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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 June 13, 2023

Appointed as the Student Regent for the Texas Tech University System Board of Regents for a term to expire May 31, 2024, Steeley E. Smith of Lubbock, Texas (replacing Hani M. Annabi of El Paso whose term expired).

Greg Abbott, Governor

TRD-202302151



Proclamation 41-3978

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;

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.

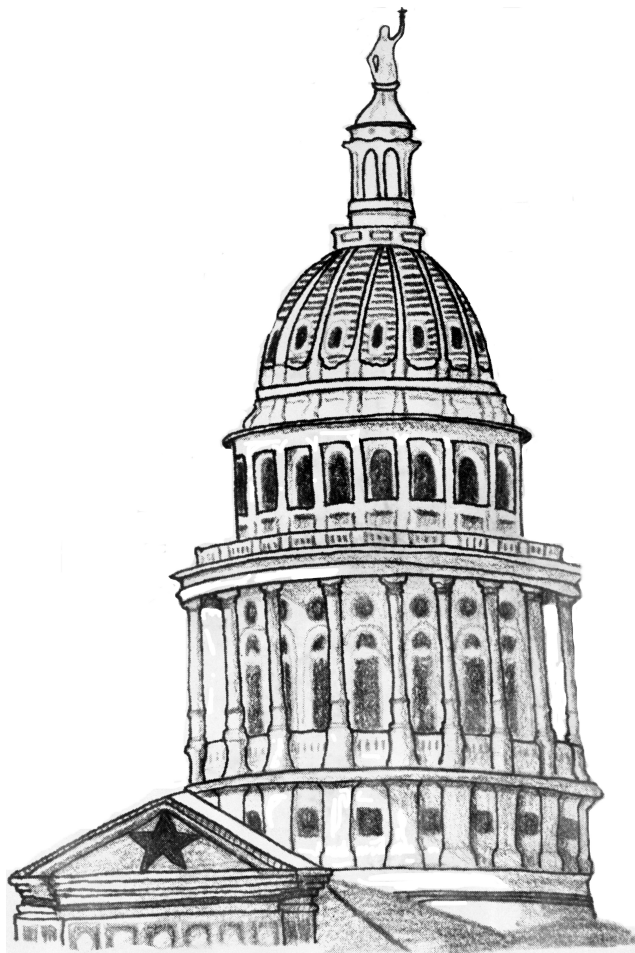
In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

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 11th day of June, 2023.

Greg Abbott, Governor

TRD-202302141





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-0511-KP

Requestor:

The Honorable Eddie Arredondo

Burnet County Attorney

220 South Pierce

Burnet, Texas 78611

Re: Whether a county commissioners court may cede authority to the county judge to hire a county commissioner's spouse for a position that reports directly to the county judge; and

related questions involving Government Code chapter 573 (RQ-0511-KP)

Briefs requested by July 6, 2023

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

TRD-202302149

Austin Kinghorn

General Counsel

Office of the Attorney General

Filed: June 13, 2023



Opinions

Opinion No. JS-0001

The Honorable Luis V. Saenz

Cameron County District Attorney

964 East Harrison Street, Fourth Floor

Brownsville, Texas 78520

Re: Authority of a county commissioners court to contract for the collection of forfeited commercial bail bonds under Code of Criminal Procedure article 103.0031(h) (RQ-0490-KP)

S U M M A R Y

Code of Criminal Procedure article 103.0031 generally permits a county or a municipality to enter into a third-party collection contract to recover money owed on certain items in criminal cases, including forfeited bonds. The reference to a nonexistent "section" in Code of Criminal Procedure article 103.0031(h), providing that "[t]his section does not apply to commercial bail bonds," is a scrivener's error that creates an absurdity, such that a court would likely construe its exception to refer to article 103.0031.

A court would likely conclude that attorney sureties execute "commercial bail bonds" to the extent they sell their bonding services for a fee or commission. As such, article 103.0031(h) would prohibit a commissioners court from entering into a third-party contract for collection services on forfeited attorney surety bail bonds. Instead, forfeited attorney surety bonds would be collected by district and county attorneys, clerks of district and county courts, sheriffs, constables, and justices of the peace pursuant to Code of Criminal Procedure article 103.003(a).

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

TRD-202302150

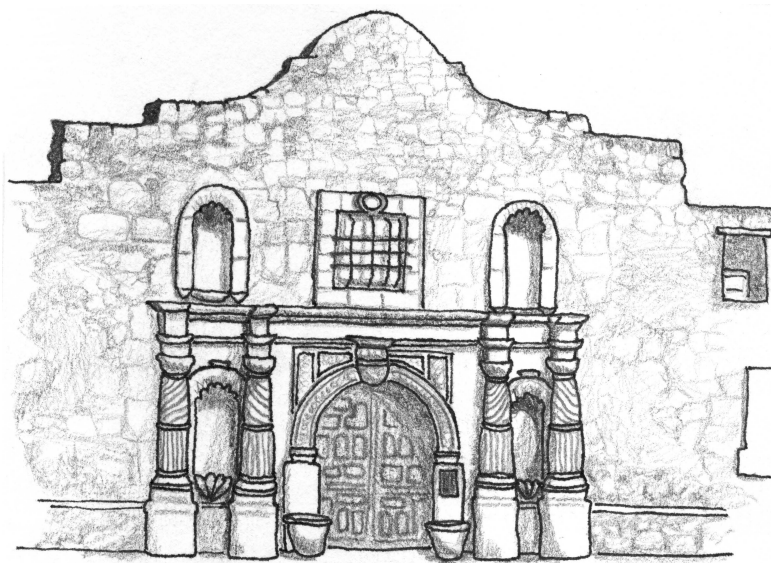
Austin Kinghorn

General Counsel

Office of the Attorney General

Filed: June 13, 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 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES

SUBCHAPTER J. PURCHASED HEALTH SERVICES

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §355.8061, concerning Outpatient Hospital Reimbursement, §355.8121, concerning Reimbursement, §355.8610, concerning Reimbursement for Clinical Laboratory Services, and §355.8660, concerning Renal Dialysis Reimbursement.

BACKGROUND AND PURPOSE

The purpose of the proposal is to implement the outpatient prospective payment system (OPPS) reimbursement as required by Texas Government Code §536.005, (enacted in the 82nd Texas Legislature, 1st Called Session, 2011) which requires that HHSC "convert outpatient hospital reimbursement systems to an appropriate prospective payment system." In addition, the 2014-15 General Appropriations Act, 83rd Legislature, Regular Session, 2013 (Article II, HHSC, Rider 38) stated that "in order to ensure that access to emergency and outpatient services remain in rural parts of Texas, it is the intent of the Legislature that when HHSC changes its outpatient reimbursement methodology to a 3M™ Enhanced Ambulatory Patient Groups or similar methodology, HHSC shall promulgate a separate or modified payment level for the above defined providers." HHSC has been unable to implement EAPGs in the current Medicaid Management Information System (MMIS) without significant technology costs. Now that the agency is moving to a modernized MMIS, EAPGs are being implemented on the same timeframe. The contracts related to the modernized MMIS anticipated the new system would become operational on September 1, 2023. However, the date may be amended to a later date if necessary for system readiness.

The OPPS that HHSC is proposing to implement is the EAPG grouper methodology. EAPGs are a visit-based classification system intended to reflect the type of resources utilized in outpatient encounters for patients with similar clinical characteristics. EAPGs are used in outpatient prospective payment systems for a variety of outpatient settings, including hospital emergency rooms, outpatient clinics and same day surgery. EAPGs are proprietary to 3M Health Information Systems and 3M initially developed Ambulatory Patient Groups prior to 2000. In 2007, 3M made significant changes to its earlier variant of the grouper to reflect current clinical practice including coding and billing prac-

tics and to describe a broader, non-Medicare population which resulted in what we now call EAPGs. EAPGs group procedures and medical visits that share similar clinical characteristics, resource utilization patterns and cost so that payment is based on the relative intensity of the entire visit. The EAPG grouping system is designed to recognize clinical and resource variations in severity, which results in higher payments for higher intensity services and lower payments for less intensive services. While each claim may receive multiple EAPGs, each procedure is assigned to only one EAPG.

HHSC is working through the evaluation of the potential impacts in payments to hospitals and other impacted providers and expects to share those impacts in May as the evaluation is completed. The rule amendments update the reimbursement methodology in each of the four rules to clarify the transition to EAPGs.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §355.8061(a) adds new paragraph (1) to define how outpatient hospitals will be reimbursed based on OPPS beginning on the date that the modernized MMIS becomes operational. It specifies that the OPPS used for payments will be EAPGs. New paragraph (2) is added to specify certain services that are excluded from the OPPS reimbursement as described in subsection (a)(1). Language from subsection (a) is used to create new paragraph (3) to specify that the paragraph applies to services provided prior to the date that the modernized MMIS becomes operational.

The proposed amendment to §355.8061(b) deletes two references for formatting purposes and deletes paragraph (1)(C) as it describes outdated legislation that was previously approved. Section 355.8061(b)(1)(D) is changed to (C) and the subparagraph is amended to provide clarification on exemption of emergency department (ED) services from OPPS reimbursement described in subsection (a) of this section. It also corrects references to paragraphs within the rule.

The proposed amendment to §355.8061(d) adds paragraph (1) to define how outpatient hospital imaging will be reimbursed based on OPPS beginning on the date that the modernized MMIS becomes operational. It specifies that the OPPS used for payments will be EAPGs. The paragraphs are renumbered and subsection (d)(2) is updated to specify that it applies to services provided prior to the date that the modernized MMIS becomes operational. Subsection (d)(3) is updated to specify that it applies to services provided prior to the date that the modernized MMIS becomes operational.

The proposed amendment to §355.8121 revises the name of the section from "Reimbursement" to "Reimbursement to Ambulatory Surgical Centers" and adds (a)(1) and (a)(2) to define how ambulatory surgical centers will be reimbursed based on OPPS

beginning on the date that the modernized MMIS becomes operational. It specifies that the OPPS used for payments will be EAPGs. The subsections are relabeled and new subsection (b) is updated to specify that it applies to services provided prior to the date that the modernized MMIS becomes operational.

The proposed amendment to §355.8610(a) removes the reference to services provided "by a hospital laboratory for its outpatients" and the language regarding HHSC or its designee reviewing maximum fees at least every two years from subsection (a). A slight modification is made to the name of the section by making "services" singular. Subsection (a) is reorganized for clarification and to align it with the subsequent subsection. New subsection (b)(1) defines how clinical diagnostic laboratory services will be reimbursed based on OPPS beginning on the date that the modernized MMIS becomes operational. It specifies that the OPPS used for payments will be EAPGs. New subsection (b)(2) specifies that it applies to services provided prior to the date that the modernized MMIS becomes operational, and fees for services during that time were established at a percentage of the Medicaid fee schedule.

The proposed amendment to §355.8660 adds new paragraph (a) to define how outpatient renal dialysis centers will be reimbursed based on OPPS beginning on the date that the modernized MMIS becomes operational. It specifies that the OPPS used for payments will be EAPGs.

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 not create a new rule;
- (6) the proposed rules will expand an existing rule;
- (7) the proposed rules will not change the number of individuals subject to the rule; and
- (8) the proposed rules will not affect the state's economy.

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

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

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

The rule is necessary to implement legislation that does not specifically state that Texas Government Code Section 2001.0045, pertaining to requirements for rules increasing the costs to regulated persons, applies to the rule.

PUBLIC BENEFIT AND COSTS

Victoria Grady, Director of Provider Finance, has determined that for each year of the first five years the rules are in effect, the public will benefit from the adoption of the rules due to the avoidance of recoupments that might otherwise occur, improved alignment of payments with their intended purpose, and increased transparency with the new details included in the rules.

Trey Wood has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because the rules do not impose any additional fees or costs on those who are required to comply.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC HEARING

A public hearing to receive comments on the proposal will be held by HHSC through a webinar. The meeting date and time will be posted on the HHSC Communications and Events Website at <https://hhs.texas.gov/about-hhs/communications-events> and the HHSC Provider Finance Hospitals website at <https://pfd.hhs.texas.gov/hospitals-clinic/hospital-services/disproportionate-share-hospitals>.

Please contact the Provider Finance Department Hospital Finance section at pfd_hospitals@hhsc.state.tx.us if you have questions.

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Christina Nip in the HHSC Provider Finance for Hospitals department at pfd_hospitals@hhsc.state.tx.us.

Written comments on the proposal may be submitted to the HHSC Provider Finance Department, Mail Code H-400, P.O. Box 149030, Austin Texas 78714-9030, or by email to pfd_hospitals@hhsc.state.tx.us.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) 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 23R026" in the subject line.

DIVISION 4. MEDICAID HOSPITAL SERVICES

1 TAC §355.8061

STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out HHSC's duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; Texas Government Code §531.021(b-1), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Texas Human Resources Code Chapter 32.

The amendment affects Texas Government Code §531.0055, Chapter 531, and Texas Human Resources Code Chapter 32.

§355.8061. Outpatient Hospital Reimbursement.

(a) Introduction. The Texas Health and Human Services Commission (HHSC), or its designee reimburses outpatient hospital services under the reimbursement methodology described in this section.

(1) For services provided on and after the date that the modernized Medicaid Management Information System (MMIS) becomes operational, HHSC, or its designee, will reimburse all hospital providers based on an outpatient prospective payment system (OPPS). This includes all hospitals as defined in §355.8052 of this division (relating to Inpatient Hospital Reimbursement), including rural, urban, and Children's. The OPPS used for reimbursement is the 3M™ Enhanced Ambulatory Patient Groups (EAPG) calculator. EAPGs are a visit-based classification system intended to reflect the type of resources utilized in outpatient encounters for patients with similar clinical characteristics.

(2) The following are exceptions to the OPPS reimbursement methodology.

(A) Reimbursement for Long-Acting Reversible Contraceptive devices.

(B) Human Breast Milk Processing, Storage and Distribution.

(C) Certain Drugs Paid to Managed Care Organizations on a Non-Risk Basis, as determined by HHSC.

(D) Cochlear implant devices and certain high cost nerve stimulators.

(E) Non-Emergent emergency room services as described in subsection (b)(1)(C) of this section.

(F) State owned teaching hospitals outpatient reimbursement is based on cost principals as described in subsection (b) of this section.

(3) For services prior to the date that the modernized MMIS becomes operational, reimbursement is outlined below in subsection (b) of this section except [Except] as described in subsections (c) and (d) of this section, HHSC will reimburse for outpatient hospital services based on a percentage of allowable charges and an outpatient interim rate.

(b) Interim reimbursement.

(1) HHSC will determine a percentage of allowable charges, which are charges for covered Medicaid services determined through claims adjudication.

(A) For high volume providers that received Medicaid outpatient payments equaling at least \$200,000 during calendar year 2004.

(i) For children's hospitals and state-owned hospitals as defined in §355.8052 of this division [~~(relating to Inpatient Hospital Reimbursement)~~], the percentage of allowable charges is 76.03 percent, except as described in subparagraph (C) of this paragraph.

(ii) For rural hospitals as defined in §355.8052 of this division, the percentage of allowable charges is 100 percent.

(iii) For all other providers, the percentage of allowable charges is 72.00 percent.

(B) For all providers not considered high volume providers as determined in paragraph (1)(A) of this subsection.

(i) For children's hospitals and state-owned hospitals as defined in §355.8052 of this division, the percentage of allowable charges is 72.27 percent[; except as described in subparagraph (C) of this paragraph].

(ii) For rural hospitals as defined in §355.8052 of this division, the percentage of allowable charges is 100 percent.

(iii) For all other providers, the percentage of allowable charges is 68.44 percent.

~~[(C) For children's hospitals:]~~

~~[(i) The percentage of allowable charges described in subparagraphs (A)(i) and (B)(i) of this paragraph are subject to the prior written approval of the Legislative Budget Board and the Governor, as required by the 2014-2015 General Appropriations Act (Article II, Health and Human Services Comm., S.B. 1, 83rd Leg., Regular Session, 2013, Rider 83 and Special Provisions Relating to All Health and Human Services Agencies, Section 44, Rate Limitations and Reporting Requirements).]~~

~~[(ii) If the percentages of allowable charges described in subparagraphs (A)(i) and (B)(i) of this paragraph are not approved as described in clause (i) of this subparagraph, the percentages of allowable charges described in subparagraphs (A)(iii) and (B)(iii) of this paragraph apply.]~~

~~(C) [(D)]~~ For outpatient emergency department (ED) services that do not qualify as emergency visits are exempt from the OPPS reimbursement described in subsection (a)(1) of this section. For these services, which are listed in the Texas Medicaid Provider Procedures Manual and other updates on the claims administrator's website, HHSC will reimburse:

(i) rural hospitals, as defined in §355.8052 of this division, an amount not to exceed 65 percent of allowable charges after application of the methodology in paragraph (1)(A) and (1)(B) [~~(2)(C)~~] of this subsection, which will result in a payment that does not exceed 65 percent of allowable cost; and

(ii) all other hospitals, a flat fee set at a percentage of the Medicaid acute care physician office visit amount for adults.

(2) HHSC will determine an outpatient interim rate for each non-rural hospital, which is the ratio of Medicaid allowable outpatient costs to Medicaid allowable outpatient charges derived from the hospital's Medicaid cost report.

(A) For a non-rural hospital with at least one tentative cost report settlement completed prior to September 1, 2013, the interim rate is the rate in effect on August 31, 2013, except the hospital will be assigned the interim rate calculated upon completion of any future cost report settlement if that interim rate is lower.

(B) For a non-rural new hospital that does not have at least one tentative cost report settlement completed prior to September

1, 2013, the default interim rate is 50 percent until the interim rate is adjusted as follows. [F]

(i) If the non-rural hospital files a short-period cost report for its first cost report, the hospital will be assigned the interim rate calculated upon completion of the hospital's first tentative cost report settlement.

(ii) The hospital will be assigned the interim rate calculated upon completion of the hospital's first full-year tentative cost report settlement.

(iii) The hospital will retain the interim rate calculated as described in clause (ii) of this subparagraph, except it will be assigned the interim rate calculated upon completion of any future cost report settlement if that interim rate is lower.

(C) Interim claim reimbursement for non-rural hospitals is determined by multiplying the amount of a hospital's outpatient allowable charges after applying any reductions to allowable charges made under paragraph (1) of this subsection by the outpatient interim rate in effect on the date of service.

(D) [Cost settlement.] Interim claim reimbursement determined in subparagraph (C) of this paragraph will be cost-settled at both tentative and final audit of a non-rural hospital's cost report. The calculation of allowable costs will be determined based on the amount of allowable charges after applying any reductions to allowable charges made under paragraph (1) of this subsection.

(i) Interim payments for claims with a date of service prior to September 1, 2013, will be cost settled.

(ii) Interim payments for claims with a date of service on or after September 1, 2013, will be included in the cost report interim rate calculation, but will not be adjusted due to cost settlement unless the settlement calculation indicates an overpayment.

(iii) HHSC will calculate an interim rate at tentative and final cost settlement for the purposes described in subparagraph (B) of this paragraph.

(iv) If a hospital's interim claim reimbursement for all outpatient services, excluding imaging, clinical lab and outpatient emergency department services that do not qualify as emergency visits, for the hospital's fiscal year exceeded the allowable costs for those services, HHSC will recoup the amount paid to the hospital in excess of allowable costs.

(v) If a hospital's interim claim reimbursement for all outpatient services, excluding imaging, clinical lab and outpatient emergency department services that do not qualify as emergency visits, for the hospital's fiscal year was less than the allowable costs for those services, HHSC will not make additional payments through cost settlement to the hospital for service dates on or after September 1, 2013.

(3) HHSC will determine an outpatient interim rate for each rural hospital, which is the ratio of Medicaid allowable outpatient costs to Medicaid allowable outpatient charges derived from the hospital's Medicaid cost report.

(A) For a rural hospital with at least one tentative cost report settlement completed prior to September 1, 2021, the interim rate effective on September 1, 2021, is the rate calculated in the latest initial cost report with an additional percentage increase, not to exceed an interim rate of 100 percent. After September 1, 2021, a rural hospital will be assigned the interim rate calculated upon completion of each initial or amended initial cost report, with an additional percentage increase, not to exceed an interim rate of 100 percent.

(B) For a new rural hospital that does not have at least one initial cost report completed prior to September 1, 2021, the default interim rate is 50 percent until the interim rate is adjusted as follows.

(i) If the rural hospital files a short-period cost report for their first cost report, the hospital will continue to receive the default rate until completion of the first full-year initial cost report.

(ii) The rural hospital will be assigned the interim rate calculated upon completion of a review of the hospital's first full-year initial or amended initial cost report, with an additional percentage increase, not to exceed an interim rate of 100 percent.

(C) Interim claim reimbursement for a rural hospital is determined by multiplying the amount of a hospital's outpatient allowable charges after applying any reductions to allowable charges made under paragraph (1) of this subsection by the outpatient interim rate in effect on the date of service as described in subparagraph (A) of this paragraph.

(D) Interim claim reimbursement determined in subparagraph (C) of this paragraph will not be cost-settled for services rendered on or after September 1, 2021.

(c) Outpatient hospital surgery. Outpatient hospital non-emergency surgery is reimbursed in accordance with the methodology for ambulatory surgical centers as described in §355.8121 of this subchapter (relating to Reimbursement).

(d) Outpatient hospital imaging.

(1) For services provided on and after the date that the modernized MMIS becomes operational, all hospitals will be reimbursed based on an outpatient prospective payment system (OPPS). The OPPS used for reimbursement is the 3M™ Enhanced Ambulatory Patient Groups (EAPG) calculator.

(2) [(+)] For services prior to the date that the modernized MMIS becomes operational, for [Før] all hospitals except rural hospitals, as defined in §355.8052 of this division, outpatient hospital imaging services are not reimbursed under the outpatient reimbursement methodology described in subsection (b) of this section. Outpatient hospital imaging services are reimbursed according to an outpatient hospital imaging service fee schedule that is based on a percentage of the Medicare Outpatient Prospective Payment System fee schedule for similar services. If a resulting fee for a service provided to any Medicaid beneficiary is greater than 125 percent of the Medicaid adult acute care fee for a similar service, the fee is reduced to 125 percent of the Medicaid adult acute care fee.

(3) [(2)] For services prior to the date that the modernized MMIS becomes operational, for [Før] rural hospitals, outpatient hospital imaging services are reimbursed based on a percentage of the Medicare Outpatient Prospective Payment System fee schedule for similar services.

(e) Minimum Fee Schedule. Effective September 1, 2020, Managed Care Organizations are required to reimburse rural hospitals based on a minimum fee schedule. The minimum fee schedules are the rates specific to rural hospitals, as described in subsections (b) - (d) of this section.

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

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DIVISION 7. AMBULATORY SURGICAL CENTERS

1 TAC §355.8121

STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out HHSC's duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; Texas Government Code §531.021(b-1), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Texas Human Resources Code Chapter 32.

The amendment affects Texas Government Code §531.0055, Chapter 531, and Texas Human Resources Code Chapter 32.

§355.8121. Reimbursement to Ambulatory Surgical Centers.

(a) For dates of service on and after the date that the modernized Medicaid Management Information System (MMIS) becomes operational, providers will be reimbursed based on an outpatient prospective payment system (OPPS).

(1) The OPSS utilized is 3M™ Enhanced Ambulatory Patient Groups (EAPG) calculator.

(2) EAPGs are a visit-based classification system intended to reflect the type of resources utilized in outpatient encounters for patients with similar clinical characteristics.

(b) ~~[(a)]~~ For services provided prior to the date that the modernized MMIS becomes operational, subject [Subject] to the specifications, conditions, and limitations established by the Texas Health and Human Services Commission [the department], payment for ambulatory surgical center facility services is made based on Medicare rules and prospectively determined rates, unless otherwise specified by the department.

(c) Payment for services provided in or by an ambulatory surgical center, other than ambulatory surgical center facility services, is made under other provisions of the state plan, as appropriate to the service and the provider performing the service.

(d) ~~[(b)]~~ Physicians must bill the Medicaid Program separately for services they provide in an ambulatory surgical center.

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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DIVISION 32. CLINICAL LABORATORY SERVICES

1 TAC §355.8610

STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out HHSC's duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; Texas Government Code §531.021(b-1), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Texas Human Resources Code Chapter 32.

The amendment affects Texas Government Code §531.0055, Chapter 531, and Texas Human Resources Code Chapter 32.

§355.8610. Reimbursement for Clinical Laboratory Service [Services].

(a) Clinical diagnostic laboratory tests performed in a practitioner's office or[;] by an independent laboratory, [or by a hospital laboratory for its outpatients] shall be reimbursed as follows.

(1) The [the] lower of the provider's usual customary charge for that service or a maximum fee determined by the Texas Health and Human Services Commission (HHSC), or its designee. [HHSC or its designee will review maximum fees at least every two years, with any adjustments made within available funding.]

(2) Fees for services provided will be established at a percentage of the Medicare fee schedule.

(b) Clinical diagnostic laboratory tests performed by a hospital laboratory for outpatient services shall be reimbursed as follows.

(1) For services provided on and after the date that the modernized Medicaid Management Information System (MMIS) becomes operational, providers will be reimbursed based on an outpatient prospective payment system (OPPS). The OPSS used for reimbursement is the 3M™ Enhanced Ambulatory Patient Groups (EAPG) calculator. EAPGs are a visit-based classification system intended to reflect the type of resources utilized in outpatient encounters for patients with similar clinical characteristics.

(2) For services provided prior to the date that the modernized MMIS becomes operational, the lower of the provider's usual customary charge for that service or a maximum fee determined by HHSC, or its designee. Fees for services provided will be established at a percentage of the Medicare fee schedule.

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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DIVISION 35. RENAL DIALYSIS SERVICES

1 TAC §355.8660

STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out HHSC's duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; Texas Government Code §531.021(b-1), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Texas Human Resources Code Chapter 32.

The amendment affects Texas Government Code §531.0055, Chapter 531, and Texas Human Resources Code Chapter 32.

§355.8660. *Renal Dialysis Reimbursement.*

(a) For services provided on or after the date that the modernized Medicaid Management Information System (MMIS) becomes operational, the reimbursement methodology for in-facility renal dialysis treatment services and home renal dialysis treatment services is an outpatient prospective payment system (OPPS). The OPPS used for reimbursement is the 3M™ Enhanced Ambulatory Patient Grouping (EAPG) payment methodology. EAPGs are a visit-based classification system intended to reflect the type of resources utilized in outpatient encounters for patients with similar clinical characteristics.

(b) [(a)] For services prior to the date that the modernized MMIS becomes operational, payment [Payment] for in-facility renal dialysis treatment services and home renal dialysis treatment services is based upon the composite rate reimbursement methodology previously used by Medicare. The composite rates reflect all changes enacted by the Balanced Budget Refinement Act of 1999 (BBRA). Rates are based on available funds[,] and are subject to legislative appropriations.

(c) [(b)] All required items and services included under the composite rate must be made available by the facility, either directly or under arrangements, for each dialysis patient. If the facility fails to make available (either directly or under arrangements) any item or service listed in this subsection, or any part of an item or service listed in this subsection, then the facility cannot be reimbursed any amount for items and services that the facility provides. Required items and services include:

- (1) medically necessary dialysis equipment and dialysis support equipment;
- (2) home dialysis support services including the delivery, installation, maintenance, repair, and testing of home dialysis equipment, and home support equipment;
- (3) purchase and delivery of all necessary dialysis supplies, except blood which is separately reimbursable under this chapter;
- (4) routine end-stage renal dialysis (ESRD) related laboratory tests; and

- (5) all dialysis services furnished by the facility's staff.

(d) [(e)] The following items and services also are included in the composite rate and may not be billed separately when provided by a dialysis facility:

- (1) cardiac monitoring;
- (2) catheter changes;
- (3) crash cart usage for cardiac arrest;
- (4) declotting of shunts by facility staff and any supplies used to declot shunts;
- (5) dialysate used during treatment;
- (6) oxygen and administration of oxygen;
- (7) staff time used to administer blood, inject separately billable drugs, blood collection, and nonroutine peritoneal items;
- (8) suture removal and dressing changes; and
- (9) other items and services related to dialysis treatment, as determined by HHSC.

