permit to divert and use not to exceed 9 acre-feet of water, within a period of three years, from the South Fork San Gabriel River, Brazos River Basin for agricultural purposes in Williamson County. More information on the application and how to participate in the permitting process is given below.

The application was received on August 28, 2023, and fees were received on June 1, 2023 and November 27, 2023. Additional information was received November 21, 2023 and December 6, 2023. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on December 8, 2023.

The Executive Director completed the technical review of the application and prepared a draft permit. The draft permit, if granted, would include special conditions including, but not limited to, streamflow restrictions. The application, technical memoranda, and Executive Director's draft permit are available for viewing on the TCEQ webpage at: https://www.tceq.texas.gov/permitting/water_rights/wr-permitting/view-wr-pend-apps. Alternatively, you may request a copy of the documents by contacting the TCEQ Office of the Chief Clerk by phone at (512) 239-3300 or by mail at TCEQ OCC, Notice Team (MC-105), P.O. Box 13087, Austin, Texas 78711.

Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, by December 09, 2024. A public meeting is intended for the taking of public comment, and is not a contested case hearing. A public meeting will be held if the Executive Director

determines that there is a significant degree of public interest in the application.

The TCEQ may grant a contested case hearing on this application if a written hearing request is filed by December 09, 2024. The Executive Director may approve the application unless a written request for a contested case hearing is filed by December 09, 2024.

To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" (4) a brief and specific description of how you would be affected by the application in a way not common to the general public; and (5) the location and distance of your property relative to the proposed activity. You may also submit proposed conditions for the requested permit which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the permit and will forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments, or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at <https://www14.tceq.texas.gov/epic/eComment/> by entering WRTP 13932 in the search field. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address.

For additional information, individual members of the general public may contact the Public Education Program at (800) 687-4040. General information regarding the TCEQ can be found at our website at www.tceq.texas.gov. Si desea información en español, puede llamar al (800)-687-4040 o por el internet al <http://www.tceq.texas.gov>.

TRD-202405754
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: November 22, 2024



Notice of District Petition TCEQ Internal Control No. D-09182024-039

Notice issued November 22, 2024

TCEQ Internal Control No. D-09182024-039: Aqu Hockley Project, LLC, a Texas limited liability company, (Petitioner) filed a petition for creation of Harris-Waller Counties Municipal Utility District No. 13 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ.

The petition states that: (1) the Petitioner holds title to a majority in value of the land to be included in the proposed District; (2) there are no lienholders on the property to be included in the proposed District; (3) the proposed District will contain approximately 548,891 acres located partially within Harris County and partially within Waller County, Texas; and (4) none of the land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any city.

The petition further states that the proposed District will: (1) purchase, design, construct, acquire, maintain, own, operate, repair, improve, and extend a waterworks and sanitary sewer system for residential and commercial purposes; (2) construct, acquire, improve, extend, maintain, and operate works, improvements, facilities, plants, equipment, and appliances helpful or necessary to provide more adequate drainage for the proposed District; (3) control, abate, and amend local storm waters or other harmful excesses of water; and (4) purchase, construct, acquire, maintain, own, operate, repair, improve, and extend such additional facilities, including roads, parks and recreation facilities, systems, plants, and enterprises as shall be consonant with all of the purposes for which the proposed District is created. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioner that the cost of said project will be approximately \$133,700,000 (\$86,500,000 for water, wastewater, and drainage plus \$8,400,000 for recreation plus \$38,800,000 for roads).

INFORMATION SECTION

To view the complete issued notice, view the notice on our website at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the website, type in the issued date range shown at the top of this document to obtain search results. The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our website at www.tceq.texas.gov.

TRD-202405749
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: November 22, 2024



Notice of District Petition TCEQ Internal Control No. D-10112024-016

Notice issued November 20, 2024

TCEQ Internal Control No. D-10112024-016: Apexx 241 AC McKinney Partnership LLC, a Texas limited liability company and Parkwood Hill School Real Estate LLC, A Texas limited liability company (Petitioners) filed a petition for creation of Bainbridge Municipal Utility District (District) of Collin County with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ.

The petition states that: (1) the Petitioners holds title to a majority in value of the land to be included in the proposed District; (2) the proposed District will contain approximately 239.729 acres located within Collin County, Texas; and all of the land within the proposed District is not located within the corporate limits or extraterritorial jurisdiction of any municipality. On August 23, 2024, McKinney provided a letter to Petitioner acknowledging the tract assigned ETJR2024-0027 was released from McKinney's extraterritorial jurisdiction. By Resolution No.2024-06-24-R, adopted on June 24, 2024, the City of Princeton, Texas, which released the approximately 37.108 acres from Princeton's extraterritorial jurisdiction. The petition further states that the proposed District will: (1) construction, maintenance and operation of a water-works system, including the purchase the purchase and sale of water, for domestic and commercial purposes; (2) the construction, maintenance and operation of a sanitary sewer collection, treatment and disposal system, for domestic and commercial purposes; (3) the construction, installation, maintenance, purchase and operation of drainage and roadway facilities and improvements; and (4) the construction, installation, maintenance, purchase and operation of facilities, systems, plants and enterprises of such additional facilities as shall be consonant with the purposes for which the purposes for which the District is organized. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioners that the cost of said project will be approximately \$58,265,000 (\$48,595,000 for water, wastewater, and drainage plus \$9,670,000 for roads).

INFORMATION SECTION

To view the complete issued notice, view the notice on our website at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the website, type in the issued date range shown at the top of this document to obtain search results. The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For in-

formation concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our website at www.tceq.texas.gov.

TRD-202405747

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: November 22, 2024



Notice of District Petition TCEQ Internal Control No. D-10292024-054

Notice issued November 22, 2024

TCEQ Internal Control No. D-10292024-054: Stoesser Investments, LLC, a Texas limited liability company, Mark A. Stoesser, individually, and Freedom Trail LB, L.P., a Texas limited partnership, (Petitioners) filed a petition for creation of Freedom Trail Municipal Utility District of Liberty County (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ.

The petition states that: (1) the Petitioners hold title to a majority in value of the land to be included in the proposed District; (2) there are no lienholders on the property to be included in the proposed District; (3) the proposed District will contain approximately 424.68 acres located within Liberty County, Texas; and (4) none of the land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any city. The petition further states that the proposed District will: (1) construct a water supply and distribution system for domestic purposes; (2) construct a wastewater conveyance and treatment system; (3) control, abate, and amend harmful excess of waters and the reclamation and drainage of overflowed lands within the proposed District; (4) construct and finance macadamized, graveled, or paved roads and turnpikes, or improvements in aid of those roads; and (5) such other construction, installation, maintenance, purchase and operation of such other facilities, systems, plants, and enterprises as shall be consonant with all of the purposes for which the proposed District is created. Additionally, the proposed District will design, acquire, construct, finance, and issue bonds for a roadway system consisting of macadamized, graveled, or paved roads and turnpikes pursuant to Texas Water Code Section 54.234, as amended. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioners that the cost of said project will be approximately \$101,610,000 (\$68,010,000 for water, wastewater, and drainage plus \$33,600,000 for roads).

INFORMATION SECTION

To view the complete issued notice, view the notice on our website at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the website, type in the issued date range shown at the top of this document to obtain search results. The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number;

(3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our website at www.tceq.texas.gov.

TRD-202405748

Laurie Gharis
Chief Clerk

Texas Commission on Environmental Quality
Filed: November 22, 2024



Notice of Request for Public Comment on Proposed List of Best Management Practices for Certain Operational Issues at Aggregate Production Operations-Legislative Requirement from Agency Sunset Review

The Texas Commission on Environmental Quality (TCEQ) has published on its website and made available for public comment a proposed list of general Best Management Practices (BMPs) for certain operational issues at Aggregate Production Operations (APOs). These operational issues include those related to dust control, water use, and water storage.

TCEQ has statutory jurisdiction to regulate aspects of APO operations in the State of Texas, and it does so through several different programs, permits, and regulations. By publishing a list of APO BMPs, TCEQ intends to provide helpful recommendations for addressing common operational issues within the agency's jurisdiction, and it intends to help explain when TCEQ requirements may apply.

The proposed list of general APO BMPs can be reviewed via TCEQ's public website at: <https://www.tceq.texas.gov/assistance/industry/aggregate-production/best-management-practices>.

Written comments may be mailed to Jess Robinson, MC 175, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087. Comments may also be submitted electronically via <https://tceq.commentinput.com/>. File size restrictions may apply to comments being submitted via the TCEQ Public Comment system. All written comments must be received at TCEQ by 11:59 p.m. on January 10, 2025, and should reference "APO BMP List Proposal."

After the public comment period, TCEQ may revise the proposed list of APO BMPs, if appropriate. The final list of APO BMPs will then be published on TCEQ's website, together with any other additional information if needed.

For further information about the proposed list of general APO BMPs, please contact Jess Robinson at jess.robinson@tceq.texas.gov.

TRD-202405669

Gitanjali Yadav

Deputy Director, Litigation Division

Texas Commission on Environmental Quality

Filed: November 21, 2024



Notice of Second Public Meeting New Permit No. WQ0016391001

APPLICATION. Wilco-Thrall 79 WWTP LLC, P.O. Box 9971, Austin, Texas 78766, has applied to the Texas Commission on Environmental Quality (TCEQ) for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0016391001, to authorize the discharge of treated domestic wastewater at an annual average flow not to exceed 3,000,000 gallons per day. TCEQ received this application on August 11, 2023.

The facility will be located approximately 1.78 miles west of the intersection of South Bounds Street and U.S. Highway 79, in Williamson County, Texas 76578. The treated effluent will be discharged to an unnamed tributary, thence to Long Branch, thence to Soil Conservation Service Site (SCSS) 18 Reservoir, thence to Long Branch, thence to Brushy Creek in Segment No. 1244 of the Brazos River Basin. The unclassified receiving water uses are limited aquatic life use for the unnamed tributary, and high aquatic life use for SCSS Site 18 Reservoir. The designated uses for Segment No. 1244 are primary contact recreation, public water supply, aquifer protection, and high aquatic life use. In accordance with 30 Texas Administrative Code §307.5 and TCEQ's *Procedures to Implement the Texas Surface Water Quality Standards* (June 2010), an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. A Tier 2 review has preliminarily determined that no significant degradation of water quality is expected in SCSS 18 Reservoir, which has been identified as having high aquatic life use. Existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received. This link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice. For the exact location, refer to the application.

<https://gisweb.tceq.texas.gov/LocationMapper/?marker=-97.32281,30.588503&level=18>

The TCEQ Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements.

ALTERNATIVE LANGUAGE NOTICE. Alternative language notice in Spanish is available at <https://www.tceq.texas.gov/permitting/wastewater/plain-language-summaries-and-public-notices>. El aviso de idioma alternativo en español está disponible en <https://www.tceq.texas.gov/permitting/wastewater/plain-language-summaries-and-public-notices>.

PUBLIC COMMENT / PUBLIC MEETING. A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of

the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. A written response to all timely, relevant and material, or significant comments will be prepared by the Executive Director. All formal comments will be considered before a decision is reached on the permit application. A copy of the written response will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

The Public Meeting is to be held:

Tuesday, January 7, 2025 at 7:00 p.m.

The Venue Taylor

115 W. 2nd Street

Taylor, Texas 76574

INFORMATION. Members of the public are encouraged to submit written comments anytime during the meeting or by mail before the close of the public comment period to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at www.tceq.texas.gov/goto/comment. If you need more information about the permit application or the permitting process, please call the TCEQ Public Education Program, Toll Free, at (800) 687-4040. *Si desea información en español, puede llamar (800) 687-4040.* General information about the TCEQ can be found at our website at <https://www.tceq.texas.gov>.

The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at Georgetown Public Library, 402 West 8th Street, Georgetown, Texas. Further information may also be obtained from Wilco-Thrall 79 WWTP LLC, at the address stated above or by calling Mr. Michael Bevilacqua, P.E., Senior Project Manager, Green Civil Design, at (737) 358-8103.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least one week prior to the meeting.

