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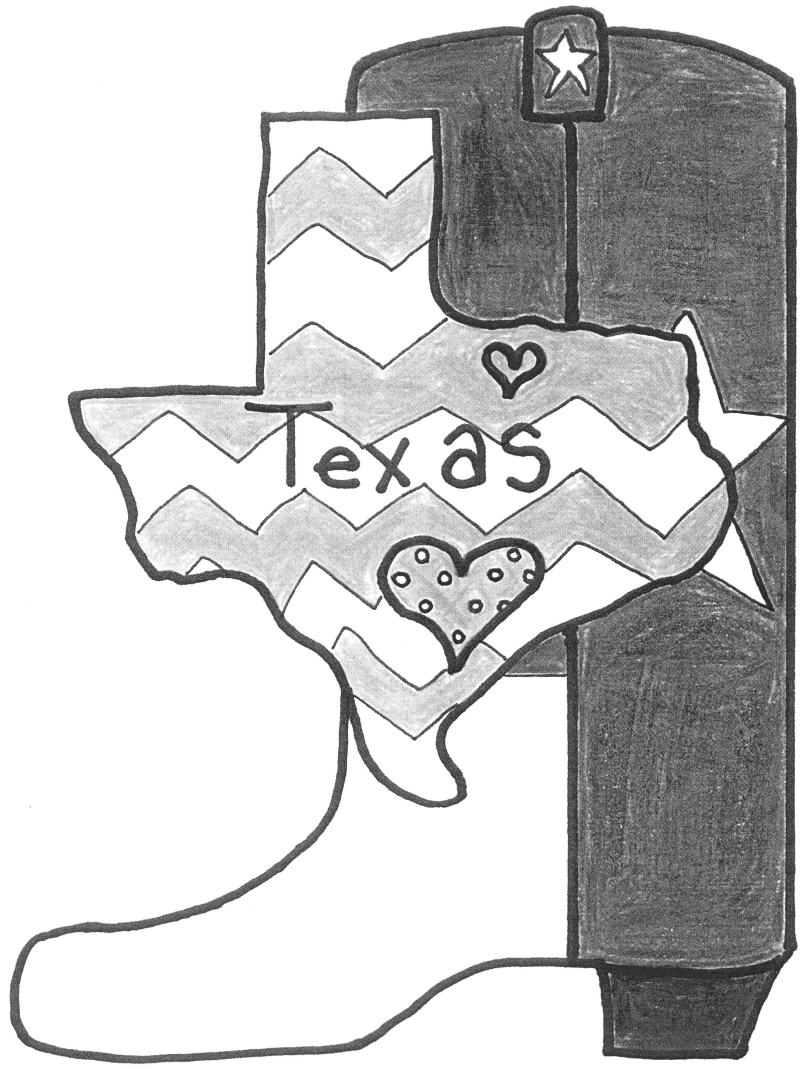
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THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Appointments

Appointments for May 11, 2023

Designated as president of the Red River Authority of Texas Board of Directors for a term to expire at the pleasure of the Governor, Jerry Bob Daniel of Truscott. Mr. Daniel is replacing Todd W. Boykin of Amarillo as president.

Greg Abbott, Governor

TRD-202301811



Proclamation 41-3969

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, GREG ABBOTT, Governor of the State of Texas, do hereby certify the severe thunderstorms that began on April 28, 2023, and included large hail, heavy rainfall, and hazardous wind gusts, caused widespread and severe property damage, injury, or loss of life in Hidalgo County;

NOW, THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby declare a state of disaster in the previously listed county.

Pursuant to Section 418.017 of the Texas Government Code, I authorize the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster.

Pursuant to Section 418.016 of the Texas Government Code, any regulatory statute prescribing the procedures for conduct of state business or any order or rule of a state agency that would in any way prevent, hinder, or delay necessary action in coping with this disaster shall be suspended upon written approval of the Office of the Governor. However, to the extent that the enforcement of any state statute or administrative rule regarding contracting or procurement would impede any state agency's emergency response that is necessary to protect life or property threatened by this declared disaster, I hereby authorize the suspension of such statutes and rules for the duration of this declared disaster.

In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 10th day of May, 2023.

Greg Abbott, Governor

TRD-202301724



Proclamation 41-3970

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, Greg Abbott, Governor of Texas, issued a disaster proclamation on May 31, 2021, certifying under Section 418.014 of the Texas Government Code that the surge of individuals unlawfully crossing the Texas-Mexico border posed an ongoing and imminent threat of disaster for a number of Texas counties and for all state agencies affected by this disaster; and

WHEREAS, I amended the aforementioned proclamation in a number of subsequent proclamations, including to modify the list of affected counties and therefore declare a state of disaster for those counties and for all state agencies affected by this disaster; and

WHEREAS, the certified conditions continue to exist and pose an ongoing and imminent threat of disaster as set forth in the prior proclamations; and

WHEREAS, a disaster has been declared by the Counties of Cameron and Hidalgo;

NOW, THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby renew the aforementioned proclamation and declare a disaster for Bee, Brewster, Brooks, Caldwell, Cameron, Chambers, Colorado, Crane, Crockett, Culberson, DeWitt, Dimmit, Duval, Edwards, El Paso, Frio, Galveston, Goliad, Gonzales, Hidalgo, Hudspeth, Jackson, Jeff Davis, Jim Hogg, Jim Wells, Kenedy, Kerr, Kimble, Kinney, Kleberg, La Salle, Lavaca, Live Oak, Mason, Maverick, McCulloch, McMullen, Medina, Menard, Midland, Pecos, Presidio, Real, Refugio, San Patricio, Schleicher, Sutton, Terrell, Throckmorton, Uvalde, Val Verde, Victoria, Webb, Wharton, Wilbarger, Wilson, Zapata, and Zavala Counties and for all state agencies affected by this disaster. All orders, directions, suspensions, and authorizations provided in the Proclamation of May 31, 2021, as amended and renewed in subsequent proclamations, are in full force and effect.

In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 12th day of May, 2023.

Greg Abbott, Governor

TRD-202301794



Proclamation 41-3971

TO ALL TO WHOM THESE PRESENTS SHALL COME:

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

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

WHEREAS, pursuant to the Texas Disaster Act of 1975, I have issued a series of executive orders and suspensions of Texas laws aimed at protecting the health and safety of Texans, ensuring uniformity throughout the State, and achieving the least restrictive means of combating the evolving threat posed by COVID-19; and

WHEREAS, Executive Orders GA-13, GA-37, GA-38, GA-39, and GA-40 remain in effect with "the force and effect of law" under Section 418.012 of the Texas Government Code; and

WHEREAS, ending the disaster declaration would terminate the executive orders that protect Texans' freedom by suspending the power of local governments to require masks, compel vaccinations, and close businesses; and

WHEREAS, I intend to keep these executive orders and suspensions in place until the Legislature can enact laws this session to prohibit local governments from imposing restrictions like mask mandates and vaccine mandates; and

WHEREAS, renewing the disaster declaration in no way infringes on the rights or liberties of any law-abiding Texans; and

WHEREAS, under the Texas Disaster Act of 1975, a state of disaster continues to exist in all counties during Texas' successful economic recovery from COVID-19;

NOW, THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby renew the disaster proclamation for all counties in Texas.

Pursuant to Section 418.017, I authorize the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster.

Under the terms of Executive Orders GA-38, GA-39, and GA-40, all of which remain in effect by virtue of this renewal, local governments are divested of any lawful authority to subject Texans to mask mandates, vaccine mandates, or business-closure mandates. As a matter of state law, COVID-19 cannot justify those local intrusions upon personal liberty.

Pursuant to Section 418.016, any regulatory statute prescribing the procedures for conduct of state business or any order or rule of a state agency that would in any way prevent, hinder, or delay necessary action in coping with this disaster shall be suspended upon written approval of the Office of the Governor. However, to the extent that the enforcement of any state statute or administrative rule regarding contracting or procurement would impede any state agency's emergency response that is necessary to cope with this declared disaster, I hereby suspend such statutes and rules for the duration of this declared disaster for that limited purpose.

In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 15th day of May, 2023.

Greg Abbott, Governor

TRD-202301795



Proclamation 41-3972

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, GREG ABBOTT, Governor of the State of Texas, do hereby certify that the severe thunderstorm and flooding event that began on May 10, 2023, and included heavy rainfall, flash flooding, tornadoes, and hazardous wind gusts caused widespread and severe property damage, injury, or loss of life in Cameron County;

NOW, THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby declare a state of disaster in the previously listed county.

Pursuant to Section 418.017 of the Texas Government Code, I authorize the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster.

Pursuant to Section 418.016 of the Texas Government Code, any regulatory statute prescribing the procedures for conduct of state business or any order or rule of a state agency that would in any way prevent, hinder, or delay necessary action in coping with this disaster shall be suspended upon written approval of the Office of the Governor. However, to the extent that the enforcement of any state statute or administrative rule regarding contracting or procurement would impede any state agency's emergency response that is necessary to protect life or property threatened by this declared disaster, I hereby authorize the suspension of such statutes and rules for the duration of this declared disaster.

In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 16th day of May, 2023.

Greg Abbott, Governor

TRD-202301806



THE ATTORNEY GENERAL

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

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

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

Requests for Opinions

RQ-0508-KP

Requestor:

The Honorable Paul Bettencourt
Chair, Senate Committee on Local Government
Texas State Senate
Post Office Box 12068
Austin, Texas 78711-2068

Re: Whether a tax rate increase election under Tax Code section 26.07 authorizes a municipality to " earmark " use of a voter-approved increase in its Maintenance and Operation property tax revenue for purposes other than maintenance or operations; and if not, may an increase in a municipality's Maintenance and Operation property tax be transferred to a local government corporation (created pursuant to Transportation Code chapter 431, subchapter D) be used for debt service on debt issued by the local government corporation (RQ-0508-KP)

Briefs requested by May 18, 2023

RQ-0509-KP

Requestor:

The Honorable Renee Ann Mueller
Washington County Attorney
100 East Main, Suite 200
Brenham, Texas 77833

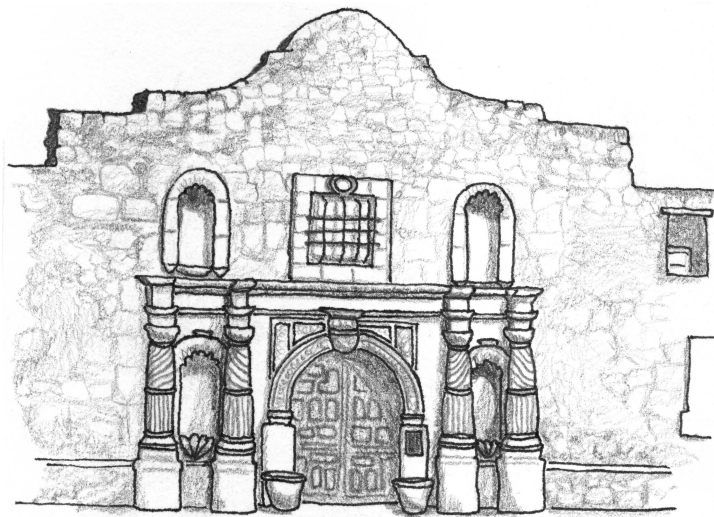
Re: Whether the District Attorney's Office located in a stand-alone building with no other courts or court offices is a building that houses the operations of a district, county, or justice court for purposes of an expenditure from the courthouse security fund (RQ-0509-KP)

Briefs requested by June 12, 2023

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

TRD-202301801
Austin Kinghorn
General Counsel
Office of the Attorney General
Filed: May 16, 2023





PROPOSED RULES

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

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

TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 24. SUBSTANTIVE RULES APPLICABLE TO WATER AND SEWER SERVICE PROVIDERS

SUBCHAPTER D. RATE-MAKING APPEALS

16 TAC §24.101

The Public Utility Commission of Texas (commission) proposes amendments to §24.101, relating to Appeal of Rate-making Decision, Pursuant to the Texas Water Code (TWC) §13.043. This proposed rule will implement TWC Chapter §13.043 as revised by Senate Bill 387 and House Bill 3689 during the Texas 87th Regular Legislative Session. The amended rule expands the commission's appellate authority by allowing ratepayers to appeal water and sewer rates set by a municipally owned utility for ratepayers previously served by another retail public utility, in certain situations. The amendments also clarify that in an appeal under this section, the commission will ensure that every appealed rate is just and reasonable.

Growth Impact Statement

The agency provides the following governmental growth impact statement for the proposed rule, as required by Tex. Gov't Code §2001.0221. The agency has determined that for each year of the first five years that the proposed rule is in effect, the following statements will apply:

- (1) the proposed rule will not create a government program and will not eliminate a government program;
- (2) implementation of the proposed rule will not require the creation of new employee positions and will not require the elimination of existing employee positions;
- (3) implementation of the proposed rule will not require an increase and will not require a decrease in future legislative appropriations to the agency;
- (4) the proposed rule will not require an increase and will not require a decrease in fees paid to the agency;
- (5) the proposed rule will not create a new regulation;
- (6) the proposed rule will not expand, limit, or repeal an existing regulation;
- (7) the proposed rule will change the number of individuals subject to the rule's applicability by altering when certain rate decisions can be appealed to the commission; and

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

Fiscal Impact on Small and Micro-Businesses and Rural Communities

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

Takings Impact Analysis

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

Fiscal Impact on State and Local Government

Tammy Benter, Director, Utility Outreach Division has determined that for the first five-year period the proposed rule is in effect, there will be no fiscal implications for the state or for units of local government under Tex. Gov't Code §2001.024(a)(4) as a result of enforcing or administering the sections.

Public Benefits

Ms. Benter has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be that the public will have an avenue to appeal the rates charged by a municipality for retail water or sewer service in certain situations. There will be no probable economic cost to persons required to comply with the rule under Tex. Gov't Code §2001.024(a)(5).

Local Employment Impact Statement

For each year of the first five years the proposed section is in effect, there should be no effect on a local economy; therefore, no local employment impact statement is required under Tex. Gov't Code §2001.022.

Costs to Regulated Persons

Tex. Gov't Code §2001.0045(b) does not apply to this rulemaking because the commission is expressly excluded under subsection §2001.0045(c)(7).

Public Hearing

The commission staff will conduct a public hearing on this rulemaking if requested in accordance with Tex. Gov't Code §2001.029. The request for a public hearing must be received by June 16, 2023. If a request for public hearing is received, commission staff will file in this project a notice of hearing.

Public Comments

Interested persons may file comments electronically through the interchange on the commission's website. Comments must be

filed by June 16, 2023. Comments should be organized in a manner consistent with the organization of the proposed rules. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed rule. The commission will consider the costs and benefits in deciding whether to modify the proposed rules on adoption. All comments should refer to Project Number 54932.

Each set of comments should include a standalone executive summary as the last page of the filing. This executive summary must be clearly labeled with the submitting entity's name and should include a bulleted list covering each substantive recommendation made in the comments.

Statutory Authority

The amended rule is proposed under TWC §13.041(a), which provides the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by TWC that is necessary and convenient to the exercise of that power and jurisdiction; TWC §13.041(b), which provides the commission with the authority to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction. The amended rule is also proposed under TWC §13.043, which relates to appellate jurisdiction of the Commission.

Cross Reference to Statute: Texas Water Code §§13.041(a), 13.041(b) and 13.043.

§24.101. Appeal of Rate-making Decision, Pursuant to the Texas Water Code §13.043.

(a) Any party to a rate proceeding before the governing body of a municipality may appeal the decision of the governing body to the commission. This subsection does not apply to a municipally owned utility, but does include privately owned utilities operating within the corporate limits of a municipality. An appeal under this subsection may be initiated by filing with the commission a petition signed by a responsible official of the party to the rate proceeding or its authorized representative and by serving a copy of the petition on all parties to the original proceeding. The petition should be filed in accordance with Chapter 22 of this title (relating to Procedural Rules). The appeal must be initiated within 90 days after the date of notice of the final decision of the governing body, or within 30 days if the appeal relates to the rates of a Class A utility, by filing a petition for review with the commission and by serving a copy of the petition on all parties to the original rate proceeding.

(b) An appeal under Texas Water Code (TWC) [TWC] §13.043(b) must be initiated within 90 days after the effective date of the rate change or, if appealing under TWC §13.043(b)(2) or (5), within 90 days after the date on which the governing body of the municipality or affected county makes a final decision. An appeal is initiated by filing a petition for review with the commission and by sending a copy of the petition to the entity providing service and with the governing body whose decision is being appealed if it is not the entity providing service. The petition must be signed by the lesser of 10,000 or 10% of the ratepayers whose rates have been changed and who are eligible to appeal under subsection (c) of this section.

(c) Retail ratepayers of the following entities may appeal the decision of the governing body of the entity affecting their water utility, sewer utility, or drainage rates to the commission:

(1) a nonprofit water supply or sewer service corporation created and operating under TWC, Chapter 67;

(2) a utility under the jurisdiction of a municipality inside the corporate limits of the municipality;

(3) a municipally owned utility, if the ratepayers reside outside the corporate limits of the municipality, including a decision of a governing body that results in an increase in rates when the municipally owned utility takes over the provision of service to ratepayers previously served by another retail public utility;

(A) A municipally owned utility must [shall]:

(i) disclose to any person, on request, the number of ratepayer(s) who reside outside the corporate limits of the municipality; and

(ii) subject to subparagraph (B) of this paragraph, provide to any person, on request, a list of the names and addresses of the ratepayers who reside outside the corporate limits of the municipality.

(B) If a ratepayer has requested that a municipally owned utility keep the ratepayer's personal information confidential under Tex. Util. Code [Ann.] §182.052, the municipally owned utility may not disclose the address of the ratepayer under subparagraph (A)(ii) of this paragraph to any person. A municipally owned utility must [shall] inform ratepayers of their right to request that their personal information be kept confidential under Tex. Util. Code [Ann.] §182.052 in any notice provided under the requirement of TWC [Tex. Water Code Ann.] §13.043(i).

(C) In complying with this subsection, the municipally owned utility:

(i) may not charge a fee for disclosing the information under subparagraph (A)(i) of this paragraph;

(ii) will [shall] provide information requested under subparagraph (A)(i) of this paragraph by telephone or in writing as preferred by the person making the request; and

(iii) may charge a reasonable fee for providing information under subparagraph (A)(ii) of this paragraph.

(D) This paragraph does not apply to a municipally owned utility that takes over the provision of service to ratepayers previously served by another retail public utility if the municipally owned utility:

(i) takes over the service at the request of the ratepayer;

(ii) takes over the service in the manner provided by TWC Chapter 13, Subchapter H; or

(iii) is required to take over the service by state law, an order of the Texas Commission on Environmental Quality, or an order of the commission.

(4) a district or authority created under [the Texas Constitution,] Article III, §52, or Article XVI, §59[;] of the Texas Constitution that provides water or sewer service to household users;

(5) a utility owned by an affected county, if the ratepayers' rates are actually or may be adversely affected. For the purposes of this subchapter, ratepayers who reside outside the boundaries of the district or authority will [shall] be considered a separate class from ratepayers who reside inside those boundaries; and

(6) in an appeal under this subsection, the retail public utility must [shall] provide written notice of hearing to all affected customers in a form prescribed by the commission.

(d) In an appeal under TWC §13.043(b), each person receiving a separate bill is considered a ratepayer, but one person may not be considered more than one ratepayer regardless of the number of bills the person receives. The petition for review is considered properly signed if signed by a person, or the spouse of the person, in whose name utility service is carried.

(e) The commission will [~~shall~~] hear an appeal under this section de novo and fix in its final order the rates the governing body should have fixed in the action from which the appeal was taken. The commission may:

- (1) in an appeal under [~~the~~] TWC §13.043(a), include reasonable expenses incurred in the appeal proceedings;
- (2) in an appeal under [~~the~~] TWC §13.043(b), included reasonable expenses incurred by the retail public utility in the appeal proceedings;
- (3) establish the effective date;
- (4) order refunds or allow surcharges to recover lost revenues;
- (5) consider only the information that was available to the governing body at the time the governing body made its decision and evidence of reasonable expenses incurred in the appeal proceedings; or
- (6) establish interim rates to be in effect until a final decision is made.

(f) A retail public utility that receives water or sewer service from another retail public utility or political subdivision of the state, including an affected county, may appeal to the commission, a decision of the provider of water or sewer service affecting the amount paid for water or sewer service. An appeal under this subsection must be initiated within 90 days after notice of the decision is received from the provider of the service by filing a petition by the retail public utility.

(g) An applicant requesting service from an affected county or a water supply or sewer service corporation may appeal to the commission a decision of the county or water supply or sewer service corporation affecting the amount to be paid to obtain service other than the regular membership or tap fees. An appeal under TWC §13.043(g) must be initiated within 90 days after written notice of the amount to be paid to obtain service is provided to the service applicant or member of the decision of an affected county or water supply or sewer service corporation affecting the amount to be paid to obtain service as requested in the applicant's initial request for that service.

(1) If the commission finds the amount charged to be clearly unreasonable, it will [~~shall~~] establish the fee to be paid and will [~~shall~~] establish conditions for the applicant to pay any amount(s) due to the affected county or water supply or sewer service corporation. Unless otherwise ordered, any portion of the charges paid by the applicant that exceed the amount(s) determined in the commission's order must [~~shall~~] be refunded to the applicant within 30 days of the date the commission issues the order, at an interest rate determined by the commission.

(2) In an appeal brought under this subsection, the commission will [~~shall~~] affirm the decision of the water supply or sewer service corporation if the amount paid by the applicant or demanded by the water supply or sewer service corporation is consistent with the tariff of the water supply or sewer service corporation and is reasonably related to the cost of installing on-site and off-site facilities to provide service to that applicant, in addition to the factors specified under subsection (i) of this section.

(3) A determination made by the commission on an appeal from an applicant for service from a water supply or sewer service corporation under this subsection is binding on all similarly situated applicants for service, and the commission may not consider other appeals on the same issue until the applicable provisions of the tariff of the water supply or sewer service corporation are amended.

(h) The commission may, on a motion by the commission staff or by the appellant under subsection (a), (b), or (f) of this section, establish interim rates to be in effect until a final decision is made.

(i) In an appeal under this section, the commission will [~~shall~~] ensure that every appealed rate [~~made, demanded, or received by any retail public utility or by any two or more retail public utilities jointly~~] is just and reasonable. Rates must not be unreasonably preferential, prejudicial, or discriminatory but must be sufficient, equitable, and consistent in application to each class of customers. The commission will [~~shall~~] use a methodology that preserves the financial integrity of the retail public utility. To the extent of a conflict between this subsection and TWC §49.2122, TWC §49.2122 prevails.

(j) A customer of a water supply corporation may appeal to the commission a water conservation penalty. The customer must [~~shall~~] initiate an appeal under TWC §67.011(b) within 90 days after the customer receives written notice of the water conservation penalty amount from the water supply corporation per its tariff. The commission will [~~shall~~] approve the water supply corporation's water conservation penalty if:

- (1) the penalty is clearly stated in the tariff;
- (2) the penalty is reasonable and does not exceed six times the minimum monthly bill in the water supply corporation's current tariff; and
- (3) the water supply corporation has deposited the penalty in a separate account dedicated to enhancing water supply for the benefit of all of the water supply corporation's customers.

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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Adriana Gonzales

Rules Coordinator

Public Utility Commission of Texas

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



TITLE 22. EXAMINING BOARDS

PART 14. TEXAS OPTOMETRY BOARD

CHAPTER 271. EXAMINATIONS

22 TAC §§271.2, 271.3, 271.5, 271.6

The Texas Optometry Board proposes amendments to 22 TAC Chapter 271, Examinations, §§271.2, 271.3, 271.5 and 271.6.

The rules in the Chapter 271 were reviewed by the Board's Administration and Licensing Committee in January 2023 to ensure the licensing and renewal process was efficient and effective. At the January 19, 2023, committee meeting, members voted to move forward with changes to update and modernize

the process and to refer the proposal to the Rules Committee. At the April 27, 2023, Rules Committee meeting, the members concurred with the recommendations of the Administration and Licensing Committee and proposed the following amendments to the licensing and renewal process.

During the April 28, 2023, meeting the Board determined that there continues to be a need for the rules in Chapter 271. The Board has also determined that changes to certain rules as currently in effect are necessary. The specific rules being amended include: §271.2 Applications; §271.3 Jurisprudence Examination Administration; §271.5 Licensure without Examination; and §271.6 National Board Examination.

The amendments outlined in this proposal include non-substantive changes to all references from "board" to "Board" and from "executive director" to "Executive Director."

In §271.2 Applications, the Board proposes to amend the title of the rule to read "Applications for Licensure as Therapeutic Optometrist"; to update the documents required for licensure; to update the statutory reference to Texas Occupations Code Chapter 53 as it relates to convictions that must be reported upon application; to state that applications must be approved within one year of application submission or applicants will have to reapply; to set out requirements for applicants who are licensed in other states; and to remove arcane language related to scheduling the jurisprudence exam as the Board will allow an applicant to take the exam at any point.

In §271.3 Jurisprudence Examination Administration, the Board proposes to amend the title of the rule to read "Jurisprudence Examination"; to clarify the jurisprudence exam is an "open book" exam; to remove arcane language related to scheduling the jurisprudence exam as the Board will allow an applicant to take the exam at any point; to state that jurisprudence exam scores are only valid for one year and if an applicant fails to get licensed in that year, applicants will have to retake the exam; and to remove language related to the administration of the exam as the Board has outsourced the exam administration to another entity.

In §271.5 Licensure without Examination, the Board proposes to clarify that the rule only applies to those applicants who have not taken Part III of the National Board of Examiners in Optometry and to make other non-substantive grammatical changes and references to statute.

In §271.6 National Board Examination, the Board proposes to remove language regarding the jurisprudence exam as it is referenced in a separate rule; and to make other non-substantive grammatical changes and references to statute.

Janice McCoy, Executive Director, has determined that for the first five-year period the amended rules are in effect, there will not be fiscal implications for state and local governments as a result of amending these existing rules.

Janice McCoy, Executive Director, has determined that for each of the first five years the amendments are in effect, the public benefit is a more effective and efficient licensing and renewal system for both licensees and Board staff.

Legal counsel for the Board has reviewed the amended rules and has found them to be within the Board's authority to propose.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS ON SMALL BUSINESSES AND RURAL COMMUNITIES: There will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a

result of the amendments. Since the agency has determined that the amendments to the rules will have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, are not required.

ENVIRONMENT AND TAKINGS IMPACT ASSESSMENT: The agency has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code §2001.0225. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. The agency has determined that the proposed amendments do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action, and therefore does not constitute a taking under Texas Government Code §2007.043.

GOVERNMENT GROWTH IMPACT STATEMENT: During the first five years that the amended rules will be in effect, it is anticipated that the amendments will not create or eliminate a government program as no program changes are proposed. Further, implementation of the amended rule will not require the creation of a new employee position or the elimination of an existing employee position; will not increase or decrease future legislative appropriations to the agency; will not increase or decrease fees paid to the agency; does not impact the number of individuals subject to the rule's applicability; does not positively or adversely impact the state's economy. The amendment does not create a new regulation nor does it expand, limit, or repeal an existing regulation.

PUBLIC COMMENTS: Comments on the amended rules may be submitted electronically to: janice.mccoy@tob.texas.gov or in writing to Janice McCoy, Executive Director, Texas Optometry Board, 1801 N. Congress, Suite 9.300, Austin, Texas 78701. The deadline for furnishing comments is thirty days after publication in the *Texas Register*.

Amendments to §271.2 Applications; §271.3 Jurisprudence Examination Administration; §271.5 Licensure without Examination; and §271.6 National Board Examination are being proposed under the Texas Optometry Act, Texas Occupations Code, §351.151 and Texas Occupations Code Chapter 351, Subchapter F - License Requirements.

No other sections are affected by the amendments.

§271.2. Applications for Licensure as Therapeutic Optometrist.

(a) The applicant shall make application furnishing to the Executive Director [~~executive director~~], on forms to be furnished by the Board [~~board~~], satisfactory evidence that the applicant [~~has attained the age of 21 years, and has a preliminary education equivalent to permit matriculation in the University of Texas, and that the applicant~~] has attended and graduated from a reputable university or college of optometry which meets with the requirements of the Board [~~board~~], or in the alternative, submit a written statement from the dean of a reputable college of optometry that the applicant is enrolled in good standing in the college and is in the final semester before graduation,] and such other information as the Board [~~board~~] may deem necessary for the enforcement of the Act.

(b) The applicant shall report all felony and misdemeanor criminal convictions as outlined under Texas Occupations Code Chapter 53 [~~; including deferred adjudication or court ordered community or mandatory supervision, with or without an adjudication of guilt or revocation of parole, probation or court ordered supervision on the application~~]. Failure of an applicant to report every criminal conviction

is deceit, dishonesty and misrepresentation in seeking admission to practice and authorizes the Board [board] to take disciplinary action under §351.501 of the Act. An applicant is not required to report a Class C Misdemeanor traffic violation. The applicant shall furnish any document relating to the criminal conviction as requested by the Board. The applicant shall also provide a complete criminal history by submitting fingerprints to the authority authorized by the Department of Public Safety to take the fingerprints in the form required by that authority.

(c) In such application, the applicant shall state that the applicant will abide by the laws of this state regulating the practice of optometry and that all facts, statements and answers contained in the application are true and correct. Such application shall be signed (manually or digitally) and dated.

(d) [Applicants shall submit proof that the applicant is legally entitled to the issuance of a license under federal law.] Applicants shall submit a report of out-of-state disciplinary action prepared by an approved national databank.

(e) Any person furnishing false information in such application shall be denied the issuance of a license [right to take the examination], or if the applicant has been licensed before it is made known to the Board [board] of the falseness of such information, such license shall be subject to suspension, revocation, or cancellation in accordance with [the Act,] §351.501 of the Act.

(f) Applications [submitted by graduates of an approved college of optometry] must contain a certified [copy of the] optometry school transcript, which shall show the total number of hours of attendance, the subjects studied, the grades or marks given, and the date of graduation of the applicant. Applicants must also submit a copy of the transcript from any undergraduate school attended which [- A license will not be issued until the applicant has submitted certified copies of the transcript of record from preoptometry and optometry colleges attended by the applicant, which certified transcript of record] shall show the total number of hours of attendance, the subjects studied, the grades or marks given, and the date of graduation of the applicant.

(g) The Board may require other documentation not specified by this section be submitted with the application. All required documents [; including transcripts, license verifications, birth certificates, and criminal histories] must be received [by the executive director prior to the date which is] within one year of application [after successful passage of the board's jurisprudence examination]; otherwise, the applicant must reapply and pay the application fee [and take and pass the board's jurisprudence examination]. A person may apply for licensure prior to graduation from a reputable university or college of optometry.

[(g) The completed application and examination fee must be filed with the executive director by the first day of the month prior to the exam.]

(h) The application must be accompanied by a fee set by the Board.

[(h) The fee for taking the examination shall be \$150. The fee is non-refundable and non-transferable.]

(i) If applicable, the application must furnish a certificate of good standing from any jurisdiction where licensed or previously licensed. The certificate must establish that:

(1) the applicant's license has never been suspended or revoked;

(2) there are no pending disciplinary actions against the applicant; and

(3) the applicant is presently authorized to practice therapeutic optometry without restrictions.

[(i) Any applicant who is refused a license because of failure to pass the examination shall be permitted to take a second examination without resubmitting an application, provided:]

[(1) the applicant submits a payment of \$150;]

[(2) the second examination is taken within a period of one year from the date the examination was first taken; and]

[(3) a written request to take the second examination and the required fee is received by the executive director at least 30 days prior to the date of the examination requested.]

(j) If the certificate of good standing does not establish the items in subsection (i) of this section, the applicant will be required to submit additional information for further Board review.

[(j) If an applicant is refused a license because of failure to pass the second examination, the applicant must reapply and take and pass the board's jurisprudence examination.]

[(k) No application fee for examination will be returned to any applicant after the application has been accepted by the board, because of the decision of the applicant not to stand for the scheduled examination or failure for any reason to take the examination.]

§271.3. Jurisprudence Examination Administration.

(a) Every applicant [Examination] for a license to practice therapeutic optometry in this state must take and pass a jurisprudence exam covering the laws and rules of the Board. The laws and rules of the Board may be referenced while taking the exam (that is, the exam shall be considered "open book").

(b) The jurisprudence exam shall be conducted in the English language in writing and by such other means as the Board [board] shall determine adequate to ascertain the qualifications of the applicant. [Each applicant shall be given due notice of the date and place of examination. The board shall administer the jurisprudence examination at least on a quarterly schedule.]

[(b) Prior to an examination, the executive director or a member of the board designated by the chair shall prepare a tentative schedule showing the time allotted to each examination.]

(c) [The examination shall be a written jurisprudence examination.] The passing grade on the jurisprudence written test shall be 70. [In addition, passing scores from the National Board of Examiners in Optometry (NBEO) Examination will be required for licensure under §271.6 of this title (relating to National Board Examinations).]

(d) [Applicants shall not communicate any words or signs, in person, in writing, or electronically, with another applicant while the applicant's examination is in progress.] Applicants shall not collaborate in any manner with any other person [; including another applicant, a licensee, or a staff member of the board,] on examination matters while the applicant's examination is in progress. Violations of this rule shall subject the offender to disciplinary action.

(e) If an applicant fails to be licensed within one-year of taking and passing the jurisprudence exam, the applicant must retake and pass the exam in order to be licensed.

[(e) Examination materials are the property of the board and shall not be returned to the applicant. An unsuccessful candidate may request an analysis of such person's performance, which request must be made in writing within 30 days after final grading.]

[(f) The board will provide reasonable examination accommodations to an examinee diagnosed as having dyslexia for all examina-

tions administered by the board. Applications requesting reasonable examination accommodations shall be submitted to the board at least 30 days before the start date of the examination. Applications for accommodations shall include a diagnosis of dyslexia by a health professional licensed to diagnose the condition, documentation establishing that accommodations are necessary, and the specific accommodation requested.}]

§271.5. *Licensure without Examination.*

(a) Upon payment of a fee in an amount set by the Board, the Board [board] may license applicants who have not taken Part III of the National Board of Examiners in Optometry (NBE0) and [without examination] who:

- (1) have no pending disciplinary actions in the state, district, or territory in which the applicant is licensed;
- (2) have never had their license suspended or revoked;
- (3) meet all requirements of the Act;
- (4) are currently licensed as a therapeutic optometrist in good standing in another state, the District of Columbia, or territory of the United States;
- (5) have passed an examination that is equivalent or superior to the examination required by §351.253 [and §351.256] of the Act; and
- (6) have, for at least five of the seven years preceding the application date, been: [been:]

(A) actively engaged in the practice of therapeutic optometry; or

(B) engaged in full-time teaching at an accredited college of optometry or medicine.

(b) The applicant must furnish a certificate of good standing from the jurisdictions where licensed. The certificate must establish that:

- (1) the applicant's license has never been suspended or revoked;
- (2) there are no pending disciplinary actions against the applicant; and
- (3) the applicant is presently authorized to practice therapeutic optometry without restrictions.

(c) An examination is deemed equivalent or superior to the examination required by §351.253 [and §351.256] of the Act if at the time the applicant took the examination, the examination met the requirements of [§351.253 and] §351.256 of the Act.

(d) The applicant shall take and pass the jurisprudence examination administered by the Board [board].

(e) The applicant must have complied with §271.2 of this chapter [title] (relating to Applications for Licensure as Therapeutic Optometrist). The completed application with all supporting documents must be received by the Board [board] not later than 30 days before the date of the Board [board] meeting at which the application is to be considered.

§271.6. *National Board Examination.*

(a) The Board [board] determines that the written examination by the National Board of Examiners in Optometry (NBE0) known as Part I and Part II complies in all material respects with the [written] examination requirements of [the Act, §351.255 and] §351.256 of the Act. The passing score on each Part of the National Board written examination is determined by the criterion-referenced standard setting

approach, in which the passing score is set at the scaled score of 300. The [Texas Optometry] Board will accept scores from an NBE0 written examination if Part I or II was satisfactorily completed on or after January 1, 1984.

(b) The Board [board] determines that the practical examination known as Part III by the National Board of Examiners in Optometry (NBE0) complies in all material respects with the practical examination requirements of [the Act, §351.255 and] §351.256 of the Act. The passing scores on Part III shall be determined by the NBE0. The Board [board] will accept scores from an NBE0 Part III examination if Part III was satisfactorily completed on or after June of 1994.

(c) All applicants must comply with the application process and qualification criteria of [the Act,] §351.254 of the Act, as well as all applicable Board [board] rules.

[(d) All applicants must pay an examination fee of \$150 to the Texas Optometry Board. No fee for examination will be returned to any applicant after the application has been approved by the board.]

[(e) In addition to the NBE0 examinations referenced in subsections (a) and (b) of this section, all applicants shall take and pass a written jurisprudence examination given by the Texas Optometry Board in order to be eligible for licensure. The board shall administer the jurisprudence written examination at least on a quarterly schedule. The jurisprudence examination can be administered in conjunction with Part III of the NBE0, provided the applicant has graduated from an approved college of optometry and has completed application with the board. However, an applicant who meets the other requirements of this section and §351.254 of the Act may take the examination without having graduated, if the dean of a college of optometry that meets the requirements of the board notifies the board in writing that the applicant is enrolled in good standing in the college and is in the final semester before graduation.]

(d) [(f)] Each applicant shall submit a true and correct copy of the applicant's score report [to the executive director,] and such other evidence of having achieved a passing grade on each part of the NBE0 examination as outlined in subsections (a) and (b) of this section [as the executive director may determine. Such satisfactory evidence of passage of the NBE0 examination must be submitted to the executive director within 12 months of successful passage of the board's jurisprudence examination; otherwise, the applicant must reapply and take and pass the board's jurisprudence examination]. No license will be issued to an applicant until evidence of passage of the NBE0 examination is received.

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 May 15, 2023.

TRD-202301776

Janice McCoy

Executive Director

Texas Optometry Board

Earliest possible date of adoption: June 25, 2023

For further information, please call: (512) 305-8500

◆ ◆ ◆
CHAPTER 279. INTERPRETATIONS

22 TAC §279.1

The Texas Optometry Board proposes amendments to 22 TAC Chapter 279, §279.1 - Contact Lens Examination.

The rules in the Chapter 279 were reviewed as a result of the Board's general rule review under Texas Government Code §2001.039. Notice of the review was published in the June 10, 2022, issue of the *Texas Register* (47 TexReg 3487). No comments were received regarding the Board's notice of review.

The Board has determined that there continues to be a need for the rules in Chapter 279. The Board has also determined that changes to §279.1 as currently in effect are necessary.

The Board initially proposed amendments in the November 25, 2022, issue of the *Texas Register* (47 TexReg 7843), but officially withdrew those rules on April 28, 2023 (published in the May 12, 2023, issue of the *Texas Register*). At the April 28, 2023, Board meeting the Board adopted a new proposal as follows.

The amendment requires the optometrist or therapeutic optometrist to "examine in-person" instead of "personally make" certain findings during an initial visit. It states that the findings must be made unless prohibited by the patient's unique condition instead of "if possible." It requires the optometrist or therapeutic optometrist to personally notate why it is not possible to record the required findings.

It clarifies that for discipline purposes, the charges must state the specific instances in which it is alleged that the optometrist or therapeutic optometrist did not comply with the rule.

Finally, the amendment makes non-substantive capitalization changes to ensure consistency across the Board's rules.

Janice McCoy, Executive Director, has determined that for the first five-year period the amended rule is in effect, there will not be fiscal implications for state and local governments as a result of amending this existing rule.

Janice McCoy, Executive Director, has determined that for each of the first five years the amendment is in effect, the public benefit is patient protection to ensure the examination is done accurately and completely.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS ON SMALL BUSINESSES AND RURAL COMMUNITIES: The agency does not find that there will be an adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the amendment. Since the agency has determined that the amendment to the rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, are not required.

ENVIRONMENT AND TAKINGS IMPACT ASSESSMENT: The agency has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code §2001.0225. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. The agency has determined that the proposed amendment 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.

GOVERNMENT GROWTH IMPACT STATEMENT: During the first five years that the amended rule will be in effect, it is anticipated that the amendment will not create or eliminate a government program as no program changes are proposed. Further, implementation of the amended rule will not require the creation

of a new employee position or the elimination of an existing employee position; will not increase or decrease future legislative appropriations to the agency; will not increase or decrease fees paid to the agency; does not impact the number of individuals subject to the rule's applicability; does not positively or adversely impact the state's economy. The amendment does not create a new regulation nor does it expand, limit, or repeal an existing regulation.

PUBLIC COMMENTS: Comments on the amended rule may be submitted electronically to: janice.mccoy@tob.texas.gov or in writing to Janice McCoy, Executive Director, Texas Optometry Board, 1801 N. Congress, Suite 9.300, Austin, Texas 78701. The deadline for furnishing comments is thirty days after publication in the *Texas Register*.

Amendments to §279.1 - Contact Lens Examination are being proposed under the Texas Optometry Act, Texas Occupations Code, §351.151 and §351.353.

No other sections are affected by the amendments.

§279.1. Contact Lens Examination.

(a) The optometrist or therapeutic optometrist shall, in the initial examination of the patient for whom contact lenses are prescribed:

(1) Examine in-person [~~Personally make~~] and record, unless prohibited by the patient's unique condition [if possible], the following findings of the conditions of the patient as required by §351.353 of the Act:

(A) biomicroscopy examination (lids, cornea, sclera, etc.), using a binocular microscope;

(B) internal ophthalmoscopic examination (media, fundus, etc.), using an ophthalmoscope or biomicroscope with fundus condensing lenses; videos and photographs may be used only for documentation and consultation purposes but do not fulfill the internal ophthalmoscopic examination requirement; and

(C) subjective findings: [] far point and near point;

(2) Either personally make and record or authorize an assistant present in the same office with the optometrist or therapeutic optometrist to make and record the following findings required by §351.353 of the Act. The authorization for assistants to make and record the following findings does not relieve the optometrist or therapeutic optometrist of professional responsibility for the proper examination and recording of each finding required by §351.353 of the Act:

(A) case history (ocular, physical, occupational, and other pertinent information);

(B) visual acuity;

(C) static retinoscopy O.D., O.S., or autorefractor;

(D) assessment of binocular function;

(E) amplitude or range of accommodation;

(F) tonometry; and

(G) angle of vision: [] to right and to left; []

(3) The optometrist or therapeutic optometrist shall personally [~~Personally~~] notate in the patient's record the reasons why it is not possible to make and record the findings required in subsection (a) of this section;

(4) When a follow-up visit is medically indicated, schedule the follow-up visit within 30 days of the contact lens fitting, and inform

the patient on the initial visit regarding the necessity for the follow-up care; and

(5) Personally or authorize an assistant to instruct the patient in the proper care of lenses.

(b) The optometrist or therapeutic optometrist and assistants shall observe proper hygiene in the handling and dispensing of the contact lenses and in the conduct of the examination. Proper hygiene includes sanitary office conditions, running water in the office where contact lenses are dispensed, and proper sterilization of diagnostic lenses and instruments.

(c) The fitting of contact lenses may be performed only by a licensed physician, optometrist, or therapeutic optometrist. Ophthalmic dispensers may make mechanical adjustments to contact lenses and dispense contact lenses only after receipt of a fully written contact lens prescription from a licensed optometrist, therapeutic optometrist, or a licensed physician. An ophthalmic dispenser shall make no measurement of the eye or the cornea or evaluate the physical fit of the contact lenses, by any means whatever, subject solely and only to the exception contained in the §351.005 of the Act.

(d) The willful or repeated failure or refusal of an optometrist or therapeutic optometrist to comply with any of the requirements in the Act, §351.353 and §351.359, shall be considered by the Board [board] to constitute prima facie evidence that the licensee is unfit or incompetent by reason of negligence within the meaning of the Act, §351.501(a)(2), and shall be sufficient ground for the filing of charges to cancel, revoke, or suspend the license. The charges shall state the specific instances in which it is alleged that the optometrist or therapeutic optometrist did not comply with the rule [was not complied with]. After the Board [board] has produced evidence of the omission of a finding required by §351.353, the burden shifts to the licensee to establish that the making and recording of the findings was not possible.

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 May 15, 2023.

TRD-202301778

Janice McCoy

Executive Director

Texas Optometry Board

Earliest possible date of adoption: June 25, 2023

For further information, please call: (512) 305-8500



22 TAC §279.3

The Texas Optometry Board proposes amendments to 22 TAC Chapter 279, §279.3 - Spectacle Examination.

The rules in Chapter 279 were reviewed as a result of the Board's general rule review under Texas Government Code §2001.039. Notice of the review was published in the June 10, 2022, issue of the *Texas Register* (47 TexReg 3487). No comments were received regarding the Board's notice of review.

The Board has determined that there continues to be a need for the rules in Chapter 279. The Board has also determined that changes to §279.3 as currently in effect are necessary.

The Board initially proposed amendments in the November 25, 2022, issue of the *Texas Register* (47 TexReg 7847), but officially withdrew those rules on April 28, 2023 (published in the May 12,

2023, issue of the *Texas Register*). At the April 28, 2023, Board meeting the Board adopted a new proposal as follows.

The amendment requires the optometrist or therapeutic optometrist to "Examine In-Person" instead of personally make certain findings during an initial visit. It states that the findings must be made unless prohibited by the patient's unique condition instead of "if possible." It requires the optometrist or therapeutic optometrist to personally notate why it is not possible to record the required findings.

It clarifies that for discipline purposes, the charges must state the specific instances in which it is alleged that the optometrist or therapeutic optometrist did not comply with the rule.

Finally, the amendment makes non-substantive capitalization changes to ensure consistency across the Board's rules.

Janice McCoy, Executive Director, has determined that for the first five-year period the amended rule is in effect, there will not be fiscal implications for state and local governments as a result of amending this existing rule.

Janice McCoy, Executive Director, has determined that for each of the first five years the amendment is in effect, the public benefit is patient protection to ensure the examination is done accurately and completely.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS ON SMALL BUSINESSES AND RURAL COMMUNITIES: The agency does not find that there will be an adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the amendment. Since the agency has determined that the amendment to the rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, are not required.

ENVIRONMENT AND TAKINGS IMPACT ASSESSMENT: The agency has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code §2001.0225. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. The agency has determined that the proposed amendment 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.

GOVERNMENT GROWTH IMPACT STATEMENT: During the first five years that the amended rule will be in effect, it is anticipated that the amendment will not create or eliminate a government program as no program changes are proposed. Further, implementation of the amended rule will not require the creation of a new employee position or the elimination of an existing employee position; will not increase or decrease future legislative appropriations to the agency; will not increase or decrease fees paid to the agency; does not impact the number of individuals subject to the rule's applicability; does not positively or adversely impact the state's economy. The amendment does not create a new regulation nor does it expand, limit, or repeal an existing regulation.

PUBLIC COMMENTS: Comments on the amended rule may be submitted electronically to: janice.mccoy@tob.texas.gov or in writing to Janice McCoy, Executive Director, Texas Optometry Board, 1801 N. Congress, Suite 9.300, Austin, Texas 78701.

The deadline for furnishing comments is thirty days after publication in the *Texas Register*.

Amendments to §279.3 - Spectacle Examination are being proposed under the Texas Optometry Act, Texas Occupations Code, §351.151 and §351.353.

No other sections are affected by the amendments.

§279.3. *Spectacle Examination.*

(a) The optometrist or therapeutic optometrist shall, in the initial examination of the patient for whom ophthalmic lenses are prescribed:

(1) Examine in-person [Personally make] and record, unless prohibited by the patient's unique condition [if possible], the following findings of the conditions of the patient as required by §351.353 of the Act:

(A) biomicroscopy examination (lids, cornea, sclera, etc.), using a binocular microscope;

(B) internal ophthalmoscopic examination (media, fundus, etc.), using an ophthalmoscope or biomicroscope with fundus condensing lenses; videos and photographs may be used only for documentation and consultation purposes but do not fulfill the internal ophthalmoscopic examination requirement; and

(C) subjective findings:[-] far point and near point:[-]

(2) Either personally make and record or authorize an assistant present in the same office with the optometrist or therapeutic optometrist to make and record the following findings required by §351.353 of the Act. The authorization for assistants to make and record the following findings does not relieve the optometrist or therapeutic optometrist of professional responsibility for the proper examination and recording of each finding required by §351.353 of the Act:

(A) case history (ocular, physical, occupational, and other pertinent information);

(B) visual acuity;

(C) static retinoscopy O.D., O.S., or autorefractor;

(D) assessment of binocular function;

(E) amplitude or range of accommodation;

(F) tonometry; and

(G) angle of vision:[-] to right and to left; and[-]

(3) Personally notate in the patient's record the reasons why it is not possible to make and record the findings required in this section.

(b) The willful or repeated failure or refusal of an optometrist or therapeutic optometrist to comply with any of the requirements in the Act, §351.353 and §351.359, shall be considered by the Board [board] to constitute prima facie evidence that the licensee is unfit or incompetent by reason of negligence within the meaning of the Act, §351.501(a)(2), and shall be sufficient ground for the filing of charges to cancel, revoke, or suspend the license. The charges shall state the specific instances in which it is alleged that optometrist or therapeutic optometrist did not comply with the rule [was not complied with]. After the Board [board] has produced evidence of the omission of a finding required by §351.353, the burden shifts to the licensee to establish that the making and recording of the findings was not possible.

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 May 15, 2023.

TRD-202301779

Janice McCoy

Executive Director

Texas Optometry Board

Earliest possible date of adoption: June 25, 2023

For further information, please call: (512) 305-8500



TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 181. VITAL STATISTICS

SUBCHAPTER E. DELAYED REGISTRATION

25 TAC §181.62

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), proposes an amendment to 25 TAC §181.62, concerning Documentary Evidence; Requirements and Acceptability.

BACKGROUND AND PURPOSE

The purpose of this amendment is to assist people seeking a delayed registration of birth, despite having contradictory documents regarding parentage. Under the current rule, people are unable to obtain a delayed registration of birth if documents presented to the State Registrar contain contradictory information. An inability to obtain a birth certificate may impact a person's ability to obtain state-issued identification documents, passports, or possibly other governmental benefits. This rule change would assist persons unable to have their birth recorded by requiring that documents not be contradictory on name, date and place of birth, and the identity of one parent. If there are contradictory documents regarding the second parent, the proposed amendment would require that the second parent will not be recorded and the field for that parent remain blank on any birth certificate issued.

The amendment also clarifies the number and types of acceptable documents to submit with a request to record a delayed registration of birth.

SECTION-BY-SECTION SUMMARY

The amendment to §181.62(a)(1)(A) and (B) states the name of the person and the date and place of birth shall be supported by at least two documents, only one of which may be an affidavit of personal knowledge, if the birth occurred at least four years but less than 15 years before the date of the application; or three documents, only one of which may be an affidavit of personal knowledge, if the birth occurred 15 or more years before the date of the application.

The amendment to §181.62(b)(5) states that documents shall not contain contradictory information regarding the person's name, date and place of birth, and the identity of one parent. If documents contain contradictory information regarding a second parent, then no information for the second parent will be recorded or entered on any birth certificate issued.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule does not impose a cost on regulated persons.

PUBLIC BENEFIT AND COSTS

Dr. Manda Hall, Associate Commissioner, has determined that for each year of the first five years the rule is in effect, the public will benefit from having the ability to obtain delayed birth certificates from the State Registrar, without being referred to court, despite having contradictory documents on parentage for one parent.

Donna Sheppard has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because the rule doesn't impose any additional costs on applicants for delayed birth certificates.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247; street address 701 West 51st Street,

Austin, Texas 78751; or emailed to HHSRulesCoordinationOffice@hhs.texas.gov.

To be considered, comments must be submitted no later than 21 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 23R029" 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; Texas Health and Safety Code §191.003, which authorizes rules necessary for the effective administration of Vital Statistics Records; Texas Health and Safety Code §192.022, which authorizes rules for filing applications with the State Registrar for delayed birth certificates; and Texas Health and Safety Code §1001.075, which authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001.

The amendment will implement Texas Government Code Chapter 531 and Texas Health and Safety Code Chapters 191, 192, and 1001.

§181.62. *Documentary Evidence; Requirements and Acceptability.*

(a) To be acceptable for registration:[];

(1) the name of the person at the time of the birth and the date and place of birth entered on a delayed registration of birth shall be supported by at least:

(A) two documents, only one of which may be an affidavit of personal knowledge, if the birth occurred at least four years but less than 15 years before the date of the application; or

(B) three documents, only one of which may be an affidavit of personal knowledge, if the birth occurred 15 or more years before the date of the application; and

(2) [(+) at least one piece of acceptable documentary evidence shall [that will] establish to the satisfaction of the State Registrar the name of at least one parent. [the parent(s);]

[(2) three pieces of acceptable documentary evidence that will establish to the satisfaction of the State Registrar the facts and date of birth as alleged in the application; and]

[(3) facts of parentage shall be supported by at least one document.]

(b) The State Registrar shall determine the acceptability of all documentary evidence submitted.

(1) Documents must be from independent sources and shall be in the form of the original record or a duly certified copy thereof or a signed statement from the custodian of the record or document.

(2) Documents may include but are not limited to:

(A) census records;

- (B) hospital records;
- (C) military records;
- (D) Social Security records;
- (E) school records; or
- (F) other documents as designated by the State Registrar.

(3) For persons 15 years of age or older, all documents submitted in evidence, other than an affidavit of personal knowledge, must be at least five [5] years old.

(4) At least one [1] document submitted in evidence should have been created within the first 10 years of life.

(5) Documents shall not contain [be] contradictory information regarding the person's name, date of birth, and place of birth. The identity of at least one parent must be established by information that does not contradict any other information available to the State Registrar. If documents contain contradictory information regarding a second parent, and the delayed certificate of birth is accepted for registration, then no information for the second parent will be recorded on the certificate.

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 May 10, 2023.

TRD-202301709

Cynthia Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: June 25, 2023

For further information, please call: (512) 776-7646



TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 284. COMPETITIVE AND INTEGRATED EMPLOYMENT INITIATIVE FOR CERTAIN MEDICAID RECIPIENTS

26 TAC §§284.101, 284.103, 284.105, 284.107, 284.109, 284.111

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes new §284.101, concerning Purpose; §284.103, concerning Applicability; §284.105, concerning Uniform Process; §284.107, concerning Strategies to Increase Number of Individuals Receiving Employment Services; §284.109, concerning Referrals to the Texas Workforce Commission; and §284.111 concerning Increasing the Number of Individuals Receiving Employment Services.

BACKGROUND AND PURPOSE

The Community Living Assistance and Support Services (CLASS), Deaf Blind with Multiple Disabilities (DBMD), Home and Community-based Services (HCS), Texas Home Living (TxHmL), and STAR+PLUS Home and Community-based

Services (STAR+PLUS HCBS) programs each provide employment services. Employment assistance assists an individual in locating competitive employment in the community. Supported employment assists an individual in sustaining competitive employment.

The purpose of the proposed rules is to implement Texas Government Code §531.02448, regarding the employment first initiative, added by Senate Bill (S.B.) 50, 87th Legislature, Regular Session, 2021.

To implement S.B. 50, HHSC developed an HHSC Employment First Uniform Assessment Form to use in the CLASS, DBMD, HCS, TxHmL, and STAR+PLUS HCBS programs to determine an individual's employment goals and the employment opportunities and employment services available to the individual in the individual's program. The proposed rules require the entity responsible for developing an individual's person-centered plan to determine an individual's desire to work. The individual's response will need to be documented in the individual's person-centered service plan. When the individual indicates a desire to work, the responsible entity will complete the HHSC Employment First Uniform Assessment Form at the time the plan is developed, annual renewals, or revisions.

After completing the HHSC Employment First Uniform Assessment Form, if an individual's person-centered service plan does not include employment services through the program in which the individual is enrolled, the proposed rules require an individual's case manager, service coordinator, or managed care organization (MCO) to refer the individual to the Texas Workforce Commission (TWC) for employment services available through the TWC.

SECTION-BY-SECTION SUMMARY

Proposed new §284.101 describes the purpose of new Chapter 284. The proposed rule establishes that the rules in Chapter 284 must be read in conjunction with the rules and policies related to the Medicaid waiver program listed in proposed §284.103 in which an individual is enrolled.

Proposed new §284.103 lists the HHSC §1915(c) and §1115 Medicaid programs to which new Chapter 284 applies.

Proposed new §284.105 covers the steps a case manager, service coordinator, or MCO must follow if an individual's service planning team records the individual's desire to work, during completion of the Employment First Uniform Assessment Form. The proposed rule identifies reasons to use the HHSC Employment First Uniform Assessment Form and instances under which an individual's service planning team must utilize the individual's employment goals and the employment services to develop an individual's person-centered service plan during enrollment, annual renewals, and revisions.

Proposed new §284.107 describes the strategies HHSC will utilize to increase the number of individuals receiving employment services from the TWC or through the program in which an individual is enrolled.

Proposed new §284.109 describes the terms under which an individual's case manager, service coordinator, or MCO must refer the individual to the TWC for employment services available through the TWC.

Proposed new §284.111 specifies HHSC's determination that the number of individuals receiving employments on December 31, 2023, from the TWC or through the program in which the indi-

viduals are enrolled will be at least five percent greater than the number of individuals receiving employment services on December 31, 2022.

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, there will not be a fiscal impact to state government.

Trey Wood has also determined that for each year of the first five years that the rules will be in effect, the proposed rules may result in an increase in cost to local intellectual and developmental disability authorities (LIDDAs) who are local governments. The increased cost could result from the requirement for LIDDA service coordinators, during a service planning meeting, to complete the Employment First Uniform Assessment Form. Completing the form may require additional time spent by the service coordinators during a service planning team meeting for each individual that expresses a desire to work. However, HHSC is unable to estimate any additional costs LIDDAs may incur.

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

Trey Wood has also determined that the proposed rules could have an adverse economic effect on waiver program providers who are small businesses or micro-businesses in that there will be a cost to comply. However, HHSC does not have the data to estimate how many of the approximately 804 waiver program providers are small businesses or micro businesses. No rural communities contract with HHSC to provide services in these waiver programs, and MCOs are not considered small business or micro-businesses.

HHSC determined alternative methods to achieve the purpose of the proposed rules for small businesses and micro-businesses would not be consistent with ensuring the health and safety of individuals receiving services in the CLASS, DBMD, HCS, TxHmL, and STAR+PLUS HCBS waiver programs.

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 are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

PUBLIC BENEFIT AND COSTS

Stephanie Stephens, State Medicaid Director, has determined that for each year of the first five years the rules are in effect, the public benefit will be a standardized and uniform assessment questionnaire designed to improve access to employment services within the home and community-based waiver programs as well as a projected increase in the number of individuals who elect to participate in the workforce.