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

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

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

19 TAC §103.1209, §103.1211

The Texas Education Agency (TEA) proposes amendments to §103.1209 and §103.1211, concerning mandatory school drills and active threat exercises. The proposed amendments would reorganize definitions and provide clarifications in §103.1209 and add requirements for certain active threat exercises in §103.1211.

BACKGROUND INFORMATION AND JUSTIFICATION: Section 103.1209 requires that school districts and open-enrollment charter schools conduct emergency safety drills in accordance with Texas Education Code, §37.114.

The proposed amendment to §103.1209(b) would reorganize the definitions to distinguish between general terms, terms defining levels of exercises, and terms defining types of drills. The changes would ensure distinction between events that include persons role playing as active aggressors and circumstances designed to train for, assess, practice, and improve incident mitigation, prevention, preparedness, response, and recovery in

a risk-free environment. Subsections (c)(4) and (5) and (d)(4) would be amended to clarify existing language.

Section 103.1211 defines the requirements a school district must meet if it elects to conduct active threat exercises.

The proposed amendment to §103.1211 would add new subsection (c) to delineate between discussion-based tabletop exercises and operations-based, functional, or full-scale exercises. Additionally, subsection (c)(2) would clarify that the notice requirements currently in rule apply to an operations-based, a functional, or a full-scale exercise.

Section 103.1211(c)(4)(A) would be amended to require that input from law enforcement personnel be solicited in the design of an operations-based, a functional, or a full-scale exercise.

New §103.1211(c)(5) would be added to ensure that operations-based, functional, or full-scale exercises are conducted during non-instructional time when non-participants are not present in a district facility. Further, subsection (c)(5)(A)-(C) would outline requirements for participants. More specifically, although student participation would be discouraged, age requirements would be detailed for students who receive an educational benefit by participating in an exercise, and all participants would be required to opt in rather than opt out of an exercise. In addition, subsection (c)(5)(D) would ensure that any exercise conducted is overseen by first responders or emergency management personnel.

New §103.1211(c)(6) would be added to ensure local education agencies conduct an after-action review of the exercise to determine the extent to which it achieved key planning objectives.

FISCAL IMPACT: Brooks Straub, deputy chief of staff for the office of school safety and security, has determined that for the first five-year period the proposal is in effect, there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

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

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

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

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

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would expand an existing regulation by adding requirements in §103.1211 for local education agencies to solicit input from law enforcement personnel about the design of an operations-based, a functional, or a full-scale exercise; requiring that exercises be conducted during non-instructional time and providing additional requirements for participants; and adding requirements for an after-action review.

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

PUBLIC BENEFIT AND COST TO PERSONS: Mr. Straub has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be to provide school districts with added clarification related to the level of exercises and drills conducted to enhance the safety and security of the overall campus community and delineate between discussion-based tabletop exercises and operations-based, functional, or full-scale exercises. Additionally, the proposal would provide guidance to conduct an exercise that ensures the physical and psychological safety of participants while simultaneously achieving key planning objectives. There is no anticipated economic cost to persons who are required to comply with the proposal.

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

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

PUBLIC COMMENTS: The public comment period on the proposal begins June 23, 2023, and ends July 24, 2023. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on June 23, 2023. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_\(TAC\)/Proposed_Commissioner_of_Education_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/).

STATUTORY AUTHORITY. The amendments are proposed under Texas Education Code (TEC), §37.114, which requires the commissioner of education to provide best practices for conducting emergency drills and exercises and to designate the number and type of mandatory school drills to be conducted each semester of the school year; and TEC, §37.1141, which provides guidelines before a school district may conduct an active threat exercise.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code, §37.114 and §37.1141.

§103.1209. Mandatory School Drills.

(a) Requirement. Each school district and open-enrollment charter school shall conduct emergency safety drills in accordance with Texas Education Code (TEC), §37.114. Drills do not include persons role playing as active aggressors or other simulated threats.

(b) Definitions and related terms. The following words and terms related to drills and exercises, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise. These definitions do not apply to an active threat exercise, which is defined in TEC, §37.1141, and associated rules, if any.

(1) General terms. [Active aggressor--An individual actively engaged in killing or attempting to kill people in a confined and populated area.]

(A) Active aggressor--An individual actively engaged in killing or attempting to kill people in a confined and populated area.

(B) Drill--A set of procedures that test a single, specific operation or function. Drills do not include persons role playing as active aggressors or other simulated threats. Drill examples include evacuating for a fire or locking down from an internal threat.

(C) Exercise--An instrument to train for, assess, practice, and improve performance in mitigation, prevention, preparedness, response, and recovery in a risk-free environment. While drills and exercises may overlap in some aspects, discussion-based and operation-based exercises are often more in depth and multi-faceted.

(2) Terms defining the level of exercise.

(A) Full-scale exercise--Typically the most complex and resource-intensive type of exercise. It involves multiple agencies, organizations, and jurisdictions and validates many facets of preparedness. This exercise often includes many players operating under cooperative systems such as the Incident Command System (ICS) or Unified Command. Resources and staff are mobilized as needed. All actions are taken as if the emergency is real. A full-scale exercise is the most time-consuming activity in the exercise continuum and is a multi-agency, multi-jurisdictional effort in which all resources are deployed. A full-scale exercise tests collaborations among the agencies and participants, public information systems, communication systems, and equipment. An Emergency Operations Center is established by either law enforcement or fire services, and the ICS is activated. Because of all the logistics and resources needed for a full-scale exercise, it often takes a year to plan and is not held often. Usually, a school district is not the organizer of such an exercise, but the district or school would play a critical role in both function and potential facility use.

(B) Functional exercise--Designed to validate and evaluate capabilities, multiple functions and/or sub-functions, or interdependent groups of functions. A functional exercise is typically focused on exercising plans, policies, procedures, and staff members involved in management, direction, command, and control functions. It allows participants to practice their specific roles or functions in an emergency. This type of exercise is conducted in a realistic, real-time simulated environment and often includes simulators (individuals who assist with the facilitation of the exercise) and follows a master scenario events list that dictates additional information, occurrences, or activities that affect the exercise scenario.

(C) Seminar exercise--A discussion-based exercise designed to orient participants to new or updated plans, policies, or procedures through informal discussions. Seminar exercises are often used to impart new information and formulate new ideas.

(D) Tabletop exercise--A small group discussion that walks through a scenario and the courses of action a school will need to take before, during, and after an emergency to lessen the impact on the school community. Participants problem-solve together through a detailed discussion of roles, responsibilities, and anticipated courses of action. A tabletop exercise leverages a defined scenario to direct discussion and may need an experienced facilitator depending on the complexity and objectives of the exercise.

(E) Workshop exercise--A type of discussion-based exercise focused on increased participant interaction and achieving or building a product (e.g., plans or policies). A workshop exercise is typically used to test new ideas, processes, or procedures; train groups in coordinated activities; and obtain consensus. A workshop exercise

often uses breakout sessions to explore parts of an issue with smaller groups.

[(2) Drill--A set of procedures that test a single, specific operation or function. Drills do not include persons role playing as active aggressors or other simulated threats. Drill examples include evacuating for a fire or locking down from an internal threat.]

(3) Terms defining the type of drill.

(A) Evacuation drill--A response action schools take to quickly move students and staff from one place to another. The primary objective of an evacuation is to ensure that all staff, students, and visitors can quickly move away from the threat. Evacuation examples include a bomb threat or internal gas leak.

(B) Fire evacuation drill--A method of practicing how a building would be vacated in the event of a fire. The purpose of fire drills in buildings is to ensure that everyone knows how to exit safely as quickly as possible.

(C) Lockdown drill--A response action schools take to secure (close, latch, and lock) interior portions of school buildings and grounds during incidents that pose an immediate threat of violence inside the school. The primary objective is to quickly ensure all school students, staff, and visitors are secured away from immediate danger.

(D) Secure drill--A response action schools take to secure (close, latch, and lock) the perimeter of school buildings and grounds during incidents that pose a threat or hazard outside of the school building. This type of drill uses the security of the physical facility to act as protection to deny entry.

(E) Shelter-in-place for hazardous materials (hazmat) drill--A response action schools take to quickly move students, staff, and visitors indoors, perhaps for an extended period of time, because it is safer inside the building than outside. Affected individuals may be required to move to rooms without windows or to rooms that can be sealed. Examples of a shelter-in-place for hazmat drill include train derailment with chemical release or smoke from a nearby fire.

(F) Shelter for severe weather drill--A response action schools take to quickly move students, staff, and visitors indoors, perhaps for an extended period of time, because it is safer inside the building than outside. For severe weather, depending on the type and/or threat level (watch versus warning), affected individuals may be required to move to rooms without windows on the lowest floor possible or to a weather shelter.

[(3) Evacuation drill--A response action schools take to quickly move students and staff from one place to another. The primary objective of an evacuation is to ensure that all staff, students, and visitors can quickly move away from the threat. Evacuation examples include a bomb threat or internal gas leak.]

[(4) Exercise--An instrument to train for, assess, practice, and improve performance in mitigation, prevention, preparedness, response, and recovery in a risk-free environment. While drills and exercises may overlap in some aspects, discussion-based and operation-based exercises are often more in depth and multi-faceted.]

[(5) Fire evacuation drill--A method of practicing how a building would be vacated in the event of a fire. The purpose of fire drills in buildings is to ensure that everyone knows how to exit safely as quickly as possible.]

[(6) Full-scale exercise--Typically the most complex and resource-intensive type of exercise. It involves multiple agencies, organizations, and jurisdictions and validates many facets of preparedness. This exercise often includes many players operating under coop-

erative systems such as the Incident Command System (ICS) or Unified Command. Resources and staff are mobilized as needed. All actions are taken as if the emergency is real. A full-scale exercise is the most time-consuming activity in the exercise continuum and is a multiagency, multijurisdictional effort in which all resources are deployed. A full-scale exercise tests collaborations among the agencies and participants, public information systems, communication systems, and equipment. An Emergency Operations Center is established by either law enforcement or fire services, and the ICS is activated. Because of all the logistics and resources needed for a full-scale exercise, it often takes a year to plan and is not held often. Usually, a school district is not the organizer of such an exercise, but the district or school would play a critical role in both function and potential facility use.]

[(7) Functional exercise--Designed to validate and evaluate capabilities, multiple functions and/or sub-functions, or interdependent groups of functions. A functional exercise is typically focused on exercising plans, policies, procedures, and staff members involved in management, direction, command, and control functions. It allows participants to practice their specific roles or functions in an emergency. This type of exercise is conducted in a realistic, real-time simulated environment and often includes simulators (individuals who assist with the facilitation of the exercise) and follows a master scenario events list that dictates additional information, occurrences, or activities that affect the exercise scenario.]

[(8) Lockdown drill--A response action schools take to secure interior portions of school buildings and grounds during incidents that pose an immediate threat of violence inside the school. The primary objective is to quickly ensure all school students, staff, and visitors are secured away from immediate danger.]

[(9) Secure drill--A response action schools take to secure the perimeter of school buildings and grounds during incidents that pose a threat or hazard outside of the school building. This type of drill uses the security of the physical facility to act as protection to deny entry.]

[(10) Seminar exercise--A discussion-based exercise designed to orient participants to new or updated plans, policies, or procedures through informal discussions. Seminar exercises are often used to impart new information and formulate new ideas.]

[(11) Shelter-in-place for hazardous materials (hazmat) drill--A response action schools take to quickly move students, staff, and visitors indoors, perhaps for an extended period of time, because it is safer inside the building than outside. Affected individuals may be required to move to rooms without windows or to rooms that can be sealed. Examples of a shelter-in-place for hazmat drill include train derailment with chemical release or smoke from a nearby fire.]

[(12) Shelter for severe weather drill--A response action schools take to quickly move students, staff, and visitors indoors, perhaps for an extended period of time, because it is safer inside the building than outside. For severe weather, depending on the type and/or threat level (watch versus warning), affected individuals may be required to move to rooms without windows on the lowest floor possible or to a weather shelter.]

[(13) Tabletop exercise--A small group discussion that walks through a scenario and the courses of action a school will need to take before, during, and after an emergency to lessen the impact on the school community. Participants problem-solve together through a detailed discussion of roles, responsibilities, and anticipated courses of action. A tabletop exercise leverages a defined scenario to direct discussion and may need an experienced facilitator depending on the complexity and objectives of the exercise.]

[(14) Workshop exercise--A type of discussion-based exercise focused on increased participant interaction and achieving or building a product (e.g., plans or policies). A workshop exercise is typically used to test new ideas, processes, or procedures; train groups in coordinated activities; and obtain consensus. A workshop exercise often uses breakout sessions to explore parts of an issue with smaller groups.]

(c) Frequency. TEC, §37.114(2), requires the commissioner of education to designate the number of mandatory school drills to be conducted each semester of the school year, not to exceed eight drills each semester and sixteen drills for the entire school year. Neither this rule, nor the law, precludes a school district or an open-enrollment charter school from conducting more drills as deemed necessary and appropriate by the district or charter school. Following is the required minimum frequency of drills by type.

- (1) Secure drill--One per school year.
- (2) Lockdown drill--Two per school year (once per semester).
- (3) Evacuation drill--One per school year.
- (4) Shelter-in-place [for hazmat] drill (for either severe weather or hazmat)--One per school year.

[(5) Shelter for severe weather drill--One per school year.]

(5) [(6)] Fire evacuation drill--School districts and open-enrollment charter schools should consult with the local authority having jurisdiction (e.g., fire marshal) and comply with its requirements and recommendations [their local fire marshal and comply with their local fire marshal's requirements and recommendations]. If a district does not have a local authority [fire marshal], it shall conduct four per school year (two per semester).

(d) Best practices for conducting drills and exercises. This subsection highlights best practices for conducting drills and exercises. For more information about best practices, refer to Texas School Safety Center guidance.

(1) Drills and exercises should be designed and conducted in accordance with guidance and best practice resources provided by the Texas School Safety Center.

(2) Drill and exercise design should include purpose, goals, and objectives that are stated in plans for each type of drill. Purpose, goals, and objectives should be developed with input from all sectors of the school community. Input in planning should be sought from multiple stakeholder perspectives for each type of drill and exercise, including from:

- (A) the district School Safety and Security Committee;
- (B) first responders;
- (C) mental and behavioral health professionals;
- (D) students and families; and
- (E) staff, including non-traditional teachers, coaches, trade instructors, custodians, and food service workers.

(3) Drill and exercise design elements should include:

- (A) physical and psychological safety for all participants;
- (B) planning in a trauma-informed manner to maximize learning and to minimize potential trauma for students and staff;
- (C) providing advance notification of drills and exercises;

(D) planning for post-drill or after-action reviews of each drill and exercise; and

(E) ensuring drills and exercises are age and developmentally appropriate with the understanding that more complex drills and exercises will require a hierarchy of learning to achieve or obtain more advanced goals or objectives.

(4) Exercises are [tend to be] more complex than drills [and should be conducted in accordance with guidance and resources provided by the Texas School Safety Center. It is imperative that districts conduct exercises that match their experience and capabilities]. It is recommended that school systems [usually best to] start with discussion-based exercises and work up to operation-based exercises [over time]. Discussion-based exercises include seminar exercises, tabletop exercises, and workshop exercises. Operation-based exercises include functional exercises and full-scale exercises. Exercises can be used for:

(A) testing and validating policies, plans, procedures, training, equipment, and interagency agreements;

(B) clarifying and training personnel in roles and responsibilities;

(C) improving interagency coordination and communications;

(D) identifying gaps in resources;

(E) improving individual performance; and

(F) identifying opportunities for improvement.

§103.1211. *Active Threat Exercises.*

(a) An [Each local educational agency (LEA), which includes school districts and open-enrollment charter schools, that elects to conduct an] active threat exercise is [.] defined as any exercise that includes a simulated active aggressor or an active shooter simulation[. shall do so in accordance with Texas Education Code (TEC), §37.1141, and this section].

[(1) LEAs are not required to conduct active threat exercises.]

[(2) LEAs may consider using a tabletop exercise as defined in §103.1209 of this title (relating to Mandatory School Drills) to achieve the purpose, goals, and objectives of the exercise rather than using a functional or full-scale active threat exercise.]

[(3) LEAs may consider conducting an active threat exercise during a non-instructional time when nonparticipants are not present in the facility.]

[(b) Prior to conducting an active threat exercise, an LEA must:]

[(1) provide adequate notice of the exercise directly to individuals participating in the exercise, parents of students participating in the exercise, and all other individuals impacted by the exercise. Adequate notice of the active threat exercise shall also be posted through multiple distribution networks, including, but not limited to, the LEA's website and social media platforms.]

[(A) To be considered adequate notice, notice shall be provided and posted at least two weeks prior to the exercise.]

[(B) The notice shall include the following required elements specified in TEC, §37.1141(a)(1):]

[(i) [the date on which the exercise will occur;]

[(ii) the content, form, and tone of the exercise; and]

[(iii) whether the exercise will include a live simulation that mimics or appears to be an actual shooting incident;]

[(C) The notice shall be provided to parents in the parents' native language to the greatest extent practicable.]

[(2) make an audible announcement over the campus public address system immediately prior to the commencement of the exercise to signal the start of the exercise to the participants, noting that it is only an exercise and not a real emergency. The announcement must contain the elements specified in TEC, §37.1141(a)(2); and]

[(3) ensure that the content of the exercise, which includes planning and execution of the exercise, addresses the following elements:]

[(A) input from multiple stakeholder perspectives in the design of the exercise;]

[(B) the physical and psychological safety of all participants before, during, and after the exercise, including:]

[(i) planning in a trauma-informed manner to minimize potential trauma for students, staff, and other participants;]

[(ii) the development and communication of a predetermined method for participants to withdraw from the exercise before or during the exercise; and]

[(iii) access to mental health supports before, during, and after the exercise; and]

[(C) the developmental appropriateness of the exercise, which includes a comprehensive perspective that supports the cognitive and emotional well-being of each individual and considers the impact that prior trauma, grief, and crisis experiences have had on a participant's development prior to the exercise. Developmental appropriateness considerations include the needs of special populations, including students with disabilities and emergent bilingual students.]

(b) Local education agencies (LEAs), which include school districts and open-enrollment charter schools, are not required to conduct active threat exercises.

(c) An LEA that elects to conduct an active threat exercise shall do so in accordance with Texas Education Code (TEC), §37.1141, and this section. The LEA shall:

(1) consider using a discussion-based tabletop exercise as defined in §103.1209 of this title (relating to Mandatory School Drills) to achieve the purpose, goals, and objectives of the exercise rather than using an operations-based, a functional, or a full-scale active threat exercise;

(2) if conducting an operations-based, a functional, or a full-scale exercise, provide adequate notice of the exercise directly to individuals participating in the exercise, parents of students participating in the exercise, and all other individuals impacted by the exercise. Adequate notice of the active threat exercise shall also be posted through multiple distribution networks, including, but not limited to, the LEA's website and social media platforms.

(A) To be considered adequate notice, notice shall be provided and posted at least two weeks prior to the exercise.

(B) The notice shall include the following required elements specified in TEC, §37.1141(a)(1):

(i) the date on which the exercise will occur;

(ii) the content, form, and tone of the exercise; and

(iii) whether the exercise will include a live simulation that mimics or appears to be an actual shooting incident.

(C) The notice shall be provided to parents in the parents' native language to the greatest extent practicable;

(3) make an audible announcement over the campus public address system immediately prior to the commencement of the exercise to signal the start of the exercise to the participants, noting that it is only an exercise and not a real emergency. The announcement must contain the elements specified in TEC, §37.1141(a)(2);

(4) ensure that the content of the exercise, which includes planning and execution of the exercise, addresses the following elements:

(A) input from multiple stakeholder perspectives in the design of the exercise, including law enforcement personnel;

(B) the physical and psychological safety of all participants before, during, and after the exercise, including:

(i) planning in a trauma-informed manner to minimize potential trauma for students, staff, and other participants;

(ii) the development and communication of a predetermined method for participants to withdraw from the exercise before or during the exercise; and

(iii) access to mental health supports before, during, and after the exercise; and

(C) the developmental appropriateness of the exercise, which includes a comprehensive perspective that supports the cognitive and emotional well-being of each individual and considers the impact that prior trauma, grief, and crisis experiences have had on a participant's development prior to the exercise. Developmental appropriateness considerations include the needs of special populations, including students with disabilities and emergent bilingual students;

(5) conduct the exercise during non-instructional time when non-participants are not present in the facility. Additionally, the LEA must require that:

(A) if a student participates in the exercise, which is discouraged, the student is in Grade 9 or higher and participates only if it provides the student with an educational benefit;

(B) all participants (students and staff) opt in rather than opt out of the exercise. A student participant must have written permission to opt in from the parent or guardian of the student;

(C) exercise participants be permitted to withdraw from the exercise at any time, before or during the exercise, using a predetermined method of withdrawal; and

(D) the exercise is organized, conducted, and overseen by law enforcement, first responders, or emergency management personnel. An LEA or one of its schools shall play a critical role in exercise coordination, overall function, and use of the facility; and

(6) conduct an after-action review of the exercise to determine the extent to which the exercise achieved key planning objectives, to include ensuring:

(A) incident command and control structures work as intended in accordance with the LEA's multihazard emergency operations plan;

(B) two-way communications work as intended with emergency first responders in accordance with the LEA's multihazard emergency operations plan; and

(C) emergency notification systems (e.g., voice calls, text messages, and email notifications) work as intended.

(d) [(e)] In accordance with TEC, §37.1141(c), data regarding the efficacy and impact of an active threat exercise shall be collected and submitted to the Texas School Safety Center (TxSSC) using the methods developed by the TxSSC.

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 June 12, 2023.

TRD-202302128

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: July 23, 2023

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

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TITLE 22. EXAMINING BOARDS

PART 1. TEXAS BOARD OF ARCHITECTURAL EXAMINERS

CHAPTER 1. ARCHITECTS

SUBCHAPTER C. EXAMINATION

22 TAC §1.43, §1.44

The Texas Board of Architectural Examiners (Board) proposes the amendment of 22 Texas Administrative Code §1.43 and §1.44.

These proposed rulemaking actions would implement changes to the Board's rules relating to the time period within which a candidate for registration is required to complete the Architect Registration Examination (ARE). The current rule is based on a now-obsolete policy from the testing provider, the National Council of Architectural Registration Boards (NCARB). This proposed amendment is intended to implement this change in NCARB policy, thereby maintaining national registration standards in Texas and providing a more equitable process for the completion of the ARE.

First, proposed §1.43 would repeal the obsolete NCARB "five-year rolling clock" policy. The rolling clock policy placed a five-year expiration date on passed divisions of the Architect Registration Examination. This decision was based on NCARB's conclusion that the five-year rolling clock was too restrictive. According to NCARB, most current ARE 5.0 exam items were developed under the previous ARE 4.0 and simply restructured for the current exam. Therefore, NCARB has concluded that preserving these scores will not impact exam validity. The Board agrees.

To maintain compliance with national registration standards proposed §1.43 would be amended to replace the adopted five-year rolling clock requirement with a requirement that architect candidates schedule and pass all sections of the examination within the time period required by NCARB. In place of the rolling clock, NCARB has adopted a new score validity policy, which bases the validity of passed ARE sections on exam versions (such as ARE 4.0, ARE 5.0, etc.) rather than a set time frame. Under this

policy, a passed exam section will remain valid throughout the delivery of the exam version under which it was taken, as well as the next exam version. For example, previously-expired ARE 4.0 sections will be reinstated and considered current throughout delivery of the current ARE 5.0 and may be used by candidates to establish credit for ARE 5.0. Likewise, ARE 5.0 sections will remain valid throughout the delivery of ARE 5.0, and future credits based on passed ARE 5.0 sections will remain valid throughout the delivery of ARE 6.0. Since exam versions are expected to be in place for approximately 10 years, the proposed amendment should result in a substantially longer window to complete the exam for all candidates.

Secondly, proposed amendments to §1.43 would retain a procedure for certain individuals to request an extension to the testing period, with amendments. Under the current rule, a candidate who gave birth to or adopted a child, developed a serious medical condition, or commenced active-duty service as a member of the military is eligible to request extended time to complete the examination. Though NCARB has eliminated an internal procedure allowing such requests, the Board proposes to retain it for Texas purposes, with amendments. Under the proposed rule, individuals who experience one of these life events would be eligible to receive an extended period of validity for an expired examination section if the event occurred within the 12 months immediately preceding the date of expiration. Under the amendment, submission of requests for extension would be required within six months of the expiration of the examination section. Additionally, the extension for a serious medical condition would be limited in time to a maximum of six months, and only if the condition reasonably prevented the person from preparing for or taking the examination. The proposed amendments recognize that, although the testing window will be much longer for all candidates, candidates who experience a qualifying life event late in the testing window might nonetheless be deserving of an extension.

Lastly, the Board proposes amendments to §1.44. The amendments would implement a repeal of the five-year rolling clock for the transfer of exam scores between states and replace it with a requirement that the transferred candidate must pass all sections of the examination within the time period required by NCARB.

FISCAL NOTE

Lance Brenton, General Counsel, has determined that for the first five-year period the amended rules are in effect, the amendments will have no significant adverse fiscal impact upon state government, local government, or the Texas Board of Architectural Examiners.

GOVERNMENT GROWTH IMPACT STATEMENT

During the first five years the proposed rules would be in effect, no government program would be created or eliminated. Rather, the proposed rules would incorporate changes to a preexisting program mandated under Texas Occupations Code §1051.704. The adoption of the proposed rules would not result in the creation or elimination of employee positions. Implementation of the proposed rules is not expected to require an increase or decrease in legislative appropriations to the agency. The proposed rules would not increase fees paid to the Board. The proposed rules would not result in the adoption of new regulations. Rather, the proposed rules would constitute the amendment of existing regulations, in a manner that imposes a decreased burden on examination candidates by allowing a longer window to complete the examination. The proposed rules would not increase the

number of individuals subject to the rule's applicability. The proposed rules are not expected to have any impact on the state's economy.

PUBLIC BENEFIT/COST OF COMPLIANCE

Mr. Brenton has determined that, for the first five-year period the amended rule is in effect, the public benefit of the proposed rules would include maintaining national registration standards in Texas. Additionally, candidates for registration would benefit from a longer window to complete the ARE, without any expected impact on the validity of the examination to measure the knowledge necessary to practice as an architect.

Compliance with the proposed amendment is not expected to result in economic costs to persons who are required to comply with the rule. Rather, individuals will be subject to lower costs, as exam sections that would otherwise be considered expired will be valid, thereby saving the candidate the cost of re-taking the section.

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

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

TAKINGS IMPACT ASSESSMENT

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

LOCAL EMPLOYMENT IMPACT STATEMENT

The agency has determined that the proposed rules will not affect any local economy, so the agency is not required to prepare a local employment impact statement under Government Code §2001.022.

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

As a self-directed semi-independent agency, Government Code §2001.0045 does not apply to rules adopted by the Board.

PUBLIC COMMENT

Comments on the proposed rules may be submitted to Lance Brenton, General Counsel, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

STATUTORY AUTHORITY

The amendment of §1.43 is proposed under Tex. Occ. Code §1051.202, which authorizes the Board to adopt reasonable rules as necessary to regulate the practice of architecture; and Tex. Occ. Code §1051.704, which requires the Board to examine each applicant for registration on any architectural subject or procedure the Board requires and to issue a certificate of registration to each applicant who passes the examination.

CROSS REFERENCE TO STATUTE

The proposed amendment does not affect any other statute.