Issuance Date: November 19, 2024

TRD-202405750

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: November 22, 2024

◆ ◆ ◆
Texas Health and Human Services Commission

Public Notice - Community First Choice (CFC) Renewal
Effective June 1, 2025

The Texas Health and Human Services Commission (HHSC) is submitting a request to the Centers for Medicare & Medicaid Services (CMS) to renew the Community First Choice (CFC) Selective Contracting program authorized under §1915(b)(4) of the Social Security Act (the Act). HHSC provides home and community-based attendant services under the state plan pursuant to §1915(k) of the Act but has a waiver under the CFC Selective Contracting program to limit choice

of CFC providers. CMS has approved the current CFC Selective Contracting program through May 31, 2025. The proposed effective date for this renewal is June 1, 2025.

HHSC intends to continue selective contracting for CFC services for CFC recipients enrolled in the following home and community-based waiver programs authorized under §1915(c) of the Act.

- Texas Home Living (TxHmL)
- Home and Community-based Services (HCS)
- Deaf Blind with Multiple Disabilities (DBMD)
- Community Living and Support Services (CLASS)

Under the current CFC Selective Contracting program, provider choice for CFC recipients enrolled in these waiver programs is limited to the recipient's provider of waiver services. To maintain existing recipient-provider relationships and to reduce administrative burden, HHSC is requesting to renew the CFC Selecting Contracting program to ensure that individuals in these waiver programs continue to receive services through existing provider networks.

This renewal clarifies HHSC's role in reviewing enrollment documentation from DBMD and CLASS providers and the corrective action plan process for DBMD and CLASS providers. This renewal clarifies HHSC's process for fiscal compliance monitoring and certification surveys and specifies Medicaid is the payor of last resort. This renewal also updates a reference to HHSC's Waiver Survey and Certification unit to use the current name of the unit, Long-Term Care Regulation (LTCR). This renewal does not make changes to services individuals receive.

To obtain a free copy of the proposed waiver renewal, interested parties may contact Jayasree Sankaran by U.S. mail, telephone, fax, or email at the addresses and numbers below.

Addresses:

U.S. Mail

Texas Health and Human Services Commission

Attention: Jayasree Sankaran, Waiver Coordinator, Federal Coordination, Rules and Committees

701 West 51st Street, Mail Code H-310

Austin, Texas 78751

Telephone

(512) 438-4331

Fax

Attention: Jayasree Sankaran, Waiver Coordinator at (512) 323-1905

Email

TX_Medicaid_Waivers@hhs.texas.gov

TRD-202405710

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: November 21, 2024

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Department of State Health Services

Licensing Actions for Radioactive Materials

During the second half of September 2024, the Department of State Health Services (Department) has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables (in alphabetical order by location). The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX [Texas]" indicates that the radioactive material may be used on a temporary basis at locations throughout the state.

In issuing new licenses and amending and renewing existing licenses, the Department's Radiation Section has determined that the applicant has complied with the licensing requirements in Title 25 Texas Administrative Code (TAC), Chapter 289, for the noted action. In granting termination of licenses, the Department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC, Chapter 289. In granting exemptions to the licensing requirements of Chapter 289, the Department has determined that the exemption is not prohibited by law and will not result in a significant risk to public health and safety and the environment.

A person affected by the actions published in this notice may request a hearing within 30 days of the publication date. A "person affected" is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. 25 TAC §289.205(b)(15); Health and Safety Code §401.003(15). Requests must be made in writing and should contain the words "hearing request," the name and address of the person affected by the agency action, the name and license number of the entity that is the subject of the hearing request, a brief statement of how the person is affected by the action what the requestor seeks as the outcome of the hearing, and the name and address of the attorney if the requestor is represented by an attorney. Send hearing requests by mail to: Hearing Request, Radioactive Material Licensing, MC 2835, PO Box 149347, Austin, Texas 78714-9347, or by fax to: (512) 206-3760, or by e-mail to: RAMlicensing@dshs.texas.gov.

NEW LICENSES ISSUED:

| Location of Use/Possession of Material | Name of Licensed Entity | License Number | City of Licensed Entity | Amendment Number | Date of Action |
|--|-------------------------|----------------|-------------------------|------------------|----------------|
| KATY | VISURAY LLC | L07235 | KATY | 00 | 09/19/24 |

AMENDMENTS TO EXISTING LICENSES ISSUED:

| Location of Use/Possession of Material | Name of Licensed Entity | License Number | City of Licensed Entity | Amendment Number | Date of Action |
|--|---|----------------|-------------------------|------------------|----------------|
| ANGLETON | TELIX ISOTHERAPEUTICS GROUP INC | L05969 | ANGLETON | 55 | 09/23/24 |
| AUSTIN | ST DAVIDS HEALTHCARE PARTNESHIP LP LLP DBA ST DAVIDS MEDICAL CENTER | L06335 | AUSTIN | 49 | 09/18/24 |
| AUSTIN | ST DAVIDS HEALTHCARE PARTNERSHIP LP LLP DBA ST DAVIDS MEDICAL CENTER | L00740 | AUSTIN | 188 | 09/25/24 |
| CORPUS CHRISTI | DRISCOLL CHILDRENS HOSPITAL | L04606 | CORPUS CHRISTI | 37 | 09/18/24 |
| DALLAS | CARDIOLOGY SPECIALISTS OF NORTH TEXAS PLLC DBA NORTH TEXAS HEART CENTER | L06941 | DALLAS | 04 | 09/26/24 |
| DALLAS | COLUMBIA HOSPITAL AT MEDICAL CITY DALLAS SUBSIDIARY LP DBA MEDICAL CITY DALLAS | L01976 | DALLAS | 242 | 09/19/24 |
| DECATUR | COLUMBIA MEDICAL CENTER OF DENTON SUBSIDIARY LP DBA MEDICAL CITY DECATUR A CAMPUS OF MEDICAL CITY DENTON | L02382 | DECATUR | 50 | 09/23/24 |

AMENDMENTS TO EXISTING LICENSES ISSUED:(continued)

| | | | | | |
|---------|---|--------|---------|-----|----------|
| DENTON | COLUMBIA MEDICAL CENTER OF DENTON SUBSIDIARY LP DBA MEDICAL CITY DENTON | L02764 | DENTON | 80 | 09/18/24 |
| EL PASO | BHS PHYSICIANS NETWORK INC DBA CENTER OF THE HEART – A PROVIDENCE MEDICAL PARTNERS PRACTICE | L05695 | EL PASO | 14 | 09/16/24 |
| EL PASO | EL PASO HEALTHCARE SYSTEM LTD DBA DEL SOL MEDICAL CENTER | L02551 | EL PASO | 84 | 09/26/24 |
| EL PASO | EL PASO HEALTHCARE SYSTEM LTD DBA LAS PALMAS MEDICAL CENTER A CAMPUS OF LAS PALMAS DE SOL HEALTHCARE | L02715 | EL PASO | 102 | 09/26/24 |
| EL PASO | TENET HOSPITALS LIMITED DBA THE HOSPITALS OF PROVIDENCE SIERRA CAMPUS | L02365 | EL PASO | 128 | 09/26/24 |
| HOUSTON | ABDUL ALI MD PA | L06842 | HOUSTON | 05 | 09/25/24 |
| HOUSTON | JUBILANT DRAXIMAGE INC DBA JUBILANT RADIOPHARMA | L06944 | HOUSTON | 14 | 09/19/24 |

AMENDMENTS TO EXISTING LICENSES ISSUED:(continued)

| | | | | | |
|------------|---|--------|------------|-----|----------|
| HOUSTON | THE METHODIST HOSPITAL REASEARCH INSTITUTE DBA HOUSTON METHODIST RESEARCH INSTITUTE | L06383 | HOUSTON | 23 | 09/20/24 |
| HOUSTON | INNOVATIVE RADIOLOGY PA | L05184 | HOUSTON | 26 | 09/24/24 |
| HOUSTON | MEMORIAL HERMANN HEALTH SYSTEM DBA MEMORIAL HERMANN TEXAS MEDICAL CENTER | L06439 | HOUSTON | 26 | 09/30/24 |
| HOUSTON | UT PHYSICIANS | L05465 | HOUSTON | 30 | 09/18/24 |
| HOUSTON | CHCA WEST HOUSTON LP DBA HCA HOUSTON HEALTHCARE WEWT | L06055 | HOUSTON | 31 | 9/18/24 |
| HOUSTON | MEMORIAL HERMANN HEALTH SYSTEM DBA MEMORIAL HERMANN TEXAS MEDICAL CENTER | L04655 | HOUSTON | 63 | 09/30/24 |
| HOUSTON | HOUSTON REFINING LP | L00187 | HOUSTON | 85 | 09/26/24 |
| HOUSTON | THE UNIVERSITY OF TEXAS MD ANDERSON CANCER CENTER | L00466 | HOUSTON | 192 | 09/25/24 |
| HUMBLE | RAJIV AGARWAL MD PA | L06991 | HUMBLE | 09 | 09/18/24 |
| IRVING | AVANTI EQUINE TX PC DBA ANIMAL IMAGING | L04602 | IRVING | 26 | 09/30/24 |
| LIVINGSTON | MEMORIAL HOSPITAL OF POLK COUNTY | L05552 | LIVINGSTON | 22 | 09/25/24 |

AMENDMENTS TO EXISTING LICENSES ISSUED:(continued)

| | | | | | |
|-------------|--|--------|-------------|-----|----------|
| LONGVIEW | CHRISTUS GOOD SHEPHERD MEDICAL CENTER DBA CHRISTUS GOOD SHEPHERD MEDICAL CENTER - LONGVIEW | L06902 | LONGVIEW | 14 | 09/30/24 |
| LUBBOCK | COLIBRI ISOTOPES CORPORATION | L07203 | LUBBOCK | 04 | 09/17/24 |
| LUBBOCK | COVENANT MEDICAL GROUP DBA COVENANT CARDIOLOGY ASSOCIATES | L04468 | LUBBOCK | 38 | 09/26/24 |
| RICHARDSON | METHODIST HOSPITALS OF DALLAS DBA METHODIST RICHARDSON MEDICAL CENTER | L06475 | RICHARDSON | 14 | 09/16/24 |
| SAN ANTONIO | TEXAS ONCOLOGY PA | L06747 | SAN ANTONIO | 14 | 09/19/24 |
| SAN ANTONIO | THE UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT SAN ANTONIO | L05217 | SAN ANTONIO | 30 | 09/18/24 |
| SAN ANTONIO | VHS SAN ANTONIO PARTNERS LLC DBA BAPTIST HEALTH SYSTEM | L00455 | SAN ANTONIO | 276 | 09/16/24 |
| SAN MARCOS | CHRISTUS SANTA ROSA HEALTH CARE CORPORATION DBA CHRISTUS SANTA ROSA HOSPITAL - SAN MARCOS | L07081 | SAN MARCOS | 07 | 09/19/24 |
| TEXAS CITY | INEOS STYROLUTION AMERICA LLC | L00354 | TEXAS CITY | 47 | 09/26/24 |

AMENDMENTS TO EXISTING LICENSES ISSUED:(continued)

| | | | | | |
|---------------|--|--------|----------------|-----|----------|
| THE WOODLANDS | ST LUKES COMMUNITY HEALTH SERVICES DBA ST LUKES THE WOODLANDS HOSPITAL | L05763 | THE WOODLANDS | 38 | 09/30/24 |
| THE WOODLANDS | MEMORIAL HERMANN HEALTH SYSTEM | L03772 | THE WOODLANDS | 180 | 09/30/24 |
| THROUGHOUT TX | GESSNER ENGINEERING LLC | L03733 | BRYAN | 35 | 09/26/24 |
| THROUGHOUT TX | CARDINAL HEALTH 414 LLC DBA CARDINAL HEALTH NUCLEAR PHARMACY SERVICES | L04043 | CORPUS CHRISTI | 64 | 09/25/24 |
| THROUGHOUT TX | SPEESOIL INC | L05619 | EL PASO | 09 | 09/18/24 |
| THROUGHOUT TX | PROFESSIONAL SERVICE INDUSTRIES INC | L00931 | FORT WORTH | 128 | 09/27/24 |
| THROUGHOUT TX | METALOGIC INSPECTION SERVICES (SOUTHWEST)LLC | L06772 | HOUSTON | 18 | 09/30/24 |
| THROUGHOUT TX | AMERICAN DIAGNOSTIC TECH LLC | L05514 | HOUSTON | 172 | 09/24/24 |
| THROUGHOUT TX | RCI ENERGY GROUP | L07172 | PASADENA | 02 | 09/20/24 |
| THROUGHOUT TX | METALLURGICAL ENGINEERING SERVICES INC | L07198 | RICHARDSON | 01 | 09/27/24 |
| THROUGHOUT TX | US ECOLOGY TEXAS INC | L05518 | ROBSTOWN | 19 | 09/27/24 |
| THROUGHOUT TX | CENTURION PLANNING AND DESIGN LLC DBA CONSTRUCTION SERVICES | L05625 | SAN ANGELO | 16 | 09/27/24 |
| THROUGHOUT TX | RABA-KISTNER INC | L01571 | SAN ANTONIO | 106 | 09/24/24 |