Trey Wood has also determined that for the first five years the rules are in effect, the proposed rules could result in an increase in costs to LIDDAs; CLASS, DBMD, HCS, and TxHmL program providers; and MCOs for the STAR+PLUS HCBS Program due to the additional time it will take to complete the Employment First Uniform Assessment Form during a service planning team meeting after an individual expresses a desire to work. After completing the Employment First Uniform Assessment Form, additional time will be required to develop, revise, or renew an individual's person-centered service plan or to refer the individual to TWC for employment services if the individual requests to receive or is receiving employment services. However, HHSC is unable to estimate any additional costs they may incur.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 701 W. 51st Street, Austin, Texas 78751; or emailed to 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 22R102" in the subject line.

STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules as necessary to carry out the commission's duties; and Texas Human Resources Code §32.021(c) and Texas Government Code §531.021(a), which authorize HHSC to administer the federal medical assistance (Medicaid) program.

The new sections are specifically authorized by and affect Texas Government Code §531.02448.

§284.101. Purpose.

(a) The purpose of this chapter is to implement Texas Government Code §531.02448.

(b) The rules in this chapter must be read in conjunction with the rules and policies related to the Medicaid programs listed in §284.103 of this chapter (relating to Applicability) in which an individual is enrolled.

§284.103. Applicability.

This chapter applies to an individual receiving services under the following Medicaid programs authorized by Section 1915(c) or Section 1115 of the Social Security Act:

- (1) the Home and Community-based Services (HCS) Program;
- (2) the Texas Home Living (TxHmL) Program;
- (3) the Deaf Blind with Multiple Disabilities (DBMD) Program;
- (4) the Community Living Assistance and Support Services (CLASS) Program; and
- (5) the STAR+PLUS Home and Community-Based Services program.

§284.105. Uniform Process.

(a) An individual's service planning team must determine during the person-centered planning process whether an individual desires to work and if so, the individual's program provider's case manager, local intellectual and developmental disability authority service coordinator, or managed care organization (MCO) must:

- (1) document the individual's desire to work on the individual's person-centered service plan; and
- (2) complete the HHSC Employment First Uniform Assessment Form available on the HHSC website to determine:
 - (A) the individual's employment goals; and
 - (B) the employment opportunities and employment services available to the individual through the program in which the individual is enrolled.

(b) An individual's service planning team must use the individual's employment goals, employment opportunities, and the employment services chosen by the individual to develop the individual's person-centered service plan.

(c) An individual's program provider's case manager, local intellectual and developmental disability authority service coordinator, or MCO must ensure that the requirements in subsections (a) and (b) of this section are followed when the individual's service planning team meets to:

- (1) develop the individual's person-centered service plan upon:
 - (A) initial enrollment; and
 - (B) for annual renewals; and
- (2) revise the individual's person-centered service plan if the individual expresses a desire to work and the individual's person-centered service plan does not include an employment service.

§284.107. Strategies to Increase Number of Individuals Receiving Employment Services.

The Texas Health and Human Services Commission (HHSC) utilizes the following strategies to increase the number of individuals receiving

employment services from the Texas Workforce Commission (TWC) or through the waiver program in which an individual is enrolled:

- (1) use of the HHSC Employment First Uniform Assessment Form identified in §284.105(a)(2) of this chapter (relating to Uniform Process);
- (2) maintain a memorandum of understanding between HHSC and TWC to enable data sharing between those agencies in order to measure the number of individuals utilizing employment services;
- (3) implement an employment-first policy jointly adopted by HHSC, the Texas Education Agency (TEA), and the TWC in accordance with Texas Government Code §531.02447(b); and
- (4) implement additional strategies as outlined in the Promoting Independence Plan, which is HHSC's plan for implementing its obligation to provide people with disabilities opportunities to live, work, and be served in integrated settings.

§284.109. Referrals to the Texas Workforce Commission.

After completing the HHSC Employment First Uniform Assessment Form, as described in §284.105(a)(2) of this chapter (relating to Uniform Process), if an individual's person-centered service plan does not include employment services through the waiver program in which the individual is enrolled, the individual's program provider's case manager, local intellectual and developmental disability authority service coordinator, or managed care organization must refer the individual to the Texas Workforce Commission (TWC) for employment services available through the TWC.

§284.111. Increasing the Number of Individuals Receiving Employment Services.

The Texas Health and Human Services Commission will ensure that the number of individuals receiving employment services from the Texas Workforce Commission or through the programs in which the individuals are enrolled on December 31, 2023, is at least 5% greater than the number of individuals receiving employment services on December 31, 2022.

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 May 8, 2023.

TRD-202301663

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: June 25, 2023

For further information, please call: (512) 438-4224



CHAPTER 745. LICENSING

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes new §§745.8301, 745.8303, 745.8305, 745.8307, 745.8309, 745.8311, 745.8313, 745.8315, 745.8317, 745.8319, and 745.8321; and repeals of §§745.8301, 745.8303, 745.8305, 745.8307, 745.8309, 745.8311, 745.8313, 745.8315, 745.8317, and 745.8319 in Title 26, Texas Administrative Code (TAC), Chapter 745, Subchapter J, Waivers and Variances for Minimum Standards.

BACKGROUND AND PURPOSE

The proposal is necessary to align 26 TAC Chapter 745, Subchapter J, with 42 United States Code §671(a)(10) so that HHSC Child Care Regulation (CCR) may only approve a waiver request for a kinship foster home.

The proposal is also necessary to align 26 TAC Chapter 745, Subchapter J, with current practices and update the subchapter as needed for clarity.

SECTION-BY-SECTION SUMMARY

Proposed new §745.8301 provides terms and definitions needed to understand the subchapter. The proposed rule has the content from repealed §745.8303. Additional content includes the terms "Foster family home," "Foster parent," and "Kinship foster home" and their definitions.

Proposed new §745.8303 clarifies that a minimum standard is ineligible for a waiver or variance if the standard is required by state or federal law. The proposed rule incorporates relevant content from repealed §745.8307.

Proposed new §745.8305 covers how an operation must request a waiver or variance. The proposed rule (1) incorporates the content from repealed §745.8305 and clarifies what an operation must submit in writing to request a waiver or variance; (2) clarifies that a waiver or variance request may only be for one operation and one minimum standard number or subsection; and (3) clarifies that if a child-placing agency is requesting a waiver or variance for a minimum standard related to foster care, the request can be for only one foster home.

Proposed new §745.8307 indicates how long CCR has to process a request for a waiver or variance. The proposed rule (1) incorporates the content from repealed §745.8309; and (2) clarifies CCR's procedures for processing a waiver or variance and how long the processing takes, including when CCR will notify the requestor of the final decision.

Proposed new §745.8309 describes when a waiver or variance expires and what must happen before it expires. The proposed rule (1) incorporates the content from repealed §745.8311; (2) adds timeframes for requesting a new waiver or variance prior to the expiration date of the current one; and (3) clarifies that an operation must comply with the minimum standard at the time a waiver or variance expires, even if a new request relating to that standard is pending CCR's review.

Proposed new §745.8311 clarifies what conditions CCR may place on an approved waiver or variance. The proposed rule (1) incorporates the content from repealed §745.8313; (2) provides that CCR may place any condition on an approved waiver or variance; and (3) clarifies that the operation must comply with each condition while the waiver or variance is in place.

Proposed new §745.8313 lists the factors that CCR considers when deciding whether to grant a waiver or variance. The proposed rule (1) incorporates relevant content from repealed §745.8307; (2) adds whether the minimum standard is ineligible for a waiver or variance described in proposed new §745.8303 as a factor; (3) clarifies that the factor for compliance history includes past and present enforcement actions; (4) adds the operation's permit status as a factor; (4) adds whether the operation is on heightened monitoring as a factor; and (5) adds a reference to the additional considerations for foster homes in proposed new §745.8315 as a factor.

Proposed new §745.8315 describes factors, in addition to those in §745.8313, that CCR considers when deciding whether to

grant a waiver or variance for a foster home. The proposed rule adds the compliance history of the foster home as a factor when the request is associated with a foster home. The proposed rule also adds any limitations in state or federal law as a factor, including (1) only granting a waiver for a kinship foster home; and (2) considering certain limitations to increasing the maximum number of foster children cared for by a foster home.

Proposed new §745.8317 provides the factors that CCR considers when determining the expiration date and conditions are the same as the factors in proposed new §745.8313.

Proposed new §745.8319 (1) describes when CCR can amend or revoke a waiver or variance; and (2) provides a cross-reference to proposed new §745.8321. The proposed rule incorporates content from repealed §745.8301 that explains a waiver or variance is not an entitlement and most of the content from repealed §745.8317.

Proposed new §745.8321 describes what an operation may do if it disagrees with CCR's decision related to a waiver or variance. Specifically, the rule provides procedures on how the operation may dispute the decision, and what the operation must do to be in compliance while disputing the decision. The proposed rule incorporates some of the content from repealed §745.8315 and §745.8319.

The proposed repeal of §§745.8301, 745.8303, 745.8305, 745.8307, 745.8309, 745.8311, 745.8313, 745.8315, 745.8317, and 745.8319 accommodates the new rules being proposed and removes content no longer needed because the new rules incorporate most of the repealed content.

FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for the first year of the first five years that the rules will be in effect, there will be an estimated additional cost to state government as a result of enforcing or administering the rules as proposed. Enforcing or administering the rules does not have foreseeable implications relating to costs or revenues of local governments.

The effect on state government for each year of the first five years the proposed rules are in effect is an estimated cost of \$24,468 in fiscal year (FY) 2024, \$0 in FY 2025, \$0 in FY 2026, \$0 in FY 2027, and \$0 in FY 2028.

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

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

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 (1) are necessary to protect the health, safety, and welfare of the residents of Texas; (2) do not impose a cost on regulated persons; and (3) are necessary to comply with federal law.

PUBLIC BENEFIT AND COSTS

Rachel Ashworth-Mazerolle, Associate Commissioner for Child Care Regulation, has determined that for each year of the first five years the rule is in effect the public benefit will be (1) increased compliance with statutory requirements; and (2) more clarity for stakeholders regarding the requirements and procedures for waivers and variances.

Trey Wood has also determined that for the first five years the rules are in effect, persons who are required to comply with the proposed rules will not incur economic costs.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Ryan Malsbary by email at Ryan.Malsbary@hhs.texas.gov.

Written comments on the proposal may be submitted to Ryan Malsbary, Rules Writer, Child Care Regulation, Health and Human Services Commission, E-550, P.O. Box 149030, Austin, Texas 78714-9030; or by email to CCRRules@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 22R113" in the subject line.

SUBCHAPTER J. WAIVERS AND VARIANCES FOR MINIMUM STANDARDS

26 TAC §§745.8301, 745.8303, 745.8305, 745.8307, 745.8309, 745.8311, 745.8313, 745.8315, 745.8317, 745.8319

STATUTORY AUTHORITY

The repealed rules are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, Texas Human Resources Code §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The repealed rules affect Texas Government Code §531.0055 and Texas Human Resources Code §42.042 and §42.048.

§745.8301. *What if I cannot comply with a specific minimum standard?*

§745.8303. *What is the difference between a waiver and a variance?*

§745.8305. *How do I request a waiver or variance?*

§745.8307. *How does Licensing make the decision to grant or deny my waiver or variance request?*

§745.8309. *Who makes the decision to grant or deny my waiver or variance request?*

§745.8311. *Does a waiver or variance expire?*

§745.8313. *Is a waiver or variance unconditional?*

§745.8315. *What if I disagree with the time limit or conditions that Licensing places on my waiver or variance?*

§745.8317. *Can Licensing amend or revoke a waiver or variance, including its conditions?*

§745.8319. *What can I do if Licensing denies or revokes my waiver or variance?*

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 May 11, 2023.

TRD-202301726

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: June 25, 2023

For further information, please call: (512) 438-3269



26 TAC §§745.8301, 745.8303, 745.8305, 745.8307, 745.8309, 745.8311, 745.8313, 745.8315, 745.8317, 745.8319, 745.8321

STATUTORY AUTHORITY

The new rules are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, Texas Human Resources Code §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The repealed rules affect Texas Government Code §531.0055 and Texas Human Resources Code §42.042 and §42.048.

§745.8301. What words must I know to understand this subchapter?

These words have the following meanings in this subchapter:

(1) Foster family home--A home that is the primary residence of the foster parent or parents and provides care to six or fewer children or young adults, under the regulation of a child-placing agency. Also referred to as "foster home."

(2) Foster parent--A person verified to provide child care services in the foster home.

(3) Kinship foster home--A foster family home with a foster parent or parents who:

(A) Is related to a foster child by consanguinity or affinity; or

(B) Has a longstanding and significant relationship with the foster child before the child is placed with the foster parent.

(4) Waiver--A decision by Licensing that waives an operation's compliance with a minimum standard if the economic impact of compliance with that standard is great enough to make compliance impractical.

(5) Variance--A decision by Licensing that there is good and just cause for an operation to meet the purpose of a minimum standard in a different way.

§745.8303. What minimum standards are ineligible for a waiver or variance?

A minimum standard is ineligible for a waiver or variance if the minimum standard is required by state or federal law.

§745.8305. How do I request a waiver or variance?

(a) You must request a waiver or variance in writing by submitting a completed:

(1) Waiver/Variance Request through your online account and separately providing any supporting documentation to your Licensing representative; or

(2) Form 2937 Child Care Regulation Waiver/Variance Request, or the information required by the form and any supporting documentation, to your Licensing representative.

(b) A waiver or variance request may only be for:

(1) One operation; and

(2) One minimum standard number or subsection.

(c) If a child-placing agency is requesting a waiver or variance for a minimum standard related to foster care, the waiver or variance request can be for only one foster home.

§745.8307. How long does Licensing have to process a request for a waiver or variance?

(a) Within 15 days after Licensing receives a request, the Licensing representative:

(1) Reviews the request and any supporting documentation; and

(2) Makes a recommendation to the supervisor or the supervisor's designee whether to grant the request for a waiver or variance.

(b) Within 15 days after receiving the Licensing representative's recommendation, the supervisor or designee makes the final decision whether to grant the waiver or variance.

(c) Within five days after the supervisor makes the final decision, Licensing staff notifies the requester of the final decision.

§745.8309. When does a waiver or variance expire, and what must I do before it expires?

(a) We grant a waiver or variance for a specific amount of time. The waiver or variance will include its expiration date.

(b) We may issue a waiver or variance for up to three years. If you need a waiver or variance for a time period that exceeds three years, you will have to submit a new request as explained in subsection (c) of this section.

(c) If you will still need a waiver or variance after the waiver or variance expires, you must submit a new request to us according to §745.8305 of this subchapter (relating to How do I request a waiver or variance?):

(1) At least 35 days prior to the expiration; or

(2) As soon as possible, if the expiration date of the waiver or variance is less than 35 days from the date we granted it.

(d) When your waiver or variance expires, you must comply with the minimum standard, even if a new request related to that standard is pending our review.

§745.8311. What conditions may Licensing place on an approved waiver or variance?

(a) We may place any condition on a waiver or variance we determine is necessary to protect the health and safety of children in your care.

(b) You must comply with each condition while the waiver or variance is in effect.

§745.8313. What factors do we consider when deciding whether to grant a waiver or variance?

When deciding whether to grant a waiver or variance, we consider:

(1) Whether the minimum standard is ineligible for a waiver or variance as outlined in §745.8303 of this subchapter (relating to What minimum standards are ineligible for a waiver or variance?);

(2) The risk to children if your operation or foster home does not meet the standard;

(3) The compliance history of your operation, including past and current enforcement actions;

(4) Any waivers or variances currently in effect;

(5) Your permit status, including if you are an applicant or have an initial license;

(6) Whether your operation is on heightened monitoring;

(7) Any economic factors or other constraints affecting your ability to comply;

(8) If the request is for a foster home, the additional factors for a foster home as required by §745.8315 of this subchapter (relating to What additional factors does Licensing consider when deciding whether to grant a waiver or variance for a foster home?); and

(9) Any other factor relevant to your request or operation that we identify.

§745.8315. What additional factors does Licensing consider when deciding whether to grant a waiver or variance for a foster home?

(a) If the request is associated with a foster home, we will consider the compliance history of the foster home.

(b) When processing a request for a waiver or variance related to a foster home, we will consider any limitations in state or federal law, including only granting:

(1) A waiver for a kinship foster home; and

(2) A variance if the request is to increase the maximum number of foster children a foster home may care for under §749.2551 of this title (relating to What is the maximum number of children a foster family home may care for?), and:

(A) The foster home does not meet the exception criteria under §749.2551(b) of this title; or

(B) Granting the variance would not result in the home's:

(i) Foster care capacity exceeding six foster children, unless the foster home meets one of the requirements in paragraph §749.2551(b)(1) of this title; or

(ii) Total capacity exceeding eight children.

§745.8317. What factors do we consider when determining the expiration date and conditions for a waiver or variance?

If we grant you a waiver or variance, we will also use the factors listed in §745.8313 of this subchapter (relating to What factors do we consider when deciding whether to grant a waiver or variance?) when determining the expiration date and what conditions to put on the waiver or variance.

§745.8319. Can Licensing amend or revoke a waiver or variance?

(a) A waiver or variance is not an entitlement. Accordingly, we may amend or revoke your waiver or variance if we determine that:

(1) Your waiver or variance does not address a risk to children that currently exists;

(2) The circumstances that supported the decision to grant the waiver or variance have changed;

(3) You fail to meet a condition; or

(4) Your waiver or variance requires an additional or alternative condition.

(b) If you disagree with an amendment to your waiver or variance, see §745.8321 of this subchapter (relating to What can I do if I disagree with Licensing's decision related to a waiver or variance?).

§745.8321. What can I do if I disagree with Licensing's decision related to a waiver or variance?

(a) When you disagree with the original expiration date or original conditions associated with a waiver or variance that Licensing granted:

Figure: 26 TAC §745.8321(a)

(b) When we deny, revoke, or amend a waiver or variance:

Figure: 26 TAC §745.8321(b)

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

Filed with the Office of the Secretary of State on May 11, 2023.

TRD-202301727

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: June 25, 2023

For further information, please call: (512) 438-3269



CHAPTER 745. LICENSING

SUBCHAPTER N. ADMINISTRATOR'S LICENSING

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §§745.8901, 745.8903, 745.8909, 745.8915, 745.8917, 745.8919, 745.8933, 745.8935, 745.9031, and 745.9037; new §§745.8906, 745.8908, 745.8923, 745.8925, 745.8927, 745.8929, 745.8930, 745.8973, 745.8975, 745.8976, 745.8977, 745.8979, 745.8981, 745.8982, 745.8983, 745.8985, 745.8986, 745.8987, and 745.8989; and repeal of §§745.8991, 745.8994, 745.8999, 745.9007, 745.9019, 745.9021, and 745.9023 in Title 26, Texas Administrative Code, Chapter 745, Licensing, Subchapter N, Administrator's Licensing.

BACKGROUND AND PURPOSE

The rule changes implement Senate Bill (S.B.) 1896, 87th Legislature, Regular Session, 2021, as it relates to SECTION 25 of the bill.

SECTION 25 amended Texas Human Resources Code (HRC) §43.0081(a) to add (a)(2)(A) and (B) to allow HHSC Child Care Regulation (CCR) to issue a provisional child-care administrator's license when an applicant does not meet the one-year supervisory experience requirement provided in HRC §43.004(a)(4), but otherwise qualifies for a license so long as the applicant complies with any additional requirements established in rule. SECTION 25 also amended HRC §43.0081 by adding subsection (e), to allow the executive commissioner to establish in rule any additional requirements that apply when a provisional child-care administrator's license is issued under HRC §43.0081(a)(2)(A).

In addition to implementing SECTION 25 of S.B. 1896, CCR is proposing other changes to Chapter 745, Licensing, Subchapter N, Administrator's Licensing. These changes add administrator conduct expectations, update rules to reflect current business practice, update wording in rule to improve understanding and readability, add a new division, renumber subsection divisions, and reorganize divisions to improve the overall organization of Subchapter N.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §745.8901 (1) updates the wording for improved readability and understanding; (2) adds a citation; and (3) clarifies that a child-care administrator may hold a full child-care administrator's license or a provisional child-care administrator's license.

The proposed amendment to §745.8903 (1) updates the wording for improved readability; and (2) clarifies that a child-placing agency (CPA) administrator must hold a full child-placing agency administrator's license.

Proposed new §745.8906 outlines the types of administrator's licenses that CCR may issue and the requirements the applicant must meet for each license type. The license types include (1) a full child-care administrator's license if an applicant meets requirements in §745.8915; (2) a provisional child-care administrator's license if an applicant meets requirements in proposed new §745.8925 or §745.8913; and (3) a full child-placing agency administrator's license if the applicant meets the requirements in amended §745.8917.

Proposed new §745.8908 explains that a child-care administrator may only serve as an administrator at a general residential

operation with a provisional child-care administrator's license as provided in proposed new §748.532.

The proposed amendment to §745.8909 (1) updates the rule title and content to clarify that a child-placing agency administrator's license must be a full administrator's license; and (2) removes references to operation types that no longer exist.

The proposed amendment to §745.8915 (1) updates the rule title and content to clarify that the rule applies to the qualifications needed for a full child-care administrator's license; (2) updates wording for improved readability; (3) updates the title of a rule reference; and (4) requires a transcript or letter of verification from the appropriate educational institution to be submitted as part of an application so that CCR may determine whether the applicant meets the educational requirements. CCR will evaluate the transcript or letter of verification to determine whether an applicant meets the required course of study. In addition, to determine the authenticity of the transcript or educational institution, CCR may (A) contact the educational institution and (B) conduct other research to assist with our determination.

The proposed amendment to §745.8917 (1) updates the rule title and content to clarify that the rule applies to the qualifications needed for a full child-placing agency administrator's license; (2) updates wording to improve readability; (3) updates the title of a rule reference; and (4) requires a transcript or letter of verification from the appropriate educational institution be submitted as part of an application so that CCR may determine whether the applicant meets the educational requirements. CCR will evaluate the transcript or letter of verification to determine whether an applicant meets the required course of study. In addition, to determine the authenticity of the transcript or educational institution, CCR may (A) contact the educational institution and (B) conduct other research to assist with our determination.

The proposed amendment to §745.8919 (1) updates the rule title and content to clarify that the one year of management or supervisory experience described applies to the qualifications needed for full child-care administrator's license or a full child-placing agency administrator's license; and (2) deletes subsection (d), which allows the Associate Commissioner to grant an exception to the required management or supervisory experience required in this rule, because proposed new §745.8923 will now address this issue.

Proposed new §745.8923 outlines what CCR may do if the applicant does not meet the one year of management or supervisory experience required for a full administrator's license. The rule allows CCR to issue (1) a provisional child-care administrator's license if the applicant meets the management or supervisory experience required in proposed new §745.8925; and (2) a full child-placing agency administrator's license if the Associate Commissioner of CCR determines that the applicant has provided compelling justification that the applicant's experience qualifies the applicant to serve as a licensed administrator of a CPA.

Proposed new §745.8925 outlines the qualifications an applicant must meet for CCR to issue a provisional child-care administrator's license if the applicant does not meet the one year of management or supervisory experience required for a full child-care administrator's license: (1) pass the administrator's examination; (2) pass the required background checks; (3) have either a master's degree in social work or closely related field, or bachelor's degree and two years' experience in a child-care setting; (4) have documented six months of management or supervisory ex-

perience required in proposed new §745.8927; and (5) have not been denied a full child-care administrator's license.

Proposed new §745.8927 outlines the type of management or supervisory experience that is needed to qualify for a provisional child-care administrator's license if the applicant does not meet the experience requirement for a full child-care administrator's license. The rule requires an applicant to submit an employer reference that substantiates the (1) applicant has six months of management or supervisory experience within the last ten years; (2) management or supervisory experience was in a setting working primarily with children; and (3) applicant supervised at least one employee, and supervision responsibilities included assigning duties, hiring, disciplining, approving leave requests, and conducting formal evaluations.

Proposed new §745.8929 sets forth conduct expectations for licensed administrators or applicants when interacting with HHSC. The rule (1) prohibits a licensed administrator or applicant from attempting to interfere with HHSC's ability to conduct agency business; (2) outlines the type of conduct that constitutes interface with agency business, which would include (A) interfering with, coercing, threatening, intimidating, retaliating against, or harassing an HHSC staff member in connection with the person's exercise of HHSC's regulatory duties, or (B) engaging in conduct or directing language at HHSC staff that a reasonable person would find to be harassing, intimidating, or threatening to HHSC staff; and (3) states that HHSC may determine an administrator or applicant has attempted to interfere with HHSC's ability to conduct agency business even if the person's conduct (A) does not occur during in the presence of HHSC staff, or (B) during any regulatory activity.

Proposed new §745.8930 sets forth the responsibilities that a licensed administrator must meet while serving as a licensed administrator at an operation. The rule (1) requires a child-care administrator to carry out responsibilities as outlined in §748.535 while serving as a licensed administrator at a GRO and (2) requires a child-placing agency administrator to carry out responsibilities as outlined in §749.635 while serving as a licensed administrator at a CPA.

The proposed amendment to §745.8933 (1) updates wording to improve understanding; (2) updates a citation and the title of a rule reference; (3) adds a requirement for an applicant to submit an employer reference documenting six months of management or supervisory experience as part of a complete application if an applicant is applying for a provisional child-care administrator's license because the applicant does not meet the one year of management or supervisory experience required for a full child-care administrator's license; and (4) updates numbering of subsections accordingly.

The proposed amendment to §745.8935 updates (1) the rule title to clarify that the rule applies to the requirements to apply for both full child-care administrator's license and a full child-placing agency administrator's license; (2) a citation; (3) wording to improve understanding and readability; and (4) the title of a rule reference.

The proposed new Division 4, Maintaining Your Administrator's License, contains proposed new rules relating to the maintenance of an administrator's license.

Proposed new §745.8973 (1) incorporates into this rule the proposed repealed §745.9021, relating to the required notifications that a licensed administrator must report to CCR and how CCR may use the information reported; and (2) updates wording for

understanding and to more accurately reflect how CCR may use information reported to CCR.

Proposed new §745.8975 (1) incorporates into this rule the proposed repealed §745.8991, relating to how long a full child-care administrator's or child-placing agency administrator's license is valid; and (2) updates language to clarify that the rule applies to full administrator licenses.

Proposed new §745.8976 establishes the maximum time that a provisional child-care administrator's license can remain valid. The proposed new rule states a provisional child-care administrator's license (1) issued under proposed new §745.8925 (A) may remain valid for up to two years from the date of issuance and (B) is not eligible for renewal; and (2) issued under §745.8913(b) (A) may be valid for up to 180 days from the date the permit is issued, and (B) may be extended one time for an additional 180 days.

Proposed new §745.8977 outlines the process for requesting to change the status of a provisional child-care administrator's license to a full child-care administrator's license. This rule (1) allows an individual with a provisional child-care administrator's license to request to change the status to a full child-care administrator's license as soon as the individual meets the minimum management or supervisory experience required for a full license, as long as the request is made before the provisional child-care administrator's license expires; (2) requires to be submitted as part of the request to change the status (A) a completed Renewal of Change of Status form, (B) evidence that the individual has completed the minimum number of continuing education training hours, and (C) an employer reference documenting the one year of management or supervisory experience needed for a full child-care administrator's license; (3) clarifies that CCR will not change the status if there is reason to deny the full administrator's license; and (4) clarifies that if a request to change the status of a provisional child-care administrator's license is received after the date listed on the permit (A) the provisional child-care administrator's license will expire and (B) the individual must reapply for another administrator's license.

Proposed new §745.8979 outlines that a provisional child-care administrator's license will expire if the permit holder is not able to meet the required one year of management or supervisory experience before the expiration date listed on the provisional license.

Proposed new §745.8981 outlines the requirements associated with an expired provisional child-care administrator's license. The rule (1) requires an individual with an expired child-care administrator's license to (A) stop acting and representing him or herself as a licensed child-care administrator and (B) return the provisional child-care administrator's license certificate to CCR; (2) requires the individual to submit a new application if the individual wishes to receive another provisional child-care administrator's license; and (3) clarifies that CCR will not accept a new application if the individual has not returned the expired provisional license certificate.

Proposed new §745.8982 outlines that, when an individual with a provisional child-care administrator's license whose license expires while CCR is processing a request to change the status to a full license, the individual may continue to serve as a child-care administrator if the individual (1) requests to change the status under proposed new §745.8777; (2) submits the request before the expiration date of the provisional license; and (3) is serving

as a child-care administrator for an operation at the time the request is submitted.

Proposed new §745.8983 outlines the number of hours of continuing education training needed to maintain an administrator's license. The rule (1) requires the administrator to complete 15 clock hours of continuing education each year to maintain a full administrator's license, which is consistent with the requirement in §745.8993; and (2) outlines the number of training hours a person with a provisional child-care administrator's license must complete when the person is requesting the license status be changed to a full child-care administrator's license, based on how long the provisional license has been in effect.

Proposed new §745.8985 (1) incorporates the requirements in repealed §745.8994, relating to the criteria training must meet to qualify as continuing education hours required to maintain an administrator's license; and (2) adds that the criteria apply to training required to maintain a provisional child-care administrator's license in addition to a full administrator's license.

Proposed new §745.8986 (1) incorporates the requirements in repealed §745.8999, relating to requirements associated with placing a full administrator's license on inactive status; and (2) clarifies that a provisional child-care administrator's license does not qualify for inactive status.

Proposed new §745.8987 (1) incorporates the requirements in repealed §745.9007, relating to the requirements needed to change the status of an administrator's license from inactive to active; and (2) clarifies that these requirements only apply to full administrator licenses.

Proposed new §745.8989 (1) incorporates the requirements in repealed §745.9019, relating to the process for obtaining an additional copy of an administrator's license; and (2) clarifies that an administrator may only request an additional copy if the original copy is lost or destroyed.

Current Division 4, Renewing Your Administrator License, is renumbered to Division 5 to accommodate proposed new Division 4, Maintaining Your Administrator's License.

The proposed repeal of §745.8991 deletes the rule as no longer necessary because the contents of the rule have been proposed in new §745.8975 with amendments.

The proposed repeal of §745.8994 deletes the rule as no longer necessary because the contents of the rule have been proposed in new §745.8985 with amendments.

The proposed repeal of §745.8999 deletes the rule as no longer necessary because the contents of the rule have been proposed in new §745.8986 with amendments.

The proposed repeal of §745.9007 deletes the rule as no longer necessary because the contents of the rule have been proposed in new §745.8987 with amendments.

The proposed repeal of §745.9019 deletes the rule as no longer necessary because the contents of the rule have been proposed in new §745.8989 with amendments.

The proposed repeal of §745.9021 deletes the rule as no longer necessary because the contents of the rule have been proposed in new §745.8973 with amendments.

The proposed repeal of §745.9023 deletes the rule as no longer necessary because the authority to take actions described in this rule are already covered in Texas Human Resources Code Chapter 43 and in §745.9037 (relating to Under what circum-

stances may Licensing take remedial action against my administrator's license or administrator's license application?).

Current Division 5, Military Members, Military Spouses, and Military Veterans is renumbered to Division 6 to accommodate proposed new Division 4, Maintaining Your Administrator's License.

Current Division 6, Remedial Actions, is renumbered to Division 7 to accommodate proposed new Division 4, Maintaining Your Administrator's License.

The proposed amendment to §745.9031 (1) clarifies the remedial actions in subsection (a) are those that CCR may take against a full administrator's license; and (2) adds subsection (b) to outline that CCR may take remedial action against a provisional child-care administrator's license by denying the administrator a full administrator's license without separately revoking the provisional child-care administrator's license.

The proposed amendment to §745.9037 (1) adds new subsection (b) to clarify that, when CCR denies a full administrator's license for an issue identified in §745.9037(a) for an individual with a provisional child-care administrator's license, (A) the permit is no longer valid and (B) the individual is prohibited from continuing to serve or represent the individual as a licensed administrator pending the outcome of due process; (2) updates renumbering of the remaining subsections accordingly; (3) adds denial of a full child-care administrator's license after issuing a provisional license to the list of circumstances in which an individual must return an administrator's license certificate to CCR; (4) clarifies that CCR may take an action in relation to a rule adopted under Chapter 43, HRC; and (5) updates the language for readability and understanding.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

- (1) the proposed rules will not create or eliminate a government program;
- (2) implementation of the proposed rules will not affect the number of HHSC employee positions;
- (3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;
- (4) the proposed rules will not affect fees paid to HHSC;
- (5) the proposed rules will create new rules;
- (6) the proposed rules will expand existing rules;
- (7) the proposed rules will increase 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 because there is no change to business practices.

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 (1) are necessary to protect the health, safety, and welfare of the residents of Texas; (2) do not impose cost on regulated persons; and (3) are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

PUBLIC BENEFIT AND COSTS

Rachel Ashworth-Mazerolle, Associate Commissioner for Child Care Regulation, has determined that for each year of the first five years the rules are in effect, the public benefit will be (1) improved oversight of general residential operations, including residential treatment centers, because there will be an increase in the number of licensed child-care administrators available for hire; (2) rules that comply with state law; and (3) rules that reflect current business practice.

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 application and examination fee to apply for a provisional child-care administrator's license are the same as one would incur when applying for a full child-care administrator's license.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Questions about the content of this proposal may be directed by email to Jennifer.Ritter@hhs.texas.gov.

Written comments on the proposal may be submitted to Jennifer Ritter, Rules Writer, Child Care Regulation, Texas Health and Human Services Commission, E-550, P.O. Box 149030, Austin, Texas 78714-9030, or by email to CRRRules@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 22R114" in the subject line.

DIVISION 1. OVERVIEW OF ADMINISTRATOR'S LICENSING

26 TAC §§745.8901, 745.8903, 745.8906, 745.8908, 745.8909, 745.8915, 745.8917, 745.8919, 745.8923, 745.8925, 745.8927, 745.8929, 745.8930

STATUTORY AUTHORITY

The amendments and new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies,

and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §43.005 requires HHSC to adopt rules to carry out requirements of HRC Chapter 43.

The amendments and new sections affect Texas Government Code §531.0055 and HRC §43.0081(a)(2) and (e).

§745.8901. *What is a child-care administrator?*

(a) A child-care administrator is a person who:

(1) Supervises and exercises direct control over a general residential ~~[child-care]~~ operation, including ~~[or]~~ a residential treatment center as defined in §745.37(3) of this chapter (relating to What specific types of operations does Licensing regulate?); and

(2) Is responsible for the operation's program ~~[program(s)]~~ and personnel, regardless of whether the person has an ownership interest in the operation or shares duties with anyone.

(b) A child-care administrator may hold a full child-care administrator's license (CCAL) or a provisional CCAL.

§745.8903. *What is a child-placing agency administrator?*

(a) A child-placing agency administrator is a person who:

(1) Supervises and exercises direct control over a child-placing agency, as defined in §745.37(3) ~~[§745.37(3)(D)]~~ of this title (relating to What specific types of operations does Licensing regulate?); and

(2) Is responsible for the agency's program ~~[program(s)]~~ and personnel, regardless of whether the person has an ownership interest in the agency or shares duties with anyone.

(b) A child-placing agency administrator must hold a full CPAAL as required by §745.8909 of this division (relating to When must I have a full Child Placing Agency Administrator's License (CPAAL)?).

§745.8906. *What type of administrator's license may Licensing issue to an applicant?*

We may issue an administrator's license to an applicant as described in the following chart:

Figure: 26 TAC §745.8906

§745.8908. *Where may a person serve as a child-care administrator with a provisional Child-Care Administrator's License (CCAL)?*

A child-care administrator with a provisional CCAL issued under §745.8925 of this division (relating to How do I qualify for a provisional Child-Care Administrator's License (CCAL) if I do not meet the minimum management or supervisory experience required for a full CCAL?) may serve as the administrator at a general residential operation as provided in §748.532 of this title (relating to When can a child-care administrator with a provisional license serve as the administrator for a general residential operation?).

§745.8909. *When must I have a full Child-Placing Agency Administrator's License (CPAAL)?*

You must have a full CPAAL to serve as a child-placing agency administrator. ~~[You do not need this license to serve as the administrator for an independent foster family or group home.]~~

§745.8915. *How do ~~[Do]~~ I qualify for a full Child-Care Administrator's License (CCAL) ~~[CCAL]~~?*

(a) To ~~[You]~~ qualify for a full CCAL₂, ~~[if]~~ you must:

(1) Pass an examination, which is offered by Licensing, that demonstrates competence in the field of child-care administration;

(2) Be in compliance with Subchapter F of this chapter (relating to Background Checks), including not having a criminal history or child abuse or neglect finding that would prohibit you from working in a residential child-care operation;

(3) Have one year of full-time experience in management or supervision of personnel and programs as specified in §745.8919 of this division (relating to What qualifies as one year of experience in management or supervision of personnel and programs required to qualify for a full Child-Care Administrator's (CCAL) or a full Child-Placing Agency Administrator's License (CPAAL)?); and

(4) Have one of the following qualifications:

(A) A master's or doctor of philosophy degree in social work or other area of study; or

(B) A bachelor's degree and two years' full-time experience in residential child care or a closely related field.

(b) In order to determine whether you meet the educational requirements in subsection (a) of this rule, your application must include a transcript or letter of verification from the appropriate educational institution. Our determination will include whether you completed the required course of study. In order to determine the authenticity of the transcript or the educational institution listed on the transcript or letter of verification, we may:

(1) Contact the educational institution; and

(2) Conduct other research to assist our determination.

§745.8917. *How do ~~[Do]~~ I qualify for a full Child-Placing Agency Administrator's License (CPAAL) ~~[CPAAL]~~?*

(a) To ~~[You]~~ qualify for a full CPAAL₂, ~~[if]~~ you must:

(1) Pass an examination, which is offered by Licensing, that demonstrates competence in the field of child-placing administration;

(2) Be in compliance with Subchapter F of this chapter (relating to Background Checks), including not having a criminal history or child abuse or neglect finding that would prohibit you from working in a residential child-care operation;

(3) Have one year of full-time experience in management or supervision of personnel and programs as specified in §745.8919 of this division (relating to What qualifies as one year of experience in management or supervision of personnel and programs required to qualify for a full Child-Care Administrator's (CCAL) or a full Child-Placing Agency Administrator's License (CPAAL)?); and

(4) Have one of the following qualifications:

(A) A master's or doctor of philosophy degree in social work or other area of study; or

(B) A bachelor's degree and two years' full-time experience in residential child care or a closely related field.

(b) In order to determine whether you meet the educational requirements in subsection (a) of this section, your application must include a transcript or letter of verification from the appropriate educational institution. Our determination will include whether you completed the required course of study. In order to determine the authenticity of the transcript or the educational institution listed on the transcript or letter of verification, we may:

(1) Contact the educational institution; and

(2) Conduct other research to assist our determination.

§745.8919. What qualifies as one year of experience in management or supervision of personnel and programs required to qualify for a full Child-Care Administrator's License (CCAL) or a full Child-Placing Agency Administrator's License (CPAAL)?

(a) To qualify for a full CCAL, you must substantiate through an employer reference that:

(1) You have completed the one year of full-time experience in management or supervision of residential child-care personnel and programs within the past 10 years;

(2) Your experience was at a general residential operation, residential treatment center, or in a comparable residential operation in which you worked primarily with children;

(3) If you were not solely responsible for implementing the operation's child-care program, that you shared in that responsibility; and

(4) You supervised at least one member of the child-care personnel and your supervision responsibilities included assigning duties, hiring, disciplining, rewarding, approving leave requests, and conducting formal employee evaluations.

(b) To qualify for a full CPAAL, you must substantiate through an employer reference that:

(1) You have completed the one year of full-time experience in management or supervision of child-placing personnel and programs within the past 10 years;

(2) Your experience was at a child-placing agency;

(3) If you were not solely responsible for implementing the agency's child-placing program, that you shared in that responsibility; and

(4) You supervised at least one member of the child-placing agency personnel and your supervision responsibilities included assigning duties, hiring, disciplining, rewarding, approving leave requests, and conducting formal employee evaluations.

(c) Experience as a foster parent, adoptive parent, or any other type of caregiver or staff person in an agency home does not meet the requirements of subsection [subsections] (a) or (b) of this section.

{(d) The Assistant Commissioner for Child-Care Licensing, or his designee, may grant exceptions to this rule on a case-by-case basis, if an applicant is able to provide compelling justification that his experience qualifies him to act as a licensed administrator.}

§745.8923. What if I do not meet the one year of management or supervisory experience required to qualify for a full Child-Care Administrator's License (CCAL) or a full Child-Placing Agency Administrator's License (CPAAL)?

If you do not meet the minimum management or supervisory experience required to qualify for a full CCAL or a full CPAAL in §745.8919 of this division (relating to What qualifies as one year of experience in management or supervision of personnel and programs required for a full Child-Care Administrator's License (CCAL) or full Child-Placing Agency Administrator's License (CPAAL)?), we may take the actions described in the following chart:

Figure: 26 TAC §745.8923

§745.8925. How do I qualify for a provisional Child-Care Administrator's License (CCAL) if I do not meet the minimum management or supervisory experience required for a full CCAL?

If you do not meet the minimum management or supervisory experience in §745.8919(a) of this division (relating to What qualifies as one

year of experience in management or supervision of personnel and programs required for a full Child-Care Administrator's License (CCAL) or full Child-Placing Agency Administrator's License (CPAAL)?), you will qualify for a provisional CCAL if:

(1) You meet the requirements in §745.8915(1), (2), and (4) of this division (relating to How do I qualify for a full Child-Care Administrator's License (CCAL)?);

(2) You have six months of full-time experience in management or supervision of personnel as specified in §745.8927 of this division (relating to What qualifies as six months of experience in management or supervision of personnel required for a provisional Child-Care Administrator's License (CCAL)?); and

(3) We have not denied you a full CCAL for an issue identified in §745.9037(a) of this subchapter (relating to Under what circumstances may Licensing take remedial action against my administrator's license or administrator's license application?) while you had a provisional CCAL.

§745.8927. What qualifies as six months of experience in management or supervision of personnel required for a provisional Child-Care Administrator's License (CCAL)?

To qualify for a provisional CCAL under §745.8925 of this division (relating to How do I qualify for a provisional Child-Care Administrator's License (CCAL) if I do not meet the minimum management or supervisory experience required for a full CCAL?), you must substantiate through an employer reference that:

(1) You have completed six months of full-time experience in management or supervision of personnel within the last 10 years;

(2) Your experience was in a setting where you worked primarily with children; and

(3) You supervised at least one employee and your supervision responsibilities included assigning duties, hiring, disciplining, rewarding, approving leave requests, and conducting formal employee evaluations.

§745.8929. What conduct requirements must a licensed administrator or a person applying to become a licensed administrator follow in relation to the Texas Health and Human Services Commission (HHSC)?

(a) A licensed administrator or applicant for an administrator's license may not attempt to interfere with HHSC's ability to conduct agency business.

(b) Conduct that constitutes an attempt to interfere with HHSC's ability to conduct agency business includes:

(1) Interfering with, coercing, threatening, intimidating, retaliating against, or harassing an HHSC staff member in connection with the person's exercise of HHSC's regulatory duties; or

(2) Engaging in conduct or directing language at HHSC staff that a reasonable person would find to be harassing, intimidating, or threatening to HHSC staff.

§745.8930. What responsibilities does a licensed administrator have when employed as the administrator for an operation?

(a) While serving as the child-care administrator for a general residential operation, a licensed administrator must carry out the responsibilities outlined in §748.535 of this title (relating to What responsibilities must the child-care administrator have?); or

(b) While serving as the child-placing agency administrator for a child-placing agency, a licensed administrator must carry out the responsibilities outlined in §749.635 of this title (relating to What responsibilities must the child-placing agency administrator have?).

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 May 10, 2023.

TRD-202301711

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: June 25, 2023

For further information, please call: (512) 438-3269



DIVISION 2. SUBMITTING YOUR APPLICATION MATERIALS

26 TAC §745.8933, §745.8935

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 Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §43.005 requires HHSC to adopt rules to carry out requirements of HRC Chapter 43.

The amendments affect Texas Government Code §531.0055 and HRC §43.0081(a)(2) and (e).

§745.8933. *What must a complete application to become a licensed administrator include?*

(a) A complete application to become a licensed administrator must include:

- (1) A completed application form;
- (2) A transcript or letter of verification from the appropriate educational institutions [institution(s)] to substantiate your educational qualifications;
- (3) Two professional references that verify your professional skills, character, and if applicable, two years of full-time work experience;
- (4) An employer reference that documents your one year of management or [of] supervisory experience as described in §745.8919 of this subchapter (relating to What qualifies as one year of experience in management or supervision of personnel and programs required to qualify for a full Child-Care Administrator's License (CCAL) or a full Child-Placing Agency Administrator's License (CPAAL)?);
- (5) An application fee of \$100;
- (6) A notarized affidavit documenting background information on a form provided by Licensing [DFPS]; and
- (7) A completed background check request form and background check fee.

(b) If you are applying for a full CCAL and do not meet the one year of management or supervisory experience required in §745.8915(3) of this subchapter (relating to How do I qualify for a full Child-Care Administrator's License (CCAL)?), you may qualify for a provisional CCAL. To apply for a provisional CCAL, your application must include an employer reference that describes your six months of

management or supervisory experience as required in §745.8927 of this subchapter (relating to What qualifies as six months of experience in management or supervision of personnel required for a provisional Child Care Administrator's License (CCAL)?).

(c) [(b)] A complete application submitted by any applicant who applies for an administrator's license under §745.8913(a) of this subchapter (relating to Can my licensure in another state qualify me for an administrator's license?) must also include, as applicable:

(1) Documentation related to each administrator's license currently held outside of Texas; and

(2) A copy of the regulations pertaining to the current out-of-state administrator's license.

(d) [(e)] A military spouse with a license in another state seeking to act as an administrator must complete the application as required by §745.9030 of this subchapter (relating to When may a military spouse with a license in another state act as an administrator without a license under this subchapter?).

(e) [(d)] Your application is incomplete if you fail to complete any requirement of this section, as applicable, including inadequate documentation of your qualifications.

§745.8935. *How do I apply for both a full Child-Care Administrator's License (CCAL) and a full Child-Placing Agency Administrator's License (CPAAL)?*

(a) To apply for both licenses simultaneously, you must submit:

(1) An application fee for each license; and

(2) All application materials required by §745.8933 of this division [title] (relating to What does a complete application to become a licensed administrator include?), except that you must have two employee references, one verifying your supervisory experience in a general residential operation or a residential treatment center, and the other verifying your supervisory experience in a child-placing agency.

(b) To apply for one of the license types after you already have the other type of license, you must submit an:

(1) Application fee;

(2) Updated complete application form; and

(3) Employee reference verifying your required supervisory experience related to the license for which you are applying, as required by [(see) §745.8919 of this subchapter [title] (relating to What qualifies as one year of experience in management or supervision of personnel and programs required for a full Child-Care Administrator's License (CCAL) or a full Child-Placing Agency Administrator's License (CPAAL)?).

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 May 10, 2023.

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Karen Ray

Chief Counsel

Health and Human Services Commission

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For further information, please call: (512) 438-3269



DIVISION 4. MAINTAINING YOUR ADMINISTRATOR'S LICENSE [RENEWING YOUR ADMINISTRATOR LICENSE]

26 TAC §§745.8973, 745.8975 - 745.8977, 745.8979, 745.8981 - 745.8983, 745.8985 - 745.8987, 745.8989

STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §43.005 requires HHSC to adopt rules to carry out requirements of HRC Chapter 43.

The new sections affect Texas Government Code §531.0055 and HRC §43.0081(a)(2) and (e).

§745.8973. What information must I report to Licensing?

(a) You must notify us in writing within 30 days after:

- (1) A change of your mailing address, place of employment, or business or home phone number;
- (2) A change in your legal name;
- (3) The filing of a criminal case against you;
- (4) A criminal conviction against you, other than a Class C misdemeanor traffic offense;
- (5) The filing of a civil lawsuit against you that relates to your role as a licensed administrator;
- (6) The settlement of or judgment rendered in a civil lawsuit filed against you that relates to your role as a licensed administrator; or
- (7) A complaint against, an investigation involving, or an enforcement or legal action against you that you are aware of related to abuse or neglect or another licensing or certification body regarding health, mental health, or child-care services.

(b) We may use information received under this section when determining whether you performed your duties as an administrator in a negligent manner.

§745.8975. How long is a full Child-Care Administrator's License (CCAL) or a full Child-Placing Agency Administrator's License (CPAAL) valid?

A full CCAL or full CPAAL is valid for two years. For your full license to continue to be valid, you must renew it every two years before the expiration date.

§745.8976. How long is a provisional Child-Care Administrator's License (CCAL) valid?

A provisional CCAL is valid for the timeframe listed in the following chart:

Figure: 26 TAC §745.8976

§745.8977. If I have a provisional Child-Care Administrator's License (CCAL), when and how do I request to change the status of my administrator's license from a provisional CCAL to a full CCAL?

(a) If you have a provisional CCAL issued under §745.8925 of this subchapter (relating to How do I qualify for a provisional Child-Care Administrator's License (CCAL) if I do not meet the minimum management or supervisory experience required for a full CCAL?), you

may request to change the status of your administrator's license from a provisional CCAL to a full CCAL when you meet the one year of management or supervisory experience required in §745.8915(3) of this subchapter (relating to How do I qualify for a full Child-Care Administrator's License (CCAL)?) before your provisional CCAL expires.

(b) To change the status of your child-care administrator's license from provisional CCAL to full CCAL, you must submit to us before the date your provisional CCAL expires:

(1) A completed Form 3014, Administrator License - Renewal or Status Change request;

(2) Evidence that you have completed any required continuing education hours as required in §745.8983(b) of this division (relating to How many hours of continuing education must I complete to maintain my administrator's license?); and

(3) An employer reference that substantiates you meet the one year of management or supervisory experience required for a full CCAL in §745.8919(a) of this subchapter (relating to What qualifies as one year of experience in management or supervision or personnel required for a full Child-Care Administrator's License (CCAL) or Child-Placing Agency Administrator's License (CPAAL)?).

(c) We will not change your status to a full CCAL if we have a reason to deny you a full CCAL for an issue identified in §745.9037(a) of this subchapter (relating to Under what circumstances may Licensing take remedial action against my administrator's license or administrator's license application?).

(d) If you do not submit a request to change the status of your provisional CCAL to a full CCAL before the expiration date listed on your permit:

(1) Your provisional CCAL will expire; and

(2) You must reapply for another administrator's license.

§745.8979. What if I am unable to meet the minimum management or supervisory requirements before my provisional Child-Care Administrator's License (CCAL) expires?

Your provisional CCAL will expire if you are not able to meet the one year of management or supervisory experience required in §745.8915(3) of this subchapter (relating to How do I qualify for a full Child-Care Administrator's License (CCAL)?) to qualify for a full CCAL before the expiration date on your provisional CCAL.

§745.8981. What happens if my provisional Child-Care Administrator's License (CCAL) expires?

(a) If your provisional CCAL expires, you must:

(1) Cease acting as and representing yourself as a licensed child-care administrator; and

(2) Return your provisional CCAL certificate to us.

(b) To be eligible to receive another provisional CCAL, you must submit a new application for a full CCAL and meet the requirements for a complete application in §745.8933 of this subchapter (relating to What must a complete application to become a licensed administrator include?).

(c) We will not accept a new application for a full CCAL from you if you have not returned the expired provisional CCAL certificate to us.

§745.8982. May I continue to serve as a child-care administrator if my provisional Child-Care Administrator's License (CCAL) expires while Licensing processes my request to change the status to a full CCAL?

You may continue to serve as a child-care administrator if your provisional CCAL expires while we process your request to change the status to a full CCAL if you:

(1) Request the change of status under §745.8977 of this division (relating to If I have a provisional Child-Care Administrator's License (CCAL), when and how do I request to change the status of my administrator's license from a provisional CCAL to a full CCAL?);

(2) Submit your request at least 15 days before the expiration date listed on your permit; and

(3) Are serving as a child-care administrator for an operation when you submit your request.

§745.8983. How many hours of continuing education must I complete to maintain my administrator's license?

(a) To maintain your full administrator's license, you must complete 15 clock hours of continuing education each year.

(b) If you have a provisional Child-Care Administrator's License (CCAL) issued under §745.8925 of this subchapter (relating to how do I qualify for a provisional Child-Care Administrator's License (CCAL) if I do not meet the management or supervisory experience required for a full CCAL?), you must complete mandatory continuing education hours by the time you request to change the status of your provisional CCAL to a full CCAL. The number of clock hours of mandatory continuing education varies depending on how long the provisional CCAL has been in effect at the time you request to change the status of your provisional CCAL. The number of clock hours of continuing education required is described in the following chart:

Figure: 26 TAC §745.8983(b)

§745.8985. What training qualifies as continuing education I need to maintain my administrator's license?

(a) To meet the continuing education requirements for your provisional Child-Care Administrator's License or to renew your full administrator's license, you may only count training that:

(1) Is directly relevant to the type of administrator's license that you have; and

(2) You completed as an attendee. You may not count training where you were the presenter.

(b) If you have taken a training more than once during the two-year period since your license was issued or last renewed, you may only count the training one time.

§745.8986. When may I request Licensing to place my full administrator's license on inactive status?

(a) You may request us to put your full administrator's license on inactive status if you are not working as an administrator.

(b) While your full administrator's license is on inactive status:

(1) You may not serve as a licensed administrator;

(2) You are not required to obtain continuing education;

(3) You must renew your administrator's license when the renewal is due; and

(4) We may still take remedial action against your administrator's license as described in §745.9037 of this subchapter (relating to Under what circumstances may Licensing take remedial action against my administrator's license or administrator's license application?).

(c) We may not make a provisional Child-Care Administrator's License inactive.

§745.8987. How do I change my full administrator's license status from inactive to active?

(a) To change the status of your inactive full administrator's license to active when renewing your license, you must submit to us:

(1) A completed Form 3014, Administrator License - Renewal or Status Change request;

(2) A \$50 renewal fee;

(3) If your administrator's license was active at any point during the renewal period, documentation of continuing education training completed; and

(4) A completed background check form and fee.

(b) To change the status of your inactive full administrator's license to active in the middle of a renewal period, you must submit to us a:

(1) Completed Form 3014, Administrator License - Renewal or Status Change request;

(2) \$25 change of status fee; and

(3) Completed background check form and fee.

§745.8989. How do I get a replacement copy of my current administrator's license if the original is lost or destroyed?

(a) You must send us your request in writing along with a \$5 fee for the replacement copy of your current administrator's license. Your request must include:

(1) A statement detailing the loss or destruction of your original license; or

(2) Be accompanied by your damaged license.

(b) Fraud or deceit related to a request for an additional copy of your license may result in remedial action as described in §745.9037 of this subchapter (relating to Under what circumstances may Licensing take remedial action against my administrator's license or administrator's license application?).

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 May 10, 2023.

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Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: June 25, 2023

For further information, please call: (512) 438-3269



DIVISION 4. RENEWING YOUR ADMINISTRATOR LICENSE

26 TAC §§745.8991, 745.8994, 745.8999, 745.9007, 745.9019, 745.9021, 745.9023

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective

Services to HHSC. In addition, HRC §43.005 requires HHSC to adopt rules to carry out requirements of HRC Chapter 43.

The repeals affect Texas Government Code §531.0055 and HRC §43.0081(a)(2) and (e).

§745.8991. *Can my administrator's license remain valid for an indefinite period of time?*

§745.8994. *What training qualifies as continuing education for renewal of my administrator's license?*

§745.8999. *If I want to maintain my administrator's license even though I am not working as an administrator, must I satisfy the continuing education requirements?*

§745.9007. *How do I change my administrator's license status from inactive to active?*

§745.9019. *How do I get an additional copy of my current administrator's license?*

§745.9021. *What information must I report to DFPS?*

§745.9023. *What will happen if I do not make a report as required by §745.9021 of this title (relating to What information must I report to DFPS?)?*

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

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Karen Ray

Chief Counsel

Health and Human Services Commission

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For further information, please call: (512) 438-3269



DIVISION 7. REMEDIAL ACTIONS

26 TAC §745.9031, §745.9037

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 Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §43.005 requires HHSC to adopt rules to carry out requirements of HRC Chapter 43.

The amendments affect Texas Government Code §531.0055 and HRC §43.0081(a)(2) and (e).

§745.9031. *What remedial actions can Licensing take against my administrator's license?*

(a) We may take the following actions against your full administrator's license:

Figure: 26 TAC §745.9031(a)

~~[Figure: 40 TAC §745.9031]~~

(b) If you have a provisional Child-Care Administrator's License (CCAL) we may deny you a full CCAL. We do not have to separately revoke your provisional CCAL.

§745.9037. *Under what circumstances may Licensing take remedial action against my administrator's license or administrator's license application?*

(a) We may take remedial action against your administrator's license or administrator's license application if you:

(1) Violate Chapter 43 of the Human Resources Code (HRC) or a [~~Licensing~~] rule adopted under that chapter [~~or minimum standard~~];

(2) Circumvent or attempt to circumvent the requirements of Chapter 43 of the HRC or a [~~Licensing~~] rule adopted under that chapter;

(3) Engage in fraud or deceit related to the requirements of Chapter 43 of the HRC or a [~~Licensing~~] rule adopted under that chapter;

(4) Provide false or misleading information to us during the application or renewal process for your own or someone else's application or license;

(5) Make a statement about a material fact during the license application or renewal process that you know or should know is false;

(6) Do not comply with Subchapter F of this chapter (relating to Background Checks);

(7) Use or abuse drugs or alcohol in a manner that jeopardizes your ability to function as an administrator;

(8) Perform your duties as an administrator in a negligent manner; or

(9) Engage in conduct that makes you ineligible to:

(A) Receive a permit under HRC §42.072; or

(B) Be employed as a controlling person or serve in that capacity in a facility or family home under HRC §42.062.

(b) If we deny you a full Child-Care Administrator's License (CCAL) for an issue identified in subsection (a) of this section while you have a provisional CCAL, your provisional CCAL is no longer valid. You may not continue serving or representing yourself as a licensed child-care administrator pending the outcome of due process.

(c) [~~(b)~~] If we revoke your administrator's license, you are not eligible to apply for another administrator's license for five years after the date the license was revoked.

(d) [~~(c)~~] If you have both a Child Care Administrator's License and a Child-Placing Agency Administrator's License, remedial action may be taken against both licenses. If we take remedial action against both of your licenses, you will be notified that the action applies to both licenses. In such a case, any administrative review or due process hearing for both licenses may be combined at our discretion.

(e) [~~(d)~~] If we revoke your full administrator's license, deny you a full CCAL after issuing you a provisional CCAL, refuse to renew [~~or do not renew~~] your full administrator's license, or you do not meet the renewal requirements, you must return your license certificate to us.

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 May 10, 2023.

TRD-202301715



CHAPTER 748. MINIMUM STANDARDS FOR GENERAL RESIDENTIAL OPERATIONS

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §748.153 and §748.533; and new §748.154 and §748.532, in Title 26, Texas Administrative Code, Chapter 748, Minimum Standards for General Residential Operations.

BACKGROUND AND PURPOSE

The proposed rule changes implement Senate Bill (S.B.) 1896, 87th Legislature, Regular Session, 2021, as it relates to SECTIONS 22 and 25 of the bill.

