Texas Register, (ISSN 0362-4781, USPS 12-0090), is published weekly (52 times per year) for $340.00 ($502.00 for first class mail delivery) by Matthew Bender & Co., Inc., 3 Lear Jet Lane Suite 104, P. O. Box 1710, Latham, NY 12110.

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The Texas Register is published under the Government Code, Title 10, Chapter 2002. Periodicals Postage Paid at Easton, MD and at additional mailing offices.

POSTMASTER: Send address changes to the Texas Register, 4810 Williamsburg Road, Unit 2, Hurlock, MD 21643.

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Appointments for March 11, 2022

Appointed as presiding officer of the Alamo Regional Mobility Authority for a term to expire February 1, 2024, Michael J. "Mike" Lynd, Jr. of San Antonio, Texas (Mr. Lynd is being reappointed).

Designated as presiding officer of the Texas Commission on Special Education Funding, for a term to expire at the pleasure of the Governor, Stacey Neal Combest of Huntsville, Texas.

Appointments for March 14, 2022

Appointed as the Adjutant General of Texas for a term to expire February 1, 2024, Thomas M. "Tom" Suelzer of Keller, Texas (replacing Tracy R. Norris of Austin, whose term expired).

Appointed to the Firefighters' Star of Texas Award Advisory Committee for a term to expire at the pleasure of the Governor, Samuel S. "Sam" McGee of Boerne, Texas (replacing Lieutenant Stephen L. "Steve" Harris of Bartonville).

Appointed to the Firefighters' Star of Texas Award Advisory Committee for a term to expire at the pleasure of the Governor, Robert L. Moore of Bryan, Texas (replacing Chief Robert Ojeda of San Antonio).

Appointed to the Peace Officers' Star of Texas Award Advisory Committee for a term to expire at the pleasure of the Governor, Timothy H. "Tim" Whitaker of Richmond, Texas (replacing Captain Patrick B. Hernandez of Leander).

Greg Abbott, Governor

TRD-202200928

❖ ❖ ❖ ❖
EMERGENCY RULES

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days’ notice. An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days (Government Code, §2001.034).

TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 500. COVID-19 EMERGENCY HEALTH CARE FACILITY LICENSING

SUBCHAPTER A. HOSPITALS

26 TAC §500.1

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts on an emergency basis in Title 26, Texas Administrative Code, Chapter 500, COVID-19 Emergency Health Care Facility Licensing, new §500.1, concerning an emergency rule to allow hospitals to treat and house patients more effectively in response to COVID-19. As authorized by Texas Government Code §2001.034, the Executive Commissioner may adopt an emergency rule without prior notice or hearing upon finding that an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days’ notice. Emergency rules adopted under Texas Government Code §2001.034 may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

BACKGROUND AND PURPOSE

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

To protect current and future patients in health care facilities and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting an emergency rule to allow a currently licensed hospital to operate an off-site inpatient facility without obtaining a new license at: (1) another type of facility currently licensed or licensed within the past 36 months or a facility pending licensure that has passed its final architectural review inspection, such as an ambulatory surgical center, an assisted living facility, a freestanding emergency medical care facility, an inpatient hospice unit, a mental hospital, or a nursing facility; (2) an outpatient facility operated by the hospital; (3) a formerly licensed hospital that closed within the past 36 months or a hospital pending licensure that has passed its final architectural review inspection; (4) a hospital exempt from licensure; and (5) a mobile, transportable, or relocatable unit.

To allow operation of additional off-site facilities, this emergency rule also allows a waiver of the requirement for off-site facilities to be open or licensed within the past 36 months, at HHSC’s discretion.

This emergency rule also temporarily permits a currently licensed hospital to designate a specific part of its hospital for use as an off-site facility by another hospital, and to allow another currently licensed hospital to apply to use the first hospital’s designated hospital space as an off-site facility for inpatient care.

STATUTORY AUTHORITY

The emergency rule is adopted under Texas Government Code §2001.034 and §531.0055 and Texas Health and Safety Code §241.026. Texas Government Code §2001.034 authorizes the adoption of emergency rules without prior notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days’ notice. Texas Government Code §531.0055 authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by the health and human services system. Texas Health and Safety Code §241.026 authorizes the Executive Commissioner of HHSC to adopt rules governing development, establishment, and enforcement standards for the construction, maintenance, and operation of licensed hospitals.


(a) Based on Governor Greg Abbott’s March 13, 2020, declaration of a state of disaster in all Texas counties, the Texas Health and Human Services Commission (HHSC) adopts this emergency rule to establish continuing requirements and flexibilities to protect public health and safety during the COVID-19 pandemic. The requirements and flexibilities established in this section are applicable during an active declaration of a state of disaster in all Texas counties due to the COVID-19 pandemic, declared pursuant to Texas Government Code §418.014.

(b) A hospital licensed under Texas Health and Safety Code Chapter 241 that meets the requirements of this emergency rule may use an off-site facility for inpatient care under its existing license for the duration as long as this emergency rule is in effect or any extension of this emergency rule is in effect.

(c) The off-site facility must be:

(1) an inpatient hospice unit licensed under Texas Health and Safety Code Chapter 142 either currently or within the past 36 months, or a facility with a pending application for such a license that has passed its final architectural review inspection;
(2) a hospital no longer licensed under Texas Health and Safety Code Chapter 241 that closed within the past 36 months, or a facility with a pending application for such a license that has passed its final architectural review inspection;

(3) a hospital exempt from licensure under Texas Health and Safety Code Chapter 241;

(4) a mobile, transportable, or relocatable unit, as defined in Title 25 Texas Administrative Code (TAC) §133.166 (relating to Mobile, Transportable, and Relocatable Units), that otherwise complies with that section;

(5) a nursing facility or other institution licensed under Texas Health and Safety Code Chapter 242 either currently or within the past 36 months, or a facility with a pending application for such a license that has passed its final architectural review inspection;

(6) an ambulatory surgical center licensed under Texas Health and Safety Code Chapter 243 either currently or within the past 36 months, or a facility with a pending application for such a license that has passed its final architectural review inspection;

(7) an assisted living facility licensed under Texas Health and Safety Code Chapter 247 either currently or within the past 36 months, or a facility with a pending application for such a license that has passed its final architectural review inspection;

(8) a freestanding emergency medical care facility licensed under Texas Health and Safety Code Chapter 254 either currently or within the past 36 months, or a facility with a pending application for such a license that has passed its final architectural review inspection;

(9) a mental hospital licensed under Texas Health and Safety Code Chapter 577 either currently or within the past 36 months, or a facility with a pending application for such a license that has passed its final architectural review inspection;

(10) an outpatient facility operated by the hospital, either currently or within the past 36 months;

(11) a building or structure of opportunity temporarily converted for health care use, including an alternate care site, that is created or maintained by the hospital in partnership with or under the supervision of the health authority, local health department, public health district, or public health consortium that has jurisdiction over the site location; or

(12) a specific portion of a second hospital currently licensed under Texas Health and Safety Code Chapter 241 that the second hospital has designated for use as an off-site facility by another hospital, using a form prescribed by HHSC;

(A) The second hospital may withdraw its designation upon 10 days’ notice to HHSC and to the hospital using the portion of the facility as an off-site facility.

(B) Any patient being treated in the off-site facility at the time approval is withdrawn shall be safely relocated as soon as practicable according to the hospital’s policies and procedures.

(C) A portion of the second hospital designated under this paragraph may not be used under the second hospital’s license while the designation is effective.

(d) At its sole discretion, HHSC may waive the requirement that an off-site facility must have been licensed or open within the past 36 months under subsection (c) of this section, if the hospital applying to use the off-site facility provides evidence satisfactory to HHSC that such waiver will not detrimentally affect the health or safety of patients, hospital staff, or the public.

(e) A hospital that uses any off-site facility under this emergency rule for inpatient care, including a portion of a second hospital designated under subsection (c)(12) of this section, is responsible under its license for complying with all applicable federal and state statutes and rules.

(f) A hospital must submit an application to use an off-site facility for inpatient care to HHSC via email at infohflc@hhs.texas.gov and receive written approval from HHSC before using the off-site facility for inpatient care.

(g) HHSC has the discretion to approve or deny any application to use an off-site facility for inpatient care. HHSC may require an inspection or additional documentation of the off-site facility before considering an application.

(h) In order to protect the health, safety, and welfare of patients and the public, HHSC may withdraw its approval for a hospital to use the off-site facility for inpatient care at any time. Any patient being treated in the off-site facility at the time approval is withdrawn shall be safely relocated as soon as practicable according to the hospital’s policies and procedures.

(i) The requirements of 25 TAC §133.21(c)(4)(B) - (C) (relating to the Scope of Hospital License) do not apply to an off-site facility applied for or used under this section.
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 2. TEXAS ETHICS COMMISSION

CHAPTER 22. RESTRICTIONS ON CONTRIBUTIONS AND EXPENDITURES

1 TAC §22.37

The Texas Ethics Commission (the Commission) proposes a new Texas Ethics Commission rule in Chapter 22. Specifically, the Commission proposes new §22.37, regarding Virtual Currency Contributions.

The Commission seeks to address and clarify the reporting requirements of political contributions made with virtual currency, such as Bitcoin. The proposal largely mirrors the way the Federal Election Commission and several other states treat virtual currency contributions.

The proposed new rule would require filers to report virtual currency as in-kind contributions.

The new rule would also direct filers to report the value of any accepted virtual currency as the fair market value at the time of receipt. This requirement is designed to address the well-known volatility of virtual currency value and provide guidance on how to report the value of virtual currency contributions. The rule would not require filers to liquidate their virtual currency holdings within any particular timeframe.

The Commission first proposed this rule in September 2021, and then again at their December 2021 meeting. The Commission received numerous public comments, both written and in person at these meetings. Those comments, and discussions by Commissioners, has resulted in this new proposal.

J.R. Johnson, General Counsel, has determined that for the first five-year period the new rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed new rule.

The General Counsel has also determined that for each year of the first five years the proposed new rule is in effect, the public benefit will be consistency and clarity in the Commission's rules regarding acceptance of virtual currency. There will not be an effect on small businesses, microbusinesses or rural communities. There is no anticipated economic cost to persons who are required to comply with the proposed new rule.

The General Counsel has determined that during the first five years that the proposed new rule is in effect, it will: not create or eliminate a government program; not require the creation of new employee positions or the elimination of existing employee positions; require an increase in future legislative appropriations to the agency; require an increase or decrease in fees paid to the agency; expand, limit, or repeal an existing regulation; not increase or decrease the number of individuals subject to the rules' applicability; or not positively or adversely affect this state's economy.

The Commission invites comments on the proposed new rule from any member of the public. A written statement should be emailed to public_comment@ethics.state.tx.us, or mailed or delivered to Anne Temple Peters, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070. A person who wants to offer spoken comments to the Commission concerning the proposed new rule may do so at any Commission meeting during the agenda item relating to the proposed new rule. Information concerning the date, time, and location of Commission meetings is available by telephoning (512) 463-5800 or on the Commission's website at www.ethics.state.tx.us.

The new rule is proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code.

The proposed new rule affects Title 15 of the Election Code.

§22.37. Virtual Currency Contributions.

(a) Virtual currency contributions are considered "in-kind" contributions.

(b) A candidate, officeholder, or political committee must report a gain from the sale of virtual currency contributions on the appropriate schedule if the gain exceeds the reporting threshold set by Section 254.0319 of the Election Code and amended by §18.31 of this title (relating to Adjustments to Reporting Thresholds).

(c) The value of a virtual currency contribution shall be reported as the fair market value of the virtual currency upon receipt.

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

Filed with the Office of the Secretary of State on March 14, 2022.

TRD-202200896
J.R. Johnson
General Counsel
Texas Ethics Commission

Earliest possible date of adoption: April 24, 2022
For further information, please call: (512) 463-5800

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE
CHAPTER 1. GENERAL PROCEDURES

SUBCHAPTER E. ADVISORY COMMITTEES

4 TAC §1.208, §1.209

The Texas Department of Agriculture (Department) proposes the repeal of 4 Texas Administrative Code, Chapter 1, Subchapter E, §1.208, concerning Shrimp Marketing Assistance Program Advisory Committee and §1.209, concerning Wine Industry Development and Marketing Advisory Committee.

Section 56(5) of Senate Bill 703 (SB 703), 87th Texas Legislature, Regular Session (2021) repealed Texas Agriculture Code, §§47.053 and 50B.002, which provided for the creation of a shrimp advisory committee and a wine industry development advisory committee, respectively. The repeal of Texas Agriculture Code, §§47.053 and 50B.002 necessitates repeal of corresponding rules for the Shrimp Marketing Assistance Program Advisory Committee and the Wine Industry Development and Marketing Advisory Committee.

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

GOVERNMENT GROWTH IMPACT STATEMENT: Pursuant to Texas Government Code, §2001.022, the Department provides the following Government Growth Impact Statement for the proposed repeals. For each year of the first five years the proposed repeals will be in effect, the Department has determined the following:

1. the proposed repeals do not create or eliminate a government program;
2. implementation of the proposed repeals does not require the creation or elimination of employee positions;
3. implementation of the proposed repeals does not require an increase or decrease in future legislative appropriations to the Department;
4. the proposed repeals do not require an increase or decrease in fees paid to the Department;
5. the proposed repeals do not create a new regulation;
6. the proposed repeals will repeal an existing regulation;
7. the proposed repeals do not increase or decrease the number of individuals subject to the rules’ applicability; and
8. the proposed repeals do not positively or adversely affect this state’s economy.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT: Karen Reichek, Administrator for Trade and Business Development, has determined that for each year of the first five years the proposed repeals are in effect, enforcing or administering the proposed repeals does not have foreseeable implications relating to costs or revenues of state or local governments.

PUBLIC BENEFITS AND PROBALE ECONOMIC COST: Ms. Reichek has determined that for each year of the first five-year period the proposed repeals are in effect, the public benefit will be the elimination of rules that will no longer be administered by the Department. Ms. Reichek has also determined that for each year of the first five-year period the proposed repeals are in effect, there will be no cost to persons who are required to comply with the proposed repeals.

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

Comments on the proposed repeals may be submitted to Skyler Shafer, Assistant General Counsel, P.O. Box 12847, Austin, Texas 78711, or by email to skyler.shafer@texasagriculture.gov. The deadline for comments is 30 days after publication in the Texas Register.

The repeals are proposed under Section 12.016 of the Texas Agriculture Code, which provides that the Department may adopt rules as necessary for the administration of its powers and duties under the Code.

Chapter 47 and Chapter 50B, Texas Agriculture Code are affected by the repeals.

§1.208. Shrimp Marketing Assistance Program Advisory Committee.

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

Filed with the Office of the Secretary of State on March 11, 2022.
TRD-202200876
Skyler Shafer
Assistant General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: April 24, 2022
For further information, please call: (512) 936-9360

CHAPTER 17. MARKETING AND PROMOTION

SUBCHAPTER F. TEXAS WINE MARKETING ASSISTANCE PROGRAM

4 TAC §17.200, §17.201

The Texas Department of Agriculture (Department) proposes amendments to 4 Texas Administrative Code, Chapter 17, Subchapter F, §17.200, concerning Definitions and §17.201, concerning Wine Marketing Assistance Program.

Section 56(5) of Senate Bill 703 (SB 703), 87th Texas Legislature, Regular Session (2021), among other things, repealed Texas Agriculture Code, §50B.002, which provided for the creation of a wine industry development advisory committee. The repeal of Texas Agriculture Code, §50B.002 necessitates the repeal of corresponding rules for the Wine Industry Development and Marketing Advisory Committee (Committee).

The proposed amendments to §17.200 remove the definition of committee, as well as definitions that are duplicative of definitions already found in 4 TAC §1.1 that apply to all Department rules. The proposed amendments reorder a definition to place it in alphabetical order.
The proposed amendments to §17.201 remove all references to the Committee and its responsibilities as well as make minor editorial changes.

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

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

1. the proposed amendments do not create or eliminate a government program;
2. implementation of the proposed amendments does not require the creation or elimination of employee positions;
3. implementation of the proposed amendments does not require an increase or decrease in future legislative appropriations to the Department;
4. the proposed amendments do not require an increase or decrease in fees paid to the Department;
5. the proposed amendments do not create a new regulation;
6. the proposed amendments will repeal an existing regulation;
7. the proposed amendments do not increase or decrease the number of individuals subject to the rules' applicability; and
8. the proposed amendments do not positively or adversely affect this state's economy.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT: Karen Reichek, Administrator for Trade and Business Development, has determined that for each year of the first five years the proposed amendments are in effect, enforcing or administering the proposed amendments does not have foreseeable implications relating to costs or revenues of state or local governments.

PUBLIC BENEFITS AND PROBABLE ECONOMIC COST: Ms. Reichek has determined that for each year of the first five-year period the proposed amendments are in effect, the public benefit will be the elimination of rules that will no longer be administered by the Department. Ms. Reichek has also determined that for each year of the first five-year period the proposed amendments are in effect, there will be no cost to persons who are required to comply with the proposed amendments.

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

Comments on the proposed amendments may be submitted to Skyler Shafer, Assistant General Counsel, P.O. Box 12847, Austin, Texas 78711, or by email to skyler.shafer@texasagriculture.gov. The deadline for comments is 30 days after publication in the Texas Register.

The amendments are proposed under Section 12.016 of the Texas Agriculture Code, which provides that the Department may adopt rules as necessary for the administration of its powers and duties under the Texas Agriculture Code. Chapter 50B, Texas Agriculture Code is affected by the proposed amendments.

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

[1] Committee—The Wine Industry Development and Marketing Advisory Committee, appointed by the Commissioner of Agriculture (Commissioner) pursuant to the Texas Agriculture Code, §§50B.002-.


[3] Package store—An entity that holds a Package Store permit from the Texas Alcoholic Beverage Commission.


§17.201. Wine Marketing Assistance Program.

[1] The department's responsibilities under this subchapter are as follows: [1]

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

[2] The committee's responsibilities under this subchapter are as follows:

(1) The committee shall assist the commissioner in establishing and implementing the Texas Wine Marketing Assistance Program and the Wine Industry Development Fund; and

(2) The committee may advise the department on the adoption of rules relating to the administration of the Texas Wine Marketing Assistance Program and the Wine Industry Development Fund.

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

Filed with the Office of the Secretary of State on March 11, 2022.

TRD-202200879

Skyler Shafer
Assistant General Counsel
Texas Department of Agriculture

Earliest possible date of adoption: April 24, 2022
For further information, please call: (512) 936-9360

SUBCHAPTER H. TEXAS SHRIMP MARKETING ASSISTANCE PROGRAM
The Texas Department of Agriculture (Department) proposes amendments to 4 Texas Administrative Code, Chapter 17, Subchapter H, §17.400, concerning Definitions; §17.401, concerning Shrimp Marketing Assistance Program and Advisory Committee; and the repeal of §17.402, concerning Shrimp Marketing Assistance Program Staff. The proposed amendments and proposed repeal are collectively referred to as the proposal.

Section 56(5) of Senate Bill 703 (SB 703), 87th Texas Legislature, Regular Session (2021), among other things, repealed Texas Agriculture Code, §47.053, which provided for the creation of a shrimp advisory committee. The repeal of Texas Agriculture Code, §47.053 necessitates repeal of corresponding rules for the Shrimp Marketing Assistance Program Advisory Committee (Committee).

The proposed amendments to §17.400 remove the definition of committee, as well as definitions that are either not used in the subchapter or that are duplicative of definitions already found in 4 TAC §1.1 that apply to all Department rules.

The proposed amendments to §17.401 remove all references to the Committee and its responsibilities, as well as make minor editorial changes. The amendments also change the heading of this rule from "Shrimp Marketing Assistance Program and Advisory Committee" to "Shrimp Marketing Assistance Program."

The repeal of §17.402 is proposed because it unnecessarily duplicates the text of Texas Agriculture Code, §47.054(a).

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

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

1. the proposal does not create or eliminate a government program;
2. implementation of the proposal does not require the creation or elimination of employee positions;
3. implementation of the proposal does not require an increase or decrease in future legislative appropriations to the Department;
4. the proposal does not require an increase or decrease in fees paid to the Department;
5. the proposal does not create a new regulation;
6. the proposal will not repeal an existing regulation;
7. the proposal does not increase or decrease the number of individuals subject to the rules’ applicability; and
8. the proposal does not positively or adversely affect this state’s economy.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT: Karen Reichek, Administrator for Trade and Business Development, has determined that for each year of the first five years the proposal is in effect, enforcing or administering the proposal does not have foreseeable implications relating to costs or revenues of state or local governments.

PUBLIC BENEFITS AND PROBABLE ECONOMIC COST: Ms. Reichek has determined that for each year of the first five-year period the proposal is in effect, the public benefit will be the elimination of rules that will no longer be administered by the Department or that are unnecessary. Ms. Reichek has also determined that for each year of the first five-year period the proposal is in effect, there will be no cost to persons who are required to comply with the proposal.

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

Comments on the proposal may be submitted to Skyler Shafer, Assistant General Counsel, P.O. Box 12847, Austin, Texas 78711, or by email to skyler.shafer@texasagriculture.gov. The deadline for comments is 30 days after publication in the Texas Register.

4 TAC §17.400, §17.401

The amendments are proposed under Section 12.016 of the Texas Agriculture Code, which provides that the Department may adopt rules as necessary for the administration of its powers and duties under the Texas Agriculture Code. Chapter 47, Texas Agriculture Code is affected by the proposed amendments.

§17.400. Definitions.

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

[(1) Coastal waters—All the salt water of the state, including the portion of the Gulf of Mexico that is within the jurisdiction of the state.]

[(2) Commissioner—The Commissioner of Agriculture, Texas Department of Agriculture.]

[(3) Committee, or Advisory Committee—the Texas Shrimp Marketing Assistance Program Advisory Committee, as established by the Texas Agriculture Code, Chapter 47, Subchapter B.]

[(4) Department—The Texas Department of Agriculture.]

[(5) Program—The Texas shrimp marketing assistance program.]

[(6) Texas-produced shrimp—Wild caught shrimp commercially harvested from coastal waters by a shrimp boat licensed by the Parks and Wildlife Department.]

§17.401. Shrimp Marketing Assistance Program [and Advisory Committee].

(a) [No change.]

(b) The department's responsibilities under this subchapter are as follows: [ ]

(1) [No change.]

(2) The department shall administer and implement the program as follows: [ ]

(A) The [in consultation with the advisory committee, the] department shall adopt rules as necessary to implement the program.
(B) - (C)  (No change.)

(3)  (No change.)

[(c)]  The committee's responsibilities under this subchapter are as follows:

[(4)]  The committee shall be composed of the following nine members appointed by the Commissioner:

[(A)] two owners of commercial bay shrimp boats;

[(B)] two owners of commercial gulf shrimp boats;

[(C)] one retail wild-caught shrimp dealer;

[(D)] one wholesale wild-caught shrimp dealer;

[(E)] one person employed by an institution of higher education as a researcher or instructor specializing in the area of food science, particularly seafood;

[(F)] one member of the seafood restaurant industry; and

[(G)] one representative of the public.

[(2)] Committee members serve without compensation, but may be reimbursed for expenses incurred in the direct performance of their duties on approval by the commissioner.

[(3)] Five members of the committee constitute a quorum sufficient to conduct the meetings and business of the committee.

[(4)] The committee shall assist the commissioner in establishing and implementing the Texas Shrimp Marketing Assistance Program and in the expenditure of funds appropriated for the purpose of this subchapter.

[(5)] The committee may advise the department on the adoption of rules relating to the administration of the Texas Shrimp Marketing Assistance Program.

[(6)] A committee member serves a three-year term, with the terms of three or four members expiring August 31 of each year. The commissioner may reappoint a member to the advisory committee.

[(7)] The members of the advisory committee shall elect a presiding officer from among the members and shall adopt rules governing the operation of the committee.

[(8)] The advisory committee shall meet as necessary, but not less frequently than once each calendar year, to provide guidance to the commissioner in establishing and implementing the 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 March 11, 2022.

TRD-202200878

Skyler Shafer
Assistant General Counsel
Texas Department of Agriculture

Earliest possible date of adoption: April 24, 2022

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

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**TITLE 7. BANKING AND SECURITIES**

**PART 6. CREDIT UNION DEPARTMENT**

**CHAPTER 91. CHARTERING, OPERATIONS, MERGERS, LIQUIDATIONS**

**SUBCHAPTER G. LENDING POWERS**

7 TAC §91.720

The Credit Union Commission (the Commission) proposes amendments to 7 TAC, Chapter 91, §91.720 concerning Small-Dollar, Short-Term Credit.

The purpose of the proposed amendments is to adjust for inflation the maximum lending limit related to these loan products and to foster competitive authority to similar products allowed federal credit unions. The $1,100 limit found within subsection (b) was established in 2010 and has not been adjusted since that time. Increasing the defined limit on these types of loans will increase the availability of credit to consumers utilizing these loan products and provide additional time to repay. Finally, the maximum lending limit and maturity found within the current rule is less than maximum maturities of similar loan products authorized by federal credit unions under the Payday Alternative Loans programs authorized by NCUA Rules and Regulations 12 CFR Part 701. The proposed changes would match federal credit union authority relating to maturity and lending limits of these loan products.

The proposed amendments to subsection (b) increases the defined maximum for small-dollar, short-term credit loans to $2,000 and extended maximum maturity to 12 months.

**STATE AND LOCAL GOVERNMENTS**

John J. Kolhoff, Commissioner, has determined that for the first five-year period that the rule changes are in effect there will be no fiscal implications for state and local government as a result of enforcing or administering the rule changes.

**STATEMENT OF PUBLIC COST AND BENEFITS**

Mr. Kolhoff has also determined that for each year of the first five years the rules are in effect, the public will benefit from the adoption of the proposed amendment because they will have greater access to credit when enjoining these types of loans.

4 TAC §17.402

The repeal is proposed under Section 12.016 of the Texas Agriculture Code, which provides that the Department may adopt rules as necessary for the administration of its powers and duties under the Texas Agriculture Code. Chapter 47, Texas Agriculture Code is affected by this repeal.

§17.402. Shrimp Marketing Assistance Program Staff.

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

Filed with the Office of the Secretary of State on March 11, 2022.

TRD-202200878

Skyler Shafer
Assistant General Counsel
Texas Department of Agriculture

Earliest possible date of adoption: April 24, 2022

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

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PROPOSED RULES  March 25, 2022  47 TexReg 1555
There will be no anticipated cost to persons who are required to comply with the proposed amendments.

SMALL AND MICRO-BUSINESSES AND RURAL COMMUNITIES

Mr. Kolhoff has also determined that for each year of the first five years the rule changes are in effect, there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. There is no economic cost anticipated to the credit union system or to individuals required to comply with the rule changes as proposed.

GOVERNMENT GROWTH IMPACT STATEMENT

Except as may be described below to the contrary, for each year of the first five years that the rules will be in effect, the rules will not: create or eliminate a government program; require the creation of new employee positions or the elimination of existing employee positions; require an increase or decrease in future legislative appropriations to the agency; create new regulations; limit, or repeal an existing regulation; increase fees paid to the department; increase or decrease the number of individuals subject to the rule’s applicability; or adversely affect this state’s economy.

Written comments on the proposed amendments may be submitted to John J. Kolhoff, Commissioner, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699 or by email to CUDMail@cud.texas.gov. To allow the Commission sufficient time to fully address all the comments it receives, all comments must be received on or before 5:00 p.m. on the 31st day after the date the proposal is published in the Texas Register.

The rule changes are proposed under Texas Finance Code, Section 15.402, which authorizes the Commission to adopt reasonable rules for administering Texas Finance Code Title 2, Chapter 15 and Title 3, Subtitle D.

The statutory provision affected by the proposed amendments is Texas Finance Code, Section 15.408, regarding consumer information and complaints.

§91.720. Small-Dollar, Short-Term Credit.

(a) General. Credit unions are encouraged to offer small-dollar credit products that are affordable, yet safe and sound, and consistent with applicable laws. The goal in offering these small-dollar credit products should be to help members avoid, or transition away from, reliance on high-cost debt. To accomplish this goal, credit unions should offer products with reasonable interest rates, low fees, and payments that reduce the principal balance of the loan or extension of credit.

(b) Definition. For purposes of this section, small-dollar, short-term credit product is defined as a low denomination loan or extension of credit having a term of 12 [6] months or less, where the amount financed does not exceed $2,000 [§1,100]. Each credit union is responsible for establishing appropriate dollar limits and terms based upon its size and sophistication of operations, and its net worth.

(c) Limitation. Accessibility and expediency are important factors for many members with emergency or other short-term needs. Therefore, small-dollar credit products must balance the need for quick availability of funds with the fundamentals of responsible lending. Sound underwriting criteria should focus on a member’s history with the credit union and ability to repay a loan within an acceptable timeframe. Given the small dollar amounts of each individual credit request, documenting the member’s ability to repay can be streamlined and may need to include only basic information, such as proof of recurring income. The aggregate total of streamlined underwritten small-dollar credit products outstanding, however, shall not exceed 20% of the credit union’s net worth.

(d) Fees. A credit union may require a member to pay reasonable expenses and fees incurred in connection with making or closing a loan. With respect to expenses and fees being assessed on small-dollar, short-term credit products, the expenses and fees are presumed to be reasonable if the aggregate total is $20 or less. In addition, if the credit union refinances a small-dollar, short-term credit product, it may charge such expenses and fees only once in a 180-day period. Credit unions may also charge a late fee as permitted by Finance Code §124.153.

(e) Payments. Credit unions should structure payment programs in a manner that reduces the principal owed. For closed-end products, loans should be structured to provide for affordable and amortizing payments. Lines of credit should require minimum payments that pay off principal. Excessive renewals or the prolonged failure to reduce the outstanding balance are signs that the product is not meeting the member’s credit needs and will be considered an unsound practice.

(f) Required Savings. Credit unions may structure small-dollar credit programs to include a savings component. The funds in this account may also serve as a pledge against the loan or extension of credit.

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

Filed with the Office of the Secretary of State on March 14, 2022.

TRD-202200903
John J. Kolhoff
Commissioner
Credit Union Department

Earliest possible date of adoption: April 24, 2022
For further information, please call: (512) 837-9236

PART 8. JOINT FINANCIAL REGULATORY AGENCIES

CHAPTER 153. HOME EQUITY LENDING

7 TAC §153.1

The Finance Commission of Texas and the Texas Credit Union Commission ("commissions") propose amendments to §153.1 (relating to Definitions) in 7 TAC, Chapter 153, concerning Home Equity Lending.

7 TAC Chapter 153 contains the commissions’ interpretations of the home equity lending provisions of Texas Constitution, Article XVI, Section 50 (“Section 50”). In general, the purposes of the proposed rule changes to 7 TAC Chapter 153 are: (1) to amend the definition of “business day” to ensure that the definition appropriately excludes legal public holidays, reflects the common understanding of “business day” in the context of mortgage loan disclosures, and is consistent with similar definitions under federal law, and (2) to make technical corrections to ensure consistency in the text of other definitions.

The interpretations in 7 TAC Chapter 153 are administered by the Joint Financial Regulatory Agencies ("agencies"), consisting of the Texas Department of Banking, Department of Savings and Mortgage Lending, Office of Consumer Credit Com-
missioner, and Texas Credit Union Department. The agencies distributed an early precomment draft of proposed changes to interested stakeholders for review, and then held an online webinar regarding the proposed changes. The agencies received verbal feedback from stakeholders during the webinar, and received one written precomment on the rule text draft. The agencies appreciate the thoughtful input provided by stakeholders.

Proposed amendments to §153.1(2) would amend the definition of "business day." The term "business day" is used in Section 50(a)(6)(M)(ii) and Section 50(f)(2)(D). Under Section 50(a)(6)(M)(ii), the lender must provide a preclosing disclosure to the owner at least one business day before the closing of a home equity loan. Under Section 50(f)(2)(D), when a lender refinances a home equity loan into a non-home-equity loan, the lender must provide a refinance disclosure within three business days after the homeowner submits a loan application.

The proposal would amend §153.1(2) to contain three definitions of "business day." First, for purposes of 7 TAC §153.13 (relating Preclosing Disclosures: Section 50(a)(6)(M)(ii)), the proposal would state that a business day is a calendar day except for Sunday or a legal public holiday described by federal law. This is similar to the current definition of "business day" in §153.1(2), but adds Juneteenth National Independence Day as a listed holiday. In 2021, federal law was amended to add Juneteenth as a legal public holiday. Juneteenth National Independence Day Act, Pub. L. No. 117-117, 135 Stat. 287 (2021) (codified at 5 U.S.C. §6103(a)). The proposal also adds a reference to the federal law listing legal public holidays at 5 U.S.C. §6103(a) (in case this section is amended to describe additional holidays in the future). Second, for purposes of 7 TAC §153.13 (relating to Refinance of an Equity Loan: Section 50(f)), the proposal would amend §153.1(2) to state that a business day is a day on which the consumer's offices are open to the public for carrying on substantially all of its business functions. Third, for purposes of 7 TAC §153.25 (relating to Right of Recission: Section 50(a)(6)(O)(viii)), the proposal would state that a business day has the meaning provided by Regulation Z, 12 C.F.R. §1026.2(a)(6) that applies for purposes of rescission.

These definitions are based on the definitions of "business day" that currently apply to mortgage disclosures under federal law, as well as regulatory commentary on those definitions. Federal Regulation Z, 12 C.F.R. part 1026, requires a lender to provide several disclosures to a borrower in connection with a mortgage loan. The two definitions of "business day" are listed in Regulation Z, 12 C.F.R. §1026.2(a)(6). One of these definitions provides that a business day is a day on which the creditor's offices are open to the public for carrying on substantially all of its business functions. The other definition provides that a business day is any calendar day except Sundays and legal public holidays listed in federal law. In its official commentary to Regulation Z, the Consumer Financial Protection Bureau (CFPB) refers to these two definitions as the "business function test" and the "more precise rule," respectively. Official Interpretations of Regulation Z, 12 C.F.R. pt. 1026, supp. I, para. 2(a)(6). Each definition applies to a different set of deadlines and timing requirements under Regulation Z. For example, the business function test applies for purposes of the requirement to provide an early disclosure within three business days after a creditor receives the consumer's application (as provided by 12 C.F.R. §1026.18(e)(1)(iii)(A)). The more precise rule applies for purposes of the requirement to provide final disclosures at least three days before closing (as provided by 12 C.F.R. §1026.18(f)(1)(ii)(A)), as well as the consumer's right to rescind certain mortgage loans within three business days after consummation (as provided by 12 C.F.R. §1026.23(2)(ii)(A)). The CFPB analyzed how these definitions apply to Juneteenth in an interpretive rule issued in August 2021. Consumer Financial Protection Bureau, Impact of the 2021 Juneteenth Holiday on Certain Closed-End Mortgage Requirements, 86 Fed. Reg. 44,267 (2021).

The changes to the definition of "business day" respond to an informal comment that the agencies received from an industry attorney in August 2021. This attorney recommended adding a reference to Juneteenth in §153.1(2), and recommended consistency with Regulation Z's definitions of "business day."