AMENDMENTS TO EXISTING LICENSES ISSUED:(continued)

| | | | | | |
|---------------|--|--------|------------|-----|----------|
| THROUGHOUT TX | SCHLUMBERGER TECHNOLOGY CORPORATION | L06303 | SUGAR LAND | 29 | 09/19/24 |
| THROUGHOUT TX | LUDLUM MEASUREMENT INC | L01963 | SWEETWATER | 120 | 09/26/24 |
| WEBSTER | CLS HEALTH PLLC DBA CLEAR LAKE SPECIALTIES | L07218 | WEBSTER | 01 | 09/30/24 |

RENEWAL OF LICENSES ISSUED:

| Location of Use/Possession of Material | Name of Licensed Entity | License Number | City of Licensed Entity | Amendment Number | Date of Action |
|--|-------------------------------|----------------|-------------------------|------------------|----------------|
| DALLAS | GERALD FRANKLIN BULLOCH MD PA | L05809 | DALLAS | 06 | 09/17/24 |
| DENTON | UNIVERSITY OF NORTH TEXAS | L00101 | DENTON | 120 | 09/25/24 |
| HOUSTON | ERIC A ORZECK MD PA | L01599 | HOUSTON | 20 | 09/19/24 |
| THROUGHOUT TX | TAS ENVIRONMENTAL SERVICES LP | L06646 | IRVING | 03 | 09/26/24 |
| THROUGHOUT TX | SQS NDT LP | L06896 | SANGER | 10 | 09/26/24 |

TERMINATIONS OF LICENSES ISSUED:

| Location of Use/Possession of Material | Name of Licensed Entity | License Number | City of Licensed Entity | Amendment Number | Date of Action |
|--|-------------------------|----------------|-------------------------|------------------|----------------|
| DALLAS | ALLIANCE IMAGING INC | L05336 | DALLAS | 23 | 09/27/24 |
| OLNEY | LINK FIELD SERVICES INC | L05383 | OLNEY | 32 | 09/26/24 |
| THROUGHOUT TX | WESTON SOLUTIONS INC | L07137 | FRISCO | 04 | 09/25/24 |

TRD-202405715
 Cynthia Hernandez
 General Counsel
 Department of State Health Services
 Filed: November 21, 2024

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 Licensing Actions for Radioactive Materials

During the first half of October 2024, the Department of State Health Services (Department) has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables (in alphabetical order by location). The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX [Texas]" indicates that the radioactive material may be used on a temporary basis at locations throughout the state.

In issuing new licenses and amending and renewing existing licenses, the Department's Radiation Section has determined that the applicant has complied with the licensing requirements in Title 25 Texas Administrative Code (TAC), Chapter 289, for the noted action. In granting termination of licenses, the Department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC, Chapter 289. In granting exemptions to the licensing requirements of Chapter 289, the Department has determined that the exemption is not prohibited by law and will not result in a significant risk to public health and safety and the environment.

A person affected by the actions published in this notice may request a hearing within 30 days of the publication date. A "person affected" is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. 25 TAC §289.205(b)(15); Health and Safety Code §401.003(15). Requests must be made in writing and should contain the words "hearing request," the name and address of the person affected by the agency action, the name and license number of the entity that is the subject of the hearing request, a brief statement of how the person is affected by the action what the requestor seeks as the outcome of the hearing, and the name and address of the attorney if the requestor is represented by an attorney. Send hearing requests by mail to: Hearing Request, Radioactive Material Licensing, MC 2835, PO Box 149347, Austin, Texas 78714-9347, or by fax to: (512) 206-3760, or by e-mail to: RAMlicensing@dshs.texas.gov.

NEW LICENSES ISSUED:

| Location of Use/Possession of Material | Name of Licensed Entity | License Number | City of Licensed Entity | Amendment Number | Date of Action |
|--|---|----------------|-------------------------|------------------|----------------|
| BAYTOWN | EXXON MOBIL TECHNOLOGY AND ENGINEERING | L07236 | BAYTOWN | 00 | 10/01/24 |
| CYPRESS | METHODIST HEALTH CENTERS DBA HOUSTON METHODIST CYPRESS HOSPITAL | L07237 | CYPRESS | 00 | 10/08/24 |
| NAVASOTA | BRAZOS VALLEY EQUINE HOSPITAL – NAVASOTA PLLC | L07239 | NAVASOTA | 00 | 10/10/24 |
| VAN HORN | BLUE ORIGIN TEXAS LLC | L07238 | VAN HORN | 00 | 10/08/24 |

AMENDMENTS TO EXISTING LICENSES ISSUED:

| Location of Use/Possession of Material | Name of Licensed Entity | License Number | City of Licensed Entity | Amendment Number | Date of Action |
|--|--|----------------|-------------------------|------------------|----------------|
| ANGLETON | TELEX ISOTHERAPEUTICS GROUP INC | L05969 | ANGLETON | 56 | 10/07/24 |
| ARLINGTON | COLUMBIA MEDICAL CENTER OF ARLINGTON SUBSIDIARY LP DBA MEDICAL CENTER OF ARLINGTON | L02228 | ARLINGTON | 95 | 10/07/24 |
| ARLINGTON | TEXAS HEALTH ARLINGTON MEMORIAL HOSPITAL | L02217 | ARLINGTON | 127 | 10/07/24 |

AMENDMENTS TO EXISTING LICENSES ISSUED:(continued)

| | | | | | |
|--------------|--|--------|--------------|-----|----------|
| AUSTIN | CARDINAL HEALTH 414 LLC DBA CARDINAL HEALTH NUCLEAR PHARMACY SERVICES | L02117 | AUSTIN | 102 | 10/14/24 |
| BEAUMONT | CHRISTUS HEALTH SOUTHEAST TEXAS DBA CHRISTUS SOUTHEAST TEXAS ST ELIZABETH | L00269 | BEAUMONT | 127 | 10/14/24 |
| BURLESON | TEXAS HEALTH HUGULEY INC | L06514 | BURLESON | 10 | 10/02/24 |
| FORT WORTH | COOK CHILDRENS MEDICAL CENTER | L04518 | FORT WORTH | 41 | 10/02/24 |
| HOUSTON | CORE LABORATORIES LP | L07088 | HOUSTON | 05 | 10/09/24 |
| HOUSTON | MEMORIAL HERMANN HEALTH SYSTEM DBA MEMORIAL HERMANN CYPRESS HOSPITAL | L06832 | HOUSTON | 40 | 10/03/24 |
| HOUSTON | MEMORIAL HERMANN HEALTH SYSTEM DBA MEMORIAL HERMANN SUGARLAND HOSPITAL | L03457 | HOUSTON | 83 | 10/01/24 |
| HOUSTON | MEMORIAL HERMANN HEALTH SYSTEM DBA MEMORIAL HERMANN KATY HOSPITAL | L03052 | HOUSTON | 117 | 10/01/24 |
| LAKE JACKSON | THE DOW CHEMICAL COMPANY | L00451 | LAKE JACKSON | 119 | 10/08/24 |

AMENDMENTS TO EXISTING LICENSES ISSUED:(continued)

| | | | | | |
|----------------------|--|--------|----------------------|----|----------|
| LUBBONCK | COLIBRI ISOTOPES CORPORATION | L07203 | LUBBOCK | 05 | 10/14/24 |
| MCKINNEY | CANCER CENTER ASSOCIATES DBA RENA TARBET CANCER CENTER | L05952 | MCKINNEY | 15 | 10/11/24 |
| MCKINNEY | COLUMBIA MEDICAL CENTER OF MCKINNEY SUBSIDIARY LP DBA MEDICAL CENTER OF MCKINNEY | L02415 | MCKINNEY | 54 | 10/09/24 |
| NORTH RICHLAND HILLS | COLUMBIA NORTH HILLS HOSPITAL SUBSIDIARY LP DBA MEDICAL CITY NORTH HILLS | L02271 | NORTH RICHLAND HILLS | 92 | 10/11/24 |
| TEXARKANA | COLLOM & CARNEY CLINIC ASSOCIATION | L05224 | TEXARKANA | 16 | 10/09/24 |
| THROUGHOUT TX | GEOTEK CORING INC | L06850 | COLLEGE STATION | 04 | 10/08/24 |
| THROUGHOUT TX | GAMMATECH INDUSTRIAL LLC | L07177 | HOUSTON | 04 | 10/04/24 |
| THROUGHOUT TX | GAMMATRON INC | L02148 | HOUSTON | 37 | 10/09/24 |
| THROUGHOUT TX | TERRACON CONSULTANTS INC | L05268 | HOUSTON | 79 | 10/03/24 |
| THROUGHOUT TX | ATLAS TECHNICAL CONSULTANTS LLC | L06407 | LUBBOCK | 34 | 10/10/24 |
| THROUGHOUT TX | PROTECT LLC | L07110 | MIDLAND | 12 | 10/09/24 |
| THROUGHOUT TX | JZ RUSSELL INDUSTRIES INC | L06459 | NEDERLAND | 13 | 10/08/24 |

AMENDMENTS TO EXISTING LICENSES ISSUED:(continued)

| | | | | | |
|---------------|--|--------|-------------|-----|----------|
| THROUGHOUT TX | TURNER SPECIALTY SERVICES LLC | L05417 | NEDERLAND | 59 | 10/11/24 |
| THROUGHOUT TX | BEYOND ENGINEERING AND TESTING LLC | L06924 | ROUND ROCK | 11 | 10/14/24 |
| THROUGHOUT TX | LUDLUM MEASUREMENT INC | L01963 | SWEETWATER | 121 | 10/10/24 |
| TYLER | DELEK REFINING LTD | L02289 | TYLER | 39 | 10/08/24 |
| WEATHERFORD | WEATHERFORD HEALTH SERVICES LLC DBA MEDICAL CITY WEATHERFORD | L06937 | WEATHERFORD | 04 | 10/09/24 |
| WEBSTER | MOHAN S KUMAR MD PLLC | L07006 | WEBSTER | 04 | 10/03/24 |

RENEWAL OF LICENSES ISSUED:

| Location of Use/Possession of Material | Name of Licensed Entity | License Number | City of Licensed Entity | Amendment Number | Date of Action |
|--|---|----------------|-------------------------|------------------|----------------|
| HUMBLE | MADIAH REVANA MD PA | L03263 | HUMBLE | 14 | 10/10/24 |
| KERRVILLE | METHODIST PHYSICIAN PRACTICES PLLC DBA SOUTH TEXAS CARDIOVASCULAR CONSULTANTS | L06635 | KERRVILLE | 07 | 10/04/24 |
| PARIS | ESSENT PRMC LP | L03199 | PARIS | 75 | 10/02/24 |
| STEPHENVILLE | TARLETON STATE UNIVERSITY | L05612 | STEPHENVILLE | 09 | 10/11/24 |
| THROUGHOUT TX | PACS CONSTRUCTION LABORATORIES AND TESTING SERVICES INC | L05776 | HOUSTON | 09 | 10/07/24 |
| THROUGHOUT TX | PRO INSPECTION INC | L06666 | ODESSA | 23 | 10/10/24 |