§1.43. *Reexamination.*

(a) In order to qualify for registration by examination, a [A Candidate's passing grade for any section of the examination is valid for five (5) years. Each] Candidate must schedule and pass all sections of the Architect Registration Examination (ARE) within the time period required by NCARB [examination within five (5) years after the date the Candidate passes a section of the examination. A Candidate who does not pass all sections of the examination within five (5) years after passing a section of the examination will forfeit credit for the section of the examination passed and must pass that section of the examination again].

(b) If a Candidate has successfully passed a section of the examination that has expired under NCARB requirements, the Candidate may request an extended period of validity for that section of the examination if, within one year prior to the date the section expired [The Board may grant extensions to the 5-year period for completion of the examination if the Candidate is unable to pass all sections of the examination within that period for the following reasons]:

(1) The Candidate gave birth to, or adopted a child [within that 5-year period];

(2) The Candidate developed a serious medical condition [within that 5-year period]; or

(3) The Candidate commenced active duty service as a member of the United States military [within that 5-year period].

(c) If a Candidate gave birth to or adopted a child, the Candidate may receive an extended period of validity of up to six months for an expired examination section.

~~[(e) A Candidate may receive an extension of up to 6 months for the birth or adoption of a child by filing a written application with the Board together with any corroborating evidence immediately after the Candidate learns of the impending adoption or birth. A Candidate may receive an extension for the period of the serious medical condition or for the period of active duty military service by filing a written application with the Board together with corroborating evidence immediately after the Candidate learns of the medical condition or the commencement of active duty military service. A Candidate shall immediately notify the Board in writing when the medical condition is resolved or active duty military service ends.]~~

(d) If a Candidate developed a serious medical condition, the Candidate may receive an extended period of validity of up to six months for an expired examination section if the serious medical condition reasonably prevented the Candidate from preparing for or taking the examination.

(e) If a Candidate commenced active duty service as a member of the United States military, the Candidate may receive an extended period of validity for an expired examination section equal to the length of time the Candidate was on active duty.

(f) Any request for an extension under this section must be received within six months of the expiration of the exam section and must be approved by the Board.

§1.44. *Transfer of Passing Scores.*

(a) A Candidate's examination score may be transferred from one NCARB member board to another. The acceptance of the Candidate's score by the board receiving the score shall terminate the Candidate's application with the board transferring the score so that the Candidate has an application pending in only one (1) jurisdiction at any

given time [all times]. In order to be approved for architectural registration in Texas, a Candidate whose examination score is transferred to Texas must satisfy all requirements for architectural registration in Texas in effect at the time the examination score is transferred.

(b) If a Candidate's examination score is transferred from another member board and accepted by the Board, the Candidate must pass all sections of the examination within the time period required by NCARB, as described by §1.43 of this chapter (relating to Reexamination) [no later than five (5) years from the date the first examination section was passed. If the Candidate does not pass all sections of the examination within five (5) years after passing a section of the examination, the Candidate will forfeit credit for the section of the examination passed and must pass that section of the examination again].

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 June 9, 2023.

TRD-202302123

Lance Brenton

General Counsel

Texas Board of Architectural Examiners

Earliest possible date of adoption: July 23, 2023

For further information, please call: (512) 305-8519



CHAPTER 3. LANDSCAPE ARCHITECTS SUBCHAPTER C. EXAMINATION

22 TAC §3.43, §3.44

The Texas Board of Architectural Examiners (Board) proposes the amendment of 22 Texas Administrative Code §3.43 and §3.44.

These proposed rulemaking actions would implement changes to the Board's rules relating to the time period within which a candidate for registration is required to complete the Landscape Architect Registration Examination (LARE). The proposed amendment is intended to maintain consistency between the rules for architect and landscape architect registration, align Texas with national registration standards, and provide a more equitable process for the completion of the LARE.

First, proposed §3.43 would repeal a requirement that a candidate for landscape architect registration must pass all sections of the examination within five (5) years from the date the candidate passes a section of the examination, or otherwise lose credit for that section. This rule is based on an identical rule the Board adopted for architect registration candidates. That rule, in turn, was based on a policy by the National Council of Architectural Registration Boards (NCARB). Recently, NCARB repealed this "five-year rolling clock" policy. Given this change in policy, the Board is reexamining its rules and has determined the five-year rolling clock should be repealed for both architect and landscape architect candidates.

The Council of Landscape Architectural Registration Boards (CLARB), which administers the LARE, does not require its examinees to complete the LARE within five years of passing the first section of the examination. Rather, examinees must pass all sections of the LARE during the period in which that version of the LARE is in effect. If an examinee does not complete the LARE before a new version comes into effect,

previously-passed sections of the examination may be used to establish credit under the new version.

Because the Board is proposing the repeal the five-year requirement for architect examinees, and because CLARB does not have a similar requirement, the Board proposes to amend §3.43 to replace the adopted five-year rolling clock requirement for landscape architect candidates with a requirement that candidates schedule and pass all sections of the examination within the time period required by CLARB. Given that the most recent version of the LARE examination has been offered for 11 years, and because CLARB allows examinees to establish credit for new versions of the LARE based on passed sections of the previous version of the LARE, it is expected that the proposed rule will result in a much longer window for registrants to complete the LARE. Additionally, the proposed rule will bring Texas into alignment with national registrations standards as established by CLARB.

Secondly, proposed amendments to §3.43 would retain a procedure for certain individuals to request an extension to the testing period, with amendments. Under the current rule, a candidate who gave birth to or adopted a child, developed a serious medical condition, or commenced active-duty service as a member of the military is eligible to request extended time to complete the examination. Under the proposed rule, individuals who experience one of these life events would be eligible to receive an extended period of validity for an expired examination section if the event occurred within the 12 months immediately preceding the date of expiration. Under the amendment, submission of requests for extension would be required within six months of the expiration of the examination section. Additionally, the extension for a serious medical condition would be limited in time to a maximum of six months, and only if the condition reasonably prevented the person from preparing for or taking the examination. The proposed amendments recognize that, although the testing window will be much longer for all candidates, candidates who experience a qualifying life event late in the testing window might nonetheless be deserving of an extension.

Lastly, the Board proposes amendments to §3.44. The amendments would implement a repeal of the five-year rolling clock for the transfer of exam scores between states and replace it with a requirement that the transferred candidate must pass all sections of the examination within the time period required by CLARB.

FISCAL NOTE

Lance Brenton, General Counsel, has determined that for the first five-year period the amended rules are in effect, the amendments will have no significant adverse fiscal impact upon state government, local government, or the Texas Board of Architectural Examiners.

GOVERNMENT GROWTH IMPACT STATEMENT

During the first five years the proposed rules would be in effect, no government program would be created or eliminated. Rather, the proposed rules would incorporate changes to a preexisting program mandated under Texas Occupations Code § 1052.153. The adoption of the proposed rules would not result in the creation or elimination of employee positions. Implementation of the proposed rules is not expected to require an increase or decrease in legislative appropriations to the agency. The proposed rules would not increase fees paid to the Board. The proposed rules would not result in the adoption of new regulations. Rather, the proposed rules would constitute the amendment of existing regulations, in a manner that imposes a decreased burden on ex-

amination candidates by allowing a longer window to complete the examination. The proposed rules would not increase the number of individuals subject to the rule's applicability. The proposed rules are not expected to have any impact on the state's economy.

PUBLIC BENEFIT/COST OF COMPLIANCE

Mr. Brenton has determined that, for the first five-year period the amended rule is in effect, the public benefit of the proposed rules would include aligning Texas with national registration standards for landscape architects. Additionally, candidates for registration would benefit from a longer window to complete the LARE, without any expected impact on the validity of the examination to measure the knowledge necessary to practice as a landscape architect.

Compliance with the proposed amendment is not expected to result in economic costs to persons who are required to comply with the rule. Rather, individuals will be subject to lower costs, as exam sections that would otherwise be considered expired will be valid, thereby saving the candidate the cost of re-taking the section.

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

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

TAKINGS IMPACT ASSESSMENT

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

LOCAL EMPLOYMENT IMPACT STATEMENT

The agency has determined that the proposed rules will not affect any local economy, so the agency is not required to prepare a local employment impact statement under Government Code § 2001.022.

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

As a self-directed semi-independent agency, Government Code § 2001.0045 does not apply to rules adopted by the Board.

PUBLIC COMMENT

Comments on the proposed rules may be submitted to Lance Brenton, General Counsel, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

STATUTORY AUTHORITY

The amendments are proposed under Tex. Occ. Code § 1051.202, which authorizes the Board to adopt reasonable rules as necessary to regulate the practice of landscape architecture; and Tex. Occ. Code § 1052.153, which requires the Board to approve and proscribe the scope of an examination and

methods of procedure to measure the ability of an applicant for landscape architectural registration, in a manner that ensures the safety of the public welfare and property rights.

CROSS REFERENCE TO STATUTE

The proposed amendment does not affect any other statute.

§3.43. *Reexamination.*

(a) In order to qualify for registration by examination, a [A Candidate's passing grade for any section of the examination is valid for five (5) years. Each] Candidate must schedule and pass all sections of the Landscape Architect Registration Examination (LARE) within the time period required by CLARB [examination within five (5) years after the date the Candidate passes a section of the examination. A Candidate who does not pass all sections of the examination within five (5) years after passing a section of the examination will forfeit credit for the section of the examination passed and must pass that section of the examination again].

(b) If a Candidate has successfully passed a section of the examination that has expired under CLARB requirements, the Candidate may request an extended period of validity for that section of the examination if, within one year prior to the date the section expired [The Board may grant extensions to the 5-year period for completion of the examination if the Candidate is unable to pass all sections of the examination within that period for the following reasons]:

(1) The Candidate gave birth to, or adopted a child [within that 5-year period];

(2) The Candidate developed a serious medical condition [within that 5-year period]; or

(3) The Candidate commenced active duty service as a member of the United States military [within that 5-year period].

(c) If a Candidate gave birth to or adopted a child, the Candidate may receive an extended period of validity of up to six months for an expired examination section.

~~[(e) Candidate may receive an extension of up to 6 months for the birth or adoption of a child by filing a written application with the Board together with any corroborating evidence immediately after the Candidate learns of the impending adoption or birth. A Candidate may receive an extension for the period of the serious medical condition or for the period of active duty military service by filing a written application with the Board together with corroborating evidence immediately after the Candidate learns of the medical condition or the commencement of active duty military service. A Candidate shall immediately notify the Board in writing when the medical condition is resolved or active duty military service ends.]~~

~~(d) If a Candidate developed a serious medical condition, the Candidate may receive an extended period of validity of up to six months for an expired examination section if the serious medical condition reasonably prevented the Candidate from preparing for or taking the examination.~~

~~(e) If a Candidate commenced active duty service as a member of the United States military, the Candidate may receive an extended period of validity for an expired examination section equal to the length of time the Candidate was on active duty.~~

~~(f) Any request for an extension under this section must be received within six months of the expiration of the exam section and must be approved by the Board.~~

§3.44. *Transfer of Passing Scores.*

(a) A Candidate's examination score may be transferred from one CLARB member board to another. The acceptance of the Candi-

date's score by the board receiving the score shall terminate the Candidate's application with the board transferring the score so that the Candidate has an application pending in only one (1) jurisdiction at any given time [all times]. In order to be approved for landscape architectural registration in Texas, a Candidate whose examination score is transferred to Texas must satisfy all requirements for landscape architectural registration in Texas in effect at the time the examination score is transferred.

(b) If a Candidate's examination score is transferred from another member board and accepted by the Board, the Candidate must pass all sections of the examination within the time period required by CLARB, as described by §3.43 of this chapter (relating to Reexamination) [no later than five (5) years from the date the first examination section was passed. If the Candidate does not pass all sections of the examination within five (5) years after passing a section of the examination, the Candidate will forfeit credit for the section of the examination passed and must pass that section of the examination again].

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Lance Brenton

General Counsel

Texas Board of Architectural Examiners

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For further information, please call: (512) 305-8519



PART 39. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS

CHAPTER 851. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS LICENSING AND ENFORCEMENT RULES

SUBCHAPTER B. P.G. LICENSING, FIRM REGISTRATION, AND GIT CERTIFICATION

22 TAC §851.21

The Texas Board of Professional Geoscientists (TBPG) proposes an amendment concerning the licensure and regulation of Professional Geoscientists in Texas. TBPG proposes amendments to 22 TAC §851.21, regarding Licensing Requirements - Examinations.

BACKGROUND, PURPOSE, AND SUMMARY OF CHANGES

The ASBOG examination is now offered by computer-based testing (CBT) and is no longer being offered by paper administration. The proposed amendment updates TBPG's application process and procedures to sit for the examinations. In addition, it clarifies the documentation required to sit for the examinations.

In subchapter B, proposed amendment in 22 TAC §851.21(g)(1)(B)(ii) amends the examination process and procedures to sit for the examinations and removes language that references a form that is no longer required to sit for the examination.

The proposed amendment in 22 TAC §851.21(g)(1)(B)(iii) removes a process to submit a form and fee that is no longer required. Updated numbering.

The proposed amendment in 22 TAC §851.21(g)(2)(ii) removes "in subsection (a) of this section" and adds the correct reference "as specified in 851.20 of the chapter."

The proposed amendment in 22 TAC §851.21(g)(2)(B)(i) provides clarity to the applicant regarding the documentation and a fee required to sit for the examination.

The proposed amendment in 22 TAC §851.21(g)(2)(B)(ii) amends the examination process and procedures to sit for the examinations and removes language that references a form that is no longer required to sit for the examination.

The proposed amendment in 22 TAC §851.21(g)(2)(B)(iii) removes language that references a form that no longer requires submittal to TBPG to sit for the examination.

The proposed amendment in 22 TAC §851.21(g)(3) adds "Certification" as it relates to the GIT program and not PG licensure. Also, it adds TFGE as an exam to pass to obtain GIT certification and not PG licensure.

The proposed amendment in 22 TAC §851.21(g)(3)(A)(i) removes "in subsection (a) of this section" and adds the correct reference "as specified in 851.20 of the chapter."

The proposed amendment in 22 TAC §851.21(g)(3)(A)(ii) adds "examination requirement" and removes reference to passing the TGE to obtain GIT certification. Passing the TGE is for PG licensure.

The proposed amendment in 22 TAC §851.21(g)(3)(B) provides clarity and consistency to the applicant regarding the documentation and a fee required to sit for the examination.

FISCAL NOTE - STATE AND LOCAL GOVERNMENT

Rene D. Truan, Executive Director of the Texas Board of Professional Geoscientists, has determined that for each fiscal year of the first five years the rules are in effect these proposals have no foreseeable implications relating to cost or revenues of the state or of local governments caused by enforcing or administering the proposed rules.

PUBLIC BENEFIT AND COST

Mr. Truan has also determined that for each year of the first five years the section is in effect, the public will benefit from adoption of the section. The public benefit anticipated from enforcing or administering the sections includes ensuring that TBPG rules are clear and consistent as they relate to geoscience licensure in Texas and as they relate to the examination requirements for licensure in all three disciplines: Geology, Geophysics, and Soil Science. There will be no anticipated economic cost to individuals who are required to comply with the proposed sections.

SMALL, MICRO-BUSINESS, LOCAL ECONOMY, AND RURAL COMMUNITIES ECONOMIC IMPACT ANALYSIS

Mr. Truan has determined that the proposed rule will not have an adverse effect on small businesses, micro-businesses, local economy, or rural communities. Consequently, neither an economic impact statement, a local employment impact statement, nor a regulatory flexibility analysis is required.

GOVERNMENT GROWTH IMPACT STATEMENT

During the first five years that the rule would be in effect:

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

(2) implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions;

(3) implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency;

(4) the proposed rules do not require an increase or decrease in fees paid to the agency;

(5) the proposed rules do not create a new regulation;

(6) the proposed rules do not expand, limit, or repeal an existing regulation;

(7) the proposed rules do not increase or decrease the number of individuals that are subject to the rules' applicability; and

(8) the proposed rules do not positively or adversely affect this state's economy.

REGULATORY ANALYSIS OF MAJOR ENVIRONMENTAL RULES

Mr. Truan has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. Although Professional Geoscientists and Registered Geoscience Firms play a key role in environmental protection for the state of Texas, this proposal is not specifically intended to protect the environment nor reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Comments on the proposed amendment may be submitted in writing to Rene D. Truan, Executive Director, Texas Board of Professional Geoscientists, 1801 Congress, George HW Bush Building, Suite 7.800, Austin, Texas 78701 or by mail to P.O. Box 13225, Austin, Texas 78711 or by e-mail to rtruan@tbpg.texas.gov. Please indicate "Comments on Proposed Rules" in the subject line of all e-mails submitted. Please submit comments within 30 days following publication of the proposal in the *Texas Register*.

STATUTORY AUTHORITY

This section is proposed under the Texas Geoscience Practice Act, Texas Occupations Code §1002.151, which authorizes the Board to adopt and enforce all rules consistent with the Act as necessary for the performance of its duties and §1002.255, which authorizes the Board to establish license eligibility requirements.

This section affects the Texas Geoscience Practice Act, Texas Occupations Code §§1002.151, 1002.254, and 1002.255.

§851.21. *Licensing Requirements - Examinations.*

(a) Qualifying examinations:

(1) An applicant for the Geology discipline must pass both parts of the ASBOG® examination. Applicants taking the ASBOG® examinations must also abide by the rules and regulations of ASBOG®.

(2) An applicant for the Soil Science discipline must pass both parts of the Council of Soil Science Examiners (CSSE) examination. Applicants taking the CSSE examinations must also abide by the rules and regulations of CSSE.

(3) An applicant for the Geophysics discipline must pass the Texas Geophysics Examination (TGE).

(b) An applicant may request an accommodation in accordance with the Americans with Disabilities Act. Proof of disability may be required.

(c) An applicant who does not timely arrive at and complete a scheduled examination will forfeit the examination fee.

(d) Cheating on an examination is grounds for denial, suspension, or revocation of a license and/or an administrative penalty.

(e) An applicant who has passed an examination may not retake that type of examination.

(f) Exam Waiver. Applicants requesting a waiver from any examination(s) shall complete a Waiver Request (Form VI) and shall comply with §851.22 regarding Waivers and Substitutions.

(g) Examination requirements and examination procedure: A qualified individual who has not passed qualifying licensing examination(s) may access and abide by all relevant components of one of the following procedures to sit for a qualifying examination(s) in the appropriate discipline:

(1) Licensure in the discipline of geology (part I)/ASBOG® Fundamentals of Geology examination:

(A) Requirements: Completion of the education qualifications for licensure as specified in Texas Occupations Code §1002.255 and §851.25 of this chapter or currently enrolled in a course of study that meets the education requirements for licensure and within two regular semesters of completion of the qualifying course of study.

(B) Procedure:

(i) The applicant shall complete and submit an Exam Request (Form E) and any required documents to the TBPG, along with the appropriate fee by the deadline posted on the TBPG website for the examination date desired by the applicant.

(ii) The Board staff will review the application and inform the applicant of any deficiencies in the application. Upon determination that the requirements have been met, the Board staff will provide the applicant instructions on how to register, pay the examination fee and schedule to sit for the examination. [mail an ASBOG® Examination Candidate Request Form to the applicant.]

~~(iii) The applicant shall submit the ASBOG® Examination Candidate Request Form and send the form, along with the examination fee to ASBOG®. A courtesy copy of the ASBOG® Candidate Request Form shall be provided to the TBPG.]~~

(iii) [(iv)] The applicant shall follow all examination administration procedures and take the examination.

(iv) [(v)] The Board staff shall notify the applicant of the results of the examination after receiving the results from ASBOG®.

(2) Licensure in the discipline of geology (part II)/ASBOG® Practice of Geology examination:

(A) Requirements:

(i) Under application for licensure as a Professional Geoscientist with the TBPG.

(ii) Meet all other qualifications for licensure as specified in §851.20 of this chapter [in subsection (a) of this section] and be within six months of meeting the qualifying experience requirement.

(B) Procedure:

~~(i) The applicant shall complete and submit the following: [The applicant shall complete and submit both the Application for P.G. Licensure (Form A), in accordance with the application procedures specified in subsection (d) of this section, along with the appropriate fee and an Exam Request (Form E) along with the appropriate fee and any required documents to the TBPG, by the deadline posted on the TBPG website for the examination date desired by the applicant.]~~

~~(I) Application for P.G. Licensure (Form A), in accordance with the application procedures as specified in §851.20 of this chapter, along with the appropriate fee;~~

~~(II) Qualifying Work Experience Record (Form A-1), as specified in §851.23 of this chapter;~~

~~(III) Exam Request (Form E), along with the appropriate fee; and~~

~~(IV) Any required documents to the TBPG, by the deadline posted on the TBPG website for the examination date desired by the applicant.~~

(ii) The Board staff will review the application and inform the applicant of any deficiencies in the application. Upon determination that the requirements have been met, the Board staff will provide the applicant instructions on how to register, pay the examination fees and schedule to sit for the examination. [mail an ASBOG® Examination Candidate Request Form to the applicant.]

~~(iii) The applicant shall submit the ASBOG® Examination Candidate Request Form and send the form, along with the examination fee to ASBOG®. A courtesy copy of the ASBOG® Examination Candidate Request Form shall be provided to the TBPG.]~~

(iii) [(iv)] The applicant shall follow all examination administration procedures and take the examination.

(iv) [(v)] The Board staff shall notify the applicant of the results of the examination after receiving the results from ASBOG®.

(3) Licensure/Certification in the discipline of geophysics/TGE/TFGE:

(A) Requirements:

(i) Under application for licensure as a Professional Geoscientist with the TBPG and meet all qualifications for licensure as specified in §851.20 of this chapter [in subsection (a) of this section], with the exception of the examination requirement; or

(ii) Under application for certification as a Geoscientist-in-Training with the TBPG and meet all qualifications for certification as a Geoscientist-in-Training in §851.41 of this chapter with the exception of the examination requirement [having passed the TGE].

(B) Procedure:

(i) The applicant shall complete and submit the following: [The applicant shall complete and submit an Application for Professional Geoscientist (Form A), in accordance with the application procedures specified in subsection (d) of this section, along with the appropriate fee and Examination Request Form (Form E) along with the appropriate fee and any required documents to the TBPG.]

(I) Application for P.G. Licensure (Form A), in accordance with the application procedures as specified in §851.20 of this chapter, along with the appropriate fee;

(II) Qualifying Work Experience Record (Form A-1), as specified in §851.23 of this chapter;

(III) Exam Request (Form E), along with the appropriate fee; and

(IV) Any required documents to the TBPG, by the deadline posted on the TBPG website for the examination date desired by the applicant.

(ii) The Board staff will review the application and inform the applicant of any deficiencies in the application. Upon determination that the requirements have been met, the Board staff will provide TGE scheduling and examination payment information to the applicant.

(iii) The applicant shall submit the required information, along with the examination fee to the TBPG.

(iv) The applicant shall follow all examination administration procedures and take the examination.

(v) The Board staff shall notify the applicant of the results of the examination.

(4) Licensure in the discipline of soil science/Council of Soil Science Examiners (CSSE) Fundamentals of Soil Science and Practice of Soil Science Examinations: An applicant must meet the examination requirements of the CSSE; apply to take the required examinations directly with the CSSE and submit the required fees; follow all examination procedures of the CSSE; take and pass both parts of the examination; and follow CSSE procedures to ensure that the passing scores are forwarded to the TBPG.

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 June 5, 2023.

TRD-202302066

Rene Truan

Executive Director

Texas Board of Professional Geoscientists

Earliest possible date of adoption: July 23, 2023

For further information, please call: (512) 936-4428



22 TAC §851.22

The Texas Board of Professional Geoscientists (TBPG) proposes an amendment concerning the licensure and regulation of Professional Geoscientists in Texas. TBPG proposes amendments to 22 TAC §851.22, regarding Waivers and Substitutions: Policy, Procedures, and Criteria.

BACKGROUND, PURPOSE, AND SUMMARY OF CHANGES

The Sunset Commission directed the Board to eliminate the requirement for applicants to submit reference letters for the Board

to evaluate the applicant's "good and ethical" character. Upon review of this rule, TBPG determined that language used in the rule regarding "honest and ethical behavior" may be interpreted as the Board evaluating an applicant's character when seeking license as a professional geologist in Texas and proposes an amendment to remove/modify that language.

The proposed amendment in 22 TAC §851.22(f)(2) adds (f)(3)(B)(C) to describe the relevant work experience requirement.

The proposed amendment in 22 TAC §851.22 removes (f)(3)(A)(D)(E) the language describing the applicant's "good and ethical" character.

The proposed amendment in 22 TAC §851.22(f)(3) adds clarity and consistent language relating to continuing education used throughout the policy.

FISCAL NOTE - STATE AND LOCAL GOVERNMENT

Rene D. Truan, Executive Director of the Texas Board of Professional Geoscientists, has determined that for each fiscal year of the first five years the rules are in effect these proposals have no foreseeable implications relating to cost or revenues of the state or of local governments caused by enforcing or administering the proposed rules.

PUBLIC BENEFIT AND COST

Mr. Truan has also determined that for each year of the first five years the section is in effect, the public will benefit from adoption of the section. The public benefit anticipated from enforcing or administering the sections includes making it less burdensome for qualified applicants to gain a license in the discipline of geophysics by allowing for a waiver from one of the examination requirements. Other benefits include ensuring that TBPG rules are clear and consistent as they relate to geoscience licensure in Texas and as they relate to the examination waiver requirements for licensure in all three disciplines: Geology, Geophysics, and Soil Science. There will be no anticipated economic cost to individuals who are required to comply with the proposed sections.

SMALL, MICRO-BUSINESS, LOCAL ECONOMY, AND RURAL COMMUNITIES ECONOMIC IMPACT ANALYSIS

Mr. Truan has determined that the proposed rule will not have an adverse effect on small businesses, micro-businesses, local economy, or rural communities. Consequently, neither an economic impact statement, a local employment impact statement, nor a regulatory flexibility analysis is required.

GOVERNMENT GROWTH IMPACT STATEMENT

During the first five years that the rule would be in effect:

- (1) the proposed rules do not create or eliminate a government program;
- (2) implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions;
- (3) implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency;
- (4) the proposed rules do not require an increase or decrease in fees paid to the agency;
- (5) the proposed rules do not create a new regulation;

(6) the proposed rules do not expand, limit, or repeal an existing regulation;

(7) the proposed rules do not increase or decrease the number of individuals that are subject to the rules' applicability; and

(8) the proposed rules do not positively or adversely affect this state's economy.

REGULATORY ANALYSIS OF MAJOR ENVIRONMENTAL RULES

Mr. Truan has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. Although Professional Geoscientists and Registered Geoscience Firms play a key role in environmental protection for the state of Texas, this proposal is not specifically intended to protect the environment nor reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Comments on the proposed amendment may be submitted in writing to Rene D. Truan, Executive Director, Texas Board of Professional Geoscientists, 1801 Congress, Suite 7.800, Austin, Texas 78701 or by mail to P.O. Box 13225, Austin, Texas 78711 or by e-mail to rtruan@tbpge.texas.gov. Please indicate "Comments on Proposed Rules" in the subject line of all e-mails submitted. Please submit comments within 30 days following publication of the proposal in the *Texas Register*.

STATUTORY AUTHORITY

This section is proposed under the Texas Geoscience Practice Act, Texas Occupations Code §1002.151, which authorizes the Board to adopt and enforce all rules consistent with the Act as necessary for the performance of its duties and §1002.259, which authorizes the Board to waive any requirement for licensure except for the payment of required fees.

This section affects the Texas Geoscience Practice Act, Occupations Code §§1002.151, 1002.255, and 1002.259.

§851.22. *Waivers and Substitutions: Policy, Procedures, and Criteria.*

(a) Introduction: The Texas Board of Professional Geoscientists is charged with the responsibility of issuing a license to engage in the public practice of geoscience in the state of Texas only to those individuals who meet the qualifications for licensure, as provided by Texas law. The successful completion of the required examination for the specific discipline is an essential element in the Professional Geoscientist licensure process. The Texas Geoscience Practice Act (TGPA) (Texas Occupations Code, Chapter 1002, §1002.259) provides that "Except for the payment of required fees, the board may waive any of the requirements for licensure by a two-thirds vote of the entire board if the

applicant makes a written request and shows good cause and the board determines that the applicant is otherwise qualified for a license."