During the online webinar on the precomment draft of the amendments, a second industry attorney expressed general support for the amendments, agreeing that the amendments reflected her members' understanding of what a business day is. This attorney requested additional clarity regarding observed holidays (such as holidays observed on the Monday following a holiday). In response to this verbal comment, the proposed amendment at §153.1(2)(A) includes guidance on observed holidays, based on the CFPB's commentary to Regulation Z, 12 C.F.R. pt. 1026, supp. I, para. 2(a)(6).

A third industry attorney (who works for a company that prepares closing documents for Texas mortgage lenders) submitted a written precomment expressing general support for the amendments. This attorney stated: "We believe the proposed amendments are a positive step in aligning the Texas and federal business day definitions. . . . We believe the draft amendments are appropriate and consistent with the Texas Constitution. In the context of mortgage loan disclosures, the term 'business day' has multiple meanings that are set out in Regulation Z. The term obviously has differing meanings depending on the context and type of disclosure . . . " The attorney explained that the proposed amendments would lead to fewer mistakes that may result from lenders manually providing Texas disclosures that do not align with their automated loan origination systems. The attorney also recommended replacing the list of holidays in §153.1(2)(A) with a single reference to federal law. The agencies considered this approach, but believe that the list of holidays helps the reader quickly understand the definition without having to refer to a separate legal source. The commissions invite further comment on this issue during the comment period on this proposal.

Based on these comments from stakeholders, the agencies believe that the proposed definitions reflect the common understanding of the term "business day" in the context of disclosures for mortgage loans. The proposed definitions would also have practical benefits. For example, by aligning the definition in §153.1(2) with Regulation Z, the proposal would allow a lender to send the constitutionally required refinance disclosure on the same day it sends the federally required early disclosure. Also, the proposal would allow a lender additional time to provide the refinance disclosure if its offices are closed for business functions due to an emergency (such as a pandemic or storm).

Other changes throughout §153.1 would make technical corrections to ensure consistency of formatting and capitalization. The changes to capitalization are based on feedback from staff of the Texas Register.

Dan Frasier (Director of Bank and Trust Supervision, Texas Department of Banking), Antonia Antov (Director of Operations, Department of Savings and Mortgage Lending), Huffman Lewis (Di-
rector of Consumer Protection, Office of Consumer Credit Commissioner), and John Kolhoff (Commissioner, Texas Credit Union Department) have determined that for the first five-year period the proposed rule changes are in effect, there will be no fiscal implications for state or local government as a result of administering the rule changes.

Dan Frasier (Director of Bank and Trust Supervision, Texas Department of Banking), William Purce (Director of Mortgage Regulation, Department of Savings and Mortgage Lending), Huffman Lewis (Director of Consumer Protection, Office of Consumer Credit Commissioner), and John Kolhoff (Commissioner, Texas Credit Union Department) have determined that for each year of the first five years the proposed rule changes are in effect, the public benefits anticipated as a result of the changes will be that the commissions’ rules will better reflect the common understanding of the term “business day” in the mortgage lending context, will better align with deadlines for federal disclosures, and will provide clearer guidance to ensure that lenders comply with Section 50.

The agencies do not anticipate any economic cost to persons who are required to comply with the amendments as proposed. The agencies do not anticipate any adverse economic effect on small businesses, micro-businesses, or rural communities resulting from this proposal. But in order to obtain more complete information concerning the economic effect of these rule changes, the agencies invite comments from interested stakeholders and the public on any economic impacts on small businesses, as well as any alternative methods of achieving the purpose of the proposal while minimizing adverse impacts on small businesses, micro-businesses, and rural communities.

During the first five years the proposed rule changes will be in effect, the rules will not create or eliminate a government program. Implementation of the rule changes will not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the rule changes will not require an increase or decrease in future legislative appropriations to the agencies, because the agencies are self-directed, semi-independent agencies that do not receive legislative appropriations. The proposed rule changes do not require an increase or decrease in fees paid to the agencies. The proposal would not create a new regulation. The proposal would expand current §153.1 to provide additional guidance in the definition of “business day.” The proposal would not limit or repeal an existing regulation. The proposed rule changes do not increase or decrease the number of individuals subject to the rule’s applicability. The agencies do not anticipate that the proposed rule changes will have an effect on the state’s economy.

Comments on the proposal may be submitted in writing to Matthew Nance, Deputy General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705 or by email to rule.comments@occc.texas.gov. To be considered, a written comment must be received on or before the 30th day after the date the proposal is published in the Texas Register. After the 30th day after the proposal is published in the Texas Register, no further written comments will be considered or accepted by the commissions.

The rule changes are proposed under Texas Finance Code, §11.308 and §15.413, which authorize the commissions to issue interpretations of Texas Constitution, Article XVI, §50(a)(5) - (7), (e) - (p), (t), and (u), subject to Texas Government Code, Chapter 2001. The constitutional provisions affected by the proposal are contained in Texas Constitution, Article XVI, §50. No statute is affected by this proposal.

§153.1 Definitions.

Any reference to Section 50 in this interpretation refers to Article XVI, Texas Constitution, unless otherwise noted. These words and terms have the following meanings when used in this chapter, unless the context indicates otherwise:

1. Balloon—An [an] installment that is more than an amount equal to twice the average of all installments scheduled before that installment.


(A) As used in Section 50(a)(6)(M)(ii) and §153.13 of this title (relating to Preclosing Disclosures: Section 50(a)(6)(M)(ii)), “business day” means all calendar days except Sundays and the following federal legal public holidays: New Year’s Day, Birthday of Martin Luther King, Jr., Washington’s Birthday, Memorial Day, Juneteenth National Independence Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other legal public holiday specified in 5 U.S.C. § 6103(a). When a holiday falls on a Saturday or Sunday, entities must observe the holiday on the preceding Friday or following Monday (e.g., when July 4 falls on a Saturday, entities must observe the holiday on Friday, July 3). For purposes of this subparagraph, these observed holidays (in the example, July 3) are business days.

(B) As used in Section 50(f)(2)(D) and §153.45 of this title (relating to Refinance of an Equity Loan: Section 50(f)), “business day” means a day on which the lender’s offices are open to the public for carrying on substantially all of its business functions. Activities that indicate that the lender is open for substantially all of its business functions include the availability of personnel to make loan disbursements, to open new accounts, and to handle loan inquiries. Activities that indicate that the lender is not open for substantially all of its business functions include a bank’s having its customer-service windows open only for limited purposes such as deposits and withdrawals, bill paying, and related services.

(C) As used in §153.25 of this title (relating to Right of Recision: Section 50(a)(6)(Q)(viii)), “business day” means the time provided by Regulation Z, 12 C.F.R. §1026.2(a)(6) that applies for purposes of rescission.

3. Closed or closing—The [the] date when each owner and the spouse of each owner signs the equity loan agreement or the act of signing the equity loan agreement by each owner and the spouse of each owner.

4. Consumer disclosure—The [Disclosure the] written notice contained in Section 50(g) that must be provided to the owner at least 12 days before the date the extension of credit is made.

5. Cross-default provision—A [a] provision in a loan agreement that puts the borrower in default if the borrower defaults on another obligation.

6. Date the extension of credit is made—The [the] date on which the closing of the equity loan occurs.

(8) Equity loan--An extension of credit as defined and authorized under the provisions of Section 50(a)(6).

(9) Equity loan agreement--The [the] documents evidencing the agreement between the parties of an equity loan.

(10) Fair market value--The [the] fair market value of the homestead as determined on the date that the loan is closed.

(11) Force-placed insurance--Insurance [insurance] purchased by the lender on the homestead when required insurance on the homestead is not maintained in accordance with the equity loan agreement.

(12) Interest--As used in Section 50(a)(6)(E), "interest" means the amount determined by multiplying the loan principal by the interest rate over a period of time.

(13) Lockout provision--A [a] provision in a loan agreement that prohibits a borrower from paying the loan early.

(14) Owner--A person who has the right to possess, use, and convey, individually or with the joinder of another person, all or part of the homestead.

(15) Preclosing disclosure--The written itemized disclosure required by Section 50(a)(6)(M)(ii).

(16) Two percent limitation--The [the] limitation on fees in Section 50(a)(6)(E).


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

Filed with the Office of the Secretary of State on March 11, 2022.

TRD-202200883
Matthew Nance
Deputy General Counsel, Office of Consumer Credit Commissioner
Joint Financial Regulatory Agencies
Earliest possible date of adoption: April 24, 2022
For further information, please call: (512) 936-7660

TITLE 10. COMMUNITY DEVELOPMENT
PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
CHAPTER 7. HOMELESSNESS PROGRAMS
SUBCHAPTER A. GENERAL POLICIES AND PROCEDURES
10 TAC §§7.1 - 7.3, 7.7, 7.12

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC Chapter 7, Homelessness Programs, Subchapter A, General Policies and Procedures, §§7.1 - 7.3, §§7.7, and §§7.12. The purpose of the proposed repeal is to eliminate outdated rules while adopting new updated rules under separate action.

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

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221. Mr. Bobby Wilkinson, Executive Director, has determined that for the first five years the proposed repeal would be in effect:

1. The proposed repeal does not create or eliminate a government program, but relates to the repeal and simultaneous readoption making changes to an existing activity, the overarching policies and procedures of the Emergency Solutions Grants, Emergency Solutions Grants CARES, Homeless Housing and Services, and Ending Homelessness Fund programs.

2. The proposed repeal does not require a change in work that would require the creation of new employee positions, nor is the proposed repeal significant enough to reduce work load to a degree that any existing employee positions are eliminated.

3. The proposed repeal does not require additional future legislative appropriations.

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

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

6. The proposed action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to an existing activity, the administration of homeless programs.

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

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

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department has evaluated this proposed repeal and determined that the proposed repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The proposed repeal does not contemplate nor authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6). The Department has evaluated the proposed repeal as to its possible effects on local economies and has determined that for the first five years the proposed repeal would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

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

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the proposed repeal is in effect, enforcing or administering the repeal does not have any fore-
seeable implications related to costs or revenues of the state or local governments.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held March 25, 2022, to April 25, 2022, to receive input on the proposed repealed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Rosy Falcon, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email rosy.falcon@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, APRIL 25, 2022.

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

Except as described herein the proposed repealed sections affect no other code, article, or statute.

§7.1. Purpose and Goals.
§7.2. Definitions.
§7.3. Construction Activities.
§7.7. Subrecipient Contact Information.

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

Filed with the Office of the Secretary of State on March 14, 2022.
TRD-202200895
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: April 24, 2022
For further information, please call: (512) 475-3959

10 TAC §§7.1 - 7.3, 7.7, 7.12

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC Chapter 7, Homelessness Programs, Subchapter A, General Policies and Procedures, §§7.1 - 7.3, 7.7, and 7.12. The purpose of the proposed new sections is to update the rules to clarify definitions and eligible activities, and to better align with the administrative rules for the Department at 10 TAC §1.5, related to rule waivers.

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

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

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed new rule would be in effect:

1. The proposed rules do not create or eliminate a government program, but relates to the readoption of this rule which makes changes to an existing activity, the overarching policies and procedures of the Emergency Solutions Grants, Emergency Solutions Grants CARES, Homeless Housing and Services, and Ending Homelessness Fund programs (homeless programs).

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

3. The proposed rules do not require additional future legislative appropriations.

4. The proposed rules will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The proposed rules are not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.

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

7. The proposed rules will not increase or decrease the number of individuals subject to the rules’ applicability.

8. The proposed rule will not negatively or positively affect the state’s economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department, in drafting these proposed rules, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov’t Code, Ch. 2306.

1. The Department has evaluated these rules and determined that none of the adverse effect strategies outlined in Tex. Gov’t Code §2006.002(b) are applicable.

2. There are approximately no small or micro-businesses subject to the proposed rules because these funds are limited to private nonprofit organizations and units of local governments per 24 CFR §576.202 for Emergency Solutions Grants funds; limited to counties and municipalities in Tex. Transportation Code §502.415 for the Ending Homeless Fund; and limited to municipalities or designated nonprofits per 10 TAC §7.22 for the Homeless Housing and Services Program.

3. The Department has determined that based on the considerations in item two above, there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The proposed rules do not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6). The Department has evaluated the rules as to their possible effects on local economies and has determined that for the first five years the rules will be in effect the new rules have no economic effect on local employment because these rules will channel funds, which may be limited, only to nonprofits, private nonprofits, local governments, and counties and municipalities; it is not anticipated that the amount of funds would be enough to support additional employment opportunities, but would add to the services provided. Alternatively, the rules would also not cause any negative impact on employment. Therefore no local employment impact statement is required to be prepared for the rules.
Tex. Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that no impact is expected, there are no "probable" effects of the new rules on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the new sections will be a rule that has greater clarity into the processes and definitions of the administration of homeless programs. There will not be any economic cost to any individuals required to comply with the new sections because the processes described by the rule have already been in place through the rules found at these sections being repealed.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the new sections are in effect, enforcing or administering the new sections does not have any foreseeable implications related to costs or revenues of the state or local governments because the costs for administering the program included in eligible activities.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held March 25, 2022, to April 25, 2022, to receive input on the new proposed sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Rosy Falcon, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by fax to (512) 475-0220, or email rosy.falcon@dhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, APRIL 25, 2022.

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

Exempt as described herein the proposed new sections affect no other code, article, or statute.

§7.1 Purpose and Goals.

(a) The rules established in this chapter relate to Homeless Programs, for which the General Provisions provided in this subchapter apply to all of the Homeless Programs, unless otherwise noted. Additional program specific requirements are contained within each program subchapter.

(b) The Homeless Programs administered by the Texas Department of Housing and Community Affairs (the "Department") support the Department's statutorily assigned mission to address homelessness among Texans.

(c) The Department accomplishes this mission by acting as a conduit for state and federal funds directed for homelessness programs. Ensuring program compliance with the state and federal laws that govern these programs is another important part of the Department's mission. Oversight and program mandates ensure state and federal resources are expended in an efficient and effective manner.

(d) Unless otherwise noted herein or required by federal law or regulation, or state statute, all provisions of this chapter apply to any Application received for federal funds and any Contract of state funds on or after the effective date of this rule.

§7.2 Definitions.

The words and terms in this chapter shall have the meanings described in this subsection unless the context clearly indicates otherwise. Other definitions may be found in Chapter 1, concerning Administration, Chapter 2, concerning Enforcement, of this title; or in federal or state law including, but not limited to, 24 CFR Parts 91, 200, 576, 582, and 583, and UGMS or TXGMS, as applicable.

(1) Affiliate--An entity related to an Applicant that controls by contract or by operation of law the Applicant or has the power to control the Applicant or a third entity that controls, or has the power to control both the Applicant and the entity. Examples include but are not limited to entities submitting under a common application, or instrumentalities of a unit of government. This term also includes any entity that is required to be reported as a component entity under Generally Accepted Accounting Standards, is required to be part of the same Single Audit as the Applicant, is reported on the same IRS Form 990, or is using the same federally approved indirect cost rate.

(2) Allocation Formula--Mathematical relationship among factors, authorized by the Board, that determines, when applicable, how much funding is available in an area or region in Subchapters B, C, and D of this chapter, relating to Homelessness Programs.

(3) Applicant--A unit of local government, nonprofit corporation or other entity, as applicable, who has submitted to the Department or to an ESG Coordinator an Application for Department funds or other assistance.

(4) Application--A request for a Contract award submitted by an Applicant to the Department or to an ESG Coordinator, in a form prescribed by the Department, including any exhibits or other supporting material.

(5) At-risk of Homelessness--Defined by 24 CFR §576.2, except as otherwise defined by Contract, the income limits for Program Participants are determined by the Subrecipient but, at a minimum, do not exceed the moderate income level pursuant to Tex. Gov't Code §2306.152.


(7) Continuum of Care (CoC)--The group composed of representatives of relevant organizations, which generally includes nonprofit homeless providers; victim service providers; faith-based organizations; governments; businesses; advocates; public housing agencies; school districts; social service providers; mental health agencies; hospitals; universities; affordable housing developers; law enforcement; organizations that serve homeless and formerly homeless veterans, and homeless and formerly homeless persons that are organized to plan for and provide, as necessary, a system of outreach, engagement, and assessment; emergency shelter; rapid re-housing; transitional housing; permanent housing; and prevention strategies to address the various needs of homeless persons and persons at risk of homelessness for a specific geographic area. HUD funds a CoC Program designed to assist sheltered and unsheltered homeless people by providing the housing and/or services needed to help individuals move into transitional and permanent housing, with the goal of long-term stability.

(8) CoC Lead Agency--CoC collaborative applicant in the HUD CoC Program per 24 CFR §578.3.

(9) Contract--The executed written agreement between the Department and a Subrecipient performing a program activity that describes performance requirements and responsibilities assigned by the document.

(10) Contract System--The electronic recordkeeping system established by the Department, as required by the program.
(11) Contract Term--Period of time identified in the Contract during which program activities may be conducted.

(12) Cost Reimbursement--A Contract sanction whereby reimbursement of costs incurred by the Subrecipient occurs only after the Department has reviewed all relevant documentation provided by the Subrecipient to support Expenditures. Reimbursement will only be approved by the Department where the documentation clearly supports the eligible use of funds.

(13) Declaration of Income Statement (DIS)--A Department-approved form used only when it is not possible for a Subrecipient to obtain third-party or firsthand verification of income, per 24 CFR §576.500(e)(4).

(14) Dwelling Unit--A residence that meets Habitability Standards that is not an emergency shelter, hotel, jail, institution, or similar temporary lodging. Transitional Housing is included in this definition unless the context clearly states otherwise. Common areas supporting the Dwelling Unit are also included in this definition.

(15) Elderly Person--
(A) For state funds, a person who is 60 years of age or older; and
(B) For ESG, a person who is 62 years of age or older.


(17) Emergency Solutions Grants (ESG)--A HUD-funded program which provides funds for services necessary to help persons that are at risk of homelessness or homeless quickly regain stability in permanent housing.

(18) Emergency Solutions Grants CARES (ESG CARES)--A HUD-funded program which provides funds for services necessary to help persons that are at risk of homelessness or homeless quickly regain stability in permanent housing authorized by the Coronavirus Aid, Relief, and Economic Security Act (CARES).

(19) ESG Interim Rule--The regulations with amendments promulgated at 24 CFR Part 576 as published by HUD for the ESG Program.

(20) Expenditure--An amount of money accounted for by a Subrecipient as spent.

(21) Finding--A Subrecipient’s material failure to comply with rules, regulations, the terms of the Contract or to provide services under each program to meet appropriate standards, goals, and other requirements established by the Department or funding source (including performance objectives). A Finding impacts the organization’s ability to achieve the goals of the program and jeopardizes continued operations of the Subrecipient. Findings include the identification of an action or failure to act that results in disallowed costs.

(22) Head of Household--As defined in the most recent Homeless Management Information System (HMIS) Data Dictionary issued by HUD.

(23) HMIS-Comparable Database--Database established and operated by a victim service provider or legal service provider that is comparable to HMIS and collects Program Participant-level data over time.

(24) HMIS Data Dictionary--The Dictionary published by HUD which defines terms for the use of HMIS and comparable databases.

(25) HMIS Data Standards Manual--Manual published by HUD which documents the requirements for the programming and use of all HMIS and comparable databases.

(26) HMIS Lead Agency--The entity designated by the CoC to operate the CoC’s HMIS on its behalf.

(27) Homeless or Homeless Individual--An individual as defined by 42 U.S.C. §§11371 - 11378 and 24 CFR §576.2. For state-funded programs, a homeless individual may have right of occupancy because of a signed lease, but still qualify as homeless if his or her primary nighttime residence is an emergency shelter or place not meant for human habitation.

(28) Homeless Housing and Services Program (HHSP)--The state-funded program established under Tex. Gov’t Code §2306.2585.

(29) Homeless Management Information System (HMIS)--Information system designated by the CoC to comply with the HUD’s data collection, management, and reporting standards and used to collect Program Participant-level data and data on the provision of housing and services to homeless individuals and families and persons at-risk of homelessness.

(30) Homeless Programs--Reference to programs that have the specific purpose of addressing homelessness administered by the Department, including ESG Program, ESG CARES, HHSP, and EH Fund.

(31) Homeless Subpopulations--Persons experiencing Homelessness who are part of the special population categories as defined by the most recent Point In Time Data Collection guidance issued by HUD.

(32) Household--A Household is a single individual or a group of persons who apply together for assistance and who live together in one Dwelling Unit, or, for persons who are not housed or in a shelter, who would live together in one Dwelling Unit if they were housed, or as defined in the most recent HMIS Data Dictionary issued by HUD.

(33) Households Served--A single individual or a group of persons who apply for Homeless Program assistance, meets a Homeless Program’s eligibility requirements, receives a Homeless Program’s services, and whose data is entered into an HMIS or comparable database.

(34) Land Use Restriction Agreement (LURA)--An agreement, regardless of its title, between the Department and a property owner, including an emergency shelter, which is a binding covenant upon the property owner and successors in interest, that, when recorded, encumbers the property with respect to the requirements of the programs for which it receives funds.

(35) Match--A contribution to the ESG Program from a non-ESG source governed by 24 CFR §576.201.

(36) Monthly Expenditure Report--Information on Expenditures from Subrecipient to the Department.

(37) Monthly Performance Report--Information on Program Participants and program activities from Subrecipient to the Department.

(38) Notice of Funding Availability (NOFA)--Notice of Funding Availability or announcement of funding published by the Department notifying the public of available funds for a Program with certain requirements.
(39) Outcome--A benefit or change achieved by a Program Participant served by the Department's Homeless Programs.

(40) Performance Target--Number of persons/Households to be served, outcomes to be reached, or construction/rehabilitation/conversion to be performed that the Subrecipient commits to accomplish during the Contract Term.

(41) Private Nonprofit Organization--An organization described in §501(c) of the Internal Revenue Code (the "Code") of 1986 and which is exempt from taxation under subtitle A of the Code, has an accounting system and a voluntary board, and practices nondiscrimination in the provision of assistance. This does not include a governmental organization such as a public housing authority or a housing finance agency.

(42) Project--A group of eligible activities identified in an Application or Contract to the Department, and designated in HMIS or HMIS-comparable database.

(43) Program Participant--An individual or Household that is assisted by a Homeless Program.

(44) Program Year--Contracts with funds from a specific federal allocation (ESG and ESG CARES) or year of a state biennium (HHSP).

(45) Recertification--Required review of a Program Participant's eligibility determination for continuation of assistance.

(46) Service Area--The city(ies), county(ies) and/or place(s) identified in the Application (as applicable), and Contract that the Subrecipient will serve.

(47) State--The State of Texas or the Department, as indicated by context.

(48) Subcontract--A contract made between the Subrecipient and a purveyor of goods or services through a procurement relationship.

(49) Subcontractor--A person or an organization with whom the Subrecipient contracts to provide services.

(50) Subgrant--An award of financial assistance in the form of money made under a grant by a Subrecipient to an eligible Subgrantee. The term includes financial assistance when provided by contractual legal agreement, but does not include procurement purchases.

(51) Subgrantee--The legal entity to which a Subgrant is awarded and which is accountable to the Subrecipient for the use of the funds provided.

(52) Subrecipient--An organization that receives federal or state funds passed through the Department to operate ESG and/or state funded Homeless Programs.

(53) Texas Administrative Code (TAC)--A compilation of all state agency rules in Texas.

(54) United States Department of Housing and Urban Development (HUD)--Federal department that provides funding for ESG.

(55) Unit of General Purpose Local Government--A unit of government which has, among other responsibilities, the authority to assess and collect local taxes and to provide general governmental services.


(57) Youth-headed Household--Household that includes unaccompanied youth 24 years of age and younger, parenting youth 24 years of age and younger, and children of parenting youth 24 years of age and younger.

§7.3. HHSP and EH Construction Activities.

(a) A Subrecipient of Homeless Program funds that constructs or rehabilitates a building or Dwelling Unit, or converts a building(s) for use as a shelter may be required to enter into a LURA. No new construction, renovation (other than repairs), rehabilitation, or conversion of a shelter, or construction or rehabilitation of a Dwelling Unit may be performed using ESG funds.

(b) Tex. Gov't Code §2306.185 requires certain multifamily rental developments to have, among other provisions, a 30-year LURA.

(c) A Subrecipient that intends to expend funds for new construction, rehabilitation, or conversion must submit a copy of the activity budget inclusive of all sources and uses of funding, documents for a construction plan review, and identification of the entity and signature authorization of the individual (name and title) that will execute the LURA. These documents must be submitted no less than 90 calendar days prior to the end of the Contract Term under which funds for the activity are provided. The Department may elect to reconsider award amounts if financial resources other than those presented in the Application are subsequently committed to an activity.

(d) A Subrecipient must request a final construction inspection within 30 calendar days of construction completion. The inspection will cover the Shelter and Housing Standards, Uniform Physical Construction Standards, 2000 International Residential Code (or municipality adopted later version), Minimum Energy Efficiency Requirements for Single Family Construction Activities, and the Accessibility Standards in Chapter 1, Subchapter B, as applicable for the Homeless Program and activity.

§7.7. Subrecipient Contact Information.

(a) In accordance with §1.22 of this title (relating to Providing Contact Information to the Department), Subrecipient will notify the Department and provide contact information for staff that approve the Contract and submit/approve reports in the Contract System. A primary and secondary contact are required to be provided to the Department for submission and approval of reports. The notification will be sent to the Department by updating its Contract System access request information.

(b) If the organization is a nonprofit organization, contact information for the chair and vice-chair of the organization's governing board must be provided to the Department and shall include the:

1. Board Member's name;
2. Beginning and end dates of the member's term;
3. Member's mailing address (which must be different from the organization's mailing address);
4. Member's phone number (different from the organization's phone number); and
5. Member's direct email address.

(c) Subrecipient will notify the Department and provide contact information for Subcontractors and Subgrantee within 30 calendar days of the effective date of the Subcontract or Subgrant. Contact information for the entities with which the Subrecipients' Subcontract or Subgrant must be provided to the Department, including the organization name, name and title of authorized person who entered into the Subgrant or Subcontract, phone number, e-mail address, and type of services provided.
7.12. Waivers

(a) The Department's Governing Board (the "Board") may waive rules in this chapter for good cause to meet the purpose of the Homeless Programs described further in §7.1 of this title (relating to Purpose and Goals) of this title. However, any waiver cannot conflict with the federal statutes or regulations, the Department's Action Plan, or state statutes governing any of the Homeless Programs.

(b) A provision of a closed NOFA may not be waived except in the case of a disaster as described in §1.5 of this title (related to Waiver Applicability in the Case of Federally Declared Disasters) or a change in federal law that makes adherence to the requirements of the NOFA impossible or impracticable as determined by the Board.

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

Filed with the Office of the Secretary of State on March 14, 2022.
TRD-202200897
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: April 24, 2022
For further information, please call: (512) 475-3959

SUBCHAPTER C. EMERGENCY SOLUTIONS GRANTS (ESG)

10 TAC §§7.31 - 7.44

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC Chapter 7, Homelessness Programs, Subchapter C, Emergency Solutions Grants (ESG), §§7.31 - 7.44. The purpose of the proposed repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

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

1. The proposed repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous readoption making changes to an existing activity, the administration of the Emergency Solutions Grants (ESG) Program.
2. The proposed repeal does not require a change in work that would require the creation of new employee positions, nor is the proposed repeal significant enough to reduce work load to a degree that any existing employee positions are eliminated.
3. The proposed repeal does not require additional future legislative appropriations.
4. The proposed repeal does not result in an increase in fees paid to the Department or in a decrease in fees paid to the Department.
5. The proposed repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.
6. The proposed action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to an existing activity, the administration of homeless programs.
7. The proposed repeal will not increase or decrease the number of individuals subject to the rule's applicability.
8. The proposed repeal will not negatively or positively affect this state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOVT' CODE §2006.002. The Department has evaluated this proposed repeal and determined that the proposed repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOVT' CODE §2007.043. The proposed repeal does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOVT' CODE §2001.024(a)(6). The Department has evaluated the proposed repeal as to its possible effects on local economies and has determined that for the first five years the proposed repeal would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOVT' CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of the repealed section would be more clarity on the administration of the Emergency Solutions Grants Program. There will not be economic costs to individuals required to comply with the repealed section.

f. FISCAL NOTE REQUIRED BY TEX. GOVT' CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the proposed repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held March 25, 2022, to April 25, 2022, to receive input on the proposed repealed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Rosy Falcon, Rule Comments, P.O.
Box 13941, Austin, Texas 78711-3941 or email rosy.falcon@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, APRIL 25, 2022.

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

Except as described herein the proposed repealed sections affect no other code, article, or statute.

§7.31. Purpose.
§7.32. Use of ESG Funds.
§7.33. Apportionment of ESG Funds.
§7.34. Local Competition for Funds.
§7.35. Eligible Applicants.
§7.36. General Threshold Criteria under a Department NOFA.
§7.37. Application Review and Administrative Deficiency Process for Department NOFAs.
§7.38. Award and Funding Process for Allocated Funds.
§7.40. Program Participant Services Selection Criteria.
§7.41. Contract Term, Expenditure Benchmark, Return of Funds, and Performance Targets.
§7.42. General Administrative Requirements.
§7.43. Program Income.
§7.44. Program Participant Eligibility and Program Participant Files.

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

Filed with the Office of the Secretary of State on March 25, 2022.

TRD-202200898

Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs

Earliest possible date of adoption: April 24, 2022

For further information, please call: (512) 475-3959

10 TAC §§7.31 - 7.44

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC Chapter 7, Subchapter C, Emergency Solutions Grants (ESG) Program and the Emergency Solutions Grant CARES (ESG CARES), §§7.31 - 7.44. The purpose of the proposed new subchapter is to update requirements related to the requirements of and the award process for the ESG and ESG CARES Programs, including updating eligible program expenses, establishing a process for continuity of awards to some Subrecipients, and updating scoring processes and award procedures for competitive award cycles.

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

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

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV’T CODE §2001.0221. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed new rule would be in effect:

1. The proposed rule does not create or eliminate a government program, but relates to the readoption of this rule which makes changes to an existing activity, administration of the Emergency Solutions Grants or Emergency Solutions Grants CARES programs.
2. The proposed new rule does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.
3. The proposed rule does not require additional future legislative appropriations.
4. The proposed rule will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.
5. The proposed rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.
6. The proposed rule will not expand, limit, or repeal an existing regulation.
7. The proposed rule will not increase or decrease the number of individuals subject to the rules’ applicability.
8. The proposed rule will not negatively or positively affect the state’s economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV’T CODE §2006.002. The Department, in drafting this proposed rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov’t Code, Ch. 2306.

1. The Department has evaluated this rule and determined that none of the adverse effect strategies outlined in Tex. Gov’t Code §2006.002(b) are applicable.
2. There are no small or micro-businesses subject to the proposed rule because these funds are limited to units of local government or designated nonprofits per 10 TAC §7.35 for the programs.
3. The Department has determined that based on the considerations in item two above, there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV’T CODE §2007.043. The proposed rule does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV’T CODE §2001.024(a)(6). The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the new rule has no economic effect on local employment because this rule will channel funds, which may be limited, only to municipalities and nonprofits; it is not anticipated that the amount of funds would be enough to support additional employment opportunities, but would add to the services provided. Alternatively, the rule would also not cause any negative impact on

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employment. Therefore no local employment impact statement is required to be prepared for the rule.

Tex. Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that no impact is expected, there are no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the new subchapter is in effect, the public benefit anticipated as a result of the new subchapter will be a rule that has greater clarity into the processes and definitions of the administration of homeless programs. There will not be any economic cost to any individuals required to comply with the new subchapter because the processes described by the rule have already been in place through the rule found at this subchapter being repealed.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the new subchapter is in effect, enforcing or administering the new subchapter does not have any foreseeable implications related to costs or revenues of the state or local governments because the costs for administering the program in included in eligible activities.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held March 25, 2022, to April 25, 2022, to receive input on the new proposed subchapter. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Rosy Falcon, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by fax to (512) 475-0220, or email rosy.falcon@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, APRIL 25, 2022.

STATUTORY AUTHORITY. The new subchapter is proposed pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules. Except as described herein the proposed new sections affect no other code, article, or statute.

§7.31. Purpose.

(a) The purpose of this rule is to provide guidance and procedures for the Emergency Solutions Grants (ESG) and the Emergency Solutions Grant CARES (ESG CARES) programs as authorized by Tex. Gov't Code §2306.053. ESG and ESG CARES funds are federal funds awarded to the State of Texas by HUD and administered by the Department.

(b) The regulations relating to ESG and ESG CARES, located in this subchapter, govern the administration of funds and establish policies and procedures for use of ESG funds to meet the purposes contained in Title IV of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. §§11371 - 11378) (the Act), as amended by the Homeless Emergency Assistance and Rapid Transition to Housing Act (HEARTH Act).

(c) In addition to this subchapter, a Subrecipient shall comply with the regulations applicable to the ESG and ESG CARES programs as set forth in Chapters 1 and 2 of this title (relating to Administration and Enforcement, respectively), Subchapter A of Chapter 7 of this title (relating to General Policies and Procedures) and as set forth in 24 CFR Parts 5, 91, and 576 (the Federal Regulations). A Subrecipient must also follow all other applicable federal and state statutes and the regulations established in this chapter, relating to Homelessness Programs, as amended or supplemented.

(d) In the event that Congress, the Texas Legislature, or HUD add or change any statutory or regulatory requirements, special conditions, or waivers concerning the use or administration of these funds, a Subrecipient shall comply with such requirements at the time they become effective.

§7.32. Use of ESG Funds.

(a) ESG Applications for provision of Program Participant services under emergency shelter, street outreach, homeless prevention and/or rapid re-housing may include a request for funds for Homeless Management Information Systems (HMIS) activities. Applications proposing to provide only HMIS activities are not eligible for an award of funds.

(b) Subrecipient may not Subgrant funds, but may Subcontract for the provision of services. Such Subcontracts are subject to applicable procurement requirements.

(c) The Department's Governing Board of Directors, Executive Director, or his/her designee may limit activities in a NOFA, or by Contract.

(d) Program Participant services may be provided under street outreach, emergency shelter, homeless prevention or rapid re-housing, as described in this subsection or otherwise permitted in Federal Regulations.

(e) The street outreach component may be provided to unsheltered Homeless persons as defined in 24 CFR §576.101(a). Eligible costs for Program Participants of street outreach include the following services:

1. Engagement costs to locate, identify, and build relationships with unsheltered Homeless persons, including assessment of needs, crisis counseling, addressing urgent physical needs, provision of information and referrals;

2. Case management costs to assess housing and service needs and coordinate delivery of services;

3. Emergency health services to the extent that other health services are inaccessible or unavailable in the area;

4. Emergency mental health services to the extent that other mental health services are inaccessible or unavailable in the area; and

5. Transportation for outreach workers and Program Participants, not including the purchase or lease of vehicles.

(f) The emergency shelter component may be provided to Homeless persons per 24 CFR §576.102. Eligible emergency shelter costs are for Program Participant services and costs related to the shelter building, relocation, and operation.