SECTION 22 added Texas Human Resources Code (HRC) §42.080 to prohibit HHSC Child Care Regulation (CCR) from issuing a citation or taking any other disciplinary action against a general residential operation for failing to employ a licensed administrator as long the operation or agency has been without a licensed administrator for fewer than 60 days and makes substantial efforts to hire a qualified administrator.

SECTION 25 amended HRC §43.0081(a) to add (a)(2)(A) and (B) to allow CCR to issue a provisional child-care administrator's license when an applicant does not meet the one-year supervisory experience requirement provided in HRC §43.004(a)(4), but otherwise qualifies for a license so long as the applicant complies with any additional requirements established in rule. SECTION 25 also amended HRC §43.0081 by adding subsection (e), to allow the executive commissioner to establish in rule any additional requirements that apply when a provisional child-care administrator's license is issued under HRC §43.0081(a)(2)(A).

SECTION-BY-SECTION SUMMARY

The proposed amendment to §748.153 adds a requirement for a general residential operation to notify CCR as soon as possible, but no later than two days, after a licensed child-care administrator position becomes vacant.

Proposed new §748.154 allows a general residential operation 60 days from the date that a licensed child-care administrator position becomes vacant to obtain a new child-care administrator before CCR will cite for not having an administrator.

Proposed new §748.532 allows a general residential operation to hire an administrator with a provisional child-care administrator's license, as long as the operation is not (1) on a voluntary plan of action; (2) on heightened monitoring; (3) on corrective action; (4) subject to an adverse action; or (5) pending due process for a corrective or an adverse action.

The proposed amendment to §748.533 (1) clarifies that a child-care administrator may serve as an administrator at two residential child-care operations when the second operation is a child-placing agency as long as the administrator holds a full child-placing agency administrator's license; (2) adds subsection (c) to prohibit a child-care administrator with a provisional child-care administrator's license from serving as a licensed administrator at more than one residential child-care operation; and

(3) updates the rule to remove the reference to residential treatment centers (RTCs) since RTCs are a type of general residential operation and are referenced in the rule.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because there is no change to business practices.

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 (1) are necessary to protect the health, safety, and welfare of the residents of Texas; (2) do not impose a cost on regulated persons; and (3) are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

PUBLIC BENEFIT AND COSTS

Rachel Ashworth-Mazerolle, Associate Commissioner for Child Care Regulation, has determined that for each year of the first five years the rules are in effect, the public benefit will be rules that comply with state law.

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 because there is no cost to comply.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Questions about the content of this proposal may be directed by email to Jennifer.Ritter@hhs.texas.gov.

Written comments on the proposal may be submitted to Jennifer Ritter, Rules Writer, Child Care Regulation, Texas Health and Human Services Commission, E-550, P.O. Box 149030, Austin, Texas 78714-9030, or by email to CCRRules@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When faxing or emailing comments, please indicate "Comments on Proposed Rule 22R114" in the subject line.

SUBCHAPTER C. ORGANIZATION AND ADMINISTRATION

DIVISION 2. OPERATIONAL RESPONSIBILITIES AND NOTIFICATIONS

26 TAC §748.153, §748.154

STATUTORY AUTHORITY

The amendment and new section are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC 42, and HRC §43.005 requires HHSC to adopt rules to carry out requirements of HRC Chapter 43.

The amendment and new section affect Texas Government Code §531.0055 and HRC §42.080 and §43.0081(e).

§748.153. What changes must I notify Licensing about regarding my operation?

You must provide written notification to your Licensing Representative:

(1) As soon as possible, but at least 30 days before you:

(A) Change the legal structure of your operation or your governing body, if applicable;

(B) Move your operation to another location as required in §745.435 of this title (relating to What must I do if I relocate my operation after I receive my license or certification?); or

(C) Change your operating hours;

(2) As soon as possible, but at least 15 days before:

(A) You make changes to the policies and procedures required in §748.103(b) of this subchapter [title] (relating to What policies and procedures must I submit for Licensing's approval as part of the application process?);

(B) Changes are made to the operation's floor plan showing the dimensions and the purpose of all rooms and specifying where children and caregivers, if applicable, will sleep; and

(C) Construction begins on adding a swimming pool or other permanent body of water;

(3) As soon as possible, but no later than two days after:

(A) You change your child-care administrator, or your child-care administrator position becomes vacant;

(B) A new individual becomes a controlling person at your operation;

(C) An individual ceases to be a controlling person at your operation; or

(D) There is a significant change in the information we maintain about a controlling person, such as a name change or mailing address change; and

(4) Within 24 hours of the child's placement, if you provide emergency care services and exceed capacity according to §748.155(b) of this division [title] (relating to May I exceed my operation's capacity?).

§748.154. What is my timeframe for filling my child-care administrator position if it becomes vacant while I do not have a back-up administrator to carry out the administrator duties?

If you do not have a back-up child-care administrator when your administrator position becomes vacant, as required in §748.535 of this chapter (relating to What responsibilities must the child-care administrator have?), you have 60 days from the date the position becomes vacant to obtain a licensed child-care administrator before we can cite you for not having an administrator.

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 May 10, 2023.

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Karen Ray

Chief Counsel

Health and Human Services Commission

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For further information, please call: (512) 438-3269



SUBCHAPTER E. PERSONNEL

DIVISION 2. CHILD-CARE ADMINISTRATOR

26 TAC §748.532, §748.533

STATUTORY AUTHORITY

The amendment and new section are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC 42, and HRC §43.005 requires HHSC to adopt rules to carry out requirements of HRC Chapter 43.

The amendment and new section affect Texas Government Code §531.0055 and HRC §42.080 and §43.0081(e).

§748.532. When can a child-care administrator with a provisional license serve as the administrator for a general residential operation?

A child-care administrator with a provisional license may serve as the child-care administrator at a general residential operation if, at the time the administrator is hired, the operation is not:

- (1) On a voluntary plan of action;
- (2) On heightened monitoring;
- (3) On corrective action;
- (4) Subject to an adverse action; or
- (5) Pending due process for a corrective or an adverse action.

§748.533. *Can a child-care administrator be an administrator for two residential child-care operations?*

(a) Except as provided in subsections (b) and (c) [subsection (b)] of this section, a child-care administrator can be an administrator for two residential child-care operations, including a child-placing agency, if:

- (1) Both operations are in good standing with Licensing;
- (2) The size and scope of the operations are manageable by one person, which is clarified in the written professional staffing plans;
- (3) The child-placing agency, if applicable, is not managing more than 25 foster homes;
- (4) The person also holds a valid full Child-Placing Agency Administrator License, if the second operation is a child-placing agency [applicable]; and

(5) The general residential operations [and/or RTCs] are contiguous. A child-placing agency does not have to be contiguous.

(b) An operation that provides emergency care services must designate an employee in the staffing plan that is solely responsible for administering those services. This employee must have the experience and background to be able to perform the child-care administrator responsibilities. See §748.535 of this title (relating to What responsibilities must the child-care administrator have?). A designated employee, other than the child-care administrator for the operation, is not required if the emergency care services program has a capacity of not more than 30 children.

(c) A child-care administrator with a provisional child-care administrator's license may only serve as a licensed administrator at one residential 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.

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Karen Ray

Chief Counsel

Health and Human Services Commission

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For further information, please call: (512) 438-3269



CHAPTER 749. MINIMUM STANDARDS FOR CHILD-PLACING AGENCIES

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to

§749.153 and §749.633; and new §749.154, in Title 26, Texas Administrative Code, Chapter 749, Minimum Standards for Child-Placing Agencies.

BACKGROUND AND PURPOSE

The proposed rule changes implement Senate Bill (S.B.) 1896, 87th Legislature, Regular Session, 2021, as it relates to SECTIONS 22 and 25 of the bill.

SECTION 22 added Texas Human Resources Code (HRC) §42.080 to prohibit HHSC Child Care Regulation (CCR) from issuing a citation or taking any other disciplinary action against a child-placing agency for failing to employ a licensed administrator as long the operation or agency has been without a licensed administrator for fewer than 60 days and makes substantial efforts to hire a qualified administrator.

SECTION 25 amended HRC §43.0081(a) to add (a)(2)(A) and (B) to allow CCR to issue a provisional child-care administrator's license when an applicant does not meet the one-year supervisory experience requirement provided in HRC §43.004(a)(4), but otherwise qualifies for a license so long as the applicant complies with any additional requirements established in rule. SECTION 25 also amended HRC §43.0081 by adding subsection (e), to allow the executive commissioner to establish in rule any additional requirements that apply when a provisional child-care administrator's license is issued under HRC §43.0081(a)(2)(A).

SECTION-BY-SECTION SUMMARY

The proposed amendment to §749.153 requires a child-placing agency to notify CCR as soon as possible, but no later than two days, after a child-placing administrator position becomes vacant.

Proposed new §749.154 allows a child-placing agency 60 days from the date that a licensed administrator position becomes vacant to obtain a new child-placing agency administrator before CCR will cite for not having an administrator.

The proposed amendment to §749.633 clarifies that a child-placing agency administrator may serve as an administrator at two residential child-care operations when the second operation is a general residential operation as long as the administrator also holds a full child-care administrator's license.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

- (1) the proposed rules will not create or eliminate a government program;
- (2) implementation of the proposed rules will not affect the number of HHSC employee positions;
- (3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;
- (4) the proposed rules will not affect fees paid to HHSC;
- (5) the proposed rules will create a new rule;
- (6) the proposed rules will expand existing rules;

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

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because there is no change to business practices.

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 (1) are necessary to protect the health, safety, and welfare of the residents of Texas; (2) do not impose a cost on regulated persons; and (3) are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

PUBLIC BENEFIT AND COSTS

Rachel Ashworth-Mazerolle, Associate Commissioner for Child Care Regulation, has determined that for each year of the first five years the rules are in effect the public benefit will be rules that comply with state law.

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 there is no cost to comply.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Questions about the content of this proposal may be directed by email to Jennifer.Ritter@hhs.texas.gov.

Written comments on the proposal may be submitted to Jennifer Ritter, Rules Writer, Child Care Regulation, Texas Health and Human Services Commission, E-550, P.O. Box 149030, Austin, Texas 78714-9030, or by email to CRRRules@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When faxing or emailing comments, please indicate "Comments on Proposed Rule 22R114" in the subject line.

SUBCHAPTER C. ORGANIZATION AND ADMINISTRATION

DIVISION 2. OPERATIONAL RESPONSIBILITIES AND NOTIFICATIONS

26 TAC §749.153, §749.154

STATUTORY AUTHORITY

The amendment and new section are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42, and HRC §43.005 requires HHSC to adopt rules to carry out requirements of HRC Chapter 43.

The amendment and new section affect Texas Government Code §531.0055 and HRC §42.080 and §43.0081(e).

§749.153. What changes must I notify Licensing about regarding my child-placing agency?

(a) You must provide written notification to your Licensing Representative:

(1) As soon as possible, but at least 30 days before you:

(A) Change the legal structure of your agency or your governing body, if applicable;

(B) Move your agency to another location as required in §745.435 of this title (relating to What must I do if I relocate my operation after I receive my license or certification?);

(C) Open a branch office; or

(D) Change your agency's or a branch office's hours of operation;

(2) As soon as possible, but at least 15 days before you:

(A) Make changes to the plans required in §749.101(3) and (4) of this subchapter [~~chapter~~] (relating to What plans must I submit for Licensing's approval as part of the application process?); or

(B) Make changes to the policies and procedures required in §749.103(b) of this subchapter [~~chapter~~] (relating to What policies and procedures must I submit for Licensing's approval as part of the application process?);

(3) As soon as possible, but no later than two days after:

(A) You change your child-placing agency administrator, or your child-placing agency administrator position becomes vacant;

(B) A new individual becomes a controlling person at your child-placing agency;

(C) An individual ceases to be a controlling person at your child-placing agency; or

(D) There is a significant change in the information we maintain about a controlling person, such as a name change or mailing address change; and

(4) About a foster home's verification status as described in §749.2489 of this chapter (relating to What information must I submit to Licensing about a foster home's verification status?).

(b) You must report to the Texas Abuse and Neglect Hotline as soon as you become aware of any foster or adoptive placements that appear to have been made by someone other than the child's parents or a child-placing agency.

§749.154. What is my timeframe for filling my child-placing agency administrator position if it becomes vacant while I do not have a back-up administrator to carry out the administrator duties?

If you do not have a back-up child-placing agency administrator when your administrator position becomes vacant, to carry out the duties in §749.635 of this chapter (relating to What responsibilities must the child-placing agency administrator have?), you have 60 days from the date the position becomes vacant to obtain a licensed child-care administrator before we can cite you for not having an administrator.

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) 438-3269



SUBCHAPTER E. AGENCY STAFF AND CAREGIVERS

DIVISION 2. CHILD-PLACING AGENCY ADMINISTRATOR

26 TAC §749.633

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 Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42, and HRC §43.005 requires HHSC to adopt rules to carry out requirements of HRC Chapter 43.

The amendment affects Texas Government Code §531.0055 and HRC §42.080 and §43.0081(e).

§749.633. Can a child-placing agency administrator be an administrator for two residential child-care operations?

A child-placing agency administrator can be an administrator for two residential child-care operations, including a general residential operation or residential treatment center, if:

- (1) Both operations are in good standing with Licensing;
- (2) The size and scope of the operations are manageable by one person, which is clarified in the written professional staffing plans;
- (3) The person also holds a valid full Child-Care Administrator License, if the second operation is a general residential operation [applicable]; and
- (4) At least one child-placing agency is managing 25 or fewer foster homes.

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 May 10, 2023.

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Karen Ray

Chief Counsel

Health and Human Services Commission

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For further information, please call: (512) 438-3269



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 463. ADVISORY COMMITTEES, PRACTICE AND PROCEDURES

37 TAC §§463.1, 463.3, 463.5, 463.7, 463.9, 463.11, 463.13, 463.15, 463.17

The Texas Commission on Fire Protection (the commission) proposes new Chapter 463, Advisory Committees, concerning, Practice and Procedures, §463.1 Objectives, §463.3, General, §463.5, Eligibility, §463.7, Terms, §463.9, Meetings, §463.11, Limitation of Powers, §463.13, Testimony, §463.15, Expulsion, §463.17, Abolishment Date.

BACKGROUND AND PURPOSE

The purpose of the proposed new chapter is to establish rules governing the Commission's advisory committees under Texas Government Code §419.908(f). This new chapter and rules implement a Sunset Commission's recommendation and Senate Bill 709 as passed by the 87th legislature.

FISCAL NOTE IMPACT ON STATE AND LOCAL GOVERNMENT

Michael Wisko, Agency Chief, has determined that for each year of the first five-year period, the proposed rules are in effect, there will be no significant fiscal impact to state government or local governments as a result of enforcing or administering these rules as proposed under Texas Government Code §2001.024(a)(4).

PUBLIC BENEFIT AND COST NOTE

Mr. Wisko has also determined under Texas Government Code §2001.024(a)(5) that for each year of the first five years the rules are in effect the public benefit will be accurate, clear, and concise rules.

LOCAL ECONOMY IMPACT STATEMENT

There is no anticipated effect on the local economy for the first five years that the proposed rules are in effect; therefore, no local employment impact statement is required under Texas Government Code §2001.022 and 2001.024(a)(6).

ECONOMIC IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES

Mr. Wisko has determined there will be no impact on rural communities, small businesses, or micro-businesses as a result of implementing these rules. Therefore, no economic impact statement or regulatory flexibility analysis, as provided by Texas Government Code §2006.002, is required.

GOVERNMENT GROWTH IMPACT STATEMENT

The agency has determined under Texas Government Code §2006.0221 that during the first five years the rules are in effect:

- (1) the rules will not create or eliminate a government program;
- (2) the rules will not create or eliminate any existing employee positions;
- (3) the rules will not require an increase or decrease in future legislative appropriation;
- (4) the rules will not result in a decrease in fees paid to the agency;
- (5) the rules will not create a new regulation;
- (6) the rules will not expand a regulation;
- (7) the rules will not increase the number of individuals subject to the rule; and
- (8) the rules are not anticipated to have an adverse impact on the state's economy.

TAKINGS IMPACT ASSESSMENT

The commission has determined that no private real property interests are affected by this proposal and this proposal does not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Texas Government Code §2007.043.

COSTS TO REGULATED PERSONS

The proposed rules do not impose a cost on regulated persons, including another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code §2001.0045.

ENVIRONMENTAL IMPACT STATEMENT

The commission has determined that the proposed rules do not require an environmental impact analysis because the rules are not major environmental rules under Texas Government Code §2001.0225.

REQUEST FOR PUBLIC COMMENT

Comments regarding the proposed rules may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register*, to Michael Wisko, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768 or e-mailed to amanda.khan@tcfp.texas.gov.

STATUTORY AUTHORITY

The new chapter is proposed under Texas Government Code §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties, and may appoint advisory committees to assist the commission in the performance of its duties.

CROSS-REFERENCE TO STATUTE

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

§463.1. Objective.

(a) The Texas Commission on Fire Protection (TCFP) is organized to aid in the protection of the lives and property of Texas citizens through the development and enforcement of recognized professional standards for individuals and the fire service. To achieve the

goals of TCFP, each committee will evaluate, make recommendations, and issue reports to the Commission on any issue in the committee's purview. Committees shall represent TCFP in advocacy for or opposition to projects and issues upon the specific authority of the Commission or such authority as may be clearly granted upon general powers delegated by the Commission to that committee.

(b) The Commission has established a Firefighter Advisory Committee, Curriculum and Testing Committee, and Health and Wellness Committee in compliance with Texas Government Code §2110.008 Duration of Advisory Committees. These committees will continue for four years from the date of creation and may be continued following a vote of the commission, to extend each of the established committees. The commission may create short-term Ad Hoc working groups for specific purposes in accordance with this rule. The committee's purpose, eligibility, terms, and meeting procedures are identified in this rule.

§463.3. General.

(a) The Commission may convene committees that are deemed to be in the best interest of the TCFP and its mission.

(b) All committees shall be subject to and governed by these bylaws.

(c) The approved committee shall elect a member of their committee as the chairperson who may remain in this position for two (2) years before reappointment or until such time as a new person is appointed as the Chairperson.

(d) Committees should be composed of a reasonable odd number of members, with a minimum of nine and a maximum of 15 members.

(e) The committees shall meet at least twice each calendar year at the call of either the committee chairperson or the Commission.

(f) All committees shall be reviewed for relevance by the Commission every odd year and will either be renewed or discontinued.

(g) Committee Chairperson may form ad hoc working groups when in the judgment of the Chair, it will enhance or provide guidance for a specific purpose and time limit/period. The Committee Chairperson may determine working group selection, but membership is limited only to the ad hoc and will disband once the purpose has been met.

(h) Annually each Committee Chairperson will present to the Commission an end-of-year status report.

(i) Meetings to deliberate a test item or information related to a test item do not require an open meeting per Texas Government Code §551.088.

§463.5. Eligibility.

(a) Any person, association, corporation, partnership, or other entity having an interest in the above-recited objectives shall be eligible for membership.

(b) Committee composition should have representatives from each fire protection stakeholder group, with consideration of department size, region, and mission.

(c) Vacant positions will be announced. Interested, qualified candidates may apply for committee appointments. A candidate selection committee may be formed to assist in the application process and may make recommendations for appointments. The list of candidates will then be presented to the Commission during their next meeting for consideration. The Commission will appoint committee members and select alternates at the same time in the event committee members cannot fulfill their tenure and/or replacement members are needed. Terms

shall begin immediately following Commission approval. Interim appointments may be made to complete vacated, unexpired terms.

§463.7. Terms.

Committee members shall be appointed to serve six-year terms of office, with the intent to stagger and ensure continuity of membership from year to year. Committee members serve six-year terms and may serve consecutively; however, after a second six-year term, the member will not be eligible for another term until after a lapse of two years.

§463.9. Meetings.

(a) Committee Chairperson or a designated Committee member when the Chairperson is unavailable, shall conduct all committee meetings.

(b) Committee meetings should be held in Austin, Texas. Committee meetings cannot be held outside of the state of Texas.

(c) Committees shall post meeting times, locations, and agendas with the Secretary of State in accordance with the Open Meetings Act, Texas Government Code Chapter 551. Committees shall keep minutes in accordance with the Open Meetings Act. When feasible, committees may allow members of the public to participate in a meeting from a remote location by videoconference call pursuant to Texas Government Code §551.127(k) to encourage access and participation throughout the state.

(d) Committee Chairpersons may limit discussion times if, in the opinion of the Chairperson, it is warranted. Participants who fail to follow the above rules may be subject to removal from the meeting.

(e) Committees may meet by videoconference calls, but only if they follow requirements of Texas Government Code §551.127. The committee must still have a physical location for the public to attend. The member presiding over the meeting must attend in person, while other members and staff may attend remotely.

§463.11. Limitation of Powers.

No action by any Committee Chairperson or its members shall be binding upon, or constitute an expression of, the policy of TCFP until it has been approved or ratified by the Commission. It shall be the function of the committees to evaluate, make recommendations, and report only to the Commission. Committees shall represent TCFP in advocacy for or opposition to projects and issues upon the specific authority of the Commission or such authority as may be clearly granted upon general powers delegated by the Commission to that committee.

§463.13. Testimony.

Once committee action has been approved by the Commission, testimony and/or presentations may be given and made before stakeholders, governmental agencies, or any other entity as deemed appropriate by the Chairperson of the Commission.

§463.15. Expulsion.

After written notice and a hearing before the Commission, any Committee member may be expelled from a committee for conduct that is unbecoming or prejudicial to the aims or repute of TCFP or expelled for lack of attendance, unless excused, to more than half of the scheduled committee meetings in a calendar year.

§463.17. Abolishment Date.

Any Advisory committee created by the Commission will be abolished after four years from the date of creation unless reestablished by the Commission prior to the abolishment date.

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 May 11, 2023.

TRD-202301722

Mike Wisko

Agency Chief

Texas Commission on Fire Protection

Earliest possible date of adoption: June 25, 2023

For further information, please call: (512) 936-3841



PART 15. TEXAS FORENSIC SCIENCE COMMISSION

CHAPTER 651. DNA, CODIS, FORENSIC ANALYSIS, AND CRIME LABORATORIES

The Texas Forensic Science Commission ("Commission") proposes amendments to 37 Texas Administrative Code §§ 651.5 and 651.203 to change a reference from "SNP" (single-nucleotide polymorphisms) to "massively parallel sequencing" in the categories of analysis for forensic biology/DNA to harmonize the reference with terminology used by the Commission's recognized accrediting bodies. The changes reflect the vote by the Commission at its April 14, 2023 quarterly meeting to change any references to the term "SNP" to "massively parallel sequencing".

Fiscal Note. Leigh M. Tomlin, Associate General Counsel of the Commission, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no fiscal impact to state or local governments as a result of the enforcement or administration of the amendments. The proposed amendment changes a reference from "SNP" (single-nucleotide polymorphisms) to "massively parallel sequencing" in the categories of analysis for forensic biology/DNA to harmonize the reference with terminology used by the Commission's recognized accrediting bodies. The amendments do not impose any costs to state or local governments.

Rural Impact Statement. The Commission expects no adverse economic effect on rural communities as the proposed amendments do not impose any direct costs or fees on municipalities in rural communities. The proposed amendment changes a reference from "SNP" (single-nucleotide polymorphisms) to "massively parallel sequencing" in the categories of analysis for forensic biology/DNA to harmonize the reference with terminology used by the Commission's recognized accrediting bodies.

Public Benefit/Cost Note. Ms. Tomlin has also determined that for each year of the first five years the proposed amendments are in effect, the anticipated public benefit includes providing clarity to crime laboratories and other criminal justice stakeholders in the terms used to references the categories of testing covered by a crime laboratory's scope of testing activities.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. As required by the Government Code § 2006.002(c) and (f), Ms. Tomlin has determined that the proposed amendments, which substitute terminology, will not have an adverse economic effect on any small or micro business because the rule does not impose any economic costs to these businesses.

Takings Impact Assessment. Ms. Tomlin has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right

to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

Government Growth Impact Statement. Ms. Tomlin has determined that for the first five-year period, implementation of the proposed amendments will have no government growth impact as described in Title 34, Part 1, Texas Administrative Code §11.1. Pursuant to the analysis required by Government Code § 2001.221(b): 1) the proposed amendments do not create or eliminate a government program; 2) implementation of the proposed amendments do not require the creation of new employee positions or the elimination of existing employee positions; 3) implementation of the proposed amendments do not increase or decrease future legislative appropriations to the agency; 4) the proposed amendments do not require a fee; 5) the proposed amendments do not create a new regulation; 6) the proposed amendments do not increase the number of individuals subject to regulation; and 7) the proposed amendments have no effect on the state's economy. The amendments do not expand any accreditation or licensing requirement under the Commission's current programs.

Requirement for Rule Increasing Costs to Regulated Persons. Ms. Tomlin has determined that there are no anticipated increased costs to regulated persons as the proposed amendments do not impose any fees or costs.

Request for Public Comment. The Commission invites comments on the proposal from any member of the public. Please submit comments to Leigh M. Tomlin, 1700 North Congress Avenue, Suite 445, Austin, Texas 78701 or leigh@fsc.texas.gov. Comments must be received by June 26, 2023 to be considered by the Commission.

SUBCHAPTER A. ACCREDITATION

37 TAC §651.5

Statutory Authority. The amendments are proposed in accordance with the Commission crime laboratory accreditation authority under (1) Code of Criminal Procedure Article 38.01 § 4-d which directs the Commission to establish an accreditation process for crime laboratories; (2) the Commission's forensic analyst licensing authority under Code of Criminal Procedure Article 38.01 § 4-a, which directs the Commission to establish the qualifications for a forensic analyst license' and (3) the Commission's general rulemaking authority under Article 38.01 § 3-a, which generally directs the Commission to adopt rules necessary to implement Code of Criminal Procedure, Article 38.01.

Cross reference to statute. The proposal affects Tex. Code Crim. Proc. art. 38.01 §§ 4-a and 4-d.

§651.5. *Forensic Disciplines Subject to Commission Accreditation.*

(a) Forensic analysis/recognized accreditation. This section describes a forensic discipline or category of analysis that involves forensic analysis for use in a criminal proceeding and for which accreditation is available from a recognized accrediting body.

(b) By discipline. A crime laboratory may apply for Commission accreditation for one or more of the following disciplines:

(1) Seized Drugs. Categories of analysis may include one or more of the following: qualitative determination, quantitative measurement, weight measurement, and volume measurement;

(2) Toxicology. Categories of analysis may include one or more of the following: qualitative determination and quantitative measurement;

(3) Forensic Biology. Categories of analysis may include one or more of the following: DNA-STR, DNA-YSTR, DNA-Mitochondrial, DNA-massively parallel sequencing [SNP], body fluid identification, relationship testing, microbiology, individual characteristic database, and nucleic acids other than human DNA;

(4) Firearms/Toolmarks. Categories of analysis may include one or more of the following: physical comparison, determination of functionality, length measurement, trigger pull force measurement, qualitative chemical determination, distance determination, ejection pattern determination, product (make/model) determination;

(5) Materials (Trace). Categories of analysis may include one or more of the following: physical determination, chemical determination, physical/chemical comparison, product (make/model) determination, gunshot residue analysis, footwear and tire tread analysis, and fire debris and explosives analysis (qualitative determination); or

(6) Other discipline and its related categories of analysis if accredited by a recognized accrediting body and approved by the Commission.

(c) Cross-disciplines and categories of analysis. A laboratory may choose to assign a particular discipline or category of analysis to a different administrative section or unit in the laboratory than the designation set forth in this subchapter.

(d) If an accreditation for a category of analysis is accompanied by the term 'only' or a similar notation, the Commission will deem the accreditation to exclude other categories of analysis in that discipline.

(e) Accreditation of a confirmation test procedure does not carry automatic accreditation of an associated field, spot, screening, or other presumptive test.

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

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TRD-202301707

Leigh Marie Tomlin

Associate General Counsel

Texas Forensic Science Commission

Earliest possible date of adoption: June 25, 2023

For further information, please call: (512) 936-0661



SUBCHAPTER C. FORENSIC ANALYST LICENSING PROGRAM

37 TAC §651.203

Statutory Authority. The amendments are proposed in accordance with the Commission crime laboratory accreditation authority under (1) Code of Criminal Procedure Article 38.01 § 4-d which directs the Commission to establish an accreditation process for crime laboratories; (2) the Commission's forensic analyst licensing authority under Code of Criminal Procedure Article 38.01 § 4-a, which directs the Commission to establish the qualifications for a forensic analyst license' and (3) the Commission's general rulemaking authority under Article 38.01

§ 3-a, which generally directs the Commission to adopt rules necessary to implement Code of Criminal Procedure, Article 38.01.

Cross reference to statute. The proposal affects Tex. Code Crim. Proc. art. 38.01 §§ 4-a and 4-d.

§651.203. *Forensic Subject to Commission Licensing; Categories of Licensure*

(a) Forensic analysis/recognized accreditation. This section describes the forensic disciplines for which accreditation by an accrediting body recognized by the Commission is required by Article 38.01, Code of Criminal Procedure and for which licensing is therefore also required.

(b) By discipline. An individual may apply to the Commission for a Forensic Analyst License for one or more of the disciplines set forth in this section. The specific requirements for obtaining a license in any of the following disciplines may differ depending upon the categories of analysis within the discipline for which the individual is qualified to perform independent casework as set forth in §651.207 of this subchapter (relating to Forensic Analyst Licensing Requirements Including License Term, Fee and Procedure for Denial of Application and Reconsideration). An individual's license shall designate the category or categories of licensure for which the individual has been approved for independent casework and for which the individual has met the requirements set forth in §651.207 of this subchapter as follows:

(1) Seized Drugs. Categories of analysis may include one or more of the following: qualitative determination, quantitative measurement, weight measurement, and volume measurement; Categories of Licensure: Seized Drugs Analyst; Seized Drugs Technician;

(2) Toxicology. Categories of analysis may include one or more of the following: qualitative determination and quantitative measurement; Categories of Licensure: Toxicology Analyst Alcohol only (Non-interpretive); Toxicology Analyst (General, Non-interpretive); Toxicologist (Interpretive); Toxicology Technician;

(3) Forensic Biology. Categories of analysis may include one or more of the following: DNA-STR, DNA-YSTR, DNA-Mitochondrial, DNA-massively parallel sequencing [SNP], body fluid identification, relationship testing, microbiology, individual characteristic database, and nucleic acids other than human DNA; Categories of Licensure: DNA Analyst; Forensic Biology Screening Analyst; Analyst of Nucleic Acids other than Human DNA; Forensic Biology Technician;

(4) Firearms/Toolmarks. Categories of analysis may include one or more of the following: physical comparison, determination of functionality, length measurement, trigger pull force measurement, qualitative chemical determination, distance determination, ejection pattern determination, product (make/model) determination; Categories of Licensure: Firearms/Toolmarks Analyst; Firearms/Toolmarks Technician;

(5) Materials (Trace). Categories of analysis may include one or more of the following: physical determination, chemical determination, chemical comparison, product (make/model) determination, gunshot residue analysis, footwear and tire tread analysis, and fire debris and explosives analysis (qualitative determination); Categories of Licensure: Materials (Trace) Analyst; Materials (Trace) Technician.

(c) Cross-disciplines. A laboratory may choose to assign a particular discipline or category of analysis to a different administrative section or unit in the laboratory than the designation set forth in this subchapter. Though an individual may perform a category of analysis under a different administrative section or unit in the laboratory,

the individual still shall comply with the requirements for the discipline or category of analysis as outlined in this subchapter.

(d) Analysts and Technicians Performing Forensic Analysis on Behalf of the United States Government. Any forensic analyst or technician who performs forensic analysis on behalf of a publicly funded laboratory or law enforcement entity operating under the authority of the United States Government is deemed licensed to perform forensic analysis in Texas for purposes of this subchapter.

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 May 10, 2023.

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Leigh Marie Tomlin

Associate General Counsel

Texas Forensic Science Commission

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For further information, please call: (512) 936-0661



CHAPTER 651. DNA, CODIS, FORENSIC ANALYSIS, AND CRIME LABORATORIES SUBCHAPTER C. FORENSIC ANALYST LICENSING PROGRAM

37 TAC §651.207, §651.211

The Texas Forensic Science Commission ("Commission") proposes amendments to 37 Texas Administrative Code §§ 651.207 and 651.211 to eliminate the fee for a temporary forensic analyst license. The change reflects a vote taken by the Commission at its April 14, 2023, quarterly meeting to remove the fee for a temporary forensic analyst license. The Commission determined this change is necessary in response to issues raised by law enforcement agencies in criminal cases that cross state boundaries, particularly where the evidence is collected and analyzed in one state and subsequently admitted in a Texas criminal case. In some of these cases, payment of the temporary forensic analyst license fee is impractical for the out-of-state accredited crime laboratory due to delays inherent in government procurement and may present a barrier to facilitating the efficient resolution of the criminal action in Texas.

Fiscal Note. Leigh M. Tomlin, Associate General Counsel of the Commission, has determined that for each year of the first five years the proposed amendments will be in effect, there will be negligible to no fiscal impact to state or local governments as a result of the enforcement or administration of the amendments. The Commission has only issued two temporary licenses at \$100.00 each since the inception of the forensic analyst licensing program in 2019, and the amendments do not impose any costs to state or local governments.

Rural Impact Statement. The Commission expects no adverse economic effect on rural communities as the proposed amendments do not impose any direct costs or fees on municipalities in rural communities. The proposed amendments remove the fee charged for a temporary forensic analyst license.

Public Benefit/Cost Note. Ms. Tomlin has determined that for each year of the first five years the proposed amendments are in effect, the anticipated public benefit is better efficiency in the

resolution of certain state criminal cases by eliminating a temporary forensic analyst license fee that may create a financial barrier in the resolution of certain state criminal cases where the forensic evidence and other factors cross state boundaries and jurisdictions.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. As required by the Government Code § 2006.002(c) and (f), Ms. Tomlin has determined that the proposed amendments will not have an adverse economic effect on any small or micro business because the rule does not impose any economic costs to these businesses. The proposed amendments remove the fee charged for a temporary forensic analyst license.

Takings Impact Assessment. Ms. Tomlin Associate has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043. The proposed amendments remove the fee charged for a temporary forensic analyst license.

Government Growth Impact Statement. Ms. Tomlin has determined that for the first five-year period, implementation of the proposed amendments will have no government growth impact as described in Title 34, Part 1, Texas Administrative Code §11.1. Pursuant to the analysis required by Government Code § 2001.221(b): 1) the proposed amendments do not create or eliminate a government program; 2) implementation of the proposed amendments do not require the creation of new employee positions or the elimination of existing employee positions; 3) implementation of the proposed amendments do not increase or decrease future legislative appropriations to the agency; 4) the proposed amendments do not require a fee; 5) the proposed amendments do not create a new regulation; 6) the proposed amendments do not increase the number of individual's subject to regulation; and 7) the proposed amendments have a negligible effect on the state's economy. The proposed amendments remove the fee charged for a temporary forensic analyst license.

Requirement for Rule Increasing Costs to Regulated Persons. Ms. Tomlin has determined that there are no anticipated increased costs to regulated persons as the proposed amendments do not impose any fees or costs.

The Texas Forensic Science Commission invites comments on the proposal from any member of the public. Please submit comments to Leigh M. Tomlin, 1700 North Congress Avenue, Suite 445, Austin, Texas 78701 or leigh@fsc.texas.gov. Comments must be received by June 26, 2023 to be considered by the Commission.

Statutory Authority. The amendments are made in accordance with the Commission's forensic analyst licensing authority under Code of Criminal Procedure, Art. 38.01 § 4-a(d)(2), which directs the Commission to establish fees for the issuance of a license, and the Commission's general rulemaking authority under Art. 38.01 § 3-a, which directs the Commission to adopt rules necessary to implement Code of Criminal Procedure, Art. 38.01.

Cross-reference to statute. The proposal affects Tex. Code Crim. Proc. Art. 38.01 § 4-a(d)(2).

§651.207. Forensic Analyst Licensing Requirements, Including License Term, Fee and Procedure for Denial of Application and Reconsideration.

(a) Issuance. The Commission may issue an individual's Forensic Analyst License under this section.

(b) Application. Before being issued a Forensic Analyst License, an applicant shall:

(1) demonstrate that he or she meets the definition of Forensic Analyst set forth in this subchapter;

(2) complete and submit to the Commission a current Forensic Analyst License Application form;

(3) pay the required fee(s) as applicable:

(A) Initial Application fee of \$220 for Analysts and \$150 for Technicians/Screeners;

(B) Biennial renewal fee of \$200 for Analysts and \$130 for Technicians/Screeners;

~~(C) Temporary License fee of \$100;~~

~~(C) [(D)] Provisional License fee of \$110 for Analysts and \$75 for Technicians/Screeners;~~

~~(D) [(E)] License Reinstatement fee of \$220;~~

~~(E) [(F)] De Minimis License fee of \$200 per ten (10) licenses;~~

~~(F) [(G)] Uncommon Forensic Analysis License fee of \$200 per ten (10) licenses; and/or~~

~~(G) [(H)] Special Exam Fee of \$50 for General Forensic Analyst Licensing Exam, required only if testing beyond the three initial attempts or voluntarily taking the exam under the Unaccredited Forensic Discipline Exception described in subsection (g)(5)(C) of this section;~~

(4) provide accurate and current address and employment information to the Commission and update the Commission within five (5) business days of any change in address or change of employment. Licensees are required to provide a home address, email address, and employer name and address on an application for a license; and

(5) provide documentation that he or she has satisfied all applicable requirements set forth under this section.

(c) Minimum Education Requirements.

(1) Seized Drugs Analyst. An applicant for a Forensic Analyst License in seized drugs must have a baccalaureate or advanced degree in chemical, physical, biological science, chemical engineering or forensic science from an accredited university.

(2) Seized Drugs Technician. An applicant for a Forensic Analyst License limited to the seized drug technician category must have a minimum of an associate's degree or equivalent.

(3) Toxicology (Toxicology Analyst (Alcohol Only, Non-interpretive), Toxicology Analyst (General, Non-interpretive), Toxicologist (Interpretive)). An applicant for a Forensic Analyst License in toxicology must have a baccalaureate or advanced degree in a chemical, physical, biological science, chemical engineering or forensic science from an accredited university.

(4) Toxicology Technician. An applicant for a Forensic Analyst License limited to the toxicology technician category must have a minimum of an associate's degree or equivalent.

(5) Forensic Biology (DNA Analyst, Forensic Biology Screener, Nucleic Acids other than Human DNA Analyst, Forensic Biology Technician). An applicant for any category of forensic biology license must have a baccalaureate or advanced degree in a chemical, physical, biological science or forensic science from an accredited university.

(6) Firearm/Toolmark Analyst. An applicant for a Forensic Analyst License in firearm/toolmark analysis must have a baccalaureate or advanced degree in a chemical, physical, biological science, engineering or forensic science from an accredited university.

(7) Firearm/Toolmark Technician. An applicant for a Forensic Analyst License limited to firearm/toolmark technician must have a minimum of a high school diploma or equivalent degree.

(8) Materials (Trace) Analyst. An applicant for a Forensic Analyst License in materials (trace) must have a baccalaureate or advanced degree in a chemical, physical, biological science, chemical engineering or forensic science from an accredited university. A Materials (Trace) Analyst performing only impression evidence analyses must have a minimum of a high school diploma or equivalent degree.

(9) Materials (Trace) Technician. An applicant for a Forensic Analyst License limited to materials (trace) technician must have a minimum of a high school diploma or equivalent degree.

(10) Foreign/Non-U.S. degrees. The Commission shall recognize equivalent foreign, non-U.S. baccalaureate or advanced degrees. The Commission reserves the right to charge licensees a reasonable fee for credential evaluation services to assess how a particular foreign degree compares to a similar degree in the United States. The Commission may accept a previously obtained credential evaluation report from an applicant or licensee in fulfillment of the degree comparison assessment.

(11) If an applicant does not meet the minimum education qualifications outlined in this section, the procedure in subsection (f) or (j) of this section applies.

(d) Specific Coursework Requirements.

(1) Seized Drugs Analyst. An applicant for a Forensic Analyst License in seized drugs must have a minimum of sixteen-semester credit hours (or equivalent) in college-level chemistry coursework above general coursework from an accredited university. In addition to the chemistry coursework, an applicant must also have a three-semester credit hour (or equivalent) college-level statistics course from an accredited university or a program approved by the Commission.

(2) Toxicology. An applicant for a Forensic Analyst License in toxicology must fulfill required courses as appropriate to the analyst's role and training program as described in the categories below:

(A) Toxicology Analyst (Alcohol Only, Non-interpretive). A toxicology analyst who conducts, directs or reviews the alcohol analysis of forensic toxicology samples, evaluates data, reaches conclusions and may sign a report for court or investigative purposes, but does not provide interpretive opinions regarding human performance must complete a minimum of sixteen-semester credit hours (or equivalent) in college-level chemistry coursework above general coursework from an accredited university.

(B) Toxicology Analyst (General, Non-interpretive). A toxicology analyst who conducts, directs or reviews the analysis of forensic toxicology samples, evaluates data, reaches conclusions and may sign a report for court or investigative purposes, but does not provide interpretive opinions regarding human performance must

complete a minimum of sixteen-semester credit hours (or equivalent) in college-level chemistry coursework above general coursework that includes organic chemistry and two three-semester credit hour (or equivalent) college-level courses in analytical chemistry and/or interpretive science courses that may include Analytical Chemistry, Chemical Informatics, Instrumental Analysis, Mass Spectrometry, Quantitative Analysis, Separation Science, Spectroscopic Analysis, Biochemistry, Drug Metabolism, Forensic Toxicology, Medicinal Chemistry, Pharmacology, Physiology, or Toxicology.

(C) Toxicologist (Interpretive). A toxicologist who provides interpretive opinions regarding human performance related to the results of toxicological tests (alcohol and general) for court or investigative purposes must complete a minimum of sixteen-semester credit hours (or equivalent) in college-level chemistry coursework above general coursework that includes organic chemistry, one three-semester credit hour (or equivalent) course in college-level analytical chemistry (Analytical Chemistry, Chemical Informatics, Instrumental Analysis, Mass Spectrometry, Quantitative Analysis, Separation Science or Spectroscopic Analysis) and one three-semester credit hour (or equivalent) college-level courses in interpretive science (Biochemistry, Drug Metabolism, Forensic Toxicology, Medicinal Chemistry, Pharmacology, Physiology, or Toxicology).

(D) An applicant for a toxicology license for any of the categories outlined in subparagraphs (A) - (C) of this paragraph must have a three-semester credit hour (or equivalent) college-level statistics course from an accredited university or a program approved by the Commission.

(3) DNA Analyst. An applicant for a Forensic Analyst License in DNA analysis must demonstrate he/she has fulfilled the specific requirements of the Federal Bureau of Investigation's Quality Assurance Standards for Forensic DNA Testing effective September 1, 2011. An applicant must also have a three-semester credit hour (or equivalent) college-level statistics course from an accredited university or a program approved by the Commission.

(4) Firearm/Toolmark Analyst. An applicant must have a three-semester credit hour (or equivalent) college-level statistics course from an accredited university or a program approved by the Commission. No other specific college-level coursework is required.

(5) Materials (Trace) Analyst. An applicant for a Forensic Analyst License in materials (trace) for one or more of the chemical analysis categories of analysis (chemical determination, physical/chemical comparison, gunshot residue analysis, and fire debris and explosives analysis) must have a minimum of sixteen-semester credit hours (or equivalent) in college-level chemistry coursework above general coursework from an accredited university. In addition to chemistry coursework for the chemical analysis categories, all materials (trace) license applicants must also have a three-semester credit hour (or equivalent) college-level statistics course from an accredited university or a program approved by the Commission. An applicant for a Forensic Analyst License in materials (trace) limited to impression evidence is not required to fulfill any specific college-level coursework requirements other than the statistics requirement.

(6) Exemptions from specific coursework requirements. The following categories of licenses are exempted from coursework requirements:

(A) An applicant for the technician license category of any forensic discipline set forth in this subchapter is not required to fulfill any specific college-level coursework requirements.

(B) An applicant for a Forensic Analyst License limited to forensic biology screening, nucleic acids other than human DNA

and/or Forensic Biology Technician is not required to fulfill the Federal Bureau of Investigation's Quality Assurance Standards for Forensic DNA Testing or any other specific college-level coursework requirements.

(e) Requirements Specific to Forensic Science Degree Programs. For a forensic science degree to meet the Minimum Education Requirements set forth in this section, the forensic science degree program must be either accredited by the Forensic Science Education Programs Accreditation Commission (FEPAC) or if not accredited by FEPAC, it must meet the minimum curriculum requirements pertaining to natural science core courses and specialized science courses set forth in the FEPAC Accreditation Standards.

(f) Waiver of Specific Coursework Requirements and/or Minimum Education Requirements for Lateral Hires, Promoting Analysts and Current Employees. Specific coursework requirements and minimum education requirements are considered an integral part of the licensing process; all applicants are expected to meet the requirements of the forensic discipline(s) for which they are applying or to offer sufficient evidence of their qualifications as described below in the absence of specific coursework requirements or minimum education requirements. The Commission Director or Designee may waive one or more of the specific coursework requirements or minimum education requirements outlined in this section for an applicant who:

(1) has five or more years of credible experience in an accredited laboratory in the forensic discipline for which he or she seeks licensure; or

(2) is certified by one or more of the following nationally recognized certification bodies in the forensic discipline for which he or she seeks licensure;

- (A) The American Board of Forensic Toxicology;
- (B) The American Board of Clinical Chemistry;
- (C) The American Board of Criminalistics;
- (D) The International Association for Identification; or
- (E) The Association of Firearm and Toolmark Examiners; and

(3) provides written documentation of laboratory-sponsored training in the subject matter areas addressed by the specific coursework requirements.

(4) An applicant must request a waiver of specific coursework requirements and/or minimum education requirements at the time the application is filed.

(5) An applicant requesting a waiver from specific coursework requirements and/or minimum education requirements shall file any additional information needed to substantiate the eligibility for the waiver with the application. The Commission Director or Designee shall review all elements of the application to evaluate waiver request(s) and shall grant a waiver(s) to qualified applicants.

(g) General Forensic Analyst Licensing Exam Requirement.

(1) Exam Requirement. An applicant for a Forensic Analyst License must pass the General Forensic Analyst Licensing Exam administered by the Commission.

(A) An applicant is required to take and pass the General Forensic Analyst Licensing Exam one time.

(B) An applicant may take the General Forensic Analyst Licensing Exam no more than three times. If an applicant fails the General Forensic Analyst Licensing Exam or the Modified Gen-

eral Forensic Analyst Licensing Exam three times, the applicant has thirty (30) days from the date the applicant receives notice of the failure to request special dispensation from the Commission as described in subparagraph (C) of this paragraph. Where special dispensation is granted, the applicant has 90 days from the date he or she receives notice the request for exam is granted to successfully complete the exam requirement. However, for good cause shown, the Commission or its Designee at its discretion may waive this limitation.

(C) Requests for Exam. If an applicant fails the General Forensic Analyst Licensing Exam or Modified General Forensic Analyst Licensing Exam three times, the applicant must request in writing special dispensation from the Commission to take the exam more than three times. Applicants may submit a letter of support from their laboratory director or licensing representative and any other supporting documentation supplemental to the written request.

(D) If an applicant sits for the General Forensic Analyst Licensing Exam or the Modified General Forensic Analyst Licensing Exam more than three times, the applicant must pay a \$50 exam fee each additional time the applicant sits for the exam beyond the three initial attempts.

(E) Expiration of Provisional License if Special Dispensation Exam Unsuccessful. If the 90-day period during which special dispensation is granted expires before the applicant successfully completes the exam requirement, the applicant's provisional license expires.

(2) Modified General Forensic Analyst Licensing Exam. Technicians in any discipline set forth in this subchapter may fulfill the General Forensic Analyst Licensing Exam requirement by taking a modified exam administered by the Commission.

(3) Examination Requirements for Promoting Technicians. If a technician passes the modified General Forensic Analyst Licensing Exam and later seeks a full Forensic Analyst License, the applicant must complete the portions of the General Forensic Analyst Exam that were not tested on the modified exam.

(4) Credit for Pilot Exam. If an individual passes the Pilot General Forensic Analyst Licensing Exam, regardless of his or her eligibility status for a Forensic Analyst License at the time the exam is taken, the candidate has fulfilled the General Forensic Analyst Licensing Exam Requirement of this section should he or she later become subject to the licensing requirements and eligible for a Forensic Analyst License.

(5) Eligibility for General Forensic Analyst Licensing Exam and Modified General Forensic Analyst Licensing Exam.

(A) Candidates for the General Forensic Analyst Licensing Exam and Modified General Forensic Analyst Licensing Exam must be employees of a crime laboratory accredited under Texas law to be eligible to take the exam.

(B) Student Examinee Exception. A student is eligible for the General Forensic Analyst Licensing Exam one time if the student:

(i) is currently enrolled in an accredited university as defined in §651.202 of this subchapter (relating to Definitions);

(ii) has completed sufficient coursework to be within 24 semester hours of completing the requirements for graduation at the accredited university at which the student is enrolled; and

(iii) designates an official university representative who will proctor and administer the exam at the university for the student.

(C) Crime Laboratory Management and Unaccredited Forensic Discipline Exception. An Employee of a crime laboratory accredited under Texas law who is either part of the crime laboratory's administration or management team or authorized for independent case-work in a forensic discipline listed below is eligible for the General Forensic Analyst Licensing Exam and Modified General Forensic Analyst Licensing Exam:

- (i) forensic anthropology;
 - (ii) the location, identification, collection or preservation of physical evidence at a crime scene;
 - (iii) crime scene reconstruction;
 - (iv) latent print processing or examination;
 - (v) digital evidence (including computer forensics, audio, or imaging);
 - (vi) breath specimen testing under Transportation Code, Chapter 724, limited to analysts who perform breath alcohol calibrations; and
 - (vii) document examination, including document authentication, physical comparison, and product determination.
- (h) Proficiency Monitoring Requirement.

(1) An applicant must demonstrate participation in the employing laboratory's process for intra-laboratory comparison, inter-laboratory comparison, proficiency testing, or observation-based performance monitoring requirements in compliance with and on the timeline set forth by the laboratory's accrediting body's proficiency monitoring requirements as applicable to the Forensic Analyst or Forensic Technician's specific forensic discipline and job duties.

(2) A signed certification by the laboratory's authorized representative that the applicant has satisfied the applicable proficiency monitoring requirements, including any intra-laboratory comparison, inter-laboratory comparison, proficiency testing, or observation-based performance monitoring requirements of the laboratory's accrediting body as of the date of the analyst's application, must be provided on the Proficiency Monitoring Certification form provided by the Commission. The licensee's authorized representative must designate the specific forensic discipline in which the Forensic Analyst or Forensic Technician actively performs forensic casework or is currently authorized to perform supervised or independent casework by the laboratory or employing entity.

(i) License Term and Fee.

(1) A Forensic Analyst License shall expire two years from the date the applicant is granted a license.

(2) Application Fee. An applicant or licensee shall pay the following fee(s) as applicable:

(A) Initial Application fee of \$220 for Analysts and \$150 for Technicians/Screeners;

(B) Biennial renewal fee of \$200 for Analysts and \$130 for Technicians/Screeners;

~~[(C) Temporary License fee of \$100;]~~

(C) ~~[(D)]~~ Provisional License fee of \$110 for Analysts and \$75 for Technicians/Screeners;

(D) ~~[(E)]~~ License Reinstatement fee of \$220;

(E) ~~[(F)]~~ De Minimis License fee of \$200 per ten (10) licenses; or

~~[(G)]~~ Uncommon Forensic Analysis License fee of \$200 per ten (10) licenses.

(3) An applicant who is granted a provisional license and has paid the required fee will not be required to pay an additional initial application fee if the provisional status is removed within one year of the date the provisional license is granted.

(j) Procedure for Denial of Application and Reconsideration.

(1) Application Review. The Commission Director or Designee must review each completed application and determine whether the applicant meets the qualifications and requirements set forth in this subchapter.

(2) Denial of Application. The Commission, through its Director or Designee, may deny an application if the applicant fails to meet any of the qualifications or requirements set forth in this subchapter.

(3) Notice of Denial. The Commission, through its Director or Designee, shall provide the applicant a written statement of the reason(s) for denial of the application.

(4) Request for Reconsideration. Within twenty (20) days of the date of the notice that the Commission has denied the application, the applicant may request that the Commission reconsider the denial. The request must be in writing, identify each point or matter about which reconsideration is requested, and set forth the grounds for the request for reconsideration.

(5) Reconsideration Procedure. The Commission must consider a request for reconsideration at its next meeting where the applicant may appear and present testimony.

(6) Commission Action on Request. After reconsidering its decision, the Commission may either affirm or reverse its original decision.

(7) Final Decision. The Commission, through its Director or Designee, must notify the applicant in writing of its decision on reconsideration within fifteen (15) business days of the date of its meeting where the final decision was rendered.

§651.211. Temporary Forensic Analyst License.

(a) Issuance. The Commission may issue a temporary Forensic Analyst License.

(b) Eligibility. An individual who performs forensic analysis primarily for non-Texas cases may apply to the Commission for a temporary Forensic Analyst License for forensic analysis related to a criminal action as that term is defined in Article 38.35 of the Texas Code of Criminal Procedure.

(c) Applications for Temporary License for More than One Criminal Action. An applicant may apply for a temporary Forensic Analyst License for each criminal action for which he or she is retained to perform forensic analysis.

(d) Multiple Defendants for Same Criminal Action. An applicant for a temporary Forensic Analyst License is not required to apply for more than one temporary license for the forensic analysis performed in criminal actions for which multiple defendants may be charged for a criminal offense or offenses related to the same event.

(e) Application. An applicant for a temporary Forensic Analyst License shall complete and submit to the Commission a current temporary Forensic Analyst License Application form, [pay the required fee,] and submit a signed statement on a form to be provided by the Commission stating the individual is employed by a crime laboratory that is accredited by a national accrediting body recognized by

the Commission and regularly performs proficiency testing in accordance with the employing laboratory's accreditation requirements.

(f) Description of Forensic Analysis for Which the Temporary Forensic Analyst License is Requested. An applicant for a temporary Forensic Analyst License shall describe the circumstances of the criminal action for which the temporary Forensic Analyst License is being requested.

(g) Description of Temporary Nature of Analysis. An applicant for a Temporary Forensic Analyst License shall state the reasons why the applicant's forensic analysis in Texas cases is a de minimis component of the applicant's overall forensic casework.

(h) Affidavit of Good Standing from Laboratory. An applicant for a Temporary Forensic Analyst License must submit an affidavit of good standing from the laboratory where the analyst is currently employed.

(i) Temporary License Term. A temporary Forensic Analyst License is granted for a period of three years from the date of issuance.

(j) Temporary License Extension. If the criminal action for which the temporary Forensic Analyst License was originally granted has not yet been resolved upon the expiration of three years from the date the license was granted, the temporary licensee may apply to the Commission to extend the license for a supplemental one-year term or terms.

(k) Temporary License Limitations. A temporary Forensic Analyst License does not apply to any criminal action other than those offenses related to the criminal action for which the temporary license was granted.

(l) Scope of Temporary License. A temporarily licensed forensic analyst may technically review or perform forensic analysis or draw conclusions from or interpret a forensic analysis for a court or crime laboratory to the extent a fully licensed forensic analyst may perform these duties.

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

Filed with the Office of the Secretary of State on May 10, 2023.

TRD-202301706

Leigh Tomlin

Associate General Counsel

Texas Forensic Science Commission

Earliest possible date of adoption: June 25, 2023

For further information, please call: (512) 936-0661



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 15. TEXAS VETERANS COMMISSION

CHAPTER 450. VETERANS COUNTY SERVICE OFFICERS CERTIFICATE OF TRAINING

40 TAC §450.1, §450.3

The Texas Veterans Commission (commission) proposes an amendment to Chapter 450, §450.1 and §450.3, Veterans County Service Officers Certificate of Training.

PART I. PURPOSE AND BACKGROUND

The proposed amendment is made to change definitions in existing language to reflect the language in Title 38 of the Code of Federal Regulations (CFR) and to correct grammatical errors.

PART II. EXPLANATION OF SECTIONS

Section 450.1 Definitions.

Defines the term of "Accreditation" as recognition by the United States Department of Veterans Affairs, cites statutory reference for a "Certificate of training" issued by the Texas Veterans Commission Claims Department.

Section 450.3 General Provisions.

Corrects grammatical errors.

PART III. IMPACT STATEMENTS

FISCAL NOTE

Coretta Briscoe, Chief Financial Officer of the Texas Veterans Commission, has determined for each year of the first five years the proposed rule amendment will be in effect, there will not be an increase in expenditures or revenue for state and local government as a result of administering the proposed rule.

COSTS TO REGULATED PERSONS

Ms. Briscoe, Chief Financial Officer, has also determined there will not be anticipated economic costs to persons required to comply with the proposed rule.

LOCAL EMPLOYMENT IMPACT

Anna Baker, Director, Veterans Employment Services of the Texas Veterans Commission, has determined that there will not be a significant impact upon employment conditions in the state as a result of the proposed rule.

SMALL BUSINESS, MICRO BUSINESS AND RURAL COMMUNITIES IMPACT

Megan Tamez, Director of the Veterans Entrepreneur Program of the Texas Veterans Commission, has determined that the proposed rule will not have an adverse economic effect on small businesses, micro businesses or rural communities as defined in Texas Government Code §2006.001. As a result, an Economic Impact Statement and Regulatory Flexibility Analysis is not required.

PUBLIC BENEFIT

Shawn Deabay, Deputy Executive Director of the Texas Veterans Commission, has determined that for each year of the first five years the proposed rule are in effect, the public benefit anticipated as a result of administering the amended rule will reduce the need for formal disputes and settle disputes at the lowest level possible.

GOVERNMENT GROWTH IMPACT STATEMENT

Mr. Deabay has also determined that for each year of the first five years that the proposed rule amendments are in effect, the following statements will apply:

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

- (2) Implementation of the proposed rule amendments will not require creation of new employee positions or elimination of existing employee positions.
- (3) Implementation of the proposed rule amendments will not require an increase or decrease in future legislative appropriations to the agency.
- (4) No fees will be created by the proposed rule amendments.
- (5) The proposed rule amendments will not require new regulations.
- (6) The proposed rule amendments have no effect on existing regulations.
- (7) The proposed rule amendments have no effect on the number of individuals subject to the rule's applicability.
- (8) The proposed rule amendments have no effect on this state's economy.

PART IV. COMMENTS

Comments on the proposed amended rule may be submitted to Texas Veterans Commission, Attention: General Counsel, P.O. Box 12277, Austin, Texas 78711; faxed to (512) 475-2395; or emailed to rulemaking@tvc.texas.gov. For comments submitted electronically, please include "Chapter 450 Rules" in the subject line. The commission must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register*.

PART V. STATUTORY AUTHORITY

The rule amendment is proposed under Texas Government Code §434.010 which authorizes the commission to establish rules it considers necessary for its administration.