(1) An applicant for licensure as a Professional Geoscientist may request a waiver by submitting a copy of Form VI - "Request for Waiver of Licensing Requirement - Board Policy and Procedures," along with supporting documentation. Only an applicant for licensure may request a waiver. An applicant must have submitted a complete application, supporting documentation (such as transcripts and qualifying experience record), and applicable fees for a waiver request to be considered.

(2) Once a request for a waiver and all relevant documents and information supporting the request have been received, subject to scheduling logistics, the request will be placed on the next available meeting of the TBPGE's Application Review and Continuing Education Committee.

(b) Guidance Policy: The following policy was developed by the TBPGE Board and is intended to be guidance for the Application Review and Continuing Education Committee and the Board in consideration of a request for waiver. In accordance with TOC §1002.259, an approval of a waiver request requires a vote of two-thirds of the TBPGE Appointed Board (6 affirmative votes), regardless of the number of Board members in attendance. A request for the substitution of experience for education (provided by TOC §1002.255(b)) requires a simple majority vote of a quorum of the TBPGE Appointed Board to be approved.

(c) TBPGE's Application Review and Continuing Education Committee Review: TBPGE's Application Review and Continuing Education Committee will review the request and supporting documentation and recommend to the full TBPGE Board to grant or not grant the requested waiver. An applicant should provide a written justification, along with supporting documentation. An applicant may also appear before the Committee and the full Board to provide testimony to support the request. All requests the Committee recommends for approval will be scheduled for review by the full Board. Requests the Committee does not recommend for approval will not be submitted to the full Board for review, unless the applicant requests review by the full Board.

(d) TBPGE's Board Initial Review: TBPGE Appointed Board will review requests the Committee recommends for approval and supporting documentation and will determine whether or not to approve the request (grant the requested waiver). An applicant whose request for a waiver or substitution was denied and who believes that there is additional information that was not available to the Board when it reviewed the request, may submit additional information to staff regarding the current application, along with a written request that the Board reconsider the request. If staff determines that new information has been submitted that may be relevant to the Board's review of an application/request, then staff will schedule the application/waiver request for reconsideration. In the review of a request to reconsider its decision on an application/waiver request, because new information has been submitted, the Board will first determine by a simple majority vote whether to reconsider the application/waiver request, based on whether relevant new information has been submitted. If the Board determines by vote that the new information warrants reconsideration of an application/waiver request, the Board will reconsider the waiver request, including all of the new information available at that time. An applicant may appear before the Board and present information related to the request. The Board will reconsider its decision on a waiver request only once.

(e) Examination Waiver Requirements and Criteria.

(1) For TBPG's Appointed Board to waive an examination, an applicant must:

(A) Meet all other qualifications for licensure (qualifying work experience, education, documentation relating to criminal, disciplinary, and civil litigation history);

(B) Meet the criteria in the policy for the specific examination that is the subject of the waiver request; and

(C) Have not failed the examination that is the subject of the waiver request.

(2) Work experience an applicant submits pursuant to the following examination waiver policies must meet the criteria for qualifying work experience under TBPG rule §851.23 regarding qualifying experience record.

(3) ASBOG® Fundamentals of Geology Examination Waiver. An applicant must have acquired one of the following combinations of education and work experience:

(A) B.S. and 15 years qualifying work experience;

(B) M.S. and 13 years qualifying work experience;

(C) Ph.D. and 10 years qualifying work experience.

(4) ASBOG® Practice of Geology Examination Waiver. An applicant must meet minimum criteria in either Generalized Practice Experience or Specialized Practice Experience.

(A) Generalized practice experience (must meet all four criteria):

(i) Completed twenty (20) years of geosciences work experience;

(ii) Completed ten (10) years of supervisory experience (three or more individuals under supervision);

(iii) Completed coursework in six of the eight following ASBOG® task domains:

(I) Field geology;

(II) Mineralogy, petrology, and geochemistry;

(III) Sedimentology, stratigraphy, and paleontology;

(IV) Geomorphology, surficial processes, and quaternary geology;

(V) Structure, tectonics, and seismology;

(VI) Hydrogeology;

(VII) Engineering geology;

(VIII) Economic geology and energy resources.

(iv) Demonstrate the ability to plan and conduct geosciences investigations considering public health, safety, and welfare.

(B) Specialized practice experience: The applicant demonstrates twenty years or more of specialized work history in only one or two of the ASBOG® task domains. One factor TBPG will consider is whether the examination is not relevant to, or largely beyond the scope of, the applicant's specialized experience and the applicant's intended field of practice.

(5) Council of Soil Science Examination (CSSE) - Fundamentals of Soil Science Waiver. An applicant must have acquired one of the following combinations of education and work experience:

(A) B.S. and 15 years qualified work experience;

(B) M.S. and 13 years of qualified work experience; or

(C) Ph.D. and 10 years of qualified work experience.

(6) Council of Soil Science Examination (CSSE) - Professional Practice examination. An applicant must meet minimum criteria in either Generalized practice experience or Specialized practice experience:

(A) Generalized practice experience (must meet all four criteria):

(i) Completed twenty (20) years of soil science work experience;

(ii) Completed ten (10) years of supervisory experience;

(iii) Completed coursework in six of the eight following CSSE Professional Practice Performance Objective (PPPO) domains:

(I) Soil chemistry;

(II) Soil mineralogy;

(III) Soil fertility and nutrient management;

(IV) Soil physics;

(V) Soil genesis and classification;

(VI) Soil morphology;

(VII) Soil biology and soil ecology; and

(VIII) Soil and land use management.

(iv) Demonstrate the ability to plan and conduct soil science investigations considering public health, safety, and welfare.

(B) Specialized practice experience: The applicant demonstrates twenty years or more of specialized work history in only one or two of the CSSE PPPO domains. One factor TBPG will consider is whether the examination is not relevant to, or largely beyond the scope of, the applicant's specialized experience and the applicant's intended field of practice.

(7) Texas Fundamentals of Geophysics Examination (TFGE). No waiver is available.

(8) Texas Geophysics Examination (TGE). An applicant must meet minimum criteria in either Generalized Practice Experience or Specialized Practice Experience.

(A) Generalized practice experience (must meet all four criteria):

(i) Completed twenty (20) years of geophysics work experience;

(ii) Completed ten (10) years of supervisory experience;

(iii) Completed coursework in six of the eight areas:

(I) Fundamentals of Geophysics;

(II) Geophysical Field Methods;

(III) Geophysical Signal Processing;

(IV) Exploration/Applied Geophysics;

(V) Engineering & Environmental Geophysics;

(VI) Hydrogeophysics;

(VII) Seismology; and

(VIII) Near-surface Geophysics: Magnetics, Electromagnetic, Gravity, Electrical Resistivity, Seismic.

(iv) Demonstrate the ability to plan and conduct geophysical surveys considering public health, safety, and welfare.

(B) Specialized practice experience: The applicant demonstrates twenty years or more of specialized work history in only one or two of the tasks domains. One factor TBPG will consider is whether the examination is not relevant to, or largely beyond the scope of, the applicant's specialized experience and the applicant's intended field of practice.

(f) Substitution of Work Experience for Educational Requirements. Before the Appointed Board considers an application for substitution of work experience for an education requirement, the applicant seeking approval of the substitution must meet all of the following minimum criteria:

(1) The applicant must pass, within three (3) attempts, the appropriate qualifying licensing examination (or a substantially similar examination), depending on the discipline in which the applicant seeks to be licensed, as follows:

(A) Geology discipline: both the Fundamentals and Practice of Geology examinations administered by ASBOG®;

(B) Geophysics discipline: the Texas Geophysics Examination (TGE); or

(C) Soil Science discipline: both the Fundamentals and Practice examinations administered by the Council of Soil Science Examiners (CSSE);

(2) The applicant must have at least 15 years of qualifying work experience; including the ability to apply scientific methods and to solve problems;

(3) The applicant must demonstrate an established record of continuing education and workshop participation in geoscience fields; and [the following:]

~~[(A) Ability to work with others;]~~

~~[(B) Ability to apply scientific methods;]~~

~~[(C) Ability to solve problems;]~~

~~[(D) Honest and ethical behavior;]~~

~~[(E) Ability to communicate effectively; and]~~

~~[(F) Relevant continuing education activities that advance knowledge throughout the applicant's professional career.]~~

(4) The applicant is highly encouraged to appear before the Application Review and Continuing Education Committee for presentation of qualifications.

(g) Waiver of Education Requirement - Generally. Before the Appointed Board considers an application for education waiver, the applicant seeking a waiver of the education requirement must demonstrate mastery of a minimum required knowledge base in geoscience by meeting the following criteria:

(1) The applicant must demonstrate both of the following:

(A) A four-year degree in a field of basic or applied science that includes at least 15 hours of courses in geosciences from an accredited institution of higher education or the equivalent of a total of at least 15 hours of courses in geoscience from an accredited institution of higher education and/or other educational sources, as determined by the Appointed Board;

(B) An established record of continuing education and workshop participation in geoscience fields; and

(C) The Appointed Board may also determine that an individual applicant has satisfactorily completed other equivalent educational requirements after reviewing the applicant's educational credentials.

(2) The applicant must have at least eight years of qualifying geoscience work experience;

(3) The applicant must pass the appropriate qualifying examination, depending on the discipline in which the applicant seeks to be licensed, as follows:

(A) Geology discipline: both the Fundamentals and Practice examinations administered by ASBOG®;

(B) Geophysics discipline: the Texas Geophysics Examination (TGE); or

(C) Soil Science discipline: both the Fundamentals and Practice examinations administered by the Council of Soil Science Examiners (CSSE).

(h) Education Waiver for License in Geology Discipline - Fundamentals. An individual who plans to apply for licensure as a Professional Geoscientist in the discipline of geology who does not fully meet the education requirement for licensure may take the ASBOG® Fundamentals of Geology examination as long as the applicant:

(1) Has submitted any other necessary forms, documents, and fees; and

(2) Has acknowledged that the Appointed Board must approve an education waiver request or approve the substitution of experience for education before the applicant may be licensed as a Professional Geoscientist and that the Appointed Board will not consider an education waiver or a request to substitute experience for education until after both the ASBOG® Fundamentals of Geology and Practice of Geology examinations have been passed.

(i) Education Waiver for License in Geology Discipline - Practice. An applicant for licensure as a Professional Geoscientist in the discipline of geology who does not fully meet the education requirement for licensure may take the ASBOG® Practice of Geology examination as long as the applicant:

(1) Meets or is within six months of meeting the qualifying experience requirement for licensure;

(2) Submits the qualifying work experience claimed (or has verified qualifying work experience claimed through an alternate means, as provided by TBPG rules);

(3) Has submitted a request for an education waiver or a substitution of experience for education;

(4) Has submitted any other necessary forms, documents, and fees; and

(5) Has acknowledged that the Appointed Board must approve the education waiver request or a request to substitute experience for education before the applicant may be licensed as a Professional Geoscientist and that the Appointed Board will not consider an education waiver or a request for substitution of experience for education until after both the ASBOG® Fundamentals of Geology and Practice of Geology examinations have been passed.

(j) Education Waiver for License in Geophysics Discipline. An applicant for licensure as a Professional Geoscientist in the discipline of geophysics who does not fully meet the education requirement

for licensure may take the Texas Geophysics Examination as long as the applicant:

- (1) Meets or is within six months of meeting the qualifying experience requirement for licensure;
- (2) Submits the qualifying work experience claimed (or has verified qualifying work experience claimed through an alternate means, as provided by TBPB rules);
- (3) Has submitted a request for an education waiver or a substitution of experience for education;
- (4) Has submitted any other necessary forms, documents, and fees; and
- (5) Has acknowledged that the Appointed Board must approve the education waiver request or a request to substitute experience for education before the applicant may be licensed as a Professional Geoscientist and that the Appointed Board will not consider an education waiver or a request for substitution of experience for education until after the Texas Geophysics Examination has been passed.

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 June 5, 2023.

TRD-202302067

Rene Truan

Executive Director

Texas Board of Professional Geoscientists

Earliest possible date of adoption: July 23, 2023

For further information, please call: (512) 936-4428



TITLE 28. INSURANCE

PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

CHAPTER 133. GENERAL MEDICAL PROVISIONS

SUBCHAPTER B. HEALTH CARE PROVIDER BILLING PROCEDURES

28 TAC §133.30

INTRODUCTION. The Texas Department of Insurance, Division of Workers' Compensation (DWC) proposes to amend 28 TAC §133.30, concerning Telemedicine and Telehealth Services. Section 133.30 implements Texas Labor Code §413.011, which requires DWC to adopt health care reimbursement policies and guidelines that reflect the standardized reimbursement structures found in other health care delivery systems with minimal modifications.

EXPLANATION. Amending §133.30 is necessary to conform the section to Texas Occupations Code Chapter 111, which was amended to define "teledentistry dental service" by House Bill (HB) 2056, 87th Legislature, Regular Session (2021). Section 133.30 sets billing requirements when a health care provider provides telemedicine and telehealth services.

Currently, §133.30 has definitions for "telemedicine services" and "telehealth services" but does not define "teledentistry dental service." Section 133.30 requires health care providers to bill for "telemedicine services" and "telehealth services" using the applicable Medicare payment policies and requirements of Chapter 133 of this title. DWC proposes to add a definition for "teledentistry services" and to add Medicaid payment policies to the list of applicable payment policies that health care providers must use to bill for telemedicine, telehealth, and teledentistry services.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Deputy Commissioner for Health & Safety Mary Landrum has determined that during each year of the first five years the proposed amendments are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the sections, other than that imposed by the statute. This determination was made because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendments.

Ms. Landrum does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendments are in effect, Ms. Landrum expects that administering the proposed amendments will have the public benefits of ensuring that DWC's rules conform to Occupations Code Chapter 111 and are providing expanded access to services and care for injured employees in Texas.

Ms. Landrum expects that the proposed amendments will not increase the cost to comply with Labor Code §413.011 because they do not impose requirements beyond those in the statute. Labor Code §413.011 requires DWC to adopt health care reimbursement policies and guidelines that reflect the standardized reimbursement structures found in other health care delivery systems with minimum modifications. To match these standardizations, §413.011 requires the commissioner to adopt the current reimbursement methodologies, models, and values or weights the federal Centers for Medicare and Medicaid Services uses. This includes applicable payment policies related to coding, billing, and reporting. As a result, the cost associated with adopting those reimbursement methodologies, models, and values or weights does not result from the enforcement or administration of the proposed amendments.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. DWC has determined that the proposed amendments will not have an adverse economic effect or a disproportionate economic impact on small or micro businesses, or on rural communities because health care providers will continue to use the billing forms and reporting processes they currently use. As a result, and in accordance with Government Code §2006.002(c), DWC is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. DWC has determined that this proposal does not impose a possible cost on regulated persons. No additional rule amendments are required under Government Code §2001.0045 because proposed §133.30 is necessary to implement legislation. The proposed rule implements Labor Code §413.011 and conforms to Occupations Code Chapter 111, which was amended to define "teledentistry dental service" by HB 2056, 87th Legislature, Regular Session (2021).

GOVERNMENT GROWTH IMPACT STATEMENT. DWC has determined that for each year of the first five years that the proposed amendments are in effect, the proposed rule:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will not require an increase or decrease in fees paid to the agency;
- will not create a new regulation;
- will expand an existing regulation;
- will not increase or decrease the number of individuals subject to the rule's applicability; and
- will not positively or adversely affect the Texas economy.

DWC made these determinations because the proposed amendments are necessary to implement legislation and conform the amendments to Occupations Code Chapter 111 made by HB 2056, 87th Legislature, Regular Session (2021). The amendments do not impose additional costs beyond those the statutes require.

TAKINGS IMPACT ASSESSMENT. DWC has determined that no private real property interests are affected by this proposal, and this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. DWC will consider any written comments on the proposal that DWC receives no later than 5:00 p.m., Central time, on July 24, 2023. Send your comments to RuleComments@tdi.texas.gov; or to Texas Department of Insurance, Division of Workers' Compensation, Legal Services, MC-LS, P.O. Box 12050, Austin, Texas 78711-2050.

To request a public hearing on the proposal, submit a request before the end of the comment period to RuleComments@tdi.texas.gov; or to Texas Department of Insurance, Division of Workers' Compensation, Legal Services, MC-LS, P.O. Box 12050, Austin, Texas 78711-2050. The request for public hearing must be separate from any comments. If DWC holds a public hearing, it will consider written and oral comments presented at the hearing.

STATUTORY AUTHORITY. DWC proposes §133.30 under Labor Code §§402.00111, 402.00116, 402.061, 408.027, and 413.011; Insurance Code §§1305.003 and 1305.153; and Occupations Code §111.001.

Labor Code §402.00111 provides that the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority, under Title 5 of the Labor Code.

Labor Code §402.00116 provides that the commissioner of workers' compensation shall administer and enforce this title, other workers' compensation laws of this state, and other laws granting jurisdiction to or applicable to DWC or the commissioner.

Labor Code §402.061 provides that the commissioner of workers' compensation shall adopt rules as necessary to implement and enforce the Workers' Compensation Act.

Labor Code §408.027 addresses payment of health care providers. Labor Code §408.027(g) provides that, despite any other provision in Title 5, Subtitle A, Labor Code or Insurance Code Chapter 1305, §408.027 applies to health care provided through a workers' compensation health care network established under Chapter 1305. Subsection (g) also requires the commissioner to adopt rules as necessary to implement §408.027.

Labor Code §413.011 requires the commissioner to adopt health care reimbursement policies and guidelines that reflect the standardized reimbursement structures found in other health care delivery systems with minimal modifications to those reimbursement methodologies as necessary to meet occupational injury requirements. To match these standardizations, §413.011 requires the commissioner to adopt the current reimbursement methodologies, models, and values or weights the federal Centers for Medicare and Medicaid Services uses. This includes applicable payment policies related to coding, billing, and reporting.

Insurance Code §1305.003(b) states that Chapter 1305 prevails if there is a conflict between the Workers' Compensation Act and Chapter 1305 regarding:

- the provision of medical benefits for injured employees;
- the establishment and regulation of fees for medical treatments and services;
- the time frames for payment of medical bills;
- the operation and regulation of workers' compensation health care networks;
- the regulation of providers who contract with those networks; or
- the resolution of disputes about medical benefits provided through those networks.

Insurance Code §1305.153(a) states that the amount of reimbursement for services provided by a network provider is determined by the contract between the network and the provider or group of providers.

Insurance Code §1305.153(d) states that, subject to Insurance Code §1305.153(a), billing by, and reimbursement to, contracted and out-of-network providers are subject to the requirements of the Workers' Compensation Act and DWC's applicable rules, consistent with Chapter 1305. The paragraph further states that this subsection may not be construed to require application of a rule on reimbursement if that application would negate the reimbursement amounts the network negotiated.

Occupations Code §111.001(2-a) defines "teledentistry dental service" as a health care service delivered by a dentist, or a health professional acting under the delegation and supervision of a dentist, acting within the scope of the dentist's or health professional's license or certification to a patient at a different physical location than the dentist or health professional using telecommunications or information technology.

CROSS-REFERENCE TO STATUTE. Section 133.30 implements Labor Code §413.011, enacted by HB 752, 73rd Legislature, Regular Session (1993); amended by HB 2600, 77th Legislature, Regular Session (2001); Senate Bill 1572, 78th Legislature, Regular Session (2003); HB 7, 79th Legislature,

Regular Session (2005); HB 2018, 79th Legislature, Regular Session (2005); HB 473, 80th Legislature, Regular Session (2007).

§133.30. *Telemedicine, [and] Telehealth, and Teledentistry Services.*

(a) This section applies to medical billing and reimbursement for telemedicine, [and] telehealth, and teledentistry services provided on or after September 1, 2021 [2018], to injured employees in the Texas workers' compensation system, including injured employees subject to a workers' compensation health care network established under Insurance Code Chapter 1305.

(b) For the purposes of this section:

(1) "telemedicine services" means telemedicine medical services as defined in Occupations Code §111.001; [and]

(2) "telehealth services" means telehealth services as defined in Occupations Code §111.001; and[-]

(3) "teledentistry services" means teledentistry services as defined in Occupations Code §111.001.

(c) Except as provided in subsection (d) of this section, a health care provider must bill for telemedicine, [and] telehealth, and teledentistry services according to applicable:

(1) Medicare payment policies, as defined in §134.203 of this title (relating to Medical Fee Guideline for Professional Services); [and]

(2) Medicaid payment policies, in accordance with the dental fee guideline in §134.303 of this title (relating to 2005 Dental Fee Guideline); and

(3) [(2)] provisions of Chapter 133 of this title.

(d) A health care provider may bill and be reimbursed for telemedicine, [or] telehealth, or teledentistry services regardless of where the injured employee is located at the time the telemedicine, [or] telehealth, or teledentistry services are provided.

(e) The provisions of this section take precedence over any conflicting provisions adopted or used [utilized] by:

(1) the Centers for Medicare and Medicaid Services in administering the Medicare program; and[-]

(2) the Texas Health and Human Services Commission in administering the Texas Medicaid Program.

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

Filed with the Office of the Secretary of State on June 7, 2023.

TRD-202302122

Kara Mace

General Counsel

Texas Department of Insurance, Division of Workers' Compensation

Earliest possible date of adoption: July 23, 2023

For further information, please call: (512) 804-4703



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 15. DRIVER LICENSE RULES

SUBCHAPTER C. EXAMINATION

REQUIREMENTS

37 TAC §15.55

The Texas Department of Public Safety (the department) proposes amendments to §15.55, concerning Waiver of Knowledge and/or Skills Tests. The proposed rule amendment waives the knowledge and skills exams for an applicant that presents a non-commercial driver license that is valid or not expired over two years from another U.S. state, U.S. territory or province of Canada and reorganizes the rule for better readability.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period this rule is in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the section as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

Ms. Whittenton has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of this rule will be a decrease in the number of return visits to the driver license office to complete knowledge and/or skills tests for applicants with out-of-state licenses expired less than two years.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

The department prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program; will not require the creation of new employee positions nor eliminate current employee positions; will not require an increase or decrease in future legislative appropriations to the agency; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create a new regulation. The proposed rulemaking does not expand, limit or repeal an existing regulation. The proposed rule does not increase or decrease the number of individuals subject to the rule's applicability. During the first five years the proposed rule is in effect the proposed rule should not impact positively or negatively the state's economy.

Comments on the proposal may be submitted to Mandy Edwards, Driver License Division, Texas Department of Public Safety, P.O. Box 4087 (MSC 0300), Austin, Texas

78773; by fax to (512) 424-5233; or by email to DLDrulecomments@dps.texas.gov. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §521.005, which authorizes the department to adopt rules necessary to administer Chapter 521 of the Texas Transportation Code; and §521.1426.

Texas Government Code, §411.004(3), and Texas Transportation Code, §521.005, are affected by this proposal.

§15.55. *Waiver of Knowledge and/or Skills Tests.*

(a) The terms in this section, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise.
[Definitions:]

(1) Knowledge exam--Written, computerized, or automated exam.

(2) Skills exam--Driving or road exam.

(3) Unrestricted Class A, B, and C license--A license that allows a person 18 years of age or older to operate a motor vehicle without having a restriction that requires a licensed driver 21 years of age or older in the front seat.

~~[(b) Required completion of the knowledge and/or skills exams.]~~

~~[(1) The skills exam will not be waived for applicants under the age of 18.]~~

~~[(2) Applicants younger than 25 years of age who present driver education completion certificates dated two or more years prior to the date of application will not have any examinations waived. These certificates are acceptable as proof of driver education completion.]~~

~~[(3) If an advance in grade is applied for, the applicant must pass the vision exam and appropriate knowledge and skills exams.]~~

~~[(4) For applicants with an expired out-of-state license or no license, the applicant must pass the vision, knowledge, and skills exams.]~~

~~[(e) Waiver of the knowledge and/or skills exams.]~~

~~[(1) Noncommercial driver license:]~~

~~[(A) Knowledge and skills exams are waived for applicants who hold a valid license from another U.S. state, U.S. territory, or province of Canada when applying for a Texas license of the same or lower type. An applicant with a valid license will be required to pass the vision exam.]~~

(b) Knowledge and skills exams are waived for applicants who hold a noncommercial driver license that is valid or not expired over two years from another U.S. state, U.S. territory, or province of Canada when applying for a Texas license of the same or lower type. An applicant with a noncommercial driver license that is valid or not expired over two years will be required to pass the vision exam.

(c) [(B)] The skills exam for a noncommercial driver license is waived for applicants who hold a valid U.S. military or Armed Forces license.

(d) [(2)] Class M License:

(1) [(A)] The Class M knowledge exam is waived for applicants who have successfully completed a Texas Department of Li-

ensing and Regulation (TDLR) approved motorcycle operator training course.

(2) [(B)] The skills exam is waived for individuals age 18 and older who have a valid, unrestricted Class A, B, or C Texas driver license and have successfully completed a TDLR approved motorcycle operator training course.

(3) [(C)] All other applicants must take and pass a skills exam for a motorcycle license.

(4) [(D)] An applicant must present either item detailed in subparagraph (A) or (B) of this paragraph [clause (i) or clause (ii) of this subparagraph] to confirm successful completion of a TDLR approved motorcycle operator training course:

(A) [(i)] a valid Standardized Motorcycle Operator Training Course completion card (Form MSB-8); or

(B) [(ii)] a valid completion card from a state or military motorcycle safety training program showing that the applicant has completed a course in basic motorcycle safety instruction that meets or exceeds the TDLR approved curriculum standards.

(C) [(iii)] The course completion cards are valid for 24 months from the date of issuance.

(e) Required completion of the knowledge and/or skills exams.

(1) The skills exam will not be waived for applicants under the age of 18.

(2) Applicants younger than 25 years of age who present driver education completion certificates dated two or more years prior to the date of application will not have any examinations waived. These certificates are acceptable as proof of driver education completion.

(3) If an advance in grade is applied for, the applicant must pass the vision exam and appropriate knowledge and skills exams.

(4) For applicants with an out-of-state license expired over two years or no license, the applicant must pass the vision, knowledge, and skills exams.

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 June 12, 2023.

TRD-202302129

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Earliest possible date of adoption: July 23, 2023

For further information, please call: (512) 424-5848

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CHAPTER 23. VEHICLE INSPECTION
SUBCHAPTER F. VIOLATIONS AND
ADMINISTRATIVE PENALTIES

37 TAC §23.62

The Texas Department of Public Safety (the department) proposes amendments to §23.62, concerning Violations and Penalty Schedule. The proposed rule amendments make various changes to the requirements relating to emissions inspections and the related conduct of inspectors and station owners and clarifies the department's authority to immediately

suspend or revoke the certificate of an inspector or inspection station if the action is found to be necessary to prevent or remedy a threat to public health, safety, or welfare.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period this rule is in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the section as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

Ms. Whittenton has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of this rule will be the prevention and remedy of the threats to public health, safety, or welfare through enhanced administrative enforcement against the vehicle inspectors and inspection station owners responsible for fraudulent vehicle emissions inspections.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

The department prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program; will not require the creation of new employee positions nor eliminate current employee positions; will not require an increase or decrease in future legislative appropriations to the agency; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create a new regulation. The proposed rulemaking does not expand, limit or repeal an existing regulation. The proposed rule does not increase or decrease the number of individuals subject to the rule's applicability. During the first five years the proposed rule is in effect the proposed rule should not impact positively or negatively the state's economy.

Comments on this proposal may be submitted to Steve Moninger, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0240, Austin, Texas 78773-0246, or by email to RSD.Rule.Comments@dps.texas.gov. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §548.002, which

authorizes the Department of Public Safety to adopt rules to enforce Chapter 548.