1. Eligible costs for Program Participants of emergency shelter services include:

(A) Case management to coordinate individualized services;

(B) Child care for children under the age of 13, and for disabled children under the age of 18;

(C) Education services providing instruction or training to enhance their ability to obtain and maintain housing, including but not limited to literacy, English literacy, General Educational Requirement (GED) preparation, consumer education, health education, and substance abuse prevention;

(D) Employment assistance and job training services;
(E) Outpatient health services to the extent that other health services are inaccessible or unavailable in the area;

(F) Legal services, to the extent that legal services are unavailable or inaccessible within the community, to assist with housing needs, excluding immigration and citizenship matters, matters related to mortgages, legal retainers and contingency fees;

(G) Life skills training including budgeting resources, managing money, managing a household, resolving conflict, shopping for food and need items, improving nutrition, using public transportation, and parenting;

(H) Outpatient mental health services to the extent that other mental health services are inaccessible or unavailable in the area;

(I) Outpatient substance abuse treatment services up to 30 days, excluding inpatient treatment; and

(J) Transportation for staff and Program Participants related to the provision of essential services, not including the purchase or lease of vehicles.

(2) Eligible emergency shelter costs related to the shelter building, relocation, and operation include:

(A) Certain costs for operation of emergency shelters, including provision of hotel or motel vouchers to Program Participants when no appropriate emergency shelter is available and minor or routine repairs to the shelter facility; and

(B) Assistance required under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

(g) The homelessness prevention component may be provided to Homeless persons and persons At-risk of Homelessness per 24 CFR §576.103, and the rapid re-housing component may be provided to Homeless persons per 24 CFR §576.104. Homelessness prevention and rapid re-housing may be provided for up to 24 months of assistance in a 36-month period. Eligible costs for homelessness prevention and rapid re-housing include housing relocation and stabilization for financial assistance, housing relocation and stabilization services, and rental assistance.

(1) Housing relocation and stabilization for financial assistance include:

(A) Rental application fees;

(B) Security deposits (equal to not more than two month's rent) and last month's rent;

(C) Utility deposits and/or utility payments;

(D) Moving costs, such as truck rental or hiring a moving company. Payment of arrearages for temporary storage is not an eligible cost; and

(E) Costs to break a lease to effect an emergency transfer per 24 CFR §5.205(e), if Program Participant is receiving rental assistance under ESG.

(2) Housing relocation and stabilization services include:

(A) Housing search and placement costs to assist in locating, obtaining, and retaining suitable permanent housing;

(B) Housing stability case management for assessing, arranging, coordinating and monitoring the delivery of individual services to facilitate housing stability;

(C) Mediation between the Program Participant and the landlord/owner to prevent loss of current housing;

(D) Legal services for housing needs excluding immigration and citizenship matters, matters related to mortgages, legal retainers and contingency fees; and

(E) Credit repair and resolution, excluding payment or modification of debts.

(3) Non-duplicative rental assistance may be provided for up to 24 months within any 36-month period. Late payment penalties during the term of assistance are not eligible ESG expenses. Rental assistance includes:

(A) Short-term rental assistance which is up to three months of rent, inclusive of arrearages, late fees accrued prior to the term of assistance, and last month's rent; and

(B) Medium-term rental assistance which is more than three months of rent but not more than 24 months of rent, inclusive of up to six months of arrearages, late fees accrued prior to the term of assistance, and last month's rent.

(h) Costs to participate in HMIS are eligible ESG costs. Eligible costs related to HMIS include:

(1) Hardware, software, equipment, office space, utility costs;

(2) Salary and staff costs for operation of HMIS, including technical support;

(3) HMIS training and overhead costs, including travel to HUD sponsored and approved HMIS training programs and travel costs for staff to conduct intake;

(4) HMIS participation fees charged by the HMIS lead agency; and

(5) HMIS-comparable databases for victim services providers or legal services providers.

(i) Eligible administrative costs for ESG are:

(1) General management and oversight of the ESG award, excluding cost to purchase office space;

(2) Provision of ESG training and costs to attend HUD-sponsored ESG training; and

(3) Costs to carry out required environmental reviews.

§7.33. Apportionment of ESG Funds.

(a) The Department will retain funds for Administrative activities. Funds for Administrative or Program Participant services may be retained by TDHCA to subgrant specific ESG activities, such as legal services or operating costs for non-congregate emergency shelters funded by the Department's allocation of funds from the HOME American Rescue Plan Act.

(b) If the Department receives ESG funding from HUD that has additional activity or geographic restrictions, the Department may elect not to use the Allocation Formula. Funds retained under subsection (a) of this section are not subject to the Allocation Formula.

(c) ESG funds not retained for the purposes outlined in subsections (a) and (b) of this section will be made available by CoC region based on an Allocation Formula. Allocation Formula factors noted in paragraphs (1) - (4) of this subsection will be used to calculate distribution percentages for each CoC region as follows:

(1) Fifty percent weight will be apportioned to renter cost burden for Households with incomes less than 30% Area Median Family Income (AMFI), as calculated in the U.S. Department of Housing
and Urban Development's (HUD) Comprehensive Housing Affordability Strategy:

(2) Fifty percent weight will be apportioned for the number of persons in poverty from the most recent five-year estimate of the American Community Survey released by the U.S. Census Bureau;

(3) Fifty percent weight will be apportioned to point-in-time counts, which are annual counts of sheltered and unsheltered persons experiencing homelessness on one day during the last two weeks of January as required by HUD for CoCs. If a CoC did not conduct a point-in-time count or only completed a partial point-in-time count, the results of the most recent point-in-time count conducted that covered both the sheltered and unsheltered persons experiencing homelessness will be utilized for the purposes of the Allocation Formula; and

(4) Negative 50% weight will be apportioned based on a total of all ESG funding allocated by HUD to local jurisdictions within the CoC region, and ESG funding awarded by the Department within the region from the previous fiscal year.

(d) Each CoC region is allocated a minimum amount of $100,000. This is accomplished by taking the amounts of all regions with over $100,000 during the initial allocation and redistributing a proportional share to the regions with less than $100,000. If the Department distributes by Allocation Formula less than the amount required to provide all regions with $100,000, then the funds will be split evenly among the CoC regions.

(e) Not less than 70% of ESG funding allocated to the CoC regions shall be initially withheld from competition for use by Subrecipients eligible for continuing awards as described under §7.34 of this subchapter (relating to Continuing Awards).

(f) Those ESG funds allocated based on the formula in subsection (c) of this section will be made available for the provision of Program Participant services; they will be made available through a NOFA for both continuing awards described in subsection (e) of this section and for competitive Applications which may be released on an annual or multiyear basis.

(1) Not more than 60% of total ESG funds under direct subgrants, continuing, and competitive awards may be awarded for the provision of street outreach and emergency shelter activities. Funds will first be made available to direct subgrants, then continuing awards. Remaining funds made available for competitive awards.

(2) Contract funding limits include the funding request for all Program Participant services proposed in the Application, HMIS, and Administrative funds.

(A) Funding request minimums and maximums will be noted in the NOFA.

(B) Funds awarded for HMIS are limited to 12% of the amount of funds awarded for Program Participant services.

(C) Administrative activities are limited to three percent of the amount of funds awarded for Program Participant services.

(g) ESG funds that have been deobligated by the Department or that have been voluntarily returned from an ESG Contract may be reprogrammed at the discretion of the Department, and are not included in the Allocation Formula or award process detailed in subsections (c) - (f) or (h) - (j) of this section.

(h) An ESG Applicant may have the right to appeal funding decisions per §1.7 of this title (relating to Appeals Process).

(i) The Department reserves the right to negotiate the final Contract amount and local Match requirement with an Applicant.

(j) Percentages described in this subchapter will not be rounded up to the nearest whole number.

§7.34. Continuing Awards.

(a) TDHCA will withhold a portion of funds from the competition for funds to be used for continuing awards to prior Subrecipients of its ESG allocation, not including ESG CARES or Contracts for reallocated funds from prior years only, in accordance with §7.33 of this subchapter (related to Apportionment of ESG Funds).

(b) ESG funds withheld for continuing awards by the Department will be allocated in accordance with the Allocation Formula, and are not subject to the award process and requirements outlined in §7.38 of this subchapter (relating to Competitive Award and Funding Process).

(c) The subsequent years of allocation of ESG funds received by the Department will be offered to eligible Subrecipients of ESG funds (not including ESG CARES) that were awarded funds at least three of the prior four allocations of ESG. An ESG Subrecipient is eligible for an offer of a continuing award of funds if the Subrecipient meets the following requirements:

(1) Submits an abbreviated Application for funding within 21 days of the request from the Department as promulgated by the Department;

(2) Resolves administrative deficiencies within the time-frame and in the manner outlined in §7.37 of this subchapter (relating to Application Review and Administrative Deficiency Process);

(3) Submitted four or fewer delinquent monthly reports for each of their active ESG Contracts (not including ESG CARES) for reports due in the six month period preceding the application submission deadline;

(4) Satisfies the requirements of the Previous Participation Review as provided for in §1.302 of this title (relating to Previous Participation Reviews for Department Program Awards Not Covered by §1.301 of this Subchapter);

(5) Does not have unresolved monitoring findings in any TDHCA funded program after the corrective action period;

(6) Does not apply for funds within the same COC Region under the competitive application process;

(7) Expended a minimum of 95% of their contracted award amount, as amended in their most recently closed ESG Contract (not including ESG CARES);

(8) Did not voluntarily deobligate an amount that exceeds 5% of their contracted award amount, as amended for increases due to reallocated funds, on their most recently closed ESG Contract (not including ESG CARES); and

(9) Is approved by the Department's Governing Board.

(d) Any offer of ESG funds made under this section is contingent on retaining similar terms and conditions or agreeing to adjustments reflective of funding amount, including but not limited to performance and match requirements, in the active ESG annual Contract issued under a NOFA.

(e) Offers of funding will be based on the prior year's award, excluding Contracts comprised exclusively of reallocated funds, before amendments, and will be proportionally increased or decreased in proportion to the total amount of ESG funds available subject to the allocation formula.

(f) If additional funds are made available due to reduced continuing awards in the region, awards may be increased proportionate to
the increased withheld funds. In any event, an increased award from funds made available from reduced awards may not exceed 115% of the award amount under the allocation or the maximum award amount established in the NOFA.

(g) Funds that remain available after all eligible continuing awards have been accepted will be transferred to the competition for funds for the regional competition in accordance with §7.38 of this subchapter.

§7.35. Eligible Applicants.

(a) An eligible Subrecipient is a Unit of Local Government as defined by HUD in CPD Notice 17-10, or a Private Nonprofit Organization.

(b) The Department reserves the option to limit eligible Subrecipient entities in a given NOFA.

§7.36. General Threshold Criteria.

(a) Applications submitted to the Department are subject to general threshold criteria. Applications which do not meet the general threshold criteria or which cannot resolve an administrative deficiency related to general threshold criteria are subject to termination. Applicants applying directly to the Department to administer the ESG Program must submit an Application on or before the deadlines specified in the NOFA, notification of a direct subgrant, or notification of availability of a continuing award, and must include items in paragraphs (1) - (13) of this subsection:

1. Application materials as published by the Department including, but not limited to, program description, budget, and performance statement.

2. An ESG budget that does not exceed the total amount available within the CoC region, other geographic limitation, subgrant, or offer of continuing award, as applicable.

3. A copy of the Applicant's written standards that comply with the requirements of 24 CFR §576.400 and certification of compliance with these standards. Any occupancy standard set by the Subrecipient must not conflict with local regulations or Texas Property Code §92.010.

4. A copy of the Applicant's policy for termination of assistance that complies with the requirements of 24 CFR §576.402 and certification of compliance with these standards.

5. A Service Area which consists of at least the entirety of one county or multiple counties within the CoC region under which Application is made, unless a CoC region does not include an entire county. When the CoC region does not encompass at least the entirety of one county, the Service Area must encompass the entire CoC region. The Service Area selected within an Application must be fully contained within one CoC region.

6. Commitment in the budget to the provision of 100% Match, or request for a Match waiver, as applicable. Match waivers will be considered by the Department based on the rank of the Application. Applicants requesting an award of funds in excess of the minimum award amount as described in the NOFA for Program Participant services are not eligible to request or receive a Match waiver. In the event that the Match waivers requested exceed $100,000, the waivers will be considered only for the highest scoring eligible Applications, subject to availability of excess Match provided by ESG Applicants. Applicants that do not receive the waiver and are unable to provide a source of Match will be ineligible for an ESG award.

7. Evidence from the CoC Lead Agency in the region that the Applicant consulted with the CoC in the preparation of their ESG application and that the CoC Lead Agency agrees that the Application meets CoC priorities for serving persons experiencing homelessness and/or persons At-risk of Homelessness.

8. Applicant certification of compliance with state and federal laws, rules and guidance governing the ESG Program as provided in the Application.

9. Evidence of Data Universal Numbering System (DUNS) number for Applicant.

10. Documentation of existing Section 501(c) tax-exempt status, as applicable.

11. Completed previous participation review materials, as outlined in 10 TAC Chapter 1, Subchapter C of this title (relating to Previous Participation and Executive Review and Advisory Committee), for Applicant.

12. Local government approval per 24 CFR §576.202(a)(2) for an Applicant that will be providing shelter activities with ESG or as ESG Match, as applicable. This documentation must be submitted not later than 30 calendar days after the Application submission deadline as specified in the NOFA, or prior to execution of a Contract for Subrecipients subject to a direct subgrant, or continuing award. Receipt of the local government approval is a condition prior to the Department obligating ESG funding.

13. A resolution or other governing body action from the Applicant's direct governing body which includes:

   A. Authorization of the submission of the Application;

   B. Title of the person authorized to represent the entity and who also has signature authority to execute a Contract; and

   C. Date that the resolution was passed by the governing body, which must be not older than 12 months preceding the date the Application is submitted.

   b) An Application must be substantially complete when received by the Department. An Application may be terminated if the Application is so unclear or incomplete that a thorough review cannot reasonably be performed, as determined by the Department. Such Application will be terminated without being processed as an administrative deficiency. Specific reasons for a Department termination will be included in the notification sent to the Applicant but, because the termination may occur prior to completion of the full review, will not necessarily include a comprehensive list of all deficiencies in the Application. Termination of an Application may be subject to §1.7 of this title (relating to Appeals Process).


(a) The Department will accept Applications on an ongoing basis during the Application acceptance period as specified in the NOFA or notification of an offer of a continuing award, as applicable. Applications will be reviewed for threshold criteria and selection criteria, if applicable, administrative deficiencies, and competitive applications will be ranked based upon the score of the Application as determined by the Department upon completion of the review.

(b) The administrative deficiency process allows the Applicant to provide additional information with regard to an Application after the Application acceptance period has ended, but only if it is requested in writing by Department staff. Staff may request that an Applicant provide clarification, correction, or non-material missing information to resolve inconsistencies in the original Application or to assist staff in evaluating the Application. Staff will request such information via a deficiency notice. Staff will send the deficiency notice via email and responses must be in kind unless otherwise defined in the notice. A
review of the Applicant’s response may reveal that additional administrative deficiencies are exposed or that issues initially identified as an administrative deficiency are actually determined to be beyond the scope of an administrative deficiency process, meaning that they are in fact matters of a material nature not susceptible to be resolved. For example, a response to an administrative deficiency that causes a new inconsistency which cannot be resolved without reversing or eliminating the need for the first deficiency response would be an example of an issue that is beyond the scope of an administrative deficiency. Department staff will make a good faith effort to provide an Applicant confirmation that an administrative deficiency response has been received and/or that such response is satisfactory. Communication from staff that the response was satisfactory does not establish any entitlement to points, eligibility status, or to any presumption of a final determination that the Applicant has fulfilled any other requirements as such is the sole determination of the Department’s Board.

(c) An Applicant may not change or supplement any part of an Application in any manner after submission to the Department, except in response to a direct written request from the Department to remedy an administrative deficiency or by amendment of an Application after the Board approval of an ESG award. An administrative deficiency may not be cured if it would, in the Department’s determination, substantially change an Application including score, or if the Applicant provides any new unrequested information to cure the deficiency.

(d) The time period for responding to a deficiency notice commences on the first day following the deficiency notice date. If an administrative deficiency is not resolved to the satisfaction of the Department by 5:00 p.m. on the seventh calendar day following the date of the deficiency notice, then one point shall be deducted from the selection criteria score for each additional day the deficiency remains unresolved. If administrative deficiencies are not resolved by 5:00 p.m., Austin local time on the fourteenth calendar day following the date of the deficiency notice, then the Application shall be terminated.

§7.38 Competitive Award and Funding Process.

(a) An Application may be submitted requesting funds for Program Participant services under street outreach, emergency shelter, homeless prevention, or rapid re-housing. Each Application submission will include one uniform Application with information applicable across all Program Participant service types, and then information on each Program Participant service requested. Each Program Participant service reflected in an Application will be treated as a separate Application, assigned a separate Application number per service type, and will be scored and ranked separately for each service type selected. Applicants may be awarded funds for one or more Program Participant services in accordance with this section. Because each Program Participant service is reviewed separately and competes separately, an award of funds for provision of one Program Participant service does not affect an award of funds in any other Program Participant service reflected in that same Application submission.

(b) Applications submitted directly to the Department for under this section will receive points based on experience, program design, budget, previous performance, and performance measures. Applications will be scored and ranked based on selection criteria described in this subchapter.

(c) Applicants for a competitive award will be required to submit a self-score within the Application. In no event will the points awarded to the Applicant exceed the point value of the self-score in any selection criterion.

(d) Tie breakers. Each Application submitted to the Department for a competitive award shall be assigned a number between one and the total number of applications. The number assignment will be determined in a random selection process to occur immediately following the close of the application acceptance period, and Applicants will be notified of said number assignment as soon as possible thereafter. The randomly assigned numbers will be used to resolve ties, with the highest assigned number having the highest priority.

(e) Partial awards. In order to maintain funding within the Allocation Formula amount designated for each CoC region as determined in this subchapter, an Applicant for a competitive award may be offered a partial award of their requested funds. An Applicant offered a partial award of funds must confirm their acceptance of a partial award, and submit updated information related to the reduction within seven calendar days following the date of notification. Scoring criteria may be updated based on the reduced funding request, but any changes to the scoring criteria must allow the Application to maintain its rank.

(f) Regional Funding Competition. Funding will be recommended first for Applicants within the CoC region up to the Allocation Formula amount designated for the CoC region as determined in this subchapter:

(1) Eligible Applications will be ranked in descending order by score within the CoC region which the Application proposes to serve. Subsection (e) of this section will be used to determine the priority of tied scores.

(2) ESG funds allocated to each CoC region will be awarded starting with the highest ranking Application and continue until the funds allocated for that CoC region are fully utilized, but not exceeded, or until the Applicant for the last application to be recommended in the region declines an offer of a partial award.

(3) Applications proposing street outreach or emergency shelter will be ranked alongside all Applications in the region, however, a recommendation for a full award of an Application for street outreach or emergency shelter will not be made through the first level of funding if funding recommendations in the CoC region for street outreach or emergency shelter will exceed 60% of the funding remaining in the CoC region after direct subgrants and acceptance of continuing awards. Applications proposing street outreach or emergency shelter services but causing awards for such services in the region to exceed 60% of the available funding in the region, will be offered a partial award of up to the amount remaining to reach 60% for the region. If no funds remain available that would not exceed 60% at the regional level for a partial award, or if they decline such partial award, the Application will be passed over and recommendation of funding would proceed to the next highest scoring application(s) in the region in order to fully fund the Formula Allocation amount for the region. Applications that were passed over for funding may be eligible to compete in the statewide funding competition, if no more than 60% of funds have been awarded for street outreach and emergency shelter in the total allocated funds.

(4) A partial award may be offered to the last highest ranking Application which is otherwise eligible for funding within the regional competition to ensure that the amount of funds recommended for a region does not initially exceed the amount identified in the Formula Allocation. Partial awards will be offered under the regional competition only if the funding remaining in the CoC region is more than $30,000.

(A) The Applicant or Applicants that accept an offer of a partial award may be required to amend the Application if the reduction in funds is expected to impact scored items and to adjust performance deliverables based on the reduced amount of funding. The revised score based on the partial award must still ensure the Application ranking would not be affected. If a partial award or the Applicant's
subsequent adjustments results in a reduced score that alters their scoring rank within the regional competition, the opportunity to be funded from the first level of funding recommendations will not be offered to the Application.

(B) The Applicant may decline the partial award of funds and instead request to be included for consideration in the statewide competition.

(g) Statewide Funding Competition. If any funds remain after recommendations for all eligible Applications in the regional funding competition, such funds shall collapse and be made available in the statewide competition.

(1) All eligible Applications not recommended to be awarded under the regional funding competition will be ranked in descending order of score with the highest scoring unfunded Application, regardless of region, having the highest priority rank. Subsection (e) of this section will be used to determine the outcome of tied scores.

(2) Funds will be awarded in the statewide funding competition starting with the highest ranked Application and continuing until no funds remain available to award or until there are no eligible Applications left to be recommended for funding.

(3) Applications proposing street outreach or emergency shelter will be ranked alongside all Applications. If the 60% of the allocated funds has been awarded to Applications proposing street outreach and emergency shelter, Applications proposing these activities will not be recommended and will be passed over to fund Applications proposing homeless prevention or rapid re-housing.

(4) The final award in the statewide funding competition and the 60% capped street outreach and emergency shelter funding may be a partial award if an Application cannot be fully funded.

(A) An Applicant that accepts an offer of a partial award may be required to amend the Application if the reduction in funds is expected to impact scored items and to adjust performance deliverables based on the reduced amount of funding. The revised score based on the partial award must still ensure the Application's ranking would not be affected. Partial awards may only be offered if the remaining funding exceeds the minimum award amount as stated in the NOFA.

(B) The Applicant may decline a partial award of funds. Applicants that decline a partial award of funding within the statewide competition will be withdrawn from competition, as there are not sufficient remaining funds to award the Application.

(C) If a partial award or the Applicant's subsequent adjustments result in a reduced score that alters the scoring rank or an Applicant declines a partial award, the next highest ranked Application will be presented with the opportunity to be funded.

(h) If there are still funds available after the statewide funding competition, the Department may offer and recommend award amounts in excess of the funds requested and in excess of the award amount limits identified in §7.33(c) of this subchapter (relating to Apportionment of ESG Funds), starting with the highest scoring Applications already identified to be recommended for an award, not to exceed an award more than 50% greater than their original request. The Department will provide notice of the proposed increase to the impacted Applicants. The budget and Performance targets would increase proportionally to the additional funding received. An Applicant will have the opportunity to accept or reject the recommendation for increased funding prior to final award by the Department.

(i) The Department reserves the right to negotiate the final Contract amount and local Match with a Subrecipient.


An Application for funding allocated in accordance with §7.33(b) of this section (relating to Apportionment of ESG Funds) and made to the Department may be awarded points under the following uniform selection criteria. The total of the score under this part will be the uniform Application score. The uniform Application score will be comprised of points awarded under each of the following criteria:

(1) Homeless participation. An Application may receive a maximum of three points for the participation of persons who are Homeless in the Applicant's program design. Points may be earned under subparagraphs (A) and (B) of this paragraph for a total of up to three points.

(A) An Application may receive a maximum of two points when at least one person who is Homeless or formerly Homeless is a member of or consults with the Applicant's policy-making entity for facilities, services, or assistance under ESG; and

(B) An Application may receive a maximum of one point when at least one person who is Homeless or formerly Homeless is employed in a paid position with duties that include constructing, renovating, maintaining, or operating the Applicant's ESG facilities, or providing services for occupants of its ESG facilities.

(2) Organizational or management experience. An Application may receive a maximum of eight points for an Applicant or its management staff's experience administering federal or state homeless programs.

(A) An Application may receive a maximum of three points for an Applicant or its management staff with at least two but less than four years of experience;

(B) An Application may receive a maximum of five points for an Applicant or its management staff with at least four but less than six years of experience; or

(C) An Application may receive a maximum of eight points for an Applicant or its management staff with six or more years of experience.

(3) Percentage of prior ESG awarded funds expended. An Application may receive a maximum of six points for the Applicant's past expenditure performance of ESG funds proportionate to the award of funds from TDHCA to the Applicant. This will apply to any and all ESG Contract(s), exclusive of ESG CARES Contracts, administered by the Applicant that were closed within 12 months prior to the date of the Application deadline established in the by the Department. Contract Expenditures will be averaged among all ESG Contracts that were closed within 12 months of the Application deadline, without requiring an amendment if the Applicant was awarded multiple Contracts. The percentage of ESG funds expended will be calculated utilizing the amount of the Contract as of its closing as stated in the Contract prior to amendments, except where the Applicant voluntarily return funds in accordance with this subchapter. Expenditure will be defined as the Applicant having reported the funds as expended. Applications may receive:

(A) Two points if the Applicant expended 91-94% of its prior ESG Contract funds as of its closing as stated in the Contract prior to amendments;

(B) Three points if the Applicant expended 95% to less than 100% of its prior ESG Contract funds as of its closing as stated in the Contract prior to amendments; or

(C) Six points if the Applicant expended 100% of its prior ESG Contract funds as of its closing as stated in the Contract prior to amendments.
ESG be rion. Its has ing 47 TexReg comes. Their monitorings established the Department. Points may be requested under all of the subparagraphs (A) to (E) of this paragraph not to exceed a total of ten points. The Outcome percentages will be averaged among all prior ESG Contracts, exclusive of ESG CARES Contracts, that closed within 12 months prior to the date of the Application deadline to determine the final percentage amount for this scoring criterion. Applications may receive points as follows:

(A) Two points if the Applicant submitted the last three reports on or before the Contract end date within the reports' respective reporting deadlines;

(B) Two points if the Applicant met 100% or more of their street outreach target of persons exiting to temporary or transitional or permanent housing destination;

(C) Two points if the Applicant met 100% or more of their emergency shelter exits to permanent housing;

(D) Two points if the Applicant met 100% or more of their Homeless prevention target for maintaining housing for three months or more;

(E) Two points if the Applicant met 100% or more of their rapid re-housing target for maintaining housing for three months or more; and

(F) Two points if the Applicant met 100% or more of their Match obligation.

(G) Twelve points if the Applicant has not previously been awarded an ESG Contract closed within 12 months prior to the date of the Application deadline.

(5) Monitoring history. Applications may receive a maximum of five points for the Applicant's previous ESG and ESG CARES monitoring history. The Department will consider the monitoring history for three years before the date that Applications are first accepted under the NOFA when determining the points awarded under this criterion. Findings that were subsequently rescinded will not be considered Findings for the purposes of this scoring criterion. Applications may be limited to a maximum of:

(A) Five points if the Applicant has not received any monitoring Findings, including Applicants with no previous monitoring history;

(B) Not more than three points if the monitoring history has a close-out letter that included Findings, but the Findings were not related to Household eligibility or violations of procurement requirements;

(C) Not more than two points if the monitoring history has a close-out letter that included Findings related to Household eligibility;

(D) Not more than one point if the monitoring history has a monitoring close-out letter that included Findings related to violations of procurement requirements; or

(E) Zero points may be requested under this criterion if the Applicant received a Finding resulting in disallowed costs in excess of $5,000 which required repayment to the Department.

(6) Priority for certain communities. Applications may receive two points if at least one Colonia, as defined in Tex. Gov't Code §2306.083, is included in the Service Area identified in the Application. Applicants awarded points under this criterion will be contractually required to maintain a Service Area that includes at least one Colonia as identified on the Office of Attorney General's website.

(7) Previously unserved areas. Applications may receive a maximum of 10 points for provision of ESG services if at least one county in the Service Area included in the Application has not received ESG funds from the Department or directly from HUD within the previous federal funding year for services. Applications may receive a maximum (of ten points if at least one county within the Service Area as stated in the Application did not receive an award of ESG annual funds from the Department within the previous federal funding year.

§7.40  Competitive Program Participant Services Selection Criteria.

(a) An Application for competitive funding allocated under §7.33(b) of this subchapter (relating to Apportionment of ESG Funds), and made to the Department, may be awarded points for Program Participant services under each category. Points awarded for Program Participant services will be separately tabulated and added to the uniform Application score to determine a score for each of the Program Participant services Applications submitted. All scoring criteria that are based upon measurable future performance expectations will be measured and expected to be fulfilled by being included as a performance requirement in the Contract should the Application be awarded funds.

(b) Street outreach. An Application proposing street outreach may receive points under the following criteria:

(1) Matching funds for street outreach. An Application may receive a maximum of three points if the Applicant commits Matching funds equal to or greater than 110% of the total ESG funds requested for street outreach.

(2) Street outreach serving Homeless Subpopulations. An Application may receive a maximum of five points by proposing to serve persons who are in a Homeless Subpopulation, as defined in §7.2(b)(34) of this chapter (relating to Definitions). An Applicant providing street outreach may receive a maximum of:

(A) One point based on a minimum target of 70% of persons served who are in one or more Homeless Subpopulation;

(B) Two points based on a minimum target of 80% of persons served who are in one or more Homeless Subpopulation;

(C) Three points based on a minimum target of 90% of persons served who are in one or more Homeless Subpopulation;

(D) Four points based on a minimum target of 95% of persons served who are in one or more Homeless Subpopulation; or

(E) Five points based on a minimum target of 100% of persons served who are in one or more Homeless Subpopulation.

(3) Street outreach exit to a positive housing destination. An Application may receive a maximum of five points based on the percentage of persons served within the 12 months prior to the application due date who exited homelessness to a positive housing destination per HMIS data standards:

(A) Two points based on 25% of persons served with street outreach who exited to positive housing destinations;

(B) Three points based on 35% of persons served with street outreach who exited to positive housing destinations;

(C) Four points based on 45% of persons served with street outreach who exited to positive housing destinations; or

(D) Five points based on 55% of persons served with street outreach who exited to positive housing destinations.
(4) Street outreach staff qualifications. An Applicant may receive a maximum of six points if a member of the staff interacting with Program Participants in the street outreach component has one or more of the following qualifications:

(A) Two points if a member is a licensed mental health provider through the Texas Behavioral Executive Health Council;

(B) Two points if a member of staff is fluent in more than one language identified in the Language Access Plan; and

(C) Two points if program includes a paid staff member who has formerly experienced homelessness.

(5) Street outreach temporary/transitional/permanent housing target. An Application may receive a maximum of three points based on the percentage of persons targeted to be served with street outreach who will be placed in temporary, transitional or permanent housing. An Application may receive a maximum of:

(A) One point based on a minimum target of 35% of persons served with street outreach who will be placed in temporary housing;

(B) Two points based on a minimum target of 45% of persons served with street outreach who will be placed in temporary housing; or

(C) Three points based on a minimum target of 55% of persons served with street outreach who will be placed in temporary housing.

(6) Street outreach services. An Application may receive a maximum of five points based on the number of street outreach services provided through ESG or other funds including engagement, case management, emergency health services, emergency mental health services, and transportation services. Emergency health services and emergency mental services may only be provided by ESG funds if these services are inaccessible or unavailable within the area. An Application may receive a maximum of:

(A) Two points if the Applicant provides street outreach engagement and case management;

(B) Three points if the Applicant provides street outreach engagement and case management, and one other service;

(C) Four points if the Applicant provides street outreach engagement and case management, and two other services; or

(D) Five points if the Applicant provides street outreach engagement and case management, and three other services.

(7) Experience providing street outreach. An Application may receive a maximum of 10 points based on the Applicant's experience providing street outreach services.

(A) Two points if the Applicant has provided street outreach for up to two years;

(B) Four points if the Applicant has provided street outreach for up to four years;

(C) Six points if the Applicant has provided street outreach for up to six years;

(D) Eight points if the Applicant has provided street outreach for up to eight years; or

(E) Ten points if the Applicant has provided street outreach for 10 or more years.

(c) Emergency shelter. An Application proposing emergency shelter may receive points under the following criteria:

(1) Matching funds for emergency shelter. An Application may receive a maximum of three points if the Applicant commits matching funds equal to or greater than 110% of the total ESG funds requested for emergency shelter.

(2) Emergency shelter serving Homeless Subpopulations. An Application may receive a maximum of five points by proposing to serve persons who are in a Homeless Subpopulation, as defined in §7.2(b)(34) of this chapter (relating to Definitions). An Application providing emergency shelter may receive a maximum of:

(A) One point based on a minimum target of 70% of persons served who are in one or more Homeless Subpopulation;

(B) Two points based on a minimum target of 80% of persons served who are in one or more Homeless Subpopulation;

(C) Three points based on a minimum target of 90% of persons served who are in one or more Homeless Subpopulation;

(D) Four points based on a minimum target of 95% of persons served who are in one or more Homeless Subpopulation; or

(E) Five points based on a minimum target of 100% of persons served who are in one or more Homeless Subpopulation.

(3) Emergency shelter exit to a positive housing destination. An Application may receive a maximum of five points based on the percentage of persons served within the 12 months prior to the application due date exited homelessness to a positive housing destination per HMIS data standards:

(A) Two points based on 25% of persons served with emergency shelter who exited to positive housing destinations;

(B) Three points based on 35% of persons served with emergency shelter who exited to positive housing destinations;

(C) Four points based on 45% of persons served with emergency shelter who exited to positive housing destinations; or

(D) Five points based on 55% of persons served with emergency shelter who exited to positive housing destinations.

(4) Emergency shelter staff qualifications. An Applicant may receive a maximum of six points if a member of the staff interacting with Program Participants in the street outreach component has one or more of the following qualifications:

(A) Two points if a member is a licensed mental health provider through the Texas Behavioral Executive Health Council;

(B) Two points if a member of staff is fluent in more than one language identified in the Language Access Plan; and

(C) Two points if program includes a paid staff member who has formerly experienced homelessness.

(5) Emergency shelter permanent housing. An Application may receive a maximum of three points based on the percentage of persons served with emergency shelter targeted to be placed in permanent housing. An Application may receive a maximum of:

(A) One point based on a minimum target of 35% of persons served with emergency shelter who will be placed in permanent housing;

(B) Two points based on a minimum target of 45% of persons served with emergency shelter who will be placed in permanent housing; or

(C) Three points based on a minimum target of 55% of persons served with emergency shelter who will be placed in permanent housing.
(6) Emergency shelter services. An Applicant may receive a maximum of five points based on the number of emergency shelter services provided through ESG or other funds, as listed in 24 CFR §576.102. Emergency shelter services include case management, child care, education services, employment assistance and job training, outpatient health services, legal services, life skills training, outpatient mental health services, outpatient substance abuse treatment services, and transportation. Outpatient health services, mental services, and substance abuse treatment services should only be provided by ESG funds if these services are otherwise inaccessible or unavailable within the Service Area. This selection criterion will become a contractual requirement if the Applicant is awarded a Contract. An Application may receive a maximum of:

(A) Two points if the Applicant provides case management and two of the other services;
(B) Three points if the Applicant provides case management and three of the other services;
(C) Four points if the Applicant provides case management and four of the other services; or
(D) Five points if the Applicant provides case management and five of the other services.

(7) Experience providing emergency shelter. An Application may receive a maximum of 10 points based on the Applicant’s experience providing emergency shelter services.