TERMINATIONS OF LICENSES ISSUED:

| Location of Use/Possession of Material | Name of Licensed Entity | License Number | City of Licensed Entity | Amendment Number | Date of Action |
|--|-------------------------|----------------|-------------------------|------------------|----------------|
| HOUSTON | INSIGNIA TTG PARENT LLC | L05775 | HOUSTON | 122 | 10/09/24 |
| SHERMAN | M ASAD KARIM MD PA | L07012 | SHERMAN | 01 | 10/11/24 |
| THROUGHOUT TX | CREDO SERVICES LLC | L07225 | FRIENDSWOOD | 01 | 10/08/24 |

TRD-202405716
 Cynthia Hernandez
 General Counsel
 Department of State Health Services
 Filed: November 21, 2024

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NEW LICENSES ISSUED:

| Location of Use/Possession of Material | Name of Licensed Entity | License Number | City of Licensed Entity | Amendment Number | Date of Action |
|--|--|----------------|-------------------------|------------------|----------------|
| CONROE | HEALTHY LIVING HEART AND VASCULAR PLLC | L07241 | CONROE | 00 | 10/24/24 |
| THROUGHOUT TX | PBI INTERNATIONAL LLC | L07240 | LA PORTE | 00 | 10/16/24 |

AMENDMENTS TO EXISTING LICENSES ISSUED:

| Location of Use/Possession of Material | Name of Licensed Entity | License Number | City of Licensed Entity | Amendment Number | Date of Action |
|--|---|----------------|-------------------------|------------------|----------------|
| ANDREWS | ANDREWS COUNTY HOSPITAL DISTRICT DBA PERMIAN REGIONAL MEDICAL CENTER | L03158 | ANDREWS | 30 | 10/21/24 |
| AUSTIN | AUSTIN RADIOLOGICAL ASSOCIATION | L00545 | AUSTIN | 256 | 10/21/24 |
| BAYTOWN | SAN JACINTO METHODIST HOSPITAL DBA HOUSTON METHODIST BAYTOWN HOSPITAL | L02388 | BAYTOWN | 87 | 10/23/24 |
| BAYTOWN | EXXON MOBIL CORPORATION | L01135 | BAYTOWN | 97 | 10/15/24 |
| BEAUMONT | BASF CORPORATION | L02016 | BEAUMONT | 39 | 10/30/24 |
| BISHOP | TICONA POLYMERS INC | L02441 | BISHOP | 73 | 10/29/24 |
| CHANNELVIEW | LYONDELL CHEMICAL COMPANY | L04439 | CHANNELVIEW | 35 | 10/22/24 |

AMENDMENTS TO EXISTING LICENSES ISSUED:(continued)

| | | | | | |
|------------|---|--------|------------|-----|----------|
| DALLAS | SOUTHERN METHODIST UNIVERSITY | L00443 | DALLAS | 33 | 10/21/24 |
| DALLAS | TEXAS ONCOLOGY PA DBA SAMMONS CANCER CENTER | L04878 | DALLAS | 76 | 10/24/24 |
| EL PASO | RIO GRANDE NUCLEAR PHARMACY LLC | L06362 | EL PASO | 10 | 10/15/24 |
| EL PASO | BHS PHYSICIANS NETWORK INC | L06893 | EI PASO | 11 | 10/30/24 |
| EL PASO | TENET HOSPITALS LIMITED DBA THE HOSPITALS OF PROVIDENCE EAST CAMPUS | L06152 | EL PASO | 43 | 10/23/24 |
| EL PASO | TENET HOSPITALS LIMITED DBA THE HOSPITALS OF PROVIDENCE MEMORIAL CAMPUS | L02353 | EL PASO | 157 | 10/22/24 |
| FORT WORTH | TEXAS ONCOLOGY PA | L05545 | FORT WORTH | 82 | 10/21/24 |
| FRISCO | COLUMBIA MEDICAL CENTER OF PLANO SUBSIDIARY LP DBA MEDICAL CITY FRISCO A MEDICAL CENTER OF PLANO FACILITY | L06957 | FRISCO | 07 | 10/21/24 |
| GRAPEVINE | BAYLOR REGIONAL MEDICAL CENTER AT GRAPEVINE DBA BAYLOR SCOTT & WHITE MEDICAL CENTER GRAPEVINE | L03320 | GRAPEVINE | 50 | 10/29/24 |

AMENDMENTS TO EXISTING LICENSES ISSUED:(continued)

| | | | | | |
|---------|---|--------|---------|-----|----------|
| HOUSTON | CARDIAC NUCLEAR IMAGING INC | L05962 | HOUSTON | 10 | 10/21/24 |
| HOUSTON | METHODIST HEALTH CENTERS DBA HOUSTON METHODIST WEST HOSPITAL | L06358 | HOUSTON | 21 | 10/23/24 |
| HOUSTON | GULF COAST CANCER AND DIAGNOSTIC CENTER AT SOUTHEAST INC DBA UNIVERSITY DIAGNOSTIC AND TREATMENT CLINIC | L05185 | HOUSTON | 23 | 10/21/24 |
| HOUSTON | DIGIRAD IMAGING SOLUTIONS INC | L05414 | HOUSTON | 53 | 10/25/24 |
| HOUSTON | HARRIS COUNTY HOSPITAL DISTRICT DBA HARRIS HEALTH | L04412 | HOUSTON | 57 | 10/22/24 |
| HOUSTON | METHODIST HEALTH CENTERS DBA HOUSTON METHODIST WILLOWBROOK HOSPITAL | L05472 | HOUSTON | 77 | 10/23/24 |
| HOUSTON | TEXAS CHILDRENS HOSPITAL | L04612 | HOUSTON | 82 | 10/29/24 |
| HOUSTON | HARRIS COUNTY HOSPITAL DISTRICT DBA HARRIS HEALTH | L01303 | HOUSTON | 114 | 10/21/24 |
| HUMBLE | RAJIV AGARWAL MD PA | L06991 | HUMBLE | 10 | 10/21/24 |
| KATY | VISURAY LLC | L07235 | KATY | 01 | 10/30/24 |
| LUBBOCK | COVENANT MEDICAL CENTER | L06993 | LUBBOCK | 11 | 10/22/24 |

AMENDMENTS TO EXISTING LICENSES ISSUED:(continued)

| | | | | | |
|---------------|--|--------|---------------|-----|----------|
| LUBBOCK | COVENANT MEDICAL GROUP | L04468 | LUBBOCK | 39 | 10/21/24 |
| ODESSA | GCC PERMIAN LLC | L06964 | ODESSA | 05 | 10/25/24 |
| PASADENA | CHEVRON PHILLIPS CHEMICAL COMPANY LP | L00230 | PASADENA | 99 | 10/17/24 |
| PLANO | TEXAS ONCOLOGY PA | L05357 | PLANO | 25 | 10/22/24 |
| SHENANDOAH | TEXAS ONCOLOGY PA | L07041 | SHENANDOAH | 06 | 10/21/24 |
| THE WOODLANDS | METHODIST HEALTH CENTER DBA HOUSTON METHODIST THE WOODLANDS HOSPITAL | L06861 | THE WOODLANDS | 23 | 10/23/24 |
| THROUGHOUT TX | DESERT NDT LLC DBA SUPERIOR INTEGRITY SERVICES | L06462 | FORT WORTH | 61 | 10/29/24 |
| THROUGHOUT TX | HAIMO AMERICA INC | L06936 | HOUSTON | 14 | 10/31/24 |
| THROUGHOUT TX | H V J ASSOCIATES INC | L03813 | HOUSTON | 76 | 10/24/24 |
| THROUGHOUT TX | NATIONAL OILWELL VARCO LP | L00287 | HOUSTON | 168 | 10/24/24 |
| THROUGHOUT TX | ADVANCED CORROSION TECHNOLOGIES & TRAINING LLC DBA ACTT - ADVANCED CORROSION TECHNOLOGIES & TRAINING LLC | L06508 | LA PORTE | 31 | 10/23/24 |
| THROUGHOUT TX | TEXAS ONCOLOGY PA | L05489 | LONGVIEW | 30 | 10/15/24 |
| THROUGHOUT TX | US ECOLOGY TEXAS INC | L05518 | ROBSTOWN | 21 | 10/25/24 |
| THROUGHOUT TX | SCHLUMBERGER TECHNOLOGY | L06880 | SUGAR LAND | 15 | 10/29/24 |

AMENDMENTS TO EXISTING LICENSES ISSUED:(continued)

| | | | | | |
|---------------|--|--------|------------|-----|----------|
| THROUGHOUT TX | SCHLUMBERGER TECHNOLOGY CORPORATION | L01833 | SUGAR LAND | 229 | 10/18/24 |
| TYLER | DELEK REFINING LTD | L02289 | TYLER | 40 | 10/30/24 |
| TYLER | THE UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT TYLER | L04117 | TYLER | 72 | 10/16/24 |
| VICTORIA | EQUISTAR CHEMICALS LP | L04101 | VICTORIA | 24 | 10/29/24 |
| WAXAHACHIE | BAYLOR MEDICAL CENTER AT WAXAHACHIE DBA BAYLOR SCOTT & WHITE MEDICAL CENTER - WAXAHACHIE | L04536 | WAXAHACHIE | 60 | 10/29/24 |
| WEBSTER | CHCA CLEAR LAKE LP DBA HCA HOUSTON HEALTHCARE CLEAR LAKE | L01680 | WEBSTER | 116 | 10/21/24 |

RENEWAL OF LICENSES ISSUED:

| Location of Use/Possession of Material | Name of Licensed Entity | License Number | City of Licensed Entity | Amendment Number | Date of Action |
|--|---|----------------|-------------------------|------------------|----------------|
| HOUSTON | ST LUKES HOSPITAL AT THE VINTAGE | L06612 | HOUSTON | 08 | 10/22/24 |
| HOUSTON | METHODIST HEALTH CENTERS DBA HOUSTON METHODIST WILLOWBROOK HOSPITAL | L06670 | HOUSTON | 15 | 10/31/24 |

TERMINATIONS OF LICENSES ISSUED:

| Location of Use/Possession of Material | Name of Licensed Entity | License Number | City of Licensed Entity | Amendment Number | Date of Action |
|--|-------------------------|----------------|-------------------------|------------------|----------------|
| HOUSTON | VISURAY LLC | L06602 | HOUSTON | 04 | 10/29/24 |
| THROUGHOUT TX | FUGRO USA LAND INC | L05843 | FORT WORTH | 17 | 10/29/24 |

EXEMPTIONS ISSUED:

| Location of Use/Possession of Material | Name of Licensed Entity | License Number | Exemption Number | City of Licensed Entity | Amendment Number | Date of Action |
|--|-------------------------|----------------|------------------|-------------------------|------------------|----------------|
| THROUGHOUT TX | Generic Exemption | N/A | E24-05 | THROUGHOUT TX | N/A | 10/27/24 |

TRD-202405717
 Cynthia Hernandez
 General Counsel
 Department of State Health Services
 Filed: November 21, 2024