Texas Government Code, §411.004(3), and Texas Transportation Code §548.002, are affected by this proposal.

§23.62. Violations and Penalty Schedule.

(a) In accordance with this section, the department may deny an application for a certificate, revoke or suspend the certificate of a person, vehicle inspection station, or inspector, place on probation, or reprimand a person who holds a certificate.

(b) The department will administer penalties by the category of the violation. The violations listed in this section are not an exclusive list of violations. The department may assess penalties for any violations of Texas Transportation Code, Chapter 548 (the Act), or rules adopted by the department. The attached graphic summarizes the violation categories and illustrates the method by which penalties are enhanced for multiple violations.

Figure: 37 TAC §23.62(b)

[Figure: 37 TAC §23.62(b)]

(c) Violation categories are as follows:

(1) Category A.

(A) Issuing a vehicle inspection report without inspecting one or more items of inspection.

(B) Issuing a vehicle inspection report without requiring the owner or operator to furnish proof of financial responsibility for the vehicle at the time of inspection.

(C) Issuing the wrong series or type of inspection report for the vehicle presented for inspection.

(D) Refusing to inspect a vehicle without an objective justifiable cause related to safety.

(E) Failure to properly safeguard inspection reports, department issued forms, the electronic station interface device, emissions analyzer access/identification card, and/or any personal identification number (PIN).

(F) Failure to maintain required records.

(G) Failure to have at least one certified inspector on duty during the posted hours of operations for the vehicle inspection station.

(H) Failure to display the official department issued vehicle inspection station sign, certificate of appointment, procedure chart and other notices in a manner prescribed by the department.

(I) Failure to post hours of operation.

(J) Failure to maintain the required facility standards.

(K) Issuing a vehicle inspection report to a vehicle with one failing item of inspection.

(L) Failing to enter information or entering incorrect vehicle information into the electronic station interface device or emissions analyzer resulting in the reporting of erroneous information concerning the vehicle.

(M) Failure to conduct an inspection within the inspection area approved by the department for each vehicle type.

(N) Failure of inspector of record to ensure complete and proper inspection.

(O) Failure to enter an inspection into the approved interface device at the time of the inspection.

(P) Conducting an inspection without the appropriate and operational testing equipment.

(Q) Failure to perform a complete inspection and/or issue a vehicle inspection report.

(R) Requiring repair or adjustment not required by the Act, this chapter, or department regulation.

(2) Category B.

(A) Issuing a passing vehicle inspection report without inspecting the vehicle.

(B) Issuing a passing vehicle inspection report to a vehicle with multiple failing items of inspection.

(C) Refusing to allow owner to have repairs or adjustments made at location of owner's choice.

(D) Allowing an uncertified person to perform, in whole or in part, the inspection or rejection of a required item during the inspection of a vehicle.

(E) Charging more than the statutory fee.

(F) Acting in a manner that could reasonably be expected to cause confusion or misunderstanding on the part of an owner or operator presenting a vehicle regarding the relationship between the statutorily mandated inspection fee and a fee for any other service or product offered by the vehicle inspection station.

(G) Failing to list and charge for any additional services separately from the statutorily mandated inspection fee.

(H) Charging a fee, convenience fee or service charge in affiliation or connection with the inspection, in a manner that is false, misleading, deceptive or unauthorized.

(I) Inspector performing inspection while under the influence of alcohol or drugs.

(J) Inspecting a vehicle at a location other than the department approved inspection area.

(K) Altering a previously issued inspection report.

(L) Issuing a vehicle inspection report, while employed as a fleet or government inspection station inspector, to an unauthorized vehicle. Unauthorized vehicles include those not owned, leased or under service contract to that entity, or personal vehicles of officers and employees of the fleet or government inspection station or the general public.

(M) Preparing or submitting to the department a false, incorrect, incomplete or misleading form or report, or failing to enter required data into the emissions testing analyzer or electronic station interface device and transmitting that data as required by the department.

(N) Issuing a passing vehicle inspection report without inspecting multiple inspection items on the vehicle.

(O) Issuing a passing vehicle inspection report by using the emissions analyzer access/identification card, the electronic station interface device unique identifier, or the associated PIN of another.

(P) Giving, sharing, lending or displaying an emissions analyzer access/identification card, the electronic station interface device unique identifier, or divulging the associated PIN to another.

(Q) Failure of inspector to enter all required data pertaining to the inspection, including, but not limited to data entry into

the emissions testing analyzer, electronic station interface device, vehicle inspection report or any other department required form.

(R) Conducting multiple inspections outside the inspection area approved by the department for each vehicle type.

(S) Issuing a passing vehicle inspection report in violation of Texas Transportation Code, §548.104(d).

(T) Vehicle inspection station owner, operator or manager directing a state certified inspector under his employ or supervision to issue a vehicle inspection report when in violation of this chapter, department regulations, or the Act.

(U) Vehicle inspection station owner, operator, or manager having knowledge of a state certified inspector under the owner's employ or supervision issuing a passing vehicle inspection report in violation of this chapter, department regulations, or the Act.

(V) Issuing a safety only inspection report to a vehicle required to undergo a safety and emissions inspection without requiring a signed and legible affidavit, approved by the department, from the owner or operator of the vehicle, in a non emissions county.

(W) Disclosing or selling information collected in relation to a vehicle inspection about a unique customer or a unique vehicle owner, to a person other than the department or the person who is the subject of the information, including a customer or vehicle owner's name, address, or phone number.

(3) Category C.

(A) Issuing more than one vehicle inspection report without inspecting the vehicles.

(B) Issuing a passing vehicle inspection report to multiple vehicles with multiple failing items of inspection.

(C) Multiple instances of issuing a passing vehicle inspection report to vehicles with multiple defects.

(D) Emissions testing the exhaust or electronic connector of one vehicle, or using an electronic device to simulate or emulate a vehicle, for the purpose of enabling another vehicle to pass the emissions test (clean piping or clean scanning), or allowing a certified inspector or other individual under the person's employment or supervision to emissions test the exhaust or electronic connector of one vehicle, or use an electronic device that simulates or emulates a vehicle, for the purpose of enabling another vehicle to pass the emissions test (clean piping or clean scanning).

(E) Issuing a passing vehicle inspection report to a vehicle with multiple emissions related violations or violations on more than one vehicle.

(F) Allowing a person whose certificate has been suspended or revoked to participate in a vehicle inspection, issue a vehicle inspection report or participate in the regulated operations of the vehicle inspection station.

(G) Charging more than the statutory fee in addition to not inspecting the vehicle.

(H) Misrepresenting a material fact in any application to the department or any other information filed pursuant to the Act or this chapter.

(I) Conducting or participating in the inspection of a vehicle during a period of suspension, revocation, denial, after expiration of suspension but before reinstatement, or after expiration of inspector certification.

(J) Altering or damaging an item of inspection with the intent that the item fail the inspection.

(K) Multiple instances of preparing or submitting to the department false, incorrect, incomplete, or misleading forms or reports.

(L) Multiple instances of failing to enter complete and accurate data into the emissions testing analyzer or electronic station interface device, or failing to transmit complete and accurate data in the manner required by the department.

(M) Violating a prohibition described in §23.57 of this title (relating to Prohibitions) not otherwise provided in this section.

(4) Category D. These violations are grounds for indefinite suspension based on the temporary failure to possess or maintain an item or condition necessary for certification. The suspension of inspection activities is lifted upon receipt by the department of proof the obstacle has been removed or remedied.

(A) Failing to possess a valid driver license.

(B) Failing to possess a required item of inspection equipment.

(5) Category E. These violations apply to inspectors and vehicle inspection stations in which emission testing is required.

(A) Failing to perform applicable emissions test as required.

(B) Issuing a passing emissions inspection report without performing the emissions test on the vehicle as required.

(C) Failing to perform the gas cap test, or the use of unauthorized bypass for gas cap test.

(D) Issuing a passing emissions inspection report when the required emissions adjustments, corrections or repairs have not been made after an inspection disclosed the necessity for such adjustments, corrections or repairs.

(E) Falsely representing to an owner or operator of a vehicle that an emissions related component must be repaired, adjusted or replaced in order to pass emissions inspection.

(F) Requiring an emissions repair or adjustment not required by this chapter, department regulation, or the Act.

(G) Tampering with the emissions system or an emission related component in order to cause vehicle to fail emissions test.

(H) Refusing to allow the owner to have emissions repairs or adjustments made at a location of the owner's choice.

(I) Allowing an uncertified person to conduct an emissions inspection.

(J) Charging more than the authorized emissions inspection fee.

(K) Entering false information into an emission analyzer in order to issue an inspection report.

~~[(L) Violating a prohibition described in §23.57 of the title (relating to Prohibitions).]~~

(d) When assessing administrative penalties, the procedures detailed in this subsection will be observed:

(1) Multiple vehicle inspection station violations may result in action being taken against all station licenses held by the owner.

(2) The department may require multiple suspension periods be served consecutively.

(3) Enhanced penalties assessed will be based on previously adjudicated violations in the same category. Any violation of the same category committed after final adjudication of the prior violation will be treated as a subsequent violation for purposes of penalty enhancement.

(A) Category A violations are subject to a two year period of limitations preceding the date of the current violation.

(B) Under Category B, C, and E, subsequent violations are based on the number of previously adjudicated or otherwise finalized violations in the same category within the five year period preceding the date of the current violation.

(4) The penalty schedule is a guide only and does not limit the department's authority to impose additional penalties, sanctions, or both, should the department determine the scheduled penalty insufficient under the specific circumstances presented. Such circumstances may include a significant number of similar violations in a brief period, a pattern of conduct established by repeated as yet unadjudicated violations, or a violation determined to constitute a threat to public health, safety, or welfare under Texas Transportation Code, §548.407.

(e) Certification for a vehicle inspection station may not be issued if the person's immediate family member's certification as a vehicle inspection station owner at that same location is currently suspended or revoked, or is subject to a pending administrative adverse action, unless the person submits an affidavit stating the certificate holder who is the subject of the suspension, revocation or pending action, has no, nor will have any, further involvement in the business of state inspections. The application will be rejected as incomplete if the applicant fails to submit the required affidavit.

(f) A new certification for a vehicle inspection station may be issued at the same location where the previous certificate holder as an owner or operator is pending or currently serving a suspension or revocation, if the person submits an affidavit stating the certificate holder who is the subject of the suspension or revocation, has no, nor will have any, further involvement in the business of state inspections. The affidavit must contain the statement that the affiant understands and agrees that in the event the department discovers the previous certificate holder is involved in the inspection business at that location, the certificate will be revoked under Texas Transportation Code, §548.405. In addition to the affidavit, when the change of ownership of the vehicle inspection station is by lease of the building or the inspection area, the person seeking certification must provide a copy of the lease agreement included with the application for certification as an official vehicle inspection station. The application will be rejected as incomplete if the applicant fails to submit the required affidavit.

(g) Reinstatement. Expiration of the suspension period does not result in automatic reinstatement of the certificate. Reinstatement must be requested by contacting the department, and this may be initiated prior to expiration of the suspension. In addition, to meet all qualifications for the certificate, the certificate holder must:

(1) attend and complete the vehicle inspection training program and pass the complete written and demonstration test [when required];

(2) submit the certification fee if certification has expired during suspension; and

(3) pay all charges assessed related to the administrative hearing process, if applicable.

(h) The failure to pay an administrative penalty that has become final, whether by the passage of the deadline to appeal or by final court disposition, whichever is later, will result in suspension of the

license with no further notice or right to appeal. The suspension will take effect upon the passage of the deadline to appeal and will remain in effect until the penalty is paid in full.

(i) The director or the director's designee may immediately suspend or revoke a certificate as an inspector or inspection station if the director or the director's designee finds that the action is necessary to prevent or remedy a threat to public health, safety, or welfare as described in Texas Transportation Code, §548.407(d)(1-10). Specifically, this section's emissions-related inspection violations are adopted pursuant to Texas Transportation Code, §548.302, and therefore constitute a threat to public health, safety, or welfare under §548.407(d)(8) of the Act.

(j) For purposes of establishing a violation relating to the entry of false information or the failure to enter accurate information into the electronic database, the entry of an inspector's identifying PIN creates a rebuttable presumption that the inspector whose PIN was used committed the violation. The allegation may be rebutted by the submission of credible evidence establishing by a preponderance of evidence that

another person used the inspector's PIN to commit the violation. The submission of such evidence will constitute an admission of having failed to secure the PIN and, if applicable, allowing an uncertified individual to conduct an inspection.

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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D. Phillip Adkins

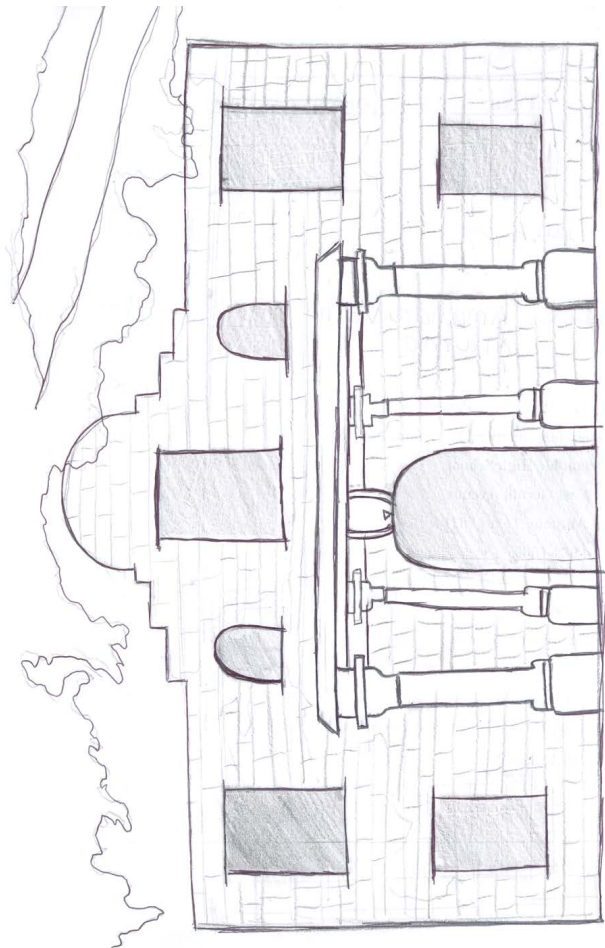
General Counsel

Texas Department of Public Safety

Earliest possible date of adoption: July 23, 2023

For further information, please call: (512) 424-5848





ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 3. BOLL WEEVIL ERADICATION PROGRAM

The Texas Department of Agriculture (Department) adopts amendments to Texas Administrative Code (TAC), Title 4, Part 1, Chapter 3, Boll Weevil Eradication Program, Subchapter A (Election Procedures), §§3.1, 3.2, 3.4 - 3.7, 3.10, and 3.11; Subchapter B (Establishment of Rules, Procedures, and Methods of Treatment), §§3.22 - 3.24; Subchapter C (Prohibition of Planting of Cotton), §§3.51 and 3.52; Subchapter D (Requirements for Participation in the Eradication Program and Administrative Penalty Enforcement), §§3.71, 3.72, 3.74 - 3.76, and 3.78; Subchapter E (Creation of Eradication Zones), §§3.100, 3.102, and 3.103; Subchapter F (General Procedures), §§3.201 - 3.203 and 3.205; Subchapter H (Use of Bio-Intensive Controls in Active Boll Weevil Eradication Zones), §§3.400 - 3.403; and Subchapter J (Organic Cotton Rules), §§3.601, 3.602, and 3.604 - 3.609 without changes to the proposed text as published in the December 30, 2022, issue of the *Texas Register* (47 TexReg 8818). These rules will not be republished.

The Department adopts amendments to Subchapter A, §3.3; Subchapter C, §3.54; and Subchapter D, §3.73 with changes to the proposed text as published in the December 30, 2022, issue of the *Texas Register* (47 TexReg 8818). These rules will be republished. The changes retain existing requirements for notice of eradication zone elections and certain Texas Boll Weevil Eradication Foundation (Foundation) actions to be published in newspapers. The changes to §§3.3, 3.54, and 3.73 are made to comply with the statutory requirements for publication in newspapers found in §§74.106, 74.117, and 74.118 of the Texas Agriculture Code (Code).

The amendments to §3.1 update a reference to the United States Department of Agriculture (USDA) Farm Service Agency (FSA) and add "Texas Boll Weevil Eradication Foundation" to clarify the reference to the Foundation Board of Directors (Board).

The amendments to §3.2 add a subsection allowing an unopposed Board candidate to assume a Board position without holding an election to expedite the election process and increase efficiency.

The amendments to §3.3 add "Texas Boll Weevil Eradication Foundation" to clarify the reference to its Board and update references to Chapter 74 of the Code and Texas A&M's AgriLife Extension Service.

The amendment to §3.4 updates the content requirements of ballots for Board elections to comport with the current Foundation practices.

The amendment to §3.5 clarifies the reference to the geographic area by which tabulation and recording of votes will occur.

The amendments to §3.6 supplement references to "zones" to "eradication zones" for greater clarity and to conform with usage throughout Chapter 74 of the Code and update a reference to the FSA and statutory references to Chapter 74 of the Code.

The amendments to §3.7 clarify references to "zones" to mean "eradication zones" for greater clarity and to conform with usage in Chapter 74 of the Code.

The amendments to §3.10 update references to the FSA and statutory references to Chapter 74 of the Code and revise language to require either the signature of a grower or a person with the authority to sign for a grower on a petition for changing areas in an eradication zone.

The amendments to §3.11 change references to the Department to conform with usage throughout Title 4, Part 1; modify language to require either the signature of a grower or a person with the authority to sign for a grower on a petition for recalling a referendum in an eradication zone; and update a reference to the FSA, as well as statutory references to Chapter 74 of the Code.

The amendments to §3.22 remove unnecessary definitions for terms already defined in TAC, Title 4, Part 1, §1.1, which apply to the entire part; remove definitions no longer used in this chapter; remove a definition for "zone" because it is defined in Section 74.002 of the Code and update the definition for the Foundation.

The amendments to §3.23 remove an outdated reference to the now nonexistent National Boll Weevil Cooperative Control Program, update references to pesticide rules in Chapter 7 of TAC, Title 4, Part 1 and to Texas A&M AgriLife Extension Service county agents.

The amendments to §3.24 update a reference to the Texas Natural Resources Conservation Commission, now known as the Texas Commission on Environmental Quality.

The amendments to §3.51 remove an unnecessary definition for a term already defined in TAC, Title 4, Part 1, §1.1, which applies to the entire part.

The amendments to §3.52 clarify internal references to the Department's administrative rules and a reference to the Foundation's Board.

The amendments to §3.54 update a cross reference to §3.52.

The amendment to §3.71 clarifies internal references to the Department's administrative rules.

The amendments to §3.72 update a reference to the FSA and correct a grammatical error.

The amendment to §3.73 makes a minor editorial change.

The amendments to §3.74 correct a grammatical error to the rule's heading and update an internal reference within this chapter.

The amendments to §3.75 revise an internal reference within this chapter; update how a person can protest the issuance of a notice of violation and assessment of a penalty payment involving the failure to pay an eradication zone assessment; add language allowing the issuance of an order for such a penalty payment in the event someone does not respond to a notice; remove language requiring a hearing be held in the event someone does not respond to a notice; update a reference to the State Office of Administrative Hearings' rules of procedure; and incorporate language from the Code, Section 12.020, the Department's general statute on administrative penalties and related hearings, which establishes a 20-day period during which a hearing on a notice may be requested.

The amendments to §3.76 revise a reference to Section 74.115 of the Code; update how assessment penalty exemption forms can be obtained from the Department; limit assessment penalty exemptions to the particular crop year for which they are sought; and clarify that such future exemptions would apply to a new crop.

The amendments to §3.100 replace references to the "commissioner of agriculture" with "commissioner" to conform with usage in Chapter 74 of the Code and in this chapter.

The amendments to §3.102 change its heading to "Eradication Zone Activation; Grower Approval" and "zone" to "eradication zone" to conform with usage in Chapter 74 of the Code and in this chapter, and make minor editorial changes.

The amendments to §3.103 modify a cross reference to §3.102 to account for its new heading.

The amendments to §3.201 clarifies a reference to the Foundation's Board; increase the threshold amount for certain purchases or lease agreements, including bid announcements and formal solicitations, for which the Foundation must receive Department approval; and update a reference to Chapter 74, Subchapter D of the Code. This increased delegation of authority to the Foundation reflects current market prices for goods and services necessary to facilitate the Foundation's eradication efforts.

The amendments to §3.202 replace an initial reference to the foundation to "Texas Boll Weevil Eradication Foundation" and add "foundation" to the Board for greater clarity.

The amendments to §3.203 replace an initial reference to the Foundation to "Texas Boll Weevil Eradication Foundation" for greater clarity and remove an unnecessary reference to Section 74.1011 of the Code.

The amendments to §3.205 update references to the Department to conform with usage throughout Title 4, Part 1; revise statutory references to Section 74.1095 of the Code and Chapter 2001 of the Texas Government Code; remove a reference to a repealed statute; and modify references to the Commissioner for consistency with Chapter 74 of the Code and this chapter.

The amendments to §3.400 remove an unnecessary definition for a term already defined in TAC, Title 4, Part 1, §1.1, which

applies to the entire part, and update the Foundation's official title.

The amendments to §§3.401 - 3.403 change references to the Department and Foundation for consistency with usage throughout TAC, Title 4, Part 1.

The amendments to §3.601 remove an unnecessary definition for a term already defined in TAC, Title 4, Part 1, §1.1, which applies to the entire part; update the Foundation's official title; update a definition for "certified organic crop" by removing a portion that refers to a repealed rule within this title allowing for emergency pest or disease treatments for organic or transitional crop; and update a definition for "transitional crop" by replacing an internal reference to a repealed rule within this title outlining the requirements for transitional crop to the current Department rule located at TAC, Title 4, Part 1, §18.300.

The amendments to §3.602 delete surplus language and clarify an internal reference to this chapter.

The amendments to §3.604 remove a reference to a repealed rule allowing for emergency pest or disease treatments for organic or transitional crop.

The amendments to §3.605 update an internal reference within this chapter and delete a reference to a repealed rule allowing for organic or transitional crop to be treated under former Department rule located at TAC, Title 4, Part 1, §18.10.

The amendments to §3.606 revise an internal reference within this chapter and remove a reference to a repealed rule providing for conventional treatment of organic or transitional crop under former Department rule located at TAC, Title 4, Part 1, §18.10.

The amendments to §3.607 modify references to the Commissioner for consistency with Chapter 74 of the Code and this chapter.

The amendments to §3.608 update references to the FDA and the USDA Risk Management Agency; update an internal reference within this chapter; remove a reference to a repealed rule allowing for compensation for destroyed organic or transitional cotton; and remove a related section providing compensation to such cotton that is treated, rather than destroyed, under §3.606.

The amendments to §3.609 correct an internal reference within the Department's administrative rules.

PUBLIC COMMENTS

Comment: The Department received a comment from the Texas Press Association (TPA) on §3.3 and §3.73. The comment opposed the proposed amendments to notice requirements from publication in newspapers to publication on the Foundation's website. TPA contends that publication on the Foundation's website would decrease the likelihood cotton producers would be aware of Board elections and referenda, thereby curbing participation from these producers affected by the outcome of these votes. TPA further contended that the means by which public notice would be given would be left to the discretion of the Foundation, resulting in a lack of consistency in terms of how notices would be received, which would undermine reliance on them. TPA added that the changes are contrary to public policy given the role of newspapers in providing independent oversight for the issuance of public notices given by government entities.

Response: The Department has reconsidered its proposed amendments to §3.3 and §3.73 and decided to adopt these

rules with changes to the proposed text but retained existing requirements for notice to be published in newspapers.

Comment: The Department received a comment from the Foundation on §§3.6, 3.7, 3.23, and 3.75. The comment recommended the elimination of provisions in §3.6 and §3.7 addressing retention referenda conducted under Section 74.114 of the Code since the statute provides for one retention referenda per eradication zone after 2005, and each zone has conducted since conducted a referendum. The Foundation recommended adding language to §3.23(d) limiting pesticide application notification requirements for the Foundation to bee keepers who provide the locations of their hives to the Foundation that are adjacent to fields intended for spraying. The Foundation also recommended changing the proposed amendment to §3.75(d), setting a 20-day deadline for a request for hearing on a notice of violation from the date of receipt of the notice to a 20-day deadline from the date the notice was mailed to avoid any fact questions regarding the receipt of the notice.

Response: After further consideration, the Department views the proposed changes to §§3.6, 3.7, and 3.23 as outside the scope of the proposed amendments, and declines to include them at this time. The Department cannot follow the recommendation for §3.75 because the proposed amendment's provision beginning the 20-day time period in which to request a hearing on the date a notice of violation is received adheres to the statutory provision in the Department's general authority to assess administrative penalties. i.e., §12.020 of the Code.

SUBCHAPTER A. ELECTION PROCEDURES

4 TAC §§3.1 - 3.7, 3.10, 3.11

The amendments are adopted pursuant to Section 74.114 of the Code, which requires the Department to adopt rules for voting in Board elections and referenda to establish or continue eradication zones and Section 74.120 of the Code, which allows the Department to adopt rules necessary to administer the purposes of Chapter 74.

The amendments are adopted pursuant to Section 74.114 of the Code, which requires the Department to adopt rules for voting in Board elections and referenda to establish or continue eradication zones and Section 74.120 of the Code, which allows the Department to adopt rules necessary to administer the purposes of Chapter 74.

§3.3. *Conduct of Elections; Notice.*

(a) The election of Texas Boll Weevil Eradication Foundation (foundation) board members from each proposed eradication zone shall be held concurrently with the eradication zone referendum or referenda.

(b) The department may conduct an assessment referendum or referenda either in conjunction with a board election and eradication zone referendum or referenda or at a time subsequent to the initial board election and referendum or referenda.

(c) A board election and referendum or referenda conducted under the Texas Agriculture Code, Chapter 74, Subchapter D and this chapter must be preceded by at least 45 days' notice published in one or more newspapers published and distributed throughout the proposed or established eradication zone or zones, or area proposed to be added or transferred. The notice shall be published not less than once a week for three consecutive weeks. In addition, direct written notice of the election shall be given to each county extension agent of the Texas A&M AgriLife Extension Service (Extension Service) in the eradication zone or zones or area proposed to be added or transferred at least 45 days before the date of the election, referendum, or referenda.

(d) Notice provided in accordance with subsection (c) of this section shall include:

- (1) the date of the election;
- (2) the manner in which the election is to be conducted (i.e., by mail balloting);
- (3) the purpose of the election and/or referendum;
- (4) if appropriate, information regarding the election of board members, including how to get on the ballot;
- (5) if an assessment referendum is being conducted, the maximum assessment to be paid by cotton growers having production in the eradication zone and the time for which the assessment will be collected;
- (6) who to contact for more information; and
- (7) if a referendum includes a proposition for approval of a third party contractor to carry out an eradication program, in accordance with the Code, §74.124, the name of the proposed contracting party.

(e) A referendum and/or board election conducted under the Code, Chapter 74, Subchapter D, and this chapter shall be conducted by mail ballot, with ballots returned by mail to the headquarters of the department.

(f) No ballot will be valid if postmarked after midnight on the last day for voting in the board election, referendum, or referenda.

(g) An eligible voter who has not received a ballot from the department, foundation or another source may request a ballot by mail by calling the department headquarters or by contacting the Extension Service office in a county within the eradication zone or proposed eradication zone, or other governmental office designated by the department.

(h) Instructions for county extension agents and voters will be available in each election from the department.

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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Skyler Shafer

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Texas Department of Agriculture

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For further information, please call: (512) 936-9360



SUBCHAPTER B. ESTABLISHMENT OF RULES, PROCEDURES, AND METHODS OF TREATMENT

4 TAC §§3.22 - 3.24

The amendments are adopted pursuant to Section 74.120 of the Code, which allows the Department to adopt rules necessary to administer the purposes of Chapter 74.