(A) Two points if the Applicant has provided emergency shelter for up to two years;
(B) Four points if the Applicant has provided emergency shelter for up to four years;
(C) Six points if the Applicant has provided emergency shelter for up to six years;
(D) Eight points if the Applicant has provided emergency shelter for up to eight years; or
(E) Ten points if the Applicant has provided emergency shelter for 10 or more years.

(d) Homelessness prevention. An Application proposing homelessness prevention may receive points under the following criteria:

(1) Matching funds for homelessness prevention. An Application may receive a maximum of three points if the Applicant commits Matching funds equal to or greater than 110% of the total ESG funds requested for homelessness prevention.

(2) Homelessness prevention serving Homeless Subpopulations. An Application may receive a maximum of five points by proposing to serve persons who are in a Homeless Subpopulation, as defined in §7.2(b)(34) of this chapter (relating to Definitions). An Applicant providing homelessness prevention may receive a maximum of:

(A) One point based on a minimum target of 70% of persons served who have one or more special needs;
(B) Two points based on a minimum target of 80% of persons served who have one or more special needs;
(C) Three points based on a minimum target of 90% of persons served who have one or more special needs;
(D) Four points based on a minimum target of 95% of persons served who have one or more special needs; or
(E) Five points based on a minimum target of 100% of persons served who have one or more special needs.

(3) Homelessness prevention exit to a positive housing destination. An Application may receive a maximum of five points based on the percentage of persons served within the 12 months prior to the application due date exited homelessness to a positive housing destination per HMIS data standards:

(A) Two points based on 25% of persons served with homelessness prevention who exited to positive housing destinations;
(B) Three points based on 35% of persons served with homelessness prevention who exited to positive housing destinations;
(C) Four points based on 45% of persons served with homelessness prevention who exited to positive housing destinations; or
(D) Five points based on 55% of persons served with homelessness prevention who exited to positive housing destinations.

(4) Homeless prevention staff qualifications. An Application may receive a maximum of six points if a member of the staff interacting with Program Participants in the homeless prevention component has one or more of the following qualifications:

(A) Two points if a member is a licensed mental health provider through the Texas Behavioral Executive Health Council;
(B) Two points if a member of staff is fluent in more than one language identified in the Language Access Plan; and
(C) Two points if program includes a paid staff member who has formerly experienced homelessness.

(5) Homeless prevention maintaining housing. An Application may receive a maximum of three points based on the percentage of persons served with Homelessness prevention who are targeted to maintain their housing for three months or more after program exit. Applications may receive a maximum of:

(A) One point based on a minimum target of 50% of persons served with homelessness prevention maintaining housing for three months;
(B) Two points based on a minimum target of 60% of persons served with homelessness prevention maintaining housing for three months; or
(C) Three points based on a minimum target of 70% of persons served with homelessness prevention maintaining housing for three months.

(6) Homelessness prevention services and rental assistance. An Application may receive a maximum of five points based on the number of homeless prevention services and type of rental assistance provided through ESG or other funds. Homeless prevention services and rental assistance include rental application fees, security deposits and last month’s rent, utility payments/deposits, moving costs, housing search and placement, housing stability case management, mediation, legal services, credit repair, short-term rental assistance, and medium-term rental assistance. An Application may receive a maximum of:

(A) Two points if the Applicant provides housing stability case management and three of the other services or rental assistance;
(B) Three points if the Applicant provides housing stability case management and four of the other services or rental assistance; or
(C) Four points if the Applicant provides housing stability case management and five of the other services or rental assistance; or
(D) Five points if the Applicant provides housing stability case management and six of the other services or rental assistance.

(7) Experience providing homeless prevention or rental assistance services. An Application may receive a maximum of 10 points based on the Applicant's experience providing homeless prevention or tenant-based rental assistance services.

(A) Two points if the Applicant has provided homeless prevention or tenant-based rental assistance services for up to two years;

(B) Four points if the Applicant has provided homeless prevention or tenant-based rental assistance services for up to four years;

(C) Six points if the Applicant has provided homeless prevention or tenant-based rental assistance services for up to six years;

(D) Eight points if the Applicant has provided homeless prevention or tenant-based rental assistance services for up to eight years; or

(E) Ten points if the Applicant has provided homeless prevention or tenant-based rental assistance services for 10 or more years.

(e) Rapid re-housing. An Application proposing rapid re-housing may receive points under the following criteria:

(1) Matching funds for rapid re-housing. Applications may receive a maximum of three points if the Applicant commits Matching funds equal to or greater than 110% of the total ESG funds requested for rapid re-housing.

(2) Rapid re-housing serving Homeless Subpopulations. An Application may receive a maximum of five points by proposing to serve persons who are in a Homeless Subpopulation, as defined in 10 TAC §7.2(b)(34) (relating to Definitions). Applicants providing rapid re-housing may receive a maximum of:

(A) One point based on a minimum target of 70% of persons served who are in one or more Homeless Subpopulation;

(B) Two points based on a minimum target of 80% of persons served who are in one or more Homeless Subpopulation;

(C) Three points based on a minimum target of 90% of persons served who are in one or more Homeless Subpopulation;

(D) Four points based on a minimum target of 95% of persons served who are in one or more Homeless Subpopulation; or

(E) Five points based on a minimum target of 100% of persons served who are in one or more Homeless Subpopulation.

(3) Rapid re-housing exit to a positive housing destination. An Application may receive a maximum of five points based on the percentage of persons served within the 12 months prior to the application due date exited homelessness to a positive housing destination per HMIS data standards:

(A) Two points based on 25% of persons served with rapid re-housing exited to positive housing destinations;

(B) Three points based on 35% of persons served with rapid re-housing exited to positive housing destinations;

(C) Four points based on 45% of persons served with rapid re-housing exited to positive housing destinations;

(D) Five points based on 55% of persons served with rapid re-housing who exited to positive housing destinations.

(4) Rapid re-housing staff qualifications. An Applicant may receive a maximum of six points if a member of the staff interacting with Program Participants in the rapid re-housing component has one or more of the following qualifications:

(A) Two points if a member is a licensed mental health provider through the Texas Behavioral Executive Health Council;

(B) Two points if a member of staff is fluent in more than one language identified in the Language Access Plan; and

(C) Two points if program includes a paid staff member who has formerly experienced homelessness.

(5) Rapid re-housing maintaining housing. Applicants may receive a maximum of three points based on the percentage of persons served with rapid re-housing targeted to maintain their housing for three months or more after program exit. Applications may receive a maximum of:

(A) One point based on a minimum target of 50% of persons served with rapid re-housing maintaining housing for three months;

(B) Two points based on a minimum target of 60% of persons served with rapid re-housing maintaining housing for three months; or

(C) Three points based on a minimum target of 70% of persons served with rapid re-housing maintaining housing for three months.

(6) Rapid re-housing services and rental assistance. Applicants may receive a maximum of five points based on the number of rapid re-housing services and type of rental assistance provided through ESG or other funds. Rapid re-housing services and rental assistance include rental application fees, security deposits/last month's rent, utility payments/deposits, moving costs, housing search and placement, housing stability case management, mediation, legal services, credit repair, short-term rental assistance, medium-term rental assistance. Applications may receive a maximum of:

(A) Two points if the Applicant provides housing stability case management and three of the other services or rental assistance;

(B) Three points if the Applicant provides housing stability case management and four of the other components;

(C) Four points if the Applicant provides housing stability case management and five of the other components; or

(D) Five points if the Applicant provides housing stability case management and six of the other components.

(7) Experience providing rapid re-housing or tenant-based rental assistance services. Applications may receive a maximum of 10 points based on the Applicant's experience providing homeless prevention or tenant-based rental assistance services.

(A) Two points if the Applicant has provided rapid re-housing or tenant-based rental assistance services for up to two years;

(B) Four points if the Applicant has provided rapid re-housing or tenant-based rental assistance services for up to four years;

(C) Six points if the Applicant has provided rapid re-housing or tenant-based rental assistance services for up to six years;
(D) Eight points if the Applicant has provided rapid re-housing or tenant-based rental assistance services for up to eight years; or

(E) Ten points if the Applicant has provided rapid re-housing or tenant-based rental assistance services for 10 or more years.

§7.41. Contract Term, Expenditure Benchmark, Return of Funds, and Performance Targets.

(a) The Contract Term for ESG funds may not exceed 12 months. All funds awarded under the Contract must be expended by the Subrecipient on or before the expiration of the Contract, unless an extension has been granted in accordance with this section. A request to extend the Contract Term must show evidence that the extension is necessary to provide services required under the Contract, and provide good cause for failure to timely expend the funds. Extensions of Contract Terms are considered on a case-by-case basis, but are subject to §7.4(e) of this title (relating to Subrecipient Contract), concerning Amendments and Extensions of Contracts.

(1) The Executive Director or his or her designee may approve an extension to the ESG Contract Term of up to six months from the original Contract Term; and may approve an extension to the Expenditure deadline for ESG CARES.

(2) Board approval is required if the Subrecipient requests to extend an ESG Contract Term for more than six months from the original Contract Term.

(3) Amendments of Expenditure requirements will not be granted by the Executive Director or the Board when such action would cause the Department to miss a federal Expenditure deadline.

(b) Subrecipient is required to have reported Expenditures in its Monthly Expenditure Reports reflecting at least 50% of the Contract funds by month nine of the original Contract Term. A Subrecipient that has not met this Expenditure benchmark must submit a plan to the Department evidencing the ability of the Subrecipient to expend the remaining funds by month 12 of the original Contract Term. This Expenditure benchmark may not be extended though amendment.

(c) Not later than 60 days prior to the end of the Contract Term, a Subrecipient may submit a written request to voluntarily return some or all of its funds to the Department. Voluntary return of funds prior to the Expenditure benchmark constitutes a reduction in the awarded amount, and returned funds at or prior to the Expenditure benchmark will not be considered deobligated funds for the purpose of future funding recommendations. Subrecipient must return any funds that would result in a violation of the administrative and HMIS expenditure limits of the Contract, as outlined in §7.33(e) of this subchapter (relating to Apportionment of ESG funds) prior to approval of a request to voluntarily deobligate funds for any Program Participant services.

(d) Funds remaining at the end of Contract which are not reflected in the last Monthly Expenditure Report will be automatically deobligated. Deobligation of funds may affect future funding recommendations.

(e) The Department may request information regarding the performance or status of a Contract prior to the Expenditure benchmark, as various times during the Contract, or during the record retention period. Subrecipient must respond within the time limit stated in the request. Prolonged or repeated failure to respond may result in suspension of funds, termination of the Contract by the Department, and could impact future funding recommendations.

(f) If additional funds become available through returned or deobligated amounts from an award made under the allocation formula or program income generated from an award made under the allocation formula, the funds may be offered to ESG Subrecipients with active Contracts that have not been amended to extend the Contract Term. Returned or deobligated funds will be offered with priority given to ESG Subrecipients with the highest Expenditure rate as of the most recent Monthly Expenditure Report. However, funds may not be offered to any Subrecipient that returned funds, or from whom funds were deobligated. The Executive Director or designee may increase the Contract of an ESG Subrecipient or authorize a new Contract with a Subrecipient by up to 25% of the original Contract amount.

(g) Funds that have been returned more than once or returned less than three months before the federal Expenditure deadline may be retained by the Department.

(h) The Contract will reflect the Performance Targets that were utilized as selection criteria for the award of funds. Requests to amend Performance Targets may not be submitted less than 60 days prior to the end of the Contract Term. Requests to amend Performance Targets will not be granted if such an amendment would have precluded the award to the Subrecipient.

§7.42. General Administrative Requirements.

(a) Subrecipient must have written policies and procedures to ensure that sufficient records are established and maintained to enable a determination that applicable federal and state requirements are met. The written standards must be applied consistently for all Program Participants. Written policies must include, but not limited to Inclusive Marketing as outlined in §7.10 of this chapter.

(b) Subrecipient must obtain the correct level of environmental clearance prior to expenditure of funds. Activities for which the Subrecipient does not properly complete the Department's environmental review process are ineligible, and funds will not be reimbursed or will be required to be repaid.

(c) Subrecipient is prohibited from charging occupancy fees for emergency shelter activities supported by funds covered by this subchapter.

(d) If a Private Nonprofit Organization Subrecipient wishes to expand the geographic scope of its emergency shelter activities after Contract execution, an updated certification of approval from the Unit of General Purpose Local Government with jurisdiction over the updated Service Area must be submitted to the Department before funds are spent on emergency shelter in those areas.

(e) Subrecipient must document compliance with the shelter and housing standards per 24 CFR §§576.500(j) and (k), including but not limited to, maintaining sufficient construction and shelter inspection reports.

(f) Rental developments must comply with all construction or operational requirements governing the development or program to which funds are comingled, and must comply with local health and safety codes.

(g) Subrecipient may be required to complete Contract orientation training prior to submission of the first Monthly Expenditure Report. Subrecipient must also complete training as requested by the Department in response to Findings or other issues identified while managing the Contract.

(h) Subrecipient must develop and establish written procurement procedures that comply with federal, State, and local procurement requirements. A conflict of interest related to procurement is prohibited by 2 CFR §200.317-318 or Chapter 171 of the Local Government Code, as applicable.
§7.43. Program Income.

(a) Program income is gross income received by the Subrecipient or its Affiliates directly generated by a grant supported activity, or earned only as a result of the grant agreement during the grant period.

(b) Program income received and expended during the Contract Term will count toward meeting the Subrecipient’s Matching requirements, per 24 CFR §576.201(f), provided the costs are eligible costs that supplement the program.

(c) Security and utility deposits paid on behalf of a Program Participant should be treated as a grant to the Program Participant. The deposit must remain with the Program Participant, and if returned, is to be returned only to the Program Participant. If the landlord or the utility service provider requires that the deposit be returned to the Subrecipient, Affiliate, Subcontractor, or Subgrantee, the deposit is program income, and must be treated as described in this subsection.

(d) In accounting for program income, the Subrecipient must accurately reflect the receipt of such funds separate from the receipt of federal funds and Subrecipient funds.

(e) Program income that is received after the end of the Contract Term, or not expended within the Contract Term, along with program income received two years following the end of the Contract Term must be returned to the Department within 10 calendar days of receipt. Income directly generated by a grant-supported activity after the two year period is no longer program income and may be retained by the Subrecipient.

§7.44. Program Participant Eligibility and Program Participant Files.

(a) Program participants must meet the applicable definitions of Homeless or At-risk of Homelessness. Proof of the eligibility or ineligibility for Program Participants must be maintained in accordance with 24 CFR §§576.500, Recordkeeping and reporting requirements. The Applicant must retain income documentation for Program Participants receiving homelessness prevention and Program Participants receiving rapid re-housing that require annual Recertification. Program Participant income eligibility must be calculated and documented in accordance with the Requirements of HUD Handbook 4350, except that the Department's DIS form may be utilized if income cannot be documented in accordance with 24 CFR §§576.500(e)(4). A DIS must be completed and signed by Program Participants whom are subject to income eligibility determination.

(b) The Subrecipient must document eligibility before providing services after a break-in-service. A break-in-service occurs when a previously assisted Household has exited the program and is no longer receiving services through Homeless Programs. Upon reentry, the Household is required to complete a new intake application and provide updated source documentation, if applicable.

(c) The Subrecipient must utilize the rental assistance agreement promulgated by the Department if providing rental assistance. The rental assistance agreement does not take the place of the lease agreement between the landlord/property manager and the tenant.

(d) The Subrecipient must retain a copy of the signed Disclosure Information on Lead Based Paint and/or Lead-Based Hazards for housing built before 1978 in the Program Participant’s file in accordance with 24 CFR §576.403(a).

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

Filed with the Office of the Secretary of State on March 14, 2022.

TRD-202200899
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: April 24, 2022
For further information, please call: (512) 475-3959

SUBCHAPTER D. ENDING HOMELESSNESS FUND

10 TAC §§7.61 - 7.65

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC Chapter 7 Homelessness Programs, Subchapter D, Ending Homelessness Fund, §§7.61 - 7.65. The purpose of the proposed repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

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

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV’T CODE §2001.0221. Mr. Bobby
Wilkinson, Executive Director, has determined that, for the first five years the proposed repeal would be in effect:

1. The proposed repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous readoption making changes to an existing activity, the administration of the Ending Homelessness Fund.

2. The proposed repeal does not require a change in work that would require the creation of new employee positions, nor is the proposed repeal significant enough to reduce work load to a degree that any existing employee positions are eliminated.

3. The proposed repeal does not require additional future legislative appropriations.

4. The proposed repeal does not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

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

6. The proposed action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to an existing activity, the administration of homeless programs.

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

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

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department has evaluated this proposed repeal and determined that the proposed repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The proposed repeal does not contemplate nor authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6). The Department has evaluated the proposed repeal as to its possible effects on local economies and has determined that for the first five years the proposed repeal would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of the repealed section would be more clarity on the administration of the Ending Homelessness Fund. There will not be economic costs to individuals required to comply with the repealed section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the proposed repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held March 25, 2022, to April 25, 2022, to receive input on the proposed repealed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Rosy Falcon, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email rosy.falcon@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, APRIL 25, 2022.

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

Except as described herein the proposed repealed sections affect no other code, article, or statute.

§7.61. Purpose and Use of Funds.

§7.62. EH Fund Subrecipient Application and Selection.

§7.63. Availability of Funds.

§7.64. Application Review Process.

§7.65. Contract Term and Limitations.

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

Filed with the Office of the Secretary of State on March 14, 2022.

TRD-202200900
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: April 24, 2022
For further information, please call: (512) 475-3959

10 TAC §§7.61 - 7.65

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC Chapter 7 Homelessness Programs, Subchapter D, Ending Homelessness Fund, §§7.61 - 7.65. The purpose of the proposed new subchapter is to update the rule to reflect new definitions, provide greater flexibility for Subrecipients, and to update the minimum amount of unobligated funds that require a competitive process.

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

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

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed new subchapter would be in effect:

1. The proposed rules do not create or eliminate a government program, but relates to the readoption of these rules which makes changes to an existing activity, administration of the Ending Homelessness Fund.

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

47 TexReg 1578 March 25, 2022 Texas Register
3. The proposed rules do not require additional future legislative appropriations.

4. The proposed rules will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The proposed rules are not creating a new regulation, except that they are replacing a rule being repealed simultaneously to provide for revisions.

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

7. The proposed rules will not increase or decrease the number of individuals subject to the rules’ applicability.

8. The proposed rules will not negatively or positively affect the state’s economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOVT’ CODE §2006.002. The Department, in drafting this proposed rules, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov’t Code, Ch. 2306.

1. The Department has evaluated these rules and determined that none of the adverse affect strategies outlined in Tex. Gov’t Code §2006.002(b) are applicable.

2. There are approximately no small or micro-businesses subject to the proposed rule because these funds are limited to counties and municipalities in Tex. Transportation Code §502.415 for the Ending Homeless Fund.

3. The Department has determined that based on the considerations in item two above, there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOVT’ CODE §2007.043. The proposed rules do not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOVT’ CODE §2001.024(a)(6).

The Department has evaluated the rules as to their possible effects on local economies and has determined that for the first five years the rules will be in effect the new rules have no economic effect on local employment because these rules will channel funds, which may be limited, only to municipalities and non-profits; it is not anticipated that the amount of funds would be enough to support additional employment opportunities, but would add to the services provided. Alternatively, the rules would also not cause any negative impact on employment. Therefore no local employment impact statement is required to be prepared for the rules.

Tex. Gov’t Code §2001.022(a) states that this “impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule...” Considering that no impact is expected, there are no “probable” effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOVT CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the new subchapter will be a rule that has greater clarity into the processes and definitions of the administration of homeless programs. There will not be any economic cost to any individuals required to comply with the new sections because the processes described by the rule have already been in place through the rule found at this section being repealed.

f. FISCAL NOTE REQUIRED BY TEX. GOVT CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the new subchapter is in effect, enforcing or administering the new subchapter does not have any foreseeable implications related to costs or revenues of the state or local governments because the costs for administering the program in included in eligible activities.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held March 25, 2022, to April 25, 2022, to receive input on the new proposed sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Rosy Falcon, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by fax to (512) 475-0220, or email rosy.falcon@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, APRIL 25, 2022.

STATUTORY AUTHORITY. The new sections are proposed pursuant to Tex. Gov’t Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed new sections affect no other code, article, or statute.

§7.61. Purpose and Use of Funds.

(a) As authorized by Tex. Transp. Code §502.415, the Ending Homelessness Fund (EH Fund) provides grant funding only to counties and municipalities for the purpose of combating homelessness.

(b) Permitted EH Fund eligible activities include any activity determined to be eligible under Subchapter B of this Chapter, Homeless Housing and Services Program (HHSP), and as otherwise described in this subchapter and Subchapter A of this chapter.

(c) Capitalized terms used in this subchapter shall follow the meanings defined in Subchapter A of this chapter unless the context clearly indicates otherwise. Additionally, any words and terms not defined in this section but defined or given specific meaning in 24 CFR Part 576, or used in that Part and defined elsewhere in state or federal law or regulation, when used in this chapter, shall have the meanings defined therein, unless the context herein clearly indicates otherwise.

(d) Funds awarded under the EH Fund are not subject to any Match requirements, but may be used as Match for other programs that do require Match.

§7.62. EH Fund Subrecipient Application and Selection.

(a) The Department will produce an Application which, if properly completed by an eligible Applicant and approved by the Department, may satisfy the Department’s requirements to receive an award of funds under the EH Fund. Applicants that have an existing ESG or HHSP Contract who have awarded ESG or HHSP funds may be eligible to submit an abbreviated EH Fund Application if such Application is made available by the Department.

(b) Funds will be available to Applicants determined to be eligible for the EH Fund under §7.63(b)(1) of this subchapter, or as specified in a NOFA as defined in and under §7.63(b)(2) of this subchapter (relating to Availability of Funds), as applicable.
(c) Application for funds. Applicants for an award from the EH Fund must submit the following items:

1. A complete Application including an Applicant certification of compliance with state rules, federal laws, rules and guidance governing the EH Fund as provided in the Application;

2. All information required under Subchapter B of this chapter (related to Homeless Housing and Services Program) to conduct a Previous Participation and Executive Award Review and Advisory Committee review;

3. A proposed budget in the format required by the Department;

4. Proposed performance targets in the format required by the Department; and

5. Activity descriptions, including selection of administration under Subchapter B of this chapter (related to Homeless Housing and Services Program (HHSP)).

(d) Applications submitted by existing ESG or HHSP Subrecipients or awarded Applicants for ESG or HHSP; eligible activities are limited to those activities in HHSP.

(e) The Department must receive all Applications within 30 calendar days of notification of eligibility to Applicants per §7.63(b)(1) of this subchapter, or as specified in the NOFA, as applicable.

§7.63. Availability of Funds.

(a) Funds available under the EH Fund will be made available at least once per state fiscal year to eligible Applicants dependent on the amount of funding made available.

(b) The balance of the EH Fund will determine the distribution method.

1. For an annual, uncommitted balance that does not exceed $1,000,000 as of the end of the state fiscal year, the total of available EH Funds will be distributed equally, up to the amount requested, among the total number of entities satisfying all of the following requirements:

   (A) Are Subrecipients or awarded Applicants of ESG or HHSP;
   
   (B) Are counties or municipalities;
   
   (C) Have indicated that they wish to participate in the EH Fund; and
   
   (D) Have identified the minimum amount of funds they would accept and the maximum amount of funds they would be able to expend during the Contract Term.

(2) For an annual, uncommitted fund balance that exceeds $1,000,000 as of the end of the state fiscal year, the total of available EH Funds may be made available through a NOFA, which may include being made available to counties and municipalities that are not existing ESG or HHSP Subrecipients or awarded Applicants. If the amount of uncommitted funds in the EH Fund is greater than $1,000,000, an award made available through a NOFA shall not exceed $250,000 per Applicant per state fiscal year, unless there are no other eligible Applicants.

§7.64. Application Review Process.

(a) Review of Applications. When not using a NOFA, an Application received in response to solicitation by the Department will be assigned a “Received Date” and processed as noted below. An Application will be prioritized for review based on its “Received Date.” All Applications received by the deadline described in §7.62(e) of this subchapter will be reviewed by the Department for completeness and administrative deficiencies to prepare for Board action and potential funding.

(b) The administrative deficiency process allows staff to request that an Applicant provide clarification, correction, or non-material missing information to resolve inconsistencies in the original Application or to assist staff in evaluating the Application. Staff will request such information via a deficiency notice. Staff will send the deficiency notice via email. Responses to the Department’s deficiency notice must be submitted electronically to the Department. A review of the Applicant’s response may reveal that additional administrative deficiencies are exposed or that issues initially identified as an administrative deficiency are actually determined to be beyond the scope of an administrative deficiency process, meaning that they are in fact matters of a material nature not susceptible to be resolved. For example, a response to an administrative deficiency that causes a new inconsistency which cannot be resolved without reversing the first deficiency response would be an example of an issue that is beyond the scope of an administrative deficiency. Department staff will make a good faith effort to provide an Applicant confirmation that an administrative deficiency response has been received and/or that such response is satisfactory. Communication from staff that the response was satisfactory does not establish any entitlement to points, eligibility status, or to any presumption of a final determination that the Applicant has fulfilled any other requirements.

1. An Application with outstanding administrative deficiencies may be suspended from further review until all administrative deficiencies have been cured or addressed to the Department’s satisfaction. The administrative deficiency process allows staff to request that an Applicant provide clarification, correction, or missing information to resolve inconsistencies in the original Application or to assist staff in evaluating the Application.

2. Applications that have completed the review process may be presented to the Board for approval with priority over Applications that continue to have administrative deficiencies at the time Board materials are prepared, regardless of “Received Date.”

3. If all funds available under a solicitation from the Department are awarded, all remaining Applicants will be notified and the remaining Applications will not be processed.

(c) Responses to administrative deficiencies. The time period for responding to a deficiency notice commences on the first calendar day following the deficiency notice date. If an administrative deficiency is not resolved to the satisfaction of the Department by 5:00 p.m., Austin local time, on the seventh calendar day following the date of the deficiency notice, the Application shall be terminated. Applicants that have been terminated may reapply unless the Application period has closed.

(d) An Application must be substantially complete when received by the Department. An Application may be terminated if the Application is so unclear or incomplete that a thorough review cannot reasonably be performed, as determined by the Department. Such Application will be terminated without being processed as an administrative deficiency. Specific reasons for a Department termination will be included in the notification sent to the Applicant but, because the termination may occur prior to completion of the full review, will not necessarily include a comprehensive list of all deficiencies in the Application. Termination of an Application may be subject to §1.7 of this part, (relating to Appeals Process).

§7.65. Contract Term and Limitations.

(a) For EH Fund Applicants that do not have a current ESG or HHSP Contract, and have not been awarded ESG or HHSP funds, the
Department requires evidence in the form of a certification or resolution adopted by the governing body of the Applicant specifying who is authorized to enter into a Contract on behalf of the Applicant. This certification or resolution is due to the Department no later than 90 calendar days after the award has been approved by the Board, must be received prior to execution of any Contract for EH funds, and must include:

(1) Authorization to enter into a Contract for EH Fund;
(2) Title of the person authorized to represent the organization and who also has signature authority to execute a Contract; and
(3) Date that the certification or resolution was adopted by the governing body, which must be within 12 months of Application submission.

(b) EH Fund Contracts will generally have an initial period of 12 months for fund Expenditure. A request to extend the Contract Term must evidence that the extension is necessary to provide activities required under the Contract, and provide good cause for failure to timely expend the funds. Extensions of a Contract Term are considered on a case-by-case basis and are subject to §7.4(c) of this title (relating to Amendments and Extensions of Contracts).

(1) The Executive Director or his or her designee may approve an extension to the Contract Term that for up to six months from the original Contract Term.

(2) Board approval is required if the Subrecipient requests to extend the Contract Term for more than six months from the original Contract Term. Extensions for greater than 12 months may not be granted.

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

Filed with the Office of the Secretary of State on March 14, 2022.
TRD-202200901
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: April 24, 2022
For further information, please call: (512) 475-3959

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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 §103.1211

The Texas Education Agency (TEA) proposes new §103.1211, concerning active threat exercises. The proposed new rule would implement Senate Bill (SB) 168, 87th Texas Legislature, Regular Session, 2021, which mandated the adoption of procedures that a school district must complete prior to conducting an active threat exercise.

BACKGROUND INFORMATION AND JUSTIFICATION: Texas Education Code (TEC), Chapter 37, Subchapter D, addresses the protection of school buildings and grounds. To this subchaper, SB 168, 87th Texas Legislature, Regular Session, 2021, added TEC, §37.1141, which provides mandatory procedures that a school district must complete prior to conducting an active threat exercise. Proposed new §103.1211 would implement the statute by establishing requirements related to adequate notice and the content of an active threat exercise.

Proposed new subsection (a) would require school districts and open-enrollment charter schools to follow mandatory procedures for conducting active threat exercises. This requirement would ensure that districts and open-enrollment charter schools promote physical and psychological safety of students and staff before, during, and after an active threat exercise.

Proposed new subsection (b) would specify what school districts and open-enrollment charter schools must do prior to conducting active threat exercises. The requirements would include adequate notice of the exercise, an announcement signaling the start of the exercise, and certain elements to be addressed in the content of the exercise.

Proposed new subsection (c) would specify the statutory requirement that data regarding the efficacy and impact of an active threat exercise be collected and submitted to the Texas School Safety Center.

FISCAL IMPACT: Tim Regal, associate commissioner for instructional support, has determined that there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

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

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

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

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

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would create a new regulation to implement requirements regarding active threat exercises established by SB 168, 87th Texas Legislature, Regular Session, 2021.

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

PUBLIC BENEFIT AND COST TO PERSONS: Mr. Regal 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 ensuring that school districts and open-enrollment charter schools conduct active threat exercises in a manner that ensures the physical and psychological safety of students and staff members. 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. However, TEC, §37.1141(c), requires that data regarding the efficacy and impact of an active threat exercise be collected and submitted to the Texas School Safety Center.

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 March 25, 2022, and ends April 25, 2022. 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 March 25, 2022. 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/.

STATUTORY AUTHORITY. The new section is proposed under Texas Education Code (TEC), §37.1141, as added by Senate Bill (SB) 168, 87th Texas Legislature, Regular Session, 2021, which allows the commissioner of education to adopt rules regarding active threat exercises; and TEC, §12.104(b), as amended by SB 168, 87th Texas Legislature, Regular Session, 2021, which makes the provisions of TEC, §37.1141, applicable to open-enrollment charter schools.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §37.1141 and §12.104(b).

§103.1211. Active Threat Exercises.

(a) Each local educational agency (LEA), which includes school districts and open-enrollment charter schools, that elects to conduct an active threat exercise 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;

(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 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.

(c) 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 March 14, 2022.
TRD-202200890
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: April 24, 2022
For further information, please call: (512) 475-1497

TITLE 22. EXAMINING BOARDS
PART 14. TEXAS OPTOMETRY BOARD
CHAPTER 273. GENERAL RULES
The Texas Optometry Board (Board) proposes amendments to §273.5, concerning Clinical Instruction and Practice - Limited License for Clinical Faculty.

The proposal amends §273.5(a)(1) by replacing "Council on Optometric Education of the American Optometric Association (COEAOA)" with "Accreditation Council on Optometric Education (ACOE)". The proposal also amends §273.5(g)(1) - (2) by removing the "in-state" college of optometry requirement. Additional amendments also clarify the intent of the rule.

Kelly Parker, Executive Director, has determined that for the first five-year period the proposed rule is in effect, there will be no fiscal implications for the state and local governments because of proposing this new rule.

Ms. Parker has also determined that for each year of the first five years the proposed amendments are in effect, the anticipated public benefit will be the adoption of a more efficient process clinical faculty. There are no anticipated costs of compliance.

Legal counsel for the Board has reviewed the amendment and has found it to be within the Board's authority to propose.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS ON SMALL BUSINESSES AND RURAL COMMUNITIES

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

ENVIRONMENT AND TAKINGS IMPACT ASSESSMENT

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

GOVERNMENT GROWTH IMPACT STATEMENT

During the first five years that the proposed amendment will be in effect, it is anticipated that the proposed amendment will not create or eliminate a government program. Further, implementation of the proposed amendment will not require the creation of new employee position or the elimination of an existing employee position; implementation of the proposed amendments will not require an increase or decrease in future legislative appropriations to the agency; and the proposed amendments will not require an increase or decrease in fees paid to the agency. The proposed amendment does not create a new regulation but does amend a current rule to clarify current standards for clinical faculty. The proposed amendment does not change the number of individuals' subject to the amendment, and the effect on the state's economy is neutral.

PUBLIC COMMENTS

Comments on the proposed rule may be submitted electronically to: kelly.parker@tob.texas.gov, Kelly Parker, Executive Director, Texas Optometry Board, 333 Guadalupe Street, Suite 2-420, Austin, Texas 78701-3942. The deadline for furnishing comments is thirty days after publication in the Texas Register.

Amended §273.5 is proposed under the Texas Optometry Act, Texas Occupations Code, §351.151.

No other sections are affected by this proposal.

§273.5. Clinical Instruction and Practice - Limited License for Clinical Faculty:

(a) Issuance of limited license. The criteria for the issuance of a limited faculty license are as follows:

(1) the applicant must be a full-time faculty member of an institution accredited by the Accreditation Council on Optometric Education (ACOE) [Council on Optometric Education of the American Optometric Association (COEAOA)] or a state recognized accrediting entity;

(2) the applicant must be a graduate of an institution accredited by the ACOE [COEAOA];

(3) the applicant's practice must be limited to the premises of the institution and its affiliated clinics;

(4) the practice must be an adjunct to the institution's teaching program; and

(5) the applicant must have paid the fees required by §273.4 of this title (relating to Fees).

(b) Duties and Responsibilities of Dean of Institution. As a condition to continued approval of the institution, the board imposes the following duties and responsibilities upon the dean of the institution relating to those faculty members performing professional optometric services in programs of the institution. The dean shall:

(1) furnish each applicant for a limited faculty license a certificate that such applicant is a bona fide member of the faculty;

(2) report immediately to the board any information received relating in any way to a member of the faculty holding only a limited license who is performing professional optometric services other than as an adjunct to such faculty member's function at the institution. Every reasonable means to prevent such unlawful practice shall be used by the dean;

(3) cooperate fully and completely with the board toward the end that the limited license provided will be used only for the purpose for which it is intended;

(4) promptly notify the board of any changes in limited license personnel on the faculty.

(c) Application and renewal. Each member of the faculty desiring a limited license shall make written application to the executive director of the board and attach to the application the original certificate of the dean herein above provided and shall enclose therewith the payment of a fee of $50 for the issuance of the limited license and the fee imposed by Section 351.153 of the Texas Optometry Act. The annual renewal fee for a limited license is equal to the fee charged for a regular license as specified in §273.4 of this title (relating to Fees). Holders of limited licenses shall also be required to meet the same continuing education requirements as holders of regular licenses. Said renewal fee shall be due on January 1 and expire after December 31 of each year. Failure to pay the renewal fee on or before January 1 shall subject the license to the same requirements of renewal as a regular license, including late penalties.
(d) Validity of limited license. The limited license shall be valid as long as the holder thereof remains a faculty member of the institution and abides by all regulations of the board.