Texas Lottery Commission

Scratch Ticket Game Number 2638 "MEGA JUMBO BUCKS"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2638 is "MEGA JUMBO BUCKS". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2638 shall be \$20.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2638.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, MONEY BAG SYMBOL, ARMORED CAR SYMBOL, BAR SYMBOL, BILL SYMBOL, CHIP SYMBOL, CROWN SYMBOL, GEM SYMBOL, KEY SYMBOL, NECKLACE SYMBOL, REGISTER SYMBOL, RING SYMBOL, STAR SYMBOL, VAULT SYMBOL, \$20.00, \$40.00, \$50.00, \$100, \$200, \$500, \$1,000, \$10,000 and \$1,000,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2638 - 1.2D

| PLAY SYMBOL | CAPTION |
|--------------------|----------------|
| 01 | ONE |
| 02 | TWO |
| 03 | THR |
| 04 | FOR |
| 05 | FIV |
| 06 | SIX |
| 07 | SVN |
| 08 | EGT |
| 09 | NIN |
| 10 | TEN |
| 11 | ELV |
| 12 | TLV |
| 13 | TRN |
| 14 | FTN |
| 15 | FFN |
| 16 | SXN |
| 17 | SVT |
| 18 | ETN |
| 19 | NTN |
| 20 | TWY |
| 21 | TWON |
| 22 | TWTO |
| 23 | TWTH |
| 24 | TWFR |
| 25 | TWV |
| 26 | TWSX |
| 27 | TWSV |

| | |
|----|------|
| 28 | TWET |
| 29 | TWNI |
| 30 | TRTY |
| 31 | TRON |
| 32 | TRTO |
| 33 | TRTH |
| 34 | TRFR |
| 35 | TRFV |
| 36 | TRSX |
| 37 | TRSV |
| 38 | TRET |
| 39 | TRNI |
| 40 | FRTY |
| 41 | FRON |
| 42 | FRTO |
| 43 | FRTH |
| 44 | FRFR |
| 45 | FRFV |
| 46 | FRSX |
| 47 | FRSV |
| 48 | FRET |
| 49 | FRNI |
| 50 | FFTY |
| 51 | FFON |
| 52 | FFTO |
| 53 | FFTH |
| 54 | FFFR |
| 55 | FFFV |
| 56 | FFSX |

| | |
|--------------------|----------|
| 57 | FFSV |
| 58 | FFET |
| 59 | FFNI |
| 60 | SXTY |
| 61 | SXON |
| 62 | SXTO |
| 63 | SXTH |
| 64 | SXFR |
| 65 | SXFV |
| 66 | SXSX |
| 67 | SXSV |
| 68 | SXET |
| 69 | SXNI |
| 70 | SVTY |
| 71 | SVON |
| 72 | SVTO |
| 73 | SVTH |
| 74 | SVFR |
| 75 | SVFV |
| MONEY BAG SYMBOL | WIN\$ |
| ARMORED CAR SYMBOL | ARMCAR |
| BAR SYMBOL | BAR |
| BILL SYMBOL | BILL |
| CHIP SYMBOL | CHIP |
| CROWN SYMBOL | CROWN |
| GEM SYMBOL | GEM |
| KEY SYMBOL | KEY |
| NECKLACE SYMBOL | NECKLACE |
| REGISTER SYMBOL | REGISTER |

| | |
|--------------|--------|
| RING SYMBOL | RING |
| STAR SYMBOL | STAR |
| VAULT SYMBOL | VAULT |
| \$20.00 | TWY\$ |
| \$40.00 | FRTY\$ |
| \$50.00 | FFTY\$ |
| \$100 | ONHN |
| \$200 | TOHN |
| \$500 | FVHN |
| \$1,000 | ONTH |
| \$10,000 | 10TH |
| \$1,000,000 | TPPZ |

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 (2638), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 025 within each Pack. The format will be: 2638-0000001-001.

H. Pack - A Pack of the "MEGA JUMBO BUCKS" Scratch Ticket Game contains 025 Tickets, packed in plastic shrink-wrapping and fan-folded in pages of one (1). The Packs will alternate. One will show the front of Ticket 001 and back of 025 while the other fold will show the back of Ticket 001 and front of 025.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "MEGA JUMBO BUCKS" Scratch Ticket Game No. 2638.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "MEGA JUMBO BUCKS" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose seventy-two (72) Play Symbols.

\$100 BONUS: If a player reveals 2 matching symbols in the \$100 BONUS Play Area, the player wins \$100. \$200 BONUS: If a player reveals 2 matching symbols in the \$200 BONUS Play Area, the player wins \$200. \$500 BONUS: If a player reveals 2 matching symbols in the \$500 BONUS Play Area, the player wins \$500. MEGA JUMBO BUCKS PLAY INSTRUCTIONS: If a player matches any of the YOUR NUMBERS Play Symbols, to any of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. If the player reveals a "MONEY BAG" Play Symbol, the player wins the prize for that symbol instantly! No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly seventy-two (72) 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 seventy-two (72) 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 seventy-two (72) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the seventy-two (72) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

- A. GENERAL: A Ticket can win up to thirty-three (33) times in accordance with the 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: Each Ticket will have six (6) different WINNING NUMBERS Play Symbols.
- D. KEY NUMBER MATCH: Non-winning YOUR NUMBERS Play Symbols will all be different.

E. KEY NUMBER MATCH: Non-winning Prize Symbols will never appear more than five (5) times on a Ticket.

F. KEY NUMBER MATCH: The top Prize Symbol will appear on every Ticket, unless restricted by other parameters, play action or prize structure.

G. KEY NUMBER MATCH: The "MONEY BAG" (WIN\$) Play Symbol will never appear in the WINNING NUMBERS, \$100 BONUS, \$200 BONUS or \$500 BONUS play spots.

H. KEY NUMBER MATCH: Non-winning Prize Symbol(s) will never be the same as the winning Prize Symbol(s).

I. KEY NUMBER MATCH: No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 40 and \$40).

J. \$100 BONUS/\$200 BONUS/\$500 BONUS: Matching Bonus Play Symbols will only appear on winning Tickets as dictated by the prize structure in the \$100 BONUS, \$200 BONUS and \$500 BONUS play areas.

K. \$100 BONUS/\$200 BONUS/\$500 BONUS: A Bonus Play Symbol will not be used more than one (1) time per Ticket across the \$100 BONUS, \$200 BONUS and \$500 BONUS play areas, unless used in a winning combination.

L. \$100 BONUS/\$200 BONUS/\$500 BONUS: The Bonus Play Symbols will never appear in the WINNING NUMBERS or YOUR NUMBERS Play Symbol spots.

M. \$100 BONUS/\$200 BONUS/\$500 BONUS: In the \$100 BONUS, \$200 BONUS and \$500 BONUS play areas, non-winning Bonus Play Symbols will not be the same as winning Bonus Play Symbols.

N. \$100 BONUS/\$200 BONUS/\$500 BONUS: The \$100 BONUS, \$200 BONUS and \$500 BONUS play areas will each be played separately.

2.3 Procedure for Claiming Prizes.

A. To claim a "MEGA JUMBO BUCKS" Scratch Ticket Game prize of \$20.00, \$40.00, \$50.00, \$100, \$200 or \$500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$40.00, \$50.00, \$100, \$200 or \$500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "MEGA JUMBO BUCKS" Scratch Ticket Game prize of \$1,000, \$10,000 or \$1,000,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event

that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "MEGA JUMBO BUCKS" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is \$1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;
2. in default on a loan made under Chapter 52, Education Code;
3. in default on a loan guaranteed under Chapter 57, Education Code; or
4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or
- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "MEGA

JUMBO BUCKS" 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 "MEGA JUMBO BUCKS" 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. 2638. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2638 - 4.0

| Prize Amount | Approximate Number of Winners* | Approximate Odds are 1 in ** |
|--------------|--------------------------------|------------------------------|
| \$20.00 | 600,000 | 10.00 |
| \$40.00 | 480,000 | 12.50 |
| \$50.00 | 180,000 | 33.33 |
| \$100 | 240,000 | 25.00 |
| \$200 | 90,500 | 66.30 |
| \$500 | 6,250 | 960.00 |
| \$1,000 | 350 | 17,142.86 |
| \$10,000 | 25 | 240,000.00 |
| \$1,000,000 | 4 | 1,500,000.00 |

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.76. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2638 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2638, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-202405668
 Bob Biard
 General Counsel
 Texas Lottery Commission
 Filed: November 21, 2024



Scratch Ticket Game Number 2649 "LUCKY SYMBOLS"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2649 is "LUCKY SYMBOLS". The play style is "coordinate with prize legend".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2649 shall be \$5.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2649.

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: BADGE SYMBOL, COINS SYMBOL, MUSHROOM SYMBOL, BOW SYMBOL, BALLOONS SYMBOL, CHEST SYMBOL, SHOE SYMBOL, HARP SYMBOL, HAT SYMBOL, HORSESHOE SYMBOL, LADYBUG SYMBOL, RAINBOW SYMBOL, SEVEN SYMBOL, LEPRECHAUN SYMBOL, CLOVER SYMBOL, DICE SYMBOL, CHERRIES SYMBOL, FORTUNE COOKIE SYMBOL, HEART SYMBOL and POT OF GOLD SYMBOL.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. This style game does

not have Play Symbol captions. Normally, one caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbols are as follows:

Figure 1: GAME NO. 2649 - 1.2D

| PLAY SYMBOL | CAPTION |
|-----------------------|---------|
| BADGE SYMBOL | |
| COINS SYMBOL | |
| MUSHROOM SYMBOL | |
| BOW SYMBOL | |
| BALLOONS SYMBOL | |
| CHEST SYMBOL | |
| SHOE SYMBOL | |
| HARP SYMBOL | |
| HAT SYMBOL | |
| HORSESHOE SYMBOL | |
| LADYBUG SYMBOL | |
| RAINBOW SYMBOL | |
| SEVEN SYMBOL | |
| LEPRECHAUN SYMBOL | |
| CLOVER SYMBOL | |
| DICE SYMBOL | |
| CHERRIES SYMBOL | |
| FORTUNE COOKIE SYMBOL | |
| HEART SYMBOL | |
| POT OF GOLD SYMBOL | |

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 (2649), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 2649-0000001-001.

H. Pack - A Pack of the "LUCKY SYMBOLS" Scratch Ticket Game contains 075 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The Packs will alternate. One will show the front

of Ticket 001 and back of 075 while the other fold will show the back of Ticket 001 and front of 075.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "LUCKY \$YMBOLS" Scratch Ticket Game No. 2649.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "LUCKY \$YMBOLS" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose twenty-four (24) Play Symbols. The player will scratch the entire play area to reveal 24 Play Symbols. If the player reveals 3 matching Play Symbols, the player wins the corresponding PRIZE in the PRIZE LEGEND 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-four (24) 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. This style of game does not have Play Symbol Captions;
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-four (24) 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-four (24) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the twenty-four (24) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. A Ticket can win up to five (5) times in accordance with the prize structure.

B. Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of Play Symbols.

C. No Play Symbol will appear more than three (3) times.

D. Winning Tickets will display three (3) matching Play Symbols to win the corresponding PRIZE in the PRIZE LEGEND, as dictated by the prize structure.

E. A non-winning Play Symbol will not appear more than two (2) times.

2.3 Procedure for Claiming Prizes.

A. To claim a "LUCKY \$YMBOLS" Scratch Ticket Game prize of \$5.00, \$10.00, \$20.00, \$25.00, \$30.00, \$50.00, \$100, \$200 or \$500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$25.00, \$30.00, \$50.00, \$100, \$200 or \$500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a

claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "LUCKY \$YMBOLS" Scratch Ticket Game prize of \$5,000 or \$100,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "LUCKY \$YMBOLS" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is \$1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;
2. in default on a loan made under Chapter 52, Education Code;
3. in default on a loan guaranteed under Chapter 57, Education Code; or
4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "LUCKY \$YMBOLS" 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 "LUCKY \$YMBOLS" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 7,200,000 Scratch Tickets in Scratch Ticket Game No. 2649. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2649 - 4.0

| Prize Amount | Approximate Number of Winners* | Approximate Odds are 1 in ** |
|--------------|--------------------------------|------------------------------|
| \$5.00 | 768,000 | 9.38 |
| \$10.00 | 864,000 | 8.33 |
| \$20.00 | 96,000 | 75.00 |
| \$25.00 | 96,000 | 75.00 |
| \$30.00 | 48,000 | 150.00 |
| \$50.00 | 48,000 | 150.00 |
| \$100 | 16,800 | 428.57 |
| \$200 | 6,600 | 1,090.91 |
| \$500 | 480 | 15,000.00 |
| \$5,000 | 25 | 288,000.00 |
| \$100,000 | 5 | 1,440,000.00 |

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.70. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2649 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2649, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-202405670
 Bob Biard
 General Counsel
 Texas Lottery Commission
 Filed: November 21, 2024

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Scratch Ticket Game Number 2653 "MILLION DOLLAR LOTERIA"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2653 is "MILLION DOLLAR LOTERIA". The play style is "row/column/diagonal".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2653 shall be \$20.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2653.