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

§450.1. *Definitions.*

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

- (1) Accreditation--Recognition by the United States Department of Veterans Affairs (VA) of representatives, attorneys, and agents to represent claimants.
- (2) ~~(4)~~ Certificate of training--Certificate or transcript provided pursuant to Tex. Gov't Code §434.038 to officers who complete all initial training requirements or who earn a minimum number of credit hours each fiscal year for completing training provided by the commission or completing other commission approved training.
- (3) ~~(2)~~ Commission--The Texas Veterans Commission.
- (4) ~~(3)~~ Credit hour--Unit of measuring credit earned for attending classroom or virtual training courses provided by the commission or other commission approved training.
- (5) ~~(4)~~ Initial training--Introductory training provided to newly appointed officers.
- (6) ~~(5)~~ Officer--Veterans county service officer or assistant veterans county service officer appointed by a county commissioners court.
- (7) ~~(6)~~ Third party training--Any commission approved training or course of instruction provided by public or private entities.
- (8) ~~(7)~~ Training event--Training or testing conducted by the commission.

§450.3. *General Provisions.*

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

(c) Each officer shall be required to earn 12 credit hours each fiscal year to maintain the certificate of training certification. Credit hours may be accumulated in one year by completing training provided or approved by the commission. Credit hours may not be accumulated for the same subjects within the same fiscal year.

(d) - (f) (No change.)

(g) Acceptance of credit hours earned through third party training:

(1) If training is provided by a VA Recognized Veterans Service Organization, whose accreditation training has been approved by the VA, the commission shall accept the training credit hours.

(2) For all other third party training, the organization shall provide the commission with the following information to allow for the awarding of credit hours to officers:

- (A) name Name of organization providing the training;
- (B) documentation Documentation from the VA;
- (C) course Course title and description;
- (D) course Course outline; and
- (E) all All course materials.

(3) Third party training and testing must be evaluated by the commission Claims Department Director or designee in accordance with subsection (f) of this section. The number of credit hours to be awarded for third party training is determined by review of the third party training curriculum by the commission Claims ~~Claim~~ Department Director. Review and awarding of credit hours will be conducted using the curriculum review matrix.

(4) To receive credit hours for third party training, the training must be approved by the commission in accordance with paragraph (1) of this subsection prior to the officer's attendance. Officers must submit a request to the commission containing the following information:

- (A) name Name of the training provider;
- (B) title Title of the course;
- (C) certificate Certificate or verification of completion;
- (D) date Date of completion.

and

(h) - (i) (No change.)

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

Filed with the Office of the Secretary of State on May 12, 2023.

TRD-202301733

Cory Scanlon

General Counsel

Texas Veterans Commission

Earliest possible date of adoption: June 25, 2023

For further information, please call: (737) 320-4167



CHAPTER 451. VETERANS COUNTY SERVICE OFFICERS ACCREDITATION

40 TAC §451.1, §451.3

The Texas Veterans Commission (commission) proposes an amendment to Chapter 451, §451.1 and §451.3, Veterans County Service Officers Accreditation. Simultaneous with this proposed amendment, the commission separately posts notice that, pursuant to Texas Government Code §2001.039, the commission will review Title 40, Part 15, Chapter 451, Veterans County Service Officers Accreditation.

PART I. PURPOSE AND BACKGROUND

The proposed amendment is made to change existing language to be consistent with the terms found in Title 38 of the Code of Federal Regulations (CFR)

PART II. EXPLANATION OF SECTIONS

Section 451.1 Definitions.

Replaces "certified" with "Certificate of training" and changes accreditation language to be consistent with the terms found in Title 38 United States Code of Federal Regulations (38CFR)

Introduces the term "recommendation" as consistent with the United States Department of Veterans Affairs regulations governing the accreditation process.

Section 451.3

Corrects Grammatical errors and provides further clarifying language consistent with the United States Department of Veterans Affairs regulations governing the accreditation process.

PART III. IMPACT STATEMENTS

FISCAL NOTE

Coretta Briscoe, Chief Financial Officer of the Texas Veterans Commission, has determined for each year of the first five years the proposed rule amendment will be in effect, there will not be an increase in expenditures or revenue for state and local government as a result of administering the proposed rule.

COSTS TO REGULATED PERSONS

Ms. Briscoe, Chief Financial Officer, has also determined there will not be anticipated economic costs to persons required to comply with the proposed rule.

LOCAL EMPLOYMENT IMPACT

Anna Baker, Director, Veterans Employment Services of the Texas Veterans Commission, has determined that there will not be a significant impact upon employment conditions in the state as a result of the proposed rule.

SMALL BUSINESS, MICRO BUSINESS AND RURAL COMMUNITIES IMPACT

Megan Tamez, Director of the Veterans Entrepreneur Program of the Texas Veterans Commission, has determined that the proposed rule will not have an adverse economic effect on small businesses, micro businesses or rural communities as defined in Texas Government Code §2006.001. As a result, an Economic Impact Statement and Regulatory Flexibility Analysis is not required.

PUBLIC BENEFIT

Shawn Deabay, Deputy Executive Director of the Texas Veterans Commission, has determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated as a result of administering the amended rule will reduce

the need for formal disputes and settle disputes at the lowest level possible.

GOVERNMENT GROWTH IMPACT STATEMENT

Mr. Deabay has also determined that for each year of the first five years that the proposed rule amendments are in effect, the following statements will apply:

- (1) The proposed rule amendments will not create or eliminate a government program.
- (2) Implementation of the proposed rule amendments will not require creation of new employee positions, or elimination of existing employee positions.
- (3) Implementation of the proposed rule amendments will not require an increase or decrease in future legislative appropriations to the agency.
- (4) No fees will be created by the proposed rule amendments.
- (5) The proposed rule amendments will not require new regulations.
- (6) The proposed rule amendments have no effect on existing regulations.
- (7) The proposed rule amendments have no effect on the number of individuals subject to the rule's applicability.
- (8) The proposed rule amendments have no effect on this state's economy.

PART IV. COMMENTS

Comments on the proposed amended rule may be submitted to Texas Veterans Commission, Attention: General Counsel, P.O. Box 12277, Austin, Texas 78711; faxed to (512) 475-2395; or emailed to rulemaking@tvc.texas.gov. For comments submitted electronically, please include "Chapter 451 Rules" in the subject line. The commission must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register*.

PART V. STATUTORY AUTHORITY

The rule amendment is proposed under Texas Government Code §434.010 which authorizes the commission to establish rules it considers necessary for its administration.

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

§451.1. Definitions.

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

- (1) - (2) (No change.)
- (3) Certificate of training [Certified]--Documentation that an officer has met [Having met] the requirements of §450.3 of this title (relating to General Provisions) for "certification".
- (4) - (7) (No change.)
- (8) Recognized Veterans Service Organization--An organization accredited [eertified] by the United States Department of Veterans Affairs to represent claimants.
- (9) Recommendation--the procedure by which the commission indicates to the secretary that it desires an officer to become an accredited representative of the Texas Veterans Commission and certifies that the officer meets the requirements of 38 C.F.R. § 14.629(a).

(10) [(9)] Representative--Person who has been recommended by a Recognized Veterans Service Organization and accredited by the United States Department of Veterans Affairs.

(11) [(10)] Secretary--The secretary of the United States Department of Veterans Affairs.

(12) [(11)] Training event--Training or testing conducted by the commission.

§451.3. *General Provisions.*

(a) The commission shall provide all [AH] officers [shall be provided a copy of] information concerning accreditation [by the commission] when the commission receives notice that [information is received indicating] an officer has been appointed [appointment has been made] by a county commissioners court.

(b) Officers must meet the following minimum standards as set forth in 38 Code of Federal Regulations §14.629 for recommendation: [consideration to be accredited representative of the commission:]

(1) is a paid employee of the county working for it not less than 1,000 hours annually;

(2) has successfully completed a course of training and an examination which have been approved by the appropriate VA district counsel within the state; and

(3) will receive annual training to ensure [assure] continued qualification as a representative in the claims' process.

(c) To receive recommendation [be an accredited representative of the Texas Veterans Commission], the officer must hold a current certificate of training from the commission [be currently certified by the commission] under the provisions of §450.3 of this title (relating to General Provisions), have attained at least 24 credit hours after completion of initial training requirements, and pass a proficiency exam.

(d) All officers [Officers] must submit a formal written application [request] for recommendation [accreditation] to the commission, which shall review the application for eligibility and approval.

(e) - (f) (No change.)

(g) Examinations for initial recommendation [accreditation] and examinations to maintain recommendation [accreditation] will be administered by the commission at a location and time designated by the commission.

(h) - (i) (No change.)

(j) To maintain the recommendation of the commission [accreditation], an officer must successfully pass, at least annually, a proficiency exam and hold a current certificate of training [be certified] under the provisions of §450.3 of this title.

(k) Inquiries concerning accreditation shall be directed to and answered by the commission Claims Department Director. Disputes shall be reviewed and a decision rendered by the commission Claims Department Director or designee. Disputes which remain unresolved shall be referred to the executive director of the commission or the executive director's designee. The decision of the executive director or the executive director's designee shall be final.

(l) The executive director of the commission or the executive director's designee will request that the secretary:

(1) revoke [Revoke] the accreditation of the officer upon termination of the officer;

(2) suspend [Suspend] or revoke the accreditation of an officer for the officer's failure to:

- (A) maintain commission annual training requirements;
 - (B) maintain the commission annual testing requirements;
 - (C) maintain the VA's annual training requirements; or
 - (D) maintain active use of the VA's database systems;
- and[.]

(3) suspend [Suspend] or revoke the accreditation of the officer for any situation in which the action is deemed appropriate.

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 May 12, 2023.

TRD-202301734

Cory Scanlon

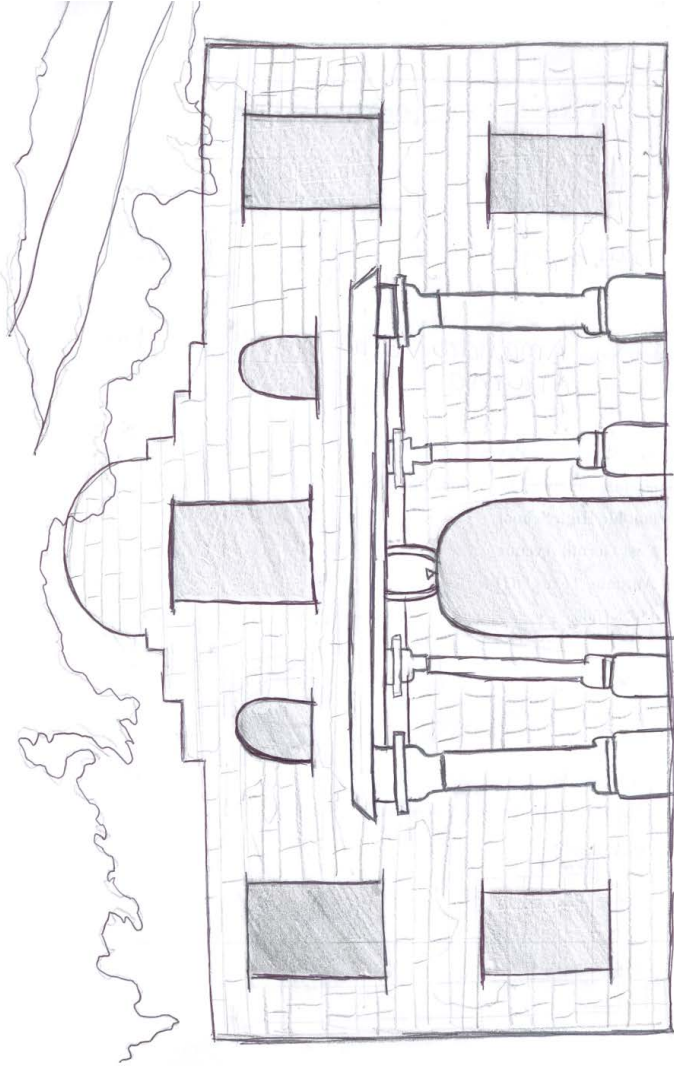
General Counsel

Texas Veterans Commission

Earliest possible date of adoption: June 25, 2023

For further information, please call: (737) 320-4167





ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 353. MEDICAID MANAGED CARE SUBCHAPTER G. STAR+PLUS

1 TAC §353.610

The Texas Health and Human Services Commission (HHSC) adopts new §353.610, concerning Minimum Performance Standards for Nursing Facilities that Participate in the STAR+PLUS Program.

The new section is adopted without changes to the proposed text as published in the February 17, 2023, issue of the *Texas Register* (48 TexReg 783). This rule will not be republished.

BACKGROUND AND JUSTIFICATION

The adopted rule implements Texas Government Code §533.00251(h), added by House Bill 2658, 87th Legislature, Regular Session, 2021. Texas Government Code §533.00251 requires HHSC to establish minimum performance standards for nursing facility providers seeking to participate in the STAR+PLUS Medicaid managed care program. Subsection (h) directs HHSC to adopt rules establishing standards for nursing facility providers that participate in the STAR+PLUS program; monitor provider performance in accordance with the standards and requiring corrective action, as HHSC determines necessary, from providers that do not meet the standards; and share data regarding the requirements with STAR+PLUS Medicaid managed care organizations, as appropriate.

COMMENTS

The 31-day comment period ended March 20, 2023.

During this period, HHSC did not receive any comments regarding the proposed rule.

STATUTORY AUTHORITY

The new section is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and by Texas Government Code §533.00251(h).

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 May 12, 2023.

TRD-202301772

Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Effective date: June 1, 2023
Proposal publication date: February 17, 2023
For further information, please call: (512) 826-4599



TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 2. ENFORCEMENT

SUBCHAPTER B. ENFORCEMENT FOR NONCOMPLIANCE WITH PROGRAM REQUIREMENTS OF CHAPTERS 6 AND 7

10 TAC §2.203

The Texas Department of Housing and Community Affairs (the Department) adopts an amendment to §2.203, Termination and Reduction of Funding for CSBG Eligible Entities without changes to the proposed text as published in the March 24, 2023 issue of the *Texas Register* (48 TexReg 1607). The rule will not be republished. The rule amendment clarifies that the process described in §2.203 does not apply to contracts awarded under CSBG Discretionary funding.

FISCAL NOTE. Mr. Bobby Wilkinson, Executive Director, has determined that, for each year of the first five years the amendment to the rule is in effect, enforcing or administering the amendment does not have any foreseeable implications related to costs or revenues of the state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT. Mr. Wilkinson also has determined that, for the first five years the adopted amendment would be in effect:

1. The adopted amendment to the rule will not create or eliminate a government program;
2. The adopted amendment to the rule will not require a change in the number of employees of the Department;
3. The adopted amendment to the rule will not require additional future legislative appropriations;
4. The adopted amendment to the rule will result in neither an increase nor a decrease in fees paid to the Department;
5. The adopted amendment to the rule will not create a new regulation;

6. The adopted amendment to the rule will not repeal an existing regulation;

7. The adopted amendment to the rule will not increase or decrease the number of individuals subject to the rule's applicability; and

8. The adopted amendment to the rule will neither positively nor negatively affect this state's economy.

PUBLIC BENEFIT/COST NOTE. Mr. Wilkinson also has determined that, for each year of the first five years the adopted amendment to the rule is in effect, the public benefit anticipated as a result of the action will be to further clarify which programs are applicable to the rule. There will not be any economic cost to any individuals required to comply with the adopted amendment.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES. The Department has determined that there will be no economic effect on small or micro-businesses or rural communities.

SUMMARY OF PUBLIC COMMENT. Public comment was accepted from March 24, 2023, through April 24, 2023. No comment was received.

STATUTORY AUTHORITY. The adoption of this action is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

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

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

Filed with the Office of the Secretary of State on May 12, 2023.

TRD-202301736

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

Effective date: June 1, 2023

Proposal publication date: March 24, 2023

For further information, please call: (512) 475-3959



TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 60. PROCEDURAL RULES OF THE COMMISSION AND THE DEPARTMENT

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 60, Subchapter A, §60.10; Subchapter F, §60.82; Subchapter G, §60.101; Subchapter I, §§60.300, 60.304, 60.305, 60.307, 60.308, and 60.310; and Subchapter J, §§60.400 - 60.406, 60.408, and 60.409; adopts new rules at Subchapter H, §§60.200 - 60.204; and Subchapter I, §§60.301, 60.302, 60.309, 60.311, and 60.312; and adopts the repeal of existing rules at Subchapter H, §60.200; and Subchapter I, §60.306 and §60.311, regarding the Procedural Rules of the Commission and the Department, without changes

to the proposed text as published in the March 3, 2023, issue of the *Texas Register* (48 TexReg 1201). These rules will not be republished.

The Commission also adopts amendments to existing rules at 16 TAC Chapter 60, Subchapter H, regarding the Procedural Rules of the Commission and the Department, with changes to the title of Subchapter H as published in the March 3, 2023, issue of the *Texas Register* (48 TexReg 1201). The title of Subchapter H will be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC Chapter 60 implement Texas Occupations Code, Chapter 51, the enabling statute of the Texas Commission of Licensing and Regulation (Commission) and the Texas Department of Licensing and Regulation (Department), and other laws applicable to the Commission and the Department.

The Chapter 60 rules are the procedural rules of the Commission and the Department. These rules apply to all of the agency's programs and to all license applicants and licensees, except where there is a conflict with the statutes and rules of a specific program.

The adopted rules update multiple subchapters and sections under Chapter 60 and are part of a larger effort to update the entire chapter. The adopted rules make substantive and clean-up changes to the agency's procedural rules and include changes resulting from staff and strategic planning, the required four-year rule review, and the Department's Sunset legislation.

Staff and Strategic Planning Changes

The adopted rules include changes suggested by the General Counsel's Office and suggested during past strategic planning sessions. The changes include updates to the rules regarding definitions and complaints; reorganization of existing rules; clean up changes in terminology; and editorial changes to "Commission," "Department," and "Executive Director" to use lower case terminology to be consistent with the statutes and consistent across the Chapter 60 rule subchapters.

Four-Year Rule Review Changes

The adopted rules also include changes as a result of the required four-year rule review conducted under Texas Government Code §2001.039. The Department conducted the required rule review of the rules under 16 TAC Chapter 60, and the Commission readopted the rule chapter in its entirety and in its current form. (Proposed Rule Review, 46 TexReg 2589, April 16, 2021. Adopted Rule Review, 46 TexReg 4701, July 30, 2021.)

In response to the Notice of Intent to Review that was published, the Department received public comments from six interested parties regarding Chapter 60, with one of these interested parties commenting on the complaint rule under Subchapter H. The interested party commented that the rules do not include timeframes for resolving complaints and that the complaint process takes too long. The Department did not propose any changes to the rules based on this public comment. Texas Occupations Code §51.252 states that the Department "shall maintain a system to promptly and efficiently act on complaints," and §51.2521 states that the Department "shall assign priorities and investigate complaints based on risk to the public of the conduct alleged in the complaint." There are internal processes and timeframes, priority of violations, case specific issues, and performance measures that affect the timing for complaint resolution. The Depart-

ment did not include any timeframes for complaint resolution in the rules.

The adopted rules include changes identified by Department staff during the rule review process. The changes are reflected throughout the adopted rules and include updates to the rules regarding definitions, fees, complaints, contested cases, and mediation for contested cases. The changes also include clarifying the rules, using plain talk language, and making the same editorial changes to use lower case terminology.

Sunset Bill Statutory Changes

The adopted rules incorporate and reflect the changes made to Texas Occupations Code, Chapter 51, as a result of House Bill (HB) 1560, 87th Legislature, Regular Session (2021), the Department's Sunset legislation. HB 1560, Article 1, Sections 1.06, 1.07, and 1.08, amended and added provisions in Chapter 51 regarding complaints, specifically under §§51.251, 51.252, and 51.2521. The adopted rules under Subchapter H incorporate and reflect the amended and new statutory provisions regarding complaints.

The adopted rules are necessary to: update the terminology and definitions; align the dishonored payment processing fee with statutory requirements; add a statutory reference regarding negotiated rulemaking; add additional rules regarding complaints; update and reflect the current processes and procedures for contested cases; clarify the existing rules regarding mediation for contested cases; and reorganize and clean up existing rules where necessary. The Department expects to propose additional changes to Chapter 60 in the future in separate rulemakings.

SECTION-BY-SECTION SUMMARY

Subchapter A. General Provisions.

The adopted rules amend §60.10. Definitions. The adopted rules amend the terms and definitions to align with applicable statutes; to provide additional information and clarity; to designate the General Counsel or the General Counsel's designee as the "ADR Administrator"; to relocate certain provisions elsewhere in the rule chapter; to make various clean-up changes; and to make editorial changes to use lower case terminology. The adopted rules also remove unnecessary or unused terms and renumber the remaining terms as necessary.

Subchapter F. Fees.

The adopted rules amend §60.82. Dishonored Payment Device. The adopted rules change the title of the section to "Dishonored Payment Fee." The adopted rules lower the dishonored payment processing fee from \$50 to \$30 to align with Business and Commerce Code §3.506, Processing Fee by Holder of Payment Device, and with the Texas Comptroller Manual of Accounts regarding revenues and returned check fees. The adopted rules replace the definition of "payment device" under §60.10, which is being repealed, with an explanation of authorized forms or methods of payment and dishonored payments. The adopted rules restructure the existing rule; use plain talk language to improve readability and understanding; and make editorial changes to use lower case terminology.

Subchapter G. Rulemaking.

The adopted rules amend §60.101. Negotiated Rulemaking. The existing rule implements Texas Occupations Code §51.208, Negotiated Rulemaking and Alternative Dispute Resolution Procedures, as it relates to negotiated rulemaking. The adopted

rules add the statutory reference for context and clarification that the statutory requirement has been implemented through this rule.

Subchapter H. Complaints; Inspections.

Subchapter H is amended to add additional rules regarding complaints. The adopted rules change the title of Subchapter H to "Complaints; Inspections" to reflect the scope of the subchapter. The adopted rules include a change to the title of Subchapter H as published in the proposed rules. The adopted rules reflect the correct title of Subchapter H.

The adopted rules repeal existing §60.200. Complaints. The repealed provisions are relocated to and replaced with new §60.200 and new §60.201.

The adopted rules add new §60.200. Notice to the Public Regarding Complaints. The new rule includes provisions that replace those found in existing §60.200, which is being repealed. The new rule requires a license holder to notify consumers and service recipients of the Department's name, address, phone number, and website address for purposes of filing complaints; specifies how and where this notification must be provided, unless stated otherwise in the program statutes or rules; and provides that information will be made available on the Department's website describing the procedures for filing complaints and for complaint investigation and resolution.

The adopted rules add new §60.201. Filing a Complaint. The new rule includes provisions that replace those found in existing §60.200, which is being repealed. The new rule explains the process and timing for filing a complaint against a person who is engaged in an activity or business regulated by the Department and the Department's handling of anonymous complaints.

The adopted rules add new §60.202. Investigation and Priority of Complaints. The new rule explains the Department's responsibilities regarding promptly and efficiently acting on complaints; assigning priorities and investigating complaints based on risk to the public; and dismissing complaints that are inappropriate or without merit.

The adopted rules add new §60.203. Cooperation with Investigation of Complaints. The new rule requires a person to cooperate in a Department investigation of a complaint and to make available all records, notices, and other documents requested by the Department. The new rule also lists prohibited actions in connection with a Department investigation.

The adopted rules add new §60.204. Status and Confidentiality of Complaints. The new rule addresses when the Department will provide the status of a complaint and the requirements on the Department to maintain confidentiality of certain complaints.

Subchapter I. Contested Cases.

Subchapter I is amended to reflect the current processes and procedures for contested cases. New rules are added, and existing rules are amended and reorganized, so that the rules set out the procedural steps in the contested case process. These rules are necessary to comply with Texas Government Code, Chapter 2001, and Texas Occupations Code, Chapter 51, Subchapters F and G.

The adopted rules amend existing §60.300. Purpose and Scope. The adopted rules make technical clean-up changes to the statutory references.

The adopted rules add new §60.301. Notice of Alleged Violation; Notice of Continued License Restrictions. The new rule is relocated in part from existing §60.306, which is being repealed. The new rule reflects the current processes and procedures with updates and clarifications for the notice of alleged violation and the notice of continued license restrictions, and it includes information on requesting a hearing.

The adopted rules add new §60.302. Notice of Proposed Denial. The new rule is relocated in part from existing §60.306, which is being repealed. The new rule reflects the current processes and procedures with updates and clarifications for the notice of proposed denial, and includes information on requesting a hearing.

The adopted rules amend existing §60.304. Disposition by Agreement. The adopted rules update the terminology for consistency purposes.

The adopted rules amend existing §60.305. Place and Nature of Hearings. The adopted rules change the title of the rule to "Contested Case Hearings at SOAH" to reflect the scope of the rule. The adopted rules provide references to SOAH's procedures and information about the Department's contested case hearings at SOAH.

The adopted rules repeal existing §60.306. Request for Hearing and Defaults. The provisions from this repealed rule have been separated into two new rules, §60.301 and §60.302, and relocated in the subchapter so they are in procedural order in the contested case process.

The adopted rules amend existing rule §60.307. Hearing Costs. The adopted rules change the title of the section to "Costs Associated with a Contested Case" to reflect the scope of the rule. The adopted rules clarify the existing provision under subsection (a), regarding costs associated with making the SOAH hearing record, and align the provision with SOAH rule 1 TAC §155.423. The adopted rules amend the existing provision under subsection (b), regarding costs associated with contested case transcripts, and align the provision with Texas Government Code §2001.059. The adopted rules add a new provision under new subsection (c) to address other possible costs associated with the contested case.

The adopted rules amend §60.308. Proposals for Decision. The adopted rules add new subsection (b) that reflects the current procedures for proposals for decision that are considered by the Commission during a Commission meeting. The adopted rules state that a party may only present the sworn testimony and the information provided during the SOAH hearing or admitted into the SOAH record.

The adopted rules add new §60.309. Motion for Rehearing. The new rule reflects the current processes and procedures for filing and handling a motion for rehearing, and it provides the requirements for the contents of the motion for rehearing.

The adopted rules amend existing §60.310. Final Orders. The adopted rules add a provision to address when a contested case decision or order is final under the Administrative Procedure Act (APA). The adopted rules also remove the provision regarding appeals and costs and relocate that provision to new §60.311.

The adopted rules add new §60.311. Appeal of Final Order. The new rule reflects the current processes and procedures for appealing a final decision or order in a contested case. The new rule provides that the appeal shall be filed and handled in accordance with the APA. The new rule also adds the provision regarding appeals and costs that is relocated from existing §60.310.

The adopted rules repeal existing §60.311. Corrected Orders. The repealed provision has been relocated to new §60.312.

The adopted rules add new §60.312. Corrected Orders. The new rule includes the provision from existing §60.311, which is being repealed.

Subchapter J. Mediation for Contested Cases.

Subchapter J is amended to clarify and make clean-up changes to the existing rules regarding mediation for contested cases. The existing rules in this subchapter implement Texas Occupations Code §51.208, Negotiated Rulemaking and Alternative Dispute Resolution Procedures, as it relates to alternative dispute resolution procedures for contested cases, and Texas Government Code Chapter 2009, Alternative Dispute Resolution for Use by Governmental Bodies.

The adopted rules amend existing §60.400. Alternative Dispute Resolution--Mediation. The adopted rules change the title of the section to "Alternative Dispute Resolution Procedures--Mediation" for clarification. The adopted rules add statutory references for context and clarification that the statutory requirements and provisions have been implemented through the rules in this subchapter. The adopted rules also add an explanation about alternative dispute resolution procedures and the use of mediation; separate the existing section into separate subsections to improve readability; update a cross-reference to Subchapter I; make clarifications and clean-up changes; and make an editorial change to use lower case terminology.

The adopted rules amend existing §60.401. Referral of Contested Matter for Mediation. The adopted rules make editorial changes to use lower case terminology.

The adopted rules amend existing §60.402. Appointment of Mediator. The adopted rules change the title of the section to "Appointment of Mediator; Mediator Costs" to reflect the scope of the rule. The adopted rules make clarifications and clean-up changes regarding the appointment of a mediator.

The adopted rules amend existing §60.403. Qualifications of Mediators. The adopted rules change the title of the section to "Qualifications, Standards, and Role of the Mediator" to reflect the scope of the rule. The adopted rules make clean-up changes; add a specific statutory reference regarding the mediation training; include information regarding the role of the mediator that has been relocated from the definition of mediator in §60.10; and add additional information regarding the role of the mediator that reflects the provisions in Texas Civil Practices and Remedies Code §154.053 and the SOAH guidelines on mediation.

The adopted rules amend existing §60.404. Disqualifications of Mediators. The adopted rules change the title of the section to "Disqualification of the Mediator." The adopted rules make an editorial change to use lower case terminology and make a clarification to the existing provisions.

The adopted rules amend existing §60.405. Qualified Immunity of the Mediator. The adopted rules make a technical correction to a statutory reference.

The adopted rules amend existing §60.406. Commencement of Mediation. The adopted rules make editorial changes to use lower case terminology; make clean-up changes to terminology; and include updated references to the notices discussed under Subchapter I.

The adopted rules amend existing §60.408. Agreements. The adopted rules make editorial changes to use lower case terminology.

The adopted rules amend existing §60.409. Confidentiality. The adopted rules make clarification changes to the existing provisions regarding the confidentiality of the mediation communications and documents.

PUBLIC COMMENTS

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the March 3, 2023, issue of the *Texas Register* (48 TexReg 1201). The public comment period closed on April 3, 2023. The Department received a comment from one interested party on the proposed rules.

The Department received a comment from the Texas Food & Fuel Association (TFFA) on the proposed rules regarding complaints, specifically new rules §60.200, §60.201, and §60.203. Each rule is addressed separately.

Comment: Regarding §60.200, TFFA raised concerns that a license holder is required to notify every consumer and service recipient of the Department's contact information, rather than only upon request; that the words "consumers" and "service recipients" are undefined and create ambiguity on when a license holder must comply; and that retailers, including convenience store and transportation fuel sales, should not be subject to §60.200(b)(1) or (3). TFFA suggested specific changes to the proposed rules, including adding definitions, creating separate notice requirements, exempting certain retailers from specific notice requirements, and using the same language that is used for posting certificates of registration.

Department Response: The Department disagrees with the comment and the suggested changes. New §60.200 includes provisions that have been relocated from current §60.200, Complaints, which is being repealed as part of this proposal. The current rule and the new rule are very similar in substance, and they both prescribe the notice requirements that are generally applicable to all Department programs.

First, the current rule and the new rule require that the Department's contact information be provided to consumers and service recipients for purposes of filing complaints. The only change in the new rule is the addition of the Department's website address in the contact information. This contact information must be provided to every consumer and service recipient for purposes of filing a complaint. The information is not provided only upon request. If a consumer or service recipient is not aware that a license holder is regulated, the person would not even know to ask for the Department's contact information.

Second, the current rule and the new rule do not define "consumer" or "service recipient." Both terms are used in Texas Occupations Code, Chapter 51, and neither term is defined in that statute or in the Chapter 60 rules. Definitions of "consumer" and "service recipient" are not needed as the terms are commonly used, are generally understood, and are not terms of art for purposes of these rules.

Any new definition would need to be generally applicable to all Department programs, unless specific program statutes or rules define the term otherwise. The suggested definitions for "consumer" and "service recipient" are too narrow and would not be applicable to all programs. The term "retail purchaser" is not

used in Texas Occupations Code, Chapter 51 and is not necessarily applicable to all programs.

Third, the current rule and the new rule require the same three locations for the notification. The only change in the new rule is the clarification that the written contract or bill for services may be provided in paper or electronic form. The current rule and the new rule state that the notice requirements apply to all programs, unless stated otherwise in the program statutes or rules. The current rule and the new rule prescribe the default notice requirements. They apply unless a specific program's statute or rules address providing the Department's contact information to consumers for purposes of filing complaints. The current rule and the new rule also apply to the extent that a license holder provides written contracts for services, has a place of business where consumers and service recipients may visit to obtain services and products, and provides bills for services.

It is important to note that the requirement for posting the Department's contact information for complaint purposes is a separate requirement from a license holder posting its license or certificate of registration. The requirements for posting licenses or certificates of registration vary across programs, and they are not applicable to, or included in, these proposed rules.

The changes suggested by TFAA to new §60.200 are program-specific changes that are not appropriate to be included in the Chapter 60 rules that are generally applicable to all programs regulated by the Department. Program-specific notice provisions may be addressed in the individual program statutes or rules. The Department did not make any changes to new §60.200 as a result of the public comment.

Comment: Regarding §60.201, TFFA raised concerns that a complaint will be considered valid and may be investigated by the Department, regardless of how much time has passed. TFFA stated that it would be difficult for a license holder to effectively respond to a dated investigation and that there should be a defined timeline for filing complaints. TFFA commented that a two-year deadline for a retail complaint is too long and suggested a six-month deadline for filing a retail complaint.

Department Response: The Department disagrees with the comment and the suggested change. New §60.201 includes provisions that have been relocated from current §60.200, Complaints, which is being repealed as part of this proposal. The current rule and the new rule establish a two-year deadline for filing a complaint and provide discretion for investigating complaints that are filed after the two-year deadline. The new rule shifts the discretion from the Executive Director to the Director of Enforcement to investigate a complaint filed beyond the two-year deadline.

The current rule and the new rule allow the Department flexibility to consider the facts and the circumstances giving rise to a complaint being filed. While generally complaints older than two years are not opened, the new rule allows the Director of Enforcement to determine on a case-by-case basis that a complaint over two years old should be opened. Regarding the concern about a license holder having difficulty in responding to a dated investigation, that has not been the Department's experience. Records are often maintained for business reasons or as required by federal, state, or local laws and rules. The Department did not make any changes to new §60.201 as a result of the public comment.

Comment: Regarding §60.203, TFFA suggested a change to the requirement that a license holder provide all documents and

records requested by the Department or its representative as part of the investigation of a complaint. TFFA suggested adding the word "pertinent" after the word "all" to clarify that the request for documents and records must be related to the complaint.

Department Response: The Department disagrees with the comment and the suggested change. Under new §60.203, a license holder is required to cooperate in an investigation of a complaint, which includes producing records and documents requested by the Department. All records that are required to be maintained are required to be made available upon request by the Department or its representative. During an investigation the Department will determine which records are pertinent to the complaint investigation based upon the records which are required to be maintained. The Department did not make any changes to new §60.203 as a result of the public comment.

COMMISSION ACTION

At its meeting on May 1, 2023, the Commission adopted the proposed rules, with changes to the title of Subchapter H, as published in the *Texas Register*.

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §60.10

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department.

In addition, the adopted rules are adopted under the authority of other state laws that apply to state agencies. These laws include Texas Occupations Code, Chapters 53, 55 and 108 (Subchapter B); Texas Government Code, Chapters 411, 551, 552, 656 (Subchapter C), 661 (Subchapter A), 2001, 2005, 2008, 2009, and 2110; Civil Practice and Remedies Code, Chapter 154; and Family Code, Chapters 231 and 232.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapter 51, and the program statutes for all the Department programs: Agriculture Code, Chapter 301 (Weather Modification and Control); Education Code, Chapter 1001 (Driver and Traffic Safety Education); Government Code, Chapters 171 (Court-Ordered Programs); and 469 (Elimination of Architectural Barriers); Health and Safety Code, Chapters 401, Subchapter M (Laser Hair Removal); 754 (Elevators, Escalators, and Related Equipment); and 755 (Boilers); Labor Code, Chapter 91 (Professional Employer Organizations); Occupations Code, Chapters 202 (Podiatrists); 203 (Midwives); 401 (Speech-Language Pathologists and Audiologists); 402 (Hearing Instrument Fitters and Dispensers); 403 (Dyslexia Practitioners and Therapists); 451 (Athletic Trainers); 455 (Massage Therapy); 506 (Behavioral Analysts); 605 (Orthotists and Prosthetists); 701 (Dietitians); 802 (Dog or Cat Breeders); 1151 (Property Tax Professionals); 1152 (Property Tax Consultants); 1202 (Industrialized Housing and Buildings); 1302 (Air Conditioning and Refrigeration Contractors); 1304 (Service Contract Providers and Administrators); 1305 (Electricians); 1603 (Barbers and Cosmetologists); 1802 (Auctioneers); 1901 (Water Well Drillers); 1902 (Water Well Pump Installers); 1952 (Code Enforcement Officers); 1953 (Sanitarians); 1958 (Mold Assessors and Remediators); 2052 (Combative Sports); 2303 (Vehicle Storage Facilities); 2308 (Vehicle Towing and Booting); 2309 (Used Automotive Parts

Recyclers); 2310 (Motor Fuel Metering and Quality); and 2402 (Transportation Network Companies); and Transportation Code, Chapters 551A (Off-Highway Vehicle Training and Safety); and 662 (Motorcycle Operator Training and Safety).

In addition, the statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 53, 55, and 108 (Subchapter B); Texas Government Code, Chapters 411 (Subchapter F), 551, 552, 656 (Subchapter C), 661 (Subchapter A), 2001, 2005, 2008, 2009, and 2110; Civil Practice and Remedies Code, Chapter 154; and Family Code, Chapters 231 and 232. 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 May 12, 2023.

TRD-202301741

Della Lindquist

Interim General Counsel

Texas Department of Licensing and Regulation

Effective date: June 1, 2023

Proposal publication date: March 3, 2023

For further information, please call: (512) 475-4879



SUBCHAPTER F. FEES

16 TAC §60.82

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department.

In addition, the adopted rules are adopted under the authority of other state laws that apply to state agencies. These laws include Texas Occupations Code, Chapters 53, 55 and 108 (Subchapter B); Texas Government Code, Chapters 411, 551, 552, 656 (Subchapter C), 661 (Subchapter A), 2001, 2005, 2008, 2009, and 2110; Civil Practice and Remedies Code, Chapter 154; and Family Code, Chapters 231 and 232.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapter 51, and the program statutes for all the Department programs: Agriculture Code, Chapter 301 (Weather Modification and Control); Education Code, Chapter 1001 (Driver and Traffic Safety Education); Government Code, Chapters 171 (Court-Ordered Programs); and 469 (Elimination of Architectural Barriers); Health and Safety Code, Chapters 401, Subchapter M (Laser Hair Removal); 754 (Elevators, Escalators, and Related Equipment); and 755 (Boilers); Labor Code, Chapter 91 (Professional Employer Organizations); Occupations Code, Chapters 202 (Podiatrists); 203 (Midwives); 401 (Speech-Language Pathologists and Audiologists); 402 (Hearing Instrument Fitters and Dispensers); 403 (Dyslexia Practitioners and Therapists); 451 (Athletic Trainers); 455 (Massage Therapy); 506 (Behavioral Analysts); 605 (Orthotists and Prosthetists); 701 (Dietitians); 802 (Dog or Cat Breeders); 1151 (Property Tax Professionals); 1152 (Property Tax Consultants); 1202 (Industrialized Housing

and Buildings); 1302 (Air Conditioning and Refrigeration Contractors); 1304 (Service Contract Providers and Administrators); 1305 (Electricians); 1603 (Barbers and Cosmetologists); 1802 (Auctioneers); 1901 (Water Well Drillers); 1902 (Water Well Pump Installers); 1952 (Code Enforcement Officers); 1953 (Sanitarians); 1958 (Mold Assessors and Remediators); 2052 (Combative Sports); 2303 (Vehicle Storage Facilities); 2308 (Vehicle Towing and Booting); 2309 (Used Automotive Parts Recyclers); 2310 (Motor Fuel Metering and Quality); and 2402 (Transportation Network Companies); and Transportation Code, Chapters 551A (Off-Highway Vehicle Training and Safety); and 662 (Motorcycle Operator Training and Safety).

In addition, the statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 53, 55, and 108 (Subchapter B); Texas Government Code, Chapters 411 (Subchapter F), 551, 552, 656 (Subchapter C), 661 (Subchapter A), 2001, 2005, 2008, 2009, and 2110; Civil Practice and Remedies Code, Chapter 154; and Family Code, Chapters 231 and 232. 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.

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Della Lindquist

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Texas Department of Licensing and Regulation

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For further information, please call: (512) 475-4879



SUBCHAPTER G. RULEMAKING

16 TAC §60.101

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department.

In addition, the adopted rules are adopted under the authority of other state laws that apply to state agencies. These laws include Texas Occupations Code, Chapters 53, 55 and 108 (Subchapter B); Texas Government Code, Chapters 411, 551, 552, 656 (Subchapter C), 661 (Subchapter A), 2001, 2005, 2008, 2009, and 2110; Civil Practice and Remedies Code, Chapter 154; and Family Code, Chapters 231 and 232.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapter 51, and the program statutes for all the Department programs: Agriculture Code, Chapter 301 (Weather Modification and Control); Education Code, Chapter 1001 (Driver and Traffic Safety Education); Government Code, Chapters 171 (Court-Ordered Programs); and 469 (Elimination of Architectural Barriers); Health and Safety Code, Chapters 401, Subchapter M (Laser Hair Removal); 754 (Elevators, Escalators, and Related Equipment); and 755 (Boilers); Labor Code, Chapter 91 (Professional

Employer Organizations); Occupations Code, Chapters 202 (Podiatrists); 203 (Midwives); 401 (Speech-Language Pathologists and Audiologists); 402 (Hearing Instrument Fitters and Dispensers); 403 (Dyslexia Practitioners and Therapists); 451 (Athletic Trainers); 455 (Massage Therapy); 506 (Behavioral Analysts); 605 (Orthotists and Prosthetists); 701 (Dietitians); 802 (Dog or Cat Breeders); 1151 (Property Tax Professionals); 1152 (Property Tax Consultants); 1202 (Industrialized Housing and Buildings); 1302 (Air Conditioning and Refrigeration Contractors); 1304 (Service Contract Providers and Administrators); 1305 (Electricians); 1603 (Barbers and Cosmetologists); 1802 (Auctioneers); 1901 (Water Well Drillers); 1902 (Water Well Pump Installers); 1952 (Code Enforcement Officers); 1953 (Sanitarians); 1958 (Mold Assessors and Remediators); 2052 (Combative Sports); 2303 (Vehicle Storage Facilities); 2308 (Vehicle Towing and Booting); 2309 (Used Automotive Parts Recyclers); 2310 (Motor Fuel Metering and Quality); and 2402 (Transportation Network Companies); and Transportation Code, Chapters 551A (Off-Highway Vehicle Training and Safety); and 662 (Motorcycle Operator Training and Safety).

In addition, the statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 53, 55, and 108 (Subchapter B); Texas Government Code, Chapters 411 (Subchapter F), 551, 552, 656 (Subchapter C), 661 (Subchapter A), 2001, 2005, 2008, 2009, and 2110; Civil Practice and Remedies Code, Chapter 154; and Family Code, Chapters 231 and 232. 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.

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SUBCHAPTER H. COMPLAINT HANDLING

16 TAC §60.200

STATUTORY AUTHORITY

The adopted repeal is adopted under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department.

In addition, the adopted repeal is adopted under the authority of other state laws that apply to state agencies. These laws include Texas Occupations Code, Chapters 53, 55 and 108 (Subchapter B); Texas Government Code, Chapters 411, 551, 552, 656 (Subchapter C), 661 (Subchapter A), 2001, 2005, 2008, 2009, and 2110; Civil Practice and Remedies Code, Chapter 154; and Family Code, Chapters 231 and 232.

The statutory provisions affected by the adopted repeal is those set forth in Texas Occupations Code, Chapter 51, and the

program statutes for all the Department programs: Agriculture Code, Chapter 301 (Weather Modification and Control); Education Code, Chapter 1001 (Driver and Traffic Safety Education); Government Code, Chapters 171 (Court-Ordered Programs); and 469 (Elimination of Architectural Barriers); Health and Safety Code, Chapters 401, Subchapter M (Laser Hair Removal); 754 (Elevators, Escalators, and Related Equipment); and 755 (Boilers); Labor Code, Chapter 91 (Professional Employer Organizations); Occupations Code, Chapters 202 (Podiatrists); 203 (Midwives); 401 (Speech-Language Pathologists and Audiologists); 402 (Hearing Instrument Fitters and Dispensers); 403 (Dyslexia Practitioners and Therapists); 451 (Athletic Trainers); 455 (Massage Therapy); 506 (Behavioral Analysts); 605 (Orthotists and Prosthetists); 701 (Dietitians); 802 (Dog or Cat Breeders); 1151 (Property Tax Professionals); 1152 (Property Tax Consultants); 1202 (Industrialized Housing and Buildings); 1302 (Air Conditioning and Refrigeration Contractors); 1304 (Service Contract Providers and Administrators); 1305 (Electricians); 1603 (Barbers and Cosmetologists); 1802 (Auctioneers); 1901 (Water Well Drillers); 1902 (Water Well Pump Installers); 1952 (Code Enforcement Officers); 1953 (Sanitarians); 1958 (Mold Assessors and Remediators); 2052 (Combative Sports); 2303 (Vehicle Storage Facilities); 2308 (Vehicle Towing and Booting); 2309 (Used Automotive Parts Recyclers); 2310 (Motor Fuel Metering and Quality); and 2402 (Transportation Network Companies); and Transportation Code, Chapters 551A (Off-Highway Vehicle Training and Safety); and 662 (Motorcycle Operator Training and Safety).

In addition, the statutory provisions affected by the adopted repeal is those set forth in Texas Occupations Code, Chapters 53, 55, and 108 (Subchapter B); Texas Government Code, Chapters 411 (Subchapter F), 551, 552, 656 (Subchapter C), 661 (Subchapter A), 2001, 2005, 2008, 2009, and 2110; Civil Practice and Remedies Code, Chapter 154; and Family Code, Chapters 231 and 232. No other statutes, articles, or codes are affected by the adopted repeals.

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SUBCHAPTER H. COMPLAINTS; INSPECTIONS

16 TAC §§60.200 - 60.204

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department.

In addition, the adopted rules are adopted under the authority of other state laws that apply to state agencies. These laws include Texas Occupations Code, Chapters 53, 55 and 108 (Subchapter B); Texas Government Code, Chapters 411, 551, 552, 656 (Subchapter C), 661 (Subchapter A), 2001, 2005, 2008, 2009, and 2110; Civil Practice and Remedies Code, Chapter 154; and Family Code, Chapters 231 and 232.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapter 51, and the program statutes for all the Department programs: Agriculture Code, Chapter 301 (Weather Modification and Control); Education Code, Chapter 1001 (Driver and Traffic Safety Education); Government Code, Chapters 171 (Court-Ordered Programs); and 469 (Elimination of Architectural Barriers); Health and Safety Code, Chapters 401, Subchapter M (Laser Hair Removal); 754 (Elevators, Escalators, and Related Equipment); and 755 (Boilers); Labor Code, Chapter 91 (Professional Employer Organizations); Occupations Code, Chapters 202 (Podiatrists); 203 (Midwives); 401 (Speech-Language Pathologists and Audiologists); 402 (Hearing Instrument Fitters and Dispensers); 403 (Dyslexia Practitioners and Therapists); 451 (Athletic Trainers); 455 (Massage Therapy); 506 (Behavioral Analysts); 605 (Orthotists and Prosthetists); 701 (Dietitians); 802 (Dog or Cat Breeders); 1151 (Property Tax Professionals); 1152 (Property Tax Consultants); 1202 (Industrialized Housing and Buildings); 1302 (Air Conditioning and Refrigeration Contractors); 1304 (Service Contract Providers and Administrators); 1305 (Electricians); 1603 (Barbers and Cosmetologists); 1802 (Auctioneers); 1901 (Water Well Drillers); 1902 (Water Well Pump Installers); 1952 (Code Enforcement Officers); 1953 (Sanitarians); 1958 (Mold Assessors and Remediators); 2052 (Combative Sports); 2303 (Vehicle Storage Facilities); 2308 (Vehicle Towing and Booting); 2309 (Used Automotive Parts Recyclers); 2310 (Motor Fuel Metering and Quality); and 2402 (Transportation Network Companies); and Transportation Code, Chapters 551A (Off-Highway Vehicle Training and Safety); and 662 (Motorcycle Operator Training and Safety).

In addition, the statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 53, 55, and 108 (Subchapter B); Texas Government Code, Chapters 411 (Subchapter F), 551, 552, 656 (Subchapter C), 661 (Subchapter A), 2001, 2005, 2008, 2009, and 2110; Civil Practice and Remedies Code, Chapter 154; and Family Code, Chapters 231 and 232. No other statutes, articles, or codes are affected by the adopted rules.

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SUBCHAPTER I. CONTESTED CASES

16 TAC §§60.300 - 60.302, 60.304, 60.305, 60.307 - 60.312

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department.

In addition, the adopted rules are adopted under the authority of other state laws that apply to state agencies. These laws include Texas Occupations Code, Chapters 53, 55 and 108 (Subchapter B); Texas Government Code, Chapters 411, 551, 552, 656 (Subchapter C), 661 (Subchapter A), 2001, 2005, 2008, 2009, and 2110; Civil Practice and Remedies Code, Chapter 154; and Family Code, Chapters 231 and 232.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapter 51, and the program statutes for all the Department programs: Agriculture Code, Chapter 301 (Weather Modification and Control); Education Code, Chapter 1001 (Driver and Traffic Safety Education); Government Code, Chapters 171 (Court-Ordered Programs); and 469 (Elimination of Architectural Barriers); Health and Safety Code, Chapters 401, Subchapter M (Laser Hair Removal); 754 (Elevators, Escalators, and Related Equipment); and 755 (Boilers); Labor Code, Chapter 91 (Professional Employer Organizations); Occupations Code, Chapters 202 (Podiatrists); 203 (Midwives); 401 (Speech-Language Pathologists and Audiologists); 402 (Hearing Instrument Fitters and Dispensers); 403 (Dyslexia Practitioners and Therapists); 451 (Athletic Trainers); 455 (Massage Therapy); 506 (Behavioral Analysts); 605 (Orthotists and Prosthetists); 701 (Dietitians); 802 (Dog or Cat Breeders); 1151 (Property Tax Professionals); 1152 (Property Tax Consultants); 1202 (Industrialized Housing and Buildings); 1302 (Air Conditioning and Refrigeration Contractors); 1304 (Service Contract Providers and Administrators); 1305 (Electricians); 1603 (Barbers and Cosmetologists); 1802 (Auctioneers); 1901 (Water Well Drillers); 1902 (Water Well Pump Installers); 1952 (Code Enforcement Officers); 1953 (Sanitarians); 1958 (Mold Assessors and Remediators); 2052 (Combative Sports); 2303 (Vehicle Storage Facilities); 2308 (Vehicle Towing and Booting); 2309 (Used Automotive Parts Recyclers); 2310 (Motor Fuel Metering and Quality); and 2402 (Transportation Network Companies); and Transportation Code, Chapters 551A (Off-Highway Vehicle Training and Safety); and 662 (Motorcycle Operator Training and Safety).

In addition, the statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 53, 55, and 108 (Subchapter B); Texas Government Code, Chapters 411 (Subchapter F), 551, 552, 656 (Subchapter C), 661 (Subchapter A), 2001, 2005, 2008, 2009, and 2110; Civil Practice and Remedies Code, Chapter 154; and Family Code, Chapters 231 and 232. No other statutes, articles, or codes are affected by the adopted rules.

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16 TAC §60.306, §60.311

STATUTORY AUTHORITY

The adopted repeals are adopted under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department.

In addition, the adopted repeals are adopted under the authority of other state laws that apply to state agencies. These laws include Texas Occupations Code, Chapters 53, 55 and 108 (Subchapter B); Texas Government Code, Chapters 411, 551, 552, 656 (Subchapter C), 661 (Subchapter A), 2001, 2005, 2008, 2009, and 2110; Civil Practice and Remedies Code, Chapter 154; and Family Code, Chapters 231 and 232.

The statutory provisions affected by the adopted repeals are those set forth in Texas Occupations Code, Chapter 51, and the program statutes for all the Department programs: Agriculture Code, Chapter 301 (Weather Modification and Control); Education Code, Chapter 1001 (Driver and Traffic Safety Education); Government Code, Chapters 171 (Court-Ordered Programs); and 469 (Elimination of Architectural Barriers); Health and Safety Code, Chapters 401, Subchapter M (Laser Hair Removal); 754 (Elevators, Escalators, and Related Equipment); and 755 (Boilers); Labor Code, Chapter 91 (Professional Employer Organizations); Occupations Code, Chapters 202 (Podiatrists); 203 (Midwives); 401 (Speech-Language Pathologists and Audiologists); 402 (Hearing Instrument Fitters and Dispensers); 403 (Dyslexia Practitioners and Therapists); 451 (Athletic Trainers); 455 (Massage Therapy); 506 (Behavioral Analysts); 605 (Orthotists and Prosthetists); 701 (Dietitians); 802 (Dog or Cat Breeders); 1151 (Property Tax Professionals); 1152 (Property Tax Consultants); 1202 (Industrialized Housing and Buildings); 1302 (Air Conditioning and Refrigeration Contractors); 1304 (Service Contract Providers and Administrators); 1305 (Electricians); 1603 (Barbers and Cosmetologists); 1802 (Auctioneers); 1901 (Water Well Drillers); 1902 (Water Well Pump Installers); 1952 (Code Enforcement Officers); 1953 (Sanitarians); 1958 (Mold Assessors and Remediators); 2052 (Combative Sports); 2303 (Vehicle Storage Facilities); 2308 (Vehicle Towing and Booting); 2309 (Used Automotive Parts Recyclers); 2310 (Motor Fuel Metering and Quality); and 2402 (Transportation Network Companies); and Transportation Code, Chapters 551A (Off-Highway Vehicle Training and Safety); and 662 (Motorcycle Operator Training and Safety).

In addition, the statutory provisions affected by the adopted repeals are those set forth in Texas Occupations Code, Chapters 53, 55, and 108 (Subchapter B); Texas Government Code, Chapters 411 (Subchapter F), 551, 552, 656 (Subchapter C), 661 (Subchapter A), 2001, 2005, 2008, 2009, and 2110; Civil Practice and Remedies Code, Chapter 154; and Family Code, Chapters 231 and 232. No other statutes, articles, or codes are affected by the adopted repeals.

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SUBCHAPTER J. MEDIATION FOR CONTESTED CASES

16 TAC §§60.400 - 60.406, 60.408, 60.409

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department.

In addition, the adopted rules are adopted under the authority of other state laws that apply to state agencies. These laws include Texas Occupations Code, Chapters 53, 55 and 108 (Subchapter B); Texas Government Code, Chapters 411, 551, 552, 656 (Subchapter C), 661 (Subchapter A), 2001, 2005, 2008, 2009, and 2110; Civil Practice and Remedies Code, Chapter 154; and Family Code, Chapters 231 and 232.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapter 51, and the program statutes for all the Department programs: Agriculture Code, Chapter 301 (Weather Modification and Control); Education Code, Chapter 1001 (Driver and Traffic Safety Education); Government Code, Chapters 171 (Court-Ordered Programs); and 469 (Elimination of Architectural Barriers); Health and Safety Code, Chapters 401, Subchapter M (Laser Hair Removal); 754 (Elevators, Escalators, and Related Equipment); and 755 (Boilers); Labor Code, Chapter 91 (Professional Employer Organizations); Occupations Code, Chapters 202 (Podiatrists); 203 (Midwives); 401 (Speech-Language Pathologists and Audiologists); 402 (Hearing Instrument Fitters and Dispensers); 403 (Dyslexia Practitioners and Therapists); 451 (Athletic Trainers); 455 (Massage Therapy); 506 (Behavioral Analysts); 605 (Orthotists and Prosthetists); 701 (Dietitians); 802 (Dog or Cat Breeders); 1151 (Property Tax Professionals); 1152 (Property Tax Consultants); 1202 (Industrialized Housing and Buildings); 1302 (Air Conditioning and Refrigeration Contractors); 1304 (Service Contract Providers and Administrators); 1305 (Electricians); 1603 (Barbers and Cosmetologists); 1802 (Auctioneers); 1901 (Water Well Drillers); 1902 (Water Well Pump Installers); 1952 (Code Enforcement Officers); 1953 (Sanitarians); 1958 (Mold Assessors and Remediators); 2052 (Combative Sports); 2303 (Vehicle Storage Facilities); 2308 (Vehicle Towing and Booting); 2309 (Used Automotive Parts Recyclers); 2310 (Motor Fuel Metering and Quality); and 2402 (Transportation Network Companies); and Transportation Code, Chapters 551A (Off-Highway Vehicle Training and Safety); and 662 (Motorcycle Operator Training and Safety).

In addition, the statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 53, 55, and 108 (Subchapter B); Texas Government Code, Chapters 411 (Subchapter F), 551, 552, 656 (Subchapter C), 661 (Subchapter A), 2001, 2005, 2008, 2009, and 2110; Civil Practice and Remedies Code, Chapter 154; and Family Code, Chapters 231 and 232. No other statutes, articles, or codes are affected by the adopted rules.

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CHAPTER 84. DRIVER EDUCATION AND SAFETY

The Texas Department of Licensing and Regulation (Department) adopts amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 84, Subchapter A, §§84.1 and §84.3; Subchapter B, §§84.31 - 84.33; Subchapter C, §84.47 and §84.48; Subchapter D, §84.50 and §84.52; Subchapter G, §§84.80, 84.84, and 84.85; Subchapter I, §§84.100, 84.101, 84.103; Subchapter L, §84.400; Subchapter M, §§84.500 - 84.502, and 84.504; Subchapter N, §84.600 and §84.601; new rules at Subchapter B, §84.30; Subchapter C, §§84.40 - 84.46; Subchapter E, §§84.60, 84.61, and 84.63; Subchapter G, §§84.81 - 84.83; Subchapter H, §84.90; Subchapter J, §84.200; Subchapter K, §84.300 and §84.301; and the repeal of existing rules at Subchapter A, §84.2; Subchapter B, §84.30; Subchapter C, §§84.40 - 84.46; Subchapter E, §§84.60 - 84.64; Subchapter F, §§84.70 - 84.72; Subchapter G, §§84.81 - 84.83; Subchapter H, §84.90; Subchapter J, §84.200; Subchapter K, §§84.300 - 84.302; Subchapter M, §§84.503, 84.505 - 84.507, regarding the Driver Education and Safety (DES) program, without changes to the proposed text as published in the February 10, 2023, issue of the *Texas Register* (48 TexReg 565). These rules will not be republished.

The Commission also adopts a new rule at 16 TAC Chapter 84, Subchapter A, §84.2, and amendments to an existing rule at 16 TAC Chapter 84, Subchapter D, §84.51, regarding the Driver Education and Safety program, with changes to the proposed text as published in the February 10, 2023, issue of the *Texas Register* (48 TexReg 565). These rules will be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC, Chapter 84, implement House Bill (HB) 1560, Article 5, Regular Session (2021) and the Texas Education Code, Chapter 1001, Driver and Traffic Safety Education.