(e) Limitation of limited license. It shall be a violation of this rule for the holder of a limited license who is not regularly licensed under the statutes to perform optometric services in any manner except as part of the program of the institution and as an adjunct to teaching functions in the institution.

(f) Revocation of limited license. Those persons granted a limited license shall be subject to the same disciplinary procedures as the holder of a regular license. If, after disciplinary proceedings as set out in board rules, a holder of a limited license is found to be in violation of the Texas Optometry Act or board rules, the board may revoke the limited license. In such event, the executive director shall promptly notify the limited licensee and the dean of the institution.

(g) A student currently enrolled in an approved [in-state] college of optometry or school may participate in clinical instruction and practice, provided that:

(1) The clinical instruction and practice is conducted on the premises of an approved [in-state] college of optometry or school, or the college's affiliated clinics and offices, under the instruction and supervision of a licensed optometrist, or physician employed by the college of optometry; or

(2) The clinical instruction and practice is conducted as an externship in the office of a licensed optometrist or physician appointed as a clinical instructor by an approved [in-state] college of optometry or school. The clinical training must be under the instruction and supervision of the appointed clinical instructor.

(h) No provision of this rule is intended to remove an exemption provided by statute.

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

Filed with the Office of the Secretary of State on March 10, 2022.
TRD-202200866
Kelly Parker
Executive Director
Texas Optometry Board

Earliest possible date of adoption: April 24, 2022
For further information, please call: (512) 305-8502

CHAPTER 277. PRACTICE AND PROCEDURE
22 TAC §277.13

The Texas Optometry Board (TOB) proposes new §277.13, concerning Complaints Resulting from Glaucoma Treatment - Investigation Process. A version of this rule was originally proposed in the December 10, 2021, issue of the Texas Register (46 TexReg 8305). The Board met on February 25, 2022, to consider comments received. At the February 25, 2022, meeting, the Board made significant changes to the proposed rule and voted unanimously to propose the rule again. The previously published version of this rule has been withdrawn and the notice of withdrawal is published elsewhere in this issue of the Texas Register.

This rule is being proposed pursuant to SB 993 of the 87th Regular Legislative Session. This new rule sets forth the investigation process for all complaints received by the agency resulting from the treatment of glaucoma after September 1, 2021. Senate Bill 993 required collaboration with the Texas Medical Board and all input received to date has been considered and included by the TOB for the proposal of this rule.

Kelly Parker, Executive Director, has determined that for the first five-year period the proposed rule is in effect, there will be fiscal implications for the state and local governments as a result of proposing this new rule. Specifically, the agency will be required to contract with and pay for expert witness services for any in-state cases that involve the treatment of glaucoma after September 1, 2021. The agency was not funded for this expense. Therefore, the agency previously proposed an increase in licensing and renewal fees. The agency plans to collect the fees and seek additional appropriations based on the collected fees.

Legal counsel for the Board has reviewed the new rule and has found it to be within the Board's authority to propose.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS ON SMALL BUSINESSES AND RURAL COMMUNITIES

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

ENVIRONMENT AND TAKINGS IMPACT ASSESSMENT

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

GOVERNMENT GROWTH IMPACT STATEMENT

During the first five years that the proposed rule will be in effect, it is anticipated that the proposed rule will not create or eliminate a government program as no program changes are proposed. Further, implementation of the proposed rule will not require the creation of a new employee position or the elimination of an existing employee position. The agency is required to contract with and pay for expert witness services for all complaints related to the treatment of glaucoma and received after September 1, 2021. The agency was not funded for this expense. Therefore, the agency previously proposed an increase in licensing and renewal fees. The agency plans to collect the fees and seek additional appropriations based on the collected fees. The proposal creates a new regulation pursuant to SB 993 of the 87th Regular Legislative Session.

PUBLIC COMMENTS

47 TexReg 1584 March 25, 2022 Texas Register
Comments on the proposed rule may be submitted electronically to: kelly.parker@tob.texas.gov, Kelly Parker, Executive Director, Texas Optometry Board, 333 Guadalupe Street, Suite 2-420, Austin, Texas 78701-3942. The deadline for furnishing comments is thirty days after publication in the Texas Register.

Proposed §277.13 is proposed under the Texas Optometry Act, Texas Occupations Code, §351.151.

No other sections are affected by this proposal.


(a) Each jurisdictional complaint received by the Board related to a therapeutic optometrist's treatment of a patient for glaucoma or a jurisdictional complaint that includes allegations involving failure to refer glaucoma treatment to an ophthalmologist pursuant to §351.3581(d) of the Optometry Act, shall be subject to a two-step investigation process as set forth more thoroughly in this Rule. A complaint is jurisdictional if it alleges conduct by a licensee that if true, would constitute a violation of the Optometry Act or board rules.

(b) Each jurisdictional complaint shall be subjected to an Initial Investigation, which may then result in an Official Investigation overseen, by the Expert Panel as contemplated in §277.14 of this title (relating to Complaints Resulting From Glaucoma Treatment-Use of Case Review Consultant and Expert Panel).

(c) Upon receipt of a complaint regarding glaucoma treatment, for which the Board has jurisdiction, such complaint shall undergo an Initial Investigation by the Board including an initial review by a, qualified physician licensed in this state who specializes in ophthalmology selected by the Board from a list of ophthalmologists approved by the Texas Medical Board (such qualified licensed physician being hereinafter referred to as the "Case Review Consultant"). Each jurisdictional complaint referred to the Case Review Consultant shall be provided to the Texas Medical Board.

(d) The Initial Investigation shall at least include the following:

1. Any and all information received from the complainant;
2. Any and all relevant medical records related to the complaint;
3. Any and all communication or response to the complaint from the Respondent; and
4. The Case Review Consultant's written report that determines whether the treatment of the patient for glaucoma violated the standard of care applicable to a physician specializing in ophthalmology.

(e) At the conclusion of the Initial Investigation, if the Case Review Consultant determines that the standard of care was violated, the Board shall commence the Official Investigation procedure contemplated in §277.14 of this title.

(f) At the conclusion of the Initial Investigation, if the Case Review Consultant did not determine that the Respondent violated the relevant standard of care related to the treatment of glaucoma, the matter shall be referred to the Board for further investigation not related to the treatment of glaucoma or referred to the Board for dismissal. The Texas Medical Board shall be advised of the disposition of the cases.

(g) In all events, if the Case Review Consultant determines that a complaint regarding glaucoma treatment suggests that the continued practice by a licensee or the continued performance by a licensee of a procedure for which the person holds a glaucoma certification would constitute a clear, imminent, or continuing threat to a patient's health or well-being, the Board shall appoint a three-member disciplinary panel consisting of board members to determine whether the license issued should be temporarily suspended or restricted pursuant to §351.5015 of the Texas Optometry Act.

(b) Board staff shall use reasonable efforts to ensure that any information shared with the Case Review Consultant and/or Expert Panel contemplated in this section and §277.14 of this title hereof shall be redacted and de-identified so as to maintain anonymity of the licensee that is the subject of the complaint.

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

Filed with the Office of the Secretary of State on March 10, 2022.

TRD-202200867

Kelly Parker
Executive Director
Texas Optometry Board

Earliest possible date of adoption: April 24, 2022

For further information, please call: (512) 305-8502

22 TAC §277.14

The Texas Optometry Board proposes new §277.14, concerning Complaints Resulting From Glaucoma Treatment - Use of Case Review Consultant and Expert Panel. A version of this rule was originally proposed in the December 10, 2021, Texas Register (46 TexReg 8307). The previously published version of this rule has been withdrawn and the notice of withdrawal is published elsewhere in this issue of the Texas Register.

This rule is being proposed pursuant to SB 993 of the 87th Regular Legislative Session. This new rule sets forth the selection process for the Case Review Consultant and Expert Panel as required by SB 993 of the 87th Regular Legislative Session. Senate Bill 993 required collaboration with the Texas Medical Board and all input received to date has been considered and included by the Texas Optometry Board for the proposal of this new rule.

Kelly Parker, Executive Director, has determined that for the first five-year period the proposed rule is in effect, there will be fiscal implications for the state and local governments as a result of proposing this new rule. Specifically, the agency will be required to contract with and pay for expert witness services for all jurisdictional cases that involve the treatment of glaucoma after September 1, 2021. The agency was not funded for this expense. Therefore, the agency previously proposed an increase in licensing and renewal fees. The agency plans to collect the fees and seek additional appropriations based on the collected fees.

Kelly Parker, Executive Director, has determined that for each of the first five years the proposed rule is in effect, the public benefit anticipated is agency efficiency in its ability to carry out its programs.

Legal counsel for the Board has reviewed the new rule and has found it to be within the Board's authority to propose.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS ON SMALL BUSINESSES AND RURAL COMMUNITIES

PROPOSED RULES March 25, 2022 47 TexReg 1585
There will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed rule. Since the agency has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, are not required.

ENVIRONMENT AND TAKINGS IMPACT ASSESSMENT

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

GOVERNMENT GROWTH IMPACT STATEMENT

During the first five years that the proposed rule will be in effect, it is anticipated that the proposed rule will not create or eliminate a government program as no program changes are proposed. Further, implementation of the proposed rule will not require the creation of a new employee position or the elimination of an existing employee position. The agency is required to contract with and pay for expert witness services for all complaints related to the treatment of glaucoma and received after September 1, 2021. The agency was not funded for this expense. Therefore, the agency previously proposed an increase in licensing and renewal fees. The agency plans to collect the fees and seek additional appropriations based on the collected fees. The proposal creates a new regulation pursuant to SB 993 of the 87th Regular Legislative Session.

PUBLIC COMMENTS

Comments on the proposed rule may be submitted electronically to: kelly.parker@tob.texas.gov, Kelly Parker, Executive Director, Texas Optometry Board, 333 Guadalupe Street, Suite 2-420, Austin, Texas 78701-3942. The deadline for furnishing comments is thirty days after publication in the Texas Register.

Proposed §277.14 is proposed under the Texas Optometry Act, Texas Occupations Code, §351.151.

No other sections are affected by this proposal.


(a) Composition. Upon a determination under §277.13 of this title (relating to Complaints Resulting From Glaucoma Treatment - Investigation Process) by the Case Review Consultant that a Respondent has violated the standard of care for the treatment of glaucoma, the Texas Optometry Board shall forward the complaint and report to an Expert Panel appointed by the Texas Optometry Board and the Texas Medical Board. The panel shall be composed of an equal number of physicians who specialize in ophthalmology and therapeutic optometrists. Ophthalmologists shall be selected from a list approved by the Texas Medical Board for such purposes and the therapeutic optometrists certified as optometric glaucoma specialist shall be selected from a list approved by the Texas Optometry Board.

(b) Qualifications. To be eligible to serve as a Case Review Consultant or as a member of the Expert Panel, interest shall be submitted to the Texas Optometry Board and Texas Medical Board through an application. The Texas Optometry Board and Texas Medical Board will collaborate to approve Case Review Consultants and Expert Panel Members. An applicant may be considered if they meet the following criteria:

1. Texas-licensed therapeutic optometrist certified as an Optometric Glaucoma Specialist or a Texas-licensed physician specializing in ophthalmology and have been in active practice in Texas for at least the last five (5) consecutive years immediately preceding the application;
2. Have no disciplinary action taken by any healthcare regulatory board in Texas or in another state within the last 10 years;
3. Is not a member of the faculty or board of trustees of an optometry school or an institution of higher education with an affiliated school of optometry; or
4. Is not an officer, nor a spouse who is an officer, employee, or paid consultant of a Texas trade association, as defined by §351.053 of the Optometry Act, in the field of health care.

(c) Payment. Approved Case Review Consultants and Expert Panel Members shall enter a contract for services with the Texas Optometry Board. The Texas Optometry Board shall pay a reasonable, contracted fee to each Case Review Consultant and Expert Panel member.

(d) Term; Resignation; Removal. A Case Review Consultant or Expert Panel member shall serve until resignation, removal, or non-renewal of contract. A Case Review Consultant or Expert Panel member may resign at any time with at least five (5) business days advance notice to the Board and, if necessary, the Texas Medical Board. A Case Review Consultant or Expert Panel member may be removed for good cause at any time, with the approval of the Texas Optometry Board and the Texas Medical Board. Good cause for removal may include without limitation:

1. Failure to maintain eligibility requirements;
2. Failure to inform the Board of known potential or apparent conflicts of interest;
3. Repeated failure to timely review complaints or timely submit reports to the Board;
4. Sharing of confidential information regarding complaints; or
5. Direct contact with the Complainant, Respondent and/or other health care providers identified in the complaint.

(e) Vacancy on Expert Panel. A vacancy of the therapeutic optometrist serving on the Expert Panel shall be filled by selecting another qualified individual from the list approved by the Texas Optometry Board, and a vacancy of an ophthalmologist serving on the Expert Panel shall be filled by selecting another individual from the list approved by the Texas Medical Board.

(f) Conflict of Interest. If a Case Review Consultant or Expert Panel member has a known personal or professional interest that might reasonably tend to influence the discharge of the individual's duties in the review of case, the Case Review Consultant or Expert Panel member shall disclose that conflict immediately to the Executive Director for assignment to a different Case Review Consultant or Expert Panel member.

1. A potential professional conflict of interest exists if the reviewer lives or practices optometry and/or ophthalmology in the same geographical market as the Respondent in the filed complaint and is in direct competition with the licensee.
(2) A potential personal conflict of interest exists if the reviewer has a personal relationship with the Respondent and/or complainant. A personal relationship is considered to be a situation in which the Case Review Consultant or Expert Panel member has personal interests such as financial interests, family or social factors that could impair one's ability to act impartially.

(g) Expert Panel Review of Case. The Expert Panel members will be provided with the Case Review Consultant's report and all relevant information related to the complaint, including records collected by the agency during the investigation. The Expert Panel members shall submit to the Texas Optometry Board a written report (or separate reports in the event the members of the panel do not have consensus) which includes whether the therapeutic optometrist should be subject to disciplinary action and, if so, whether the disciplinary action should include suspension or revocation of the therapeutic optometrist's license or certificate issued under §351.3581(a) of the Optometry Act.

(h) Upon receipt of an Expert Panel Report, the Board shall evaluate the report, complaint, and any other relevant information and shall comply with §277.2 of this title (relating to Disciplinary Proceedings) as necessary. The Expert Panel recommendations are not binding but the Board may give deference to the Panel's findings when making a final determination for disciplinary action.

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

Filed with the Office of the Secretary of State on March 10, 2022.
TRD-202200868
Kelly Parker
Executive Director
Texas Optometry Board

Earliest possible date of adoption: April 24, 2022
For further information, please call: (512) 305-8502

PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 531. CANONS OF PROFESSIONAL ETHICS AND CONDUCT

22 TAC §531.18

The Texas Real Estate Commission (TREC) proposes amendments to §531.18, Consumer Information.

The proposed amendments to §531.18, Consumer Information, are made as a result of the Commission's quadrennial review. The proposed amendments to 22 TAC 531.18, Consumer Information, are not intended to change who must comply with these rules (i.e., active real estate brokers and sales agents), but merely to use more consistent and concise language.

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

Ms. Lee also has determined that for each year of the first five years the section as proposed are in effect, the public benefit anticipated as a result of enacting the section will be greater clarity in the rules.

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

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

Comments on the proposal may be submitted through the online comment submission form at https://www.trec.texas.gov/rules-and-laws/comment-on-proposed-rules, to Abby Lee, Deputy General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the Texas Register.

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

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

§531.18. Consumer Information.

(a) The Commission adopts by reference the Consumer Protection Notice, TREC No. CN 1-4. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.texas.gov.

(b) Each license holder [active real estate broker and sales agent] shall provide the notice adopted under subsection (a) by:

(1) displaying it in a readily noticeable location in each place of business the broker maintains; and

(2) providing a link to it in a readily noticeable place on the homepage of each business website, labeled:

(A) "Texas Real Estate Commission Consumer Protection Notice", in at least 10 point font; or

(B) "TREC Consumer Protection Notice", in at least 12 point font.

(c) For purposes of this section, business website means a website on the internet that:

(1) is accessible to the public;
(2) contains information about a license holder's real estate brokerage services; and

(3) the content of the website is controlled by the license holder.

(d) For purposes of providing the link required under subsection (b)(2) on a social media platform, the link may be located on:

(1) the account holder profile; or

(2) a separate page or website through a direct link from the social media platform or account holder profile.

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

Filed with the Office of the Secretary of State on March 11, 2022.

TRD-202200875
Abby Lee
Deputy General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: April 24, 2022
For further information, please call: (512) 936-3057

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 307. TEXAS SURFACE WATER QUALITY STANDARDS


(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figures in 30 TAC §§307.6, 307.7, and 307.10 are not included in the print version of the Texas Register. The figures are available in the on-line version of the March 25, 2022, issue of the Texas Register.)

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §§307.2 - 307.4, 307.6, 307.7, and 307.10.

Background and Summary of the Factual Basis for the Proposed Rules

The Federal Water Pollution Control Act, or federal Clean Water Act (CWA), §303 (33 United States Code (USC), §1313) requires all states to adopt water quality standards for surface water. A water quality standard consists of the designated beneficial uses of a water body or a segment of a water body and the water quality criteria that are necessary to protect those uses. Water quality standards are the basis for establishing pollutant loadings in wastewater permits, setting instream water quality goals for total maximum daily loads (TMDLs), and providing water quality targets used to assess surface water quality monitoring data.

The states are required under the CWA to review their water quality standards at least once every three years and revise them, if appropriate. States review the standards because new scientific and technical data may be available that have a bearing on the review. Environmental changes over time may also warrant the need for a review. Where the standards do not meet established uses, they must be periodically reviewed to see if uses can be attained. Additionally, water quality standards may have been previously established for the protection and propagation of aquatic life and recreation in and on the water without sufficient data to determine whether the uses were attainable. Finally, changes in the Texas Water Code (TWC), CWA, or regulations issued by the United States Environmental Protection Agency (EPA) may necessitate reviewing and revising standards to ensure compliance with current statutes and regulations.

Following adoption of revised Texas Surface Water Quality Standards (TSWQS) by the commission, the Governor or their designee must submit the officially adopted standards to EPA Region 6 Administrator for review. The Regional Administrator reviews the TSWQS to determine compliance with the CWA and implementing regulations. TSWQS are not applicable to regulatory actions under the CWA until approved by EPA.

The TSWQS were last amended in March 2018. The EPA began approving portions of the state's revised standards in November 2018.

Reviews and revisions of the TSWQS address many provisions that apply statewide, such as criteria for toxic pollutants. They also address the water quality uses and criteria that are applicable to individual water bodies. An extensive review of water quality standards for individual water bodies is often initiated when the existing standards appear to be inappropriate for water bodies that are listed as impaired under the CWA, §303(d) or potentially affected by permitted wastewater discharges or other permitting actions.

States may modify existing designated uses or criteria when it can be demonstrated through a use-attainability analysis (UAA) that attaining the current designated uses or criteria is not appropriate. Most changes in designated uses or criteria are based on a demonstration that natural characteristics of a water body cannot attain the currently designated uses or criteria. Natural characteristics include temperature, pH, dissolved oxygen, diversity of aquatic organisms, amount of streamflow, physical conditions such as depth, and natural background pollutant levels. Conversely, an UAA might demonstrate that the currently designated uses and criteria are appropriate, or even that they should be more stringent.

An UAA can require several years of additional sampling studies, or they may focus on a long-term evaluation of existing historical data. For UAs on water bodies that are potentially impacted by pollutant loadings above natural background levels, sampling and evaluation are often conducted on similar but relatively impacted water bodies to determine reference conditions that can be applied to the water body of concern.

The focus of UAs depends on the uses and criteria that need to be reevaluated. The applicable aquatic life use is determined by repeatedly sampling fish or invertebrates in relatively impacted areas and applying quantitative indices, such as indices of biotic integrity, to the sampling data of the biological communities. UAs to assign aquatic recreational uses include assessing physical and hydrological conditions, observing existing recreation, and collecting information on current and historical recreational activities. Dissolved oxygen criteria are evaluated by monitoring dissolved oxygen over numerous (usually ten) 24-hour periods in relatively unimpacted areas. Site-specific criteria for toxic pollutants are evaluated by placing selected
small aquatic organisms in water samples from the site and exposing them to different doses of the toxic pollutant of concern.

The commission is proposing editorial revisions as well as substantive changes. Editorial revisions would be adopted to improve clarity, make grammatical corrections, and renumber or re-letter subdivisions as appropriate.

Numerous revisions of toxic criteria are proposed to incorporate new data on toxicity effects. Other proposed revisions include a clarification regarding the prohibition of the discharge of visible pre-production plastic into surface water in the state and provide clarity regarding the use of temporary standards. Numerous revisions are also proposed for the uses and criteria of individual water bodies to incorporate new data and the results of recent UAAs.

Section by Section Discussion

§307.2, Description of Standards

The proposed changes to §307.2 include language regarding temporary standards to improve consistency with federal rules listed in 40 Code of Federal Regulations (CFR) §131.14. These revisions allow the expression of the temporary standard as an interim effluent condition when adopted for permittees or water bodies. Revisions also clarify that a temporary standard must preclude degradation of existing water quality as opposed to impairing an existing use. Other revisions are editorial and proposed to improve overall clarity.

§307.3, Definitions and Abbreviations

Proposed changes to §307.3 include the addition of a definition for "Pre-production plastic." The intent behind this definition is to differentiate pre-production plastic, or primary plastic manufactured for a variety of uses, from secondary plastic, such as degraded particles, bottles, containers, packaging, or bags. Proposed changes also include a definition and acronym for "Bioaccumulation factor," and the addition of an acronym for "municipal utility district." The definition for "method detection limit" has also been amended to match the current federal definition in 40 CFR Part 136. Other revisions are editorial and proposed to improve overall clarity.

§307.4, General Criteria

To clarify existing regulations, a proposed change to §307.4 includes the addition of a statement explicitly prohibiting the discharge of visible pre-production plastic. The prohibition on discharging visible pre-production plastics from facilities subject to §307.4(b)(8) applies to all wastewater and stormwater discharges. For the purposes of implementing this prohibition, a control measure would be infeasible if it were not technologically possible or not economically practicable and achievable in light of best industry practices. Other revisions are editorial and proposed to improve overall clarity.

§307.6, Toxic Materials

Section 307.6(c)(1), Table 1, which lists numeric criteria for the protection of aquatic life, includes proposed revisions to the existing cadmium acute and chronic criteria for both freshwater and saltwater based on EPA's issuance of an updated national criteria document.

Proposed changes to the human health criteria in Table 2, §307.6(d)(1), include the revision of oral slope factors that led to revised criteria for the following five carcinogens: benzo(a)anthracene, benzo(a)pyrene, chrysene, 1,2-dichloro-propane, and 1,3-dichloropropene. Reference dose updates also led to revisions of criteria for the following two carcinogens: dichloromethane and tetrachloroethylene. Criteria revisions to one carcinogen, dicofol, were based on a revision to the animal body weight used to calculate the cancer potency factor from the oral slope factor. No criteria changes are proposed for noncarcinogens. Other revisions are editorial and proposed to improve overall clarity.

§307.7, Site-Specific Uses and Criteria

The proposed changes to §307.7 include the addition of a geometric mean criterion for Enterococci of 54 colonies per 100 milliliters (mL) for high saline inland waters with primary contact recreation 2. Other revisions are editorial and proposed to improve overall clarity.

§307.10, Appendices A - E and G

Proposed changes to Appendix A include the addition of a footnote to Brushy Creek (1244) restricting the public water supply designation to within the Edwards Aquifer zones based on lack of public water supply intakes. A footnote addition for Upper North Bosque River (1255) is also proposed to clarify that the portion of the segment from the confluence with Dry Branch upstream to the confluence with the North/South Forks North Bosque River in Erath County is intermittent with perennial pools based on a 1991 UAA. The UAA resulted in the creation of classified Segment 1255, which was adopted as part of the 1992 revisions to the TSWSQ and approved by EPA in an action letter dated June 16, 1993. Proposed changes also include the deletion of a footnote that describes Mid Cibolo Creek (1913) as being an intermittent stream with perennial pools. This footnote, added in the 2018 Revision to the TSWSQ, has not yet been approved by EPA and is being removed because further data evaluation is necessary. Additional proposed changes include revising the designated use of primary contact recreation 1 with a corresponding criterion of 126 colonies per 100 mL to a secondary contact recreation 1 use with a corresponding criterion of 630 colonies per 100 mL for San Miguel Creek (2108). This proposed change is based on the results from a recreational UAA. Other revisions are editorial and proposed to improve overall clarity.

Proposed changes to Appendix B include the addition of the San Marcos River (1808) and Choke Canyon Reservoir (2116). Other proposed changes include the removal of Greenbelt Lake (0223), Granger Lake (1247), and Lake Brownwood (1418).

Proposed changes to Appendix C include reverting the segment descriptions for Lower Cibolo Creek (1902), Upper Cibolo Creek (1908), and Mid Cibolo Creek (1913) back to the most recent EPA-approved descriptions due to further data evaluation being necessary. Other revisions are editorial and proposed to improve overall clarity.

Proposed changes to Appendix D include new entries for three water bodies based on UAA analyses. All the water bodies are tributaries within the listed segment numbers as follows: Piney Creek (0604); Little Pine Island Bayou (0607); and Buckners Creek (1402). An existing entry for Buckners Creek is replaced with two new entries for this water body. Proposed additions also include two new entries for both Piney Creek and Little Pine Island Bayou. The segment number for the existing entry for County Relief Ditch is changed from Segment 0502 to Segment 0501 due to recent EPA approval of the revised boundaries for both segments. Other revisions are editorial and proposed to improve overall clarity.
Proposed changes to Appendix E include the addition of eight new site-specific copper water-effect ratios in the watersheds of segments 0601, 0604, 0702, 1009, 2429, 2432, and 2441. The results from two site-specific copper biotic ligand models are also proposed for segments 0202 and 0827. One existing entry for Segment 1001 has been reordered to arrange all table entries in numeric order by segment and permit number.

Proposed revisions to Appendix G include changing the presumed use of primary contact recreation 1 with a corresponding criterion of 126 colonies per 100 mL to a secondary contact recreation 1 use with a corresponding criterion of 630 colonies per 100 mL for South Lilly Creek in the Cypress Creek Basin (0409). This proposed change is based on the result of a recreational UAA. Due to construction activities that filled in much of Bullhead Bayou and re-routed the water body into a different watershed, proposed revisions to Bullhead Bayou include delineations of the East and West reaches, and updates to segment numbers in order to reflect current conditions for both Bullhead Bayou and Unnamed tributary of Bullhead Bayou. Other revisions are editorial and proposed to improve overall clarity.

Fiscal Note: Costs to State and Local Government

Jené Bearse, Analyst in the Budget and Planning Division, has determined that for the first five-year period the proposed rules are in effect, fiscal implications are anticipated for the agency as a result of administration or enforcement of the proposed rules.

The agency estimates the implementation of the proposed rules in §307.10 could result in a cost savings for the agency in three of the five years after implementation. The agency anticipates the proposed rules would result in the addition of one water body to Appendix G, which designates site-specific contact recreation criteria for unclassified water bodies, and the removal of one contact recreation impairment for one assessment unit from a water body currently found on the 303(d) list of impaired waters. The removal of water bodies that are listed for contact recreation impairments may also eliminate the need for a study to define a TMDL for these water bodies, and the removal of this impaired assessment unit is estimated to be a savings of between $33,333 to $83,333 in the second, third, and fourth year after implementation.

The following state agencies may be affected by the proposed rules because each of them operates a permitted domestic wastewater discharge facility: Texas Department of Criminal Justice, Texas Parks and Wildlife Department, Texas Department of Transportation, and university and educational facilities. However, TCEQ does not anticipate a fiscal implication for these other agencies.

Approximately 290 units of local government have permits issued annually under the Texas Pollutant Discharge Elimination System. Although they may be impacted by the proposed rules relating to dissolved oxygen criteria, no significant fiscal implications are anticipated.

At least one unit of local government, the Neches Valley Authority's North Regional Treatment Plant, may experience fiscal implications from proposed §307.4(b)(8). According to the plant's Standard Industrial Classification code, it treats wastewater and stormwater from industries which may manufacture pre-production plastic. If this unit of local government would need to change or employ new wastewater treatment screening, monitoring, or treatment methods to comply with the TSWQS for water quality, costs may be incurred.

Public Benefits and Costs

Ms. Bearse determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated would be increased protection of public drinking water supplies and aquatic life resources, an improved regulatory process for permitted wastewater discharges, and potentially improved quality of the surface water resources of the state.

The proposed rulemaking may result in fiscal implications for businesses or individuals who own or operate wastewater discharge facilities. Where applicable, the costs associated with compliance with the proposed toxic standards would be determined by the size and current condition of the treatment facility, the extent of the current controls, and the nature of the wastewater and receiving waters. Because of the variability in receiving waters, the number of toxic substances, and the current condition of treatment facilities, an engineering study and design may be required to determine the extent of any required changes to comply with the proposed rulemaking. This variability precludes calculation of specific costs associated with implementation.

Regarding the proposed rule in §307.4(b)(8), relating to pre-production plastic, regulated entities who will be required to comply with the proposed rule will develop and implement Best Management Practices (BMPs) to prevent the discharge of pre-production plastic. According to agency research and a survey conducted of the Texas Chemical Council members, the cost for implementing BMPs varies and may include significant one-time expenses. As an example, an entity may require facility or equipment upgrades, such as the construction of berms or curbing in loading areas or the installation of screens and filters. An example of a smaller, reoccurring cost could be related to employee training.

Of the Texas Chemical Council respondents who reported costs, their estimates ranged from $2,000 to $25 million in the first year of implementation. The higher end of that range was for those who determined that facility or equipment upgrades may be needed. Of that subset, the costs ranged from $322,000 to $25 million in the first year, with a median cost of $3.7 million. Because the cost for facility or equipment upgrades was most significant in the first year, the respondents projected second year costs ranging from $0 to $245,000. By year five, these costs were estimated to range from $0 to $117,000, with a median cost of $1,000. Other reported costs included site audits, improvement of employee training and procedures, site inspections, and enforcement procedures. The costs provided through this research are based on costs reported by manufacturers and may not be representative of costs for handlers, molders, and formers.

Because of existing requirements in the Stormwater Multi-Sector General Permit, the agency expects that holders of that permit already have BMPs in place as part of their Stormwater Pollution Prevention Plan; therefore, the proposed rule relating to pre-production plastic is not anticipated to have a fiscal impact on those regulated entities.

Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rulemaking does not adversely affect a local economy in a material way for the first five years the proposed rules would be in effect.

Rural Communities Impact Assessment
The commission reviewed this proposed rulemaking and determined that the proposed rulemaking does not adversely affect rural communities in a material way for the first five years that the proposed rules are in effect. The amendments would apply statewide and have the same effect in rural communities as in urban communities.

Small Business and Micro-Business Assessment
No adverse fiscal implications are anticipated for small businesses or micro-businesses due to the implementation or administration of the proposed rules for the first five-year period the proposed rules would be in effect.

Small Business Regulatory Flexibility Analysis
The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rules does not adversely affect a small businesses or micro-business in a material way for the first five years the proposed rules would be in effect.

Government Growth Impact Statement
The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program and will not require an increase or decrease in future legislative appropriations to the agency. The proposed rulemaking does not require the creation of new employee positions, eliminate current employee positions, or require an increase or decrease in fees paid to the agency. The proposed rulemaking does clarify an existing regulation relating to the discharge of pre-production plastic. The proposed rulemaking does not increase or decrease the number of individuals subject to its applicability. During the first five years, the proposed rules should not impact the state's economy positively or negatively.

Draft Regulatory Impact Analysis Determination
The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined the rulemaking would not subject to §2001.0225 because it would not meet any of the four applicability criteria listed in Texas Government Code, §2001.0225(a). According to subsection (a), §2001.0225 only applies to a major environmental rule, the result of which is to exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking would not meet any of these four applicability criteria because it would not exceed a standard set by federal law; would not exceed an express requirement of state law; would not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and is not proposed solely under the general powers of the agency but, rather, specifically under 33 USC, §1313(c), which requires states to adopt water quality standards and review them at least once every three years; and TWC, §28.025, which requires the commission to set water quality standards and allows the commission to amend them. Therefore, this proposed rulemaking would not fall under any of the applicability criteria in Texas Government Code, §2001.0225.

Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preambles.

Takings Impact Assessment
The commission evaluated this proposed rulemaking and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this rulemaking is to incorporate changes to the TSWQS deemed necessary based on the commission's triennial review of the standards, which mainly consist of incorporating new data on toxicity effects and from recent UAAs, prohibiting the discharge of visible pre-production plastic, and clarifying the use of temporary standards. The proposed rulemaking would substantially advance this stated purpose by revising toxic criteria, individual water bodies' uses and criteria, and the temporary requirements and adding a plastic discharge prohibition in Chapter 307 of the commission's rules.

The commission's analysis indicates that Texas Government Code, Chapter 2007 would not apply to this proposed rulemaking because this is an action that is reasonably taken to fulfill an obligation mandated by federal law, which is exempt under Texas Government Code, §2007.003(b)(4). CWA, §303 requires the State of Texas to adopt water quality standards, review those standards at least once every three years, and revise the standards as necessary based on the review. TWC, §26.023 delegates the responsibility of adopting and revising the standards to the commission.

Nevertheless, the commission further evaluated this proposed rulemaking and performed an assessment of whether it constitutes a taking under Texas Government Code, Chapter 2007. Promulgation and enforcement of this proposed rulemaking would be neither a statutory nor a constitutional taking of private real property. Specifically, the proposed regulations would not affect a landowner's rights in private real property because this rulemaking would not burden, restrict, or limit an owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. In other words, this rulemaking makes necessary revisions to the TSWQS without burdening, restricting, or limiting an owner's right to property and reducing its value by 25% or more. Therefore, the proposed rulemaking would not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program
The commission reviewed the proposed rulemaking and found that the proposal is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 et seq., and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the proposed rules in accordance with Coastal Coordination Act implementation rules, 31 TAC §505.22 and found the proposed rulemaking is consistent with the applicable CMP goals and policies.

CMP goals applicable to the proposed rules include protecting, preserving, restoring, and enhancing the diversity, quality, quantity, functions, and values of coastal natural resources by establishing standards and criteria for instream water quality for Texas streams, rivers, lakes, estuaries, wetlands, and other water bodies. These proposed water quality standards would provide parameters for permitted discharges that would protect, preserve,
restore, and enhance the quality, functions, and values of coastal natural resources.

CMP policies applicable to the proposed rules include 31 TAC §501.21. The proposed rulemaking would require wastewater discharge permit applicants to provide information and monitoring data to the commission so the commission may make an informed decision in authorizing a discharge permit and ensuring the authorized activities in a wastewater discharge permit comply with all applicable requirements, thus making the rulemaking consistent with the administrative policies of the CMP.