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: ARMADILLO SYMBOL, BAT SYMBOL, BICYCLE SYMBOL, BLUEBONNET SYMBOL, BOAR SYMBOL, BUTTERFLY SYMBOL, CACTUS SYMBOL, CARDINAL SYMBOL, CHERRIES SYMBOL, CHILE PEPPER SYMBOL, CORN SYMBOL, COVERED WAGON SYMBOL, COW SYMBOL, COWBOY HAT SYMBOL, COWBOY SYMBOL, DESERT SYMBOL, FIRE SYMBOL, FOOTBALL SYMBOL, GEM SYMBOL, GUITAR SYMBOL, HEN SYMBOL, HORSE SYMBOL, HORSESHOE SYMBOL, JACKRABBIT SYMBOL, LIZARD SYMBOL, LONE STAR SYMBOL, MARACAS SYMBOL, MOCKINGBIRD SYMBOL, MOONRISE SYMBOL, MORTAR PESTLE SYMBOL, NEWSPAPER SYMBOL, OIL RIG SYMBOL, PECAN TREE SYMBOL, PIÑATA SYMBOL, RACE CAR SYMBOL, RATTLESNAKE SYMBOL, ROADRUNNER SYMBOL, SADDLE SYMBOL, SHIP

SYMBOL, SHOES SYMBOL, SOCCER BALL SYMBOL, SPEAR SYMBOL, SPUR SYMBOL, STRAWBERRY SYMBOL, SUNSET SYMBOL, WHEEL SYMBOL, WINDMILL SYMBOL, CHECK SYMBOL, MONEYBAG SYMBOL, HEART SYMBOL, GOLD BAR SYMBOL, STAR SYMBOL, ARMORED CAR SYMBOL, BANK SYMBOL, COINS SYMBOL, STACK OF BILLS SYMBOL, VAULT SYMBOL, \$10.00, \$20.00, \$30.00, \$40.00, \$50.00, \$100, \$150, \$200, \$500, \$1,000, \$5,000, \$20,000 and \$1,000,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2653 - 1.2D

| PLAY SYMBOL | CAPTION |
|----------------------|----------------|
| ARMADILLO SYMBOL | ARMADILLO |
| BAT SYMBOL | BAT |
| BICYCLE SYMBOL | BICYCLE |
| BLUEBONNET SYMBOL | BLUEBONNET |
| BOAR SYMBOL | BOAR |
| BUTTERFLY SYMBOL | BUTTERFLY |
| CACTUS SYMBOL | CACTUS |
| CARDINAL SYMBOL | CARDINAL |
| CHERRIES SYMBOL | CHERRIES |
| CHILE PEPPER SYMBOL | CHILE PEPPER |
| CORN SYMBOL | CORN |
| COVERED WAGON SYMBOL | COVERED WAGON |
| COW SYMBOL | COW |
| COWBOY HAT SYMBOL | COWBOY HAT |
| COWBOY SYMBOL | COWBOY |
| DESERT SYMBOL | DESERT |
| FIRE SYMBOL | FIRE |
| FOOTBALL SYMBOL | FOOTBALL |
| GEM SYMBOL | GEM |
| GUITAR SYMBOL | GUITAR |
| HEN SYMBOL | HEN |
| HORSE SYMBOL | HORSE |
| HORSESHOE SYMBOL | HORSESHOE |
| JACKRABBIT SYMBOL | JACKRABBIT |
| LIZARD SYMBOL | LIZARD |
| LONE STAR SYMBOL | LONE STAR |
| MARACAS SYMBOL | MARACAS |

| | |
|-----------------------|---------------|
| MOCKINGBIRD SYMBOL | MOCKINGBIRD |
| MOONRISE SYMBOL | MOONRISE |
| MORTAR PESTLE SYMBOL | MORTAR PESTLE |
| NEWSPAPER SYMBOL | NEWSPAPER |
| OIL RIG SYMBOL | OIL RIG |
| PECAN TREE SYMBOL | PECAN TREE |
| PIÑATA SYMBOL | PIÑATA |
| RACE CAR SYMBOL | RACE CAR |
| RATTLESNAKE SYMBOL | RATTLESNAKE |
| ROADRUNNER SYMBOL | ROADRUNNER |
| SADDLE SYMBOL | SADDLE |
| SHIP SYMBOL | SHIP |
| SHOES SYMBOL | SHOES |
| SOCCER BALL SYMBOL | SOCCER BALL |
| SPEAR SYMBOL | SPEAR |
| SPUR SYMBOL | SPUR |
| STRAWBERRY SYMBOL | STRAWBERRY |
| SUNSET SYMBOL | SUNSET |
| WHEEL SYMBOL | WHEEL |
| WINDMILL SYMBOL | WINDMILL |
| CHECK SYMBOL | CHECK |
| MONEYBAG SYMBOL | MONEYBAG |
| HEART SYMBOL | HEART |
| GOLD BAR SYMBOL | GOLD BAR |
| STAR SYMBOL | STAR |
| ARMORED CAR SYMBOL | ARMCAR |
| BANK SYMBOL | BANK |
| COINS SYMBOL | COINS |
| STACK OF BILLS SYMBOL | STACKOFBILLS |

| VAULT SYMBOL | VAULT |
|--------------|--------|
| \$10.00 | TEN\$ |
| \$20.00 | TWY\$ |
| \$30.00 | TRTY\$ |
| \$40.00 | FRTY\$ |
| \$50.00 | FFTY\$ |
| \$100 | ONHN |
| \$150 | ONFF |
| \$200 | TOHN |
| \$500 | FVHN |
| \$1,000 | ONTH |
| \$5,000 | FVTH |
| \$20,000 | 20TH |
| \$1,000,000 | TPPZ |

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 (2653), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 025 within each Pack. The format will be: 2653-0000001-001.

H. Pack - A Pack of the "MILLION DOLLAR LOTERIA" Scratch Ticket Game contains 025 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket 001 will be shown on the front of the Pack; the back of Ticket 025 will be revealed on the back of the Pack. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack. Every other Pack will reverse i.e., reverse order will be: the back of Ticket 001 will be shown on the front of the Pack and the front of Ticket 025 will be shown on the back of the Pack.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "MILLION DOLLAR LOTERIA" Scratch Ticket Game No. 2653.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "MILLION DOLLAR LOTERIA" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose seventy-eight (78) Play Symbols. A prize winner in the "MILLION DOLLAR LOTERIA" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose Play Symbols as follows: PLAYBOARD 1: 1) The player completely scratches the CALLER'S CARD area to reveal 27 symbols. 2) The player scratches ONLY the symbols on the PLAYBOARD that exactly match the symbols revealed on the CALLER'S CARD. 3) If the player reveals a complete row, column or diagonal line, the player wins the prize for that line. PLAYBOARDS 2: The player scratches ONLY the symbols on each PLAYBOARD that exactly match the symbols revealed on the CALLER'S CARD. If the player reveals all 4 symbols in a column, the player wins the PRIZE for that column. PLAY AREA 3 (BONUS GAMES): The player scratches ONLY the symbols on the BONUS GAMES that exactly match the symbols revealed on the CALLER'S CARD. If the player reveals 2 symbols in the same GAME, the player wins the PRIZE for that GAME. PLAY AREA 4 (BONUS): If the player reveals 2 matching symbols in the BONUS \$100, the player wins \$100. If the player reveals 2 matching symbols in the BONUS \$200, the player wins \$200. TABLA DE JUEGO 1: 1) El jugador raspa completamente la CARTA DEL GRITÓN para revelar 27 símbolos. 2) El jugador SOLAMENTE raspa los símbolos en la TABLA DE JUEGO que son exactamente iguales a los símbolos rev-

elados en la CARTA DEL GRITÓN. 3) Si el jugador revela una línea completa, horizontal, vertical o diagonal, el jugador gana el premio para esa línea. TABLAS DE JUEGO 2: El jugador SOLAMENTE raspa los símbolos en cada de las TABLAS DE JUEGO que son exactamente iguales a los símbolos revelados in la CARTA DEL GRITÓN. Si el jugador revela todos los 4 símbolos en una columna, el jugador gana el PREMIO para esa columna. ÁREA DE JUEGO 3 (JUEGOS DE BONO): El jugador SOLAMENTE raspa los símbolos en los JUEGOS DE BONO que son exactamente iguales a los símbolos revelados en la CARTA DEL GRITÓN. Si el jugador revela 2 símbolos en el mismo JUEGO, el jugador gana el PREMIO para ese JUEGO. ÁREA DE JUEGO 4 (BONO): Si el jugador revela 2 símbolos iguales en el área de BONO \$100, el jugador gana \$100. Si el jugador revela 2 símbolos iguales en el área de BONO \$200, el jugador gana \$200. 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 seventy-eight (78) 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 seventy-eight (78) 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 seventy-eight (78) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the seventy-eight (78) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. GENERAL: A Ticket can win up to fourteen (14) times in accordance with the 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. GENERAL: There will be no duplicate Play Symbols in the CALLER'S CARD/CARTA DEL GRITON play area.

D. PLAYBOARD 1/TABLA DE JUEGO 1: At least eight (8) but no more than twelve (12) CALLER'S CARD/CARTA DEL GRITÓN Play Symbols will match a Play Symbol on the PLAYBOARD 1/TABLA DE JUEGO 1 play area.

E. PLAYBOARD 1/TABLA DE JUEGO 1: No identical Play Symbols are allowed on the same PLAYBOARD 1/TABLA DE JUEGO 1 play area.

2.3 Procedure for Claiming Prizes.

A. To claim a "MILLION DOLLAR LOTERIA" Scratch Ticket Game prize of \$20.00, \$30.00, \$40.00, \$50.00, \$100, \$150, \$200, \$250 or \$500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$30.00, \$40.00, \$50.00, \$100, \$150, \$200, \$250 or \$500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the

claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "MILLION DOLLAR LOTERIA" Scratch Ticket Game prize of \$1,000, \$5,000, \$20,000 or \$1,000,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "MILLION DOLLAR LOTERIA" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is \$1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;
2. in default on a loan made under Chapter 52, Education Code;
3. in default on a loan guaranteed under Chapter 57, Education Code; or
4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "MILLION DOLLAR LOTERIA" 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 "MILLION DOLLAR LOTERIA" 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 25,200,000 Scratch Tickets in Scratch Ticket Game No. 2653. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2653 - 4.0

| Prize Amount | Approximate Number of Winners* | Approximate Odds are 1 in ** |
|--------------|--------------------------------|------------------------------|
| \$20.00 | 3,024,000 | 8.33 |
| \$30.00 | 1,764,000 | 14.29 |
| \$40.00 | 504,000 | 50.00 |
| \$50.00 | 1,008,000 | 25.00 |
| \$100 | 902,160 | 27.93 |
| \$150 | 201,600 | 125.00 |
| \$200 | 181,440 | 138.89 |
| \$250 | 65,520 | 384.62 |
| \$500 | 11,760 | 2,142.86 |
| \$1,000 | 2,520 | 10,000.00 |
| \$5,000 | 336 | 75,000.00 |
| \$20,000 | 42 | 600,000.00 |
| \$1,000,000 | 10 | 2,520,000.00 |

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.29. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2653 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2653, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-202405673

Bob Biard
 General Counsel
 Texas Lottery Commission
 Filed: November 21, 2024

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North Central Texas Council of Governments

Request for Proposals - McKinney Avenue Transit Authority Americans with Disabilities Act Accessibility Study

The North Central Texas Council of Governments (NCTCOG) is requesting written proposals from consultant firms to assist the North Central Texas Council of Governments (NCTCOG) and the McKinney Avenue Transit Authority (MATA) to create a plan to implement modifications to improve accessibility on MATA's transit system, the M-Line in central Dallas. The plan will specifically identify options to make the M-Line compliant with Texas Accessibility Standards (TAS)

and Americans with Disabilities Act (ADA) standards. This would allow the agency to be eligible for federal funding for future operations and projects, thereby improving connectivity in its service area and the level of service currently being provided by MATA. The plan will also identify the financial impacts and various tradeoffs that will be associated with the modifications needed for TAS and ADA compliance, which should be considered. Dallas Area Rapid Transit (DART) and the City of Dallas will also be a part of the project oversight team. The selected consultant will carry out tasks related to project management, stakeholder involvement, a comprehensive transit needs assessment, scenario development, and final report preparation.

Proposals must be received in-hand no later than **5:00 p.m., Central Time**, on **Friday, January 17, 2025**, to Gypsy Gavia, Program Manager, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011 and electronic submissions to TransRFPs@nctcog.org. The Request for Proposals will be available at www.nctcog.org/rfp by the close of business on **Friday, December 6, 2024**.