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

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SUBCHAPTER C. PROHIBITION OF PLANTING OF COTTON

4 TAC §§3.51, 3.52, 3.54

The amendments are adopted pursuant to Section 74.118 of the Code, which allows the Department to adopt rules regarding the areas where cotton may not be planted in eradication zones, and Section 74.120 of the Code, which allows the Department to adopt rules as necessary to carry out the purposes of Chapter 74.

§3.54. *Failure To Comply with Prohibition.*

(a) Upon notice by the foundation that a grower has failed to comply with a notice of prohibition provided in accordance with §3.53 of this chapter (relating to Notice of Prohibition), or has failed to obtain a permit for planting of noncommercial cotton in an eradication zone as required by §3.52 of this chapter (relating to Prohibition of Planting of Commercial and Noncommercial Cotton) the department shall take the following actions:

(1) Immediately upon identification of a field that is out of compliance, the department shall give written notice to the farm owner, to the grower, and, if known, to any lender having an interest in the field or the cotton, that the field and any cotton growing in the field are in violation of these rules.

(2) The notice shall further instruct the owner and grower to destroy any cotton located in the field within seven days after the date the written notice is received. Destruction shall be performed in a manner to prohibit the presence of live cotton plants.

(3) If the owner or grower cannot be located after reasonably diligent effort has been made by the department to locate such persons, the department shall publish the notice in a newspaper of general circulation in the county in which the land is located and post for a period of three consecutive days a copy of the notice on or in the immediate vicinity of the field in violation.

(4) If no response is received by the department from either the owner or grower within four days after the date of posting of the notice at the field, or if the department considers the response inadequate, the department shall have the cotton destroyed.

(b) The department may take any other action necessary to complete destruction of cotton in order to prevent the spread of boll weevils from the infested area.

(c) All costs incurred by the department in the destruction of cotton in accordance with subsection (a) of this section shall be reimbursed by the grower.

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. REQUIREMENTS FOR PARTICIPATION IN THE ERADICATION PROGRAM AND ADMINISTRATIVE PENALTY ENFORCEMENT

4 TAC §§3.71 - 3.76, 3.78

The amendments are adopted under Section 74.115 of the Texas Agriculture Code (Code), which allows the Department to assess administrative penalties for failure to pay eradication zone assessments when due; Section 74.116 of the Code, which requires the Department to adopt rules setting criteria for exemptions from payment of assessment penalties; Section 74.118 of the Code, which allows the Department to adopt rules requiring participation in eradication programs in established eradication zones and to assess penalties for failure to comply with Department rules on participation in cost sharing and acreage reporting; and Section 74.120 of the Code, which allows the Department to adopt rules as necessary to carry out the purposes of Chapter 74.

§3.73. *Notice of Requirement for Participation.*

(a) After passage of a referendum establishing an eradication program and maximum assessment and/or upon adoption of any new requirements by the department and/or the foundation, a notice of the requirements to participate in the eradication program shall be published by the foundation in a newspaper having general circulation within the affected zone or zones for one day each week for three successive weeks.

(b) The notice required by subsection (a) of this section shall include any requirements for timely reporting of acreage to the foundation, compliance with rules of the department, and payment of the assessment established and approved for that zone.

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. CREATION OF ERADICATION ZONES

4 TAC §§3.100 - 3.103

The amendments are adopted pursuant to Section 74.120 of the Code, which allows the Department to adopt rules as necessary to carry out the purposes of Chapter 74.

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. GENERAL PROCEDURES

4 TAC §§3.201 - 3.203, 3.205

The amendments are adopted pursuant to Section 74.120 of the Code, which allows the Department to adopt rules as necessary to carry out the purposes of Chapter 74; Section 74.152 of the Code, which requires the Department to adopt rules to implement a cost-sharing program as part of the eradication program, and Section 74.1095 of the Code, which requires the Department to establish by rule procedures for the informal review and resolution of claims arising out of certain acts of the Foundation.

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. USE OF BIO-INTENSIVE CONTROLS IN ACTIVE BOLL WEEVIL ERADICATION ZONES

4 TAC §§3.400 - 3.403

The amendments are adopted pursuant to Section 74.130 of the Code, which requires the Department to develop and adopt rules to allow cotton growers in eradication programs to use biological, botanical, or other non-synthetic pest control methods, and Section 74.120 of the Code, which allows the Department to adopt rules necessary to administer the purposes of Chapter 74.

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. ORGANIC COTTON RULES

4 TAC §§3.601, 3.602, 3.604 - 3.609

The amendments are adopted pursuant to Section 74.120 of the Code, which allows the Department to adopt rules necessary to administer the purposes of Chapter 74, and Section 74.125 of the Code, which requires the Department to adopt rules and procedures to protect the eligibility of Department-certified organic cotton growers, to ensure that organic and transitional certification meets national certification standards, to maintain the effectiveness of the eradication program, and to provide indemnity for organic cotton growers for reasonable losses resulting from production prohibitions or required destruction.

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 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 21. TRADE PRACTICES

The commissioner of insurance adopts amendments to 28 TAC §§21.113, 21.2505, 21.4902, 21.5001, 21.5002, 21.5010, 21.5011, 21.5020, 21.5021, and 21.5040, concerning trade practices, and the repeal of Chapter 21, Subchapter QQ. The commissioner adopts §21.5011 and §21.5021 with changes to the proposed text published in the February 10, 2023, issue of the *Texas Register* (48 TexReg 628). These sections will be republished. Changes to §21.5011 and §21.5021 are nonsubstantive and revised for consistency with agency drafting style.

The commissioner adopts §§21.113, 21.2505, 21.4902, 21.5001, 21.5002, 21.5010, 21.5020, and 21.5040 and the repeal of Chapter 21, Subchapter QQ, without changes to the proposed text as published in both the February 10, 2023, issue of the *Texas Register*, and the correction of error published in the February 24, 2023, issue of the *Texas Register* (48 TexReg 1184). These sections will not be republished.

REASONED JUSTIFICATION.

The amendments to §§21.4902, 21.5001, 21.5002, and 21.5040 are necessary to implement House Bill 3924, 87th Legislature, 2021, and Insurance Code Chapter 1275. HB 3924 permits a nonprofit agricultural organization under Insurance Code Chapter 1682 to offer a health benefit plan. These health benefit plans are subject to the requirements of Chapter 1275, which create similar requirements for out-of-network billing that already exist for HMOs and Preferred Provider Benefit Plans, as well as for health benefit plans administered by the Employees Retirement Systems of Texas and Teacher Retirement System of Texas plans under Insurance Code Chapters 1551, 1575, and 1579. The amendments clarify the applicability of Subchapters OO and PP to health benefit plans offered by nonprofit agricultural organizations.

The amendments to §§21.5010, 21.5011, 21.5020, and 21.5021 are necessary to implement Senate Bill 1264, 86th Legislature, 2019, and Insurance Code Chapter 1467. SB 1264 prohibits balance billing for certain health benefit claims under certain health benefit plans, provides exceptions to balance billing prohibitions, and authorizes an independent dispute resolution process for claim disputes between certain out-of-network providers and health benefit plan issuers and administrators. The amendments clarify the independent dispute resolution requirements to ensure efficient processing of mediation and arbitration of claims.

The amendments to §21.113 and §21.2505 remove outdated Texas Department of Insurance (TDI) mailing addresses. The amendments also make nonsubstantive changes throughout to reflect current agency drafting style and plain language preferences.

The repeal of Subchapter QQ is necessary because the information technology waiver previously granted under Insurance Code Chapter 1661 to certain health benefit plan issuers expired in 2012. Before January 1, 2012, a health benefit plan issuer could apply for a waiver from the information technology requirements under Chapter 1661. All waivers previously approved by the commissioner under §21.5103 expired September 1, 2013. Subchapter QQ implemented Insurance Code §1661.008, which expired.

The amendments to specific sections and the repeal are described in the following paragraphs, organized by subchapter.

Subchapter B. Advertising, Certain Trade Practices, and Solicitation.

Section 21.113. The adopted amendments to §21.113 replace inaccurate references to "Figure: 28 TAC §21.113(1)(5)" with "Figure: 28 TAC §21.113(l)(5)" for accuracy and consistency. The amendments also remove reference to TDI's mailing address in §21.113(l)(2) because the address is no longer accurate and TDI no longer keeps physical copies of the referenced form in hard copy format. The referenced form is available in Figure: 28 TAC §21.113(l)(5) for ease of access.

Amendments update references to the titles of 28 TAC Chapter 3, Subchapters S and Y, and add references to the titles of Insurance Code Chapter 1214; Chapter 541, Subchapter B; and Chapter 541 to ensure consistency and accuracy in Administrative Code and Insurance Code references. An amendment to Figure: 28 TAC §21.113(l)(5) restructures it so that Item (6) is shown before Item (7).

Amendments also include changes to conform with current agency drafting style and plain language preferences. The

amendments include correcting punctuation and revising capitalization of policy types listed in §21.113(d)(19). These amendments do not change the policy types listed.

Other amendments include corrections to punctuation and capitalization and, where appropriate, replacing "prior to" and "prior to such" with "before," "which" with "that" or "the," "conjunction therewith of" with "proximity to," "or" with "of," "division" with "title," "pre-existing" with "preexisting," "utilizes" with "uses," "low cost" with "low-cost," "consummate" with "complete," "such" with "the" or "these," "in order to" with "to," "who" with "that," "acknowledgement" with "acknowledgment," "shall" and "shall be" with alternative words as appropriate in the context of the provision; inserting the word "the"; and deleting "that," "as such," "such time as," "and," and "which is."

Subchapter Q. Complaint Records to Be Maintained.

Section 21.2505. The adopted amendments to §21.2505 remove reference to TDI's former mailing address where insurers were able to request the recommended complaint record maintenance form. TDI no longer provides physical copies of the referenced form. The amendments provide TDI's website where insurers may access the form.

Subchapter OO. Disclosures by Out-of-Network Providers.

Section 21.4902. The adopted amendments to §21.4902 add the defined terms "administrator" and "health benefit plan" to the section. The addition of these defined terms clarifies the applicability of Insurance Code Chapter 1682 and ensures consistency of the language used in Chapter 21, Subchapters OO and PP.

Subchapter PP. Out-of-Network Claim Dispute Resolution.

Section 21.5001. The adopted amendments to §21.5001 expressly incorporate a reference to Insurance Code §1275.003 into the purpose statement of §21.5001 to clarify that administrators operating under Insurance Code Chapter 1275 must comply with the requirements in the subchapter. The amendments also remove unnecessary punctuation.

Section 21.5002. The adopted amendment to §21.5002 clarifies that the subchapter applies to a claim filed for certain care or services by the administrator of a health benefit plan under Insurance Code Chapter 1682.

Section 21.5010. The adopted amendments to §21.5010 clarify that an out-of-network health benefit claim for an out-of-network laboratory or out-of-network diagnostic imaging service must be in connection with a health care or medical service or supply provided by a participating provider.

Section 21.5011. The adopted amendments to §21.5011 clarify that TDI may remove a mediator from the list of qualified mediators in certain circumstances, including failure to comply with any requirement under Insurance Code Chapter 1467 or rules adopted under Insurance Code §1467.003. The amendments also make nonsubstantive grammatical changes to §21.5011(e)(1) by adding "the" and "the date" for clarity.

The text of §21.5011(f)(3) as proposed has been changed to add "Insurance Code" to two citations for consistency with agency drafting style.

Section 21.5020. The adopted amendments to §21.5020 clarify that an out-of-network health benefit claim for an out-of-network laboratory or out-of-network diagnostic imaging service must be in connection with a health care or medical service or supply provided by a participating provider.

Section 21.5021. The adopted amendments to §21.5021 clarify that TDI may remove an arbitrator from the list of qualified arbitrators in certain circumstances, including failure to comply with any requirement under Insurance Code Chapter 1467 or rules adopted under Insurance Code §1467.003.

The amendments also specify that an arbitrator must evaluate only the factors found in §1467.083. Finally, the amendments remove unnecessary punctuation and add "the" and "the date" to §21.5021(e)(1) for clarity.

The text of §21.5021(f)(3) as proposed has been changed to add "Insurance Code" to two citations for consistency with agency drafting style.

Section 21.5040. The adopted amendments to §21.5040 expressly incorporate a reference to Insurance Code §1275.003 into the list of cited Insurance Code provisions under which health benefit plan issuers or administrators must provide the explanation of benefits according to the section. The amendments also clarify that the written notice required under the section must specify that the itemization of copayments, coinsurance, deductibles, and other amounts required under §21.5040(1)(B) is at an in-network cost-sharing level.

Amendments add the word "and" to the end of subparagraph (B) to clarify that a health benefit plan issuer or administrator subject to §21.5040 must provide the physician or provider with a written notice in an explanation of benefits that includes the requirements in paragraphs (1) and (2). The amendments also correct capitalization and delete unnecessary punctuation in the section.

Subchapter QQ. Health Information Technology.

Sections 21.5101 - 21.5103. These sections make up the entirety of Subchapter QQ and are repealed. Subchapter QQ is no longer necessary because the statutory provision it implemented expired.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Commenters: TDI received comments from three commenters. Commenters in support of the proposal were Superior Health Plan of Texas and Texas Association of Health Plans. A commenter in support of the proposal with changes was Family Hospital Systems.

General comments

Comment. A commenter expresses concern regarding the functionality of certain provisions in Insurance Code Chapter 1467. The commenter requests that arbitration replace mediation and that mediation fees be removed. The commenter notes that arbitration is already used for professional fee disputes. The commenter also requests lawmakers define "good faith negotiations" to require the payor to disclose contract terms with clients to further resolution of disputes of overpayments or allowed minimums. The commenter suggests requiring health plans to state requirements for participation as in-network providers and suggests compelling participation as an in-network provider if certain requirements are met.

Agency Response. TDI declines to make the suggested changes. The requested amendments are outside the scope of TDI's statutory rulemaking authority.

Comment on §21.5010

Comment. A commenter expresses support for the addition of language to clarify that a qualified mediation claim must be for

an out-of-network laboratory service or out-of-network diagnostic imaging service provided in connection with a health care or medical service or supply provided by a participating provider.

Agency Response. TDI appreciates the support.

Comment on §21.5011

Comment. A commenter asks whether a health plan may request the removal of a mediator because of ongoing issues or concerns the plan experiences with the mediator.

Agency Response. TDI may remove mediators for failing to comply with the requirements in Insurance Code Chapter 1467 or the rules adopted under that chapter. Health plans may provide feedback, make complaints, or express concerns through the consumer complaint portal on TDI's website. TDI will review complaints under Insurance Code §1467.101 and §1467.151, and rules under 28 TAC §§21.5011, 21.5021, and 21.5030.

Comment on §21.5020

Comment. A commenter asks whether claim information from an out-of-network laboratory or out-of-network diagnostic imaging service will be included on the IDR portal and whether failure to include the claim information would render the claim in dispute ineligible for mediation. The commenter states that failing to include the claim information would make it difficult to find the corresponding claim on file with the plan. The commenter expresses concern about identifying eligible claims.

Agency Response. TDI declines to make changes to the rule text to require new or additional information be entered into the IDR portal. The proposed changes to §21.5020 do not amend applicability or requirements under Insurance Code Chapter 1467. The amendments align the rule text language with statutory requirements under Insurance Code §§1271.158, 1275.053, 1301.165, 1575.173, and 1579.111. TDI encourages health plans to contact providers with contact information entered into the IDR portal during the dispute resolution process, including if the plan has reason to believe a claim is ineligible.

SUBCHAPTER B. ADVERTISING, CERTAIN TRADE PRACTICES, AND SOLICITATION

DIVISION 1. INSURANCE ADVERTISING

28 TAC §21.113

STATUTORY AUTHORITY.

The commissioner adopts amendments to §21.113 under Insurance Code §§541.401(a), 1201.101, and 36.001.

Insurance Code §541.401(a) authorizes the commissioner to adopt and enforce reasonable rules necessary to accomplish the purposes of Insurance Code Chapter 541.

Insurance Code §1201.101 provides that the commissioner adopt reasonable rules under the section establishing specific standards, including standards that address the nonduplication of coverage.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

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

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Jessica Barta

General Counsel

Texas Department of Insurance

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For further information, please call: (512) 676-6555



SUBCHAPTER Q. COMPLAINT RECORDS TO BE MAINTAINED

28 TAC §21.2505

STATUTORY AUTHORITY. The commissioner adopts amendments to §21.2505 under Insurance Code §§541.401(a), 542.014, and 36.001.

Insurance Code §541.401(a) authorizes the commissioner to adopt and enforce reasonable rules necessary to accomplish the purposes of Insurance Code Chapter 541.

Insurance Code §542.014 provides that the commissioner adopt reasonable rules as necessary to implement and augment the purposes and provisions of Insurance Code Chapter 542, Subchapter A.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

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

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SUBCHAPTER OO. DISCLOSURES BY OUT-OF-NETWORK PROVIDERS

28 TAC §21.4902

STATUTORY AUTHORITY. The commissioner adopts amendments to §21.4902 under Insurance Code §§1275.004, 1467.003, and 36.001.

Insurance Code §1275.004 states that Insurance Code Chapter 1467 applies to a health benefit plan to which Insurance Code Chapter 1275 applies, and the administrator of a health benefit plan to which Chapter 1275 applies is an administrator for purposes of Chapter 1467.

Insurance Code §1467.003 requires the commissioner to adopt rules as necessary to implement the commissioner's powers and duties under Insurance Code Chapter 1467.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

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

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SUBCHAPTER PP. OUT-OF-NETWORK CLAIM DISPUTE RESOLUTION

DIVISION 1. GENERAL PROVISIONS

28 TAC §21.5001, §21.5002

STATUTORY AUTHORITY. The commissioner adopts amendments to §21.5001 and §21.5002 under Insurance Code §§1275.004, 1301.007, 1467.003, and 36.001.

Insurance Code §1275.004 states that Insurance Code Chapter 1467 applies to a health benefit plan to which Insurance Code Chapter 1275 applies, and the administrator of a health benefit plan to which Chapter 1275 applies is an administrator for purposes of Chapter 1467.

Insurance Code §1301.007 provides that the commissioner adopt rules as necessary to implement Insurance Code Chapter 1301 and ensure reasonable accessibility and availability of preferred provider services to residents of this state.

Insurance Code §1467.003 requires the commissioner to adopt rules as necessary to implement the commissioner's powers and duties under Insurance Code Chapter 1467.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

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

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DIVISION 2. MEDIATION PROCESS

28 TAC §21.5010, §21.5011

STATUTORY AUTHORITY. The commissioner adopts amendments to §21.5010 and §21.5011 under Insurance Code §§1467.003, 1467.0505, and 36.001.

Insurance Code §1467.003 requires the commissioner to adopt rules as necessary to implement the commissioner's powers and duties under Insurance Code Chapter 1467.

Insurance Code §1467.0505 provides that the commissioner adopt rules, forms, and procedures necessary for the implementation and administration of the mediation program.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

§21.5011. *Mediation Request Procedure.*

(a) Mediation request and notice.

(1) An out-of-network provider that is a facility or a health benefit plan issuer or administrator may request mediation. To be eligible for mediation, the party requesting mediation must complete the mediation request information required on the department's website at www.tdi.texas.gov, as specified in subsection (b) of this section.

(2) The party who requests the mediation must provide written notice to each other party on the date the mediation is requested. The notification must contain the information as specified on the department's website, including the necessary claim information and contact information of the parties. A health benefit plan issuer or administrator requesting mediation must send the mediation notification to the mailing address or email address specified in the claim submitted by the provider. If a provider does not specify an address to receive notice requesting mediation in the claim, a health benefit plan issuer or administrator may provide notice to the provider at the provider's last known address the issuer or administrator has on file for the provider. A provider requesting mediation must send the mediation notification to the email address specified in the explanation of benefits by the health benefit plan issuer or administrator.

(b) Submission of request. The requesting party must submit information necessary to complete the initial mediation request, including:

(1) facility details, including identifying the facility type, facility contact information, and facility representative information;

(2) claim information, including the claim number, type of service or supply provided, date of service, billed amount, amount paid, and balance; and

(3) relevant information from the enrollee's health benefit plan identification card or other similar document, including plan number and group number.

(c) Notice of teleconference outcome. Parties must submit additional information on the department's website at the completion of the informal settlement teleconference period, including the date the teleconference request was received and the date of the teleconference.

(d) Mediator selection.

(1) The parties must notify the department through the department's website on or before 30 days from the date the mediation is requested if:

- (A) the parties agree to a settlement;
- (B) the parties agree to the selection of a mediator; or

(C) the parties agree to extend the deadline to have the department select a mediator and notify the department of new deadlines.

(2) If the department is not given notification under paragraph (1) of this subsection, the department will assign a mediator after the 30th day from the date the mediation is requested. The parties must pay the nonrefundable mediator's fee to the mediator when the mediator is assigned. Failure to pay the mediator when the mediator is assigned constitutes bad faith participation.

(e) Submission of information. Parties must submit information, as specified on the department's website, to the department at the completion of the mediation or informal settlement, including:

(1) the name of the mediator, the date when the mediator was selected, the date when the mediation was held, the date of the agreement, the date of the mediator report, and when payment was made; and

(2) the agreement, including the original billed amount, payment amount, and the total agreed amount.

(f) Mediator approval and removal.

(1) Mediators may apply to the department using a method as determined by the Commissioner, including through an application on the department's website or through the department's procurement process. An individual or entities that employ mediators may apply for approval.

(2) A list of qualified mediators will be maintained on the department's website. A mediator must notify the department immediately if the mediator wants to voluntarily withdraw from the list.

(3) At the discretion of the department, a mediator may be removed from the list of qualified mediators in certain circumstances, including failure to comply with any requirement under Insurance Code Chapter 1467, concerning Out-of-Network Claim Dispute Resolution, or rules adopted under Insurance Code §1467.003, concerning Rules.

(g) Mediation process.

(1) A party may request mediation after 20 days from the date an out-of-network provider receives the initial payment for a health benefit claim, during which time the out-of-network provider may attempt to resolve a claim payment dispute through the health benefit plan issuer's or administrator's internal appeal process.

(2) The parties may submit written information to a mediator concerning the amount charged by the out-of-network provider for the health care or medical service or supply and the amount paid by the health benefit plan issuer or administrator.

(3) The parties must evaluate the factors specified in Insurance Code §1467.056, concerning Matters Considered in Mediation; Agreed Resolution.

(4) Each party is responsible for reviewing the list of mediators and notifying the department within 10 days of the request for mediation whether there is a conflict of interest with any of the mediators on the list to avoid the department assigning a mediator with a conflict of interest.

(5) The parties may agree to aggregate claims between the same facility and same health benefit plan issuer or administrator for mediation.

(h) Assistance. Assistance with submitting a request for mediation is available on the department's website at www.tdi.texas.gov.

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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Texas Department of Insurance

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For further information, please call: (512) 676-6555



DIVISION 3. ARBITRATION PROCESS

28 TAC §21.5020, §21.5021

STATUTORY AUTHORITY. The commissioner adopts amendments to §21.5020 and §21.5021 under Insurance Code §§1467.003, 1467.082, and 36.001.

Insurance Code §1467.003 requires the commissioner to adopt rules as necessary to implement the commissioner's powers and duties under Insurance Code Chapter 1467.

Insurance Code §1467.082 requires the commissioner to adopt rules, forms, and procedures necessary for the implementation and administration of the arbitration program.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

§21.5021. *Arbitration Request Procedure.*

(a) Arbitration request and notice.

(1) An out-of-network provider or a health benefit plan issuer or administrator may request arbitration. To be eligible for arbitration, the party requesting arbitration must complete the arbitration request information required on the department's website at www.tdi.texas.gov, as specified in subsection (b) of this section.

(2) The party who requests the arbitration must provide written notice to each other party on the date the arbitration is requested. The notification must contain the information as specified on the department's website, including the necessary claim information and contact information of the parties. A health benefit plan issuer or administrator requesting arbitration must send the arbitration notification to the mailing address or email address specified in the claim submitted by the provider. If a provider does not specify an address to receive notice requesting arbitration in the claim, the health benefit plan issuer or administrator may provide notice to the provider at the provider's last known address the issuer or administrator has on file for the provider. A provider requesting arbitration must send the arbitration notification to the email address specified in the explanation of benefits by the health benefit plan issuer or administrator.

(b) Submission of request. The requesting party must submit information necessary to complete the initial arbitration request, including:

(1) provider details, including identifying the provider type, provider contact information, and provider representative information;

(2) claim information, including the claim number, type of service or supply provided, date of service, billed amount, amount paid, and balance; and

(3) relevant information from the enrollee's health benefit plan identification card or a similar document, including plan number and group number.

(c) Notice of teleconference outcome. Parties must submit additional information on the department's website at the completion of the informal settlement teleconference period, including the date the teleconference request was received, the date of the teleconference, and settlement offer amounts.

(d) Arbitrator selection.

(1) The parties must notify the department, through the department's website, on or before 30 days from the date arbitration was requested if:

(A) the parties agree to a settlement;

(B) the parties agree to the selection of an arbitrator; or

(C) the parties agree to extend the deadline to have the department select an arbitrator and notify the department of new deadlines.

(2) If the department is not given notification under paragraph (1) of this subsection, the department will assign an arbitrator after the 30th day from the date the arbitration is requested. The parties must pay the nonrefundable arbitrator's fee to the arbitrator when the arbitrator is assigned. Failure to pay the arbitrator when the arbitrator is assigned constitutes bad faith participation, and the arbitrator may award the binding amount to the other party.

(e) Submission of information.

(1) The arbitrator must submit information, as specified on the department's website, to the department at the completion of the arbitration, including:

(A) the name of the arbitrator, the date when the arbitrator was selected, the date of the decision, the date of the arbitrator report, and when payment was made; and

(B) the written decision, including any final offers made during the health benefit plan issuer's or administrator's internal appeal process or informal settlement, reasonable amount for the services or supplies, and the binding award amount.

(2) If the parties settle the dispute before the arbitrator's decision, the parties must submit information, as specified on the department's website, to the department, including:

(A) the date of the settlement; and

(B) the amount of the settlement.

(f) Arbitrator approval and removal.

(1) Arbitrators may apply to the department using a method as determined by the Commissioner, including through an application on the department's website or the department's procurement process. An individual or entities that employ arbitrators may apply for approval.

(2) A list of qualified arbitrators will be maintained on the department's website. An arbitrator must notify the department immediately if the arbitrator wants to voluntarily withdraw from the list.

(3) At the discretion of the department, an arbitrator may be removed from the list of qualified arbitrators in certain circumstances, including failure to comply with any requirement under Insurance Code

Chapter 1467, concerning Out-of-Network Claim Dispute Resolution, or rules adopted under Insurance Code §1467.003, concerning Rules.

(g) Arbitration process.

(1) A party may request arbitration after 20 days from the date an out-of-network provider receives the initial payment for a health benefit claim, during which time the out-of-network provider may attempt to resolve a claim payment dispute through the health benefit plan issuer's or administrator's internal appeal process.

(2) The parties must submit written information to an arbitrator concerning the amount charged by the out-of-network provider for the health care or medical service or supply, and the amount paid by the health benefit plan issuer or administrator.

(3) The arbitrator must evaluate only the factors specified in Insurance Code §1467.083, concerning Issue to Be Addressed; Basis for Determination.

(4) The arbitrator must provide the parties an opportunity to review the written information submitted by the other party, submit additional written information, and respond in writing to the arbitrator on the time line set by the arbitrator.

(5) Each party is responsible for reviewing the list of arbitrators and notifying the department within 10 days of the request for arbitration if there is a conflict of interest with any of the arbitrators on the list to avoid the department assigning an arbitrator with a conflict of interest.

(6) If a party does not respond to the arbitrator's request for information, the dispute will be decided based on the available information received by the arbitrator without an opportunity for reconsideration.