The proposed rulemaking considers information gathered through the biennial assessments of water quality in the commission’s Integrated Report of Surface Water Quality to prioritize coastal waters for studies and analysis when reviewing and revising the TSWQS. The TSWQS are established to protect designated uses of coastal waters, including protecting uses for recreational purposes and propagating and protecting terrestrial and aquatic life. The proposed rulemaking is consistent with the CMP’s policies for discharges of municipal and industrial wastewater to coastal waters and how they relate to specific activities and coastal natural resource areas.

Promulgation and enforcement of these rules would not violate or exceed any standards identified in the applicable CMP goals and policies because the proposed rules are consistent with these CMP goals and policies, because these rules do not create or have a direct or significant adverse effect on any coastal natural resource areas, and because the proposed rules do not create or have a direct or significant adverse effect on any coastal natural resource areas.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Hearing

The commission will hold a hybrid in-person and virtual public hearing on this proposal in Austin on May 2, 2022, at 10:00 a.m. in Building E, Room 2015, at the commission’s central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Individuals who plan to attend the hearing virtually and want to provide oral comments and/or want their attendance on record must register by April 29, 2022. To register for the hearing, please email Rules@tceq.texas.gov and provide the following information: your name, your affiliation, your email address, your phone number, and whether or not you plan to provide oral comments during the hearing. Instructions for participating in the hearing will be sent on April 29, 2022, to those who register for the hearing.

Members of the public who do not wish to provide oral comments but would like to view the hearing virtually may do so at no cost at:

https://teams.microsoft.com/l/meetup-join/19%3ameeting_Mm-U1N1MzOTA1YzdlMC00MGRkLTk2NGItOWNmOTZlOTdhZWE-Yy%40thread.v2/0?context=%7b%22tid%22%3a%22871a83a-4-a1ce-4b7a-8156-3bcd93a08fba%22%22oid%22%3a- %22e7a40e-69d4-469d-a8ef-06f29ac2a80%22%22is-BroadcastMeeting%22%3atru%7d&btype=a&role=a

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services, at (512) 239-1802 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: https://www6.tceq.texas.gov/rules/ecomments/. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2020-014-307-OW. The comment period closes on May 2, 2022. Copies of the proposed rulemaking can be obtained from the commission’s website at https://www.tceq.texas.gov/rules/propose_adopt.html. For further information, please contact Debbie Miller, Monitoring and Assessment Section, at (512) 239-1703.

Statutory Authority

The amendments are proposed under the authority of Texas Water Code (TWC), §5.102, which establishes the commission’s general authority necessary to carry out its jurisdiction; TWC, §5.103, which establishes the commission’s general authority to adopt rules; TWC, §5.105, which establishes the commission’s authority to set policy by rule; TWC, §5.120, which requires the commission to administer the law so as to promote the conservation and protection of the quality of the state’s environment and natural resources; TWC, §26.011, which authorizes the commission to establish the level of quality to be maintained in and control the quality of water in the state; TWC, §26.0135, which authorizes the commission to monitor and assess the water quality of each watershed and river basin in the state; TWC, §26.023, which authorizes the commission to set water quality standards for water in the state by rule; TWC, §26.027, which authorizes the commission to issue permits; TWC, §26.121, which provides the commission’s authority to prohibit unauthorized discharges; and 33 United States Code, §1313, which requires states to adopt water quality standards and review them at least once every three years.

The proposed amendments implement TWC, §26.023.

§307.2. Description of Standards.

(a) Contents of the Texas Surface Water Quality Standards.

(1) Section 307.1 of this title (relating to General Policy Statement) contains the general standards policy of the commission.

(2) This section lists the major sections of the standards, defines basin classification categories, describes justifications for standards modifications, and provides the effective dates of the rules.

(3) Section 307.3 of this title (relating to Definitions and Abbreviations) defines terms and abbreviations used in the standards.

(4) Section 307.4 of this title (relating to General Criteria) lists the general criteria that are applicable to all surface waters of the state unless specifically excepted in §307.8 of this title (relating to Application of Standards) or §307.9 of this title (relating to Determination of Standards Attainment).

(5) Section 307.5 of this title (relating to Antidegradation) describes the antidegradation policy and implementation procedures.
(6) Section 307.6 of this title (relating to Toxic Materials) establishes criteria and control procedures for specific toxic substances and total toxicity.

(7) Section 307.7 of this title (relating to Site-Specific Uses and Criteria) defines appropriate water uses and supporting criteria for site-specific standards.

(8) Section 307.8 of this title sets forth conditions when portions of the standards do not apply - such as in mixing zones or below critical low-flows.

(9) Section 307.9 of this title describes sampling and analytical procedures to determine standards attainment.

(10) Section 307.10 of this title (relating to Appendices A-G) lists site-specific standards and supporting information for classified segments (Appendices A and C), water bodies that are sole-source surface drinking water supplies (Appendix B), site-specific uses and criteria for unclassified water bodies (Appendix D), site-specific toxic criteria that may be derived for any water in the state (Appendix E), chlorophyll a criteria for selected reservoirs (Appendix F), and site-specific recreational uses and criteria for unclassified water bodies (Appendix G). Specific appendices are as follows:

(A) Appendix A - Site-specific Uses and Criteria for Classified Segments;

(B) Appendix B - Sole-source Surface Drinking Water Supplies;

(C) Appendix C - Segment Descriptions;

(D) Appendix D - Site-specific Uses and Criteria for Unclassified Water Bodies;

(E) Appendix E - Site-specific Toxic Criteria;

(F) Appendix F - Site-specific Nutrient Criteria for Selected Reservoirs; and

(G) Appendix G - Site-specific Recreational Uses and Criteria for Unclassified Water Bodies.

(b) Applicability. The Texas Surface Water Quality Standards apply to surface waters in the state - including wetlands.

(c) Classification of surface waters. The major surface waters of the state are classified as segments for purposes of water quality management and designation of site-specific standards. Classified segments are aggregated by basin, and basins are categorized as follows:

(1) River basin waters. Surface inland waters comprising the major rivers and their tributaries, including listed impounded waters and the tidal portion of rivers to the extent that they are confined in channels.

(2) Coastal basin waters. Surface inland waters, including listed impounded waters but exclusive of paragraph (1) of this subsection, discharging, flowing, or otherwise communicating with bays or the gulf, including the tidal portion of streams to the extent that they are confined in channels.

(3) Bay waters. All tidal waters, exclusive of those included in river basin waters, coastal basin waters, and gulf waters.

(4) Gulf waters. Waters that are not included in or do not form a part of any bay or estuary but that are a part of the open waters of the Gulf of Mexico to the limit of the state's jurisdiction.

(d) Modification of standards.

(1) The commission reserves the right to amend these standards following the completion of special studies.

(2) Any errors in water quality standards resulting from clerical errors or errors in data may be corrected by the commission through amendment of the affected standards. Water quality standards not affected by such clerical errors or errors in data remain valid until changed by the commission.

(3) The narrative provisions, presumed uses, designated uses, and numerical criteria of the Texas Surface Water Quality Standards may be amended for a specific water body to account for local conditions. A site-specific standard is an explicit amendment to this chapter, and adoption of a site-specific standard requires the procedures for public notice and hearing established under the Texas Water Code, §26.024 and §26.025. An amendment that establishes a site-specific standard requires a use-attainability analysis that demonstrates that reasonably attainable water-quality related uses are protected. Upon adoption, site-specific amendments to the standards will be listed in §307.10 of this title.

(4) Factors that may justify the development of site-specific standards are described in §307.4 and §§307.6 - 307.8 of this title.

(5) Temporary variance. When scientific information indicates that a site-specific standards amendment is justified, the commission may allow a corresponding temporary variance to the water quality standards in a permit for a discharge of wastewater or stormwater.

(A) A temporary variance is only applicable to an existing permitted discharge.

(B) A permittee may apply for a temporary variance prior to or during the permit application process. The temporary variance request must be included in a public notice during the permit application process. An opportunity for public comment is provided, and the request may be considered in any public hearing on the permit application.

(C) A temporary variance for a Texas Pollutant Discharge Elimination System permit also requires review and approval by the United States Environmental Protection Agency (EPA) during the permitting process.

(D) The permit must contain effluent limitations that protect existing uses and preclude degradation of existing water quality, and the term of the permit must not exceed three years. Effluent limitations that are needed to meet the existing standards are listed in the permit and are effective immediately as final permit effluent limitations in the succeeding permit, unless the permittee fulfills the requirements of the conditions for the variance in the permit.

(E) When the permittee has complied with the terms of the conditions in the temporary variance, then the succeeding permit may include a permit schedule to meet standards in accordance with subsection (f) of this section. The succeeding permit may also extend the temporary variance in accordance with subsection (f) of this section in order to allow additional time for a site-specific standard to be adopted in this chapter. This extension can be approved by the commission only after a site-specific study that supports a standards change is completed and the commission agrees the completed study supports a change in the applicable standard(s).

(F) Site-specific standards that are developed under a temporary variance must be expeditiously proposed and publicly considered for adoption at the earliest opportunity.

(e) Standards implementation procedures. Provisions for implementing the water quality standards are described in a document entitled Procedures to Implement the Texas Surface Water Quality Standards (RG-194) as amended and approved by the Texas Commission on Environmental Quality and EPA.
(f) Permit schedules to meet standards. Upon permit amendment or permit renewal, the commission may establish interim effluent limitations to allow a permittee time to modify effluent quality in order to attain final effluent limitations. The duration of any interim effluent limitations may not be longer than three years from the effective date of the permit issuance, except in accordance with a temporary variance as described in subsection (d)(5) of this section.

(g) Temporary standards. Where a criterion or designated use is not attained and cannot be attained for one or more of the reasons listed in 40 Code of Federal Regulations (CFR) §131.10(g), or to facilitate restoration or reconfiguration activities that preclude the attainment of the designated use or criterion, then a temporary standard for specific water bodies or permittees may be adopted in §307.10 of this title as an alternative to changing uses.

(1) A temporary standard identifies the interim numerical criteria or use that applies during the existence of the temporary standard. When a temporary standard is adopted for permittees or water bodies, the temporary standard may be expressed as one of the following:

(A) The interim effluent condition that reflects the greatest pollution reduction achievable; or

(B) The interim effluent condition that reflects the greatest pollutant reduction achievable with the pollutant control technologies installed at the time the temporary standard is adopted, and implementation of a remediation plan as specified in the Procedures to Implement the Texas Surface Water Quality Standards (RG-194).

(2) A temporary standard must be adopted in accordance with the provisions of subsection (d)(3) of this section. Once adopted by the commission and approved by EPA, a temporary standard is the applicable standard for the purposes of developing wastewater discharge permit limits and issuing certifications specified in the federal Clean Water Act, §401 and Chapter 279 of this title (relating to Water Quality Certification).

(3) Specific reasons and additional procedures for justifying a temporary standard are provided in the Procedures to Implement the Texas Surface Water Quality Standards (RG-194). A temporary standard must identify the water body or permittee to which the temporary standard applies. A temporary standard does not exempt any discharge from compliance with applicable technology-based effluent limits.

(4) A temporary standard must be reevaluated every five years at a minimum, which may be conducted through the permit process or a triennial review of the Texas Surface Water Quality Standards. If the reevaluation is not submitted to EPA within 30 days of completion, subsequent federal Clean Water Act activities will be evaluated using the applicable existing water quality standards.

(5) The term of a temporary standard is expressed as an interval of time from the date of EPA approval or a specific date cited in the temporary standard. If the continuance of a temporary standard is sufficiently justified, it can be renewed during revisions of the Texas Surface Water Quality Standards. When a temporary standard expires, subsequent discharge permits are issued to meet the applicable existing water quality standards.

(6) A temporary standard must preclude the degradation of existing water quality unless degradation is necessary to facilitate restoration or reconfiguration activities as specified in this section.

(h) Effective date of standards. Except as provided in 40 CFR §131.21 (EPA review and approval of water quality standards), this chapter becomes effective 20 days after the date the chapter is filed in the Office of the Secretary of State. As to actions covered by 40 CFR §131.21, the rules become effective upon approval by EPA.

(i) Effect of conflict or invalidity of rule.

(1) If any provision of this chapter or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the provisions contained in this chapter that can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

(2) To the extent of any irreconcilable conflict between provisions of this chapter and other rules of the commission, the provisions of this chapter supersedes.

§307.3. Definitions and Abbreviations.

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

(1) Acute toxicity--Toxicity that exerts a stimulus severe enough to rapidly induce an effect. The duration of exposure applicable to acute toxicity is typically 96 hours or less. Tests of total toxicity normally use lethality as the measure of acute impacts. (Direct thermal impacts are excluded from definitions of toxicity.)

(2) Ambient--Refers to the existing water quality in a particular water body.

(3) Aquatic vegetation--Refers to aquatic organisms, i.e., plant life, found in the water and includes phytoplankton; algae, both attached and floating; and vascular and nonvascular plants, both rooted and floating.

(4) Attainable use--A use that can be reasonably achieved by a water body in accordance with its physical, biological, and chemical characteristics whether it is currently meeting that use or not. Guidelines for the determination and review of attainable uses are provided in the standards implementation procedures. The designated use, existing use, or presumed use of a water body may not necessarily be the attainable use.

(5) Background--Refers to the water quality in a particular water body that would occur if that water body were relatively unaffected by human activities.

(6) Bedslope--Stream gradient, or the extent of the drop in elevation encountered as the stream flows downhill. One measure of bedslope is the elevation decline in meters over the stream distance in kilometers.

(7) Best management practices--Schedules of activities, maintenance procedures, and other management practices to prevent or reduce the pollution of water in the state from point and nonpoint sources, to the maximum extent practicable. Best management practices also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

(8) Bioaccumulative--Describes a chemical that is taken up by aquatic organisms from water directly or through the consumption of food containing the chemical.

(9) Bioaccumulation factor--A unitless value describing the degree to which a chemical can be concentrated in the tissues of an organism in the aquatic environment and that is absorbed through all routes of exposure, including the food chain. The bioaccumulation factor is the ratio of the concentration of a chemical in the tissue of an aquatic organism to the concentration of the chemical dissolved in ambient water at the site of sampling.
(10) [9] Bioconcentration factor--A unitless value describing the degree to which a chemical can be concentrated in the tissues of an organism in the aquatic environment and that is absorbed directly from the water. The bioconcentration factor is the ratio of a chemical's concentration in the tissue of an organism compared to that chemical's average concentration in the surrounding water.

(11) [10] Biological integrity--The species composition, diversity, and functional organization of a community of organisms in an environment relatively unaffected by pollution.

(12) [11] Biotic ligand model--A metal bioavailability model that uses receiving water body characteristics to develop site-specific water quality criteria.

(13) [12] Chronic toxicity--Toxicity that continues for a long-term period after exposure to toxic substances. Chronic exposure produces sub-lethal effects, such as growth impairment and reduced reproductive success, but it may also produce lethality. The duration of exposure applicable to the most common chronic toxicity test is seven days or more.

(14) [13] Classified--Refers to a water body that is listed and described in Appendices A and C of §307.10 of this title (relating to Appendices A - G). Site-specific uses and criteria for classified water bodies are listed in Appendix A of §307.10 of this title.

(15) [14] Coastal recreation waters--Marine coastal waters including oceans, coastal estuaries, and bays designated as primary contact recreation. Waters upstream of an unimpaired natural connection to the open sea or tidal inland waters are not considered coastal recreation waters (e.g., tidal rivers or streams).


(17) [16] Criteria--Water quality conditions that are to be met in order to support and protect desired uses, i.e., existing, designated, attainable, and presumed uses.

(18) [17] Critical low-flow--Low-flow condition that consists of the seven-day, two-year low-flow or the alternative low-flows for spring-fed streams as discussed in §307.8(a)(2) of this title (relating to Application of Standards) and below which some standards do not apply.

(19) [18] Designated use--A use that is assigned to specific water bodies in Appendix A, D, or G of §307.10 of this title (relating to Appendices A - G). Typical uses that may be designated for specific water bodies include domestic water supply, categories of aquatic life use, recreation categories, and aquifer protection.

(20) [19] Discharge permit--A permit issued by the state or a federal agency to discharge treated effluent or cooling water into waters of the state.

(21) [20] Dry weather flows--Sustained or typical dry, warm-weather flows between rainfall events, excluding unusual antecedent conditions of drought or wet weather.

(22) [21] EC₅₀--The concentration of a toxicant that produces an adverse effect on 50% of the organisms tested in a specified time period.

(23) [22] E. coli--Escherichia coli, a subgroup of fecal coliform bacteria that is present in the intestinal tracts and feces of warm-blooded animals. It is used as an indicator of the potential presence of pathogens.

(24) [23] Effluent--Wastewater discharged from any point source prior to entering a water body.

(25) [24] Enterococci--A subgroup of fecal streptococci bacteria (mainly Streptococcus faecalis and Streptococcus faecium) that is present in the intestinal tracts and feces of warm-blooded animals. It is used as an indicator of the potential presence of pathogens.

(26) [25] Epilimnion--The upper mixed layer of a lake (including impoundments, ponds, and reservoirs).

(27) [26] Existing use--A use that is currently being supported by a specific water body or that was attained on or after November 28, 1975.

(28) [27] Fecal coliform--A portion of the coliform bacteria group that is present in the intestinal tracts and feces of warm-blooded animals; heat tolerant bacteria from other sources can sometimes be included. It is used as an indicator of the potential presence of pathogens.

(29) [28] Freshwaters--Inland waters that exhibit no measurable elevation changes due to normal tides.

(30) [29] Halocline--A vertical gradient in salinity under conditions of density stratification that is usually recognized as the point where salinity exhibits the greatest difference in the vertical direction.

(31) [29] Harmonic mean flow--A measure of mean flow in a water course that is calculated by summing the reciprocals of the individual flow measurements, dividing this sum by the number of measurements, and then calculating the reciprocal of the resulting number.

(32) [30] Incidental fishery--A level of fishery that applies to water bodies that are not considered to have a sustainable fishery but do have an aquatic life use of limited, intermediate, high, or exceptional.

(33) [31] Industrial cooling impoundment--An impoundment that is owned or operated by, or in conjunction with, the water rights permittee, and that is designed and constructed for the primary purpose of reducing the temperature and removing heat from an industrial effluent.

(34) [32] Industrial cooling water area--A designated area associated with a permitted wastewater discharge where numerical temperature criteria are not applicable in accordance with conditions and requirements specified in §307.4(f) of this title (relating to General Criteria) and §307.8(b) of this title (relating to Application of Standards).

(35) [33] Intermittent stream--A stream that has a period of zero flow for at least one week during most years. Where flow records are available, a stream with a seven-day, two-year low-flow of less than 0.1 cubic feet per second is considered intermittent.

(36) [34] Intermittent stream with perennial pools--An intermittent stream that maintains persistent pools even when flow in the stream is less than 0.1 cubic feet per second.

(37) [35] LC₅₀--The concentration of a toxicant that is lethal (fatal) to 50% of the organisms tested in a specified time period.

(38) [36] Main pool station--A monitoring station that is located in the main body of a reservoir near the dam and not located in a cove or in the riverine portion or transition zone of a reservoir.

(39) [37] Method detection limit--The minimum concentration of a substance that can be measured and reported with 99% confidence that the analyte concentration is distinguishable from the method blank results [greater than zero] and is determined from analysis of a sample in a given matrix containing the analyte. The method
Detection limit is estimated in accordance with 40 Code of Federal Regulations Part 136, Appendix B.

(40) Minimum analytical level--The lowest concentration that a particular substance can be quantitatively measured with a defined accuracy and precision level using approved analytical methods. The minimum analytical level is not the published method detection limit for a United States Environmental Protection Agency-approved analytical method that is based on laboratory analysis of the substance in reagent (distilled) water. The minimum analytical level is based on analyses of the analyte in the matrix of concern (e.g., wastewater effluents). The commission establishes general minimum analytical levels that are applicable when information on matrix-specific minimum analytical levels is unavailable.

(41) Mixing zone--The area contiguous to a permitted discharge where mixing with receiving waters takes place and where specified criteria, as listed in §307.8(b)(1) of this title (relating to Application of Standards), can be exceeded. Acute toxicity to aquatic organisms is not allowed in a mixing zone, and chronic toxicity to aquatic organisms is not allowed beyond a mixing zone.

(42) Noncontact recreation--Activities that do not involve a significant risk of water ingestion, such as those with limited body contact incidental to shoreline activity, including birding, hiking, and biking. Noncontact recreation use may also be assigned where primary and secondary contact recreation activities should not occur because of unsafe conditions, such as ship and barge traffic.

(43) Nonpersistent--Describes a toxic substance that readily degrades in the aquatic environment, exhibits a half-life of less than 60 days, and does not have a tendency to accumulate in organisms.

(44) Nutrient criteria--Numeric and narrative criteria that are established to protect surface waters from excessive growth of aquatic vegetation. Nutrient numeric criteria for reservoirs are expressed in terms of chlorophyll a concentration per unit volume as a measure of phytoplankton density.

(45) Nutrient--A chemical constituent, most commonly a form of nitrogen or phosphorus, that in excess can contribute to the undesirable growth of aquatic vegetation and impact uses as defined in this title.

(46) Oyster waters--Waters producing edible species of clams, oysters, or mussels.

(47) Persistent--Describes a toxic substance that is not readily degraded and exhibits a half-life of 60 days or more in an aquatic environment.

(48) Pollution--The alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water in the state that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property or to the public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.

(49) Point source--Any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants or wastes are or may be discharged into or adjacent to any water in the state.

(50) Pre-production plastic--Pellet (nurdle), powder, flake, and powdered additive forms of pre-consumer plastic resin (virgin and recycled), consisting of organic polymers and additives, which are handled (including, but not limited to, produced, received, or stored) at a regulated facility.

(51) Presumed use--A use that is assigned to generic categories of water bodies (such as perennial streams). Presumed uses are superseded by designated uses for individual water bodies in Appendix A, D, or G of §307.10 of this title (relating to Appendices A - G).

(52) Primary contact recreation 1--Activities that are presumed to involve a significant risk of ingestion of water (e.g., wading by children, swimming, water skiing, diving, tubing, surfing, handfishing as defined by Texas Parks and Wildlife Code, §66.115, and the following whitewater activities: kayaking, canoeing, and rafting).

(53) Primary contact recreation 2--Water recreation activities, such as wading by children, swimming, water skiing, diving, tubing, surfing, handfishing as defined by Texas Parks and Wildlife Code, §66.115, and whitewater kayaking, canoeing, and rafting, that involve a significant risk of ingestion of water but that occur less frequently than for primary contact recreation 1 due to:

(A) physical characteristics of the water body; or
(B) limited public access.

(54) Protection zone--Any area within the watershed of a sole-source surface drinking water supply that is:

(A) within two miles of the normal pool elevation of a body of surface water that is a sole-source surface drinking water supply;
(B) within two miles of that part of a perennial stream that is:
   (i) a tributary of a sole-source surface drinking water supply; and
   (ii) within three linear miles upstream of the normal pool elevation of a sole-source surface drinking water supply; or
(C) within two miles of that part of a stream that is a sole-source surface drinking water supply, extending three linear miles upstream from the water supply intake (Texas Water Code, §26.0286).

(55) Public drinking water supply--A water body designated to provide water to a public water system as defined in Chapter 290 of this title (relating to Public Drinking Water).

(56) Saltwater--A coastal water that has a measurable elevation change due to normal tides. In the absence of tidal information, saltwater is generally considered to be a coastal water that typically has a salinity of two parts per thousand or greater in a significant portion of the water column.

(57) Salinity--The total dissolved solids in water after all carbonates have been converted to oxides, all bromide and iodide have been replaced by chloride, and all organic matter has been oxidized. For most purposes, salinity is considered equivalent to total dissolved salt content. Salinity is usually expressed in parts per thousand.

(58) Seagrass propagation--A water-quality-related existing use that applies to saltwater with significant stands of submerged seagrass.

(59) Secondary contact recreation 1--Activities that commonly occur but have limited body contact incidental to shoreline activity (e.g. fishing, canoeing, kayaking, rafting, and motor boating). These activities are presumed to pose a less significant risk of water ingestion than primary contact recreation 1 or 2 but more than secondary contact recreation 2.
Secondary contact recreation--Activities with limited body contact incidental to shoreline activity (e.g., fishing, canoeing, kayaking, rafting, and motor boating) that are presumed to pose a less significant risk of water ingestion than secondary contact recreation. These activities occur less frequently than secondary contact recreation due to physical characteristics of the water body or limited public access.

Segment--A water body or portion of a water body that is individually defined and classified in Appendices A and C of §307.10 of this title (relating to Appendices A - G) in the Texas Surface Water Quality Standards. A segment is intended to have relatively homogeneous chemical, physical, and hydrological characteristics. A segment provides a basic unit for assigning site-specific standards and for applying water quality management programs of the agency. Classified segments may include streams, rivers, bays, estuaries, wetlands, lakes, or reservoirs.

Settleable solids--The volume or weight of material that settles out of a water sample in a specified period of time.

Seven-day, two-year low-flow (7Q2)--The lowest average stream flow for seven consecutive days with a recurrence interval of two years, as statistically determined from historical data. As specified in §307.8 of this title, some water quality standards do not apply at stream flows that are less than the 7Q2 flow.

Shellfish--Clams, oysters, mussels, crabs, crayfish, lobsters, and shrimp.

Sole-source surface drinking water supply--A body of surface water that is identified as a public water supply in rules adopted by the commission under Texas Water Code, §26.023 and is the sole source of supply of a public water supply system, exclusive of emergency water connections (Texas Water Code, §26.0286).

Standard Methods for the Examination of Water and Wastewater--A document describing sampling and analytical procedures that is published by the American Public Health Association, American Water Works Association, and Water Environment Federation. The most recent edition of this document is to be followed whenever its use is specified by this chapter.

Standards--Desirable uses (i.e., existing, attainable, designated, or presumed uses as defined in this section) and the narrative and numerical criteria deemed necessary to protect those uses in surface waters.

Standards implementation procedures--Methods and protocols in the guidance document Procedures to Implement the Texas Surface Water Quality Standards (RG-194), as amended and approved by the commission and EPA.

Stormwater--Rainfall runoff, snow melt runoff, surface runoff, and drainage.

Stormwater discharge--A point source discharge that is composed entirely of stormwater associated with an industrial activity, a construction activity, a discharge from a municipal separate storm sewer system, or other discharge designated by the agency.

Stream order--A classification of stream size, where the smallest, unbranched tributaries of a drainage basin are designated first order streams. Where two first order streams join, a second order stream is formed; where two second order streams join, a third order stream is formed, etc. For purposes of water quality standards application, stream order is determined from United States Geological Survey topographic maps with a scale of 1:24,000.

Surface water in the state--Lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, wetlands, marshes, inlets, canals, the Gulf of Mexico inside the territorial limits of the state as defined in the Texas Water Code, §26.001, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or nonnavigable, and including the beds and banks of all water-courses and bodies of surface water, that are wholly or partially inside or bordering the state or subject to the jurisdiction of the state; except that waters in treatment systems that are authorized by state or federal law, regulation, or permit, and that are created for the purpose of waste treatment are not considered to be water in the state.

Sustainable Fisheries--Descriptive of water bodies that potentially have sufficient fish production or fishing activity to create significant long-term human consumption of fish. Sustainable fisheries include perennial streams and rivers with a stream order of three or greater; lakes and reservoirs greater than or equal to 150 acre-feet or 50 surface acres; all bays, estuaries, and tidal rivers. Water bodies that are presumed to have sustainable fisheries include all designated segments listed in Appendix A of §307.10 of this title (relating to Appendices A - G) unless specifically exempted.

The deepest portion of a stream or river channel cross-section.

Tidal--Descriptive of coastal waters that are subject to the ebb and flow of tides. For purposes of standards applicability, tidal waters are considered to be saltwater. Classified tidal waters include all bays and estuaries with a segment number that begins with 24xx, all streams with the word tidal in the segment name, and the Gulf of Mexico.

To discharge--Includes to deposit, conduct, drain, emit, throw, run, allow to seep, or otherwise release or dispose of, or to allow, permit, or suffer any of these acts or omissions.

Total dissolved solids--The amount of material (inorganic salts and small amounts of organic material) dissolved in water and commonly expressed as a concentration in terms of milligrams per liter. The term is equivalent to the term filterable residue, as used in 40 Code of Federal Regulations Part 136 and in previous editions of the publication entitled, Standard Methods for the Examination of Water and Wastewater.

Total maximum daily load (TMDL)--The total amount of a substance that a water body can assimilate and still meet the Texas Surface Water Quality Standards.

Total suspended solids--Total suspended matter in water, which is commonly expressed as a concentration in terms of milligrams per liter. The term is equivalent to nontotal suspended solids, as used in 40 Code of Federal Regulations Part 136 and in previous editions of the publication entitled, Standard Methods for the Examination of Water and Wastewater.

Total toxicity--Toxicity as determined by exposing aquatic organisms to samples or dilutions of instream water or treated effluent. Also referred to as whole effluent toxicity or biomonitoring.

Toxic equivalency factor--A factor to describe an order-of-magnitude consensus estimate of the toxicity of a compound relative to the toxicity of 2,3,7,8-tetrachlorodibenzo-p-dioxin (2,3,7,8-TCDD). The factor is applied to transform various concentrations of dioxins and furans or dioxin-like polychlorinated biphenyls into equivalent concentrations of 2,3,7,8-TCDD, expressed as a toxic equivalency.
Toxic equivalency--The sum of the products from the concentration of each dioxin and furan, or dioxin-like polychlorinated biphenyl congener, multiplied by its respective toxic equivalency factor to give a single 2,3,7,8-tetrachlorodibenzo-p-dioxin equivalent.

Toxicity--The occurrence of adverse effects to living organisms due to exposure to toxic materials. Adverse effects caused by conditions of temperature and dissolved oxygen are excluded from the definition of toxicity. With respect to the provisions of §307.6(e) of this title (relating to Toxic Materials), which concerns total toxicity and biomonitoring requirements, adverse effects caused by concentrations of dissolved salts (such as sodium, potassium, calcium, chloride, carbonate) in source waters are excluded from the definition of toxicity. Source water is defined as surface water or groundwater that is used as a public water supply or industrial water supply (including a cooling-water supply). Source water does not include brine water that is produced during the extraction of oil and gas, or other sources of brine water that are substantially uncharacteristic of surface waters in the area of discharge. In addition, adverse effects caused by concentrations of dissolved salts that are added to source water by industrial processes are not excluded from the requirements of §307.6(e) of this title, except as specifically noted in §307.6(e)(2)(B) of this title, which concerns requirements for toxicity testing of 100% effluent. This definition of toxicity does not affect the standards for dissolved salts in this chapter other than §307.6(e) of this title. The standards implementation procedures contain provisions to protect surface waters from adverse effects of dissolved salts and methods to address the effects of dissolved salts on total toxicity tests.

Toxicity biomonitoring--The process or act of determining total toxicity. Documents that describe procedures for toxicity biomonitoring are cited in §307.6 of this title (relating to Toxic Materials). Also referred to simply as biomonitoring.

Water-effect ratio (WER)--The WER is calculated as the toxic concentration (LC50) of a substance in water at a particular site, divided by the toxic concentration of that substance as reported in laboratory dilution water. The WER can be used to establish site-specific acute and chronic criteria to protect aquatic life. The site-specific criterion is equal to the WER times the statewide aquatic life criterion in §307.6(e) of this title.

Water quality management program--The agency's overall program for attaining and maintaining water quality consistent with state standards, as authorized under the Texas Water Code, the Texas Administrative Code, and the federal Clean Water Act, §§106, 205(j), 208, 303(e) and 314 (33 United States Code, §§1251 et seq.).

Wetland--An area (including a swamp, marsh, bog, prairie pothole, or similar area) having a predominance of hydric soils that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support and that under normal circumstances supports the growth and regeneration of hydrophytic vegetation. The term "hydric soil" means soil that, in its undrained condition, is saturated, flooded, or ponded long enough during a growing season to develop an anaerobic condition that supports the growth and regeneration of hydrophytic vegetation. The term "hydrophytic vegetation" means a plant growing in: water or a substrate that is at least periodically deficient in oxygen during a growing season as a result of excessive water content. The term "wetland" does not include irrigated acreage used as farmland; a man-made wetland of less than one acre; or a man-made wetland where construction or creation commenced on or after August 28, 1989, and that was not constructed with wetland creation as a stated objective, including but not limited to an impoundment made for the purpose of soil and water conservation that has been approved or requested by soil and water conservation districts. If this definition of wetland conflicts with the federal definition in any manner, the federal definition prevails.

Wetland water quality functions--Attributes of wetlands that protect and maintain the quality of water in the state, which include stormwater storage and retention and the moderation of extreme water level fluctuations; shoreline protection against erosion through the dissipation of wave energy and water velocity, and anchoring of sediments; habitat for aquatic life; and removal, transformation, and retention of nutrients and toxic substances.

Zone of initial dilution--The small area at the immediate point of a permitted discharge where initial dilution with receiving waters occurs and that may not meet certain criteria applicable to the receiving water. A zone of initial dilution is substantially smaller than a mixing zone.

Abbreviations. The following abbreviations apply to this chapter:

1. ALU--aquatic life.
2. AP--aquifer protection.
3. AS--agricultural water supply.
5. BAF--Bioaccumulation factor.
6. BCF--Bioconcentration factor.
7. CASRN--Chemical Abstracts Service Registry number.
9. cfs--cubic feet per second.
10. Cl--chloride.
11. CR--county road.
12. DO--dissolved oxygen.
14. EPA--United States Environmental Protection Agency.
15. degrees F--degrees Fahrenheit.
16. FM--Farm to Market Road.
17. ft/s--feet per second.
19. HEAST--Health Effects Assessment Summary Tables.
20. I--intermediate aquatic life use.
22. IH--Interstate Highway.
23. IRIS--Integrated Risk Information System.
24. IS--industrial water supply.
25. km--kilometer.
26. L--limited aquatic life use.
27. M--minimal aquatic life use.
28. m--multiplier.
§307.4. General Criteria.

(a) Application. The general criteria set forth in this section apply to surface water in the state and specifically apply to substances attributed to waste discharges or human activities. General criteria do not apply to those instances when surface water, as a result of natural phenomena, exhibit characteristics beyond the limits established by this section. General criteria are superseded by specific exemptions stated in this section or in §307.8 of this title (relating to the Application of Standards), or by site-specific water quality standards for classified segments. Provisions of the general criteria remain in effect in mixing zones or below critical low-flow conditions unless specifically exempted in §307.8 of this title.

(b) Aesthetic parameters.

(1) Concentrations of taste and odor producing substances must not interfere with the production of potable water by reasonable water treatment methods, impart unpalatable flavor to food fish including shellfish, result in offensive odors arising from the waters, or otherwise interfere with the reasonable use of the water in the state.

(2) Surface water must be essentially free of floating debris and suspended solids that are conducive to producing adverse responses in aquatic organisms or putrescible sludge deposits or sediment layers that adversely affect benthic biota or any lawful uses.