NCTCOG encourages participation by disadvantaged business enterprises and does not discriminate on the basis of age, race, color, religion, sex, national origin, or disability.

TRD-202405684

Mike Eastland

Executive Director

North Central Texas Council of Governments

Filed: November 21, 2024



Supreme Court of Texas

Final Approval of Amendments to Texas of Civil Procedure
103, 107, and 501

Supreme Court of Texas

Misc. Docket No. 24-9102

Final Approval of Amendments to Texas Rules of Civil Procedure 103, 107, and 501

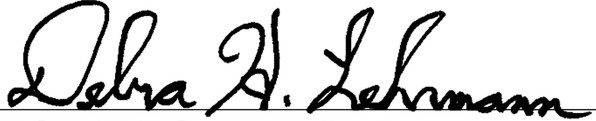
ORDERED that:

1. On June 11, 2024, in Misc. Dkt. No. 24-9034, the Court preliminarily approved amendments to Texas Rules of Civil Procedure 103 and 107 and invited public comment.
2. Following the comment period, the Court made revisions to Texas Rule of Civil Procedure 501. This Order incorporates those revisions and contains the final version of the amendments to Texas Rules of Civil Procedure 103, 107, and 501, effective December 1, 2024.
3. The Clerk is directed to:
 - a. file a copy of this Order with the Secretary of State;
 - b. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;
 - c. send a copy of this Order to each elected member of the Legislature; and
 - d. submit a copy of this Order for publication in the *Texas Register*.

Dated: November 22, 2024.



Nathan L. Hecht, Chief Justice



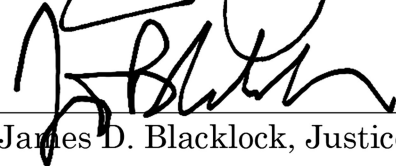
Debra H. Lehrmann, Justice




Jeffrey S. Boyd, Justice



John P. Devine, Justice



James D. Blacklock, Justice




Brett Busby, Justice



Jane N. Bland, Justice



Rebeca A. Huddle, Justice



Evan A. Young, Justice

TEXAS RULES OF CIVIL PROCEDURE

RULE 103. WHO MAY SERVE

Process including citation and other notices, writs, orders, and other papers issued by the court may be served anywhere by (1) any sheriff or constable or other person authorized by law, (2) any person authorized by law or by written order of the court who is not less than eighteen years of age, or (3) any person certified ~~under order of the Supreme Court~~ by the Judicial Branch Certification Commission. Service by registered or certified mail and citation by publication must, if requested, be made by the clerk of the court in which the case is pending. But no person who is a party to or interested in the outcome of a suit may serve any process in that suit, and, unless otherwise authorized by a written court order, only a sheriff or constable may serve a citation in an action of forcible entry and detainer, a writ that requires the actual taking of possession of a person, property or thing, or process requiring that an enforcement action be physically enforced by the person delivery the process. The order authorizing a person to serve process may be made without written motion and no fee may be imposed for issuance of such order.

Notes and Comments

Comment to 1988 change: The amendment makes clear that the courts are permitted to authorize persons other than Sheriffs or Constables to serve Citation. Further, Sheriffs or Constables are not restricted to service in their county. The last sentence is added to avoid the necessity of motions and fees.

Comment- 2005: The rule is amended to include among the persons authorized to effect service those who meet certification requirements promulgated by the Supreme Court and to prohibit private individuals from serving certain types of process unless, in rare circumstances, a court authorizes an individual to do so.

RULE 107. RETURN OF SERVICE

- (a) The officer or authorized person executing the citation must complete a return of service. The return may, but need not, be endorsed on or attached to the citation.
- (b) The return, together with any documents to which it is attached, must include the following information:
 - (1) the cause number and case name;

- (2) the court in which the case is filed;
 - (3) a description of what was served;
 - (4) the date and time the process was received for service;
 - (5) the person or entity served;
 - (6) the address served;
 - (7) the date of service or attempted service;
 - (8) the manner of delivery of service or attempted service;
 - (9) the name of the person who served or attempted to serve the process;
 - (10) if the person named in (9) is a process server certified ~~under order of the Supreme Court~~ by the Judicial Branch Certification Commission, his or her identification number and the expiration date of his or her certification; and
 - (11) any other information required by rule or law.
- (c) When the citation was served by registered or certified mail as authorized by Rule 106, the return by the officer or authorized person must also contain the return receipt with the addressee's signature.
- (d) When the officer or authorized person has not served the citation, the return shall show the diligence used by the officer or authorized person to execute the same and the cause of failure to execute it, and where the defendant is to be found, if ascertainable.
- (e) The officer or authorized person who serves or attempts to serve a citation must sign the return. If the return is signed by a person other than a sheriff, constable, or the clerk of the court, the return must either be verified or be signed under penalty of perjury. A return signed under penalty of perjury must contain the statement below in substantially the following form:

“My name is _____, my date of birth is _____, and
(First)(Middle)(Last)

“My name is _____, I am at least 18 years old, and
(First, Middle, Last)

my address is _____, _____, _____, _____, and
(Street) (City) (State) (Zip Code)

_____. I declare under penalty of perjury that the foregoing is true and correct.
(Country)

Executed in _____ County, State of _____, on the _____ day of _____,
(Month)

_____.
(Year)

_____.”
(Declarant)

- (f) Where citation is executed by an alternative method as authorized by Rule 106, proof of service shall be made in the manner ordered by the court.
- (g) The return and any document to which it is attached must be filed with the court and may be filed electronically or by facsimile, if those methods of filing are available.
- (h) No default judgment shall be granted in any cause until proof of service as provided by this rule or by Rules 108 or 108a, or as ordered by the court in the event citation is executed by an alternative method under Rule 106, shall have been on file with the clerk of the court ten days, exclusive of the day of filing and the day of judgment.

Notes and Comments

Comment to 1988 change: Amendments are made to conform to changes in Rule 103.

Comment to 1990 change: To state more directly that a default judgment can be obtained when the defendant has been served with process in a foreign country pursuant to the provisions of Rules 108 or 108a.

2021 Comment: Certain default orders, like those in suits for protection from family violence, may be exempt by statute from the ten-day requirement in paragraph (h). *See, e.g.,* TEX. FAM. CODE § 85.006.

RULE 501. CITATION AND SERVICE

RULE 501.2. SERVICE OF CITATION

- (a) *Who May Serve.* No person who is a party to or interested in the outcome of the suit may serve citation in that suit, and, unless otherwise authorized by written court order, only a sheriff or constable may serve a citation in an eviction case, a writ that requires the actual taking of possession of a person, property or thing, or process requiring that an enforcement action be physically enforced by the person delivering the process. Other citations may be served by:
- (1) a sheriff or constable;
 - (2) a process server certified ~~under order of the Supreme Court~~by the Judicial Branch Certification Commission;
 - (3) the clerk of the court, if the citation is served by registered or certified mail; or
 - (4) a person authorized by court order who is 18 years of age or older.
- (b) *Method of Service.* Citation must be served by:
- (1) delivering a copy of the citation with a copy of the petition attached to the defendant in person, after endorsing the date of delivery on the citation; or
 - (2) mailing a copy of the citation with a copy of the petition attached to the defendant by registered or certified mail, restricted delivery, with return receipt or electronic return receipt requested.
- (c) *Service Fees.* A plaintiff must pay all fees for service unless the plaintiff has filed a Statement of Inability to Afford Payment of Court Costs with the court. If the plaintiff has filed a Statement, the plaintiff must arrange for the citation to be served by a sheriff, constable, or court clerk.

- (d) *Service on Sunday.* A citation cannot be served on a Sunday except in attachment, garnishment, sequestration, or distress proceedings.
- (e) *Alternative Service of Citation.* If the methods under (b) are insufficient to serve the defendant, the plaintiff, or the constable, sheriff, process server certified ~~under order of the Supreme Court~~ by the Judicial Branch Certification Commission, or other person authorized to serve process, may make a request for alternative service. This request must include a sworn statement describing the methods attempted under (b) and stating the defendant's usual place of business or residence, or other place where the defendant can probably be found. The court may authorize the following types of alternative service:
- (1) mailing a copy of the citation with a copy of the petition attached by first class mail to the defendant at a specified address, and also leaving a copy of the citation with petition attached at the defendant's residence or other place where the defendant can probably be found with any person found there who is at least 16 years of age; or
 - (2) mailing a copy of the citation with a copy of the petition attached by first class mail to the defendant at a specified address, and also serving by any other method that the court finds is reasonably likely to provide the defendant with notice of the suit.
- (f) *Service by Publication.* In the event that service of citation by publication is necessary, the process is governed by the rules in county and district court.

**RULE 501.3. DUTIES OF OFFICER OR PERSON RECEIVING CITATION;
RETURN OF SERVICE**

- (a) *Endorsement; Execution; Return.* The officer or authorized person to whom process is delivered must:
- (1) endorse on the process the date and hour on which he or she received it;
 - (2) execute and return the same without delay; and
 - (3) complete a return of service, which may, but need not, be endorsed on or attached to the citation.
- (b) *Contents of Return.* The return, together with any document to which it is attached, must include the following information:
- (1) the case number and case name;

- (2) the court in which the case is filed;
 - (3) a description of what was served;
 - (4) the date and time the process was received for service;
 - (5) the person or entity served;
 - (6) the address served;
 - (7) the date of service or attempted service;
 - (8) the manner of delivery of service or attempted service;
 - (9) the name of the person who served or attempted service;
 - (10) if the person named in (9) is a process server certified ~~under Supreme Court Order~~ by the Judicial Branch Certification Commission, his or her identification number and the expiration date of his or her certification; and
 - (11) any other information required by rule or law.
- (c) *Citation by Mail.* When the citation is served by registered or certified mail as authorized by Rule 501.2(b)(2), the return by the officer or authorized person must also contain the receipt with the addressee's signature.
- (d) *Failure to Serve.* When the officer or authorized person has not served the citation, the return must show the diligence used by the officer or authorized person to execute the same and the cause of failure to execute it, and where the defendant is to be found, if ascertainable.
- (e) *Signature.* The officer or authorized person who serves or attempts to serve a citation must sign the return. If the return is signed by a person other than a sheriff, constable, or clerk of the court, the return must either be verified or be signed under penalty of perjury. A return signed under penalty of perjury must contain the statement below in substantially the following form:

"My name is (First) (Middle) (Last) , my ~~date of birth is~~ (Month) (Day), (Year) I am at least 18 years old, and my address is (Street), (City), (State) (Zip Code), (Country) . I declare under penalty of perjury that the foregoing is true and correct.

Executed in _____ County, State of __, on the _____ day of (Month), (Year).

Declarant”

- (f) *Alternative Service.* Where citation is executed by an alternative method as authorized by 501.2(e), proof of service must be made in the manner ordered by the court.
- (g) *Filing Return.* The return and any document to which it is attached must be filed with the court and may be filed electronically or by fax, if those methods of filing are available.
- (h) *Prerequisite for Default Judgment.* No default judgment may be granted in any case until proof of service as provided by this rule, or as ordered by the court in the event citation is executed by an alternative method under 501.2(e), has been on file with the clerk of the court 3 days, exclusive of the day of filing and the day of judgment.

TRD-202405727
Jaclyn Daumerie
Rules Attorney
Supreme Court of Texas
Filed: November 22, 2024

Final Approval of Amendments to Texas Rules of Appellate
Procedure 9, 38, 52, 53, and 55 (Joint Order, Court of Criminal
Appeals Misc. Docket No. 24-007)



Supreme Court of Texas


Misc. Docket No. 24-9096

Final Approval of Amendments to Texas Rules of Appellate Procedure 9, 38, 52, 53, and 55

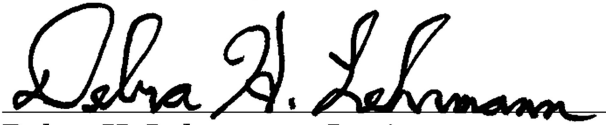
ORDERED that:

1. On July 16, 2024, in Misc. Dkt. No. 24-9043, the Supreme Court preliminarily approved amendments to Texas Rules of Appellate Procedure 9, 38, 52, 53, 55 and 68, and invited public comment.
2. Following the comment period, the Court made revisions to the amendments to limit their application to civil cases. This Order incorporates those revisions and contains the final version of the amendments to Texas Rules of Appellate Procedure 9, 38, 52, 53, and 55, effective December 1, 2024.
3. The Clerk is directed to:
 - a. file a copy of this Order with the Secretary of State;
 - b. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;
 - c. send a copy of this Order to each elected member of the Legislature; and
 - d. submit a copy of this Order for publication in the *Texas Register*.