(7) The submission of multiple claims to arbitration in one proceeding must be for the same provider and the same health benefit plan issuer or administrator and the total amount in controversy may not exceed \$5,000.

(h) Assistance. Assistance with submitting a request for arbitration is available on the department's website at www.tdi.texas.gov.

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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Texas Department of Insurance

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For further information, please call: (512) 676-6555



DIVISION 5. EXPLANATION OF BENEFITS

28 TAC §21.5040

STATUTORY AUTHORITY. The commissioner adopts amendments to §21.5040 under Insurance Code §§1275.003, 1275.004, 1301.007, 1467.003, and 36.001.

Insurance Code §1275.003 requires an explanation of benefits to contain information required by commissioner rule advising the physician or provider of the availability of mediation or arbitration, as applicable, under Insurance Code Chapter 1467.

Insurance Code §1275.004 states that Insurance Code Chapter 1467 applies to a health benefit plan to which Insurance Code Chapter 1275 applies, and the administrator of a health benefit plan to which Chapter 1275 applies is an administrator for purposes of Chapter 1467.

Insurance Code §1301.007 provides that the commissioner adopt rules as necessary to implement Insurance Code Chapter 1301 and ensure reasonable accessibility and availability of preferred provider services to residents of this state.

Insurance Code §1467.003 requires the commissioner to adopt rules as necessary to implement the commissioner's powers and duties under Insurance Code Chapter 1467.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

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

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General Counsel

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For further information, please call: (512) 676-6555



SUBCHAPTER QQ. HEALTH INFORMATION TECHNOLOGY

28 TAC §§21.5101 - 21.5103

STATUTORY AUTHORITY. The commissioner adopts the repeal of §§21.5101 - 21.5103 under Insurance Code §1661.009(a) and §36.001.

Insurance Code §1661.009(a) provides that the commissioner adopt rules as necessary to implement Insurance Code Chapter 1661.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

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

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 15. DRIVER LICENSE RULES SUBCHAPTER B. APPLICATION REQUIREMENTS--ORIGINAL, RENEWAL, DUPLICATE, IDENTIFICATION CERTIFICATES

37 TAC §15.49

The Texas Department of Public Safety (the department) adopts amendments to §15.49, concerning Proof of Domicile. This rule is adopted without changes to the proposed text as published in the May 5, 2023 issue of the *Texas Register* (48 TexReg 2331) and will not be republished.

The proposed rule amendment increases the number of acceptable proof of domicile documents and changes the validity period from within ninety 90 days of the date of application to within one hundred eighty (180) days of the date of application.

No comments were received regarding the adoption of this rule.

This rule is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §521.005, which authorizes the department to adopt rules necessary to administer Chapter 521 of the Texas Transportation Code; and §521.1426.

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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D. Phillip Adkins
General Counsel
Texas Department of Public Safety
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For further information, please call: (512) 424-5848



SUBCHAPTER K. INTERAGENCY AGREEMENTS

37 TAC §15.174

The Texas Department of Public Safety (the department) adopts new §15.174, concerning Interagency Application Fees. This

rule is adopted without changes to the proposed text as published in the May 5, 2023 issue of the *Texas Register* (48 TexReg 2333) and will not be republished.

This new rule outlines the fees related to interagency application for driver licenses and personal identification certificates to qualified inmates preparing for release by Texas agencies who have entered into a memorandum of understanding with the department under §15.171 of this title and is authorized by §521.421, Transportation Code.

No comments were received regarding the adoption of this rule.

STATUTORY AUTHORITY

This rule is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §521.005, which authorizes the department to adopt rules necessary to administer Chapter 521 of the Texas Transportation Code; and §521.421.

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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D. Phillip Adkins
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For further information, please call: (512) 424-5848



CHAPTER 16. COMMERCIAL DRIVER LICENSE

SUBCHAPTER A. LICENSING REQUIREMENTS, QUALIFICATIONS, RESTRICTIONS, AND ENDORSEMENTS

37 TAC §16.7

The Texas Department of Public Safety (the department) adopts amendments to §16.7, concerning Proof of Domicile. This rule is adopted without changes to the proposed text as published in the May 5, 2023, issue of the *Texas Register* (48 TexReg 2334) and will not be republished.

The proposed rule amendment increases the number of acceptable proof of domicile documents and changes the validity period from within ninety 90 days of the date of application to within one hundred eighty (180) of the date of application.

No comments were received regarding the adoption of this rule.

This rule is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §522.005, which authorizes the department to adopt rules necessary to administer Chapter 522 of the Texas Transportation Code; and §522.0225.

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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TABLES & GRAPHICS

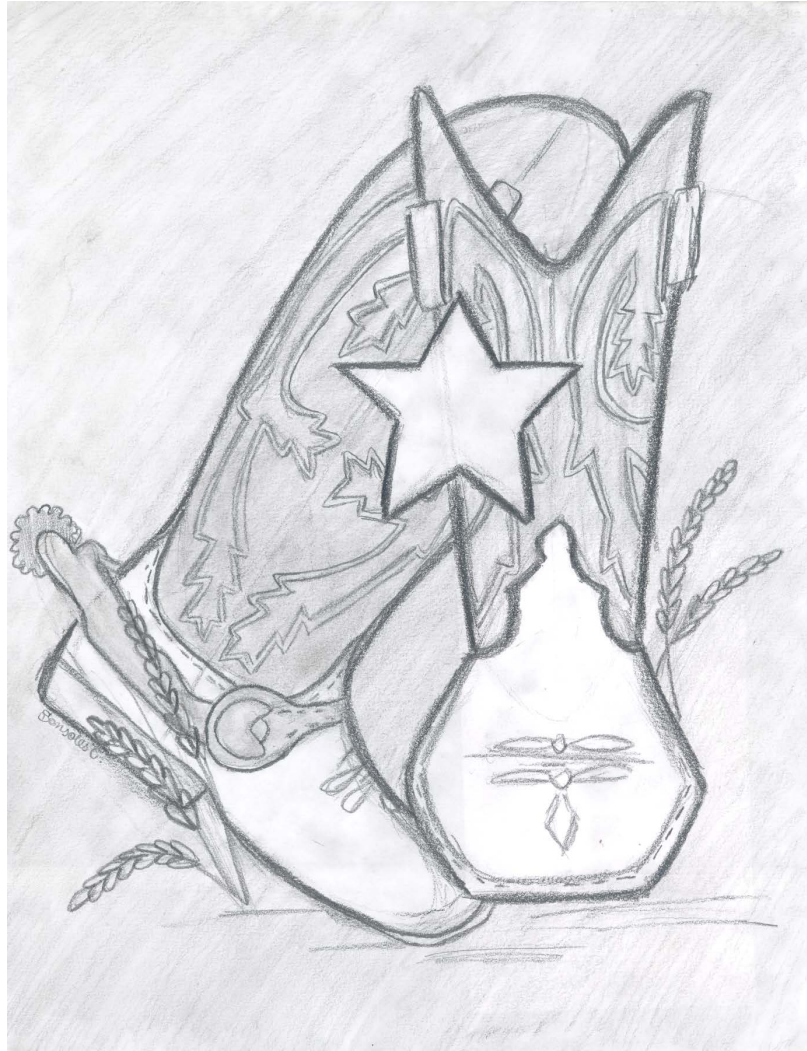
Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

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: 37 TAC §23.62(b)

Violations and Penalty Schedule

Category	1 st	2 nd	3 rd	4 th
A	\$250	\$500.00	6 month suspension	12 month suspension
B	\$500.00	12 month suspension	Revocation	Lifetime revocation
C*	12 month suspension	Revocation	Lifetime revocation	
*Category C violation §23.62(c)(3)(D).	Revocation	Lifetime revocation		
D (Failing to possess a valid driver's license)	Suspension until bar removed			
E	\$500.00	12 month suspension	Revocation	Lifetime revocation
Administrative action (Failure to pay)	Suspension until penalty is paid in full			



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

Texas Health and Safety Code and Texas Water Code Settlement Notice

The State of Texas gives notice of the following proposed resolution of an environmental enforcement action under the Texas Water Code and the Texas Health and Safety Code. Before the State may enter into a voluntary settlement agreement, pursuant to Section 7.110 of the Texas Water Code, the State shall permit the public to comment in writing. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreement if the comments disclose facts or considerations indicating that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the law.

Case Title and Court: *State of Texas v. Houston Refining LP*; Cause No. D-1-GN-20-001128; in the 353rd Judicial District Court, Travis County, Texas.

Background: Defendant Houston Refining LP (HRLP) owns and operates a petroleum refinery at 12000 Lawndale Street, Houston, Harris County. The State filed suit for HRLP's alleged violation of the Texas Clean Air Act, regulations of the Texas Commission on Environmental Quality (TCEQ), and its air permits. Specifically, between 2016 and 2022, permit deviations were documented and eighteen unauthorized emissions events occurred at HRLP's refinery. After suit was filed, HRLP completed corrective actions to TCEQ's satisfaction.

Proposed Settlement: The parties propose an Agreed Final Judgment which assesses a civil penalty of \$2,500,000 against HRLP, and attorney's fees to the State in the amount of \$100,000.

For a complete description of the proposed settlement, the Agreed Final Judgment should be reviewed in its entirety. Requests for copies of the proposed judgment and settlement, and written comments on the same, should be directed to David Terry, Assistant Attorney General, Office of the Attorney General of Texas, P.O. Box 12548, MC 066, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911, email David.Terry@oag.texas.gov. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-202302144
Austin Kinghorn
General Counsel
Office of the Attorney General
Filed: June 13, 2023

◆ ◆ ◆ Comptroller of Public Accounts

Local Sales Tax Rate Changes Effective July 1, 2023

The City of Draper has changed its legal name as listed below. The change is effective July 1, 2023.

<u>CITY NAME</u>	<u>LOCAL CODE</u>	<u>LOCAL RATE</u>	<u>TOTAL RATE</u>
Corral City (Denton Co)	2061293	.015000	.080000
<u>SPD NAME</u>	<u>LOCAL CODE</u>	<u>LOCAL RATE</u>	<u>TOTAL RATE</u>
Corral City Municipal Development District	5061612	.002500	.080000

The city sales and use tax will be increased to 1 1/4 percent as permitted under Chapter 321 of the Texas Tax Code and an additional 1/4 percent city sales and use tax for Municipal Street Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code will become effective July 1, 2023 in the city listed below.

<u>CITY NAME</u>	<u>LOCAL CODE</u>	<u>LOCAL RATE</u>	<u>TOTAL RATE</u>
Hawley (Jones Co)	2127044	.020000	.082500

The combined area created to administer the local sales and use tax between overlapping local jurisdictions as permitted under Chapter 321 of the Texas Tax Code, is abolished effective June 30, 2023 in the jurisdictions listed below.

<u>COMBINED AREA NAME</u>	<u>LOCAL CODE</u>	<u>NEW RATE</u>	<u>TOTAL RATE</u>
Bulverde/Bexar County Emergency Services District No. 3	6015600	.000000	.000000

TRD-202302145

Jenny Burleson
Director, Tax Policy
Comptroller of Public Accounts
Filed: June 13, 2023

◆ ◆ ◆
Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 06/19/23 - 06/25/23 is 18% for consumer¹ credit.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 06/19/23 - 06/25/23 is 18% for commercial² credit.

¹Credit for personal, family or household use.

²Credit for business, commercial, investment or other similar purpose.

TRD-202302148
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: June 13, 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 **July 25, 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 **July 25, 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: 1 SOURCE WATER WELLS AND SEPTICS LLC; DOCKET NUMBER: 2023-0153-WR-E; IDENTIFIER: RN11583175; LOCATION: Bernardo, Colorado County; TYPE OF FACILITY: operator; RULES VIOLATED: TWC, §11.081 and §11.121, by failing to obtain authorization prior to impounding, diverting, or using state water; PENALTY: \$350; ENFORCEMENT COORDINATOR: Ellen Ojeda, (512) 239-2581; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: Andrews Logistics Texas, L.P.; DOCKET NUMBER: 2023-0672-WQ-E; IDENTIFIER: RN111664330; LOCATION: Beaumont, Jefferson County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a multi-sector general permit for storm water discharges; PENALTY: \$875; ENFORCEMENT COORDINATOR: Mistie Gonzales, (254) 761-3056; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(3) COMPANY: BPX Operating Company; DOCKET NUMBER: 2023-0278-AIR-E; IDENTIFIER: RN108989625; LOCATION: Orla, Reeves County; TYPE OF FACILITY: oil and gas processing facility; RULES VIOLATED: 30 TAC §101.201(a)(1)(B) and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit an initial notification for a reportable emissions event no later than 24 hours after the discovery of an emissions event; and 30 TAC §116.115(c) and §116.615(2), Standard Permit Registration Number 138352, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$3,538; ENFORCEMENT COORDINATOR: Johnnie Wu, (512) 239-2524; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(4) COMPANY: Craig Schneider; DOCKET NUMBER: 2022-0214-LII-E; IDENTIFIER: RN105706402; LOCATION: Holland, Bell County; TYPE OF FACILITY: landscape irrigation business; RULES VIOLATED: 30 TAC §30.5(a), TWC, §37.003, and Texas Occupations Code, §1903.251, by failing to hold an irrigator license prior to selling, designing, consulting, installing, altering, repairing, or servicing an irrigation system; PENALTY: \$943; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5865; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(5) COMPANY: Cross Timbers Water Supply Corporation; DOCKET NUMBER: 2022-0980-PWS-E; IDENTIFIER: RN101439230; LOCATION: Argyle, Denton County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(j) and Texas Health and Safety Code, §341.0351, by failing to notify the Executive Director prior to making any significant change or addition to the system's production, treatment, storage, pressure maintenance, or distribution facilities; 30 TAC §290.42(b)(1) and (e)(3), by failing to provide continuous and effective disinfection that can be secured under all conditions; 30 TAC §290.42(e)(2), by failing to disinfect all groundwater prior to distribution with a point of application ahead of the facility's ground storage tank and in a manner consistent with the requirements of 30 TAC §290.110; 30 TAC §290.42(e)(7)(A)(i), by failing to inject ammonia downstream of the chlorine injection point; and 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the system's facilities and equipment; PENALTY: \$11,230; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 881-6991; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: Exxon Mobil Corporation; DOCKET NUMBER: 2021-1379-AIR-E; IDENTIFIER: RN102574803; LOCATION: Baytown, Harris County; TYPE OF FACILITY: chemical manufacturing

plant; RULES VIOLATED: 30 TAC §116.115(c) and §122.143(4), New Source Review Permit Numbers 20211 and PAL16, Special Conditions Number 1, Federal Operating Permit Number O2269, General Terms and Conditions and Special Terms and Conditions Number 30, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$8,325; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$3,330; ENFORCEMENT COORDINATOR: Johnnie Wu, (512) 239-2524; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(7) COMPANY: HGS INTERNATIONAL LLC dba Bread and Butter Stop; DOCKET NUMBER: 2023-0171-PST-E; IDENTIFIER: RN101875276; LOCATION: Henrietta, Clay County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) in a manner which will detect a release at a frequency of at least once every 30 days, and failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: \$3,494; ENFORCEMENT COORDINATOR: Tiffany Chu, (817) 588-5891; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(8) COMPANY: Occidental Chemical Corporation; DOCKET NUMBER: 2021-1067-AIR-E; IDENTIFIER: RN100211176; LOCATION: Gregory, San Patricio 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 19169 and 107530, PSDTX1338, and GHGPSDTX40, Special Conditions Number 1, Federal Operating Permit Numbers O1240 and O3806, General Terms and Conditions and Special Terms and Conditions Numbers 13 and 21, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$13,125; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$5,250; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 500 North Shoreline Boulevard, Suite 500, Corpus Christi, Texas 78401-0318, (361) 881-6900.

(9) COMPANY: PAK - BADERIA ENTERPRISES, INCORPORATED dba M and M Superette; DOCKET NUMBER: 2022-0949-PST-E; IDENTIFIER: RN102789617; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.48(g)(1)(A)(ii) and (B) and (h)(1)(B) and TWC, §26.3475(c)(2), by failing to test the spill and overflow prevention equipment at least once every three years to ensure the equipment is liquid tight, and failing to conduct the annual walkthrough inspection of the underground storage tank (UST) containment sumps and release detection equipment; and 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs in a manner which will detect a release at a frequency of at least once every 30 days; PENALTY: \$4,076; ENFORCEMENT COORDINATOR: Courtney Gooris, (817) 588-5863; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(10) COMPANY: South Kirbyville Rural Water Supply Corporation; DOCKET NUMBER: 2022-1400-UTL-E; IDENTIFIER: RN101451961; LOCATION: Kirbyville, Jasper 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: Miles Wehner, (512)

239-2813; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(11) COMPANY: Tony's Concrete Work, LLC; DOCKET NUMBER: 2023-0676-WQ-E; IDENTIFIER: RN110726684; LOCATION: Tolar, Hood County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a multi-sector general permit for storm water discharges; PENALTY: \$875; ENFORCEMENT COORDINATOR: Mistie Gonzales, (254) 761-3056; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(12) COMPANY: TotalEnergies Petrochemicals and Refining USA, Incorporated; DOCKET NUMBER: 2022-0380-AIR-E; IDENTIFIER: RN102457520; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: petroleum refinery; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(c), and 122.143(4), New Source Review Permit Numbers 46396, N044, and PSDTX1073M2, Special Conditions Number 1, Federal Operating Permit Number O1267, General Terms and Conditions and Special Terms and Conditions Number 29, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$14,250; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$5,700; ENFORCEMENT COORDINATOR: Johnnie Wu, (512) 239-2524; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(13) COMPANY: Western International Gas and Cylinders, Incorporated; DOCKET NUMBER: 2021-0481-AIR-E; IDENTIFIER: RN104892633; LOCATION: Bellville, Austin County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §§101.4, 101.5, 106.6(b), and 106.476 and Texas Health and Safety Code (THSC), §382.085(a) and (b), by failing to prevent unauthorized emissions, and failing to provide sufficient tank pressure at all times to prevent vapor or gas loss to the atmosphere; and 30 TAC §101.201(a)(1)(B) and THSC, §382.085(b), by failing to submit an initial notification for a reportable emissions event no later than 24 hours after the discovery of an emissions event; PENALTY: \$6,913; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-202302139

Gitanjali Yadav

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: June 13, 2023



Enforcement Orders

An agreed order was adopted regarding INEOS OLIGOMERS USA LLC, Docket No. 2021-0553-AIR-E on June 13, 2023 assessing \$2,438 in administrative penalties with \$487 deferred. Information concerning any aspect of this order may be obtained by contacting Mackenzie Mehlmann, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding HOLT TEXAS, LTD., Docket No. 2021-1260-EAQ-E on June 13, 2023 assessing \$6,250 in administrative penalties with \$1,250 deferred. Information concerning any aspect of this order may be obtained by contacting Mark Gamble, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding ARROWHEAD HILL WATER SUPPLY CORPORATION, Docket No. 2021-1585-PWS-E on June 13, 2023 assessing \$1,375 in administrative penalties with \$275 deferred. Information concerning any aspect of this order may be obtained by contacting Samantha Duncan, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Southern Ionics Incorporated, Docket No. 2021-1604-AIR-E on June 13, 2023 assessing \$5,000 in administrative penalties with \$1,000 deferred. Information concerning any aspect of this order may be obtained by contacting Desmond Martin, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Avis Rent A Car System, LLC, Docket No. 2021-1610-PST-E on June 13, 2023 assessing \$3,375 in administrative penalties with \$675 deferred. Information concerning any aspect of this order may be obtained by contacting Sushil Modak, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Nouryon Surface Chemistry LLC, Docket No. 2021-1629-AIR-E on June 13, 2023 assessing \$6,900 in administrative penalties with \$1,380 deferred. Information concerning any aspect of this order may be obtained by contacting Mackenzie Mehlmann, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding The Chemours Company FC, LLC, Docket No. 2022-0081-AIR-E on June 13, 2023 assessing \$5,320 in administrative penalties with \$1,064 deferred. Information concerning any aspect of this order may be obtained by contacting Amanda Diaz, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding 13123 WEST HARDY, L.P., Docket No. 2022-0916-PWS-E on June 13, 2023 assessing \$500 in administrative penalties with \$100 deferred. Information concerning any aspect of this order may be obtained by contacting Kaisie Hubschmitt, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Bellville, Docket No. 2022-0976-PST-E on June 13, 2023 assessing \$4,000 in administrative penalties with \$800 deferred. Information concerning any aspect of this order may be obtained by contacting Karolyn Kent, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Betenbough Homes, LLC, Docket No. 2022-1003-AIR-E on June 13, 2023 assessing \$6,562 in administrative penalties with \$1,312 deferred. Information concerning any aspect of this order may be obtained by contacting Johnnie Wu, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Deaf Smith County Fresh Water Supply District 1, Docket No. 2022-1144-UTL-E on June 13, 2023 assessing \$510 in administrative penalties with \$102 deferred. Information concerning any aspect of this order may be obtained by contacting Nick Lohret-Froio, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Key Largo Utilities LLC, Docket No. 2022-1228-UTL-E on June 13, 2023 assessing \$645 in administrative penalties with \$129 deferred. Information concerning

any aspect of this order may be obtained by contacting Samantha Salas, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Goldking Minerals Management, L.L.C., Docket No. 2022-1369-AIR-E on June 13, 2023 assessing \$2,625 in administrative penalties with \$525 deferred. Information concerning any aspect of this order may be obtained by contacting Johnnie Wu, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding DEANVILLE WATER SUPPLY CORPORATION, Docket No. 2022-1406-UTL-E on June 13, 2023 assessing \$850 in administrative penalties with \$170 deferred. Information concerning any aspect of this order may be obtained by contacting Wyatt Throm, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Meadow, Docket No. 2022-1422-UTL-E on June 13, 2023 assessing \$550 in administrative penalties with \$110 deferred. Information concerning any aspect of this order may be obtained by contacting Ashley Lemke, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Hooks, Docket No. 2022-1469-UTL-E on June 13, 2023 assessing \$1,250 in administrative penalties with \$250 deferred. Information concerning any aspect of this order may be obtained by contacting Ilia Perez Ramirez, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding DMJM Enterprises LLC, Docket No. 2022-1473-UTL-E on June 13, 2023 assessing \$500 in administrative penalties with \$100 deferred. Information concerning any aspect of this order may be obtained by contacting Tessa Bond, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding MHP Ranchero Estates, LLC, Docket No. 2022-1501-UTL-E on June 13, 2023 assessing \$510 in administrative penalties with \$102 deferred. Information concerning any aspect of this order may be obtained by contacting Wyatt Throm, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Sunset Water, LLC, Docket No. 2022-1502-UTL-E on June 13, 2023 assessing \$625 in administrative penalties with \$125 deferred. Information concerning any aspect of this order may be obtained by contacting Tessa Bond, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding UNION WATER SUPPLY CORPORATION, Docket No. 2022-1503-UTL-E on June 13, 2023 assessing \$1,220 in administrative penalties with \$244 deferred. Information concerning any aspect of this order may be obtained by contacting Samantha Duncan, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Everett Square Inc., Docket No. 2022-1568-UTL-E on June 13, 2023 assessing \$500 in administrative penalties with \$100 deferred. Information concerning any aspect of this order may be obtained by contacting Ronica Rodriguez, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202302158
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 14, 2023



Enforcement Orders

An agreed order was adopted regarding Harvest Midstream I, L.P., Docket No. 2020-0996-AIR-E on June 14, 2023 assessing \$58,650 in administrative penalties with \$11,730 deferred. Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding The Chemours Company FC, LLC, Docket No. 2021-0413-AIR-E on June 14, 2023 assessing \$23,576 in administrative penalties with \$4,715 deferred. Information concerning any aspect of this order may be obtained by contacting Amanda Diaz, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Dipesh Limbad dba Last Chance, Docket No. 2021-0458-PST-E on June 14, 2023 assessing \$45,138 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Cynthia Sirois, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding INEOS USA LLC, Docket No. 2021-0473-AIR-E on June 14, 2023 assessing \$46,468 in administrative penalties with \$9,293 deferred. Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Atlas Oil Company, Docket No. 2021-0850-IHW-E on June 14, 2023 assessing \$63,750 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Casey Kurnath, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding High Country Real Estate LLC dba FUEL CITY FLEET EXPRESS, Docket No. 2021-1007-PST-E on June 14, 2023 assessing \$16,776 in administrative penalties with \$3,355 deferred. Information concerning any aspect of this order may be obtained by contacting Horus Garcia, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding H. L. ZUMWALT CONSTRUCTION, INC., Docket No. 2021-1120-MLM-E on June 14, 2023 assessing \$18,675 in administrative penalties with \$3,735 deferred. Information concerning any aspect of this order may be obtained by contacting Mark Gamble, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Gilmer, Docket No. 2021-1189-MWD-E on June 14, 2023 assessing \$31,625 in administrative penalties with \$6,325 deferred. Information concerning any aspect of this order may be obtained by contacting Ellen Ojeda, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Air Liquide Large Industries U.S. LP, Docket No. 2021-1515-AIR-E on June 14, 2023 assessing \$21,288 in administrative penalties with \$4,257 deferred. Information concerning any aspect of this order may be obtained by contacting Amanda Diaz, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An order was adopted regarding Blue Cereus, LLC d/b/a La Caleta Estate and Blue Cereus, LLC d/b/a San Pedro Village, Docket No. 2022-0010-PWS-E on June 14, 2023 assessing \$210 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.

An agreed order was adopted regarding SOLAR TURBINES INCORPORATED, Docket No. 2022-0211-AIR-E on June 14, 2023 assessing \$29,350 in administrative penalties with \$5,870 deferred. Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding ONEOK Hydrocarbon Southwest, LLC, Docket No. 2022-0372-IWD-E on June 14, 2023 assessing \$10,800 in administrative penalties with \$2,160 deferred. Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Port Mansfield Public Utility District, Docket No. 2022-0438-PWS-E on June 14, 2023 assessing \$2,665 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Ashley Lemke, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Flint Hills Resources Corpus Christi, LLC, Docket No. 2022-0481-IWD-E on June 14, 2023 assessing \$45,000 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding Javier Maldonado dba Auto Correct Paint and Body Shop, Docket No. 2022-0595-AIR-E on June 14, 2023 assessing \$3,375 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Jennifer Peltier, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding West Texas Commercial Properties LLC dba Hop In 430457, Docket No. 2022-0638-PST-E on June 14, 2023 assessing \$16,476 in administrative penalties with \$3,295 deferred. Information concerning any aspect of this order may be obtained by contacting Courtney Gooris, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Bloomington Independent School District, Docket No. 2022-0758-MWD-E on June 14, 2023 assessing \$22,262 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Ellen Ojeda, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding RS PATEL, INC. dba Quick Way Food Store 7, Docket No. 2022-0779-PST-E on June 14, 2023 assessing \$10,125 in administrative penalties with \$2,025 deferred. Information concerning any aspect of this order may be obtained by contacting Stephanie McCurley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding MIDWAY WATER UTILITIES, INC., Docket No. 2022-0784-MWD-E on June 14, 2023 assessing \$16,875 in administrative penalties with \$3,375 deferred. Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding QW Transport, LLC dba American Petrofina, Docket No. 2022-0867-PST-E on June 14, 2023 assessing \$43,059 in administrative penalties with \$8,611 deferred. Information concerning any aspect of this order may be obtained by contacting Karolyn Kent, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Riverside Special Utility District, Docket No. 2022-0892-PWS-E on June 14, 2023 assessing \$3,375 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Nick Lohret, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202302160

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: June 14, 2023



Notice of Correction to Agreed Order Number 11

In the October 7, 2022, issue of the *Texas Register* (47 TexReg 6653), the Texas Commission on Environmental Quality (commission) published notice of Agreed Orders, specifically Item Number 11, for Vulcan Construction Materials; Docket Number 2022-1077-WR-E. The error is as submitted by the commission.