(3) Surface waters must be essentially free of settleable solids conducive to changes in flow characteristics of stream channels or the unmitigating filling of surface water in the state. This provision does not prohibit dredge and fill activities that are permitted in accordance with the Federal Clean Water Act.

(4) Surface waters must be maintained in an aesthetically attractive condition.

(5) Waste discharges must not cause substantial and persistent changes from ambient conditions of turbidity or color.

(6) No foaming or frothing of a persistent nature is permissible.

(7) Surface waters must be maintained so that oil, grease, or related residue do not produce a visible film or sheen of oil or globules of grease on the surface or coat the banks or bottoms of the watercourse; or cause toxicity to man, aquatic life, or terrestrial life in accordance with subsection (d) of this section.

(8) There shall be no discharge of visible pre-production plastic. For the purposes of this paragraph, visible means able to be seen by the naked eye without special equipment. This prohibition applies to individual and general TPDES permit authorizations held by plastic manufacturers, formers/molders, and facilities that otherwise handle pre-production plastic. Facilities that handle pre-production plastic must implement best management practices as defined in §307.5(a)(7) to eliminate discharges of visible pre-production plastic in stormwater through the implementation of control measures such as the following, where determined feasible (list not exclusive): minimizing spills, cleaning up spills promptly and thoroughly, sweeping and/or vacuuming thoroughly, and pellet capturing.

(c) Radiological substances. Radioactive materials must not be discharged in excess of the amount regulated by Chapter 336 of this title (relating to Radioactive Substance Rules).

(d) Toxic substances. Surface waters must not be toxic to man from ingestion of water, consumption of aquatic organisms, or contact with the skin, or to terrestrial or aquatic life. Additional requirements and criteria for toxic substances are specified in §307.6 of this title (relating to Toxic Materials). Criteria to protect aquatic life from acute toxicity apply to all surface waters in the state except as specified in §307.8(a)(3) of this title. Criteria to protect aquatic life from chronic toxicity apply to surface waters with an aquatic life use of limited, intermediate, high, or exceptional as designated in §307.10 of this title (relating to Appendices A - G) or as determined on a case-by-case basis in accordance with subsection (l) of this section. Toxic criteria to protect human health for consumption of fish apply to waters with a sustainable or incidental fishery, as described in §307.6(d) of this title.
Additional criteria apply to water in the state with a public drinking water supply use, as described in §307.6(d) of this title. The general provisions of this subsection do not change specific provisions in §307.8 of this title for applying toxic criteria.

(c) Nutrients. Nutrients from permitted discharges or other controllable sources must not cause excessive growth of aquatic vegetation that impairs an existing, designated, presumed, or attainable use. Site-specific nutrient criteria, nutrient permit limitations, or separate rules to control nutrients in individual watersheds are established where appropriate after notice and opportunity for public participation and proper hearing. Site-specific numeric criteria related to chlorophyll a are listed in Appendix F of §307.10 of this title.

(f) Temperature. Consistent with §307.1 of this title (relating to General Policy Statement) and in accordance with state water right permits, temperature in industrial cooling impoundments, industrial cooling water areas, and all other surface water in the state must be maintained so as to not interfere with the reasonable use of such waters. Numerical temperature criteria have not been specifically established for industrial cooling impoundments, which in most areas of the state contribute to water conservation and water quality objectives. In addition, numerical criteria for temperature are not applicable in designated industrial cooling water areas, as defined in §307.3 of this title (relating to Definitions and Abbreviations). The horizontal boundaries of an industrial cooling water area must be defined in the applicable wastewater permit. The following temperature criteria, expressed as a maximum temperature differential (rise over ambient) are established except for industrial cooling impoundments, temperature elevations due to discharges of treated domestic (sanitary) effluent, and temperature elevations within designated mixing zones or industrial cooling water areas. The maximum temperature differentials are:

1. freshwater streams: 5 degrees Fahrenheit (degrees F);
2. freshwater lakes and impoundments: 3 degrees F; and
3. tidal river reaches, bay, and gulf waters: 4 degrees F in fall, winter, and spring, and 1.5 degrees F in summer (June, July, and August).

(4) Additional temperature criteria (expressed as maximum temperatures) for classified segments are specified in Appendix A of §307.10 of this title. These criteria are not applicable within industrial cooling water areas.

(g) Salinity.

1. Concentrations and the relative ratios of dissolved minerals such as chloride, sulfate, and total dissolved solids must be maintained such that existing, designated, presumed, and attainable uses are not impaired.
2. Criteria for chloride, sulfate, and total dissolved solids for classified freshwater segments are specified in Appendix A of §307.10 of this title.
3. Salinity gradients in estuaries must be maintained to support attainable estuarine dependent aquatic life uses. Numerical salinity criteria for Texas estuaries have not been established because of the high natural variability of salinity in estuarine systems, and because long-term studies by state agencies to assess estuarine salinities are still ongoing. Absence of numerical criteria must not preclude evaluations and regulatory actions based on estuarine salinity, and careful consideration must be given to all activities that may detrimentally affect salinity gradients.

(h) Aquatic life uses and dissolved oxygen.

(1) Dissolved oxygen concentrations must be sufficient to support existing, designated, presumed, and attainable aquatic life uses. Aquatic-life use categories and corresponding dissolved oxygen criteria are described in §307.7(b)(3) of this title (relating to Site-Specific Uses and Criteria).

(2) Aquatic life use categories and dissolved oxygen criteria for classified segments are specified in Appendix A of §307.10 of this title. Aquatic life use categories and dissolved oxygen criteria for other specific water bodies are specified in Appendix D of §307.10 of this title. Where justified by sufficient site-specific information, dissolved oxygen criteria that differ from §307.7(b)(3) of this title may be adopted for a particular water body in §307.10 of this title.

(3) Perennial streams, rivers, lakes, bays, estuaries, and other appropriate perennial waters that are not specifically listed in Appendix A or D of §307.10 of this title are presumed to have a high aquatic life use and corresponding dissolved oxygen criteria. Applicable dissolved oxygen criteria are described in §307.7(b)(3)(A) of this title. Higher uses are protected where they are attainable.

(4) When water is present in the streambed of intermittent streams, a 24-hour dissolved oxygen mean of at least 2.0 mg/L and 24-hour minimum dissolved oxygen concentration of 1.5 mg/L must be maintained. Intermittent streams that are not specifically listed in Appendix A or D of §307.10 of this title are considered to have a minimal aquatic life use except as indicated below in this subsection. For intermittent streams with seasonal aquatic life uses, dissolved oxygen concentrations commensurate with the aquatic life uses must be maintained during the seasons when the aquatic life uses occur. Unclassified intermittent streams with perennial pools are presumed to have a limited aquatic life use and corresponding dissolved oxygen criteria. Higher uses are protected where they are attainable.

(i) Aquatic life uses and habitat. Vegetative and physical components of the aquatic environment must be maintained or mitigated to protect aquatic life uses. Procedures to protect habitat in permits for dredge and fill are specified in Federal Clean Water Act, §404 and in Chapter 279 of this title (relating to Water Quality Certification).

(j) Aquatic recreation.

1. Existing, designated, presumed, and attainable uses of aquatic recreation must be maintained, as determined by criteria that indicate the potential presence of pathogens. Categories of recreation and applicable criteria are established in §307.7(b)(1) of this title.

2. Recreational use categories and criteria for classified segments are specified in Appendix A of §307.10 of this title. Site-specific recreational use categories and criteria for selected unclassified water bodies are specified in Appendix G of §307.10 of this title. Where justified by sufficient site-specific information, recreational uses and criteria that differ from §307.7(b)(1) of this title may be adopted for a particular water body in §307.10 of this title. For water bodies not specifically listed in Appendix A or Appendix G of §307.10 of this title, the following recreational uses are presumed to apply.

(A) Primary contact recreation 1. Primary contact recreation 1 is presumed for lakes, reservoirs, and tidal water bodies. Primary contact recreation 1 is presumed to apply to intermittent streams, intermittent streams with perennial pools, nontidal wetlands, and perennial freshwater streams and rivers, except where site-specific information indicates that recreational activities that involve a significant risk of ingestion have little to no likelihood of occurring, in accordance with subparagraph (C) of this paragraph.

(B) Primary contact recreation 2. No water body is presumed to have a use of primary contact recreation 2. This use is applicable when designated for an individual water body as listed in Ap-
Appendix A or G in §307.10 of this title. Primary contact recreation 2 applies to water bodies where water recreation activities that involve a significant risk of ingestion of water occur, but less frequently than for primary contact recreation 1 due to:

(i) physical characteristics of the water body; or

(ii) limited public access.

(C) Secondary contact recreation 1. Secondary contact recreation 1 applies to water bodies where water recreation can occur, but the nature of the recreation does not involve a significant risk of ingestion. Secondary contact recreation 1 applies to intermittent and perennial freshwaters where site-specific information demonstrates that primary contact recreation 1 or 2 have little to no likelihood of occurring. At a minimum, the following characteristics must be demonstrated for a presumed use of secondary contact recreation 1 to apply:

(i) during dry weather flows, the average depth at the thalweg (mid-channel) is less than 0.5 meters and there are not substantial pools with a depth of 1 meter or greater; and

(ii) there are no existing recreational activities that create a significant risk of ingestion or uses for primary contact recreation 1 or 2.

(D) Secondary contact recreation 2. Secondary contact recreation 2 applies to water bodies where water recreation activities do not involve a significant risk of water ingestion and where activities occur less frequently than for secondary contact recreation 1 due to physical characteristics of the water body or limited public access. No water body is presumed to have a use of secondary contact recreation 2. This use is applicable when designated for an individual water body as listed in Appendix A or G in §307.10 of this title.

(E) Noncontact recreation. Noncontact recreation applies to water bodies where recreation activities do not involve a significant risk of water ingestion and where primary and secondary contact recreation uses should not occur because of unsafe conditions. No water body is presumed to have a use of noncontact recreation. This use is applicable when designated for an individual water body as listed in Appendix A or G in §307.10 of this title.

(3) Assigning recreational uses to an unclassified water body.

(A) Applying presumed uses. Recreational uses and associated numerical criteria are assigned to an unclassified water body in accordance with the presumed uses and guidelines established in paragraph (2) of this subsection. To assign uses other than primary contact recreation 1, a reasonable level of inquiry is conducted to determine if a different presumed use is appropriate for a particular water body. A reasonable level of inquiry includes review of available relevant information or completed site surveys.

(B) Assigning presumed uses. Presumed uses of primary contact recreation 1 and secondary contact recreation 1 can be assigned to an individual water body for regulatory action without individually designating the recreational use and criteria in Appendix G in §307.10 of this title. Regulatory action may include issuing Texas Pollutant Discharge Elimination System permits, revising the list of impaired water bodies under federal Clean Water Act, §303(d), or setting and implementing a total maximum daily load. The presumed secondary contact recreation 1 use is included in the public notice of a regulatory action that could affect recreational water quality, and the assigned recreational uses are subject to applicable public comment and approval by the United States Environmental Protection Agency (EPA). For tracking purposes, presumed recreational uses that have been determined to be less stringent than primary contact recreation 1 are noted in a publicly available list such as the EPA’s Water Quality Standards Repository prior to a water quality standards revision. Presumed uses that have been determined for particular water bodies are listed in Appendix G in §307.10 of this title when the water quality standards are revised.

(C) Assigning a use less stringent than presumed use. A recreational use that is less stringent than the applicable presumed use can only be assigned to an individual water body for a regulatory action after that use is approved by the EPA and designated in Appendix A or G in §307.10 of this title. Support for designating a use less stringent than an applicable presumed use requires a use-attainability analysis (UAA). 40 Code of Federal Regulations §131.10(g) §131.10(g) lists six reasons for a change in use in a water body. At least one of these reasons must be included in the UAA.

(k) Antidegradation. Nothing in this section is intended to be construed or otherwise used to supersede the requirements of §307.5 of this title (relating to Antidegradation).

(l) Assessment of unclassified waters for aquatic life uses. Waters that are not specifically listed in Appendices A or D of §307.10 of this title are assigned the specific uses that are attainable or characteristic of those waters. Upon administrative or regulatory action by the commission that affects a particular unclassified water body, the characteristics of the affected water body must be reviewed by the commission to determine which aquatic life uses are appropriate. Additional uses so determined must be indicated in public notices for discharge applications. Uses that are not applicable throughout the year in a particular unclassified water body are assigned and protected for the seasons where such uses are attainable. Initial determinations of use are considered preliminary, and in no way preclude redeterminations of use in public hearings conducted under the provisions of the Texas Water Code. For unclassified waters where the presumed minimum uses or criteria specified in this section are inappropriate, site-specific standards may be developed in accordance with §307.2(d) of this title (relating to Description of Standards). Uses and criteria are assigned in accordance with this section and with §307.7(b)(3) of this title. Procedures for assigning uses and criteria are described in the standards implementation procedures.

(m) pH. Consistent with §307.1 of this title, pH levels in all surface water in the state must be maintained so as to not interfere with the reasonable use of such waters.


(a) Application. The toxic criteria set forth in this section apply to surface water in the state and specifically apply to substances attributed to waste discharges or human activity. With the exception of numeric human health criteria, toxic criteria do not apply to those instances where surface water, solely as a result of natural phenomena, exhibit characteristics beyond the limits established by this section. Standards and procedures set forth in this section are applied in accordance with §307.8 of this title (relating to Application of Standards) and §307.9 of this title (relating to Determination of Standards Attainment).

(b) General provisions.

(1) Water in the state must not be acutely toxic to aquatic life in accordance with §307.8 of this title.

(2) Water in the state with designated or existing aquatic life uses of limited or greater must not be chronically toxic to aquatic life, in accordance with §307.8 of this title.

(3) Water in the state must be maintained to preclude adverse toxic effects on human health resulting from contact recreation, consumption of aquatic organisms, consumption of drinking water or
any combination of the three. Water in the state with sustainable fish-
eries or public drinking water supply uses must not exceed applicable
human health toxic criteria, in accordance with subsection (d) of this
section and §307.8 of this title.

(4) Water in the state must be maintained to preclude ad-
verse toxic effects on aquatic life, terrestrial life, livestock, or domes-
tic animals, resulting from contact, consumption of aquatic organisms,
consumption of water, or any combination of the three.

(c) Specific numerical aquatic life criteria.

(1) Numerical criteria are established in Table 1 of this
paragraph for those specific toxic substances where adequate toxicity
information is available and that have the potential for exerting adverse
impacts on water in the state.
Figure: 30 TAC §307.6(c)(1)

(2) Numerical criteria are based on ambient water qual-
ity criteria documents published by the EPA. EPA guidance criteria
have been appropriately recalculated to eliminate the effects of toxic-
ity data for aquatic organisms that are not native to Texas, in accor-
dance with procedures in the EPA guidance documents entitled Guide-
lines for Deriving Numerical Site-Specific Water Quality Criteria (EPA
600/3-84-099) and Revised Deletion Process for the Site-Specific Re-
calulation Procedure for Aquatic Life Criteria (EPA-823-R-13-001).
Additional EPA guidelines that may be used to establish aquatic life
criteria are detailed in the guidance documents.

(3) Specific numerical acute aquatic life criteria are applied
as 24-hour averages, and specific numerical chronic aquatic life criteria
are applied as seven-day averages.

(4) Ammonia and chlorine toxicity are addressed by total
toxicity (biomonitourcing) requirements in subsection (e) of this section.

(5) Specific numerical aquatic life criteria for metals and
metaloids in Table 1 of paragraph (1) of this subsection apply to dis-
solved concentrations where noted. Dissolved concentrations can be
estimated by filtration of samples prior to analysis, or by converting
from total recoverable measurements in accordance with procedures
approved by the commission in the standards implementation proce-
dures (RG-194) as amended. Specific numerical aquatic life criteria
for non-metallic substances in Table 1 of paragraph (1) of this subsec-
tion apply to total recoverable concentrations unless otherwise noted.

(6) Specific numerical acute criteria for toxic substances
are applicable to all water in the state except for small zones of initial
dilution (ZIDs) at discharge points. Acute criteria may be exceeded
within a ZID and below extremely low streamflow conditions (one-
fourth of critical low-flow conditions) in accordance with §307.8 of
this title. There must be no lethality to aquatic organisms that move
through a ZID, and the sizes of ZIDs are limited in accordance with
§307.8 of this title. Specific numerical chronic criteria are applicable
to all water in the state with designated or existing aquatic life uses
of limited or greater, except inside mixing zones and below critical
low-flow conditions, in accordance with §307.8 of this title.

(7) For toxic materials where specific numerical criteria are
not listed in Table 1 of paragraph (1) of this subsection, the appropri-
ate criteria for aquatic life protection may be derived in accordance with
current EPA guidelines for deriving site-specific water quality criteria.
When insufficient data are available to use EPA guidelines, the follow-
ing provisions are applied in accordance with this section and §307.8 of
this title. The LC₅₀ data used in the subsequent calculations are typi-
cally obtained from traditional laboratory studies; however, if LC₅₀ data
are unavailable or incomplete, other methodologies (such as quantita-
tive structure-activity relationships) may be used:

(A) acute criteria are calculated as 0.3 of the LC₅₀ of the
most sensitive aquatic species; LC₅₀ × (0.3) = acute criteria;

(B) concentrations of nonpersistent toxic materials
must not exceed concentrations that are chronically toxic as deter-
mined from appropriate chronic toxicity data obtained in accordance
with procedures in the EPA guidance document entitled Guidelines for
Deriving Numerical National Water Quality Criteria for the Protection
of Aquatic Life and Their Uses (EPA 822-R-85-100) or calculated as
0.1 of acute LC₅₀ values to the most sensitive aquatic species; LC₅₀ × (0.1) = chronic criteria;

(C) concentrations of persistent toxic materials that do
not bioaccumulate shall not exceed concentrations that are chronically
toxic as determined from appropriate chronic toxicity data obtained in
accordance with procedures in the EPA guidance document entitled Guidelines for
Deriving Numerical National Water Quality Criteria for the Protection
of Aquatic Life and Their Uses (EPA 822-R-85-100) or calculated as 0.05 of LC₅₀ values to the most sensitive aquatic species; LC₅₀ × (0.05) = chronic criteria;

(D) concentrations of toxic materials that bioaccumu-
late must not exceed concentrations that are chronically toxic as deter-
mined from appropriate chronic toxicity data obtained in accordance
with procedures in the EPA guidance document entitled Guidelines for
Deriving Numerical National Water Quality Criteria for the Protection
of Aquatic Life and Their Uses (EPA 822-R-85-100) or calculated as
0.01 of LC₅₀ values to the most sensitive aquatic species; LC₅₀ × (0.01) = chronic criteria.

(8) For toxic substances where the relationship of toxicity
is defined as a function of pH or hardness, numerical criteria are pre-
SENTED as an equation based on this relationship. Site-specific values
for each segment are given in the standards implementation procedures
(RG-194) as amended.

(9) Criteria for most metals are multiplied by a water-effect
ratio (WER) in order to incorporate the effects of local water chem-
istry on toxicity. The WER is assumed to be equal to one except where
sufficient site-specific data are available to determine the WER for a
particular water body or portion of a water body. A WER is only appli-
cable to those portions of a water body that are adequately addressed
by site-specific data. WERs that have been determined for particular
water bodies are listed in Appendix E of §307.10 of this title (relating
to Appendices A–G) when standards are revised. A site-specific WER
that affects an effluent limitation in a wastewater discharge permit,
and that has not been incorporated into Appendix E of §307.10 of this title,
must be noted in a public notice during the permit application process.
An opportunity for public comment must be provided, and the WER
may be considered in any public hearing on the permit application.

(10) Freshwater copper aquatic-life criteria include a multi-
plier (m) to incorporate effects of local water chemistry on toxicity.
Site-specific criteria may be based on either a WER or a biotic ligand
model. The WER multiplier is assumed to be equal to one except where
sufficient site-specific data are available to determine the multiplier for
a particular water body or portion of a water body. The WER multi-
plier or biotic ligand model result is only applicable to those portions of
a water body that are adequately addressed by site-specific data. The
biotic ligand model is based on the dissolved portion of copper, and
the freshwater equation is not used in this case. As WER multipliers
and criteria based on biotic ligand models are determined for particu-
lar water bodies, they are listed in Appendix E of §307.10 of this title
when standards are revised. A site-specific WER multiplier or biotic
ligand model result that affects an effluent limitation in a wastewater
discharge permit, and that has not been incorporated into Appendix E
of §307.10 of this title, is noted in a public notice during the permit
application.
application process. An opportunity for public comment must be provided, and the WER multiplier or biotic ligand model result may be considered in any public hearing on the permit application.

(11) Additional site-specific factors may indicate that the numerical criteria listed in Table 1 of paragraph (1) of this subsection are inappropriate for a particular water body. These factors are applied as a site-specific standards modification in accordance with §307.2(d) of this title (relating to Description of Standards). The application of a site-specific standard must not impair an existing, attainable, or designated use. Factors that may justify a temporary variance or site-specific standards amendment include the following:

(A) background concentrations of specific toxics of concern in receiving waters, sediment, or indigenous biota;
(B) persistence and degradation rate of specific toxic materials;
(C) synergistic, additive, or antagonistic interactions of toxic substances with other toxic or nontoxic materials;
(D) measurements of total effluent toxicity;
(E) indigenous aquatic organisms, which may have different responses to particular toxic materials;
(F) technological or economic limits of treatability for specific toxic materials;
(G) bioavailability of specific toxic substances of concern, as determined by WER tests or other analyses approved by the commission; and
(H) new information concerning the toxicity of a particular substance.

(d) Specific numerical human health criteria.

(1) Numerical human health criteria are established in Table 2 of this paragraph. Figure: 30 TAC §307.6(d)(1)

(2) Categories of human health criteria, [s]

(A) Concentration [concentration] criteria to prevent contamination of drinking water, fish, and other aquatic life to ensure that they are safe for human consumption. These criteria apply to surface waters that are designated or used for public drinking water supplies, including all water bodies identified as having a public drinking water supply use in Appendix A of §307.10 of this title or as a sole-source surface drinking water supply in Appendix B of §307.10 of this title. (See Column A in Table 2 of paragraph (1) of this subsection)

(B) Concentration [concentration] criteria to prevent contamination of fish and other aquatic life to ensure that they are safe for human consumption. These criteria apply to surface waters that have sustainable fisheries and that are not designated or used for public water supply or as a sole-source surface drinking water supply. (See Column B in Table 2 of paragraph (1) of this subsection)

(3) Specific assumptions and procedures (except where noted in Table 2 of paragraph (1) of this subsection).

(A) Sources for the toxicity factors to calculate criteria were derived from EPA's IRIS database; EPA's National Recommended Water Quality Criteria: 2002. Human Health Criteria Calculation Matrix (EPA-822-R-02-012); EPA inputs for calculating the 2015 updated national recommended human health criteria; EPA Health Effects As-

(B) For known or suspected carcinogens (as identified in EPA's IRIS database), an incremental cancer risk level of 10⁻⁶ (1 in 100,000) was used to derive criteria. An RJD (reference dose) was determined for carcinogens and noncarcinogens where the EPA has not derived cancer slope factors.

(C) Consumption rates of fish and shellfish were estimated as 17.5 grams per person per day, unless otherwise specified in Table 2 of paragraph (1) of this subsection.

(D) Drinking water consumption rates were estimated as 2.0 liters per person per day.

(E) For carcinogens, a body-weight scaling factor of 3/4 power was used to convert data on laboratory animal to human scale. Reported weights of laboratory test animals are used, and an average weight of 70 kilograms is assumed for humans.

(F) Childhood exposure was considered for all noncarcinogens. Consumption rates for fish and shellfish were estimated as 5.6 grams per child per day and drinking water consumption rates were estimated as 0.64 liters per child per day. A child body weight was estimated at 15 kilograms. Both the water consumption rate and body weight are age-adjusted for a six-year-old child. The consumption rate for fish and shellfish for children is from Table 10-61 of EPA's 1997 Exposure Factors Handbook (EPA/600/P-95/002Fa-c).

(G) Numerical human health criteria were derived in accordance with the general procedures and calculations in the EPA guidance documents entitled Technical Support Document for Water Quality-based Toxics Control (EPA/505/2-90-001); Guidance Manual for Assessing Human Health Risks from Chemically Contaminated Fish and Shellfish (EPA/503/8-89-002); and Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health (2000) (EPA-822-B-00-004).

(H) If a calculated criterion to prevent contamination of drinking water and fish to ensure they are safe for human consumption (Column A in Table 2 of paragraph (1) of this subsection) was greater than the applicable maximum contaminant level (MCL) in Chapter 290 of this title (relating to Public Drinking Water), then the MCL was used as the criterion.

(I) If the concentration of a substance in fish tissue used for these calculations was greater than the applicable United States Food and Drug Administration Action Level for edible fish and shellfish tissue, then the acceptable concentration in fish tissue was lowered to the Action Level for calculation of criteria.

(4) Human health criteria for additional toxic materials are adopted by the commission as appropriate.

(5) Specific human health concentration criteria for water are applicable to water in the state that has sustainable fisheries or designation or use as a public drinking water supply or as a sole-source drinking water supply except within mixing zones and below stream flow conditions as specified in §307.8 of this title. The following waters are considered to have sustainable fisheries:

(A) all designated segments listed in Appendix A of §307.10 of this title, unless specifically exempted;

(B) perennial streams and rivers with a stream order of three or greater, as defined in §307.3 of this title (relating to Definitions and Abbreviations);
(C) lakes and reservoirs greater than or equal to 150 acre-feet or 50 surface acres;
(D) all bays, estuaries, and tidal rivers; and
(E) any other waters that potentially have sufficient fish production or fishing activity to create significant long-term human consumption of fish.

(6) Waters that are not considered to have a sustainable fishery, but that have an aquatic life use of limited or greater, are considered to have an incidental fishery. Consumption rates assumed for incidental fishery waters are 1.75 grams per person per day. Therefore, numerical criteria applicable to incidental fishery waters are ten times the criteria listed in Column B in Table 2 of paragraph (1) of this subsection.

(7) Specific human health criteria are applied as long term average exposure criteria designed to protect populations over a life time. Attainment measures for human health are addressed in §307.9 of this title.

(8) For toxic materials of concern where specific human health criteria are not listed in Table 2 of paragraph (1) of this subsection, the following provisions apply:

(A) For known or suspected carcinogens (as identified in EPA’s IRIS database), a cancer risk of $10^{-8}$ (1 in 100,000) is applied to the most recent numerical criteria adopted by the EPA and published in the Federal Register. If an MCL or equivalent agency guideline for protection of drinking water sources is less than the resulting criterion, then the MCL applies to public drinking water supplies in accordance with paragraph (3)(H) of this subsection.

(B) For toxic materials not defined as carcinogens, the most recent numerical criteria adopted by the EPA and published in the Federal Register are applicable. If an MCL or equivalent agency guideline for protection of drinking water sources is less than the resulting criterion, then the MCL applies to public drinking water supplies in accordance with paragraph (3)(H) of this subsection.

(C) In the absence of available criteria, numerical criteria may be derived from technically valid information and calculated in accordance with the provisions of paragraph (3) of this subsection.

(9) Numerical criteria for bioconcentratable pollutants are derived in accordance with the general procedures in the EPA guidance document entitled Assessment and Control of Bioconcentratable Contaminants in Surface Water (March 1991). The commission may develop discharge permit limits in accordance with the provisions of this section.

(10) Numerical human health criteria are expressed as total recoverable concentrations for nonmetals and selenium and as dissolved concentrations for other metals and metalloids.

(11) Additional site-specific factors may indicate that the numerical human health criteria listed in Table 2 of paragraph (1) of this subsection are inappropriate for a particular water body. These factors are applied as a site-specific standards modification in accordance with §307.2(d) of this title. The application of site-specific criteria must not impair an existing, attainable, presumed, or designated use or affect human health. Factors that may justify a temporary variance or site-specific standards amendment include the following:

(A) background concentrations of specific toxics of concern in receiving waters, sediment, or indigenous biota;
(B) persistence and degradation rate of specific toxic materials;
(C) synergistic or antagonistic interactions of toxic substances with other toxic or nontoxic materials;
(D) technological or economic limits of treatability for specific toxic materials;
(E) bioavailability of specific toxic substances of concern;
(F) local water chemistry and other site-specific conditions that may alter the bioconcentration, bioaccumulation, or toxicity of specific toxic substances;
(G) site-specific differences in the bioaccumulation responses of indigenous, edible aquatic organisms to specific toxic materials;
(H) local differences in consumption patterns of fish and shellfish or drinking water, but only if any changes in assumed consumption rates are protective of the local population that frequently consumes fish, shellfish, or drinking water from a particular water body; and
(I) new information concerning the toxicity of a particular substance.

(e) Total toxicity.

(1) Total (whole-effluent) toxicity of permitted discharges, as determined from biomonitoring of effluent samples at appropriate dilutions, must be sufficiently controlled to preclude acute total toxicity in all water in the state with the exception of small ZIDs at discharge points and at extremely low streamflow conditions (one-fourth of critical low-flow conditions) in accordance with §307.8 of this title. Acute total toxicity levels may be exceeded in a ZID, but there must be no significant lethality to aquatic organisms that move through a ZID, and the sizes of ZIDs are limited in accordance with §307.8 of this title. Chronic total toxicity, as determined from biomonitoring of effluent samples at appropriate dilutions, must be sufficiently controlled to preclude chronic toxicity in all water in the state with an existing or designated aquatic life use of limited or greater except in mixing zones at discharge points and at flows less than critical low-flows, in accordance with §307.8 of this title. Chronic toxicity levels may be exceeded in a mixing zone, but there must be no significant sublethal toxicity to aquatic organisms that move through the mixing zone.

(2) General provisions for controlling total toxicity.

(A) Dischargers whose effluent has a significant potential for exerting toxicity in receiving waters as described in the Procedures to Implement the Texas Surface Water Quality Standards (RG-194) as amended are required to conduct whole effluent toxicity biomonitoring at appropriate dilutions.

(B) In addition to the other requirements of this section, the effluent of discharges to water in the state must not be acutely toxic to sensitive species of aquatic life, as demonstrated by effluent toxicity tests. Toxicity testing for this purpose is conducted on samples of 100% effluent, and the criterion for acute toxicity is mortality of 50% or more of the test organisms after 24 hours of exposure. This provision does not apply to mortality that is a result of an excess, deficiency, or imbalance of dissolved inorganic salts (such as sodium, calcium, potassium, chloride, or carbonate) that are in the effluent and are not listed in Table 1 of subsection (c)(1) of this section or that are in source waters.

(C) The latest revisions of the following EPA publications provide methods for appropriate biomonitoring procedures: Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms, Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters
to Freshwater Organisms, Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Marine and Estuarine Organisms, and the Technical Support Document for Water Quality-based Toxics Control. The use of other procedures approved by the agency and the EPA is also acceptable. Toxicity tests must be conducted using representative, sensitive aquatic organisms as approved by the agency, and any such testing must adequately determine if toxicity standards are being attained.

(D) If toxicity biomonitoring results indicate that a discharge is not sufficiently controlled to preclude acute or chronic toxicity as described in this subsection, then the permittee will be required to eliminate sources of toxicity and may be required to conduct a toxicity reduction evaluation (TRE) in accordance with the permitting procedures of the commission. In accordance with the standards implementation procedures (RG-194), permits are amended to include appropriate provisions to eliminate toxicity. Such provisions may include total toxicity limits, chemical-specific limits, best management practices, or other actions (such as moving a discharge location) designed to reduce or eliminate toxicity. Where sufficient to attain and maintain applicable numeric and narrative state water quality standards, a chemical-specific limit, best management practices, or other actions designed to reduce or eliminate toxicity rather than a total toxicity limit may be established in the permit. Where conditions may be necessary to prevent or reduce effluent toxicity, permits must include a reasonable schedule for achieving compliance with such additional conditions.

(E) Discharge permit limits based on total toxicity may be established in consideration of site-specific factors, but the application of such factors must not result in impairment of an existing, attainable, presumed, or designated use. These factors are applied as a site-specific standards modification in accordance with §307.2(d) of this title. A demonstration that uses are protected may consist of additional effluent toxicity testing, instream monitoring requirements, or other necessary information as determined by the agency. Factors that may justify a temporary variance or site-specific standards amendment include the following:

(i) background toxicity of receiving waters;
(ii) persistence and degradation rate of principal toxic materials that are contributing to the total toxicity of the discharge;
(iii) site-specific variables that may alter the impact of toxicity in the discharge;
(iv) indigenous aquatic organisms that may have different levels of sensitivity than the species used for total toxicity testing; and
(v) technological, economic, or legal limits of treatability or control for specific toxic material.

§307.7. Site-Specific Uses and Criteria.

(a) Uses and numerical criteria are established on a site-specific basis in Appendices A, B, D, E, F, and G of §307.10 of this title (relating to Appendices A - G). Site-specific uses and numerical criteria may also be applied to unclassified waters in accordance with §307.4 of this title (relating to General Criteria) and §307.5(c) of this title (relating to Antidegradation). Site-specific criteria apply specifically to substances attributed to waste discharges or human activity. Site-specific criteria do not apply to those instances when surface waters exceed criteria due to natural phenomena. The application of site-specific uses and criteria is described in §307.8 of this title (relating to the Application of Standards) and §307.9 of this title (relating to the Determination of Standards Attainment).

(b) Appropriate uses and criteria for site-specific standards are defined as follows.

(1) Recreation. Recreational use consists of five categories—primary contact recreation 1, primary contact recreation 2, secondary contact recreation 1, secondary contact recreation 2, and noncontact recreation waters. Classified segments are designated for primary contact recreation 1 unless sufficient site-specific information demonstrates that elevated concentrations of indicator bacteria frequently occur due to sources of pollution that cannot be reasonably controlled by existing regulations, wildlife sources of bacteria are unavoidably high and there is limited aquatic recreational potential, or primary or secondary contact recreation is considered unsafe for other reasons such as ship or barge traffic. In a classified segment where contact recreation is considered unsafe for reasons unrelated to water quality, a designated use of noncontact recreation may be assigned either noncontact recreation criteria or criteria normally associated with primary contact recreation. A designation of primary or secondary contact recreation is not a guarantee that the water is designated is completely free of disease-causing organisms. Indicator bacteria, although not generally pathogenic, are indicative of potential contamination by feces of warm-blooded [warm-blooded] animals. Recreational criteria are based on these indicator bacteria rather than direct measurements of pathogens. Criteria are expressed as the number of bacteria per 100 milliliters (mL) of water (in terms of colony forming units, most probable number, or other applicable reporting measures). Even where the concentration of indicator bacteria is less than the criteria for primary or secondary contact recreation, there is still some risk of contracting waterborne diseases. Additional guidelines on minimum data requirements and procedures for evaluating standards attainment are specified in the TCEQ Guidance for Assessing and Reporting Surface Water Quality in Texas, as amended.

(A) Freshwater.

(i) Primary contact recreation 1. The geometric mean criterion for E. coli is 126 per 100 mL. In addition, the single sample criterion for E. coli is 399 per 100 mL.

(ii) Primary contact recreation 2. The geometric mean criterion for E. coli is 206 per 100 mL.