The adopted rules, pursuant to HB 1560, include: (1) clarification of DES license types, licensing prerequisites, means of course instruction delivery, and program fees; and (2) implementing the recommendations of the DES Providers/Instructors Workgroup

(Workgroup), consistent with HB 1560, relating to the qualifications, responsibilities, and functions of those licensees.

The adopted rules in this rulemaking represent the first phase of bill implementation associated with HB 1560. A second phase is being considered to address rule amendments relating to driver training curriculum and enforcement issues within the DES program.

House Bill 1560, Article 5, Driver Education

House Bill 1560, Article 5, Regular Session (2021) represented significant reorganization and modification in the Driver Education and Safety program in Chapter 1001, Education Code by: (1) repealing and replacing certain license types and endorsements associated with driver education, driving safety, specialized driving safety, and the drug and alcohol driving awareness program courses; (2) repealing selected administrative functions to promote greater simplicity and transparency for the Department and licensees; (3) amending and adding program fees and requirements related to the revised license types; and (4) authorizing the Commission to change minimum hours for driver education course instruction.

The Workgroup conducted four meetings to address the proposed changes to the DES program brought about by HB 1560, Article 5. The Workgroup review was limited to 16 TAC Chapter 84, Subchapters A through J and the adopted rules reflect their input.

SECTION-BY-SECTION SUMMARY

Subchapter A. General Provisions.

The adopted rules amend §84.1, Authority, by clarifying rule language.

The adopted rules add new §84.2, Definitions, which establishes the meaning of the words and terms employed throughout the rule chapter. The new rule replaces existing §84.2 to: (1) add definitions for "Branch Location", "Education Service Center", "Endorsement", "Instructional Hour", "Primary Driver Education Provider", and "Relevant Driver Training Entity"; (2) delete definitions rendered unnecessary due to the provisions of HB 1560, Article 5 for "Alternative Method of Instruction", "Certificate of Program Completion", "Change of Ownership of a School or Course Provider", "Clock Hour", "Criminal History Record Information", "DSY25", "Educational Objectives", "Inactive Course", "Instructor Development Course", "Instructor Development Program", "Instructor Trainer", "National Criminal History Record Information", "New Course", "Post Program Exam", "Pre Program Exam", "Primary School", "Specialized Driving Safety Course", and "Teaching Techniques"; (3) amend definition terminology provisions consistent with HB 1560, Article 5; (4) renumber provisions as needed; and (5) clarify rule language.

The adopted rules repeal existing §84.2, Definitions.

The adopted rules amend §84.3, Materials Adopted by Reference, by deleting references in subsections (d) and (e) to minimum requirements for course curriculum related to Specialized Driving Safety and the Drug and Alcohol Driving Awareness programs which are repealed by HB 1560, Article 5.

Subchapter B. Driver Training and Traffic Safety Advisory Committee

The adopted rules add new §84.30, Membership, which introduces changes in the number and composition of the DES advisory committee, consistent with HB 1560, Article 5. The new

rule replaces existing §84.30 to: (1) reduce the number of members from eleven to nine; (2) remove member representation for the repealed drug and alcohol driving awareness program; and (3) reduce committee membership to one public member.

The adopted rules repeal existing §84.30, Membership.

The adopted rules amend §84.31, Duties, to clarify rule language.

The adopted rules amend §84.32, Terms; Vacancies, to clarify rule language.

The adopted rules amend §84.33, Officers, to clarify rule language.

Subchapter C. Driver Education Providers and Instructors.

The adopted rules amend the title of Subchapter C, "Driver Education Schools and Instructors" to read "Driver Education Providers and Instructors" to reflect the HB 1560, Article 5 change in terminology for "driver education providers" as indicated in Texas Education Code, §1001.001(6-b).

The adopted rules add new §84.40, Driver Education Provider Licensure Requirements, which introduces minimum prerequisites, consistent with the implementation of HB 1560, Article 5, for an applicant to obtain a DE provider license. The new rule replaces existing §84.40 to: (1) remove the tender of letters of credit and cash deposits as accepted alternate forms of security by DE providers in lieu of a corporate surety bond for initial licensure and renewals; (2) update rule terminology consistent with HB 1560, Article 5; (3) accept transfer of change of DE provider ownership requirements from existing §84.2(6), Definitions; (4) allow for refunds for those students unable to complete a course with a DE provider that has changed location; (5) eliminate the requirement for Department pre-approval on contract sites DE providers employ to conduct instruction at another location where a written agreement exists between the provider and authorized contract site representatives; (6) clarify ownership verification requirements in new subsection (c) for primary and branch provider location relating to new applications and change of ownership situations; (7) require licensed branch driver education locations to have a different physical address from the licensed primary provider location; (8) allow the Department to declare closure of a DE provider where the provider provides written notice of its intent to no longer deliver driver education training or education and returns all unissued DE certificates or numbers; and (9) clarify rule language.

The adopted rules repeal existing §84.40, Driver Education School Licensure Requirements.

The adopted rules add new §84.41, Driver Education Provider Responsibilities, which enumerates the duties and functions of licensed DE providers. The new rule replaces existing §84.41 to: (1) clarify the business responsibilities for online and in-person DE providers, consistent with HB 1560, Article 5; (2) transfer the duties in existing rule subsection (c) related to the care, security and issuance of driver education certificates of completion, and corporate security requirements for student data to new §84.43, Driver Education Certificates; (3) update rule terminology consistent with HB 1560, Article 5; (4) mandate DE provider compliance with §84.43 in the issuance of driver education certificates of completion; (5) require that each DE provider either be located in or maintain a registered agent within the state; and (6) clarify rule language.

The adopted rules repeal existing §84.41, Driver Education School Responsibilities.

The adopted rules add new §84.42, Motor Vehicles, which identifies the requirements for motor vehicles used by DE providers to conduct in-car instruction of students. The new rule replaces existing §84.42 to: (1) allow providers to use any motor vehicle equipped with special vehicle controls to conduct in-car instruction of a disabled student; (2) describe minimum equipment and insurance requirements for provider-owned motor vehicles used for demonstration or practice driving lessons; (3) update rule terminology consistent with HB 1560, Article 5; and (4) clarify rule language.

The adopted rules repeal existing §84.42, Motor Vehicles.

The adopted rules add new §84.43, Driver Education Certificates, which describes how relevant driver training entities care, control and issue driver education certificates of completion or certificate numbers. The new rule replaces existing §84.43 to: (1) clarify and separate the specific responsibilities for DE providers, and public and private schools, regarding the handling of driver education certificates of completion or certificate numbers; (2) combine certain DE provider responsibilities previously found in existing §84.41(c) relating to care, security and issuance of driver education certificates of completion, and corporate security requirements for student data for clarity and better organization within the rule chapter; (3) update rule terminology consistent with HB 1560, Article 5; and (4) clarify rule language.

The adopted rules repeal existing §84.43, Driver Education Certificates.

The adopted rules add new §84.44, Driver Education Instructor License, which identifies the requirements for an applicant to obtain a driver education instructor license. The new rule replaces existing §84.44 to: (1) eliminate the requirement for a high school diploma or equivalent for licensure in existing subsection (a)(1); (2) remove previous instructor endorsements with their qualifications and responsibilities; (3) require submission of a valid driver license record for the preceding three year period for instructor renewal; (4) reduce continuing education (CE) hour requirements for license renewal from four hours to two hours of instruction related to driving education, driving safety, and instructional techniques; (5) require applicant criminal history background checks for initial and renewal license applications; and (6) establish an auditing process to verify reporting of continuing education hours submitted by renewing licensees.

The adopted rules repeal existing §84.44, Driver Education Instructor License.

The adopted rules add new §84.45, Student Progress, which sets the requirements to assess student comprehension during driver education courses. The new rule replaces existing §84.45 to: (1) remove limitations on methods available to DE instructors and providers to assess successful completion and mastery of driver education course materials; (2) update rule terminology consistent with HB 1560, Article 5; and (3) clarify rule language.

The adopted rules repeal existing §84.45, Student Progress.

The adopted rules add new §84.46, Attendance and Makeup, which establishes minimum standards for DE provider recording of student attendance. The new rule replaces existing §84.46 to: (1) increase the maximum daily limit of driver education training offered by providers to six hours per day; (2) increase the allocation of in-car instruction from three hours to four

hours per day; (3) increase behind-the-wheel instruction from one hour to two hours per day out of a daily in-car instruction session; (4) repeal the requirement that DE providers develop a makeup policy for inclusion in enrollment contracts; (5) update rule terminology consistent with HB 1560, Article 5; and (6) clarify rule language.

The adopted rules repeal existing §84.46, Attendance and Makeup.

The adopted rules amend §84.47, Student Conduct Policy, to clarify rule language.

The adopted rules amend §84.48, Accommodations for Deaf or Hard of Hearing Students, to update rule terminology consistent with HB 1560, Article 5.

Subchapter D. Parent-Taught Driver Education.

The adopted rules amend §84.50, Parent-Taught Driver Education Program Requirements, by: (1) removing unnecessary language in existing subsection (b) already contained in Texas Education Code, §§1001.112(b)(2)-(4); (2) limiting parent taught driver education instruction to students to six hours a day, including not more than two hours of behind-the-wheel supervised practice; (3) updating rule terminology consistent with HB 1560, Article 5; and (4) clarifying rule language.

The adopted rules amend §84.51, Submission of Parent-Taught Course of Department Approval, to: (1) clarify the applicability of rules relevant to PTDE providers; and (2) update the section title.

The adopted rules amend §84.52, Cancellation of Department Approval, to update the name of the Department's instructor designation form in the rule.

Subchapter E. Driving Safety Providers.

The adopted rules amend the title of Subchapter E, "Driving Safety Schools, Course Providers and Instructors" to read "Driving Safety Providers" to reflect the HB 1560, Article 5 change in terminology for "driving safety provider" as indicated in Texas Education Code, §1001.001(13).

The adopted rules add new §84.60, Driving Safety Provider License Requirements, which details the prerequisites for an applicant to obtain a driving safety provider license. The new rule, consistent with HB 1560, Article 5, replaces existing §§84.60 and 84.62 to reflect the introduction of the new driving safety provider license type, and the repeal of the driving safety school license, respectively. The new rule replaces existing §84.60 to: (1) combine the functions of the previously separate course provider and driving safety school license types into one new license type (driving safety provider) to offer a driving safety course; (2) add bond amount requirements to original and renewal applications for a driving safety provider license; (3) add ownership verification, license renewal, provider relocation, provider closure, and existing provider acquisition requirements for the driving safety provider license type, and repeal such requirements for driving safety schools; (4) update rule terminology consistent with HB 1560, Article 5; and (5) clarify rule language.

The adopted rules repeal existing §84.60, Driving Safety School Licensure Requirements.

The adopted rules add new §84.61, Driving Safety Provider Responsibilities, which illustrates the required obligations for a licensed driving safety provider. The new rule replaces existing §84.61 by: (1) eliminating Department preapproval of locations

for driving safety instruction courses, and the requirements associated with the driving safety instructor license type, due to its repeal by HB 1560, Article 5; (2) transferring the provider responsibilities, except those dealing with the now repealed driving safety school and instructor license types, to §84.63, Uniform Certificate of Course Completion for Driving Safety Course; (3) imposing an obligation upon driving safety providers to make all records available upon request to Department staff; (4) requiring providers to be located or maintain a registered agent within the state; (5) updating rule terminology consistent with HB 1560, Article 5; and (6) clarifying rule language.

The adopted rules repeal existing §84.61, Driving Safety School and Course Provider Responsibilities.

The adopted rules repeal existing §84.62, Course Provider License Requirements, which includes requirements that will instead be addressed in new §84.60, Driving Safety Provider License Requirements.

The adopted rules add new §84.63, Uniform Certificate of Course Completion for Driving Safety Course, which describes the responsibilities for driving safety providers regarding management of driving safety uniform certificates of course completion and certificate numbers. This new rule replaces existing §84.63 by: (1) eliminating driving safety course provider, school owner, and instructor responsibilities for uniform certificates for course completion for specific driving safety courses repealed by HB 1560, Article 5; (2) identifying requirements for driving safety providers relating to care, control, security and issuance of original and duplicate uniform certificates of course completion and certificate numbers; (3) updating rule terminology consistent with HB 1560, Article 5; and (4) clarifying rule language.

The adopted rules repeal existing §84.63, Uniform Certificate of Course Completion for Driving Safety or Specialized Driving Safety Course.

The adopted rules repeal existing §84.64, Driving Safety Instructor License Requirements, because the driving safety instructor license was repealed by HB 1560, Article 5.

Subchapter F. Drug and Alcohol Awareness Programs and Instructors.

The adopted rules repeal the Subchapter F title, "Drug and Alcohol Driving Awareness Programs and Instructors".

The adopted rules repeal existing §84.70, Drug and Alcohol Driving Awareness Program School Licensure Requirements, because the Drug and Alcohol Driving Awareness Program was repealed by HB 1560, Article 5.

The adopted rules repeal existing §84.71, School and Course Provider Responsibilities, because the Drug and Alcohol Driving Awareness Program was repealed by HB 1560, Article 5.

The adopted rules repeal existing §84.72, Instructor License Requirements, because the Drug and Alcohol Driving Awareness Program was repealed by HB 1560, Article 5.

Subchapter G. General Business Practices.

The adopted rules amend existing §84.80, Names and Advertising, by: (1) removing the Department pre-approval requirement for business advertising by new license applicants pending licensure; (2) updating rule terminology consistent with HB 1560, Article 5; and (3) clarifying rule language.

The adopted rules add new §84.81, Recordkeeping Requirements, which identifies student record management requirements for driver training providers. The new rule replaces existing §84.81 to: (1) allow licensees to maintain student records of the most recent 12 months of instruction at the provider's licensed location rather than the class instruction site; (2) clarify the type of required entries for driver education providers regarding classroom and in-car instruction student records, including retention, audit and inspection standards; (3) require driver training providers to electronically upload specific student enrollment, course completion, withdrawal and termination data to the Department within specified time periods; (4) identify the circumstances under which student records may be released by driver training providers; (5) eliminate recordkeeping requirements for driving safety schools, and drug and alcohol awareness schools, repealed by HB 1560, Article 5; (6) require DE providers to upload student certificate data to the Department as directed within 15 calendar days after issuance; (7) update rule terminology consistent with HB 1560, Article 5; and (8) clarify rule language.

The adopted rules repeal existing §84.81, Recordkeeping Requirements.

The adopted rules add new §84.82, Driver Training Provider Student Enrollment Contracts, which identifies the elements to be included on student enrollment contracts prior to the submission of payment to a provider. The new rule replaces existing §84.82 to: (1) identify the required enrollment provisions for student contracts with driver training providers; (2) eliminate the contract requirements for repealed drug and alcohol awareness and driving safety schools; (3) authorize group enrollment contracts for students enrolled in driving safety and adult driver education courses; (4) update rule terminology consistent with HB 1560, Article 5; and (5) clarify rule language.

The adopted rules repeal existing §84.82, Student Enrollment Contracts.

The adopted rules add new §84.83, Student Complaints, which identifies the Department policy regarding dispute resolution obligations for driver training providers. The new rule replaces existing §84.83 to: (1) remove repetitive grievance procedures already contained in §84.82; and (2) clarify policy relating to disputes between students and providers.

The adopted rules repeal existing §84.83, Student Complaints.

The adopted rules amend existing §84.84, Notification of Public Interest Information and Participation, by: (1) limiting the required notice of Department complaint filing information to student enrollment contracts, provider business locations, and websites; and (2) clarifying rule language.

The adopted rules amend existing §84.85, Statement of Assurance, by: (1) updating rule terminology consistent with HB 1560, Article 5; and (2) clarifying rule language.

Subchapter H. Facilities and Equipment for Driver Training Providers.

The adopted rules amend the title of Subchapter H, "Facilities and Equipment for Driver Education Schools, Driving Safety Schools and Drug and Alcohol Awareness Schools", to read "Facilities and Equipment for Driver Training Providers" to reflect the HB 1560, Article 5, changes in terminology for "driver education provider" as indicated in Texas Education Code, §1001.001(6-b) and the repeal of the license types for "driving safety schools" and "drug and alcohol awareness schools".

The adopted rules add new §84.90, Facilities and Equipment, which describes the necessary elements required for an in-person driver training provider location. The new rule replaces existing §84.90 by: (1) clarifying that such facilities must comply with local ordinances and state laws related to health and safety for students and instructors; (2) requiring that an appropriate amount of seating and writing facilities for the class size be available to students where applicable; (3) removing the requirements for driver training courses deregulated by HB 1560, Article 5; (4) updating rule terminology consistent with HB 1560, Article 5; and (5) clarifying rule language.

The adopted rules repeal existing §84.90, Facilities and Equipment.

Subchapter I. Inspections.

The adopted rules amend existing §84.100, Inspections - General, by clarifying rule language.

The adopted rules amend existing §84.101, Inspection of Driver Education Providers Before Operation, by clarifying rule language.

The adopted rules amend existing §84.103, by: (1) amending the rule title to read, "Driver Training Provider Audits"; and (2) updating rule terminology consistent with HB 1560, Article 5.

Subchapter J. Driver Training Provider Cancellation and Refund.

The adopted rules amend the title of Subchapter J, "Driver Education and Driving Safety School Cancellation and Refund", to read "Driver Training Provider Cancellation and Refund" to reflect the HB 1560, Article 5 changes in license type terminology and the deregulation of "driving safety schools".

The adopted rules add new §84.200, Cancellation and Refund Policy, which illustrates the student cancellation and refund policies applicable to driver training providers that cease operations, terminate course instruction, or have a student withdrawal from the course. The new rule replaces existing §84.200 by: (1) reducing the interest rate on unpaid refunds to 10% to provide consistency with the provisions relating to usury in Article 16, Section 11 of the Texas Constitution; (2) clarifying that an attempted student refund evidenced in the student file represents a good faith attempt to tender a refund rather than proof of certified mail to the student or student's parent; (3) removing driving safety schools from the cancellation and refund policy requirements due to the license type repeal by HB 1560; (4) updating rule terminology consistent with HB 1560, Article 5; and (5) clarifying rule language.

The adopted rules repeal existing §84.200, Cancellation and Refund Policy.

Subchapter K. Fees

The adopted rules add new §84.300, Driver Education Fees, which set the nonrefundable driver education provider fees for the DES program for the new license types established by HB 1560, Article 5 by: (1) establishing the initial license application fees for primary and branch driver education providers, where applicable, at \$500 and license renewal at \$300, with initial driver education provider license endorsements at \$300 each with no cost for license renewal; (2) setting driver education initial instructor license fees at \$50, with license renewal at \$25; (3) keeping driver education completion certificate fees at \$1; (4) updating rule terminology consistent with HB 1560, Article 5; (5) removing Department driver education course pre-approval fees; and (6) clarifying rule language.

The adopted rules repeal existing 84.300, Driver Education Fees.

The adopted rules add new §84.301, Driving Safety Fees, which set the nonrefundable driving safety provider fees for the new license type, Driving Safety Provider, established by HB 1560, Article 5 by: (1) establishing the initial license application fee for a driving safety provider at \$500, and license renewal at \$100; (2) keeping driving safety course completion certificate fees at \$1; (3) removing driving safety course Department pre-approval fees; (4) updating rule terminology consistent with HB 1560, Article 5; and (5) clarifying rule language.

The adopted rules repeal existing 84.301, Driver Safety Fees.

The adopted rules repeal existing 84.302, Drug and Alcohol Driving Awareness Fees consistent with its repeal pursuant to HB 1560, Article 5.

Subchapter L. Complaints and Enforcement Provisions.

The adopted rules amend existing §84.400, Administrative Penalties and Sanctions, by removing a violation of an executive order issued by the Governor as a basis for the institution of proceedings by the Department to seek to impose administrative penalties and/or sanctions against a licensee. This change provides consistency with the statutory authority of the Department to administer and enforce the laws and rules of the DES program.

Subchapter M. Curriculum and Alternative Methods of Instruction.

The adopted rules amend existing §84.500 by: (1) amending the rule title to read, "Courses of Instruction for Driver Education Providers"; (2) updating rule terminology consistent with HB 1560, Article 5; (3) removing requirements for driver education instructor development courses and continuing education course approval, which were deregulated by HB 1560, Article 5; and (4) clarifying rule language.

The adopted rules amend existing §84.501, Driver Education Course Alternative Method of Instruction, by: (1) updating rule terminology consistent with HB 1560, Article 5; and (2) clarifying rule language.

The adopted rules amend existing §84.502, Driving Safety Courses of Instruction, by: (1) removing rule language relating to requirements for driving safety instructors and course providers, continuing education course creation, and instructor development and training, due to the repeal of the license type by HB 1560, Article 5; (2) updating rule terminology consistent with HB 1560, Article 5; and (3) clarifying rule language.

The adopted rules repeal existing §84.503, Specialized Driving Safety Courses of Instruction, which addresses courses that were repealed by HB 1560, Article 5.

The adopted rules amend existing §84.504, Driving Safety Course Alternative Delivery Method, by: (1) updating rule terminology consistent with HB 1560, Article 5; and (2) clarifying rule language.

The adopted rules repeal existing §84.505, Drug and Alcohol Driving Awareness Programs of Instruction, which addresses programs that were repealed by HB 1560, Article 5.

The adopted rules repeal existing §84.506, Drug and Alcohol Driving Awareness Programs Alternative Delivery Method, which addresses programs that were repealed by HB 1560, Article 5.

The adopted rules repeal existing §84.507, Driving Safety Course for Drivers Younger than 25 Years of Age, which addresses courses that were repealed by HB 1560, Article 5.

Subchapter N. Program Instruction for Public Schools, Educational Service Centers, and Colleges or Universities Course Requirements.

The adopted rules amend existing §84.600, Program of Organized Instruction, by clarifying rule language.

The adopted rules amend existing §84.601, Additional Procedures for Student Certification and Transfers, by clarifying rule language.

PUBLIC COMMENTS

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the February 10, 2023, issue of the *Texas Register* (48 TexReg 565). The deadline for public comments was March 13, 2023. The Department received comments (some in multi-part form) from 15 interested parties on the proposed rules during the 30-day public comment period. The public comments are summarized below.

Comment - Five commenters, three of whom also provided comment at the March 6, 2023, Commission Meeting and the April 6, 2023, Driver Training and Traffic Safety Advisory Committee Meeting, opposed the elimination of the Driver Training Course approval fees in current 16 TAC §§84.300(d)(1)-(d)(5) and 84.301(e)(1), as noted in the proposed rules. The main concerns included that such repeal of fees would result in a significant increase in the number of duplicate online driver education and traffic safety courses, also known as "clone courses", onto the Texas marketplace, thereby creating an unfair competitive advantage for some companies by flooding the market with such courses, sacrificing educational quality and motorist safety.

Commission Response - The Department disagrees with the commenters' concerns and notes that the repeal of certain Driver Education and Traffic Safety course fees in proposed 16 TAC §§84.300 and 84.301 were mandated by the provisions of House Bill (HB) 1560 adopted by the 87th Regular Legislature in 2021 and codified in Texas Education Code §1001.151(b). That law expressly mandates the universe of driver training fees that the Department may establish by rule. There is no legislative authorization to maintain a course approval fee for ADM and AMI Driver Training courses. The Department did not make any changes to the proposed rules in response to this comment.

Comment - Three commenters inquired as to the term "endorsement" found in proposed 16 TAC §84.300(b) in the form of multi-part questions as it related to the acquisition of a driver education provider (DEP) license including: (1) the origin and definition of the term, "endorsement"; (2) the Department's determination of its \$300 fee; (3) the absence of a renewal fee for the endorsement; and (4) the reason for the limit to the number of endorsements per DEP license number.

Commission Response - In response to question (1), the "endorsement" model, as noted in proposed 16 TAC §84.300(b), was determined by the Department to best implement the requirements of Texas Education Code §1001.201(b), adopted from HB 1560.

The Department agrees with the commenters regarding a need for further clarification of the term "endorsement" and, therefore,

proposes a definition added to 16 TAC §84.2 as follows: Endorsement - The delivery method by which a driver education course is delivered to the student, whether in-person, online or parent-taught.

In response to question (2), the Commission has broad authority to set reasonable and necessary fees sufficient to cover administrative costs, pursuant to Texas Occupations Code §51.202 and Texas Education Code §1001.151. After Department Staff financial analysis, the fee of \$300 for the initial application fee for a driver education endorsement in proposed 16 TAC §84.300(b) was determined to be reasonable and necessary to cover the administrative costs for this program.

In response to question (3), there is no separate renewal fee for endorsements as financial analysis indicated no additional administrative costs that justified such a charge.

Noting question (4), the DEP license endorsement, as described in proposed 16 TAC §84.300(b), is a representation of the available methods of driver education course delivery pursuant to Texas Education Code §1001.201. There are three types of delivery authorized by statute: in-person, online or parent-taught driver education. Therefore, a DEP license applicant can obtain no more than three endorsements attached to a driver education provider license.

The changes made in the proposed rules are required due to the provisions of HB 1560. The Department, outside of the change made in response to question (1), did not make any changes to the proposed rules in response to the comments.

Comment - One commenter opposed the lowering of the driver education instructor eligibility requirements in proposed 16 TAC §84.44, characterizing it as unsafe for Texas motorists, resulting in increased costs due to more damage to roadways, and will adversely impact DPS employee workload.

Commission Response - The Department disagrees with the commenter's concerns and notes that the proposed changes in proposed 16 TAC §84.44 related to the eligibility requirements for driver education instructors (DEI) is a result of the amendment to the eligibility requirements mandated by Texas Education Code §1001.2531 brought about by HB 1560. The Department is obligated to follow the directives of the Legislature. The Department notes that existing laws and rules as well as provisions within the proposed rules impose duties and requirements upon DEPs and DEIs to encourage adequate training and continuing education for instructors in necessary subject areas and instructional techniques to foster learning of the course material for instructors to present to prospective students, promoting safety on Texas roads. The Department did not make any changes to the proposed rules in response to this comment.

Comment - One commenter requested that the definition for "contract site" found in proposed 16 TAC §84.2(5) include postsecondary schools for site locations.

Commission Response - The Department agrees with the commenter's concerns and amends 16 TAC §84.2(5) to read as follows: "Contract site--An accredited public or private secondary, or postsecondary school approved as a location for a driver education course of a licensed driver education provider."

Comment - Four commenters filed similar comments that included questioning the accuracy of the definitions for "DE-964" and "relevant driver training entity" in proposed 16 TAC §84.2; and the opposition for the Department's authority for amend-

ing recordkeeping requirements for DE providers in proposed 16 TAC §84.81(g).

Commission Response - The Department disagrees with the comments on the definitions for "DE-964" and "relevant driver training entity". Both definitions have been used in the industry for several years without incident and no substantive change was made to the previous form of these definitions.

The Department disagrees with the commenters and amends 16 TAC 84.81(g) to require DE providers to upload certificate data in a manner prescribed by the Department within 15 days after certificate issuance. The change is authorized pursuant to Texas Education Code §1001.055(a-2). The same process is currently being employed by driving safety providers within a five day period. It should be noted that Department Staff will provide further information and instruction at the upcoming informational summits regarding the data upload requirement in proposed 16 TAC §84.81(g). This requirement will not be mandatory for DE providers until 2024. The Department did not make any changes to the proposed rules in response to this comment.

Comment - One commenter opposed the concept of informational summits to discuss the implementation of HB 1560 after the proposed rules are adopted.

Commission Response - The Department disagrees with the comment and notes that the rulemaking process is codified in Texas Government Code, Chapter 2001 and the Department has complied with the procedure. Interested parties, as part of the rulemaking process, are afforded ample opportunity to participate in rule drafting through the comment process, both oral and written, prior to adoption. The optional informational summits are a unique feature employed across programs in which the Department interacts with licensees to offer additional instruction and assistance during significant transition periods due to changes brought by bill implementation. The Department did not make any changes to the proposed rules in response to this comment.

Comment - One commenter opposed inclusion of a reference to the "Texas Drivers Handbook" in proposed 16 TAC §84.600(i)(4).

Commission Response - The Department disagrees with this comment and notes that the Texas Department of Public Safety still publishes the "Texas Drivers Handbook". It is available online and is accessible to the public. The current rule anticipates the DE provider will afford access to the publication and simply direct the student to the DPS website and nothing more would be required. It is possible that the Department will consider an amendment in a subsequent rulemaking, if further clarification is necessary. The Department did not make any changes to the proposed rules in response to this comment.

Comment - One commenter opposed the driver education instructor fee in proposed 16 TAC §84.300(c)(1) and the fee for the PTDE instructor designation service application in proposed 16 TAC §84.300(e)(5) as confusing and discriminatory against those persons who choose a PTDE course of instruction.

Commission Response - The Department disagrees with this comment and notes that the driver education instructor fee is based upon Texas Education Code §1001.151(c). The public school DE instructor fee exception in the proposed rule is rooted in statute. The proposed fee for the PTDE Instructor Designation Service Application (formerly, Parent Taught Driver Education Guide Form) is unchanged. This proposed rule amendment represented a name change to better reflect the services pro-

vided. The Department did not make any changes to the proposed rules in response to this comment.

Comment - One commenter offered multiple comments including that: (1) the language in proposed 16 TAC §§84.40(e) and 84.60(e) should be identical; (2) a rule covering the transfer of ownership of a PTDE provider should be included in 16 TAC Chapter 84, Subchapter D; (3) the rule language in 16 TAC §84.600(i)(1) should be included in 16 TAC §84.500(b); and (4) a 14 year old non-hardship student should not be presented with the "For Learner License Only" portion of the DE-964 until age 15 since they could not take in-car instruction until reaching 15.

Commission Response - The Department notes that proposed 16 TAC §§84.40(e) and 84.60(e), while not identical in rule language, have the same requirements and does not think a change as suggested is necessary at this time. The Department agrees that it would be helpful to have proposed rule language governing the transfer of ownership of an existing PTDE provider and can address that issue in a future rulemaking. The Department disagrees with the suggestion that the rule language contained in 16 TAC §84.600(i)(1) be included in 16 TAC §84.500(b). There is no current confusion as to the applicability of these provisions and there was no change to either section in this rulemaking. The last comment regarding the provision of a DE-964 to a non-hardship 14 year old student was not contemplated in this rulemaking and, therefore, beyond the scope of this project at this time. The Department did not make any changes to the proposed rules in response to this comment.

Comment - One commenter offered multiple comments regarding PTDE providers that included a central concern that the statutory definitions for "driver education provider", "driver training provider", "online driver education provider", and "parent-taught driver education provider" may impose inapplicable obligations on a PTDE provider where those terms are used in the proposed rules. The commenter included, in example, several proposed rule sections in 16 TAC Chapter 84, Subchapters C, D, G and M where it alleged that some confusion could occur in applicability to PTDE providers.

Commission Response - The Department acknowledges the commenter's concerns but determines that no change to the proposed rules is needed at this time. The Department notes that the provisions in 16 TAC Chapter 84, Subchapter D are applicable solely to parent-taught driver education providers, however, it is not an exclusive list of requirements for such providers. Moreover, Texas Occupations Code §1001.2043 provides the regulatory boundaries applicable to the commenter's concerns and the Department continues to adhere to that and other applicable laws and rules relating to parent-taught education. It should be noted that the Department, in recognition of the commenter's concerns did make a change to 16 TAC §84.51(a) to clarify that PTDE providers are expected to adhere to applicable statutory provisions. This provision now reads in part: "If the curriculum and all materials meet or exceed the applicable minimum standards set forth in [§1001.112 of] the Code"... The Department may explore possible changes relating to PTDE providers in a future rulemaking.

Comment - One commenter inquired if proposed 16 TAC §84.63 eliminated the driving safety course provider and its responsibilities.

Commission Response - The Department disagrees with the comment and notes that HB 1560 repealed the driver safety school license type and combined the duties and responsibili-

ties of the course provider and driving safety school entities into a single license type, driving safety provider. The provisions of 16 TAC §84.63 and all other applicable driving safety provisions are now assumed by the driving safety provider. Driving safety schools are no longer regulated by the Department. The Department did not make any changes to the proposed rules in response to this comment.

ADVISORY BOARD RECOMMENDATIONS AND COMMISSION ACTION

The Driver Training and Traffic Safety Advisory Committee met on April 6, 2023 to discuss the proposed rules and the public comments received. The Driver Training and Traffic Safety Advisory Committee recommended that the Commission adopt the proposed rules as published in the *Texas Register* with changes to §84.2 and §84.51 made in response to public comments and/or Department recommendations.

At its meeting on May 1, 2023, the Commission adopted the proposed rules with changes to §84.2 and §84.51 as recommended by the Advisory Board as explained in the Section-by-Section Summary.

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §§84.1 - 84.3

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51 and Texas Education Code, Chapter 1001, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapter 51, Texas Education Code, Chapters 29 and 1001, and Texas Transportation Code, Chapter 521. No other statutes, articles, or codes are affected by the adopted rules.

§84.2. Definitions.

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

- (1) ADE-1317--The driver education certificate of completion confirming student completion of a department-approved driver education course exclusively for adults.
- (2) Advertising--Any affirmative act, whether written or oral, designed to call public attention to a driver training provider or course in order to evoke a desire to patronize that driver training provider or course. This includes meta tags and search engines.
- (3) Branch location--A licensed in-person driver education provider that has the same ownership and name as a licensed primary in-person driver education provider but has a different physical address from the primary provider.
- (4) Code--Refers to Texas Education Code, Chapter 1001.
- (5) Contract site--An accredited public or private secondary, or postsecondary school approved as a location for a driver education course of a licensed driver education provider.
- (6) DE-964--The driver education certificate of completion confirming completion of an approved minor and adult driver education course.

(7) Education Service Center (ESC)--A public school district service organization of the Texas Education Agency governed by Texas Education Code, Chapter Eight.

(8) Endorsement - The method by which a driver education course is delivered to the student, whether in-person, online or parent-taught.

(9) Instructional Hour (also known as "Clock Hour"):

(A) Driver Education Provider Instructional Hour--55 minutes of instruction time in a 60-minute period for a driver education course. This includes classroom and in-car instruction time.

(B) Driving Safety Provider Instructional Hour--50 minutes of instruction in a 60-minute period for a driving safety course.

(10) Personal validation question--A question designed to establish the identity of the student by requiring an answer related to personal information such as a driver's license number, address, date of birth, or other similar information that is unique to the student.

(11) Primary driver education provider--The main business location for a licensed in-person driver education provider.

(12) Public or private school--A public or private secondary school accredited by the Texas Education Agency.

(13) Relevant driver training entity--Refers to a licensed driver education provider, exempt driver education school, public or private school, education service center, college or university.

(14) Uniform certificate of course completion--A document with a serial number purchased from the department that is printed, administered and supplied by driving safety providers for issuance to students confirming completion of an approved driving safety course, and that meets the requirements of Texas Transportation Code, Chapter 543, and Texas Code of Criminal Procedure, Article 45.051 or 45.0511. This term encompasses all parts of an original or duplicate uniform certificate of course completion.

(15) Validation question--A question designed to establish the student's participation in a course or program and comprehension of the materials by requiring the student to answer a question regarding a fact or concept taught in the course or program.

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 May 12, 2023.

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Della Lindquist

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Texas Department of Licensing and Regulation

Effective date: June 1, 2023

Proposal publication date: February 10, 2023

For further information, please call: (512) 463-7750



16 TAC §84.2

STATUTORY AUTHORITY

The adopted repeals are adopted under Texas Occupations Code, Chapters 51 and Texas Education Code, Chapter 1001, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as

necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted repeals are those set forth in Texas Occupations Code, Chapter 51, Texas Education Code, Chapters 29 and 1001, and Texas Transportation Code, Chapter 521. No other statutes, articles, or codes are affected by the adopted repeals.

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. DRIVER TRAINING AND TRAFFIC SAFETY ADVISORY COMMITTEE

16 TAC §84.30

STATUTORY AUTHORITY

The adopted repeals are adopted under Texas Occupations Code, Chapters 51 and Texas Education Code, Chapter 1001, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted repeals are those set forth in Texas Occupations Code, Chapter 51, Texas Education Code, Chapters 29 and 1001, and Texas Transportation Code, Chapter 521. No other statutes, articles, or codes are affected by the adopted repeals.

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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16 TAC §§84.30 - 84.33

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51 and Texas Education Code, Chapter 1001, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary

to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapter 51, Texas Education Code, Chapters 29 and 1001, and Texas Transportation Code, Chapter 521. 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.

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For further information, please call: (512) 463-7750



SUBCHAPTER C. DRIVER EDUCATION SCHOOLS AND INSTRUCTORS

16 TAC §§84.40 - 84.46

STATUTORY AUTHORITY

The adopted repeals are adopted under Texas Occupations Code, Chapters 51 and Texas Education Code, Chapter 1001, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted repeals are those set forth in Texas Occupations Code, Chapter 51, Texas Education Code, Chapters 29 and 1001, and Texas Transportation Code, Chapter 521. No other statutes, articles, or codes are affected by the adopted repeals.

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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16 TAC §§84.40 - 84.48

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51 and Texas Education Code, Chapter 1001, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary

to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapter 51, Texas Education Code, Chapters 29 and 1001, and Texas Transportation Code, Chapter 521. 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.

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SUBCHAPTER D. PARENT-TAUGHT DRIVER EDUCATION

16 TAC §§84.50 - 84.52

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51 and Texas Education Code, Chapter 1001, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapter 51, Texas Education Code, Chapters 29 and 1001, and Texas Transportation Code, Chapter 521. No other statutes, articles, or codes are affected by the adopted rules.

§84.51. Submission of Parent-Taught Course for Department Approval.

(a) If the curriculum and all materials meet or exceed the applicable minimum standards set forth in the Code, the department will approve the course. No more than 640 minutes of the required hours of classroom instruction delivered via multimedia may be counted.

(b) Notification of approval or denial will be sent to the requesting entity. Deficiencies will be noted in cases of denial. Any substantive change in course curriculum or materials will require submission for approval according to subsection (a).

(c) A written request is required within thirty (30) days if there is any change relating to an approved course, including contact information, company name, and course titles. Updated information will be included as soon as practical.

(d) The department will retain submitted materials according to the department's retention schedule.

(e) The department has authority to require course re-approval due to changes in parent-taught driver education curriculum requirements, state law, or administrative rules. The department will notify the parent-taught driver education course provider when re-approval is required. The course provider will have ninety (90) days from the

date of notification to submit the requested information. Failure to adequately respond within the required time will result in cancellation of the course approval. The department will review the course material and make a determination as to adoption in a timely manner.

(f) A parent-taught driver education course submitted for department review may be denied upon finding:

(1) that the course does not meet the standards required under §1001.112 of the Code; or

(2) the materials used were not approved by the department.

(g) A notice of denial will be sent to requesting entity. The requesting entity will have ninety (90) days to correct the noted deficiencies. If the requesting entity fails to meet approval criteria, the course will be denied. If a course is denied by the department, the requesting entity must wait thirty (30) days before submitting a new parent-taught driver education course for approval by the department.

(h) Course identification. All parent-taught courses must display the parent-taught provider name and registration number assigned by the department on the entity's website and the registration page used by the student to pay any monies, provide any personal information, and enroll.

(i) A parent-taught course may accept students redirected from a website if the student is redirected to a webpage that clearly identifies the parent-taught provider and registration number offering the course. This information must be visible before and during the student registration and course payment processes.

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. DRIVING SAFETY SCHOOLS, COURSE PROVIDERS AND INSTRUCTORS

16 TAC §§84.60 - 84.64

STATUTORY AUTHORITY

The adopted repeals are adopted under Texas Occupations Code, Chapters 51 and Texas Education Code, Chapter 1001, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted repeals are those set forth in Texas Occupations Code, Chapter 51, Texas Education Code, Chapters 29 and 1001, and Texas Transportation Code, Chapter 521. No other statutes, articles, or codes are affected by the adopted repeals.

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. PROVIDERS

16 TAC §§84.60, 84.61, 84.63

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51 and Texas Education Code, Chapter 1001, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapter 51, Texas Education Code, Chapters 29 and 1001, and Texas Transportation Code, Chapter 521. 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.

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SUBCHAPTER F. DRUG AND ALCOHOL AWARENESS PROGRAMS AND INSTRUCTORS

16 TAC §§84.70 - 84.72

STATUTORY AUTHORITY

The adopted repeals are adopted under Texas Occupations Code, Chapters 51 and Texas Education Code, Chapter 1001, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted repeals are those set forth in Texas Occupations Code, Chapter 51, Texas Education Code, Chapters 29 and 1001, and Texas Transporta-

tion Code, Chapter 521. No other statutes, articles, or codes are affected by the adopted repeals.

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 G. GENERAL BUSINESS PRACTICES

16 TAC §§84.80 - 84.85

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51 and Texas Education Code, Chapter 1001, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapter 51, Texas Education Code, Chapters 29 and 1001, and Texas Transportation Code, Chapter 521. 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.

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16 TAC §§84.81 - 84.83

STATUTORY AUTHORITY

The adopted repeals are adopted under Texas Occupations Code, Chapters 51 and Texas Education Code, Chapter 1001, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted repeals are those set forth in Texas Occupations Code, Chapter 51, Texas Education Code, Chapters 29 and 1001, and Texas Transporta-

tion Code, Chapter 521. No other statutes, articles, or codes are affected by the adopted repeals.

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 H. FACILITIES AND EQUIPMENT FOR DRIVER EDUCATION SCHOOLS, DRIVING SAFETY SCHOOLS AND DRUG AND ALCOHOL AWARENESS SCHOOLS

16 TAC §84.90

STATUTORY AUTHORITY

The adopted repeals are adopted under Texas Occupations Code, Chapters 51 and Texas Education Code, Chapter 1001, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted repeals are those set forth in Texas Occupations Code, Chapter 51, Texas Education Code, Chapters 29 and 1001, and Texas Transportation Code, Chapter 521. No other statutes, articles, or codes are affected by the adopted repeals.

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 H. FACILITIES AND EQUIPMENT FOR DRIVER TRAINING PROVIDERS

16 TAC §84.90

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51 and Texas Education Code, Chapter 1001, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapter 51, Texas Education Code, Chapters 29 and 1001, and Texas Transportation Code, Chapter 521. 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.

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SUBCHAPTER I. INSPECTIONS

16 TAC §§84.100, 84.101, 84.103

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51 and Texas Education Code, Chapter 1001, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapter 51, Texas Education Code, Chapters 29 and 1001, and Texas Transportation Code, Chapter 521. 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.

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SUBCHAPTER J. DRIVER EDUCATION AND DRIVING SAFETY SCHOOL CANCELLATION AND REFUND

16 TAC §84.200

STATUTORY AUTHORITY

The adopted repeals are adopted under Texas Occupations Code, Chapters 51 and Texas Education Code, Chapter 1001, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted repeals are those set forth in Texas Occupations Code, Chapter 51, Texas Education Code, Chapters 29 and 1001, and Texas Transportation Code, Chapter 521. No other statutes, articles, or codes are affected by the adopted repeals.

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**SUBCHAPTER J. DRIVER TRAINING
PROVIDER CANCELLATION AND REFUND**

16 TAC §84.200

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51 and Texas Education Code, Chapter 1001, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapter 51, Texas Education Code, Chapters 29 and 1001, and Texas Transportation Code, Chapter 521. 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.

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SUBCHAPTER K. FEES

16 TAC §§84.300 - 84.302

STATUTORY AUTHORITY

The adopted repeals are adopted under Texas Occupations Code, Chapters 51 and Texas Education Code, Chapter 1001, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted repeals are those set forth in Texas Occupations Code, Chapter 51, Texas Education Code, Chapters 29 and 1001, and Texas Transportation Code, Chapter 521. No other statutes, articles, or codes are affected by the adopted repeals.

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16 TAC §84.300, §84.301

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51 and Texas Education Code, Chapter 1001, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapter 51, Texas Education Code, Chapters 29 and 1001, and Texas Transportation Code, Chapter 521. No other statutes, articles, or codes are affected by the adopted rules.

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SUBCHAPTER L. COMPLAINTS AND ENFORCEMENT PROVISIONS

16 TAC §84.400

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51 and Texas Education Code, Chapter 1001, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapter 51, Texas Education Code, Chapters 29 and 1001, and Texas Transportation Code, Chapter 521. 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.

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SUBCHAPTER M. CURRICULUM AND ALTERNATIVE METHODS OF INSTRUCTION

16 TAC §§84.500 - 84.502, 84.504

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51 and Texas Education Code, Chapter 1001, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapter 51, Texas Education Code, Chapters 29 and 1001, and Texas Transportation Code, Chapter 521. 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.

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16 TAC §§84.503, 84.505 - 84.507

STATUTORY AUTHORITY

The adopted repeals are adopted under Texas Occupations Code, Chapters 51 and Texas Education Code, Chapter 1001, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted repeals are those set forth in Texas Occupations Code, Chapter 51, Texas Education Code, Chapters 29 and 1001, and Texas Transportation Code, Chapter 521. No other statutes, articles, or codes are affected by the adopted repeals.

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SUBCHAPTER N. PROGRAM INSTRUCTION FOR PUBLIC SCHOOLS, EDUCATION SERVICE CENTERS, AND COLLEGES OR UNIVERSITIES COURSE REQUIREMENTS

16 TAC §§84.600, §84.601

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51 and Texas Education Code, Chapter 1001, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapter 51, Texas Education Code, Chapters 29 and 1001, and Texas Transportation Code, Chapter 521. 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.

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS

SUBCHAPTER CC. COMMISSIONER'S RULES CONCERNING SCHOOL FACILITIES

19 TAC §61.1031

The Texas Education Agency (TEA) adopts new §61.1031, concerning school safety requirements. The new section is adopted with changes to the proposed text as published in the November 11, 2022 issue of the *Texas Register* (47 TexReg 7519) and will be republished. The adopted new section implements requirements for school safety to ensure a safe and secure environment in Texas public schools.

REASONED JUSTIFICATION: In light of recent events and ongoing public concern, the commissioner, as authorized by Texas Education Code (TEC), §7.061 and §37.115(b), is adopting new §61.1031 to address the safety of students and staff alike in our public schools by ensuring minimum school safety standards.

The adopted new rule requires that all public school system instructional facilities have access points that are secured by design, maintained to operate as intended, and appropriately monitored.

Adopted new subsection (a) establishes definitions for the rule.

In response to public comment, subsection (a)(7) was added at adoption to define a "secure vestibule."

Adopted new subsection (b) requires that standards outlined in the rule apply to all public school instructional facilities, whether owned, operated, or leased.

Adopted new subsection (c) outlines the safety and security standards compliance requirements that apply to public school instructional facilities. The adopted new rule requires specific standards for exterior doors and primary entrances. Other safety and security standards apply depending on whether instructional facilities are within an exterior secured area or are actively monitored. The adopted new subsection also establishes the components for a communication infrastructure required across all public school instructional facilities.

In response to public comment, subsection (c)(2) was modified at adoption, adjusting exterior door requirements for primary entrances when a secure vestibule is present.

In response to public comment, subsection (c)(3)(D) was modified at adoption to expand current and future capabilities of electronic devices utilized to gain entry to a door that is keyed for re-entry.

In response to public comment, subsection (c)(9)(A) was modified at adoption to clarify the use of one or more distinctive, exterior secure master key boxes designed to permit emergency access to both law enforcement agencies and emergency responder agencies from the exterior of a building.

In response to public comment, subsection (c)(9)(B) was added at adoption to afford flexibility in how local law enforcement is provided electronic or physical master key(s) to access district buildings.

In response to public comment, subsection (c)(10)(B) was modified at adoption to include "software" and "or online applications" as clarifying terms related to panic alert technology.

In response to public comment, subsection (c)(10)(B)(i) was modified at adoption to provide flexibility related to local determination and to provide additional clarity.

In response to public comment, subsection (c)(10)(B)(ii) was modified at adoption to clarify that an alert must be triggered automatically if a district employee makes a 9-1-1 call using integrated telecommunications devices.

In response to public comment, subsection (c)(10)(B)(iv) was modified at adoption to specify that notice to a 9-1-1 center must include the location of where the alert originated.

In response to public comment, subsection (c)(10)(B)(v) was modified at adoption to remove the requirement that an alert system must automatically notify relevant campus staff of any exterior door where the electronic lock cannot engage.

In response to public comment, subsection (c)(11) was added at adoption to ensure compliance with state and federal Kari's Laws and RAY BAUM's Act and corresponding rules and regulations pertaining to 9-1-1 service for school telephone systems.

Adopted new subsection (d) requires public school systems to implement certain operating requirements related to access control, exterior door numbering, and maintenance.

In response to public comment, subsection (d)(2) was modified at adoption to clarify the requirements for interior door numbering on site plans provided for emergency response personnel.

In response to public comment, subsection (d)(2)(D) was added at adoption to require school maps be oriented to true north.

In response to public comment, subsection (d)(3)(A)(v) was reworded at adoption to provide clarity.

Adopted new subsection (e) requires public school systems to comply with 19 TAC §61.1040(j), School Facilities Standards for Construction on or after November 1, 2021.

Adopted new subsection (f) establishes that the provisions of the adopted rule control in the event of any conflict between the provisions of the adopted rule and 19 TAC §61.1040.

In response to public comment, new subsection (g) was added at adoption to require compliance with Texas Government Code, §469.052.

In response to public comment, new subsection (h) was added at adoption to require school systems to adopt a 3-year records control schedule that complies with the minimum requirements established by the Texas State Library and Archives Commission schedule, record series item number 5.4.017.

Adopted new subsection (i) requires implementation of the requirements in subsections (c) and (d) beginning in school year

2022-2023. The adopted new subsection requires a school system to certify compliance of these requirements as part of the ongoing security audits under TEC, §37.108(b); maintain the certification locally; and report as required by the Texas School Safety Center. The adopted new subsection also establishes that any and all non-compliance must be reported to the school system's safety and security committee, school system board, and Texas School Safety Center.

In addition, adopted new subsection (i) allows for provisional compliance if the school system has taken the necessary steps to initiate upgrades of facilities components and, during the 2023-2024 school year, if the contractor or supplier has been procured and has provided a time frame for completion.

In response to public comment, subsection (i)(3) was added at adoption to address the agency's ability to modify rule requirements to meet individual site requirements.

Adopted new subsection (j) addresses the future expiration of certain provisions of subsection (i) of the rule.

In response to public comment, 911 was changed to 9-1-1 throughout the rule.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began November 11, 2022, and ended December 12, 2022. A public hearing on the proposal took place on December 5, 2022. Following is a summary of public comments received and corresponding agency responses.

Comment: The Texas State Teachers Association recommended that the frequency of security system inspections be at least monthly versus weekly and/or at a frequency to be determined by the board of trustees.

Response: The agency disagrees. The unpredictability of security hardware defects or failures makes monthly inspections less desirable when considering the safety of students across Texas.

Comment: Three school administrators recommended clarifying the use of primary entrances and secured vestibules. More specifically, the commenters recommended that initial doors should not be required to be locked as they are not the doors that allow entry into the instructional facility. The doors inside of the security vestibule allow access to the instructional facility and should be required to be locked and latched.

Response: The agency agrees and has added new subsection (a)(7) at adoption to define "secure vestibule." In addition, subsection (c)(2) was modified at adoption to reference secure vestibules.

Comment: Texas Commission on State Emergency Communications recommended replacing 911 with 9-1-1 throughout the proposed rule to ensure universal standardization. Additionally, the commenter recommended that new subsection (c)(11) be added to reflect state and federal compliance with Kari's Laws and the federal RAY BAUM's Act and corresponding rules and regulations pertaining to 9-1-1 service for school telephone systems, including a multi-line telephone system.

Response: The agency agrees. At adoption, 911 has been changed to 9-1-1 throughout the rule and new subsection (c)(11) has been added to address compliance with state and federal laws and corresponding rules and regulations pertaining to 9-1-1 service for school telephone systems.

Comment: Texas Commission on State Emergency Communications and two 9-1-1 entities recommended additions to subsection (d)(2) to clarify requirements for interior door numbering on site plans provided for emergency response personnel.

Response: The agency agrees and has modified subsection (d)(2)(A)-(C) at adoption to reflect the recommendations.

Comment: A school administrator recommended that overhead doors at an instructional facility be allowed to be opened for ventilation purposes and shop work.

Response: The agency provides the following clarification. In accordance with subsection (c)(3)(A)(ii) of the rule, for the purposes of ventilation, a school system may designate in writing as part of its multi-hazard emergency operations plan under TEC, §37.108, specific exterior doors that are allowed to remain open for specified periods of time if explicitly authorized by the school safety and security committee established by TEC, §37.109, when a quorum of members are present, and only if it is actively monitored or within an exterior secured area. Actively monitored is defined as supervised by an adult who can visibly review visitors prior to entrance, who can take immediate action to close and/or lock the door, and whose duties allow for sufficient attention to monitoring. Exterior secured area has the definition outlined in subsection (a)(2).

Comment: A school board trustee expressed opposition to the requirement that fencing surround school facilities.

Response: The agency provides the following clarification. Fencing is not a requirement in the proposed rule; it is listed as an option for creating an exterior secured area in subsection (a)(2).

Comment: Five school administrators relayed concerns regarding the implementation timeline for the rule, citing, for example, the timeline being difficult to achieve in the current construction environment.

Response: The agency agrees and has added new subsection (i)(3) at adoption to address the commenters' concern. The new language specifies that TEA may modify rule requirements or grant provisional certification for individual site needs.

Comment: The Equity Center, nine school administrators, and three individuals relayed concerns regarding funding related to implementation of the rule, citing, for example, funding being insufficient or assumed costs being unbearable.

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

Comment: Four school administrators relayed concerns regarding funding related to implementation of the proposed rule, citing, for example, funds being better targeted by hiring law enforcement personnel and/or bolstering access control.

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

Comment: A school administrator inquired whether the rule is inclusive of all state organizations and schools, such as higher education, or just Kindergarten-Grade 12.

Response: The agency provides the following clarification. The commissioner of education has no rulemaking authority over other state organizations.

Comment: State Representative Ken King recommended that school safety proposals include a requirement for school maps to be oriented to true north.

Response: The agency agrees and has added new subsection (d)(2)(D) at adoption to specify that the site layout and exterior and interior door designation document should be oriented in a manner that depicts true north.

Comment: Texas Parent to Parent, Disability Rights Texas, Texas Council of Administrators of Special Education (TCASE), and an individual suggested the rule be more inclusive of individuals with disabilities.

Response: The agency provides the following clarification. A school system's response during a crisis is outlined in its multi-phase, multi-hazard emergency operations plan to include provisions to better ensure the safety of students and staff members with disabilities.

Comment: A school administrator recommended there be a detailed audit of existing systems per school campus/per local education agency to determine what needs may exist to reach compliance and/or what existing infrastructure may require updating.

Response: The agency provides the following clarification. Several audit tools have been previously provided to school systems to accomplish this recommendation. The agency has determined that the rule as adopted is sufficient. Additionally, new subsection (h) was added at adoption to ensure school systems have a related records control schedule that complies with minimum requirements established by the Texas State Library and Archives Commission schedule.

Comment: Three school administrators recommended additional clarification be added related to fencing around an entire campus to create an exterior secured area under subsection (a)(2); what qualifies as visibly reviewing a visitor under subsection (a)(1); playground fencing requirements, as related to subsection (a)(2); guidance outlining student transitions during passing periods; clarity surrounding certain operating requirements in subsection (d); and added clarity related to the certification procedure outlined in subsection (g).

Response: The agency disagrees and has determined that the rule as adopted is sufficient to address concerns within the scope of the proposed rulemaking.

Comment: Early Independent School District (ISD) requested a vendor list related to silent panic alert technology as outlined in the proposed rule. Leander ISD relayed that the district is unable to determine what systems are available to identify when a lock cannot engage. Additionally, Albany ISD commented that it would be difficult for different existing systems to properly communicate with each other to meet the requirements outlined in the proposed rule.

Response: The agency provides the following clarification. The agency is unable to recommend or otherwise endorse a vendor for providing services. These determinations are made at the local level.

Comment: The Arc of Texas commented that protocols related to school safety and security should be widely understood by all staff and students in Texas schools. The commenter stated that it is essential for any new school safety requirements to incorporate the needs of staff and students with disabilities. The commenter further stated that Section 504 plans may outline ac-

commodations these students would need during emergency situations.

Response: The agency provides the following clarification. School systems are required to train staff, including substitutes, on standard response protocols annually. In addition, TEC, §37.114, outlines a maximum number of mandatory school drills to be conducted each semester of the school year. A school system's response during a crisis is outlined in its multiphase, multi-hazard emergency operations plan to include provisions to better ensure the safety of students and staff members with disabilities. The remaining portions of this comment are beyond the scope of the proposed rulemaking.

Comment: Three school administrators questioned requirements surrounding emergency key access as outlined in the proposed rule. The administrators' questions and comments included a preference to provide a designated number of master keys to all local law enforcement agencies that might respond to a crisis, a query related to law enforcement accessing existing "Knox box" devices under the control of local fire agencies, and a recommendation that consideration be given that a key requires fine motor skills to operate when under stress.

Response: The agency agrees. Recognizing that the agency does not have authority to mandate a local fire marshal and/or other local authority having jurisdiction to provide "Knox box" access to law enforcement, subsection (c)(9)(B) has been added at adoption to allow additional local control in providing first responders ease in access to facilities during a critical event. Additionally, subsection (c)(9)(A) has been modified at adoption to provide additional clarity.

Comment: Enseo LLC recommended a wearable button for non-stationary workers as a research-based best practice. The commenter recommended that in subsection (c)(10)(B)(ii), the order be reversed and conditional, indicating that the primary purpose of a panic alarm is to call for help when use of a phone may be impossible or otherwise unsafe. The commenter proposed changing subsection (c)(10)(B)(i) to read, "an alert must be capable of being triggered by all or most campus staff, including temporary or substitute staff, from an integrated or enabled device."

Response: The agency agrees in part and has modified subsection (c)(10)(B)(i) at adoption to allow for added flexibility in local determination. Regarding the recommendation for a wearable button, the agency disagrees. Mandating a wearable button is too specific to allow flexibility at the local level.

Comment: Raptor Technologies recommended the addition of the word "software" in subsection (c)(10)(B) to provide additional clarification regarding panic alert technology.

Response: The agency agrees and has modified subsection (c)(10)(B) at adoption to include the word "software."

Comment: Harlingen Consolidated ISD recommended that subsection (c)(10)(B) read, "include a panic alert button, duress, or equivalent alarm system, via standalone hardware or integrated into other telecommunications devices or online applications, that includes the following functionality: (i) An alert must be capable of being triggered manually by campus staff in person or remotely;" and that subsection (c)(10)(B)(v) read, "For any exterior doors that feature electronic locking mechanisms that allow for remote locking or one touch lockdown, the alert system will trigger those doors to automatically lock and to automatically

notify relevant campus staff of any door where the lock cannot engage."

Response: The agency disagrees. The standards proposed are too specific to allow for flexibility at the local level. However, subsection (c)(10)(B) was modified at adoption to provide additional clarity.

Comment: Eastman, National Safety Security Protection Association, and the National Glass Association recommended that, unless they are inside a secure area, doors and windows or glazing be certified as complying to a minimum Level 1 of ASTM F3561 or for retrofit have a glazing which meets ANSI Z97.1 standards.