The county should be corrected to read: "Parker County."

The identifier should be corrected to read: "RN110069614."

For questions concerning these errors, please contact Michael Parrish at (512) 239-2548.

TRD-202302140

Gitanjali Yadav

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: June 13, 2023



Notice Public Meeting New Permit No. WQ0016177001

APPLICATION. Chisholm Hill LP, 3500 Oakmont Boulevard, Suite 200, Austin, Texas 78731, has applied to the Texas Commission on Environmental Quality (TCEQ) for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0016177001, to authorize the discharge of treated domestic wastewater at a daily average flow not

to exceed 650,000 gallons per day. TCEQ received this application on June 1, 2022.

The facility will be located approximately 0.9 of a mile north of the intersection of Black Ankle Road and State Highway 130, in Caldwell County, Texas 78644. The treated effluent will be discharged to an unnamed tributary, thence to Big West Fork Plum Creek, thence to West Fork Plum Creek, thence to Plum Creek in Segment No. 1810 of the Guadalupe River Basin. The unclassified receiving water use is limited aquatic life use for the unnamed tributary, Big West Fork Plum Creek, and West Fork Plum Creek. The designated uses for Segment No. 1810 are primary contact recreation, aquifer protection, and high aquatic life use. In accordance with 30 Texas Administrative Code §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. This review has preliminarily determined that no water bodies with exceptional, high, or intermediate aquatic life uses are present within the stream reach assessed; therefore, no Tier 2 degradation determination is required. No significant degradation of water quality is expected in water bodies with exceptional, high, or intermediate aquatic life uses downstream, and 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=-97.734444%2C29.856944&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:

Monday, July 24, 2023 at 7:00 p.m.

The Connection Center

200 S Blanco St.

Lockhart, Texas 78644

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 Dr. Eugene Clark Public Library, 217 South Main Street, Lockhart, Texas. Further information may also be obtained from Chisholm Hill LP at the address stated above or by calling Mr. Ted J. Schneider, P.E., Project Engineer, BGE Inc., at (512) 806-1896.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or 1-800-RELAY-TX (TDD) at least five business days prior to the meeting.

Issuance Date: June 08, 2023

TRD-202302156

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: June 14, 2023



Notices Issued June 08, 2023

NOTICE OF AN APPLICATION FOR A WATER USE PERMIT

APPLICATION NO. 13779

North Fields Investment Partners LP, Fields Preserve Investment Partners LP, VPTM Fields LB LLC, FHQ Development Partners LP, Fields Midtown West Investment Partners LP, Fields Point West Investment Partners LP, and Fields Midtown East Investment Partners LP (Applicants), 1900 N. Akard St., Dallas, Texas 75201, seek authorization to construct and maintain six dams and reservoirs and maintain one existing dam and reservoir on unnamed tributaries of Panther Creek, Trinity River Basin, impounding a total of 167.5 acre-feet of water for recreational purposes in Denton County. Applicants also seek authorization to use the bed and banks of unnamed tributaries of Panther Creek to convey a total of 743.98 acre-feet of groundwater for storage in the reservoirs and for subsequent diversion and use for agricultural purposes in Denton and Collin counties. More information on the application and how to participate in the permitting process is given below. The application and fees were received on August 20, 2021. Additional information was received on October 29, 2021 and January 13, 2022. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on January 24, 2022. Additional information was received on Au-

gust 19, September 9, and November 10, 2022, and March 13, 2023. The Executive Director completed the technical review of the application and prepared a draft Water Use Permit. The Water Use Permit, if granted, would contain special conditions including, but not limited to, maintaining an alternate source of water and water quality monitoring. The application, technical memoranda, and Executive Director's draft permit are available for viewing on the TCEQ web page at: https://www.tceq.texas.gov/permitting/water_rights/wr-permitting/view-wr-pend-apps. Alternatively, you may request a copy of the documents by contacting the TCEQ Office of the Chief Clerk by phone at (512) 239-3300 or by mail at TCEQ OCC, Notice Team (MC-105), P.O. Box 13087, Austin, Texas 78711. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice. A public meeting is intended for the taking of public comment and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application.

The TCEQ may grant a contested case hearing on this application if a written hearing request is filed within 30 days from the date of newspaper publication of this notice. The Executive Director may approve the application unless a written request for a contested case hearing is filed within 30 days after newspaper publication of this notice.

To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" (4) a brief and specific description of how you would be affected by the application in a way not common to the general public; and (5) the location and distance of your property relative to the proposed activity. You may also submit proposed conditions 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 WRPERM 13779 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 <http://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>.*

NOTICE OF AN APPLICATION FOR A TEMPORARY WATER USE PERMIT

APPLICATION NO. 13890

Peckerwood Gardens Conservation Foundation, Inc., Applicant, 20559 FM 359 RD, Hempstead, Texas 77445, seeks a temporary water use permit to divert and use not to exceed 60 acre-feet of water, within a period of three years, from a point on an unnamed tributary of Clear Creek, Brazos River Basin for agricultural purposes in Waller County.

More information on the application and how to participate in the permitting process is given below.

The application and partial fees were received on December 29, 2022. Additional information and fees were received on January 31, February 21, February 27, and March 16, 2023. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on March 24, 2023.

The Executive Director completed the technical review of the application and prepared a draft permit. The draft permit, if granted, would include special conditions including, but not limited to, streamflow restrictions and installation of a measuring device for diversions. 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.

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 June 26, 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 June 26, 2023. The Executive Director may approve the application unless a written request for a contested case hearing is filed by June 26, 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 13890 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-202302157

Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 14, 2023

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Texas Facilities Commission

Request for Proposals #303-4-20754 Temple

The Texas Facilities Commission (TFC), on behalf of the Health and Human Services Commission (HHSC) and the Department of State Health Services (DSHS) announces the issuance of Request for Proposals (RFP) 303-4-20754. TFC seeks a five (5) or ten (10) year lease of approximately 28,498 SF of space that consists of 23,498 SF of office and 5,000 SF of adjacent conditioned warehouse space in Temple, Texas.

The deadline for questions is July 11, 2023, and the deadline for proposals is August 8, 2023, at 3:00 p.m. The anticipated award date is October 19, 2023. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting Heather Goll at heather.goll@tfc.texas.gov. A copy of the RFP may be downloaded from the Electronic State Business Daily at <https://www.txsmartbuy.com/esbddetails/view/303-4-20754>.

TRD-202302137
Rico Gamino
Procurement Director
Texas Facilities Commission
Filed: June 13, 2023

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Texas Health and Human Services Commission

Notice of Public Hearing on Proposed Updates to Medicaid Payment Rates

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on July 11, 2023, at 9:00 a.m., to receive public comments on proposed updates to Medicaid payment rates for Ambulance, Birth and Woman's Health Services, Evaluation and Management, Private Duty Nursing, Personal Care Services, Rural Hospital Inpatient and Outpatient Services. The proposed rate actions are based on direction provided by the 2024-25 General Appropriations Act (GAA), House Bill 1, 88th Legislature, Regular Session, 2023 (Article II, Special Provisions Relating to all Health and Human Services Agencies).

This hearing will be conducted both in-person and as an online event. To join the hearing from your computer, tablet, or smartphone, register for the hearing in advance using the following link:

Registration URL:

<https://attendee.gotowebinar.com/register/4862721446890562654>

After registering, you will receive a confirmation email containing information about joining the webinar. Instructions for dialing-in by phone will be provided after you register.

Members of the public may attend the rate hearing in person, which will be held in the Public Hearing Room 125 in the John H Winters Building located at 701 W 51st Street, Austin, Texas, or they may access a

live stream of the meeting at <https://hhs.texas.gov/about-hhs/communications-events/live-archived-meetings>. For the live stream, select the "Winters Live" tab. A recording of the hearing will be archived and accessible on demand at the same website under the "Archived" tab. The hearing will be held in compliance with Texas Human Resources Code section 32.0282, which requires public notice of and hearings on proposed Medicaid reimbursements.

Any updates to the hearing details will be posted on the HHSC website at <https://www.hhs.texas.gov/about/meetings-events>.

Proposal. The rate actions for the following services are proposed to be effective September 1, 2023:

- A(1) Ambulance
- A(2) Birth and Women's Health Services
- A(3) Evaluation and Management
- A(4) Private Duty Nursing
- A(5) Personal Care Services
- B(1) Rural Hospital Inpatient
- B(2) Rural Hospital Outpatient

Methodology and Justification. The proposed payment rates were calculated in accordance with Title 1 of the Texas Administrative Code:

Section 355.8021 - Reimbursement Methodology for Home Health Services

Section 355.8085 - Reimbursement Methodology for Physicians and Other Practitioners

Section 355.8441 - Reimbursement Methodologies for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Services (known in Texas as Texas Health Steps)

Section 355.8600 - Reimbursement Methodology for Ambulance Services

Section 355.8641 - Reimbursement Methodology for the Women's Health Program

Section 355.8052 - Inpatient Hospital Reimbursement and

Section 355.8061 -Outpatient Hospital Reimbursement

Rate Hearing Packet. A briefing packet describing the proposed payment rates will be made available at <https://pfd.hhs.texas.gov/rate-packets> no later than June 30, 2023. Interested parties may obtain a copy of the briefing packet on or after that date by contacting Provider Finance by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at PFDAcuteCare@hhs.texas.gov or PFD_hospitals@hhsc.state.tx.us.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Provider Finance, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Provider Finance at (512) 730-7475; or by e-mail to PFDAcuteCare@hhs.texas.gov or PFD_hospitals@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail to Texas Health and Human Services Commission, Attention: Provider Finance, Mail Code H-400, North Austin Complex, 4601 Guadalupe St, Austin, Texas 78751.

Preferred Communication. For quickest response please use e-mail or phone if possible for communication with HHSC related to this rate hearing.

Persons with disabilities who wish to participate in the hearing and require auxiliary aids or services should contact Provider Finance at (512) 730-7401 at least 72 hours before the hearing so appropriate arrangements can be made.

TRD-202302131

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: June 12, 2023



Public Notice - Texas State Plan for Medical Assistance Amendment

The Texas Health and Human Services Commission (HHSC) announces its intent to submit amendments to the Texas State Plan for Medical Assistance under Title XIX of the Social Security Act. The proposed amendments are effective July 1, 2023.

The purpose of the proposed amendments is to update the current State Plan to denote that certain family planning services are reimbursed to the Federal Qualified Health Clinic (FQHC) and Rural Health Clinic (RHC) as an alternative payment methodology for services provided to a Medicaid recipient at an RHC or a FQHC. This alternative payment methodology will pay the higher of the provider PPS rate or the current amount listed on the Physicians Fee Schedule.

The proposed amendment for FQHC and RHC's is estimated to result in an increased annual aggregate expenditure of \$206,549 for federal fiscal year (FFY) 2023, consisting of \$123,661 in federal funds and \$82,888 in state general revenue. For FFY 2024, the estimated annual aggregate expenditure is \$726,418 consisting of \$436,940 in federal funds and \$289,478 in state general revenue. For FFY 2025, the estimated annual aggregate expenditure is \$718,717, consisting of \$432,309 in federal funds and \$286,408 in state general revenue.

Rate Hearing. The details for the hearing will be published at a later date for the alternative payment methodology. Information about the rate hearing and rates will be published in the *Texas Register* at <http://www.sos.state.tx.us/texreg/index.shtml>.

Copy of Proposed Amendment. Interested parties may obtain additional information and/or a free copy of the proposed amendment by contacting Kenneth Anzaldúa, State Plan Policy Advisor, by mail at the Health and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, Texas 78711; by telephone at (512) 438-4326; by facsimile at (512) 323-1905; or by email at Medicaid_Chip_SPA_Inquiries@hhsc.state.tx.us. Copies of the proposed amendment will be available for review at the local county offices of HHSC, formerly the local offices of the Texas Department of Aging and Disability Services.

Written Comments. Written comments about the proposed amendment and/or requests to review comments may be sent by U.S. mail, overnight mail, special delivery mail, hand delivery, fax, or email:

U.S. Mail

Texas Health and Human Services Commission

Attention: Provider Finance Department

Mail Code H-400

P.O. Box 149030

Austin, Texas 78714-9030

Overnight mail, special delivery mail, or hand delivery

Texas Health and Human Services Commission

Attention: Provider Finance Department

North Austin Complex

Mail Code H-400

4601 W Guadalupe St

Austin, Texas 78751

Phone number for package delivery: (512) 730-7401

Fax

Attention: Provider Finance at (512) 730-7475

Email

pdf_hospitals@hhsc.state.tx.us

Preferred Communication.

For quickest response, please use email or phone, if possible, for communication with HHSC related to this state plan amendment.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Provider Finance at (512) 730-7401 at least 72 hours before the hearing so appropriate arrangements can be made.

TRD-202302154

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: June 14, 2023



Public Notice - Texas State Plan for Medical Assistance Amendment

The Texas Health and Human Services Commission (HHSC) announces its intent to submit amendments to the Texas State Plan for Medical Assistance under Title XIX of the Social Security Act. The proposed amendment is effective July 1, 2023.

The purpose of the amendment is to clarify the coverage of certain services like durable medical equipment and drugs for renal dialysis services as payable outside of the current composite rate due to new and/or expensive technology and high cost drugs.

The proposed amendment for renal dialysis services is estimated to result in an annual aggregate expenditure of \$46,297 for federal fiscal year (FFY) 2023, consisting of \$27,718 in federal funds and \$18,579 in state general revenue. For FFY 2024, the estimated annual aggregate expenditure is \$164,841 consisting of \$99,152 in federal funds and \$65,689 in state general revenue. For FFY 2025, the estimated annual aggregate expenditure is \$185,496 consisting of \$111,576 in federal funds and \$73,920 in state general revenue.

Rate Hearing. The details for the hearing will be published at a later date for the alternative payment methodology. Information about the rate hearing and rates will be published in the *Texas Register* at <http://www.sos.state.tx.us/texreg/index.shtml>.

Copy of Proposed Amendment.

Interested parties may obtain additional information and/or a free copy of the proposed amendment by contacting Kenneth Anzaldua, State Plan Policy Advisor, by mail at the Health and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, Texas 78711; by

telephone at (512) 438-4326; by facsimile at (512) 323-1905; or by email at Medicaid_Chip_SPA_Inquiries@hhsc.state.tx.us. Copies of the proposed amendment will be available for review at the local county offices of HHSC, formerly the local offices of the Texas Department of Aging and Disability Services.

Written Comments.

Written comments about the proposed amendment and/or requests to review comments may be sent by U.S. mail, overnight mail, special delivery mail, hand delivery, fax, or email:

U.S. Mail

Texas Health and Human Services Commission

Attention: Provider Finance Department

Mail Code H-400

P.O. Box 149030

Austin, Texas 78714-9030

Overnight mail, special delivery mail, or hand delivery

Texas Health and Human Services Commission

Attention: Provider Finance Department

North Austin Complex

Mail Code H-400

4601 W. Guadalupe St.

Austin, Texas 78751

Phone number for package delivery: (512) 730-7401

Fax

Attention: Provider Finance at (512) 730-7475

Email

pdf_hospitals@hhsc.state.tx.us

Preferred Communication.

For quickest response, please use email or phone, if possible, for communication with HHSC related to this state plan amendment.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Provider Finance at (512) 730-7401 at least 72 hours before the hearing so appropriate arrangements can be made.

TRD-202302155

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: June 14, 2023



Texas Department of Insurance

Company Licensing

Application to do business in the state of Texas for Applied Home National Underwriters LLC, a foreign fire and/or casualty company. The home office is Wilmington, Delaware.

Application to do business in the state of Texas for Crossroads Insurance Company, a foreign fire and/or casualty company. The home office is in Atlanta, Georgia.

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-202302159

Justin Beam

Chief Clerk

Texas Department of Insurance

Filed: June 14, 2023

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Texas Lottery Commission

Scratch Ticket Game Number 2478 "\$100,000 JACKPOT"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2478 is "\$100,000 JACKPOT". The play style is "multiple games".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2478 shall be \$5.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2478.

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: STAR SYMBOL, HORSESHOE SYMBOL, POT OF GOLD SYMBOL, COIN SYMBOL, JOKER SYMBOL, KEY SYMBOL, BELL SYMBOL, BOOT SYMBOL, CACTUS SYMBOL, CLOVER SYMBOL, LADYBUG SYMBOL, WISHBONE SYMBOL, CROWN SYMBOL, HEART SYMBOL, RING SYMBOL, ANCHOR SYMBOL, PIG SYMBOL, MONEY SYMBOL, LEMON SYMBOL, BANANA SYMBOL, MELON SYMBOL, APPLE SYMBOL, GRAPE SYMBOL, PALM SYMBOL, SMILE SYMBOL, LIGHTNING BOLT SYMBOL, DIAMOND SYMBOL, CHILE PEPPER SYMBOL, HAT SYMBOL, PLANE SYMBOL, FISH SYMBOL, CAR SYMBOL, NOTE SYMBOL, CHEST SYMBOL, STRAWBERRY SYMBOL, BANK SYMBOL, TROPHY SYMBOL, BUTTERFLY SYMBOL, PIZZA SYMBOL, DICE SYMBOL, ACE SYMBOL, HORSE SYMBOL, \$5.00, \$10.00, \$20.00, \$50.00, \$100, \$500, \$1,000, \$5,000 and \$100,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2478 - 1.2D

PLAY SYMBOL	CAPTION
STAR SYMBOL	STAR
HORSESHOE SYMBOL	HRSHOE
POT OF GOLD SYMBOL	PTGOLD
COIN SYMBOL	COIN
JOKER SYMBOL	JOKER
KEY SYMBOL	KEY
BELL SYMBOL	BELL
BOOT SYMBOL	BOOT
CACTUS SYMBOL	CACTUS
CLOVER SYMBOL	CLOVER
LADYBUG SYMBOL	LBUG
WISHBONE SYMBOL	BONE
CROWN SYMBOL	CROWN
HEART SYMBOL	HEART
RING SYMBOL	RING
ANCHOR SYMBOL	ANCHR
PIG SYMBOL	PIG
MONEY SYMBOL	MONEY
LEMON SYMBOL	LEMN
BANANA SYMBOL	BNNA
\$5.00	FIV\$
\$10.00	TEN\$
\$20.00	TWY\$
\$50.00	FFTY\$
\$100	ONHN

\$500	FVHN
\$1,000	ONTH
\$5,000	FVTH
\$100,000	100TH
MELON SYMBOL	MELN
APPLE SYMBOL	APPL
GRAPE SYMBOL	GRPE
PALM SYMBOL	PALM
SMILE SYMBOL	SMILE
LIGHTNING BOLT SYMBOL	BOLT
DIAMOND SYMBOL	DMND
CHILE PEPPER SYMBOL	PEPPER
HAT SYMBOL	HAT
PLANE SYMBOL	PLANE
FISH SYMBOL	FISH
CAR SYMBOL	CAR
NOTE SYMBOL	NOTE
CHEST SYMBOL	CHEST
STRAWBERRY SYMBOL	STBRY
BANK SYMBOL	BANK
TROPHY SYMBOL	TRPHY
BUTTERFLY SYMBOL	BTFLY
PIZZA SYMBOL	PIZZA
DICE SYMBOL	DICE
ACE SYMBOL	ACE
HORSE SYMBOL	HORSE

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 (2478), 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: 2478-0000001-001.

H. Pack - A Pack of the "\$100,000 JACKPOT" Scratch Ticket Game contains 075 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The Packs will alternate. One will show the front of Ticket 001 and back of 075 while the other fold will show the back of Ticket 001 and front of 075.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "\$100,000 JACKPOT" Scratch Ticket Game No. 2478.

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 "\$100,000 JACKPOT" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose sixty-eight (68) Play Symbols. BONUS: If a player reveals 2 matching prize amounts in the BONUS, the player wins that amount. GAME 1 - MATCH 2 SYMBOLS: If the player reveals 2 matching symbols in the same ROW, the player wins the PRIZE for that ROW. GAME 2 - SLOTS: If the player reveals 3 matching symbols in the same SPIN, the player wins the PRIZE for that SPIN. 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-eight (68) 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-eight (68) 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-eight (68) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the sixty-eight (68) 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: The top Prize Symbol will appear on every Ticket, unless restricted by other parameters, play action or prize structure.

B. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

C. GAME 1 - MATCH 2 SYMBOLS: A non-winning Prize Symbol will never match a winning Prize Symbol in GAME 1.

D. GAME 1 - MATCH 2 SYMBOLS: A Ticket may have up to three (3) matching non-winning Prize Symbols, unless restricted by other parameters, play action or prize structure.

E. GAME 1 - MATCH 2 SYMBOLS: There will be no duplicate non-winning ROWS in any order.

F. GAME 1 - MATCH 2 SYMBOLS: On Non-Winning Tickets, every Play Symbol will be different.

G. GAME 2 - SLOTS: A non-winning Prize Symbol will never match a winning Prize Symbol in GAME 2.

H. GAME 2 - SLOTS: A Ticket may have up to two (2) matching non-winning Prize Symbols, unless restricted by other parameters, play action or prize structure.

I. GAME 2 - SLOTS: There will never be three (3) matching Play Symbols in adjacent positions in a column or diagonal line.

J. GAME 2 - SLOTS: There will be no duplicate non-winning SPINs in any order.

K. GAME 2 - SLOTS: There will be no more than two (2) matching non-winning Play Symbols on a Ticket, unless restricted by other parameters, play action or prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "\$100,000 JACKPOT" Scratch Ticket Game prize of \$5.00, \$10.00, \$20.00, \$25.00, \$50.00, \$100 or \$500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$25.00, \$50.00, \$100 or \$500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "\$100,000 JACKPOT" Scratch Ticket Game prize of \$1,000, \$5,000 or \$100,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "\$100,000 JACKPOT" 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 "\$100,000 JACKPOT" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "\$100,000 JACKPOT" 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 7,080,000 Scratch Tickets in Scratch Ticket Game No. 2478. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2478 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$5.00	731,600	9.68
\$10.00	542,800	13.04
\$20.00	94,400	75.00
\$25.00	141,600	50.00
\$50.00	94,400	75.00
\$100	20,650	342.86
\$500	3,422	2,068.97
\$1,000	413	17,142.86
\$5,000	10	708,000.00
\$100,000	6	1,180,000.00

*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 4.35. 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. 2478 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. 2478, 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-202302153
 Bob Biard
 General Counsel
 Texas Lottery Commission
 Filed: June 14, 2023

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Public Utility Commission of Texas

Notice of Application to Relinquish Designation as an Eligible Telecommunications Carrier

Notice is given to the public of an application filed with the Public Utility Commission of Texas on June 9, 2023, to relinquish designation as an eligible telecommunications carrier under 16 Texas Administrative Code §26.418.

Docket Title and Number: Application of CGKC&H No. 1 Rural Cellular Limited Partnership dba West Central Wireless and dba Right Wireless to Relinquish its Eligible Telecommunications Carrier Designation, Docket Number 55129.

The Application: CGKC&H No. 1 Rural Cellular Limited Partnership dba West Central Wireless and dba Right Wireless requests to relinquish its eligible telecommunications carrier (ETC) designation in Texas.

Persons who wish to file a motion to intervene or comments on the application should contact the commission as an intervention deadline will be imposed. A comment or request to intervene should be mailed to P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 55129.

TRD-202302147
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Filed: June 13, 2023



Notice of Application to Relinquish Designation as an Eligible Telecommunications Carrier and Eligible Telecommunications Provider

Notice is given to the public of an application filed with the Public Utility Commission of Texas on June 9, 2023, to relinquish a designation as an eligible telecommunications carrier and eligible telecommunications provider under 16 Texas Administrative Code §26.417 and §26.418.

Docket Title and Number: Application of CT Cube, LP dba West Central Wireless and dba Right Wireless to Relinquish its Eligible Telecommunications Provider and Eligible Telecommunications Carrier Designations, Docket Number 55131.

The Application: CT Cube, LP requests to relinquish its eligible telecommunications provider (ETP) and eligible telecommunications carrier (ETC) designation in Texas.

Persons who wish to file a motion to intervene or comments on the application should contact the commission as an intervention deadline will be imposed. A comment or request to intervene should be mailed to P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 55131.

TRD-202302133
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Filed: June 12, 2023



Notice of Application to Relinquish Designation as an Eligible Telecommunications Carrier and Eligible Telecommunications Provider

Notice is given to the public of an application filed with the Public Utility Commission of Texas on June 9, 2023, to relinquish designa-

tion as an eligible telecommunications carrier and eligible telecommunications provider under 16 Texas Administrative Code §26.417 and §26.418.

Docket Title and Number: Application of CGKC&H No.2 Rural Cellular Limited Partnership dba West Central Wireless and dba Right Wireless to Relinquish its Eligible Telecommunications Provider and Eligible Telecommunications Carrier Designations, Docket Number 55130.

The Application: CGKC&H No.2 Rural Cellular Limited Partnership dba West Central Wireless and dba Right Wireless requests to relinquish its eligible telecommunications provider (ETP) and eligible telecommunications carrier (ETC) designation in Texas.

Persons who wish to file a motion to intervene or comments on the application should contact the commission as an intervention deadline will be imposed. A comment or request to intervene should be mailed to P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 55130.

TRD-202302138
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Filed: June 13, 2023



Notice of Application to Relinquish Designation as an Eligible Telecommunications Provider

Notice is given to the public of an application filed with the Public Utility Commission of Texas on June 9, 2023, to relinquish designation as an eligible telecommunications provider under 16 Texas Administrative Code §26.417.

Docket Title and Number: Application of Texas RSA 15B2 Limited Partnership dba Five Star Wireless to Relinquish its Eligible Telecommunications Provider Designation, Docket Number 55132.

The Application: Texas RSA 15B2 Limited Partnership dba Five Star Wireless requests to relinquish its eligible telecommunications provider designation in the Verizon Communications, Inc. wire centers of Boerne, Fredericksburg, and portions of Junction, Stonewall, and Willow City, and in the Windstream Communications Kerrville, LP wire centers of Harper and Kerrville. Texas RSA 15B2 proposes termination of service on August 31, 2023.

Persons who wish to file a motion to intervene or comments on the application should contact the commission as an intervention deadline will be imposed. A comment or request to intervene should be mailed to P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 55132.

TRD-202302134
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Filed: June 12, 2023



Notice of Intent to Implement a Minor Rate Change Under 16 Texas Administrative Code §26.171

Notice is given to the public of an application filed with the Public Utility Commission of Texas (Commission) on June 7, 2023, to implement a minor rate change under 16 Texas Administrative Code §26.171.

Tariff Control Title and Number: Application Cameron Telephone Company for a Minor Rate Change Under 16 TAC §26.171, Tariff Control Number 55115.

The Application: On June 7, 2023, Cameron Telephone Company filed an application with the Commission for approval to increase its monthly local residential and business access line rates by \$2.00. Cameron Telephone proposed the following increases in service charges for residential and business customers:

Exchange Name Current Charge Proposed Charge

Residential

High Island \$16.50 \$18.50

Nome \$16.50 \$18.50

Gilchrist \$16.50 \$18.50

Business

High Island \$15.30 \$17.30

Nome \$17.10 \$19.10

Gilchrist \$16.40 \$18.40

Cameron Telephone proposed an effective date of July 1, 2023. The revenue effect of implementing the minor rate change described in this application results in an increase to Cameron Telephone's regulated intrastate gross annual revenues by an estimated \$8,472.00.

If the Commission receives a complaint(s) relating to this proposal signed by 5% or more of the affected customers to which this proposal applies by July 5, 2023, the application will be docketed. The 5% threshold is calculated using total number of affected customers as of the calendar month preceding the Commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by July 5, 2023. Requests to intervene should be filed with the Commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326, or you may call the Commission at (512) 936-7120 or toll-free (800) 735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the Commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Tariff Control Number 55115.

TRD-202302132

Andrea Gonzalez

Rules Coordinator

Public Utility Commission of Texas

Filed: June 12, 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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