Dated: November 19, 2024.



Nathan L. Hecht, Chief Justice



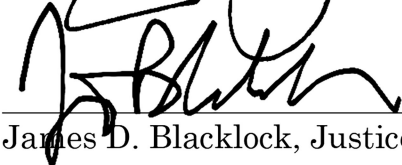
Debra H. Lehrmann, Justice



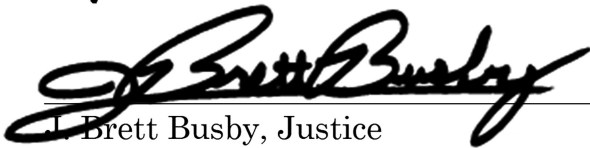
Jeffrey S. Boyd, Justice



John P. Devine, Justice



James D. Blacklock, Justice



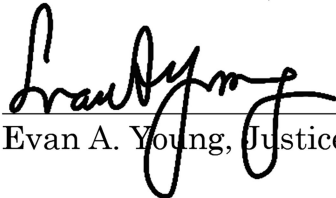
Brett Busby, Justice



Jane N. Bland, Justice



Rebeca A. Huddle, Justice



Evan A. Young, Justice

TEXAS RULES OF APPELLATE PROCEDURE

Rule 9. Documents Generally

9.4. Form

Except for the record, a document filed with an appellate court, including a paper copy of an electronically filed document, must — unless the court accepts another form in the interest of justice — be in the following form:

- (h) *Appendix and Original Proceeding Record.* A paper appendix may be bound either with the document to which it is related or separately. If separately bound, the appendix must comply with paragraph (f). A paper record in an original proceeding or a paper appendix must be tabbed and indexed. An electronically filed record in an original proceeding or an electronically filed appendix that includes more than one item must contain bookmarks to assist in locating each item.

- (j) *Electronically Filed Documents.* An electronically filed document must:
- (1) be in text-searchable portable document format (PDF);
 - (2) be directly converted to PDF rather than scanned, if possible;
 - (3) not be locked;
 - (4) be combined with any appendix into one computer file, unless that file would exceed the size limit prescribed by the electronic filing manager; ~~and~~
 - (5) in civil cases, be bookmarked to assist in locating each item; and
 - ~~(5)~~ otherwise comply with the Technology Standards set by the Judicial Committee on Information Technology and approved by the Supreme Court.

Rule 38. Requisites of Briefs

38.1. Appellant's Brief

The appellant's brief must, under appropriate headings and in the order here indicated, contain the following:

- (b) *Table of Contents.* The brief must have a table of contents with references to the pages of the brief and, in civil cases, be bookmarked to assist in locating each item. The table of contents must indicate the subject matter of each issue or point, or group of issues or points.

- (k) *Appendix in Civil Cases.*

- (1) *Necessary Contents.* The appendix must be bookmarked to assist in locating each item and, unless voluminous or impracticable, the appendix must contain a copy of:

- (A) the trial court's judgment or other appealable order from which relief is sought;
- (B) the jury charge and verdict, if any, or the trial court's findings of fact and conclusions of law, if any; and
- (C) the text of any rule, regulation, ordinance, statute, constitutional provision, or other law (excluding case law) on which the argument is based, and the text of any contract or other document that is central to the argument.

- (2) *Optional Contents.* The appendix may contain any other item pertinent to the issues or points presented for review, including copies or excerpts of relevant court opinions, laws, documents on which the suit was based, pleadings, excerpts from the reporter's record, and similar material. Items should not be included in the appendix to attempt to avoid the page limits for the brief.

Rule 52. Original Proceedings

52.3. Form and Contents of Petition

The petition must, under appropriate headings and in the order here indicated, contain the following:

- (b) *Table of Contents.* The petition must include a table of contents with references to the pages of the petition and be bookmarked to assist in locating each item. The table of contents must indicate the subject matter of each issue or point, or group of issues or points.

- (k) *Appendix.*
- (1) Necessary Contents. The appendix must be bookmarked to assist in locating each item and must contain:
- (A) any order or opinion of the court of appeals, if the petition is filed in the Supreme Court;
 - (AB) a certified or sworn copy of any order complained of, or any other document showing the matter complained of;
 - ~~(B) any order or opinion of the court of appeals, if the petition is filed in the Supreme Court;~~
 - (C) unless voluminous or impracticable, the text of any rule, regulation, ordinance, statute, constitutional provision, or other law (excluding case law) on which the argument is based; and
 - (D) if a writ of habeas corpus is sought, proof that the relator is being restrained.
- (2) Optional Contents. The appendix may contain any other item pertinent to the issues or points presented for review, including copies or excerpts of relevant court opinions, statutes, constitutional provisions, documents on which the suit was based,

pleadings, and similar material. Items should not be included in the appendix to attempt to avoid the page limits for the petition. The appendix should not contain any evidence or other item that is not necessary for a decision.

Rule 53. Petition for Review

53.2. Contents of Petition

The petition for review must, under appropriate headings and in the order here indicated, contain the following items:

- (b) *Table of Contents.* The petition must have a table of contents with references to the pages of the petition and must be bookmarked to assist in locating each item. The table of contents must indicate the subject matter of each issue or point, or group of issues or points.

- (l) *Appendix.*
- (1) Necessary Contents. The appendix must be bookmarked to assist in locating each item and, ~~U~~unless voluminous or impracticable, ~~the appendix~~ must contain a copy of:
- (A) the opinion and judgment of the court of appeals;
 - (~~B~~) the judgment or other appealable order of the trial court from which relief in the court of appeals was sought;
 - (~~B~~C) the jury charge and verdict, if any, or the trial court's findings of fact and conclusions of law, if any; and
 - (~~C~~) ~~the opinion and judgment of the court of appeals; and~~
 - (D) the text of any rule, regulation, ordinance, statute, constitutional provision, or other law on which the

argument is based (excluding case law), and the text of any contract or other document that is central to the argument.

- (2) **Optional Contents.** The appendix may contain any other item pertinent to the issues or points presented for review, including copies or excerpts of relevant court opinions, statutes, constitutional provisions, documents on which the suit was based, pleadings, and similar material. Items should not be included in the appendix to attempt to avoid the page limits for the petition.

Rule 55. Brief on the Merits

55.2. Petitioner's Brief on the Merits

The petitioner's brief on the merits must be confined to the issues or points stated in the petition for review and must, under appropriate headings and in the order here indicated, contain the following items:

- (b) *Table of Contents.* The brief must have a table of contents with references to the pages of the brief and be bookmarked to assist in locating each item. The table of contents must indicate the subject matter of each issue or point, or group of issues or points.

TRD-202405728
Jaclyn Daumerie
Rules Attorney
Supreme Court of Texas
Filed: November 22, 2024



Teacher Retirement System of Texas

Report of Fiscal Transactions, Accumulated Cash and Securities, and Rate of Return on Assets and Actuary's Certification of Actuarial Valuation and Actuarial Present Value of Future Benefits

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," this document is not included in the print version of the Texas Register. The document is

available in the on-line version of the December 6, 2024, issue of the Texas Register.)

TRD-202405718
Brian Guthrie
Executive Director
Teacher Retirement System of Texas
Filed: November 22, 2024



Texas Department of Transportation

Acquisition of PA 41 Gulf Intracoastal Waterway (GIWW) Dredge Material Placement Area Parcel

Notice

Virtual Public Hearing Tuesday, Jan. 28, 2025

CSJ (Project Number): 5500-00-079

Galveston County, Texas

The Texas Department of Transportation (TxDOT) is proposing to acquire a parcel of land to use as a placement area for materials dredged from the Gulf Intracoastal Waterway (GIWW) in Galveston County, Texas. This notice advises the public that TxDOT will be conducting an online virtual public hearing on the proposed project. The virtual hearing will be available on Tuesday, Jan. 28, 2025, by 5 p.m. and will remain available for comment until Wednesday, Feb. 12, 2025, at 11:59 p.m. To log onto the virtual public hearing, go to the following web address at the date and time indicated above: www.txdot.gov/inside-txdot/get-involved/about/hearings-meetings/maritime/012825.html. The virtual hearing will consist of a pre-recorded video presentation and will include both audio and visual components. Please note that the presentation will not be available on the website until the time and date listed above.

If you do not have internet access, you may call (512) 468-5600 between the hours of 8 a.m. and 5 p.m., Monday through Friday, to ask questions and access project materials during the project development process.

Formal written comments may be provided by mail or email as explained below. All written comments will be considered by TxDOT and included as part of the official record. Responses to comments will be prepared by TxDOT, included as part of the hearing and project record and made available online at www.txdot.gov/inside-txdot/get-involved/about/hearings-meetings/maritime/012825.html.

This notice is provided as required by the Texas Coastal Waterways Act, Transportation Code, Section 51.006. The proposed parcel of land to be considered for acquisition is Placement Area (PA) 41. PA 41 is a 255.881-acre parcel of land in the Samuel Parr Survey, Abstract Number 162 and Abraham Van Nordstrand Survey No. 203, Galveston County, Texas.

TxDOT is acquiring the property to fulfill its responsibilities as the non-federal sponsor of the GIWW. These responsibilities include providing right of way and placement areas for the U.S. Army Corps of Engineers (USACE) operation and maintenance of the GIWW. Right of way and displacement requirements are not applicable for this acquisition.

Environmental documentation, maps and drawings showing the project location, and other information regarding the proposed project are available for inspection online at www.txdot.gov/inside-txdot/get-involved/about/hearings-meetings/maritime/012825.html.

Maps, USACE environmental documentation, and other displays concerning the proposed site will be available during the virtual public hearing. These displays are on file and available for inspection from Monday through Friday between the hours of 8 a.m. and 5 p.m. at the TxDOT Stassney Campus, 6230 E. Stassney Lane, Austin, Texas 78744. To schedule an appointment, please contact Ray Newby at (512) 917-9357.

The virtual public hearing will be conducted in English. If you need an interpreter or document translator because English is not your primary language or have difficulty communicating effectively in English, one will be provided to you. If you need an interpreter, document translator, or have a disability and need assistance, special arrangements can be made to accommodate most needs. If you need interpretation or translation services or are a person with a disability who requires an accommodation to participate in the virtual public hearing, please contact the TxDOT Maritime Division at (512) 486-5600 no later than Thursday, Jan. 23, 2025. Please be aware that advance notice is required as some services and accommodations may require time for TxDOT to arrange.

Written comments from the public regarding the proposed project may be submitted by mail to the TxDOT Stassney Campus, Attn: Maritime Division, 6230 E. Stassney Lane, Austin, Texas 78744. Comments may also be submitted electronically to ray.newby@txdot.gov or online at www.txdot.gov/inside-txdot/get-involved/about/hearings-meetings/maritime/012825.html. Comments must be received on or before Wednesday, Feb. 12, 2025, to be considered part of the official virtual public hearing record.

Responses to written comments received will be available online at www.txdot.gov/inside-txdot/get-involved/about/hearings-meetings/maritime/012825.html once they have been prepared.

If you have any general questions or concerns regarding the proposed project or the virtual hearing, please contact Ray Newby, Waterways Program Coordinator, Maritime Division at (512) 917-9357 or ray.newby@txdot.gov.

TRD-202405660
Becky Blewett
Deputy General Counsel
Texas Department of Transportation
Filed: November 20, 2024



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 24 of Volume 49 (2024) is cited as follows: 49 TexReg 24.

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 “49 TexReg 2 issue date,” while on the opposite page, page 3, in the lower right-hand corner, would be written “issue date 49 TexReg 3.”

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: <http://www.sos.state.tx.us>. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State’s website at <http://www.sos.state.tx.us/tac>.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
26. Health and Human Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to Update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule’s *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION Part 4. Office of the Secretary of State Chapter 91. Texas Register

1 TAC §91.1.....950 (P)

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