Response: The agency disagrees. The standards proposed are too specific to allow for flexibility at the local level.

Comment: National Safety Security Protection Association recommended the proposed rule provide clear guidelines and require locking all interior and exterior doors with a penalty imposed for noncompliance. The commenter stated that proper facility hardening should be mandated.

Response: The agency disagrees. The rule requirements as adopted are clear and enforceable.

Comment: MutuaLink commented that adding exterior door numbers to the inside of the door seems to serve no purpose as the door number is a reference for emergency responders to "rally" at an entry control point for incidents.

Response: The agency disagrees. The rule is aligned with standards in the International Fire Code and International Business Code.

Comment: The Texas Society of Architects recommended clear recognition in the rule of existing standards related to communications capacity between educators and emergency personnel to provide more measurable compliance standards and performance objectives.

Response: The agency agrees. At adoption, subsection (c)(10) was modified and new subsection (c)(11) was added. Subsection (c)(11) references state and federal Kari's Laws and federal RAY BAUM's Act and corresponding rules and regulations.

Comment: Alvin ISD recommended allowing for storing site plans electronically versus having a physical copy on hand at a facility. Specifically, the commenter stated that keeping a copy in the front office will be burdensome and requested that an electronic copy that can be made available when needed be allowed. The commenter stated that most school districts have Google Drive and keep documentation electronically stored.

Response: The agency disagrees. Accessing an electronic copy during a crisis may require district personnel be on site and/or delay timely response capabilities at the site of an emergency.

Comment: Cypress-Fairbanks ISD recommended that, to ensure equity for districts that have made investments in their security infrastructure, the proposed rule pre-award date be changed to no later than June 1, 2019.

Response: The agency disagrees. Dates for pre-award cannot be altered; they exist as part of a grant formula.

Comment: Texas Association of School Administrators commented that the fencing options listed in the rule are wholly inappropriate and may cause substantial issues for student learning and safety. The commenter stated that research

demonstrates that the institutionalization of schools has a negative impact on learning.

Response: The agency provides the following clarification. Fencing is not a requirement in the proposed rule; it is listed as an option for creating an exterior secured area in subsection (a)(2).

Comment: TCASE recommended adding definitions in subsection (a) for non-district employees and district employees.

Response: The agency disagrees. Within the proposed rule, the term employee is referenced once, thereby not requiring a differentiation in definitions.

Comment: Frisco ISD recommended that the rule be amended to include more details regarding requirements for glass and to ensure that wherever the rule is intended to set a specific standard, that standard is clearly defined.

Response: The agency disagrees. Mandated glass standards would be too specific to allow for flexibility at the local level, and the rule requirements as adopted are clear and enforceable.

Comment: Alief ISD commented that fencing and window film on potentially fire-egress windows cannot ensure protection from intruders and simultaneously allow for egress without regard to fire safety plans.

Response: The agency provides the following clarification. Fencing is not a requirement in the proposed rule; it is listed as an option for creating an exterior secured area in subsection (a)(2). Additionally, it is not standard for windows to be designed for fire egress.

Comment: Fayetteville ISD commented that International Fire Code (IFC), §505, is intended for address identification and that placing large 4-inch-tall alpha-numerical characters will create an eye sore across campuses. The commenter stated that a minimum standard of 2 inches is more appropriate as it can be maintained across the campus both on interior and exterior doors.

Response: The agency disagrees. According to IFC, §505, all exterior identification labels, numbers, and letters must be Arabic numbers and/or alphabetical letters, visible from the closest road / driveway, contrasting in color to its background, reflective material that is visible in dark or smoky conditions, larger than 4 inches and 1/2 inch wide, and regularly maintained. These IFC guidelines apply to exterior door labeling and for building address identification. Labeling that is IFC compliant improves emergency response and can expedite an evacuation process.

Comment: Eastman recommended revising subsection (a)(2)(A) to read, "if enclosed by a fence or wall, utilizes a fence or wall at least 6 feet high with design features that prevent it from being easily scalable, such as stone, glass, wrought iron, chain link with slats or wind screen, or chain link topped with an anti-scaling device, or utilizes a fence or wall at least 8 feet high."

Response: The agency disagrees. The words "such as" are not all inclusive and would indicate that examples provided are not essential to the related subsection.

Comment: State Representative Shawn Thierry commented that, as related to silent panic alert technology, not all schools are the same and we need to make sure we are funding them appropriately for implementation.

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

Comment: Garretts recommended additional language be added to the proposed rule that would provide standards for reducing the number of entry points or better securing primary entrances while simultaneously mandating the use of metal detection equipment.

Response: The agency disagrees. The suggested change is too specific to provide needed flexibility at the district level.

Comment: Texas Star Alliance recommended clarifying what qualifies as a "panic alert button, duress, or equivalent alarm system" in subsection (c)(10)(B) by adding the agency's definition under subsection (a) of the proposed rule.

Response: The agency disagrees. Requirements that would trigger an alert are outlined in a multiphase, multi-hazard emergency operations plan as required by TEC, §37.108. The language of the rule includes the commenter's suggested components.

Comment: Texas American Federation of Teachers (AFT) stated that it does not support defining "school system" in subsection (a)(6) and recommended referring to "the independent school district or open-enrollment charter school" as applicable throughout the proposed rule.

Response: The agency disagrees and considers the use of the term appropriate in the context of this rule.

Comment: Texas AFT stated the rule creates what may be unreachable facilities standards with no assurance of funds to support compliance. The commenter stated that the rule should allow flexibility to address facilities safety locally based on individual campus needs and that there should be some transparency measures added.

Response: The agency disagrees regarding the need for additional local flexibility. The remainder of this comment is outside the scope of the proposed rulemaking.

Comment: Harlingen Consolidated ISD recommended updating subsection (c)(3)(C)-(D) and (c)(4) to read, "(i) a mechanism that fully closes and engages locking hardware automatically or electronically after entry or egress without manual intervention, regardless of air pressure within or outside of the facility; and (ii) a mechanism that allows the door to be opened electronically or from the inside when locked to allow for emergency egress while remaining locked; and (D) if keyed for re-entry, be capable of being unlocked with a single (or a small set of) master key(s), whether physical key, punch code, or key-fob or similar electronic key device operated by an online application. (4) Except when inside an exterior secured area, classrooms with exterior entry doors shall include a means to allow an individual located in the classroom to visually identify an individual seeking to enter the classroom when the door is closed and locked, including, but not limited to, windows, camera systems, public address systems and/or intercoms."

Response: The agency disagrees that the suggested language is necessary. However, language in subsection (c)(3)(D) was changed at adoption to read, "if keyed for re-entry, be capable of being unlocked with a single (or a small set of) master key(s), whether physical key, punch code, or key-fob or similar electronic device."

Comment: WRA Architects recommended that language require some sort of a minimum standard that defines when glass is past the threshold of being easily broken.

Response: The agency disagrees. Mandates at this level would be too specific to allow for flexibility at the local level.

Comment: Yellowstone College Prep commented that the proposed safety and security measures that require all first-floor windows be "covered" would eliminate all of the funding the school is expected to receive as part of the security grant. The commenter stated that the money could be spent on other vital components such as a security guard, firming up gates and entries, etc. The commenter stated that the first-floor window requirement should be a suggested use of funds, not a requirement.

Response: The agency provides the following clarification. In accordance with subsection (c)(4) and (5), all first-floor windows are not required to be covered. As related to funding, the comment is beyond the scope of this proposed rulemaking.

Comment: Rave Mobile Safety stated that the collaboration between 9-1-1 and schools is essential for ensuring the safety of students and staff and that by working together, schools and 9-1-1 can respond quickly and effectively to any emergency from everyday medical emergencies to mass casualty incidents. The commenter encouraged TEA to continue working closely with the Commission on State Emergency Communication, the Department of Public Safety, and the Department of Emergency Management to develop rules and policies to uniformly enhance the health and safety of students across Texas.

Response: The agency agrees that collaboration between state agencies is important for the safety and security of students across Texas.

Comment: Texas Society of Architects stated that the proposed rule could pose implementation challenges and that a link is needed between current and existing standards. The commenter stated that funding should be a consideration with flexibility based on individual district needs.

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

Comment: Texas Public Charter Schools Association (TPCSA) recommended that the agency allow for appropriate and comparable adjustments in some requirements if a public charter school is leasing a building, has a safety vestibule, or has another unique circumstance. TPCSA also stated that TEA should ensure "communication infrastructure" and other rule requirements are clearly defined, technologically available, and within the control of public schools. TPCSA asked for clarity regarding individuals considered to be law enforcement or emergency personnel. Finally, TPCSA stated that the agency should immediately and fully fund the rule's safety requirements.

Response: The agency provides the following clarification. A communication infrastructure is outlined in subsection (c)(10)(A) and (B) and (11). Law enforcement personnel are referenced throughout existing statute, including Texas Code of Criminal Procedure, §2.13, and TEC, §37.081. As related to funding, this comment is outside the scope of the proposed rulemaking.

STATUTORY AUTHORITY. The new section is adopted under Texas Education Code (TEC), §7.061, which requires the commissioner of education to adopt and amend rules to ensure a safe and secure environment for public schools, which includes best practices for design and construction of new facilities and improving, renovating, and retrofitting existing facilities. The section requires the commissioner to review all rules by September 1st of each even-numbered year and take action as necessary to

ensure school facilities for school districts and open-enrollment charter schools continue to provide a safe and secure environment; and TEC, §37.115(b), which allows the agency, in coordination with the Texas School Safety Center, to adopt rules to establish a safe and supportive school program, including providing for physical and psychological safety.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §7.061 and §37.115(b).

§61.1031. School Safety Requirements.

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

(1) Actively monitored--supervised by an adult who can visibly review visitors prior to entrance, who can take immediate action to close and/or lock the door, and whose duties allow for sufficient attention to monitoring.

(2) Exterior secured area--an area fully enclosed by a fence and/or wall that:

(A) if enclosed by a fence or wall, utilizes a fence or wall at least 6 feet high with design features that prevent it from being easily scalable, such as stone, wrought iron, chain link with slats or wind screen, or chain link topped with an anti-scaling device, or utilizes a fence or wall at least 8 feet high;

(B) is well maintained; and

(C) if gated, features locked gates with emergency egress hardware and has features to prevent opening from the exterior without a key or combination mechanism.

(3) Instructional facility--this term has the meaning assigned in Texas Education Code (TEC), §46.001, and includes any real property, an improvement to real property, or a necessary fixture of an improvement to real property that is used predominantly for teaching curriculum under TEC, §28.002. For purposes of this section, an instructional facility does not include real property, improvements to real property, or necessary fixtures of an improvement to real property that are part of a federal, state, or private correctional facility or facility of an institution of higher education, medical provider, or other provider of professional or social services over which a school system has no control.

(4) Modular, portable building--

(A) an industrialized building as defined by Texas Occupations Code (TOC), §1202.002 and §1202.003;

(B) any relocatable educational facility as defined by TOC, §1202.004, regardless of the location of construction of the facility; or

(C) any other manufactured or site-built building that is capable of being relocated and is used as a school facility.

(5) Primary entrance--

(A) the main entrance to an instructional facility that is closest to or directly connected to the reception area; or

(B) any exterior door the school system intends to allow visitors to use to enter the facility during school hours either through policy or practice.

(6) School system--a public independent school district or public open-enrollment charter school.

(7) Secure vestibule--a secured space with two or more sets of doors and an office sign-in area where all but the exterior doors shall:

(A) remain closed, latched, and locked;

(B) comply with subsection (c)(3)(B) of this section;

and

(C) only open once the visitor has been visually verified.

(b) The provisions of this section apply to all school instructional facilities owned, operated, or leased by a school system, regardless of the date of construction or date of lease. The provisions of this section ensure that all school system instructional facilities have access points that are:

(1) secured by design;

(2) maintained to operate as intended; and

(3) appropriately monitored.

(c) A school system shall implement the following safety and security standards compliance requirements to all school instructional facilities owned, operated, or leased by the school system.

(1) All instructional facilities campus-wide, including modular, portable buildings, must include the addition of graphically represented alpha-numerical characters on both the interior and exterior of each exterior door location. The characters may be installed on the door, or on at least one door at locations where more than one door leads from the exterior to the same room inside the facility, or on the wall immediately adjacent to or above the door location. Characters shall comply with the International Fire Code, §505. The primary entrance of an instructional facility shall always be the first in the entire sequence and is the only door location that does not require numbering. The numbering sequence shall be clockwise and may be sequenced for the entire campus or for each facility individually. The door-numbering process must comply with any and all accessibility requirements related to signage.

(2) Unless a secure vestibule is present, a primary entrance shall:

(A) meet all standards for exterior doors;

(B) include a means to allow an individual located within the building to visually identify an individual seeking to enter the primary entrance when the entrance is closed and locked, including, but not limited to, windows, camera systems, and/or intercoms;

(C) feature a physical barrier that prevents unassisted access to the facility by a visitor; and

(D) feature a location for a visitor check-in and check-out process.

(3) All exterior doors shall:

(A) be, by default, set to a closed, latched, and locked status, except that:

(i) a door may be unlocked if it is actively monitored or within an exterior secured area; and

(ii) for the purposes of ventilation, a school system may designate in writing as part of its multi-hazard emergency operations plan under TEC, §37.108, specific exterior doors that are allowed to remain open for specified periods of time if explicitly authorized by the school safety and security committee established by TEC, §37.109, when a quorum of members are present, and only if it is actively monitored or within an exterior secured area;

(B) be constructed, both for the door and door frame and their components, of materials and in a manner that make them

resistant to entry by intruders. Unless inside an exterior secured area, doors constructed of glass or containing glass shall be constructed or modified such that the glass cannot be easily broken and allow an intruder to open or otherwise enter through the door (for example, using forced entry-resistant film);

(C) include:

(i) a mechanism that fully closes and engages locking hardware automatically after entry or egress without manual intervention, regardless of air pressure within or outside of the facility; and

(ii) a mechanism that allows the door to be opened from the inside when locked to allow for emergency egress while remaining locked; and

(D) if keyed for re-entry, be capable of being unlocked with a single (or a small set of) master key(s), whether physical key, punch code, or key-fob or similar electronic device.

(4) Except when inside an exterior secured area, classrooms with exterior entry doors shall include a means to allow an individual located in the classroom to visually identify an individual seeking to enter the classroom when the door is closed and locked, including, but not limited to, windows, camera systems, and/or intercoms.

(5) Except when inside an exterior secured area, all windows that are adjacent to an exterior door and that are of a size and position that, if broken, would easily permit an individual to reach in and open the door from the inside shall be constructed or modified such that the glass cannot be easily broken.

(6) Except when inside an exterior secured area, all ground-level windows near exterior doors that are of a size and position that permits entry from the exterior if broken shall be constructed or modified such that the glass cannot be easily broken and allow an intruder to enter through the window frame (for example, using forced entry-resistant film).

(7) If designed to be opened, all ground-level windows shall have functional locking mechanisms that allow for the windows to be locked from the inside and, if large enough for an individual to enter when opened or if adjacent to a door, be closed and locked when staff are not present.

(8) Roof access doors should default to a locked, latched, and closed position when not actively in use and be lockable from the interior.

(9) All facilities must:

(A) include one or more distinctive, exterior secure master key box(es) designed to permit emergency access to both law enforcement agencies and emergency responder agencies from the exterior (for example, a Knox box) at a location designated by the local authorities with applicable jurisdiction; or

(B) provide all local law enforcement electronic or physical master key access to the building(s).

(10) A communications infrastructure shall be implemented that must:

(A) ensure equipment is in place such that law enforcement and emergency responder two-way radios can function within most portions of the building(s); and

(B) include a panic alert button, duress, or equivalent alarm system, via standalone hardware, software, or integrated into other telecommunications devices or online applications, that includes the following functionality.

(i) An alert must be capable of being triggered by campus staff, including temporary or substitute staff, from an integrated or enabled device.

(ii) An alert must be triggered automatically in the event a district employee makes a 9-1-1 call using the hardware or integrated telecommunications devices described in this subparagraph from any location within the school system.

(iii) With any alert generated, the location of where the alert originated shall be included.

(iv) The alert must notify a set of designated school administrators as needed to provide confirmation of response, and, if confirmed, notice must be issued to the 9-1-1 center of an emergency situation requiring a law enforcement and/or emergency response and must include the location of where the alert originated. A notice can simultaneously be issued to all school staff of the need to follow appropriate emergency procedures.

(v) For any exterior doors that feature electronic locking mechanisms that allow for remote locking, the alert system will trigger those doors to automatically lock.

(11) In implementing the requirements of this section, school systems shall comply with state and federal Kari's Laws and federal RAY BAUM's Act and corresponding rules and regulations pertaining to 9-1-1 service for school telephone systems, including a multi-line telephone system.

(d) Certain operating requirements. A school system shall implement the following.

(1) Access control. The board of trustees or the governing board shall adopt a policy requiring the following continued auditing of building access:

(A) conduct at least weekly inspections during school hours of all exterior doors of all instructional facilities to certify that all doors are, by default, set to a closed, latched, and locked status and cannot be opened from the outside without a key as required in subsection (c)(3)(A) of this section;

(B) report the findings of weekly inspections required by subparagraph (A) of this paragraph to the school system's safety and security committee as required by TEC, §37.109, and ensure the results are kept for review as part of the safety and security audit as required by TEC, §37.108;

(C) report the findings of weekly inspections required by subparagraph (A) of this paragraph to the principal or leader of the instructional facility to ensure awareness of any deficiencies identified and who must take action to reduce the likelihood of similar deficiencies in the future; and

(D) include a provision in the school system's applicable policy stating that nothing in a school system's access control procedures will be interpreted as discouraging parents, once properly verified as authorized campus visitors, from visiting campuses they are authorized to visit.

(2) Exterior and interior door numbering site plan.

(A) A school system must develop and maintain an accurate site layout and exterior and interior door designation document for each instructional facility school system-wide that identifies all exterior and interior doors in the instructional facility and depicts all exterior doors on a floor plan with an alpha-numeric designation, in accordance with the door numbering specifications established in subsection (c)(1) of this section.

(B) Copies of exterior and interior door numbering site plans shall be readily available in each campus main office.

(C) Electronic copies of exterior and interior door numbering site plans shall be supplied to the local 9-1-1 administrative entity so that the site plans can be made available to emergency responders by 9-1-1 dispatchers.

(D) The site layout and exterior and interior door designation document should be oriented in a manner that depicts true north.

(3) Maintenance.

(A) A school system shall perform at least twice-yearly maintenance checks to ensure the facility components required in subsection (c) of this section function as required. At a minimum, maintenance checks shall ensure the following:

(i) instructional facility exterior doors function properly, including meeting the requirements in subsection (c)(3)(A) and (C) of this section;

(ii) the locking mechanism for any ground-level windows that can be opened function properly;

(iii) any perimeter barriers and related gates function properly;

(iv) all panic alert or similar emergency notification systems in classrooms and campus central offices function properly, which includes at least verification from multiple campus staff and classroom locations that a notification can be issued and received by the appropriately designated personnel, that the alert is successfully broadcast to all campus staff and to appropriate law enforcement and emergency responders, and that a potential threat observed on video triggers an alert from video surveillance monitoring systems;

(v) all school telephone systems and communications infrastructure provide accurate location information when a 9-1-1 call is made in accordance with state and federal laws and rules and when an alert is triggered in accordance with this section;

(vi) all exterior master key boxes function properly and the keys they contain function properly;

(vii) law enforcement and emergency responder two-way radios operate effectively within each instructional facility; and

(viii) two-way radios used by school system peace officers, school resource officers, or school marshals properly communicate with local law enforcement and emergency response services.

(B) A school system shall ensure procedures are in place to require that staff who become aware of a facility component functionality deficiency that would be identified during the twice-yearly maintenance review described by subparagraph (A) of this paragraph immediately report the deficiency to the school system's administration, regardless of the status of the twice-yearly maintenance review.

(C) A school system shall promptly remedy any deficiencies discovered as a consequence of maintenance checks required by subparagraph (A) of this paragraph or reports made under subparagraph (B) of this paragraph.

(e) In implementing the requirements of this section, school systems shall comply with the provisions of §61.1040(j) of this title (relating to School Facilities Standards for Construction on or after November 1, 2021).

(f) To the extent that any provisions of this section conflict with rules adopted in Chapter 61, Subchapter CC, of this title (relating to Commissioner's Rules Concerning School Facilities), including terms defined by this section or standards established by this section, the provisions of this section prevail.

(g) In implementing the requirements of this section, school systems shall comply with the standards adopted under Texas Government Code, §469.052.

(h) In implementing the requirements of this section, school systems must adopt a 3-year records control schedule that complies with the minimum requirements established by the Texas State Library and Archives Commission schedule, record series item number 5.4.017, as referenced in Texas Government Code, §441.169, and Texas Local Government Code, §203.041.

(i) Certification.

(1) All requirements in subsections (c) and (d) of this section shall be implemented during the 2022-2023 school year and thereafter. Annually, a school system shall certify compliance with those requirements as part of ongoing security audits under TEC, §37.108(b); maintain the certification locally; and report as required by the Texas School Safety Center. Any and all non-compliance shall be reported to the school system's safety and security committee, the school system's board, and the Texas School Safety Center, as required by TEC, §37.108(c).

(2) A school system may provisionally certify compliance of a facility component described in subsection (c) of this section that is not in compliance with the requirements of paragraph (1) of this subsection if:

(A) the school system has taken the necessary steps to initiate an upgrade of the facility component to ensure compliance; and

(B) for the 2023-2024 school year, the contractor or supplier has been procured and has provided a time frame when the upgrade will be completed.

(3) TEA may modify rule requirements or grant provisional certification for individual site needs as determined by the agency.

(j) Subsection (i)(2) of this section and this subsection expire August 31, 2024.

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 May 11, 2023.

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Texas Education Agency

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



TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

The commissioner of insurance adopts the repeal of 28 TAC §§5.5001, 5.5002, and 5.5005, concerning Inland Marine Insurance and Multi-peril Insurance. The commissioner also adopts new Division 1, containing 28 TAC §§5.5001 - 5.5008, and new Division 2, containing §5.5101, concerning Inland Marine Insurance and Multi-peril Insurance. New §5.5008 is adopted with nonsubstantive changes to the proposed text published in the February 10, 2023, issue of the *Texas Register* (48 TexReg 620) and will be republished. Repealed §§5.5001, 5.5002, and 5.5005, and new §§5.5001 - 5.5007 and §5.5101 are adopted without changes to the proposed text and will not be republished.

REASONED JUSTIFICATION. New 28 TAC §§5.5001 - 5.5008 are necessary to implement Senate Bill 1367, 87th Legislature, 2021, which exempts commercial inland marine insurance from rate and form filing requirements. The new rules also implement House Bill 2587, 86th Legislature, 2019, which requires travel insurance rates and forms to be filed as inland marine, subject to an exception allowing travel insurance with sickness, accident, disability, or death coverage to be filed as accident and health insurance.

The new sections are described in the following paragraphs.

New §5.5001 uses the designation "non-filed" for non-filed classes rather than "non-regulated," as was used in repealed §5.5001, to emphasize the non-filed status and reduce potential misunderstanding that the classes are not subject to regulation of any kind. The adopted section also does not reference "uniform standards of application" in the definition of "non-filed" because the Texas Department of Insurance (TDI) does not adopt standard and uniform policies anymore. Adopted §5.5001 does not include language regarding the exclusion of fire and extended coverage in relation to inland marine insurance coverage. Fire and extended coverage requirements exist for only the particular classes of inland marine insurance described in new §§5.5004(2)(C); 5.5005(1) and (3); and 5.5008(5), (8), and (28), as specified in those provisions.

New §5.5002 contains similar substantive language as was in repealed §5.5002(1). The new section addresses insurance for imports, describing how imports on consignment and imports not on consignment may be covered.

New §5.5003 contains similar substantive language as was in repealed §5.5002(2). The new section addresses insurance for exports, describing how exports may be covered.

New §5.5004 contains similar substantive language as was in repealed §5.5002(3). The new section addresses insurance for domestic shipments, describing how domestic shipments may be covered.

New §5.5005 contains similar substantive language as was in repealed §5.5002(4). The new section addresses insurance for bridges, tunnels, and other instrumentalities of transportation and communication, describing how they may be covered.

New §5.5006 contains the same substantive language as was in repealed §5.5002(5)(Q)(i). The new section addresses insurance for consumer credit property, describing how it may be covered.

New §5.5007 contains similar language as was in repealed §5.5002(5)(Q)(ii). The new section addresses insurance for commercial credit property, describing how it may be covered.

New §5.5008 contains similar substantive language as was in most of repealed §5.5002(a)(5), other than repealed §5.5002(a)(5)(Q)(i) and §5.5002(a)(5)(Q)(ii), which is reflected in proposed §5.5006 and §5.5007, respectively. The new section addresses insurance for all other classes of inland marine insurance, describing how they may be covered. The new section also classifies travel insurance as inland marine insurance.

Nonsubstantive changes were made to the proposed text in new §5.5008. Specifically, in new §5.5008(20), two words that had been incorrectly capitalized in the proposal have been changed to lowercase. In new §5.5008(33)(D), an inadvertently repeated word in the proposed text has been removed.

New §5.5101 contains similar substantive language as was in repealed §5.5005. The new section provides a procedure for regulating rates for commercial multi-peril policies.

SUMMARY OF COMMENTS. TDI did not receive any comments on the proposed new sections.

SUBCHAPTER F. INLAND MARINE INSURANCE AND MULTI-PERIL INSURANCE

28 TAC §§5.5001, 5.5002, 5.5005

STATUTORY AUTHORITY. The commissioner adopts the repeal of §§5.5001, 5.5002, and 5.5005 under Insurance Code § 2251.0031, 2251.004, 2301.0031, 2301.005, 3504.0007, 36.001, and 36.002.

Insurance Code §2251.0031 exempts commercial inland marine insurance from rate filing requirements. Section 2251.0031 also provides that the commissioner may adopt reasonable and necessary rules to implement §2251.0031.

Insurance Code §2251.004 requires that the commissioner adopt rules governing the manner in which rates for the various classifications of risks insured under inland marine insurance are regulated.

Insurance Code §2301.0031 exempts commercial inland marine insurance from form filing requirements. Section 2301.0031 also provides that the commissioner may adopt reasonable and necessary rules to implement §2301.0031.

Insurance Code §2301.005 requires that the commissioner adopt rules governing the manner in which forms for the various classifications of risks insured under inland marine insurance are regulated.

Insurance Code §3504.0007 provides that the commissioner may adopt rules necessary to implement Insurance Code Chapter 3504.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

Insurance Code §36.002 provides that the commissioner may adopt reasonable rules that are necessary to effect the purposes of Insurance Code Chapter 2251 and Chapter 2301, Subchapter A.

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

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Jessica Barta

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Texas Department of Insurance

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For further information, please call: (512) 676-6587



DIVISION 1. INLAND MARINE INSURANCE

28 TAC §§5.5001 - 5.5008

STATUTORY AUTHORITY. The commissioner adopts new §§5.5001 - 5.5008 under Insurance Code §§2251.0031, 2251.004, 2301.0031, 2301.005, 3504.0007, 36.001, and 36.002.

Insurance Code §2251.0031 exempts commercial inland marine insurance from rate filing requirements. Section 2251.0031 also provides that the commissioner may adopt reasonable and necessary rules to implement §2251.0031.

Insurance Code §2251.004 requires that the commissioner adopt rules governing the manner in which rates for the various classifications of risks insured under inland marine insurance are regulated.

Insurance Code §2301.0031 exempts commercial inland marine insurance from form filing requirements. Section 2301.0031 also provides that the commissioner may adopt reasonable and necessary rules to implement §2301.0031.

Insurance Code §2301.005 provides that the commissioner must adopt rules governing the manner in which forms for the various classifications of risks insured under inland marine insurance are regulated.

Insurance Code §3504.0007 provides that the commissioner may adopt rules necessary to implement Insurance Code Chapter 3504.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

Insurance Code §36.002 provides that the commissioner may adopt reasonable rules that are necessary to effect the purposes of Insurance Code Chapter 2251 and Chapter 2301, Subchapter A.

§5.5008. *Inland Marine Insurance -- Other Inland Marine Risks.*

Other inland marine risk definitions and classifications follow.

(1) Accounts receivable (non-filed).

(2) Agricultural machinery and equipment. These risks include:

(A) personal risks (filed); and

(B) dealers and other commercial risks (non-filed).

(3) Bailee customers policies (non-filed). These policies cover property in the custody of bleacheries, throwsters, fumigatories, dyers, cleaners, laundries, needle workers, and other bailees for the purpose of storage or performing work on the property. The policies may include coverage while in transit but may not cover the bailee's property at the bailee's premises.

(4) Block policies. These risks include:

(A) camera dealers (non-filed);

(B) equipment dealers (non-filed);

(C) furrier's block (non-filed);

(D) jeweler's block (non-filed); and

(E) musical instrument dealers (non-filed).

(5) Builders' risks or installation risks (non-filed). These policies cover loss to the owner, seller, or contractor due to physical damage to machinery, equipment, building materials, or building supplies being used with and during the course of installation, testing, building, renovating, or repairing of dwelling, commercial, or industrial construction.

(A) Policies may cover property designated for and awaiting specific installation, building, renovating, or repairing while the property is at points or places where work is being performed, in transit, or in temporary storage or deposit.

(B) Policies may not cover property while it is part of merchandise held by dealers for public sale.

(C) Coverage must be limited to builders' risks or installation risks if a policy insures perils in addition to fire and extended coverage.

(D) If a policy is written for an owner, coverage must end when the work is completed and accepted.

(E) If a policy is written for a seller or contractor, coverage must end when the interest of the seller or contractor ends.

(6) Cold storage locker plant policies (non-filed). These policies cover merchandise of customers such as meats, game, fish, poultry, fruit, vegetables, and similar property.

(7) Cotton buyers transit policies (non-filed).

(8) Domestic bulk liquids policies (non-filed). These policies cover domestic bulk liquids stored in tanks, but do not include fire and extended coverage.

(9) Electronic Equipment Protection Policy (filed for personal risks; non-filed for commercial risks).

(A) These policies can cover:

(i) electronic equipment, including data processing equipment and components, connections, extensions, and systems;

(ii) electronic media, including converted data; and

(iii) extra expense incurred to continue normal operations that are interrupted as a result of an insured loss.

(B) A policy must cover the property while in transit.

(C) Insurance for "portable electronic devices," as described in Insurance Code §4055.251, concerning Definitions, is also subject to the provisions of Insurance Code Chapter 551, Subchapter E, concerning Portable Electronics Insurance, and Chapter 4055, Subchapter F, concerning Portable Electronic Vendor License.

(10) Exhibition policies covering property while on exhibition and in transit to or from an exhibition (non-filed).

(11) Film floaters, including builders' risk during the production and coverage of completed negatives and positives and sound records:

- (A) personal risks (filed); and
- (B) commercial risks (non-filed).

(12) Fine arts policies covering objects of art such as pictures, bronzes, antiques, rare manuscripts and books, and articles of vertu:

- (A) private collections (filed); and
- (B) dealers and other commercial risks (non-filed).

(13) Floor plan policies (non-filed). These policies cover property for sale while in possession of dealers under a floor plan or any similar plan under which the dealer borrows money from a lending institution to pay the manufacturer.

(A) The merchandise must be specifically identifiable as encumbered to the lending institution.

(B) The dealer's right to sell or otherwise dispose of the merchandise must be conditioned upon the lending institution releasing the merchandise from encumbrance.

(C) These policies must cover the merchandise in transit and not extend beyond termination of the dealer's interest.

(D) These policies may not cover merchandise for which the collateral is the dealer's stock or inventory, as distinguished from merchandise specifically identifiable as encumbered to the lending institution.

(14) Furriers' customers policies (non-filed). These policies cover specified articles of customers' property for which furriers or fur storsers issue certificates or receipts.

(15) Garment contractors floaters (non-filed).

(16) Government service floaters (non-filed).

(17) Home freezers and freezer contents (non-filed). These policies cover against loss resulting from power failure or mechanical breakdown.

(18) Live animal floaters. These risks include:

(A) cattle kept for feeding, dairy, breeding, or show purposes; sheep; swine; and horses and mules (except horses and mules used exclusively for racing, show, or breeding for racing or show):

- (i) personal risks (filed); and
- (ii) commercial risks (non-filed);

(B) range cattle and range sheep while on ranges (non-filed);

(C) horses or mules used exclusively for racing, show, or breeding for racing or show (non-filed);

(D) livestock while being transported to or from stockyards or while at stockyards (non-filed);

(E) policies issued to insureds conducting sales or auctions, covering others' livestock for public sale (non-filed);

(F) livestock insured under mortality policies that cover, among other perils, death or destruction due to natural causes (non-filed);

(G) livestock of circus, carnival, or theatrical enterprises (non-filed); and

(H) policies issued to veterinarians and humane societies to cover others' livestock in their custody or control for professional purposes (non-filed).

(19) Mobile equipment and miscellaneous movable property (non-filed).

(A) These policies cover contractors' equipment, industrial and other special equipment not primarily designed for highway use, mechanical sales devices, storage batteries, stevedores' equipment, divers' equipment, undertakers' equipment, outboard boats and motors, parachutes, balloons, scientific and surveyors' instruments, articles for sport and recreation, musical scores and orchestrations, or all other similar movable and identified property.

(B) These policies do not cover any equipment or property:

(i) on sale or consignment; or

(ii) that, in the course of manufacture, has come into the custody or control of parties who intend to use the equipment or property for the purpose for which it was manufactured or created.

(C) These policies may not cover storage at the insured's premises, except where storage is incidental to the regular use of the equipment or property away from the premises.

(20) Musical instrument floaters. For purposes of this section, "musical instrument" does not include music-playing equipment like radios, televisions, CD or record players, MP3 players, and streaming devices:

(A) personal risks (filed); and

(B) commercial risks (non-filed).

(21) Nuclear insurance (non-filed). These policies cover loss resulting from physical damage (including risks in the course of construction) to:

(A) designated nuclear facilities, including property associated with the facilities and subject to radiation damage from them;

(B) other property directly related to the nuclear facilities; and

(C) other facilities involving substantial quantities of radiation.

(22) Oil and gas lease property (non-filed).

(23) Pattern and die floaters, excluding coverage on the owner's premises (non-filed).

(24) Personal property floaters (filed). These policies include floaters for personal effects, personal fur, personal jewelry, and other personal property.

(25) Pet insurance (non-filed). Individual or group insurance policies covering veterinary expenses for pet illness or injury.

(26) Physicians' and surgeons' equipment floaters (non-filed).

(27) Radium floaters (non-filed).

(28) Rolling stock used on a railway system (non-filed). Coverage may be provided on an all-risk basis or named peril basis. Coverage must include fire, collision, derailment, overturn, strikes, and riots.

(29) Salespersons' samples floaters (non-filed).

(30) Sign and street clock policies (non-filed). These policies cover neon signs, automatic or mechanical signs, and street clocks, while in use.

(31) Silverware floaters:

- (A) personal risks (filed); and
- (B) commercial risks (non-filed).

(32) Stamp and coin floaters:

- (A) private collections (filed); and
- (B) commercial risks (non-filed).

(33) Self-service storage customer floaters (filed for policy forms and endorsements; non-filed for rates). These policies may be issued to a tenant of a self-service storage facility to cover property stored at the facility.

(A) For purposes of this paragraph, the terms "self-service storage facility" and "tenant" have the meanings prescribed by Property Code §59.001, concerning Definitions.

(B) Coverage is limited to property in storage for the perils listed in the policies, which must include coverage for property while in transit.

(C) Coverage may not be provided for any motor vehicles subject to motor vehicle registration and inspection.

(D) Policies may not cover property stored in:

(i) any facility where the lessor issues a warehouse receipt, bill of lading, or other document of title relating to the stored property; or

(ii) facilities other than storage facilities that have multiple storage units.

(34) Theatrical floaters (non-filed). These policies may not include coverage for buildings, improvements, betterments, and furniture and fixtures that do not travel with theatrical troupes.

(35) Travel insurance (filed), as described in Insurance Code Chapter 3504, concerning Travel Insurance.

(36) Valuable papers and records. These risks include:

- (A) personal risks (filed); and
- (B) commercial risks (non-filed).

(37) Wedding present floaters (non-filed).

(38) Wool growers and wool buyers floaters (non-filed). These policies cover property usual to the insured's business while in transit and all other situations customary and incidental to transit.

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 May 15, 2023.

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Jessica Barta

General Counsel

Texas Department of Insurance

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For further information, please call: (512) 676-6587

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DIVISION 2. MULTI-PERIL INSURANCE

28 TAC §5.5101

STATUTORY AUTHORITY. The commissioner adopts §5.5101 under Insurance Code §36.001 and §36.002.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

Insurance Code §36.002 provides that the commissioner may adopt reasonable rules that are necessary to effect the purposes of Insurance Code Chapter 2251.

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

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 461. INCIDENT COMMANDER

37 TAC §§461.1, 461.3, 461.5

The Texas Commission on Fire Protection (Commission) adopts 37 Texas Administrative Code Chapter 461, Incident Commander, §461.1, Incident Commander Certification, §461.3, Minimum Standards for Incident Commander Certification and §461.5, Examination Requirements. The purpose of Chapter 461 is to outline the requirement for certification and the minimum standards for Incident Commander certification. Chapter 461, Incident Commander, is adopted without changes to the text as published in the March 3, 2023, issue of the *Texas Register* (48 TexReg 1271). These rules will not be republished.

No comments were received from the public regarding the adoption of the rules.

The rules are adopted under Texas Government Code §419.008, which authorizes the commission to adopt or amend rules to perform the duties assigned to the commission. The rule is also adopted under Texas Government Code §419.032, which authorizes the commission to adopt rules establishing the requirements for certification; and §419.0325, which authorizes the commission to obtain the criminal history record information for the individual seeking certification by the 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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Mike Wisko

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Texas Commission on Fire Protection

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 15. TEXAS VETERANS COMMISSION

CHAPTER 452. ADMINISTRATION GENERAL PROVISIONS

40 TAC §452.2

The Texas Veterans Commission (commission) adopts amendments to §452.2 of Title 40, Part 15, Chapter 452 of the Texas Administrative Code concerning Advisory Committees with changes to the proposed text as published in the February 24, 2023, issue of the *Texas Register* (48 TexReg 1023) and will be republished

The amended rule is adopted to change existing language to more closely align the method of selecting the committee chair with selection of the commission chair and to update the rule with language that reflects the current method of video conference for remote participation by committee members.

No comments were received regarding the proposed rule amendments.

The amended rule is adopted under Texas Government Code §434.010, which authorizes the commission to establish rules it considers necessary for its administration, and Texas Government Code §434.0101, granting the commission authority to establish rules governing the agency's advisory committees.

§452.2. *Advisory Committees.*

(a) The commission may establish advisory committees in accordance with Texas Government Code, Chapter 2110. The following shall apply to each advisory committee:

(1) **Agency role.** The executive director may direct one or more staff members of the agency to assist each advisory committee. These positions shall be non-voting.

(2) **Committee size and appointment of members.** Each advisory committee shall be composed of nine members appointed by the commission. Members of each committee serve at the pleasure of the commission and may be removed from a committee by a majority vote of the commission.

(3) **Committee chair and vice chair.**

(A) The committee chair will be selected by the commission. The committee chair shall serve a term as determined by

the commission. The committee chair determines the agenda for each meeting.

(B) The vice chair of each advisory committee is selected by the committee's voting members. Committee vice chair term lengths are one or two-year terms as determined by the committee's voting members and are limited to two years of service as the vice chair during their appointment to the committee. The vice chair shall perform the chair duties when the chair is unavailable or unable to perform.

(4) **Conditions of membership.**

(A) **Terms of service.** The term of office for each member will be determined by the commission in order to achieve staggered terms. In the event that a member cannot complete his or her term, or is removed by the commission, the commission shall appoint a qualified replacement to serve the remainder of the term.

(B) **Participation.** Participation on an advisory committee is voluntary.

(C) **Compensation.** Advisory committee members appointed by the commission shall serve without compensation.

(D) **Reimbursement.** The commission may, if authorized by law and the executive director, reimburse a member of a committee for reasonable and necessary expenses up to four times per calendar year. Current rules and laws governing reimbursement of expenses for state employees shall govern reimbursement of expenses for advisory committee members.

(5) **Training.** Each committee member shall receive initial training to ensure compliance with the Open Meetings Act. Training should also include an overview of the agency's mission and organizational structure, the overall purpose or goals of the committee, as well as other information that will assist members to accomplish committee goals.

(6) **Responsibilities.** Each advisory committee will review issues and provide advice to the commission, as charged by the commission.

(7) **Meetings.** Each advisory committee shall meet as needed by the commission. Advisory committee meetings may be conducted by video conference. Each advisory committee shall be subject to meeting at the call of the committee chair or designee. A quorum shall consist of a majority of the committee membership. The committees shall comply with Open Meetings Act requirements as provided in Texas Government Code, Chapter 551.

(8) **Reports.** The committee chair or designee of each advisory committee shall regularly report to the commission regarding its activities and recommendations, and, when requested by the commission, shall file with the commission a report containing:

(A) the minutes of meetings;

(B) a memo summarizing the meetings; and

(C) a list of the committee's recommendations, if any.

(9) **Evaluation and duration.** Each advisory committee shall remain in existence as long as deemed necessary by the commission based on a regular evaluation of the continuing need for each advisory committee. The executive director or staff may assist with this evaluation at the direction of the commission.

(10) **Formation of subcommittees.** Each advisory committee shall notify the commission of any adopted subcommittees and their purpose in its quarterly report.

(b) Veteran Services Advisory Committee.

(1) Purpose. The purpose of the Veteran Services Advisory Committee (VSAC) is to develop recommendations to improve overall services to veterans, their families, and survivors by the TVC. TVC leadership will provide veteran service topics to the committee for analysis and feedback.

(2) Committee member qualifications. The Committee shall be comprised of veterans and/or non-veterans that are interested in significantly improving the quality of life for all Texas veterans, their families, and survivors.

(c) Fund for Veterans' Assistance Advisory Committee.

(1) Purpose. The purpose of the Fund for Veterans' Assistance Advisory Committee is to evaluate grant applications and make recommendations to the commission.

(2) Committee member qualifications.

(A) Committee members may include representatives from veterans' organizations, non-profit or philanthropic organizations, veterans or family members of veterans, and other individuals with the experience and knowledge to assist the committee with achievement of its purpose.

(B) Committee members may not include officers, directors or employees of organization or entities that have an open Fund for Veterans' Assistance grant during the member's tenure or that intend to submit an application for a Fund for Veterans' Assistant grant.

(C) Committee members will be required to sign non-disclosure and conflict of interest agreements before reviewing grant applications. Committee members found in violation of the non-disclosure agreement will be prohibited from evaluating grant applications and making recommendations to the commission. Committee members found in violation of any agreement may also be removed from the committee by the commission.

(3) Meetings. The Fund for Veterans' Assistance Advisory Committee shall meet as needed to make grant recommendations to the commission.

(d) Veterans County Service Officer Advisory Committee.

(1) Purpose. The purpose of the Veterans County Service Officer Advisory Committee is to develop recommendations to improve the support and training of Veterans County Service Officers and to increase coordination between Veterans County Service Officers and the Texas Veterans Commission related to the statewide network of services being provided to veterans.

(2) Committee member qualifications. The members shall be current Veterans County Service Officers with the experience and knowledge to assist the committee with achievement of its purpose.

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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Cory Scanlon

General Counsel

Texas Veterans Commission

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For further information, please call: (737) 320-4167

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CHAPTER 457. PROTESTS OF AGENCY PURCHASES

40 TAC §457.1

The Texas Veterans Commission (commission) adopts amendments to §457.1 of Title 40, Part 15, Chapter 457 of the Texas Administrative Code concerning Protests of Agency Purchases with changes to the proposed text as published in the November 25, 2022, issue of the *Texas Register* (47 TexReg 7860) and will be republished.

The amended rule is adopted to eliminate language that is no longer applicable.

No comments were received regarding the proposed rule amendments.

The rule amendment is adopted under Texas Government Code §434.010 which authorizes the commission to establish rules it considers necessary for its administration. No other statutes, articles, or codes are affected by this adoption.

§457.1. Protests.

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

(1) Agency--The Texas Veterans Commission.

(2) Commissioners--Commissioners of the Texas Veterans Commission.

(3) Interested parties--All vendors who have submitted bids or proposals for the provision of goods or services pursuant to a contract with the agency.

(b) Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation, evaluation, or award of a contract may formally protest to the Chief Financial Officer. Such protests must be in writing and received in the Chief Financial Officer's office within 10 working days after such aggrieved person knows, or should have known, of the occurrence of the action which is protested. Formal protests must conform to the requirements of this subsection and subsection (c) of this section, and shall be resolved in accordance with the procedure set forth in subsections (d) and (e) of this section. Copies of the protest must be mailed or delivered by the protesting party to the agency and other interested parties.

(c) In the event of a timely protest or appeal under this section, the agency shall not proceed further with the solicitation or with the award of the contract unless the Executive Director, after consultation with the Chief Financial Officer, makes a written determination that the award of contract without delay is necessary to protect the best interests of the state.

(d) A formal protest must be sworn and contain:

(1) a specific identification of the statutory or regulatory provision(s) that the protesting party alleges has been violated;

(2) a specific description of each action by the agency that the protesting party alleges to be a violation of the statutory or regulatory provision(s) that the protesting party has identified pursuant to paragraph (1) of this subsection;

(3) a precise statement of the relevant facts;

(4) a statement of any issues of law or fact that the protesting party contends must be resolved;

(5) a statement of the argument and authorities that the protesting party offers in support of the protest; and

(6) a statement that copies of the protest have been mailed or delivered to the agency and all other identifiable interested parties.

(e) The Chief Financial Officer shall have the authority, prior to appeal to the Executive Director of the commission, to settle and resolve the dispute concerning the solicitation or award of a contract. The Chief Financial Officer may solicit written responses to the protest from other interested parties.

(f) If the protest is not resolved by mutual agreement, the Chief Financial Officer will issue a written determination on the protest.

(1) If the Chief Financial Officer determines that no violation of rules or statutes has occurred, he/she shall so inform the protesting party and other interested parties by letter which sets forth the reasons for the determination.

(2) If the Chief Financial Officer determines that a violation of the rules or statutes has occurred in a case where a contract has not been awarded, he/she shall so inform the protesting party and other interested parties by letter which sets forth the reasons for the determination and the appropriate remedial action.

(3) If the Chief Financial Officer determines that a violation of the rules or statutes has occurred in a case where a contract has been awarded, he/she shall so inform the protesting party and other interested parties by letter which sets forth the reasons for the determination, which may include ordering the contract void.

(g) The Chief Financial Officer's determination on a protest may be appealed by the protesting party to the Executive Director of the agency. An appeal of the Chief Financial Officer's determination must be in writing and must be received in the Executive Director's office no later than 10 working days after the date of the Chief Financial Officer's determination. Copies of the appeal must be mailed or delivered by the protesting party and other interested parties. The appeal must include a certified statement that such copies have been provided. The appeal shall be limited to review of the Chief Financial Officer's determination.

(h) The Executive Director may confer with the General Counsel in his/her review of the matter appealed. The Executive Director may, in his/her discretion, refer the matter to the Commissioners for their consideration at a regularly scheduled open meeting or issue a written decision on the protest.

(i) When a protest has been appealed to the Executive Director under subsection (f) of this section and has been referred to the Commissioners by the Executive Director under subsection (g) of this section, the following requirements shall apply:

(1) Copies of the appeal and responses of interested parties, if any, shall be mailed to the Commissioners.

(2) All interested parties who wish to make an oral presentation at the open meeting are requested to notify the Commission's General Counsel at least 48 hours in advance of the open meeting.

(3) The Commissioners may consider oral presentations and written documents presented by staff and interested parties. The Chairman shall set the order and amount of time allowed for presentations.

(4) The Commissioners' determination of the appeal shall be by duly adopted resolution reflected in the minutes of the open meeting, and shall be final.

(j) A protest or appeal that is not filed timely will not be considered, unless good cause for delay is shown or the commission determines that a protest or appeal raises issues significant to procurement practices or procedures.

(k) A decision issued either by the Commissioners in open meeting, or in writing by the Executive Director, shall be the final administrative action of the agency.

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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Cory Scanlon

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Effective date: June 1, 2023

Proposal publication date: November 25, 2022

For further information, please call: (737) 320-4167



CHAPTER 459. TRANSPORTATION SUPPORT SERVICES

40 TAC §§459.1 - 459.6

The Texas Veterans Commission (commission) adopts the repeal to 40 TAC, Part 15, Chapter 459, §§459.1 - 459.6, relating to Transportation Support Services, without changes to the proposed text as published in the February 24, 2023, issue of the *Texas Register* (48 TexReg 1024) and will not be republished.

The repeal is made to eliminate a rule that is no longer applicable.

No comments were received regarding proposal of the rule repeal.

The repeal is adopted under Texas Government Code §434.010 which authorizes the commission to establish rules it considers necessary for its administration. No other statutes, articles, or codes are affected by this adoption.

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

Filed with the Office of the Secretary of State on May 12, 2023.

TRD-202301738

Cory Scanlon

General Counsel

Texas Veterans Commission

Effective date: June 1, 2023

Proposal publication date: February 24, 2023

For further information, please call: (737) 320-4167



TRANSFERRED RULES

The Government Code, §2002.058, authorizes the Secretary of State to remove or transfer rules within the Texas Administrative Code when the agency that promulgated the rules is abolished. The Secretary of State will publish notice of rule transfer or removal in this section of the *Texas Register*. The effective date of a rule transfer is the date set by the legislature, not the date of publication of notice. Proposed or emergency rules are not subject to administrative transfer.

Department of Aging and Disability Services

Rule Transfer

During the 84th Legislative Session, the Texas Legislature passed Senate Bill 200, addressing the reorganization of health and human services delivery in Texas. As a result, some agencies were abolished and their functions transferred to the Texas Health and Human Services Commission (HHSC). Texas Government Code, §531.0202(b), specified the Department of Aging and Disability Services (DADS) be abolished September 1, 2017, after all its functions were transferred to HHSC in accordance with Texas Government Code, §531.0201 and §531.02011. The former DADS rule in Texas Administrative Code, Title 40, Part 1, Chapter 9, Intellectual Disability Services--Medicaid State Operating Agency Responsibilities, Subchapter D, Home and Community-Based Services (HCS) Program and Community First Choice (CFC), §9.181, Administrative Penalties is being transferred to Texas Administrative Code, Title 26, Part 1, Chapter 565, Home and Community-Based Services (HCS) Program Certification Standards, Subchapter G, HHSC Actions, §565.45, Administrative Penalties.

The rule will be transferred in the Texas Administrative Code effective June 19, 2023.

The following table outlines the rule transfer:

Figure: 40 TAC Chapter 9, Subchapter D

TRD-202301793



Figure: 40 TAC Chapter 9, Subchapter D

<p>Current Rules Title 40. Social Services and Assistance Part 1. Department of Aging and Disability Services Chapter 9. Intellectual Disability Services-- Medicaid State Operating Agency Responsibilities Subchapter D. Home and Community-Based Services (HCS) Program and Community First Choice (CFC) §9.181. Administrative Penalties.</p>	<p>Move to Title 26. Health and Human Services Part 1. Texas Health and Human Services Commission Chapter 565. Home and Community-Based Services (HCS) Program Certification Standards Subchapter G. HHSC Actions §565.45. Administrative Penalties.</p>
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Department of Aging and Disability Services

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Health and Human Services Commission

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The rule will be transferred in the Texas Administrative Code effective June 19, 2023.

The following table outlines the rule transfer:

Figure: 40 TAC Chapter 9, Subchapter D

TRD-202301790

vices Commission (HHSC). Texas Government Code, §531.0202(b), specified the Department of Aging and Disability Services (DADS) be abolished September 1, 2017, after all its functions were transferred to HHSC in accordance with Texas Government Code, §531.0201 and §531.02011. Certain former DADS rules in Texas Administrative Code, Title 40, Part 1, Chapter 9, Intellectual Disability Services--Medicaid State Operating Agency Responsibilities, Subchapter N, Texas Home Living (TXHML) Program and Community First Choice (CFC) are being transferred to Texas Administrative

Code, Title 26, Part 1, Chapter 566, Texas Home Living (TXHML) Program and Community First Choice (CFC) Certification Standards.

The rules will be transferred in the Texas Administrative Code effective June 19, 2023.

The following table outlines the rule transfer:

Figure: 40 TAC Chapter 9, Subchapter N
TRD-202301792



Health and Human Services Commission

Rule Transfer

During the 84th Legislative Session, the Texas Legislature passed Senate Bill 200, addressing the reorganization of health and human services delivery in Texas. As a result, some agencies were abolished and their functions transferred to the Texas Health and Human Ser-

vices Commission (HHSC). Texas Government Code, §531.0202(b), specified the Department of Aging and Disability Services (DADS) be abolished September 1, 2017, after all its functions were transferred to HHSC in accordance with Texas Government Code, §531.0201 and §531.02011. Certain former DADS rules in Texas Administrative Code, Title 40, Part 1, Chapter 9, Intellectual Disability Services--Medicaid State Operating Agency Responsibilities, Subchapter N, Texas Home Living (TXHML) Program and Community First Choice (CFC) are being transferred to Texas Administrative Code, Title 26, Part 1, Chapter 566, Texas Home Living (TXHML) Program and Community First Choice (CFC) Certification Standards.

The rules will be transferred in the Texas Administrative Code effective June 19, 2023.

The following table outlines the rule transfer:

Figure: 40 TAC Chapter 9, Subchapter N
TRD-202301791

Figure: 40 TAC Chapter 9, Subchapter N

Current Rules	Move to
Title 40. Social Services and Assistance	Title 26. Health and Human Services
Part 1. Department of Aging and Disability Services	Part 1. Texas Health and Human Services Commission
Chapter 9. Intellectual Disability Services--Medicaid State Operating Agency Responsibilities	Chapter 566. Texas Home Living (TXHML) Program and Community First Choice (CFC) Certification Standards
Subchapter N. Texas Home Living (TXHML) Program and Community First Choice (CFC)	
§9.553. Definitions.	§566.3. Definitions.
§9.555. Description of TxHmL Program Services.	§566.5. Description of TxHmL Program Services.
§9.572. Other Program Provider Requirements.	§566.17. Other Program Provider Requirements.
§9.576. HHSC Surveys of a Program Provider.	§566.19. HHSC Surveys of a Program Provider.
§9.578. Program Provider Certification Principles: Service Delivery.	§566.7. Program Provider Certification Principles: Service Delivery.
§9.579. Certification Principles: Staff Member and Service Provider Requirements.	§566.9. Certification Principles: Staff Member and Service Provider Requirements.
§9.580. Certification Principles: Quality Assurance.	§566.11. Certification Principles: Quality Assurance.
§9.581. Administrative Penalties.	§566.23. Administrative Penalties.
§9.584. Certification Principles: Prohibitions.	§566.13. Certification Principles: Prohibitions.
§9.585. Certification Principles: Requirements Related to the Abuse, Neglect, and Exploitation of an Individual.	§566.15. Certification Principles: Requirements Related to the Abuse, Neglect, and Exploitation of an Individual.
§9.586. Amelioration.	§566.25. Amelioration.
§9.587. Program Provider Compliance and Corrective Action.	§566.21. Program Provider Compliance and Corrective Action.



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 Veterans Commission

Title 40, Part 15

Pursuant to Texas Government Code §2001.039, the Texas Veterans Commission (commission) will review Title 40 Part 15 TAC Chapters 450, 451, 452, and 453. The commission will consider whether the reasons for initially adopting these rules continue to exist and determine whether these rules should be repealed, readopted, or readopted with amendments.

The text of the rule sections will not be published. The text of the rules may be found in the Texas Administrative Code, Title 40, Social Services and Assistance, Part 15.

Chapter 450. Veterans County Service Officers Certificate of Training

40 TAC §450.1

40 TAC §450.3

40 TAC §450.5

Chapter 451. Veterans County Service Officers Accreditation

40 TAC §451.1

40 TAC §451.3

Chapter 452. Administration General Provisions

40 TAC §452.1

40 TAC §452.2

40 TAC §452.3

40 TAC §452.4

40 TAC §452.5

40 TAC §452.6

40 TAC §452.7

40 TAC §452.8

Chapter 453. Historically Underutilized Business Program

40 TAC §453.1

The Commission will accept comments for 30 days following the publication of this notice in the *Texas Register*. Comments pertaining to this rule review may be submitted in writing to Cory Scanlon, General Counsel, Texas Veterans Commission, P.O. Box 12277, Austin, Texas 78711-2277, or faxed to (512) 475-2395, or emailed to rulemaking@tvc.texas.gov.

During the review process, the Commission may determine that a specific rule may need to be amended to further refine the Commission's legal and policy considerations; whether a rule reflects current Commission procedures; that no changes to a rule as currently in effect are necessary; or that a rule is no longer valid or applicable. Rules may also be combined or reduced for simplification and clarity when feasible. Any proposed changes to these chapters or subchapters because of this review will be published in the "Proposed Rules" section of the *Texas Register* and will be open for an additional 30-day public comment period prior to adoption by the Commission.

TRD-202301732

Cory Scanlon

General Counsel

Texas Veterans Commission

Filed: May 12, 2023

Adopted Rule Reviews

Texas Department of Housing and Community Affairs

Title 10, Part 1

The Texas Department of Housing and Community Affairs (the Department) adopts its rule review for 10 TAC §1.10, Public Comment Procedures. The proposed rule review was published in the February 24, 2023, issue of the *Texas Register* (48 TexReg 1157). The purpose of the action is to conduct a rule review in accordance with Tex. Gov't Code §2001.039, which requires a state agency to review its rules every four years.

At this time, the Department has determined that there continues to be a need for this rule, which is to have procedures for hearing public comment at Governing Board meetings. This rule has been readopted which will be noted in the *Texas Register's* Review of Agency Rules section without publication of the text.

SUMMARY OF PUBLIC COMMENT. All comments in response to this notice of rule review were accepted from February 24, 2023, through March 27, 2023. Comment was received from one commenter, as described and responded to below. There will be a proposed rule change ensuing in response to public comment.

10 TAC §1.10(b)(4)

COMMENT: The commenter voiced concern over whether residents that are not in Austin are provided a chance for participation. They note that letters from public officials can be read into the Board meeting record, but that is the only allowance in the current rule for absentee comments. They recommend that the current rule regarding position cards be expanded to allow the public outside of Austin the chance to

submit position cards to be read into the record and provided suggested language in their comment. Texas Housers would prefer an option allowing a short, written statement submitted ahead of time to be read at board meetings, but understands the need to limit materials read into the record due to time concerns. TDHCA should consider allowing short statements of less than 100 to 200 words to be read into the record. A limit could be placed on reading statements at the meeting, either allowing all comments under a certain length or limiting comments if more than a certain number is received.

RESPONSE: The current process used fully comports with Texas Open Meetings Act requirements, and ensures that the opinions expressed in meetings are actually those of an individual. No changes to the rule are recommended.

10 TAC §1.10(b)(5)(B)

COMMENT: Commenter suggests that there is a need for proper consideration of all speakers' input in cases where many speakers show up for a single agenda item. Current language gives the Chair discretion to limit the number of speakers and length of presentations without any kind of assurance that speakers will have a chance to add new testimony if they have something to say. TDHCA's board information web page states that "If numerous people wish to comment on the same issue and in the same basic way, they may be asked to agree upon a smaller number of spokespersons." The phrase "same basic way" is vague and leaves too much up to the discretion of the Board Chair. Texas Housers suggests that the rule needs to better describe circumstances in which the Chair might limit attendees' ability to testify and better protect speakers' ability to contribute if they have something to say that could have an impact on Board decisions. Texas Housers provided suggested language in their comment.

RESPONSE: The current process used fully comports with Texas Open Meetings Act requirements, and no instance was cited by the commenter when the rule, as adopted, was alleged to have actually impeded public comment on an agenda item. No changes to the rule are recommended.

10 TAC §1.10(b)(6)(C)(i)

COMMENT: Texas Housers suggests that the rule needs to be more lenient for speakers who may not be familiar with board meeting requirements and still deserve a chance to participate and have their voices heard. Submitting documents ahead of time requires advance knowledge of board procedures that speakers understandably may not have, and the onus for document collection at board meetings should be on staff as opposed to speakers. Texas Housers provided suggested language on this proposed change.

RESPONSE: The current process used fully comports with Texas Open Meetings Act requirements, and no instance was cited by the commenter when the rule, as adopted, was alleged to have actually impeded public comment on an agenda item. No changes to the rule are recommended.

10 TAC §1.10(b)(6)(C)(iii)

COMMENT: Texas Housers commented that speakers should not be expected to provide hard copies to every single person in attendance. Not only is that unnecessary (hard copies can very easily be photographed or scanned and added to the meeting agenda/board book after the fact), but it is overly burdensome for speakers. Low-income speakers - the intended tenants of LIHTC properties - should not be expected to pay out of pocket for an unknown number of copies just so meeting attendees can hold the materials. A description of the materials by the speaker at the meeting, hard copies for all board members, and an after-the-fact supplement to the board book should

be enough to document materials for the public record. To comply with Tex. Gov't Code §2306.032(d), the rule could require hard copies for all members of the board plus one additional copy to be made available to any attendees that want to see it. This section of statute does not specify that one copy needs to be made available for each member of the public. Texas Housers provided suggested language on this proposed change.

RESPONSE: The current process used fully comports with Texas Open Meetings Act requirements and clearly complies with Tex. Gov't Code §2306.032(d). No changes to the rule are recommended.

10 TAC §1.10(c)

COMMENT: Texas Housers recommends that the language in this section be adjusted to reflect the correct usage of "translator" and "interpreter." Oral testimony is interpreted, written comment is translated. The language in TAC should also reflect the need for appropriately trained interpreters.

Texas Housers recommended proposed language on this item.

RESPONSE: The Department agrees with the suggested change to the rule regarding the use of the term "interpreter" rather than "translator," but finds no basis to prohibit bilingual speakers from providing interpretation assistance at meetings simply because they have not been specially "trained in interpretation practices." A rule change will be proposed.

Other

The following suggestion is not an existing section in this rule, but Texas Housers suggests that because public involvement in TDHCA decision-making is currently dominated by developers, the Department should add the requirement that properties notify tenants of upcoming board meetings where their property will be discussed to encourage tenant involvement. Texas Housers recommended proposed language on this item.

RESPONSE: No change to the rule is recommended.

This concludes the review of Chapter 1.

TRD-202301787

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

Filed: May 15, 2023



The Texas Department of Housing and Community Affairs (the Department) adopts its rule review for 10 TAC §2.204 Contents of a Quality Improvement Plan. The proposed rule review was published in the March 24, 2023 issue of the *Texas Register* (48 TexReg 1643). The purpose of the action is to conduct a rule review in accordance with Tex. Gov't Code §2001.039, which requires a state agency to review its rules every four years.

The Department has determined that there continues to be a need for this rule, which is to establish minimum requirements of a Quality Improvement Plan for an Eligible Entity facing termination or reduction of funding under 10 TAC §2.203. The Department has also determined that no changes to this rule as currently in effect are necessary. This rule has been readopted which will be noted in the *Texas Register's* Review of Agency Rules section without publication of the text.

SUMMARY OF PUBLIC COMMENT. Comments or questions about the rule review were accepted from March 24, 2023, through April 24, 2023. No comment was received.

Text of Rule as Currently in Effect for 10 TAC §2.204 Contents of a Quality Improvement Plan:

§2.204 Contents of a Quality Improvement Plan

(a) Capitalized words used herein have the meaning assigned in, Chapter 1 of this title (relating to Administration), Chapter 2 of this title (relating to Enforcement), Chapter 6 of this title (relating to Community Affairs Programs), or assigned by federal or state law.

(b) If a QIP is required of an Eligible Entity under §2.203(f) of this chapter (relating to Termination and Reduction of Funding for CSBG Eligible Entities), it must comply with this section. While each QIP developed by an Eligible Entity is unique and must be responsive to the specific Deficiency identified, all of the items in this section, at a minimum, must be addressed.

(c) The QIP must set forth a timeline for resolution of each Deficiency. In general, issues should be fully resolved within 60 calendar days from the final determination letter issued to the Eligible Entity as referenced in §2.203(e) of this chapter.

(d) At minimum, the QIP must identify:

- (1) Specific actions that will be taken to address each Deficiency;
- (2) The date by when each Deficiency will be corrected; and
- (3) If applicable, an explanation for any Deficiency that cannot be corrected within 60 calendar days.

TRD-202301731
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Filed: May 12, 2023



Texas Education Agency

Title 19, Part 2

The State Board of Education (SBOE) adopts the review of 19 Texas Administrative Code (TAC) Chapter 157, Hearings and Appeals, pursuant to the Texas Government Code, §2001.039. The rules reviewed by the SBOE in 19 TAC Chapter 157 relate to hearings and appeals and are organized under the following subchapters: Subchapter A, General Provisions for Hearings Before the State Board of Education, and Subchapter D, Independent Hearing Examiners.

The SBOE proposed the review of 19 TAC Chapter 157, Subchapters A and D, in the March 3, 2023 issue of the *Texas Register* (48 TexReg 1317).

Relating to the review of 19 TAC Chapter 157, Subchapters A and D, the SBOE finds that the reasons for adopting Subchapters A and D continue to exist and readopts the rules. Changes to the rules in 19 TAC Chapter 157 Subchapter D, will be presented to the SBOE for consideration at its next SBOE meeting in response to the rule review and SBOE members.

The SBOE received no comments related to the review of Subchapter A and D.

This concludes the review of Chapter 157.

TRD-202301802
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: May 16, 2023



Texas Commission on Environmental Quality

Title 30, Part 1

The Texas Commission on Environmental Quality (commission) has completed its Rule Review of 30 Texas Administrative Code (TAC) Chapter 91, Alternative Public Notice and Public Participation Requirements for Specific Designated Facilities, as required by Texas Government Code, §2001.039. Texas Government Code, §2001.039, requires a state agency to review and consider for re adoption, re adoption with amendments, or repeal each of its rules every four years. The commission published its Notice of Intent to Review these rules in the January 6, 2023, issue of the *Texas Register* (48 TexReg 57).

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 30 TAC Chapter 91 are required because the rules implement House Bill 2201, 79th Texas Legislature (2005), codified in part as new Texas Health and Safety Code, §382.0565 and Texas Water Code, §5.558. Chapter 91 implements reasonably streamlined processes for issuing permits required to construct a component of the FutureGen project designed to meet the FutureGen emissions profile. This chapter provides the commission the opportunity to use public meetings, informal conferences, or advisory committees to gather input of interested persons on an application subject to Chapter 91 when there is a significant degree of public interest. The permit processes authorized under this chapter are not subject to the requirements relating to a contested case hearing.

Public Comment

The public comment period closed on February 7, 2023. The commission did not receive comments on the rules review of this chapter.

As a result of the review the commission finds that the reasons for adopting the rules in 30 TAC Chapter 91 continue to exist and readopts these sections in accordance with the requirements of Texas Government Code, §2001.039.

TRD-202301773
Guy Henry
Acting Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: May 12, 2023



The Texas Commission on Environmental Quality (commission) has completed its Rule Review of 30 TAC Chapter 337, Dry Cleaner Environmental Response, as required by Texas Government Code, §2001.039. Texas Government Code, §2001.039, requires a state agency to review and consider for re adoption, re adoption with amendments, or repeal each of its rules every four years. The commission published its Notice of Intent to Review these rules in the January 6, 2023, issue of the *Texas Register* (48 TexReg 57).

The review assessed whether the reasons for initially adopting the rules continue to exist, and the commission has determined that those reasons do continue to exist. The rules in Chapter 337 are required because Texas Health and Safety Code, Chapter 374 requires the agency to adopt rules necessary to administer and enforce that chapter to ensure protection of the environment and to provide for corrective action of releases from dry cleaning facilities. The rules fulfill this statutory mandate and include provisions which establish registration requirements and performance standards for dry cleaning facilities; provide for the use of risk-based corrective action to address releases from dry

cleaning facilities; and establish the criteria under which the agency may determine that corrective action is considered complete.

Public Comment

The public comment period opened on January 6, 2023, and closed on February 7, 2023. The commission did not receive comments on the rules review of this chapter.

As a result of the review, the commission finds that the reasons for initially adopting the rules in 30 TAC Chapter 337 continue to exist and readopts these sections in accordance with the requirements of Texas Government Code, §2001.039.

TRD-202301774

Guy Henry

Acting Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: May 12, 2023



Texas Commission on Fire Protection

Title 37, Part 13

The Texas Commission on Fire Protection (commission) adopts the review of Texas Administrative Code, Title 37, Part 13, Chapter 425, concerning Fire Service Instructors. The review was conducted pursuant to Texas Government Code, Chapter 2001, §2001.039.

The commission received no comments on the proposed rule review, which was published in the December 23, 2022, issue of the *Texas Register* (47 TexReg 8760).

The commission has determined that the reasons for initially adopting the rule continue to exist and readopts the chapter without changes.

This concludes the review of Texas Administrative Code, Title 37, Part 13, Chapter 425.

TRD-202301771

Mike Wisko

Agency Chief

Texas Commission on Fire Protection

Filed: May 12, 2023



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: 26 TAC §745.8321(a)

<p><u>You may dispute the decision by:</u></p> <p><u>(1)(A) Contacting the Licensing supervisor or designee who made the waiver or variance decision to discuss alternative options, who may further amend the waiver or variance as a result of this contact. If you and the Licensing supervisor or designee cannot reach an agreement, you may request an administrative review (see Subchapter M, Division 1 of this chapter (relating to Administrative Reviews)); or</u></p> <p><u>(1)(B) Requesting an administrative review (see Subchapter M, Division 1 of this chapter) without contacting the Licensing supervisor or designee who made the waiver or variance decision to discuss alternative options.</u></p>	<p><u>While you dispute the decision you must:</u></p> <p><u>(2)(A) Comply with the conditions until the expiration date;</u></p> <p><u>(2)(B) Comply with the minimum standard that was the subject of the waiver or variance after the expiration date if the decision sought under (1)(A) or (1)(B) is not complete by the expiration date.</u></p>
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Figure: 26 TAC §745.8321(b)

<u>Decision</u>	<u>You may dispute the decision by:</u>	<u>While you dispute the decision you must:</u>
(1) <u>Denial of a waiver or variance.</u>	(A) <u>Requesting an administrative review (see Subchapter M, Division 1 of this chapter).</u>	(B) <u>Comply with the minimum standard for which you requested a waiver or variance.</u>
(2) <u>Revocation of a waiver or variance.</u>	(A) <u>Requesting an administrative review (see Subchapter M, Division 1 of this chapter).</u>	(B) <u>Comply with the minimum standard that was the subject of your waiver or variance.</u>
(3) <u>Amendment of a waiver or variance under §745.8319(a) of this subchapter (relating to Can Licensing amend or revoke a waiver or variance?), including amending a condition, the expiration date, or both.</u>	(A)(i) <u>Contacting the Licensing supervisor or designee who made the waiver or variance decision to discuss alternative options, who may further amend the waiver or variance as a result of this contact. If you and the Licensing supervisor or designee cannot reach an agreement, you may request an administrative review (see Subchapter M, Division 1 of this chapter);</u> <u>or</u> (A)(ii) <u>Requesting an administrative review (see Subchapter M, Division 1 of this chapter) without contacting the Licensing supervisor or designee who made the waiver or variance decision to discuss alternative options.</u>	(B)(i) <u>Comply with the amended condition and all other conditions until the expiration date if we amended a condition;</u> (B)(ii) <u>Comply with the minimum standard that was the subject of the waiver or variance after the expiration date if the decision sought under (A)(i) or (A)(ii) is not complete by the expiration date.</u>

Figure: 26 TAC §745.8906

<u>We may issue a:</u>	<u>If we determine that the applicant:</u>
<u>(1) Full Child-Care Administrator's License (CCAL)</u>	<u>Meets the requirements in §745.8915 of this division (relating to How do I qualify for a full Child-Care Administrator's License (CCAL)?).</u>
<u>(2) Provisional CCAL</u>	<u>(A) Is eligible under §745.8913 of this division (relating to Can my licensure in another state qualify me for an administrator's license?); or</u> <u>(B) Meets the requirements in §745.8925 of this division (relating to How do I qualify for a provisional Child-Care Administrator's License (CCAL) if I do not meet minimum management or supervisory experience required for a full CCAL?).</u>
<u>(3) Full CPAAL</u>	<u>Meets the requirements in §745.8917 of this division (relating to How do I qualify for a full Child Placing Agency Administrator's License (CPAAL)?).</u>

Figure: 26 TAC §745.8923

<u>If you are applying for a full:</u>	<u>We may issue you:</u>
<u>(1) CCAL</u>	<u>A provisional CCAL if you meet the requirements for a provisional CCAL in §745.8925 of this division (relating to How do I qualify for a provisional Child-Care Administrator's License (CCAL) if I do not meet minimum management or supervisory experience required for a full CCAL?).</u>
<u>(2) CPAAL</u>	<u>A full CPAAL if the Associate Commissioner for Child Care Regulation or designee grants an exception after determining that you have provided a compelling justification that your experience qualifies you to act as the licensed administrator of a child-placing agency.</u>

Figure: 26 TAC §745.8976

<u>If the provisional CCAL is issued:</u>	<u>The permit is valid:</u>
<u>(1) Under §745.8925 of this subchapter (relating to How do I qualify for a provisional Child-Care Administrator's License (CCAL) if I do not meet the management or supervisory experience required for a full CCAL?)</u>	<u>(A) For two years from the date we issue the permit; and</u> <u>(B) Is not eligible for renewal.</u>
<u>(2) Under §745.8913(b) of this subchapter (relating to Can my licensure in another state qualify me for an administrator's license?)</u>	<u>(A) 180 days after the permit is issued; and</u> <u>(B) May be extended one time for an additional 180 days.</u>

Figure: 26 TAC §745.8983(b)

<u>If the provisional CCAL has been in effect for:</u>	<u>The number of clock hours of continuing education required:</u>
<u>(1) Fewer than 4 months</u>	<u>No continuing education hours are required.</u>
<u>(2) 4 or more months but fewer than 7 months</u>	<u>7 clock hours.</u>
<u>(3) 7 or more months but fewer than 13 months</u>	<u>15 clock hours.</u>
<u>(4) 13 or more months but fewer than 19 months</u>	<u>22 clock hours.</u>
<u>(5) 19 or more months but fewer than 25 months</u>	<u>30 clock hours.</u>

Figure: 26 TAC §745.9031(a) [~~40 TAC §745.9031~~]

Remedial Action	Description of Action
(1) Reprimand	We send you a letter of reprimand by certified mail. Further disciplinary actions may result from future violations.
(2) Probation	We put you on probation for a specific period of time. We may impose conditions on your probation. As part of the probation, we may require you to report to us regularly on the conditions of your probation and to continue or renew professional education that is related to the conditions we impose. We may also limit your areas of practice during the probation period. We may place you on probation only once during the two-year term of your administrator's license. We may suspend or revoke your administrator's license if you do not meet the conditions of your probation.
(3) Refusal to Renew License	Even if you otherwise qualify for renewal, we refuse to renew your administrator's license if you are not in compliance with the laws or rules governing it.
(4) Suspension	We suspend your administrator's license for a specified period of time. We may require corrective actions during your suspension period. We may revoke your administrator's license if you do not complete the suspension's required corrective actions.
(5) Revocation	We revoke your administrator's license.
(6) License Denial	We deny you an administrator's license.



IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Office of the Attorney General

Request for Applications (RFA) for the Domestic Violence High Risk Teams Grant Program

The Office of the Attorney General (OAG) is soliciting applications for the Domestic Violence High Risk Teams Grant Program to utilize funds for developing and providing statewide support for activities of Domestic Violence High Risk Teams in reducing or preventing incidents of domestic violence and providing domestic violence services to victims.

Applicable Funding Source for Domestic Violence High Risk Teams Grant Program:

The source of funding is through a biennial appropriation by the Texas Legislature. All funding is contingent upon an appropriation to the OAG by the Texas Legislature. The OAG makes no commitment that an Application, once submitted, or a grant, once funded, will receive subsequent funding.

Eligibility Requirements:

Eligible Applicants: State Domestic Violence Coalition - a statewide nonprofit organization that has been identified as a domestic violence coalition by a state or federal agency authorized to make that designation.

Eligibility: The OAG will initially screen each application for eligibility. Applications will be deemed ineligible if the application is submitted by an ineligible Applicant; the application is not submitted in the manner and form required by the Application Kit; the application is submitted after the deadline established in the Application Kit; or the application does not meet other requirements as stated in the RFA and the Application Kit.

How to Obtain Application Kit: The OAG will post the Application Kit on the OAG's website at <https://www.texasattorneygeneral.gov/divisions/grants>. Updates and other helpful reminders about the application process will also be posted at this location. Potential Applicants are encouraged to refer to the site regularly.

Deadlines and Filing Instructions for the Grant Application:

Create an On-Line Account: Creating an on-line account in the Grant Offering and Application Lifecycle System (GOALS) is required to apply for a grant. **If an on-line account is not created, the Applicant will be unable to apply for funding.** To create an on-line account, the Applicant must email the point of contact information to Grants@oag.texas.gov with the following information:

- First Name
- Last Name
- Email Address (*It is highly recommended to use a generic organization email address if available*)
- Organization Legal Name

Note: Applicants who created accounts during the Other Victim Assistance Grant (OVAG), Victim Coordinator and Liaison Grant (VCLG),

and Sexual Assault Prevention and Crisis Services (SAPCS)-State grant application cycle are already registered in GOALS.

- Registered Applicants should access their Grant Programs webpage (homepage) in GOALS and select the green View Grant Programs button. If the answers provided on the Eligibility questions matched to the Domestic Violence High Risk Teams Grant Program, the application will be available to the Applicant.

Application Deadline: The Applicant must submit its application, including all required attachments, to the OAG by the deadline and the manner and form established in the Application Kit.

Filing Instructions: Strict compliance with the submission instructions, as provided in the Application Kit, is required. The OAG will **not** consider an Application if it is not submitted by the due date. The OAG will **not** consider an Application if it is not in the manner and form as stated in the Application Kit.

Minimum and Maximum Amounts of Funding Available: Minimum and maximum amounts of funding are subject to change as stated in the Application Kit. The minimum amount of funding for all programs is \$300,000 per fiscal year. The maximum amount for a program is \$300,000 per fiscal year, with the specified amount being awarded to the identified subgrantees, as detailed in the application kit.

Start Date and Length of Grant Contract Period: The grant contract period (term) is up to two years from September 1, 2023 through August 31, 2025, subject to and contingent on funding and/or approval by the OAG.

No Match Requirements: There are no match requirements.

Award Criteria: The OAG will make funding decisions that support the efficient and effective use of public funds. Scoring components will include, but are not limited to, information provided by the Applicant on the proposed project activities and budget. Funding decisions will be determined using a competitive allocation method. All grant decisions including, but not limited to, eligibility, evaluation and review, and funding rest completely within the discretionary authority of the OAG. The decisions made by the OAG are final and are not subject to appeal.

Grant Purpose Area: The purpose of the Domestic Violence High Risk Teams Grant Program is to develop and provide statewide support for activities of Domestic Violence High Risk Teams in reducing or preventing incidents of domestic violence and providing domestic violence services to victims. Approved purpose activities may include:

- Identifying and contracting with sites in local communities that have the capacity to implement best practice models for high risk teams or expand existing Domestic Violence High Risk Teams;
- Evaluating funded site results;
- Identifying best practice models that may be implemented in other communities;
- Providing technical assistance to communities interested in implementing Domestic Violence High Risk Teams;

- Making recommendations to improve the implementation and/or the expansion of Domestic Violence High Risk Teams in Texas.

Prohibitions on Use of Grant Funds: OAG grant funds may not be used to support or pay the costs of lobbying; indirect costs; fees to administer a subcontract; any portion of the salary or any other compensation for an elected government official; the purchase of food and beverages except as allowed under Texas State Travel Guidelines; the purchase or lease of vehicles; the purchase of promotional items or recreational activities; costs of travel that are unrelated to the direct delivery of services that support the OAG grant-funded program; the costs for consultants or vendors who participate directly in writing a grant application; or for any unallowable costs set forth in applicable state or federal law, rules, regulations, guidelines, policies, procedures or cost principles. Grant funds may not be used to purchase any other products or services the OAG identifies as inappropriate or unallowable within this RFA or the Application Kit.

OAG Contact Person: If additional information is needed, contact the Grants Administration Division at Grants@oag.texas.gov, or (512) 936-0792.

TRD-202301780
Austin Kinghorn
General Counsel
Office of the Attorney General
Filed: May 15, 2023



Request for Applications (RFA) for the Sexual Assault Prevention and Crisis Services (SAPCS) Preventive Health and Health Services (PHHS) Block Grant Programs

The Office of the Attorney General (OAG) is soliciting applications from sexual assault programs and state sexual assault coalitions that provide services to victims of sexual assault and conduct sexual violence prevention activities.

Applicable Funding Source: Both State and Federal funds may be utilized. The source of federal funds includes the Federal Department of Health and Human Services, Preventive Health and Health Services Block Grant, Catalog of Federal Domestic Assistance (CFDA) Number 93.991. All funding is contingent upon the appropriation of funds by the United States Congress and the Texas Legislature. The OAG makes no commitment that an application, once submitted, or a grant, once funded, will receive subsequent funding.

Eligibility Requirements: To be eligible for these grant opportunities, the Applicant must be a sexual assault program who is a current FY 2023 SAPCS-State grantee and is eligible to receive an FY 2024 SAPCS-State grant, or the state sexual assault coalition. For sexual assault programs, a current SAPCS-State grantee is one that has an active SAPCS-State grant contract for FY 2023 (September 1, 2022 through August 31, 2023).

Eligible Applicants: Sexual assault programs and the state sexual assault coalition are eligible to apply for a SAPCS-PHHS Block grant. Funding eligibility may be further limited as stated in the Application Kit.

Sexual Assault Programs - any local public or private nonprofit corporation, independent of a law enforcement agency or prosecutor's office, that is operated as an independent program or as part of a municipal, county, or state agency and that provides the following minimum services to adult survivors of stranger and non-stranger sexual assault: 24-hour crisis hotline, crisis intervention, public education, advocacy,

and accompaniment to hospitals, law enforcement offices, prosecutor offices, and courts and meets the Minimum Services Standards.

State Sexual Assault Coalitions - a statewide nonprofit organization that has been identified as a state sexual assault coalition by a state or federal agency authorized to make that designation.

Eligibility: The OAG will initially screen each application for eligibility. Applications will be deemed ineligible if the application is submitted by an ineligible applicant; the application is not filed in the manner and form required by the Application Kit; the application is filed after the deadline established in the Application Kit; or the application does not meet other requirements as stated in the RFA and the Application Kit.

How to Obtain Application Kit: The OAG will post the Application Kit on the OAG's website at <https://www.texasattorneygeneral.gov/divisions/grants>. Updates and other helpful reminders about the application process will also be posted at this location. Potential Applicants are encouraged to refer to the site regularly.

Deadlines and Filing Instructions for the Grant Application:

Create an On-Line Account (for Applicants who did not create an account during the OVAG, VCLG, and SAPCS-State grant application cycle): Creating an on-line account in the Grant Offering and Application Lifecycle System (GOALS) is required to apply for a grant. If an on-line account is not created, the Applicant will be unable to apply for funding. To create an on-line account, the Applicant must email the point of contact information to Grants@oag.texas.gov with the following information:

First Name

Last Name

Email Address

Organization Legal Name

Note: Applicants who created accounts during the Other Victim Assistance Grant (OVAG), Victim Coordinator and Liaison Grant (VCLG), and Sexual Assault Prevention and Crisis Services (SAPCS)-State grant application cycle are already registered in GOALS.

Registered Applicants should access their Grant Programs webpage in GOALS (top right portion of the webpage). If the answers provided on the Eligibility Profile matched to the SAPCS-PHHS Block grant, the application will be available to the Applicant.

Application Deadline: The Applicant must submit its application, including all required attachments, to the OAG by the deadline established in the Application Kit.

Filing Instructions: Strict compliance with the submission instructions, as provided in the Application Kit, is required. The OAG will **not** consider an Application if it is not submitted by the due date. The OAG will **not** consider an Application if it is not in the manner and form as stated in the Application Kit.

Minimum and Maximum Amounts of Funding Available:

SAPCS-PHHS Block grant: the minimum amount of funding a sexual assault program may apply for is \$50,000 and the maximum amount of funding a sexual assault program may apply for is \$60,000 per fiscal year. The minimum amount of funding a state sexual assault coalition may apply for is \$50,000 and maximum amount of funding a state sexual assault coalition may apply for is \$85,000 per fiscal year.

The amount of an award is determined solely by the OAG. The OAG may award grants at amounts above or below the established funding levels and is not obligated to fund a grant at the amount requested.

Start Date and Length of Grant Contract Period: The grant period for SAPCS-PHHS Block is for up to two years from October 1, 2023 through September 30, 2025, subject to and contingent on funding and/or approval by the OAG. Contracts will be awarded for up to a one-year period (term). Contract terms may be further limited as stated in the Application Kit

No Match Requirements: There are no match requirements for SAPCS-PHHS Block projects.

Award Criteria: The OAG will make funding decisions that support the efficient and effective use of public funds. Review components will include, but are not limited to, information provided by the applicant on the proposed project activities and budget.

Grant Purpose Area: All grant projects must address one or more of the purpose areas as stated in the Application Kit.

Prohibitions on Use of Grant Funds: OAG grant funds may not be used to support or pay the costs of lobbying; any portion of the salary or any other compensation for an elected government official; the purchase of food and beverages except as allowed under Texas State Travel Guidelines; the purchase or lease of vehicles; the purchase of promotional items or recreational activities; costs of travel that are unrelated to the direct delivery of services that support the OAG grant-funded program; the costs for consultants or vendors who participate directly in writing a grant application; or for any unallowable costs set forth in applicable state or federal law, rules, regulations, guidelines, policies, procedures or cost principles. Grant funds may not be used to purchase any other products or services the OAG identifies as inappropriate or unallowable within this RFA or the Application Kit.

OAG Contact Person: If additional information is needed, contact grants@oag.texas.gov or (512) 936-0792.

TRD-202301735
Austin Kinghorn
General Counsel
Office of the Attorney General
Filed: May 12, 2023



Request for Applications (RFA) for the Sexual Assault Services Program Grant

The Office of the Attorney General (OAG) is soliciting applications for the Sexual Assault Services Program Grant to utilize funds for preventing sexual assault or improving services for survivors and other individuals affected by sexual violence.

Applicable Funding Source for the Sexual Assault Services Program Grant:

The source of funding is through a biennial appropriation by the Texas Legislature. All funding is contingent upon an appropriation to the OAG by the Texas Legislature. The OAG makes no commitment that an Application, once submitted, or a grant, once funded, will receive subsequent funding.

Eligibility Requirements:

Eligible Applicants: State Sexual Assault Coalition - a statewide non-profit organization that has been identified as a state sexual assault coalition by a state or federal agency authorized to make that designation.

Eligibility: The OAG will initially screen each application for eligibility. Applications will be deemed ineligible if the application is submitted by an ineligible applicant; the application is not filed in the manner

and form required by the Application Kit; the application is filed after the deadline established in the Application Kit; or the application does not meet other requirements as stated in the RFA and the Application Kit.

How to Obtain Application Kit: The OAG will post the Application Kit on the OAG's website at <https://www.texasattorneygeneral.gov/divisions/grants>. Updates and other helpful reminders about the application process will also be posted at this location. Potential Applicants are encouraged to refer to the site regularly.

Deadlines and Filing Instructions for the Grant Application:

Create an On-Line Account: Creating an on-line account in the Grant Offering and Application Lifecycle System (GOALS) is required to apply for a grant. **If an on-line account is not created, the Applicant will be unable to apply for funding.** To create an on-line account, the Applicant must email the point of contact information to Grants@oag.texas.gov with the following information:

- First Name
- Last Name
- Email Address (*It is highly recommended to use a generic organization email address if available*)
- Organization Legal Name

Note: Applicants who created accounts during the Other Victim Assistance Grant (OVAG), Victim Coordinator and Liaison Grant (VCLG), and Sexual Assault Prevention and Crisis Services (SAPCS)-State grant application cycle are already registered in GOALS.

- Registered Applicants should access their Grant Programs webpage (homepage) in GOALS and select the green View Grant Programs button. If the answers provided on the Eligibility questions matched to the Sexual Assault Services Program Grant, the application will be available to the Applicant.

Application Deadline: The Applicant must submit its application, including all required attachments, to the OAG by the deadline and the manner and form established in the Application Kit.

Filing Instructions: Strict compliance with the submission instructions, as provided in the Application Kit, is required. The OAG will **not** consider an Application if it is not submitted by the due date. The OAG will **not** consider an Application if it is not in the manner and form as stated in the Application Kit.

Minimum and Maximum Amounts of Funding Available: Minimum and maximum amounts of funding are subject to change as stated in the Application Kit. The minimum amount of funding for a coalition is \$65,000 per fiscal year. The maximum amount of funding for a coalition is \$1,524,468 per fiscal year.

Grant Period- Up to Two Years: The grant contract period (term) is up to two years from September 1, 2023 through August 31, 2025, subject to and contingent on funding and/or approval by the OAG.

No Match Requirements: There are no match requirements.

Award Criteria: The OAG will make funding decisions that support the efficient and effective use of public funds. Scoring components will include, but are not limited to, information provided by the Applicant on the proposed project activities and budget. Funding decisions will be determined using a competitive allocation method. All grant decisions including, but not limited to, eligibility, evaluation and review, and funding rest completely within the discretionary authority of the OAG. The decisions made by the OAG are final and are not subject to appeal.

Grant Purpose Areas: Grant contracts awarded under this Application Kit may be used to carry out the purpose of Texas Government Code, Chapter 420, including standardizing the quality of services provided, preventing sexual assault, providing training and technical assistance to sexual assault programs, and improving services to survivors and other individuals affected by sexual violence.

Prohibitions on Use of Grant Funds: OAG grant funds may not be used to support or pay the costs of lobbying; indirect costs; fees to administer a subcontract; any portion of the salary or any other compensation for an elected government official; the purchase of food and beverages except as allowed under Texas State Travel Guidelines; the purchase or lease of vehicles; the purchase of promotional items or recreational activities; costs of travel that are unrelated to the direct delivery of services that support the OAG grant-funded program; the costs for consultants or vendors who participate directly in writing a grant application; or for any unallowable costs set forth in applicable state or federal law, rules, regulations, guidelines, policies, procedures or cost principles. Grant funds may not be used to purchase any other products or services the OAG identifies as inappropriate or unallowable within this RFA or the Application Kit.

OAG Contact Person: If additional information is needed, contact the Grants Administration Division at Grants@oag.texas.gov, or (512) 936-0792.

TRD-202301781
Austin Kinghorn
General Counsel
Office of the Attorney General
Filed: May 15, 2023

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Coastal Bend Workforce Development Board

Reissue of Invitation for Bids for Airframe Equipment WFSCB IFB No. 23-08

Notice of Public Meeting

The Coastal Bend Workforce Development Board, dba Workforce Solutions Coastal Bend in collaboration with the Kingsville Chamber of Commerce and Coastal Bend College, is seeking bids on the purchase of airframe equipment for a Texas Industry Partnership Program to create an Airframe & Power Plant certification program. The goal of this project is to train students for accreditation as aviation maintenance technicians in preparation for employment opportunities with contractors at the Naval Air Station Kingsville. Accredited aviation maintenance technicians will support the mission to train carrier-based strike fighter pilots.

IFB documents can be accessed on the Workforce Solutions Coastal Bend website at: <https://www.workforcesolutionscb.org/about-us/procurement-opportunities/>

The sealed bid opening for the Reissue of Invitation for Bids for Airframe Equipment (IFB No. 23-08) will occur virtually at 3:00 p.m. on Monday, May 30, 2023, and interested parties are invited to participate from a computer, tablet, or smart phone via Zoom:

<https://us02web.zoom.us/j/89948834561?pwd=NmhLNvhld3pWW-EZJa0Mrc2Z0Y3QvUT09>

US Toll-Free: (888) 475-4499

Meeting ID: 899 4883 4561

Passcode: 673172

Workforce Solutions Coastal Bend is an Equal Opportunity Employer/Program. Auxiliary aids and services are available upon request to individuals with disabilities. Relay Texas: 1 (800) 735-2989 (TDD) and 1 (800) 735-2988 or 711 (Voice). Historically Underutilized Businesses (HUBs) are encouraged to apply.

Este documento contiene información importante sobre los requisitos, los derechos, las determinaciones y las responsabilidades del acceso a los servicios del sistema de la fuerza laboral. Hay disponibles servicios de idioma, incluida la interpretación y la traducción de documentos, sin ningún costo y a solicitud.

TRD-202301805
Esther Velazquez
Contract and Procurement Specialist
Coastal Bend Workforce Development Board
Filed: May 16, 2023

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WFSCB IFB No. 23-08

The Coastal Bend Workforce Development Board, dba Workforce Solutions Coastal Bend in collaboration with the Kingsville Chamber of Commerce and Coastal Bend College, is seeking bids on the purchase of airframe equipment for a Texas Industry Partnership Program to create an Airframe & Power Plant certification program. The goal of this project is to train students for accreditation as aviation maintenance technicians in preparation for employment opportunities with contractors at the Naval Air Station Kingsville. Accredited aviation maintenance technicians will support the mission to train carrier-based strike fighter pilots.

IFB documents can be accessed on the Workforce Solutions Coastal Bend website at:

<https://www.workforcesolutionscb.org/about-us/procurement-opportunities/>

The sealed bid opening for the Reissue of Invitation for Bids for Airframe Equipment (IFB No. 23-08) will occur virtually at 3:00 p.m. on Monday, May 30, 2023, and interested parties are invited to participate from a computer, tablet, or smart phone via Zoom:

<https://us02web.zoom.us/j/89948834561?pwd=NmhLNvhld3pWW-EZJa0Mrc2Z0Y3QvUT09>

US Toll-Free: (888) 475-4499

Meeting ID: 899 4883 4561

Passcode: 673172

Workforce Solutions Coastal Bend is an Equal Opportunity Employer/Program. Auxiliary aids and services are available upon request to individuals with disabilities. Relay Texas: (800) 735-2989 (TDD) and (800) 735-2988 or 711 (Voice). Historically Underutilized Businesses (HUBs) are encouraged to apply.

Este documento contiene información importante sobre los requisitos, los derechos, las determinaciones y las responsabilidades del acceso a los servicios del sistema de la fuerza laboral. Hay disponibles servicios de idioma, incluida la interpretación y la traducción de documentos, sin ningún costo y a solicitud.

TRD-202301803
Esther Velazquez
Contract & Procurement Specialist
Coastal Bend Workforce Development Board
Filed: May 16, 2023

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Office of Consumer Credit Commissioner

Correction of Error

The judgment ceiling published in the April 28, 2023, issue of the *Texas Register* (48 TexReg 2193) was incorrect. Below is the correct rate information:

The judgment ceiling as prescribed by §304.003 for the period of 05/01/23 - 05/31/23 is 8.00% for Consumer/Agricultural/Commercial credit through \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 05/01/23 - 05/31/23 is 8.00% for Commercial over \$250,000.

TRD-202301804

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: May 16, 2023

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Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.009 and 304.003, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 05/22/23 - 05/28/23 is 18% for Consumer¹/Agricultural/Commercial² credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 05/22/23 - 05/28/23 is 18% for Commercial over \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 06/01/23 - 06/30/23 is 8.25% for Consumer/Agricultural/Commercial credit through \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 06/01/23 - 06/30/23 is 8.25% for Commercial over \$250,000.

¹ Credit for personal, family or household use.

² Credit for business, commercial, investment or other similar purpose.

TRD-202301810

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: May 16, 2023

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Credit Union Department

Application for a Merger or Consolidation

Notice is given that the following application has been filed with the Credit Union Department (Department) and is under consideration.

An application was received from Kilgore Shell Employees Federal Credit Union (Kilgore) seeking approval to merge with Telco Plus Credit Union (Longview), with the latter being the surviving credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed

during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

Application Withdrawn

Notice is given that the following application was received from Priority Postal Credit Union (Pasadena) seeking approval to merge with USI Federal Credit Union (La Porte), with the latter being the surviving credit union has been withdrawn.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-202301813

Michael S. Riepen

Commissioner

Credit Union Department

Filed: May 17, 2023

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Application to Expand Field of Membership

Notice is given that the following application has been filed with the Credit Union Department (Department) and is under consideration.

An application was received from ALLIANCE Credit Union, Lubbock, Texas, to expand its field of membership. The proposal would permit persons who live, worship, work, or attend school, and businesses and other legal entities located in Swisher, Castro, Randall, Potter, Kent, Fisher, Scurry, Mitchell, Coke, Tom Green, Dawson, Borden, Howard, Nolan, Gaines, Andrews, Runnels, Concho, Martin, Yoakum, Cochran, Bailey, and Parmer Counties, Texas, to be eligible for membership in the credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236 or downloading the form at <http://www.cud.texas.gov/page/bylaw-charter-applications>. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-202301812

Michael S. Riepen

Commissioner

Credit Union Department

Filed: May 17, 2023

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Texas Board of Professional Engineers and Land Surveyors

Guidelines for Applicants, Licensees, and Registrants with Criminal Convictions

Approved May 11, 2023

These guidelines are issued by the Texas Board of Professional Engineers and Land Surveyors (TBPELS) pursuant to the Texas Occupations Code, § 53.025(a).

These guidelines describe the process by which TBPELS determines whether a criminal conviction renders an applicant, licensee, or registrant an unsuitable candidate for the license or registration, or whether a conviction warrants revocation or suspension of a license or registration previously granted. These guidelines present the general factors that are considered in all cases, and also the reasons why particular crimes are considered to relate to each type of license and registration issued by TBPELS.

Agency's process

Applications for licensure as a Professional Engineer (PE) and registration as a Registered Professional Land Surveyor (RPLS) require the applicant to provide information about criminal convictions. TBPELS's Licensing and Registration Department performs a criminal background check on each Professional Engineer (PE) and Registered Professional Land Surveyor (RPLS) application filed. This background check is done through the Criminal History Record Check (CHRC) process utilizing fingerprint background checks. (LINK) The CHRC provides criminal background information from both the Texas Department of Public Safety (DPS) system as well as the Federal Bureau of Investigation (FBI).

If the application materials or the CHRC check reveals a conviction that warrants additional review, licensing staff will review the conviction against the criminal history policy and follow the processes outlined in Board Rules §133.85 and §134.85 (relating to - Additional Review of and Action on Applications) for PE applicants and RPLS applicants, respectively.

If a conviction meets the requirements of the guidelines, pursuant to §133.85 and §134.85 applicants will be referred to the Licensing Committee. The Licensing Committee may obtain additional information and make recommendations for final action. The Licensing Committee may consider applications subject to Occupations Code Ch. 53 and cases in which any of the following conditions apply:

1. Any criminal convictions discovered by staff through the CHRC that were not reported in the application materials submitted by the applicant.
2. The direct relationship of the offense to the duties and responsibilities of a Professional Engineer or Registered Professional Land Surveyor in Texas.
3. Multiple misdemeanor or felony judgments that occurred within 10 years of the date of application that indicate a pattern of unethical behavior.
4. Any felony judgement related to the duties and responsibilities of a Professional Engineer or Registered Professional Land Surveyor for which the date of completion and resolution of the terms is within 10 years of the date of application.

If a person received a judgment or a deferred adjudication and has not completed the period of supervision or the person completed the period of supervision less than five years before the date the person applied for the license, then the board will follow Occupations Code 53.021(d). An application may be placed in a hold status and processing may resume after the court requirements have been completed and the application updated.

No currently incarcerated individual is eligible to obtain or renew a license or registration. A person's license or registration will be automatically revoked by operation of law upon the person's imprisonment

following a felony conviction, felony probation revocation, revocation of parole, or revocation of mandatory suspension.

For individuals who are already licensed or registered when TBPELS discovers a criminal conviction, the process is essentially the same as that described above. A conviction discovered by licensing staff, Compliance & Enforcement staff, or any other TBPELS employee is referred to the Compliance & Enforcement Division. If the Compliance & Enforcement Department finds, after investigation, that the conviction warrants taking action on the license or registration, a proposed Notice of Violation letter and Consent Order is issued to the license or registration holder. Depending on the response to the Notice of Violation and Consent Order, the processes outlined in Chapter 139, Subchapter C, relating to Enforcement Proceedings are followed. The Board ultimately decides whether any action should be taken against the license or registration.

Subject to the requirements of Texas Occupations Code Chapter 53, Subchapter D, a person who has reason to believe that the person may be ineligible for a license, due to conviction or deferred adjudication for a felony or misdemeanor offense, may request the Board to issue a criminal history evaluation letter regarding the prospective applicant's potential eligibility for a license. The person may request such a letter, in a format prescribed by the Board, before applying for a license, enrolling in an educational program that prepares a person for initial license or applying to take a licensing exam. The request must state the basis for the person's potential ineligibility. Upon receiving such a request, the Board may request additional supporting materials.

Requests will be processed under the same standards as applications for a license.

Responsibilities of the applicant

The applicant has the responsibility, to the extent possible, to obtain and provide to the agency a summary of the events related to the conviction, legal documents related to the conviction, any documents related to the disposition and resolution of the conviction, and other supporting documents that may be required by the board.

General factors

The Board may suspend or revoke a license, disqualify a person from receiving a license or registration, or deny to a person the opportunity to take a licensing or registration examination on the grounds that a person has been convicted of an offense, as addressed in Chapter 53 of the Texas Occupations Code.

In deciding whether a criminal conviction should be grounds to deny, revoke, or take other enforcement action on a license or registration, the following factors are considered in all cases to determine whether the conviction directly relates to the duties and responsibilities of engineering or land surveying:

- the nature and seriousness of the crime;
- the relationship of the crime to the purposes for requiring a license to engage in the occupation;
- the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the applicant previously had been involved;
- the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the licensed occupation;
- any correlation between the elements of the crime and the duties and responsibilities of the licensed occupation.

In determining the fitness of an applicant or license holder who has been convicted of a crime, the board will also consider the following in deciding whether to take board action:

- the extent and nature of the person's past criminal activity;
- the age of the person when the crime was committed;
- the amount of time that has elapsed since the person's last criminal activity;
- the conduct and work activity of the person before and after the criminal activity;
- evidence of rehabilitation or rehabilitative effort while incarcerated or following release;
- evidence of the person's compliance with any conditions of community supervision, parole, or mandatory supervision; and
- other evidence of the person's fitness, including letters of recommendation.

Relation of crimes to specific licenses and registrations issued by TBPELS

These guidelines reflect the most common or well-known categories of crimes, and their relation to specific license types. These guidelines are not intended to be an exclusive listing, i.e. they do not prohibit TBPELS from considering crimes not listed herein. After due consideration of the circumstances of the criminal act and the general factors listed above, TBPELS may find that a conviction not described herein renders a person unfit to hold a license.

In addition to the specific crimes listed below, multiple violations of any criminal statute should always be reviewed, for any license or registration. Multiple violations may reflect a pattern of behavior that renders the applicant unfit or not suited for the license. The board may give extra weight to multiple misdemeanor or felony convictions if any one of them occurred within 10 years of the date of application as they indicate a pattern of unethical behavior, lack of character, or suitability for licensure or registration.

ENGINEERS

Pursuant to Texas Occupations Code §53.025(a), the Board considers that the following crimes, which involve a lack of honesty, integrity, fidelity, or the exercise of good judgement, and other crimes not listed here, that involve the above-listed characteristics, directly relate to the practice of engineering due to the adverse impact each of these crimes has on the special trust and ethical duties a Professional Engineer owes to the client and the public.

Any crime that involves a disregard for the health, safety, or welfare of the general public or individuals.

Reason: Licensees are directly involved with buildings, infrastructure, and other systems in the built environment and entrusted with safe and competent engineering practice. Unsafe engineering can have a significant impact on health, safety, and welfare of the public.

Violent crime against a person, including such as homicide, kidnapping, assault, crimes involving prohibited sexual conduct, or crimes involving children or elderly persons as victims.

Reason: Licensees have direct contact with persons at residences and businesses in situations that have potential for confrontational behavior. A person with a predisposition for a violent response would pose a risk to the public.

Any crime of which theft, fraud, or deceit is an essential element or crimes involving financial or other loss for a client(s) or the public, including crimes against property such as theft or burglary.

Reason: Licensees have the means and the opportunity to practice deceit, fraud, and misrepresentation related to the need for designs, reports, estimates, and services. Licensees have access to private residences and businesses, where they may come into direct contact with unattended property. A person with the predisposition and experience in committing crimes against property would have the opportunity to engage in further similar conduct.

Any crime related to property violations or trespassing.

Reason: A PE often has access to private or public property and a surveyor needs to follow all applicable laws, rules, and regulations related to access and activities on the property of others.

Any crime that demonstrates a lack of professional judgment expected of a Professional Engineer, including a crime involving drugs or alcohol.

Reason: Licensees need to have the trust of the public and honesty, integrity, fidelity, or the exercise of good judgement are critical to the ethical practice of professional engineering. Professional judgement and ability to follow laws, rules, codes, and ordinances is an expectation of the public.

SURVEYORS

Pursuant to Texas Occupations Code §53.025(a), the Board considers that the following crimes, which involve a lack of honesty, integrity, fidelity, or the exercise of good judgement, and other crimes not listed here, that involve the above-listed characteristics, directly relate to the practice of land surveying due to the adverse impact each of these crimes has on the special trust and ethical duties a Registered Professional Land Surveyor owes to the client and the public.

Any crime that involves a disregard for the health, safety, or welfare of the general public or individuals.

Reason: Registrants are directly involved with property, infrastructure, and other systems in the built environment and entrusted with safe and competent land surveying practice. Incorrect or unsafe surveying can have a significant impact on health, safety, welfare, and property of the public.

Violent crime against a person, including such as homicide, kidnapping, assault, crimes involving prohibited sexual conduct, or crimes involving children or elderly persons as victims.

Reason: Registrants have direct contact with persons at residences and businesses in situations that have potential for confrontational behavior. A person with a predisposition for a violent response would pose a risk to the public.

Any crime of which theft, fraud, or deceit is an essential element or crimes involving financial or other loss for a client(s) or the public, including crimes against property such as theft or burglary.

Reason: Registrants have the means and the opportunity to practice deceit, fraud, and misrepresentation related to the need for surveys, plats, reports, and services. Registrants have access to private property, residences, and businesses, where they may come into direct contact with unattended property. A person with the predisposition and experience in committing crimes against property would have the opportunity to engage in further similar conduct.

Any crime related to property violations or trespassing.

Reason: An RPLS often has access to private or public property and a surveyor needs to follow all applicable laws, rules, and regulations related to access and activities on the property of others.

Any crime that demonstrates a lack of professional judgment expected of a Registered Professional Land Surveyor, including a crime involving drugs or alcohol.

Reason: Registrants need to have the trust of the public and honesty, integrity, fidelity, or the exercise of good judgement are critical to the ethical practice of professional land surveying. Professional judgement and ability to follow laws, rules, codes, and ordinances is an expectation of the public.

TRD-202301775

Lance Kinney

Executive Director

Texas Board of Professional Engineers and Land Surveyors

Filed: May 12, 2023

Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **June 27, 2023**. TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on **June 27, 2023**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission's enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: Ashley and Fagan Investments Company Incorporated dba Rio Brazos Water System; DOCKET NUMBER: 2023-0205-UTL-E; IDENTIFIER: RN103105805; LOCATION: Snyder, Kent County; TYPE OF FACILITY: retail public utility, exempt utility, or provider or conveyor of potable or raw water service that furnishes water service; RULE VIOLATED: TWC, §13.1394(b)(2), by failing to adopt and submit to the TCEQ for approval an emergency preparedness plan that demonstrates the facility's ability to provide emergency operations; PENALTY: \$835; ENFORCEMENT COORDINATOR: Samantha Salas, (512) 239-1543; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(2) COMPANY: CHATT Water Supply Corporation; DOCKET NUMBER: 2022-0347-PWS-E; IDENTIFIER: RN101440931; LOCATION: Abbott, Hill County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.42(e)(3)(G) and TCEQ Agreed Order Docket Number 2019-1501-PWS-E, Ordering Provision Number 2.a, by failing to obtain an exception, in accordance with 30 TAC §290.39(1), prior to using blended water containing free chlorine and water containing chloramines; PENALTY: \$13,420; ENFORCEMENT COORDINATOR: Claudia Bartley, (512) 239-1116; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(3) COMPANY: City of Mertens; DOCKET NUMBER: 2022-1262-UTL-E; IDENTIFIER: RN101401651; LOCATION: Mertens, Hill County; TYPE OF FACILITY: retail public utility, exempt utility, or provider or conveyor of potable or raw water service that furnishes water service; RULE VIOLATED: TWC, §13.1394(b)(2), by failing to adopt and submit to the TCEQ for approval an emergency preparedness plan that demonstrates the facility's ability to provide emergency operations; PENALTY: \$520; ENFORCEMENT COORDINATOR: Samantha Salas, (512) 239-1543; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(4) COMPANY: Cotton Logistics, Incorporated; DOCKET NUMBER: 2022-0123-MWD-E; IDENTIFIER: RN110007242; LOCATION: Midland, Midland County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1) and (17) and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0015764001, Sludge Provisions, Section IV.C, by failing to submit a complete annual sludge report to the TCEQ by September 30th of each year; and 30 TAC §305.125(1) and (17) and §319.7(d) and TPDES Permit Number WQ0015764001, Monitoring and Reporting Requirements, Number 1, by failing to submit monitoring results at the intervals specified in the permit; PENALTY: \$3,080; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5865; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(5) COMPANY: DOGWOOD SPRINGS WATER SUPPLY CORPORATION; DOCKET NUMBER: 2023-0209-UTL-E; IDENTIFIER: RN102681160; LOCATION: Frankston, Anderson County; TYPE OF FACILITY: retail public utility, exempt utility, or provider or conveyor of potable or raw water service that furnishes water service; RULE VIOLATED: TWC, §13.1394(b)(2), by failing to adopt and submit to the TCEQ for approval an emergency preparedness plan that demonstrates the facility's ability to provide emergency operations; PENALTY: \$500; ENFORCEMENT COORDINATOR: Iliia Perez-Ramirez, (713) 767-3743; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(6) COMPANY: INV Propylene, LLC f/k/a Flint Hills Resources Houston Chemical, LLC; DOCKET NUMBER: 2021-1612-AIR-E; IDENTIFIER: RN102576063; LOCATION: Houston, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(c), and 122.143(4), New Source Review Permit Numbers 18999, PSDTX755M1, and N216, Special Conditions Number 1, Federal Operating Permit Number O1251, General Terms and Conditions and Special Terms and Conditions Number 12, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$8,700; ENFORCEMENT COORDINATOR: Johnnie Wu, (512) 239-2524; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(7) COMPANY: J J FOX CONSTRUCTION INCORPORATED; DOCKET NUMBER: 2022-0924-WQ-E; IDENTIFIER: RN111498614; LOCATION: Rockport, Aransas County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §281.25(a)(4),

by failing to obtain a construction general permit (stormwater); PENALTY: \$875; ENFORCEMENT COORDINATOR: Ellen Ojeda, (512) 239-2581; REGIONAL OFFICE: 500 North Shoreline Boulevard, Suite 500, Corpus Christi, Texas 78401, (361) 881-6900.

(8) COMPANY: Karishma Properties, Incorporated; DOCKET NUMBER: 2020-1024-PST-E; IDENTIFIER: RN102390127; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks in a manner which will detect a release at a frequency of at least once every 30 days; PENALTY: \$5,437; ENFORCEMENT COORDINATOR: Karolyn Kent, (512) 239-2536; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(9) COMPANY: RETERRA CORPORATION; DOCKET NUMBER: 2022-0790-WQ-E; IDENTIFIER: RN100673136; LOCATION: Houston, Harris County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a multi-sector general permit (stormwater); PENALTY: \$875; ENFORCEMENT COORDINATOR: Ellen Ojeda, (512) 239-2581; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(10) COMPANY: Texas Bonarrico Homes LLC; DOCKET NUMBER: 2022-0402-WQ-E; IDENTIFIER: RN111422358; LOCATION: Mount Pleasant, Titus County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit (stormwater); PENALTY: \$875; ENFORCEMENT COORDINATOR: Ellen Ojeda, (512) 239-2581; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

TRD-202301797
Gitanjali Yadav
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: May 16, 2023



Enforcement Order

An agreed order was adopted regarding Noe Abdiel Requena-Bernal dba NR TRUCKING, Docket No. 2022-0377-WQ-E on May 16, 2023, assessing \$5,000 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Megan L. Grace, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202301825
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: May 17, 2023



Notice of an Application for a Temporary Water Use Permit

Notice Issued May 11, 2023

APPLICATION NO. 13882

Rose City Resources, LLC, Applicant, 100 Independence Pl. Ste. 405, Tyler, Texas 75703, seeks a temporary water use permit to divert and use not to exceed 120 acre-feet of water within a period of 180 days from a point on Jim (James) Bayou, Cypress Creek Basin for mining purposes in Cass County. More information on the application and how to participate in the permitting process is given below.

The application and fees were received on September 21, 2022. Additional information was received on October 25 and October 28, 2022. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on November 1, 2022.

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 and installation of a measuring device. The application, technical memoranda, and Executive Director's draft permit are available for viewing on the TCEQ web page at: https://www.tceq.texas.gov/permitting/water_rights/wr-permitting/view-wr-pend-apps. Alternatively, you may request a copy of the documents by contacting the TCEQ Office of the Chief Clerk by phone at (512) 239-3300 or by mail at TCEQ OCC, Notice Team (MC-105), P.O. Box 13087, Austin, Texas 78711.

Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, by May 30, 2023. 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 May 30, 2023. The Executive Director may approve the application unless a written request for a contested case hearing is filed by May 30, 2023.

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 13882 in the search field. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address.

For additional information, individual members of the general public may contact the Public Education Program at (800) 687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.texas.gov. Si desea información en español, puede llamar al (800) 687-4040 o por el internet al <http://www.tceq.texas.gov>.

TRD-202301820
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: May 17, 2023

◆ ◆ ◆
Notice of Correction to Agreed Order Number 9

In the February 3, 2023, issue of the *Texas Register* (48 TexReg 534), the Texas Commission on Environmental Quality (commission) published notice of Agreed Orders, specifically Item Number 9, for TEXAS WATER SYSTEMS, INCORPORATED; Docket Number 2022-1343-UTL-E. The error is as submitted by the commission.

The reference to the penalty should be corrected to read: "\$1,270."

For questions concerning the error, please contact Michael Parrish at (512) 239-2548.

TRD-202301798

Gitanjali Yadav

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: May 16, 2023

◆ ◆ ◆
Notice of Correction to Agreed Order Number 10

In the March 31, 2023, issue of the *Texas Register* (48 TexReg 1746), the Texas Commission on Environmental Quality (commission) published notice of Agreed Orders, specifically Item Number 10, for Targa Midstream Services LLC; Docket Number 2021-0412-AIR-E. The error is as submitted by the commission.

The reference to the second set of rules violated should be corrected to add: "30 TAC §122.143(4)."

For questions concerning these errors, please contact Michael Parrish at (512) 239-2548.

TRD-202301799

Gitanjali Yadav

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: May 16, 2023

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Notice of District Petition

Notice issued May 11, 2023

TCEQ Internal Control No. D-03242023-037; Chisholm Hill, LP, a Texas limited partnership, (Petitioner) filed a petition for creation of Chisholm Municipal Utility District No. 1 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner holds title to a majority in value of the land to be included in the proposed District; (2) there is one lienholder, Independent Bank, a Texas state bank, on the property to be included in the proposed District and information provided indicates that the lienholder consents to the creation of the proposed District; (3) the proposed District will contain approximately 618.462 acres located within Caldwell 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, systems, plants, and enterprises as shall be consonant with all of the purposes for which the proposed District is created. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioners that the cost of said project will be approximately \$177,740,000 (\$160,400,000 for water, wastewater, and drainage and \$17,340,000 for roads).

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.texas.gov.

TRD-202301821

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: May 17, 2023

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Notice of District Petition

Notice issued May 17, 2023

TCEQ Internal Control No. D-05012023-025; Stephen Selinger, an individual (Petitioner), filed a petition for creation of Ellis County Municipal Utility District FM 984 (the "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) the proposed District will contain approximately 530.573 acres located within Ellis County, Texas; and (3) all of the land within the proposed District is wholly within the extraterritorial jurisdiction of the City of Ennis, Texas (City), and no portion of the land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. Additionally, the Petitioner has attested that there are no lienholders on the property to be included in the proposed District. In accordance with Local Government Code §42.042 and TWC §54.016, the then owner of a majority in value of the land to be included in the proposed District submitted a petition to the City of Ennis, requesting the City's consent to the creation of the District, followed by a petition for the City to provide water and sewer services to the District. According to the petition, neither such petitioner nor the Petitioner has received any response from the City related to the Petition for Consent or the Petition for Service. The petition further states that the proposed District will: (1) purchase, construct, acquire, improve, or extend inside or outside of its boundaries any and all works, improvements, facilities, plants, equipment, and appliances necessary or helpful to supply and distribute water for municipal, domestic, and commercial purposes; (2) collect, transport, process, dispose of and control domestic, and commercial wastes; (3) gather, conduct, divert, abate, amend and control local storm water or other local harmful excesses of water in the District; (4) design, acquire, construct, finance, improve, operate, and maintain macadamized, graveled, or paved roads and turnpikes, or improvements in aid of those roads; (5) purchase, construct, acquire, improve, or extend inside or outside of its boundaries such additional facilities, systems, plants, and enterprises as shall be consonant with the purposes for which the proposed District is organized. According to the Petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioner, from the information available at this time, that the cost of said project will be approximately \$57,775,000.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC

103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.texas.gov.

TRD-202301824

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: May 17, 2023



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

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **June 27, 2023**. TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on June 27, 2023**. The designated attorneys are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: COMAL IRON & METAL, INC.; DOCKET NUMBER: 2021-0295-EAQ-E; TCEQ ID NUMBER: RN103219572; LOCATION: 1431 Farm-to-Market Road 306, New Braunfels, Comal County; TYPE OF FACILITY: scrap metal recycling facility; RULE VIOLATED: 30 TAC §213.4(a)(1), by failing to obtain approval of an Edwards Aquifer Protection Plan prior to commencing the construction of a regulated activity over the Edwards Aquifer Recharge Zone; PENALTY: \$27,000; STAFF ATTORNEY: Jennifer Peltier, Litigation, MC 175, (512) 239-0544; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(2) COMPANY: YOE GROUP, LTD.; DOCKET NUMBER: 2020-1133-PST-E; TCEQ ID NUMBER: RN102850211; LOCATION: 5307 Farm-to-Market Road 1252 West, Kilgore, Gregg County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensat-

ing third parties for bodily injury and property damage caused by accidental releases; TWC, §26.3475(c)(1) and 30 TAC §334.50 and §334.54(c)(1), by failing to monitor a temporarily out-of-service UST system for releases; TWC, §26.3475(d) and 30 TAC §334.49(c)(2)(C), by failing to inspect the impressed current corrosion protection system at least once every 60 days to ensure the rectifier and other system components are operating properly; 30 TAC §334.606, by failing to maintain required operator certification records and make them available for inspection upon request by agency personnel; and 30 TAC §334.10(b)(2), by failing to assure that all UST recordkeeping requirements are met; PENALTY: \$5,351; STAFF ATTORNEY: Cynthia Sirois, Litigation, MC 175, (512) 239-3392; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

TRD-202301800
Gitanjali Yadav
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: May 16, 2023



Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions of KIA ENTERPRISES, INC. dba Iffi Stop Food Market SOAH Docket No. 582-23-18189 TCEQ Docket No. 2021-1541-PWS-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - June 8, 2023
William P. Clements Building
300 West 15th Street, 4th Floor
Austin, Texas 78701

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed June 27, 2022, concerning assessing administrative penalties against and requiring certain actions of KIA ENTERPRISES, INC. dba Iffi Stop Food Market, for violations in Montgomery County, Texas, of: 30 Texas Administrative Code §290.41(c)(3)(A) and §290.46(n)(1), and TCEQ Agreed Order Docket No. 2015-1431-PWS-E, Ordering Provisions Nos. 2.a.i., 2.a.ii., and 2.c.

The hearing will allow KIA ENTERPRISES, INC. dba Iffi Stop Food Market, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford KIA ENTERPRISES, INC. dba Iffi Stop Food Market, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. **Upon failure of KIA ENTERPRISES, INC. dba Iffi Stop Food Market to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Re-**

port and Petition, attached hereto and incorporated herein for all purposes. KIA ENTERPRISES, INC. dba Iffi Stop Food Market, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Texas Health & Safety Code ch. 341 and 30 Texas Administrative Code chs. 70 and 290; Tex. Water Code § 7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Texas Administrative Code §70.108 and §70.109 and ch. 80, and 1 Texas Administrative Code ch. 155.

Further information regarding this hearing may be obtained by contacting Megan L. Grace, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Garrett T. Arthur, Public Interest Counsel, Mail Code 103, at the same P.O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at www.tceq.texas.gov/goto/efilings or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

In accordance with 1 Texas Administrative Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: May 10, 2023
TRD-202301818
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: May 17, 2023



Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions of NORTHWEST PETROLEUM LP dba San Antonio Airport Q Mart SOAH Docket No. 582-23-18224 TCEQ Docket No. 2020-1267-PST-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - June 8, 2023
William P. Clements Building
300 West 15th Street, 4th Floor
Austin, Texas 78701

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed July 28, 2022 concerning assessing administrative penalties against and requiring certain actions of NORTHWEST PETROLEUM LP dba San Antonio Airport Q Mart, for violations in Bexar County, Texas, of: Tex. Water Code § 26.3467(a) and 30 Texas Administrative Code §§ 334.8(c)(4)(A)(vii), (c)(5)(A)(i), (c)(5)(B)(ii), and 334.10(b)(2).

The hearing will allow NORTHWEST PETROLEUM LP dba San Antonio Airport Q Mart, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford NORTHWEST PETROLEUM LP dba San Antonio Airport Q Mart, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. **Upon failure of NORTHWEST PETROLEUM LP dba San Antonio Airport Q Mart to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes.** NORTHWEST PETROLEUM LP dba San Antonio Airport Q Mart, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Tex. Water Code § 7.054 and Tex. Water Code chs. 7 and 26 and 30 Texas Administrative Code chs. 70 and 334; Tex. Water Code § 7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Texas Administrative Code §70.108 and §70.109 and ch. 80, and 1 Texas Administrative Code ch. 155.

Further information regarding this hearing may be obtained by contacting David Keagle, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Sheldon Wayne, Staff Attorney, Office of Public Interest Counsel, Mail Code 103, at the same P. O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at www.tceq.texas.gov/goto/efilings or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

In accordance with 1 Texas Administrative Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: May 10, 2023

TRD-202301817

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: May 17, 2023

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Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions of NORTHWEST PETROLEUM LP dba Veterans Qmart SOAH Docket No. 582-23-18225 TCEQ Docket No. 2021-0584-PST-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - June 8, 2023

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed July 29, 2022, concerning assessing administrative penalties against and requiring certain actions of NORTHWEST PETROLEUM LP dba Veterans Qmart, for violations in Harris County, Texas, of: Tex. Water Code § 26.3475 (a), (c)(1), and (d), and 30 Texas Administrative Code §334.49(a)(1) and §334.50(b)(1)(B) and (b)(2).

The hearing will allow NORTHWEST PETROLEUM LP dba Veterans Qmart, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford NORTHWEST PETROLEUM LP dba Veterans Qmart, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. **Upon failure of NORTHWEST PETROLEUM LP dba Veterans Qmart to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes.** NORTHWEST PETROLEUM LP dba Veterans Qmart, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Tex. Water Code § 7.054 and chs. 7 and 26, and 30 Texas Administrative Code chs. 70 and 334; Tex. Water Code § 7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Texas Administrative Code §70.108 and §70.109 and ch. 80, and 1 Texas Administrative Code ch. 155.

Further information regarding this hearing may be obtained by contacting David Keagle, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087,

Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Sheldon Wayne, Staff Attorney, Office of Public Interest Counsel, Mail Code 103, at the same P. O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at www.tceq.texas.gov/goto/efilings or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

In accordance with 1 Texas Administrative Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: May 10, 2023

TRD-202301816

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: May 17, 2023



Notice of Public Meeting for TPDES Permit for Municipal Wastewater New Permit No. WQ0016222001

APPLICATION. Clairemont Acquisitions, LLC and JLMCG Properties, LLC, 500 West 7th Street, Suite 1220, Fort Worth, Texas 76102, has applied to the Texas Commission on Environmental Quality (TCEQ) for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0016222001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 515,000 gallons per day. TCEQ received this application on September 14, 2022.

The facility will be located approximately 711 feet southeast of the intersection of North Highway 156 and TN Skiles Road, in Denton County, Texas 76259. The treated effluent will be discharged to an unnamed tributary, thence to Wolf Branch, thence to South Hickory Creek, thence to Hickory Creek, thence to Lewisville Lake in Segment No. 0823 of the Trinity River Basin. The unclassified receiving water uses are minimal aquatic life use for the unnamed tributary, limited aquatic life use for Wolf Branch (intermittent with pools portion), and high aquatic life use for Wolf Branch (perennial portion). The designated uses for Segment No. 0823 are primary contact recreation, public water supply, and high aquatic life use. In accordance with 30 Texas Administrative Section 307.5 and the 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 Wolf Branch (perennial portion), South

Hickory Creek, and Lewisville Lake, which have 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://tceq.maps.arcgis.com/apps/webappviewer/index.html?id=db5bac44afbc468bbddd360f8168250f&marker=-97.282222%2C33.192222&level=12>

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, June 27, 2023 at 7:00 p.m.

Marriott Champions Circle

3300 Championship Parkway

Fort Worth, Texas 76177

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 web site at <https://www.tceq.texas.gov>.

The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at Betty Foster Pub-

lic Library, 405 Shaffner Street, Ponder, Texas. Further information may also be obtained from Clairemont Acquisitions, LLC and JLMCG Properties, LLC at the address stated above or by calling Mr. Chris Vela, P.E., Kimley-Horn, at (817) 339-2299.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least five business days prior to the meeting.

Issuance Date: May 12, 2023

TRD-202301822

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: May 17, 2023



Notice of Public Meeting Proposed Air Quality Permit No. 147696

APPLICATION. LS Ready Mix, LLC, has applied to the Texas Commission on Environmental Quality (TCEQ) for the amendment of Permit No. 147696. This application would authorize modification of a Concrete Batch Plant located at 9756 Veterans Memorial Dr., Houston, Harris County, Texas 77038. **AVISO DE IDIOMA ALTERNATIVO.** El aviso de idioma alternativo en español está disponible en <https://www.tceq.texas.gov/permitting/air/newsourcereview/airpermits-pendingpermit-apps>. This link to an electronic map of the site or facility's general location is provided as a public courtesy and not part of the application or notice. For exact location, refer to application. <http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=29.906944&lng=-95.434722&zooom=13&type=r>. The proposed facility will emit the following air contaminants: particulate matter including (but not limited to) aggregate, cement, road dust, and particulate matter with diameters of 10 microns or less and 2.5 microns or less.

This application was submitted to the TCEQ on February 16, 2023. The executive director has completed the administrative and technical reviews of the application and determined that the application meets all of the requirements of a standard permit authorized by 30 TAC §116.611, which would establish the conditions under which the plant must operate. The executive director has made a preliminary decision to issue the registration because it meets all applicable rules.

PUBLIC COMMENT/PUBLIC MEETING. You may submit public comments to the Office of the Chief Clerk at the address below. The TCEQ will consider all public comments in developing a final decision on the application. A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application, and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. At the conclusion of the comment period, all formal comments will be considered before a decision is reached on the permit application. A written response to all formal comments will be prepared by the executive director and will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides

a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

The Public Meeting is to be held:

Tuesday, June 20, 2023 at 7:00 p.m.

Mangum-Howell Community Center

at Richard P. Doss Park

2500 Frick Road

Houston, Texas 77038

INFORMATION. Members of the public are encouraged to submit written comments anytime during the public meeting or by mail before the close of the public comment period to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at <https://www14.tceq.texas.gov/epic/eComment/>. If you need more information about the permit application or the permitting process, please call the TCEQ Public Education Program, toll free, at (800) 687-4040. General information can be found at our Web site at www.tceq.texas.gov. *Si desea información en español, puede llamar al (800) 687-4040.*

INFORMATION AVAILABLE ONLINE. For details about the status of the application, visit the Commissioners' Integrated Database (CID) at www.tceq.texas.gov/goto/cid. Once you have access to the CID using the link, enter the permit number at the top of this form.

The application, executive director's preliminary decision, and standard permit will be available for viewing and copying at the TCEQ central office, the TCEQ Houston regional office, and at Harris County Justice of the Peace (Mickey Leland Courthouse), 7300 North Sheppard Drive, Houston, Harris County, Texas, 77091. The facility's compliance file, if any exists, is available for public review at the TCEQ Houston Regional Office, 5425 Polk St. Ste H, Houston, Texas. Visit www.tceq.texas.gov/goto/cbp to review the standard permit.

Further information may also be obtained from LS Ready Mix, LLC, 9756 Veterans Memorial Dr, Houston, Texas 77038 or by calling Mr. Taha Ahmed PE, Managing Partner at (281) 936-9858.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least five business days prior to the meeting.

Notice Issuance Date: May 16, 2023

TRD-202301823

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: May 17, 2023



Notice of Receipt of Application and Intent to Obtain Municipal Solid Waste Permit Amendment

Notice issued on May 10, 2023

Proposed Limited Scope Amendment to Permit No. 664

Application. City of Stephenville, 298 West Washington Street, Stephenville, Texas, 76401 has applied to the Texas Commission on Environmental Quality (TCEQ) for a permit amendment to raise final contours to restore airspace originally permitted when the facility was a Type I landfill. The facility is located at 669 County Road 385,

Stephenville, 76401 in Erath County, Texas. The TCEQ received this application on April 4, 2023. The permit application is available for viewing and copying at the Stephenville Public Library 174 North Columbia Street, Stephenville, Texas 76401, and may be viewed online at <https://biggsandmathews.com/on-line-documents/permits-v2/category/109-city-of-stephenville>. The following link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice: <https://arcg.is/1q841O>. For exact location, refer to application.

Alternative Language Notice/ Aviso sobre lenguas alternativas. Alternative language notice in Spanish is available at www.tceq.texas.gov/goto/mswapps. Hay disponible un aviso en otro idioma en español en www.tceq.texas.gov/goto/mswapps.

Additional Notice. TCEQ's Executive Director has determined the application is administratively complete and will conduct a technical review of the application. After technical review of the application is complete, the Executive Director may prepare a draft permit and will issue a preliminary decision on the application. Notice of the Application and Preliminary Decision will be published and mailed to those who are on the county-wide mailing list and to those who are on the mailing list for this application. That notice will contain the deadline for submitting public comments.

Public Comment/Public Meeting. You may submit public comments or request a public meeting on this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. TCEQ will hold a public meeting if the Executive Director determines that there is a significant degree of public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing.

Opportunity for a Contested Case Hearing. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material, or significant public comments. Unless the application is directly referred for a contested case hearing, the response to comments, and the Executive Director's decision on the application, will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting reconsideration of the Executive Director's decision and for requesting a contested case hearing. A person who may be affected by the facility is entitled to request a contested case hearing from the commission. A contested case hearing is a legal proceeding similar to a civil trial in state district court.

To Request a Contested Case Hearing, You Must Include The Following Items in Your Request: your name, address, phone number; applicant's name and permit number; the location and distance of your property/activities relative to the facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; a list of all disputed issues of fact that you submit during the comment period; and the statement "[I/we] request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify by name and physical address an individual member of the group who would be adversely affected by the facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose.

Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests

for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. The Commission may only grant a request for a contested case hearing on issues the requestor submitted in their timely comments that were not subsequently withdrawn.

If a hearing is granted, the subject of a hearing will be limited to disputed issues of fact or mixed questions of fact and law that are relevant and material to the Commission's decision on the application submitted during the comment period.

Mailing List. If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. To be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

Information Available Online. For details about the status of the application, visit the Commissioners' Integrated Database (CID) at www.tceq.texas.gov/goto/cid. Once you have access to the CID using the above link, enter the permit number for this application, which is provided at the top of this notice.

Agency Contacts and Information. All public comments and requests must be submitted either electronically at www14.tceq.texas.gov/epic/eComment/ or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. Please be aware that any contact information you provide, including your name, phone number, email address and physical address will become part of the agency's public record. For more information about this permit application or the permitting process, please call the TCEQ's Public Education Program, Toll Free, at (800) 687-4040 or visit their website at www.tceq.texas.gov/goto/pep. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from the City of Stephenville at the address stated above or by calling Mr. Nick Williams, P.E., Director of Public Works at (254) 918-1223.

TRD-202301819

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: May 17, 2023

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General Land Office

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

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 *Federal Register* pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 26. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of May 8, 2023 to May 12, 2023. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§30.25, 30.32, and 30.41, the public comment period extends 30 days from the date

published on the Texas General Land Office web site. The notice was published on the web site on Friday, May 19, 2023. The public comment period for this project will close at 5:00 p.m. on Sunday, June 18, 2023.

FEDERAL AGENCY ACTIVITIES:

Applicant: Texas Department of Transportation (TxDOT)

Location: The project site is located at Horseshoe Lake near Port Bolivar, Galveston County, Texas.

Project Description: The applicant proposes to replace the existing bridge on State Loop 108 at Horseshoe Lake (CSJ 0367-07-009). The State Loop 108 bridge was constructed in 1962 and is a two-lane roadway, which includes one, 12-foot lane in each direction with 3-foot outside shoulders. The proposed facility would include a two-lane roadway with 12-foot lanes and 8-foot shoulders in each direction on the bridge. The shoulders of the bridged section would vary from 3 to 8 feet. The drainage would remain direct flow to Horseshoe Lake. The project would extend approximately 0.017 mile along State Loop 108 and would take place within the existing 130-foot right-of-way (ROW).

Type of Application: TxDOT U.S. Coast Guard Bridge Permit Exemption Request.

CMP Project No: 23-1250-F2

Applicant: Texas Department of Transportation (TxDOT) Yoakum District

Location: The project site is located over Carancahua Bay near Point Comfort, Jackson County, Texas.

Project Description: The applicant proposes to replace the existing bridge on SH 35 over Carancahua Bay (CSJ 0179-09-041). The SH 35 bridge was constructed in 1962 and is a 60-span concrete pan girder bridge. The new concrete bridge would be a 31-span concrete I-girder bridge which would be wider to accommodate current traffic and future needs. The bridge would be constructed to the south of the existing bridge to maintain traffic flow during construction, and approximately 2.3 acres of new ROW would be required to construct the new bridge. The existing bridge has 59 sets of columns in the water, each row containing four columns. The proposed bridge would have 30 sets of columns placed within the water, each row containing six columns.

Type of Application: TxDOT U.S. Coast Guard Bridge Permit Exemption Request.

CMP Project No: 23-1255-F2

FEDERAL AGENCY ACTIONS:

Applicant: Enterprise Products Operating LLC

Location: The project site is located in wetlands adjacent to the Neches River at the Beaumont Marine East terminal near Beaumont, in Orange County, Texas.

Latitude and Longitude: 30.040685, -94.029161

Project Description: The applicant proposes to modify Department of the Army Permit SWG-2013-00749 to permanently discharge fill into 0.82 acre of waters of the US, including 0.16 acre of palustrine emergent (PEM) wetlands, 0.1 acre of palustrine scrub shrub (PSS) wetlands, 0.47 acre of palustrine forested wetlands, and 0.09 acre of a pond, to construct additional infrastructure at the Beaumont Marine East ethane export terminal.

The applicant stated that the purpose of the project is to construct additional infrastructure for the authorized docks at the Beaumont Marine East ethane export terminal to meet increasing demand of crude oil and petroleum liquids in the Texas Gulf Coast region.

The applicant proposed to mitigate for the proposed impacts by purchasing wetland mitigation credits from an approved mitigation bank within the applicable service area.

Type of Application: U.S. Army Corps of Engineers permit application # SWG-2013-00749. This application will be reviewed pursuant to Section 404 of the Clean Water Act. Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality as part of its certification under §401 of the Clean Water Act.

CMP Project No: 23-1258-F1

Applicant: Bass Enterprises Production Company, LP (BEPCO, LP)

Location: The project site is located in Aransas Bay, at 1824 Shell Ridge Road, in Rockport, Aransas County, Texas.

Latitude and Longitude: 28.002343, -97.055744

Project Description: The applicant proposes discharge a total of 4,836 cubic yards of rock rip rap and shoreline restoration fabric or filter cloth in Aransas Bay along an existing harbor breakwater for a total distance of 1,503 linear feet. Specifically, the applicant proposes to discharge 2,397.3 cubic yards along 683 linear feet of the northside of the breakwater and 2,438.7 cubic yards along 820 linear feet of the southside of the breakwater. The rock will be placed vertically against the existing breakwater to a typical top elevation of +4 feet NAVD 88 and will extend out from the breakwater and crest with a variable side slope resulting in a base width between 13-26 feet.

The applicant does not propose any compensatory mitigation. The applicant stated the project does not propose any impacts to submerged aquatic vegetation or other sensitive resources.

Type of Application: U.S. Army Corps of Engineers permit application # SWG-1991-01834. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act. Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality as part of its certification under §401 of the Clean Water Act.

CMP Project No: 23-1259-F1

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection, may be obtained from the Texas General Land Office Public Information Officer at 1700 N. Congress Avenue, Austin, Texas 78701, or via email at pialegal@glo.texas.gov. Comments should be sent to the Texas General Land Office Coastal Management Program Coordinator at the above address or via email at federal.consistency@glo.texas.gov.

TRD-202301796

Mark Havens

Chief Clerk, Deputy Land Commissioner

General Land Office

Filed: May 16, 2023



Notice of Intention to Conduct Assessment and Restoration Planning for the Flint Hills Resources Dock 5 Release into Corpus Christi Bay on December 24, 2022

Summary:

Under the Oil Pollution Act (OPA), Federal and State trustees (Trustees) for natural resources are authorized to assess natural resource injuries resulting from the discharge of oil or the substantial threat of discharge, as well as injuries that result from response to the release. The Trustees develop and implement a restoration plan to

identify and quantify injuries to natural resources and the restoration required to compensate for the injuries. This notice announces the intention of the Trustees to conduct an assessment and restoration planning for the discharge of oil from a rusted tank line into Corpus Christi Bay on December 24, 2022, owned and operated by Flint Hills Resources L.P.

Contact Information

Allison Fischer

Allison.fischer@glo.texas.gov

1700 N. Congress Ave.

P.O. Box 12873

Austin, Texas 78711-2873

Supplementary Information

The Flint Hills Dock 5 Spill occurred on December 24, 2022, near Ingleside, Texas. A leak from a rusted tank line released approximately 335 barrels, or 14,000 gallons, of oil into Corpus Christi Bay (the Incident). The Responsible Party (RP) for this Incident has been identified as Flint Hills Resources. Pursuant to 15 CFR 990.14(c), the Trustees have invited the RP to participate in a cooperative Natural Resource Damage Assessment (NRDA) process. To date, the Trustees have coordinated with the RP's representatives on activities undertaken as part of the NRDA process.

Pursuant to Section 1006 of OPA, 33 U.S.C 2706, the Trustees are authorized to 1) assess natural resource injuries resulting from a discharge of oil or the substantial threat of a discharge and from related response activities, and 2) develop and implement a plan for restoration of the injured resources and their services. The Federal Trustees are designated pursuant to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) (40 CFR 300.600). The Texas Trustees are designated by the Governor of Texas pursuant to the NCP (40 CFR 300.602), and OPA 33 U.S.C. 2706(b)(3). The following agencies are designated natural resource Trustees and are acting as trustees for this Incident: Department of the Interior represented by the United States Fish and Wildlife Service ("USFWS"), National Oceanic and Atmospheric Administration ("NOAA"), General Land Office ("GLO"), the Texas Parks and Wildlife Department ("TPWD"), and Texas Commission on Environmental Quality ("TCEQ").

The Trustees initiated the Preassessment Phase of the NRDA in accordance with 15 CFR 990.40 to determine if they have jurisdiction to pursue restoration under OPA and, if so, whether it is appropriate to do so. During the Preassessment Phase, the Trustees collect and analyze the following: (1) data reasonably expected to be necessary to make a determination of jurisdiction and to conduct restoration planning, (2) ephemeral data, and (3) information needed for assessment activities as part of the Restoration Planning Phase. The collection and analysis of the data and information listed above continues to date.

Under 15 CFR Part 990 (NRDA regulations), the Trustees must prepare and issue a notice of intent to conduct restoration planning (Notice) that demonstrates that the conditions have been met for the Trustees to have jurisdiction over this matter and that restoration of natural resources is feasible and appropriate. Pursuant to 15 CFR 990.44, this notice announces that the Trustees have determined to proceed with restoration planning to fully evaluate, assess, quantify, and develop plans for restoring, replacing, or acquiring the equivalent of injured natural resources and services losses resulting from the Incident. The planning process will include collection of information for evaluating and quantifying injuries and the use of that information to determine the need for and type and scale of restoration actions required to make the public whole.

Determination of Jurisdiction

The Trustees have made the following findings pursuant to 15 CFR 990.41:

1) The Incident resulted in discharges of oil into and upon navigable waters of the United States, including the Corpus Christi Bay, as well as adjoining shorelines, all of which constitute an "incident" within the meaning of 15 CFR 990.30.

2) The discharge(s) are not permitted pursuant to federal, state, or local law; are not from a public vessel; and are not from an onshore facility subject to the Trans-Alaska Pipeline Authority Act, (43 U.S.C. 1651 *et seq.*).

3) Natural resources under the trusteeship of the Trustees have been and continue to be injured or threatened as a result of discharged oil and associated response and removal efforts. The discharged oil is harmful to natural resources exposed to the oil, including, but not limited to, aquatic organisms, wildlife, vegetation, and shoreline habitats. Discharged oil and the associated response activities have resulted in adverse effects on natural resources in and around the coastal waters of Texas and along its adjoining shorelines, and impaired services that those resources provide. The full extent of potential injuries is currently unknown; however current natural resources and resource services that may have been impacted include but are not limited to the following:

- a) Shoreline, including sandy beaches; hard structures, such as breakwaters; dredge spoil areas; marsh; and other habitat areas
- b) Water column habitat
- c) A variety of wildlife, including birds, turtles, and marine mammals
- d) Various other biota, including benthic communities and fish
- e) Lost human use opportunities associated with various natural resources in the Gulf region, including fishing, swimming, beach-going, and viewing of birds and wildlife

Accordingly, the Trustees have determined that they have jurisdiction under OPA to pursue assessment and restoration planning.

Determination to Conduct Restoration Planning

1. The Trustees have made the following findings pursuant to 15 CFR 990.42: Observations and data collected pursuant to 15 CFR 990.43 demonstrate that injuries to natural resources and the services they provide have resulted from the Incident; however, the nature and extent of such injuries have not been fully determined at this time. The Trustees have identified numerous categories of impacted and potentially impacted resources, including marine mammals, birds, fish, and biota, as well as their habitats. Impacted and potentially impacted habitats include but are not limited to wetlands, marshes, sand beaches, bottom sediments and the water column. The Trustees have also determined that there are impacts or potential impacts to human use of these affected resources or habitats. The Trustees have been conducting, and continue to conduct, activities to value injuries and potential injuries to these resources. More information on these resources, including assessment work plans developed jointly by the Trustees and the RP, if any, and information gathered during the Preassessment Phase, will be made available in the Administrative Record (AR), as discussed below. The full nature and extent of injuries will be determined during the injury assessment conducted as part of the Restoration Planning Phase.

2. Response actions employed for this spill included containment, collection of oil, on-shore removal of sand and wrack material, and other removal operations. These response actions have not addressed and are not expected to address all injuries resulting from the discharges of oil. Although response actions were initiated soon after identification of the spill, they were unable to prevent injuries to many natural

resources. In addition, some of these response actions have caused or are likely to cause injuries to natural resources and the services they provide, including the impairment of sensitive marshes, beaches, and other habitats and impacts to human uses of the resources. While injured natural resources may eventually recover naturally to the condition they would have been in had the discharges not occurred, interim losses did occur and will persist until baseline conditions are achieved. In addition, there have been losses and diminution of human uses of the resources resulting from the impacts to the natural resources and from the response actions themselves.

3. Feasible restoration actions exist to address the natural resource injuries and losses caused by the Incident, including but not limited to injured habitat and lost human uses. Assessment procedures are available to scale the appropriate amount of restoration required to offset these ecological and human use service losses. During the restoration planning phase, the Trustees will evaluate potential projects, determine the scale of restoration actions needed to make the environment and the public whole, and release a draft Restoration Plan for public review and comment. Based upon these determinations, the Trustees intend to proceed with restoration planning for the Incident.

Administrative Record

The Trustees will open an Administrative Record (AR) in compliance with 15 CFR 990.45 and other authorities. The AR will be publicly available and include documents considered by the Trustees during the NRDA and restoration planning performed in connection with the Incident. The AR will be augmented with additional information over the course of the NRDA process.

Opportunity to Comment

In accordance with 15 CFR 990.14(d), the Trustees will provide opportunities for public involvement in the restoration planning for the Incident. The opportunities for public involvement will be addressed in future notices and announcements.

Author

The primary author of this notice is Scottie Aplin at the General Land Office.

Authority

The authority of this action is the Oil Pollution Act of 1990 (33 U.S.C. 2701 et seq.) and the implementing Natural Resource Damage Assessment regulations found at 15 CFR part 990.

TRD-202301720

Mark Havens

Chief Clerk, Deputy Land Commissioner

General Land Office

Filed: May 11, 2023



Department of State Health Services

Administrative Foods Group Penalty Matrix Guidance 2023

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the Administrative Foods Group Penalty Matrix is not included in the print version of the Texas Register. The figure is available in the on-line version of the May 26, 2023, issue of the Texas Register.)

Examples of various regulatory violations are provided in the graphic for which administrative penalties may be assessed pursuant to applicable law and rules, including the requirements of the Texas Health and

Safety Code, Chapter 431, concerning Texas Food, Drug, and Cosmetic Act and Title 25, Texas Administrative Code Chapter 229, §229.261, concerning Assessment of Administrative Penalties.

Section 229.261(c). The Texas Department of State Health Services (department) shall assess administrative penalties based upon one or more of the following criteria: (1) history of previous violations; (2) seriousness of the violation; (3) hazard to the health and safety of the public; (4) demonstrated good faith efforts to correct; (5) economic harm to property or the environment; (6) amounts necessary to deter future violations; (7) enforcement costs relating to the violation; and (8) any other matter justice may require.

These examples are not exhaustive and are intended only to provide compliance guidance to licensees, and in no way restricts, limits, or may be considered a condition precedent to any proposed action the department may take for violations of the applicable law and rules. There is no significance to the order of the examples.

Section 229.261(h) Adjustments to penalties. The department may make adjustments to the penalties listed in subsections (e), (f), or (g) of this section for any one of the following factors.

(1) Previous violations. (2) Demonstrated good faith. (3) Hazard to the health and safety of the public.

Severity Level I covers violations that are most significant and may have a significant negative impact on public health and safety. Examples of Severity Level I include tested positive for pathogens that have a significant impact on health, selling adulterated or misbranded food product that results in a serious illness of consumer, or unapproved health claims.

Severity Level II covers violations that are very significant and may have a negative impact on public health and safety. Examples of Severity Level II include evidence of significant pest activity on food contact surfaces, failing to declare the presence of allergens on label, or offering or selling a food that contains an unapproved food additive.

Severity Level III covers violations that are significant and, if not corrected, could threaten the public health and safety. Examples of Severity Level III include evidence of pest activity in areas where food is stored but not directly on food, packaging, food contact surfaces, or equipment.

Severity Level IV covers violations that are of more than minor significance, but if left uncorrected, could lead to more serious circumstances. Examples of Severity Level IV include evidence of pest activity in a facility that processes/warehouses food but the activity has not spread to areas where food is located or not maintaining sanitation monitoring records required by regulation.

Severity Level V covers violations that are of minor health or safety significance. Examples of Severity Level V include incomplete label (i.e. Missing net weight) resulting in a minor public health significance or failing to have training as required by regulation (i.e. Acidified/LACF and Seafood required training). Examples provided are not intended to be all inclusive.

*Examples of various regulatory violations are provided in the graphic for which administrative penalties may be assessed pursuant to applicable law and rules, including the requirements of the Texas Health and Safety Code, Chapter 431 concerning Texas Food, Drug, and Cosmetic Act and Title 25, Texas Administrative Code Chapter 229, §229.261. The department may, after providing an opportunity for a hearing, refuse an application for a license/registration from a food manufacturer, food wholesaler, or warehouse operator, or may revoke or suspend a license/registration for violations of the requirements in §229.182 of this title (relating to Licensing/Registration Fee and

Procedures, and §229.183 of this title (relating to Minimum Standards for Licensure/Registration, or for interference with the department in the performance of its duty under these rules.

This matrix is effective immediately upon publication in the *Texas Register* and can be revised from time to time.

TRD-202301705
Cynthia Hernandez
General Counsel
Department of State Health Services
Filed: May 10, 2023

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Texas Department of Housing and Community Affairs

Emergency Solutions Grants Fiscal Year 2023 Notice of Funding Availability

The Texas Department of Housing and Community Affairs (the Department) announces the availability of approximately \$9,367,485 in funding for the 2023 Emergency Solutions Grants (ESG) Program funded through the U.S. Department of Housing and Community Development (HUD). The funds will be made available to eligible applicants for an offer of a continuing award, or a competitive award, as further described in the NOFA.

Applications for a competitive award may be submitted beginning June 1, 2023 in accordance with the NOFA. From time to time, additional funding may be made available under the NOFA through transfer of prior year balances, deobligated funds, and Program Income. Amendments will be published on the TDHCA website.

Information is available on the Department's web site at <http://www.tdhca.state.tx.us/nofa.htm>. Questions regarding the NOFA may be addressed to the Rosy Falcon via email at rosy.falcon@tdhca.state.tx.us.

TRD-202301729
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Filed: May 12, 2023

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Notice of Public Hearing and Public Comment Period on the Draft 2024 Regional Allocation Formula Methodology

The Texas Department of Housing and Community Affairs (the Department) will hold a public hearing to accept public comment on the Draft 2024 Regional Allocation Formula (RAF) Methodology.

The public hearing will take place as follows:

Tuesday, June 6, 2023

2:00 p.m. Austin local time

Thomas Jefferson Rusk Building Room 320

208 E. 10th Street, Austin, Texas 78701

The RAF may be accessed from TDHCA's Public Comment Center at: <https://www.tdhca.state.Texas.us/public-comment.htm>

The RAF utilizes appropriate statistical data to measure the affordable housing need and available resources in the 13 State Service Regions that are used for planning purposes. The RAF also allocates funding to rural and urban subregions within each region. The Depart-

ment has flexibility in determining variables to be used in the RAF, per §2306.1115(a)(3) of the Tex. Gov't Code, "the department shall develop a formula that"includes other factors determined by the department to be relevant to the equitable distribution of housing funds..." The RAF is revised annually to reflect current data, respond to public comment, and better assess regional housing needs and available resources.

The RAF methodology explains the use of factors, in keeping with the statutory requirements, which include the need for housing assistance, the availability of housing resources, and other factors relevant to the equitable distribution of housing funds in urban and rural areas of the state.

The Single Family HOME Investment Partnerships Program (HOME), Multifamily HOME, Housing Tax Credit (HTC), and Housing Trust Fund (HTF) program RAFs each use slightly different formulas because the programs have different eligible activities, households, and geographical service areas. For example, §2306.111(c) of the Tex. Gov't Code requires that 95% of HOME funding be set aside for non-participating jurisdictions (non-PJs). Therefore, the Single Family and Multifamily HOME RAFs only use need and available resource data for non-PJs.

The public comment period for the Draft 2024 RAF methodology will be open from Monday, May 22, 2023, through Wednesday, June 21, 2023, at 5:00 p.m., Austin local time. Anyone may submit comments on the Draft 2024 RAF Methodology in written form or oral testimony at the June 6, 2023, public hearing.

Written comments concerning the Draft 2024 RAF Methodology may be submitted by mail to the Texas Department of Housing and Community Affairs, Housing Resource Center, P.O. Box 13941, Austin, Texas 78711-3941, by email to info@tdhca.state.Texas.us. Comments must be received no later than Wednesday, June 21, 2023, at 5:00 p.m. Austin local time.

Individuals who require auxiliary aids or services for the public hearing on June 6, 2023, should contact Nancy Dennis, at (512) 475-3959 or Relay Texas at (800) 735-2989, at least three days before the meeting so that appropriate arrangements can be made.

Non-English speaking individuals who require interpreters for the public hearing should contact Danielle Leath by phone at (512) 475-4606 or by email at danielle.leath@tdhca.state.Texas.us at least three days before the meeting so that appropriate arrangements can be made.

Personas que hablan español y requieren un interprete, favor de llamar a Danielle Leath al siguiente numero (512) 475-4606 o enviarle un correo electronico a danielle.leath@tdhca.state.Texas.us por lo menos tres dias antes de la junta para hacer los preparativos apropiados.

TRD-202301730
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Filed: May 12, 2023

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Texas Department of Insurance

Company Licensing

Application to do business in the state of Texas for CopperPoint Casualty Insurance Company, a foreign fire and/or casualty company. The home office is in Phoenix, Arizona.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register*

publication, addressed to the attention of John Carter, 1601 Congress Ave., Suite 6.900, Austin, Texas 78711.

TRD-202301815

Justin Beam

Chief Clerk

Texas Department of Insurance

Filed: May 17, 2023

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Texas Lottery Commission

Scratch Ticket Game Number 2493 "WINNER'S CLUB"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2493 is "WINNER'S CLUB". The play style is "coordinate with prize legend".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2493 shall be \$5.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2493.

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: HEART SYMBOL, DIAMOND SYMBOL, GOLD BAR SYMBOL, HORSE-SHOE SYMBOL, PIGGY BANK SYMBOL, DICE SYMBOL, STACK OF CASH SYMBOL, COIN SYMBOL, SAILBOAT SYMBOL, POT OF GOLD SYMBOL, MELON SYMBOL, LADYBUG SYMBOL, LEMON SYMBOL, SUN SYMBOL, CHERRY SYMBOL, CLUB SYMBOL, BELL SYMBOL, PINEAPPLE SYMBOL, ANCHOR SYMBOL, MOON SYMBOL, RAINBOW SYMBOL, LIGHTNING BOLT SYMBOL, CROWN SYMBOL, UMBRELLA SYMBOL, RING SYMBOL, KEY SYMBOL, HAT SYMBOL, BOOT SYMBOL, CACTUS SYMBOL, TROPHY SYMBOL, 2X SYMBOL, 5X SYMBOL and 10X SYMBOL.

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. 2493 - 1.2D

PLAY SYMBOL	CAPTION
HEART SYMBOL	HEART
DIAMOND SYMBOL	DIAMND
GOLD BAR SYMBOL	BAR
HORSESHOE SYMBOL	HRSHOE
PIGGY BANK SYMBOL	PIGBNK
DICE SYMBOL	DICE
STACK OF CASH SYMBOL	CASH
COIN SYMBOL	COIN
SAILBOAT SYMBOL	BOAT
POT OF GOLD SYMBOL	GOLD
MELON SYMBOL	MELON
LADYBUG SYMBOL	LADYBG
LEMON SYMBOL	LEMON
SUN SYMBOL	SUN
CHERRY SYMBOL	CHERRY
CLUB SYMBOL	CLUB
BELL SYMBOL	BELL
PINEAPPLE SYMBOL	PNAPLE
ANCHOR SYMBOL	ANCHOR
MOON SYMBOL	MOON
RAINBOW SYMBOL	RAINBW
LIGHTNING BOLT SYMBOL	BOLT
CROWN SYMBOL	CROWN
UMBRELLA SYMBOL	UMBRLA
RING SYMBOL	RING
KEY SYMBOL	KEY
HAT SYMBOL	HAT

BOOT SYMBOL	BOOT
CACTUS SYMBOL	CACTUS
TROPHY SYMBOL	TROPHY
2X SYMBOL	DBL
5X SYMBOL	WINX5
10X SYMBOL	WINX10

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 (2493), 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: 2493-0000001-001.

H. Pack - A Pack of the "WINNER'S CLUB" Scratch Ticket Game contains 075 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket 001 will be shown on the front of the Pack; the back of Ticket 075 will be revealed on the back of the Pack. All packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack. Every other Pack will reverse; i.e., reverse order will be: the back of Ticket 001 will be shown on the front of the Pack and the front of Ticket 075 will be shown on the back of the Pack.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "WINNER'S CLUB" Scratch Ticket Game No. 2493.

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 "WINNER'S CLUB" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose twenty-seven (27) Play Symbols. WINNER'S CLUB PLAY INSTRUCTIONS: The player scratches the entire play area to reveal 25 Play Symbols. If the player reveals 3 or more "TROPHY" Play Symbols in the play area, the player wins the corresponding prize in the PRIZE LEGEND on the front of Ticket. (Only highest prize paid). MULTIPLIER SYMBOLS PLAY INSTRUCTIONS: The player scratches the MULTIPLIER SYMBOLS play area to reveal 2 MULTIPLIER SYMBOLS Play Symbols. If the player reveals 2 matching MULTIPLIER SYMBOLS, the player multiplies the prize

won in the WINNER'S CLUB play area by that multiplier and wins that amount. For example, if the player reveals 2 "10X" MULTIPLIER SYMBOLS, the player will multiply the prize won in the WINNER'S CLUB play area by 10 TIMES. 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-seven (27) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Scratch Ticket shall be intact;
6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;
8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The Scratch Ticket must not be counterfeit in whole or in part;
10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;
11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;
13. The Scratch Ticket must be complete and not miscut, and have exactly twenty-seven (27) 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-seven (27) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the twenty-seven (27) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of Play Symbols.

B. GENERAL: A Ticket can win as indicated by the prize structure.

C. GENERAL: A Ticket can win up to one (1) time.

D. GENERAL: The "TROPHY" (TROPHY) Play Symbol will never appear in the MULTIPLIER SYMBOLS play area.

E. GENERAL: The "2X" (DBL), "5X" (WINX5) and "10X" (WINX10) Play Symbols will only appear in the MULTIPLIER SYMBOLS play area.

F. WINNER'S CLUB: On both winning and Non-Winning Tickets, the "TROPHY" (TROPHY) Play Symbol will appear at least two (2) times and will win as per the prize structure.

G. WINNER'S CLUB: Non-winning Play Symbols will not appear more than once on a Ticket.

H. WINNER'S CLUB: Winning Tickets will contain at least three (3), but no more than thirteen (13) "TROPHY" (TROPHY) Play Symbols.

I. WINNER'S CLUB: Non-Winning Tickets will never have more than two (2) "TROPHY" (TROPHY) Play Symbols.

J. MULTIPLIER SYMBOLS: All Tickets winning double the prize will win by revealing at least three (3) "TROPHY" (TROPHY) Play Symbols in the WINNER'S CLUB play area with two (2) matching "2X"

(DBL) MULTIPLIER SYMBOLS in the MULTIPLIER SYMBOLS play area, as per the prize structure.

K. MULTIPLIER SYMBOLS: All Tickets winning five (5) times the prize will win by revealing at least three (3) "TROPHY" (TROPHY) Play Symbols in the WINNER'S CLUB play area with two (2) matching "5X" (WINX5) MULTIPLIER SYMBOLS in the MULTIPLIER SYMBOLS play area, as per the prize structure.

L. MULTIPLIER SYMBOLS: All Tickets winning ten (10) times the prize will win by revealing at least three (3) "TROPHY" (TROPHY) Play Symbols in the WINNER'S CLUB play area with two (2) matching "10X" (WINX10) MULTIPLIER SYMBOLS in the MULTIPLIER SYMBOLS play area, as per the prize structure.

M. MULTIPLIER SYMBOLS: On Non-Winning Tickets, the two (2) MULTIPLIER SYMBOLS Play Symbols will always be different.

2.3 Procedure for Claiming Prizes.

A. To claim a "WINNER'S CLUB" Scratch Ticket Game prize of \$5.00, \$10.00, \$20.00, \$25.00, \$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, \$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 "WINNER'S CLUB" Scratch Ticket Game prize of \$1,000, \$10,000 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 "WINNER'S CLUB" 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 "WINNER'S CLUB" 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 "WINNER'S CLUB" 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. 2493. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2493 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$5.00	800,000	9.00
\$10.00	576,000	12.50
\$20.00	144,000	50.00
\$25.00	128,000	56.25
\$50.00	76,000	94.74
\$100	16,100	447.20
\$200	8,500	847.06
\$500	1,800	4,000.00
\$1,000	30	240,000.00
\$10,000	10	720,000.00
\$100,000	5	1,440,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.11. 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. 2493 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. 2493, 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-202301808
 Bob Biard
 General Counsel
 Texas Lottery Commission
 Filed: May 16, 2023

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Scratch Ticket Game Number 2494 "DAZZLING WINNINGS"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2494 is "DAZZLING WINNINGS". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2494 shall be \$10.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2494.

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, 03,

04, 06, 07, 08, 09, 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, 2X SYMBOL, 5X SYMBOL, 10X SYMBOL, ARMORED CAR SYMBOL, BAR SYMBOL, BANK SYMBOL, BILL SYMBOL, CARD SYMBOL, CHECK SYMBOL, CHIP SYMBOL, CROWN SYMBOL, GEM SYMBOL, MONEY BAG SYMBOL, NECKLACE SYMBOL, REGISTER SYMBOL, RING SYMBOL, STAR SYMBOL, VAULT SYMBOL, \$10.00,

\$20.00, \$30.00, \$50.00, \$100, \$200, \$500, \$1,000, \$10,000, \$50,000 and \$250,000.

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. 2494 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
03	THR
04	FOR
06	SIX
07	SVN
08	EGT
09	NIN
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
2X SYMBOL	DBL
5X SYMBOL	WINX5
10X SYMBOL	WINX10
ARMORED CAR SYMBOL	ARMCAR
BAR SYMBOL	BAR
BANK SYMBOL	BANK
BILL SYMBOL	BILL
CARD SYMBOL	CARD
CHECK SYMBOL	CHECK
CHIP SYMBOL	CHIP
CROWN SYMBOL	CROWN
GEM SYMBOL	GEM
MONEY BAG SYMBOL	MONEYBAG
NECKLACE SYMBOL	NECKLACE
REGISTER SYMBOL	REGISTER
RING SYMBOL	RING
STAR SYMBOL	STAR
VAULT SYMBOL	VAULT
\$10.00	TEN\$

\$20.00	TWY\$
\$30.00	TRTY\$
\$50.00	FFTY\$
\$100	ONHN
\$200	TOHN
\$500	FVHN
\$1,000	ONTH
\$10,000	10TH
\$50,000	50TH
\$250,000	250TH

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 (2494), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 050 within each Pack. The format will be: 2494-0000001-001.

H. Pack - A Pack of the "DAZZLING WINNINGS" Scratch Ticket Game contains 050 Tickets, packed in plastic shrink-wrapping and fan-folded in pages of one (1). Ticket back 001 and 050 will both be exposed.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "DAZZLING WINNINGS" Scratch Ticket Game No. 2494.

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 "DAZZLING WINNINGS" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose sixty-four (64) Play Symbols. \$50 BONUS: If a player reveals 2 matching Play Symbols in the \$50 BONUS, the player wins \$50. \$100 BONUS: If a player reveals 2 matching Play Symbols in the \$100 BONUS, the player wins \$100. \$200 BONUS: If a player reveals 2 matching Play Symbols in the \$200 BONUS,

the player wins \$200. \$500 BONUS: If a player reveals 2 matching Play Symbols in the \$500 BONUS, the player wins \$500. DAZZLING WINNINGS: 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 "2X" symbol, the player wins DOUBLE the PRIZE for that symbol. If the player reveals a "5X" symbol, the player wins 5 TIMES the PRIZE for that symbol. If the player reveals a "10X" symbol, the player wins 10 TIMES the PRIZE for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly sixty-four (64) 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 sixty-four (64) 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 sixty-four (64) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the sixty-four (64) 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 twenty-nine (29) times in accordance with the approved 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: The top Prize Symbol will appear on every Ticket unless restricted by other parameters, play action or prize structure.

D. KEY NUMBER MATCH: Each Ticket will have six (6) different WINNING NUMBERS Play Symbols.

E. KEY NUMBER MATCH: Non-winning YOUR NUMBERS Play Symbols will all be different.

F. KEY NUMBER MATCH: Non-winning Prize Symbols will never appear more than three (3) times.

G. KEY NUMBER MATCH: The "2X" (DBL), "5X" (WINX5), and "10X" (WINX10) Play Symbols, will never appear in the WINNING NUMBERS Play Symbol spots.

H. KEY NUMBER MATCH: The "2X" (DBL), "5X" (WINX5), and "10X" (WINX10) Play Symbols, will only appear on winning Tickets as dictated by the prize structure.

I. KEY NUMBER MATCH: Non-winning Prize Symbols will never be the same as the winning Prize Symbol(s).

J. KEY NUMBER MATCH: No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 20 and \$20).

K. \$50 BONUS/\$100 BONUS/\$200 BONUS/\$500 BONUS: Matching Play Symbols will only appear as dictated by the prize structure in the \$50 BONUS, \$100 BONUS, \$200 BONUS, and \$500 BONUS play areas.

L. \$50 BONUS/\$100 BONUS/\$200 BONUS/\$500 BONUS: A Play Symbol will not be used more than one (1) time per Ticket across the \$50 BONUS, \$100 BONUS, \$200 BONUS, and \$500 BONUS play areas, unless used in a winning combination.

M. \$50 BONUS/\$100 BONUS/\$200 BONUS/\$500 BONUS: The Play Symbols will never appear in the WINNING NUMBERS or YOUR NUMBERS Play Symbol spots.

N. \$50 BONUS/\$100 BONUS/\$200 BONUS/\$500 BONUS: In the \$50 BONUS, \$100 BONUS, \$200 BONUS, and \$500 BONUS play areas, non-winning Play Symbols will not be the same as winning Play Symbols.

O. \$50 BONUS/\$100 BONUS/\$200 BONUS/\$500 BONUS: The \$50 BONUS, \$100 BONUS, \$200 BONUS and \$500 BONUS play areas will each be played separately.

2.3 Procedure for Claiming Prizes.

A. To claim a "DAZZLING WINNINGS" Scratch Ticket Game prize of \$10.00, \$20.00, \$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 \$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 "DAZZLING WINNINGS" Scratch Ticket Game prize of \$1,000, \$10,000, \$50,000 or \$250,000, 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 "DAZZLING WINNINGS" 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 "DAZZLING

WINNINGS" 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 "DAZZLING WINNINGS" 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 8,040,000 Scratch Tickets in Scratch Ticket Game No. 2494. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2494 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$10.00	964,800	8.33
\$20.00	482,400	16.67
\$30.00	281,400	28.57
\$50.00	281,400	28.57
\$100	73,700	109.09
\$200	19,430	413.79
\$500	2,814	2,857.14
\$1,000	402	20,000.00
\$10,000	12	670,000.00
\$50,000	6	1,340,000.00
\$250,000	4	2,010,000.00

*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 3.82. 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. 2494 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. 2494, 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-202301789
 Bob Biard
 General Counsel
 Texas Lottery Commission
 Filed: May 15, 2023



Scratch Ticket Game Number 2496 "POWER 10X"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2496 is "POWER 10X". The play style is "find symbol".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2496 shall be \$2.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2496.

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: BALL

SYMBOL, BAR SYMBOL, BELL SYMBOL, BOOT SYMBOL, CLOUDS SYMBOL, CROWN SYMBOL, DIAMOND SYMBOL, HEART SYMBOL, KEY SYMBOL, KITE SYMBOL, MOON SYMBOL, PLANE SYMBOL, RAINBOW SYMBOL, RING SYMBOL, SHADES SYMBOL, SHIRT SYMBOL, SPADE SYMBOL, STAR SYMBOL, SUN SYMBOL, UMBRELLA SYMBOL, BOLT SYMBOL, 10X SYMBOL, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00, \$100, \$1,000 and \$30,000.

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. 2496 - 1.2D

PLAY SYMBOL	CAPTION
BALL SYMBOL	BALL
BAR SYMBOL	BAR
BELL SYMBOL	BELL
BOOT SYMBOL	BOOT
CLOUDS SYMBOL	CLOUDS
CROWN SYMBOL	CROWN
DIAMOND SYMBOL	DIAMOND
HEART SYMBOL	HEART
KEY SYMBOL	KEY
KITE SYMBOL	KITE
MOON SYMBOL	MOON
PLANE SYMBOL	PLANE
RAINBOW SYMBOL	RAINBOW
RING SYMBOL	RING
SHADES SYMBOL	SHADES
SHIRT SYMBOL	SHIRT
SPADE SYMBOL	SPADE
STAR SYMBOL	STAR
SUN SYMBOL	SUN
UMBRELLA SYMBOL	UMBRELLA
BOLT SYMBOL	WIN\$
10X SYMBOL	WINX10
\$2.00	TWO\$
\$4.00	FOR\$
\$5.00	FIV\$
\$10.00	TEN\$
\$20.00	TWY\$

\$50.00	FFTY\$
\$100	ONHN
\$1,000	ONTH
\$30,000	30TH

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 (2496), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 125 within each Pack. The format will be: 2496-0000001-001.

H. Pack - A Pack of the "POWER 10X" Scratch Ticket Game contains 125 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). One Ticket will be folded over to expose a front and back of one Ticket on each Pack. Please note the Packs will be in an A, B, C and D configuration.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "POWER 10X" Scratch Ticket Game No. 2496.

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 "POWER 10X" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose twenty-four (24) Play Symbols. If a player reveals a "BOLT" Play Symbol, the player wins the PRIZE for that symbol. If the player reveals a "10X" Play Symbol, the player wins 10 TIMES the PRIZE for that symbol. POWER SPOTS: If the player reveals 2 matching prize amounts in the same POWER SPOT, the player wins that amount. 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;

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. GENERAL: A Ticket can win up to twelve (12) times in accordance with the approved 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: The top Prize Symbol will appear on every Ticket, unless restricted by other parameters, play action or prize structure.

D. FIND SYMBOL: The "BOLT" (WINS) Play Symbol may appear multiple times on intended winning Tickets, unless restricted by other parameters, play action or prize structure.

E. FIND SYMBOL: Non-winning Prize Symbols will never appear more than two (2) times.

F. FIND SYMBOL: The "BOLT" (WINS) Play Symbol will only appear on winning Tickets as dictated by the prize structure.

G. FIND SYMBOL: The "10X" (WINX10) Play Symbol will only appear on winning Tickets as dictated by the prize structure.

H. FIND SYMBOL: Non-winning Play Symbols will be different.

I. FIND SYMBOL: Non-winning Prize Symbol(s) will never be the same as the winning Prize Symbol(s).

J. POWER SPOT: Tickets winning in the POWER SPOT play areas will only appear as dictated by the prize structure.

K. POWER SPOT: Tickets that do not win in the POWER SPOT play areas will never have matching Prize Symbols in the same POWER SPOT play area.

L. POWER SPOT: A Ticket will not have matching non-winning Prize Symbols across the two (2) POWER SPOT play areas.

M. POWER SPOT: Non-winning Prize Symbols will not be the same as winning Prize Symbols across the two (2) POWER SPOT play areas.

2.3 Procedure for Claiming Prizes.

A. To claim a "POWER 10X" Scratch Ticket Game prize of \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00 or \$100, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate,

make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$50.00 or \$100 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "POWER 10X" Scratch Ticket Game prize of \$1,000 or \$30,000, 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 "POWER 10X" 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 "POWER 10X" 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 "POWER 10X" 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. 2496. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2496 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$2.00	624,000	9.62
\$4.00	432,000	13.89
\$5.00	120,000	50.00
\$10.00	96,000	62.50
\$20.00	72,000	83.33
\$50.00	27,750	216.22
\$100	2,750	2,181.82
\$1,000	20	300,000.00
\$30,000	5	1,200,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.37. 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. 2496 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. 2496, 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-202301809
Bob Biard
General Counsel
Texas Lottery Commission
Filed: May 16, 2023

◆ ◆ ◆
Texas Department of Transportation

Public Hearing Notice - Statewide Transportation Improvement Program

The Texas Department of Transportation (department) will hold a public hearing on Thursday, June 15, 2023, at 10:00 a.m. Central Standard Time (CST) to receive public comments on the May 2023 Quarterly Revisions to the Statewide Transportation Improvement Program (STIP) for FY 2023-2026. The hearing will be conducted via electronic means. Instructions for accessing the hearing will be published on the department's website at: <https://www.txdot.gov/inside-txdot/get-involved/about/hearings-meetings.html>

The STIP reflects the federally funded transportation projects in the FY 2023-2026 Transportation Improvement Programs (TIPs) for each Metropolitan Planning Organization (MPO) in the state. The STIP includes both state and federally funded projects for the nonattainment areas of Dallas-Fort Worth, El Paso, Houston and San Antonio. The STIP also contains information on federally funded projects in rural areas that are not included in any MPO area, and other statewide programs as listed.

Title 23, United States Code, §134 and §135 require each designated MPO and the state, respectively, to develop a TIP and STIP as a condition to securing federal funds for transportation projects under Title 23 or the Federal Transit Act (49 USC §5301, et seq.). Section 134 requires an MPO to develop its TIP in cooperation with the state and affected public transit operators and to provide an opportunity for interested parties to participate in the development of the program. Section

135 requires the state to develop a STIP for all areas of the state in cooperation with the designated MPOs and, with respect to non-metropolitan areas, in consultation with affected local officials, and further requires an opportunity for participation by interested parties as well as approval by the Governor or the Governor's designee.

A copy of the proposed May 2023 Quarterly Revisions to the FY 2023-2026 STIP will be available for review, at the time the notice of hearing is published, on the department's website at: <https://www.txdot.gov/inside-txdot/division/transportation-planning/stips.html>

Persons wishing to speak at the hearing may register in advance by notifying Lori Morel, Transportation Planning and Programming Division, at (512) 810-6663 no later than 12:00 p.m. CST on Wednesday, June 14, 2023. Speakers will be taken in the order registered and will be limited to three minutes. Speakers who do not register in advance will be taken at the end of the hearing. Any interested person may offer comments or testimony; however, questioning of witnesses will be reserved exclusively to the presiding authority as may be necessary to ensure a complete record. While any persons with pertinent comments or testimony will be granted an opportunity to present them during the course of the hearing, the presiding authority reserves the right to restrict testimony in terms of time or repetitive content. Groups, organizations, or associations should be represented by only one speaker. Speakers are requested to refrain from repeating previously presented testimony.

The public hearing will be conducted in English. Persons who have special communication or accommodation needs and who plan to participate in the hearing are encouraged to contact the Transportation Planning and Programming Division, at (512) 810-6663. Requests should be made at least three working days prior to the public hearing. Every reasonable effort will be made to accommodate the needs.

Interested parties who are unable to participate in the hearing may submit comments regarding the proposed May 2023 Quarterly Revisions to the FY 2023-2026 STIP to Humberto Gonzalez, P.E., Director of the Transportation Planning and Programming Division, P.O. Box 149217, Austin, Texas 78714-9217. In order to be considered, all written comments must be received at the Transportation Planning and Programming office by 4:00 p.m. CST on Monday, June 26, 2023.

TRD-202301725
Becky Blewett
Deputy General Counsel
Texas Department of Transportation
Filed: May 11, 2023

How to Use the Texas Register

Information Available: The sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Review of Agency Rules - notices of state agency rules review.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words “TexReg” and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 48 (2023) is cited as follows: 48 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written “48 TexReg 2 issue date,” while on the opposite page, page 3, in the lower right-hand corner, would be written “issue date 48 TexReg 3.”

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: <http://www.sos.state.tx.us>. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State’s website at <http://www.sos.state.tx.us/tac>.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
26. Health and Human Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to Update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule’s *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION Part 4. Office of the Secretary of State Chapter 91. Texas Register

1 TAC §91.1.....950 (P)

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