(iii) Secondary contact recreation 1. The geometric mean criterion for E. coli is 630 per 100 mL.

(iv) Secondary contact recreation 2. The geometric mean criterion for E. coli is 1,030 per 100 mL.

(v) Noncontact recreation. The geometric mean criterion for E. coli is 2,060 per 100 mL.

(vi) For high saline inland water bodies where Enterococci is the designated recreational indicator in Appendix A of §307.10 of this title, Enterococci is the applicable recreational indicator for instream bacteria sampling at all times for the classified water body and for the unclassified water bodies that are within the watershed of that classified segment, unless it is demonstrated that an unclassified water body is not high saline. E. coli is the applicable recreational indicator for instream bacteria sampling at all times for unclassified water bodies where conductivity values indicate that the water bodies are not high saline. For high saline inland waters with primary contact recreation 1, the geometric mean criterion for Enterococci is 33 per 100 mL and the single sample criterion is 78 per 100 mL. For high saline inland waters with primary contact recreation 2, the geometric mean criterion for Enterococci is 54 per 100 mL. For high saline inland waters with secondary contact recreation 1, the geometric mean criterion for Enterococci is 165 per 100 mL. For high saline inland waters with secondary contact recreation 2, the geometric mean criterion for Ente-
roccoci is 270 per 100 mL. For high saline inland water bodies with noncontact recreation, the geometric mean criterion for Enterococci is 540 per 100 mL.

(B) Saltwater.

(i) Primary contact recreation. The geometric mean criterion for Enterococci is 35 per 100 mL. In addition, the single sample criterion for Enterococci is 130 per 100 mL.

(ii) Secondary contact recreation. A secondary contact recreation use for tidal streams and rivers can be established on a site-specific basis in §307.10 of this title if justified by a use-attainability analysis and the water body is not a coastal recreation water as defined in the Beaches Environmental Assessment and Coastal Health Act of 2000 (BEACH Act). The geometric mean criterion for Enterococci is 175 per 100 mL.

(iii) Noncontact recreation. A noncontact recreation use for tidal streams and rivers can be established on a site-specific basis in §307.10 of this title if justified by a use-attainability analysis and the water body is not a coastal recreation water, as defined in §307.3 of this title (relating to Definitions and Abbreviations). The geometric mean criterion for Enterococci is 350 per 100 mL.

(C) Swimming advisory programs. For areas where local jurisdictions or private property owners voluntarily provide public notice or closure based on water quality, the use of any single-sample or short-term indicators of recreational suitability are selected at the discretion of the local managers of aquatic recreation. Guidance for single-sample bacterial indicators are given in the EPA documents entitled 'Recreational Water Quality Criteria' (EPA-820-F-12-058) and 'Ambient Water Quality Criteria for Bacteria - 1986' (EPA 440/5-84-002). Other short-term indicators to assess water quality suitability for recreation - such as measures of streamflow, turbidity, or rainfall - may also be appropriate.

(2) Domestic water supply.

(A) Use categories. Domestic water supply consists of three use subcategories - public water supply, sole-source surface drinking water supply, and aquifer protection.

(i) Public water supply. Segments designated for public water supply are those known to be used or exhibit characteristics that would allow them to be used as the supply source for public water systems as defined by Chapter 290 of this title (relating to Public Drinking Water).

(ii) Sole-source surface drinking water supplies and their protection zones. Water bodies that are sole-source surface drinking water supplies are listed in Appendix B of §307.10 of this title. Sole-source surface drinking water supplies and their protection zones are addressed in Chapter 321, Subchapter B of this title (relating to Concentrated Animal Feeding Operations).

(iii) Aquifer protection. Segments designated for aquifer protection are capable of recharging the Edwards Aquifer. The principal purpose of this use designation is to protect the quality of water infiltrating into and recharging the aquifer. The designation for aquifer protection applies only to those portions of the segments so designated that are on the recharge zone, transition zone, or contributing zone as defined in Chapter 213 of this title (relating to the Edwards Aquifer). Chapter 213 of this title establishes provisions for activities in the watersheds of segments that are designated for aquifer protection.

(B) Use criteria. The following use criteria apply to all domestic water supply use subcategories.

(i) Radioactivity associated with dissolved minerals in the freshwater portions of river basin and coastal basin waters should not exceed levels established by drinking water standards as specified in Chapter 290 of this title unless the conditions are of natural origin.

(ii) Surface waters utilized for domestic water supply must not exceed toxic material concentrations that prevent them from being treated by conventional surface water treatment to meet drinking water standards as specified in Chapter 290 of this title.

(iii) Chemical and microbiological quality of surface waters used for domestic water supply should conform to drinking water standards as specified in Chapter 290 of this title.

(3) Aquatic life. The establishment of numerical criteria for aquatic life is highly dependent on desired use, sensitivities of aquatic communities, and local physical and chemical characteristics. Six subcategories of aquatic life use are established. They include minimal, limited, intermediate, high, and exceptional aquatic life and oyster waters. Aquatic life use subcategories designated for segments listed in Appendix A of §307.10 of this title recognize the natural variability of aquatic community requirements and local environmental conditions.

(A) Dissolved oxygen.

(i) The characteristics and associated dissolved oxygen criteria for limited, intermediate, high, and exceptional aquatic life use subcategories are indicated in Table 3 of this clause. This table also includes dissolved oxygen criteria for a minimal aquatic life use subcategory that applies to intermittent streams without perennial pools as indicated in §307.4(h)(4) of this title.

Figure: 30 TAC §307.7(b)(3)(A)(i) (No change.)

(ii) Critical low-flow values associated with the bed-slopes and dissolved oxygen criteria in Table 4 of this clause apply to streams that have limited, intermediate, high, or exceptional aquatic life uses and to streams that are specifically listed in Appendix A or D of §307.10 of this title. The critical low-flow values in Table 4 of this clause apply to streams in Texas that are east of a line defined by Interstate Highways 35 and 35W from the Red River to the community of Moore in Frio County, and by US Highway 57 from the community of Moore to the Rio Grande. Table 4 of this clause does not apply where specifically superseded by the equation that is listed in footnote 3 in the Cypress Creek Basin in Appendix A and in footnote 1[2] in Appendix D of §307.10 of this title. The critical low-flow values in Table 4 of this clause (at the appropriate stream bedslope) are utilized as headwater flows when the flows are larger than applicable seven-day, two-year low-flows in order to determine discharge effluent limits necessary to achieve dissolved oxygen criteria. For streams that have bed slopes less than the minimum bed slopes in Table 4 of this clause, the flows listed for the minimum bed slope of 0.1 meters per kilometer (m/km) are applicable. For streams that have bed slopes greater than the maximum bed slope in Table 4 of this clause, the flows listed for the maximum bed slope of 2.4 m/km are applicable. The required effluent limits are those necessary to achieve each level of dissolved oxygen (as defined in Table 3 of clause (i) of this subparagraph) at or below an assigned, designated, or presumed aquatic life use. Presumed aquatic life uses must be in accordance with those required by §307.4(h) of this title. The critical low-flow values in Table 4 of this clause do not apply to tidal streams.

Figure: 30 TAC §307.7(b)(3)(A)(ii) (No change.)

(iii) The critical low-flow values in Table 4 of clause (ii) of this subparagraph for limited, intermediate, high, and exceptional aquatic life uses are based upon data from the commission's least impacted stream study (Texas Aquatic Ecoregion Project). Results of this study indicate a strong dependent relationship for average summertime
background dissolved oxygen concentrations and several hydrologic and physical stream characteristics - particularly bedslope (stream gradient) and stream flow. The critical low-flow values in Table 4 of clause (ii) of this subparagraph are derived from a multiple regression equation for the eastern portion of Texas as defined in clause (ii) of this subparagraph. Further explanation of the development of the regression equation and its application are contained in the standards implementation procedures as amended.

(iv) The critical low-flow values in Table 4 of clause (ii) of this subparagraph may be adjusted based on site-specific data relating dissolved oxygen concentrations to factors such as flow, temperature, or hydraulic conditions in accordance with the standards implementation procedures as amended. Site-specific, critical low-flow values require approval by the commission. The EPA must review any site-specific, critical low-flow values that could affect permits or other regulatory actions that are subject to approval by EPA. Critical low-flow values that have been determined for particular streams are listed in the standards implementation procedures.

(B) Oyster waters.

(i) A 1,000 foot buffer zone, measured from the shoreline at ordinary high tide, is established for all bay and gulf waters except those contained in river or coastal basins as defined in §307.2 of this title (relating to Description of Standards). Recreational criteria for indicator bacteria, as specified in §307.7(b)(1) of this title (relating to Site-Specific Uses and Criteria), are applicable within buffer zones.

(ii) The criteria for median fecal coliform concentration in bay and gulf waters, exclusive of buffer zones, are 14 colonies per 100 mL with not more than 10% of all samples exceeding 43 colonies per 100 mL.

(iii) Oyster waters should be maintained so that concentrations of toxic materials do not cause edible species of clams, oysters, and mussels to exceed accepted guidelines for the protection of public health. Guidelines are provided by the United States Food and Drug Administration Action Levels for molluscan shellfish, but additional information related to human health protection may also be considered in determining acceptable toxic concentrations.

(4) Additional criteria.

(A) Chemical parameters. Site-specific criteria for chloride, sulfate, and total dissolved solids are established as averages over an annual period for either a single sampling point or multiple sampling points.

(B) pH. Site-specific numerical criteria for pH are established as absolute minima and maxima.

(C) Temperature. Site-specific temperature criteria are established as absolute maxima.

(D) Toxic materials. Criteria for toxic materials are established in §307.6 of this title (relating to Toxic Materials).

(E) Nutrient criteria. Numeric and narrative criteria to preclude excessive growth of aquatic vegetation are intended to protect multiple uses such as primary, secondary, and noncontact recreation, aquatic life, and public water supplies. Nutrient numeric criteria for specific reservoirs, expressed as concentrations of chlorophyll a in water, are listed in Appendix F of §307.10 of this title.

(5) Additional uses. Other basic uses, such as navigation, agricultural water supply, industrial water supply, seagrass propagation, and wetland water quality functions must be maintained and protected for all water in the state where these uses can be achieved.

§307.10. Appendices A - G.

The following appendices are integral components of this chapter of the Texas Surface Water Quality Standards.

(1) Appendix A - Site-specific Uses and Criteria for Classified Segments:

Figure: 30 TAC §307.10(1)

(2) Appendix B - Sole-source Surface Drinking Water Supplies:

Figure: 30 TAC §307.10(5)

(3) Appendix C - Segment Descriptions:

Figure: 30 TAC §307.10(5)

(4) Appendix D - Site-specific Uses and Criteria for Unclassified Water Bodies:

Figure: 30 TAC §307.10(4)

(5) Appendix E - Site-specific Toxic Criteria:

Figure: 30 TAC §307.10(5)

(6) Appendix F - Site-specific Nutrient Criteria for Selected Reservoirs:

Figure: 30 TAC §307.10(6) (No change.)

(7) Appendix G - Site-specific Recreational Uses and Criteria for Unclassified Water Bodies:

Figure: 30 TAC §307.10(7)

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

Filed with the Office of the Secretary of State on March 11, 2022.

TRD-202200172

Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality

Earliest possible date of adoption: April 24, 2022

For further information, please call: (512) 239-2678

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 5. TEXAS BOARD OF PARDONS AND PAROLES

CHAPTER 145. PAROLE

SUBCHAPTER A. PAROLE PROCESS

37 TAC §145.19

The Texas Board of Pardons and Paroles proposes a new rule in 37 TAC Chapter 145, Subchapter A, Parole Process by adding §145.19 Action Upon Review; Early Release on Parole. The new rule is necessary to implement changes made to Government Code, Chapter 508, by House Bill (H.B.) 2372, 87th Legislature, Regular Session.
H.B. 2372 amended Subchapter E, Chapter 508, Government Code, by adding Section 508.1455, which requires the Board to release certain offenders on parole 180 days before their parole eligibility date; and requires the offender to participate in a program operated by TDCJ following their release. The bill also requires the Board and the TDCJ to jointly adopt rules of identifying offenders, and the Board to adopt rules governing the release of the offender.

David Gutiérrez, Chair of the Board, determined that for each year of the first five-year period the proposed amendments are in effect, there will be no expected fiscal impact on state or local governments as a result of enforcing or administering the proposed amendments to this section.

Mr. Gutiérrez has also determined that during the first five years that the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the amendments to this section will be to effectuate the newly enacted §508.1455, Government Code.

Mr. Gutiérrez has also determined that during the first five years the proposed amendments are in effect, the amendments will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; does not create a new regulation; does not expand, limit or repeal an existing regulation; will not increase or decrease the number of individuals subject to the rule's applicability; and will not positively or adversely affect this state's economy.

An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed amendments will not have an economic effect on micro-businesses, small businesses, or rural communities as defined in Section 2006.001, Government Code.

Comments should be directed to Bettie Wells, General Counsel, Texas Board of Pardons and Paroles, 209 W. 14th Street, Suite 500, Austin, Texas 78701, or by e-mail to bettie.wells@tdcj.texas.gov. Written comments from the general public should be received within 30 days of the publication of this proposal.

The new rule is proposed under §§493.034, 508.0441, 508.045, and 508.1455, Government Code. Section 493.034 authorizes the Texas Department of Criminal Justice to establish a pilot program to provide educational and vocational training, employment, and reentry services to eligible offenders. Sections 508.0441 and 508.045 authorize the Board to adopt reasonable rules as proper or necessary relating to the eligibility of an offender for release to mandatory supervision and to act on matters of release to mandatory supervision. Section 508.1455 authorizes the Board to adopt rules governing the release of an inmate on parole under this section, and requires a parole panel releasing an offender on parole to impose as a condition of release that the offender participate in a program operated under 493.034.

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

§145.19  Action Upon Review; Early Release on Parole.
(a) This section applies only to an eligible offender who has been identified by TDCJ as a suitable candidate for participation in an educational and vocational training pilot program.

(b) If TDCJ determines an offender is a suitable candidate for early release on parole:

1. the offender shall be provided written notice of the early release on parole review and shall have 30 days from the receipt of the notice to submit, in writing, information to the Board; and

2. the expiration of the 30-day time period, the case shall be referred to a parole panel who will consider the case for early release on parole approximately 180 days prior to the offender's parole eligibility date.

(c) Upon considering a case for early release on parole, a parole panel may:

1. vote early release on parole; or

2. vote deny early release on parole.

(d) If the parole panel votes to deny early release on parole, the offender shall be considered for release on parole on the date that the offender would otherwise have been considered for release.

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

Filed with the Office of the Secretary of State on March 10, 2022.

TRD-202200870
Bettie Wells
General Counsel
Texas Board of Pardons and Paroles

Earliest possible date of adoption: April 24, 2022

For further information, please call: (512) 406-5478

PART 9. TEXAS COMMISSION ON JAIL STANDARDS

CHAPTER 263. LIFE SAFETY RULES

SUBCHAPTER D. PLANS AND DRILLS FOR EMERGENCIES

37 TAC §263.42

The Texas Commission on Jail Standards proposes amendments to Texas Administrative Code, Title 37, §263.42, relating to Fire Inspection Plan. Specifically, the proposed amendments would require that the local fire official who performs fire inspections in jails shall either be certified by the Texas Commission on Fire Protection or shall meet the alternative criteria provided in Government Code § 419.909. The amendments would also require that jails shall pass the fire inspection. Since 2009, Government Code § 419.909 (originally § 419.908 but changed in 2011 to § 419.909) has required that "Only an individual certified by (The Commission on Fire Protection) as a fire inspector may conduct a fire safety inspection required by a state or local law, rule, regulation, or ordinance." In a memo on November 20, 2009, the Commission on Jail Standards informed county jails of this requirement as a condition of compliance certification; however, TCJS did not add this requirement to its minimum jail standards. It wishes to do so now.

Executive Director Brandon Wood has determined that for each year of the first five years that the section will be in effect, there
will be no fiscal implications to state or local governments as a result of enforcing and administering the section as proposed. TCJS has determined that during the first five years that the section will be in effect:

(1) the proposed rule will not create or eliminate a government program;
(2) implementation of the proposed rule will not affect the number of employee positions;
(3) implementation of the proposed rule will not require an increase or decrease in future legislative appropriations;
(4) the proposed rule will not affect fees paid to the agency;
(5) the proposed rule will not create a new rule;
(6) the proposed rule will not repeal an existing rule;
(7) the proposed rule will not change the number of individuals subject to the rule; and
(8) TCJS has insufficient information to determine the proposed rule’s effect on the state’s economy.

Mr. Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities to comply with the amended rule, as they will not be required to alter their business practices and the rule does not impose any additional costs on those required to comply with the rule.

There are no anticipated economic costs to persons who are required to comply with the section as proposed.

Texas Government Code, § 2001.0045 does not apply to this proposal because the rule does not impose a cost on regulated persons; is amended to reduce the burden or responsibilities imposed on regulated persons by the rule; is necessary to protect the health, safety, and welfare of the residents of this state; and is necessary to implement legislation that does not specifically state that § 2001.0045 applies to the rule.

Mr. Wood has determined that for each year of the first five years the rule is in effect, the public will benefit from the adoption of the rule. The Commission anticipates that including in its administrative code the existing requirement that county jail fire inspections be conducted by persons certified by the Texas Commission on Fire Protection will make the requirement more readily knowable to county jails and therefore result in the jails more likely being in compliance with the rule and safer to the public and officers who occupy the jails.

TCJS has determined that this 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 § 2007.043 of the Government Code.

Comments on the proposed rule may be submitted in writing to William Turner, P.O. Box 12985, Austin, Texas 78771, Fax (512) 463-3185, or e-mail at will.turner@tcjs.state.tx.us.

The amendment is proposed under the authority of Government Code, Chapter 511, which authorizes the Texas Commission on Jail Standards to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

This proposed change does not affect other rules or statutes.

§263.42. Fire Prevention Plan.

Each facility, after consultation with the local fire department or Texas Commission on Fire Protection, shall have and implement a written plan, approved by the Commission on Jail Standards, for fire prevention and a fire hazard inspection checklist which shall be evaluated no less than each calendar quarter. The facility shall be inspected annually by a local fire official who is certified by the Texas Commission on Fire Protection or who meets the alternative criteria provided in Government Code 419.909 and shall pass the 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.

Filed with the Office of the Secretary of State on March 10, 2022.
TRD-202200859
Brandon Wood
Executive Director
Texas Commission on Jail Standards
Earliest possible date of adoption: April 24, 2022
For further information, please call: (512) 463-2690

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 840. WIOA ELIGIBLE TRAINING PROVIDERS

The Texas Workforce Commission (TWC) proposes amendments to Chapter 840, relating to WIOA Eligible Training Providers, as follows:

Subchapter A. General Provisions, §840.2
Subchapter F. Adverse Actions, §§840.51, 840.53, and 840.54
Subchapter G. State and Local Flexibility, §840.61.

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

TWC’s Chapter 840 addresses the requirements of training services provided through the Workforce Innovation and Opportunity Act (WIOA). The chapter became effective on January 4, 2021.

The amendments to Chapter 840 will clarify the requirements for participants, Local Workforce Development Boards (Boards), and eligible training providers (ETPs) engaged with TWC’s statewide Eligible Training Provider List (ETPL) specifically, and the ETP system in general.


Communication with Boards and ETPs indicates that enhancements to Chapter 840 relating to the local administration of training services provided through the ETPL will be beneficial to the effective administration of the ETP system and statewide ETPL.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

PROPOSED RULES  March 25, 2022  47 TexReg 1609
(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER A. GENERAL PROVISIONS

TWC proposes the following amendments to Subchapter A:

§840.2. Definitions
Section 840.2 is amended to add the definition for "eligible training provider list" and the subsequent paragraphs are renumbered accordingly.

SUBCHAPTER F. ADVERSE ACTIONS

TWC proposes the following amendments to Subchapter F:

§840.51. Reporting Actions
Section 840.51(a) and (d) are amended to make technical corrections to the language.

§840.53. WIOA Violations
Section 840.53 is amended to rename the section "Compliance Violations." New §840.53(b) is added to explicitly require providers to acknowledge TWC's authority under the Family Educational Rights and Privacy Act to receive education records. Relettered §840.53(c) and (d) are amended to require providers to submit acknowledgement of §840.53(a) and proposed §840.53(b) requirements during initial eligibility determination and annual reporting periods. New §840.53(g) is added to clarify that providers no longer meeting the requirements in §840.10 will be removed from the statewide ETPL.

§840.54. Continuation of Students in Removed Programs
Section 840.54 is amended to update the relating to statement for the reference to §840.53 from "WIOA Violations" to "Compliance Violations."

SUBCHAPTER G. STATE AND LOCAL FLEXIBILITY

TWC proposes the following amendments to Subchapter G:

§840.61. Individual Training Accounts
Section 840.61 is amended to add subsection (c) to clarify that all changes to program costs must be included on the statewide ETPL and add subsection (g) to clarify that a Board informs participants and training providers that funds are not available unless the Board or Board's fiscal agent has approved and issued an individual training account.

PART III. IMPACT STATEMENTS

Chris Nelson, Chief Financial Officer, determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rules.

There are no estimated cost reductions to the state and to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to individuals required to comply with the rules.

There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural communities as a result of enforcing or administering the rules.

Based on the analyses required by Texas Government Code, §2001.024, TWC determined that the requirement to repeal or amend a rule, as required by Texas Government Code, §2001.0045, does not apply to this rulemaking.

Takings Impact Assessment

Under Texas Government Code, §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part temporarily or permanently, in a manner that requires the governmental entity to compensate the private property owner as provided by the Fifth and Fourteenth Amendments to the US Constitution or the Texas Constitution, Article I, §17 or §19, or restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action, and is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect. TWC completed a Takings Impact Analysis for the proposed rulemaking action under Texas Government Code, §2007.043. The primary purpose of this proposed rulemaking action, as discussed elsewhere in this preamble, is to amend Chapter 840 to clarify licensure requirements for training providers and the role that a Board plays as the sole approval agent of training funds through individual training accounts.

The proposed rulemaking action will not create any additional burden on private real property or affect private real property in a manner that would require compensation to private real property owners under the US Constitution or the Texas Constitution. The proposal also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the proposed rulemaking will not cause a taking under Texas Government Code, Chapter 2007.

Government Growth Impact Statement

TWC determined that during the first five years the rules will be in effect, they will not:

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

Economic Impact Statement and Regulatory Flexibility Analysis

TWC determined that the rules will not have an adverse economic impact on small businesses or rural communities, as the proposed rules place no requirements on small businesses or rural communities.
Mariana Vega, Director, Labor Market Information, determined that there is not a significant negative impact upon employment conditions in the state as a result of the rules.

Courtney Arbour, Director, Workforce Development Division, determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to ensure the continued availability of workforce-supported high-quality training programs while providing clear operational rules to providers of training programs and their local Board partners.

TWC hereby certifies that the proposal has been reviewed by legal counsel and found to be within TWC’s legal authority to adopt.

PART IV. COORDINATION ACTIVITIES

In the development of these rules for publication and public comment, TWC sought the involvement of the Boards. TWC provided the policy concept regarding the rule amendments to the Boards for consideration and review on December 7, 2021. TWC also conducted a conference call with Board executive directors and Board staff on December 17, 2021, to discuss the policy concept. During the rulemaking process, TWC considered all information gathered in order to develop rules that provide clear and concise direction to all parties involved.

PART V. PUBLIC COMMENT

Comments on the proposed rules may be submitted to TWCPolicyComments@twc.texas.gov and must be received no later than April 25, 2022.

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §840.2

PART VI. STATUTORY AUTHORITY

The rule is proposed under Texas Labor Code, §§301.0015 and 302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The rule implements the requirements set out in WIOA §§116, 122, and 134; 20 CFR Part 680, Subpart D; and 20 CFR §681.550.

§840.2. Definitions.

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

1. Address of record—In addition to the mailing address contained in the application for approval, each provider shall establish an email address of record, with the format of the address to be "ProviderName.Director@xdomain." This email address of record must consistently include a minimum of two current recipients. Providers currently licensed with TWC’s Career Schools and Colleges (CSC) program must use their CSC-approved email of record.

2. Agency—The unit of state government established under Texas Labor Code, Chapter 301, that is presided over by the Commission and administered by the executive director to operate the integrated workforce development system and administer the unemployment compensation insurance program in this state as established under the Texas Unemployment Compensation Act, Texas Labor Code Annotated, Title 4, Subtitle A, as amended. The definition of Agency shall apply to all uses of the term in [rules contained in] this chapter.

3. Community-Based Organization—As defined in WIOA §3(10), a private nonprofit organization (which may include a faith-based organization), that is representative of a community or a significant segment of a community and that has demonstrated expertise and effectiveness in the field of workforce development.

4. Customized Training—As defined in WIOA §3(14), means training:

   (A) that is designed to meet the specific requirements of an employer (including a group of employers);

   (B) that is conducted with a commitment by the employer to employ an individual upon successful completion of the training; and

   (C) for which the employer pays:

   (i) a significant portion of the cost of training, as determined by the local Board, taking into account the size of the employer and such other factors that the local Board determines to be appropriate, which may include the number of employees participating in training, wage, and benefit levels of those employees (at present and anticipated upon completion of the training), relation of the training to the competitiveness of a participant, and other employer-provided training and advancement opportunities; and

   (ii) in the case of customized training (as defined in subparagraphs (A) and (B) of this paragraph) involving an employer located in multiple local areas in the state, a significant portion of the cost of the training, as determined by the Commission, taking into account the size of the employer and such other factors that the Commission determines to be appropriate.

5. Eligible Training Provider (ETP)—A training provider as defined by this chapter with one or more programs included on the statewide ETPL.

6. Eligible Training Provider List (ETPL)—The statewide list of ETPLs that may receive funds through individual training accounts for training services at the discretion of Boards and as defined by this chapter.

7. Individual Training Account (ITA)—Payment agreement established by a local Board on behalf of a participant with a training provider. ITAs may be used only to pay for a training program included on the statewide ETPL, except where an out-of-state program is approved by the Board in accordance with §840.53 of this chapter (relating to Compliance [WIOA] Violations).

8. LWDA—Local Workforce Development Area (workforce area) designated by the governor as provided in Texas Government Code, §2308.252.

9. LWDB—Local Workforce Development Board (Board) created pursuant to Texas Government Code, §2308.253, and certified by the governor pursuant to Texas Government Code, §2308.261.

10. On-the-Job Training (OJT)—As defined by WIOA §3(44), a training by an employer that is provided to a paid participant while engaged in productive work in a job that:

   (A) provides knowledge or skills essential to the full and adequate performance of the job;

   (B) is made available through a program that provides the employer with partial reimbursement of the wage rate of the participant for the extraordinary costs of providing the training and additional supervision related to the training; and

   (C) is limited in duration as appropriate to the occupation for which the participant is being trained, taking into account the
content of the training, the prior work experience of the participant, and the service strategy of the participant, as appropriate.

(11) [(40)] Target Occupations--As determined by LWDA, include:

(A) occupations that:
   (i) are in-demand, as defined by WIOA §3(23);
   (ii) have a dedicated training component; and
   (iii) provide wages that meet self-sufficiency requirements in the LWDA; or

(B) occupations that are included in career pathway leading to an occupation described in subparagraph (A) of this paragraph.

(12) [(44)] Training Provider--As set out in WIOA §122(a)(2), provides a program containing one or more training services, as defined by this chapter, and must be one of the following entities:

(A) an institution of higher education that provides a program that leads to a recognized postsecondary credential;

(B) an entity that carries out programs registered under the Act of August 16, 1937 (commonly known as the "National Apprenticeship Act"; 50 Stat. 664, Chapter [chapter] 663; 29 USC §50 [§40] et seq.); or

(C) another public or private provider of a program of training services, which may include:
   (i) community-based organizations;
   (ii) joint labor-management organizations; and
   (iii) eligible providers of adult education and literacy activities under WIOA Title II, if such activities are provided in combination with occupational skills training.

(13) [(42)] Training Services--As provided in WIOA §134(c)(3)(D), may include:

(A) occupational skills training, including training for nontraditional employment;

(B) OJT;

(C) incumbent worker training;

(D) programs that combine workplace training with related instruction, which may include cooperative education programs;

(E) training programs operated by the private sector;

(F) skill upgrading and retraining;

(G) entrepreneurial training;

(H) transitional jobs;

(I) job readiness training provided in combination with any services described in subparagraphs (A) - (H) of this paragraph;

(J) adult education and literacy activities, including activities of English language acquisition and integrated education and training programs, provided concurrently or in combination with any services described in subparagraphs (A) - (H) of this paragraph;

(K) customized training conducted with a commitment by an employer or group of employers to employ an individual upon successful completion of the training.

(14) [(44)] WIOA--Workforce Innovation and Opportunity Act, PL 113 - 128, 29 USCA §3101, et seq., enacted July 22, 2014. The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 8, 2022.
TRD-202200834
Les Trobman
General Counsel
Texas Workforce Commission
Earliest possible date of adoption: April 24, 2022
For further information, please call: (512) 689-9855

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SUBCHAPTER F. ADVERSE ACTIONS
40 TAC §§840.51, 840.53, 840.54

The rules are proposed under Texas Labor Code, §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The rules implement the requirements set out in WIOA §§116, 122, and 134; 20 CFR Part 680, Subpart D; and 20 CFR §681.550.

§840.51. Reporting Actions.

(a) Failure to submit required annual reporting information, including performance outcomes, in accordance with [within] Agency-determined timelines [time lines] shall result in removal of affected programs from the statewide ETPL for not less than two years.

(b) Failure to submit information for any individual program shall result in the removal of such program.

(c) Removal shall occur following the end of the reporting period, as determined by the Agency.

(d) Registered Apprenticeship Program (RAPs) shall be exempt from actions taken under this section.


(a) Training providers shall comply with all nondiscrimination protections included in WIOA §188.

(b) Training providers shall designate the Agency as an authorized representative under the Family Educational Rights and Privacy Act regarding the disclosure of education records to be used for audit and/or evaluation purposes and for performance reporting and program evaluation under WIOA and in accordance with 34 Code of Federal Regulations, Part 99.

(c) [(b)] The Agency shall require providers to submit an acknowledgment of compliance requirements, addressed in subsections [subsection] (a) and (b) of this section, at initial eligibility determination in electronic format, or by such other means determined by the Agency.

(d) [(e)] The Agency shall require providers to submit an acknowledgment of compliance requirements, addressed in subsections [subsection] (a) and (b) of this section, during annual report submission in electronic format or by such other means determined by the Agency.

(e) [(d)] A local Board or the Agency may determine if a provider has violated any protection provided by WIOA §188. If
such determination is made, the provider will be considered to have substantially violated the rules of this chapter.

(f) Providers determined to have substantially violated the rules of this chapter shall have their programs removed from the statewide ETPL immediately. Removal for such violation shall be for not less than two years.

(g) Providers that are no longer licensed in accordance with §840.10 of this chapter (relating to Appropriate Licensure) shall have their programs immediately removed from the statewide ETPL.

(h) The Agency may require providers that have been determined to have violated the rules of this chapter to repay any funds provided under this chapter during the period of such violation.

§840.54. Continuation of Students in Removed Programs.

(a) Students enrolled in a program removed under this subchapter, except §840.53 of this subchapter (relating to Compliance Violations), shall be allowed to continue in training when the ITA was encumbered before such removal.

(b) For programs removed under §840.53 of this subchapter, the Agency may require that students be discontinued following removal. Boards may place a student affected by program removal into a similar program, in accordance with local policies, when available.

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

Filed with the Office of the Secretary of State on March 8, 2022.

TRD-202200835
Les Trobman
General Counsel
Texas Workforce Commission
Earliest possible date of adoption: April 24, 2022
For further information, please call: (512) 689-9855

SUBCHAPTER G. STATE AND LOCAL FLEXIBILITY

40 TAC §840.61

The rule is proposed under Texas Labor Code, §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The rule implements the requirements set out in WIOA §§116, 122, and 134; 20 CFR Part 680, Subpart D; and 20 CFR §681.550.

§840.61. Individual Training Accounts.

(a) A participant determined eligible for training may use an ITA to pay for the cost of training programs that are:

1. included on the statewide ETPL; or

2. locally approved out-of-state programs.

(b) ITAs shall include only those costs required for successful completion of training programs, which are paid directly to providers of programs on the statewide ETPL or locally approved out-of-state programs.

(c) All changes to a program, including any increase in program costs, must be included on the ETPL prior to issuance of an ITA.

(d) Boards shall ensure that the ITA allowance does not exceed training costs listed on the ETPL for programs at the time of student enrollment.

(e) Additional costs related to training programs may be paid using support services funds, in accordance with existing guidance.

(f) Boards may apply additional criteria to training programs beyond those included in this chapter. Such additional criteria may include limitations on the:

1. cost of training programs; and

2. length of training programs.

(g) Boards shall ensure that participants and training providers are informed that WIOA training funds are not available unless the Board has approved and issued an ITA to the training provider or eligible participant.

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

Filed with the Office of the Secretary of State on March 8, 2022.

TRD-202200836
Les Trobman
General Counsel
Texas Workforce Commission
Earliest possible date of adoption: April 24, 2022
For further information, please call: (512) 689-9855
Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 1. ADMINISTRATION

PART 2. TEXAS ETHICS COMMISSION

CHAPTER 22. RESTRICTIONS ON CONTRIBUTIONS AND EXPENDITURES

1 TAC §22.37

The Texas Ethics Commission withdraws proposed new §22.37, which appeared in the January 14, 2022, issue of the Texas Register (47 TexReg 73).

Filed with the Office of the Secretary of State on March 14, 2022.
TRD-202200894
J.R. Johnson
General Counsel
Texas Ethics Commission
Effective date: March 14, 2022
For further information, please call: (512) 463-5800

Kelly Parker
Executive Director
Texas Optometry Board
Effective date: March 10, 2022
For further information, please call: (512) 305-8502

22 TAC §277.14

The Texas Optometry Board withdraws proposed new §277.14, which appeared in the December 10, 2021, issue of the Texas Register (46 TexReg 8307).

Filed with the Office of the Secretary of State on March 10, 2022.
TRD-202200864
Kelly Parker
Executive Director
Texas Optometry Board
Effective date: March 10, 2022
For further information, please call: (512) 305-8502

22 TAC §277.15

The Texas Optometry Board withdraws proposed new §277.15, which appeared in the December 10, 2021, issue of the Texas Register (46 TexReg 8308).

Filed with the Office of the Secretary of State on March 10, 2022.
TRD-202200865
Kelly Parker
Executive Director
Texas Optometry Board
Effective date: March 10, 2022
For further information, please call: (512) 305-8502

TITLE 22. EXAMINING BOARDS

PART 14. TEXAS OPTOMETRY BOARD

CHAPTER 277. PRACTICE AND PROCEDURE

22 TAC §277.13

The Texas Optometry Board withdraws proposed new §277.13, which appeared in the December 10, 2021, issue of the Texas Register (46 TexReg 8305).

Filed with the Office of the Secretary of State on March 10, 2022.
TRD-202200863
ADMITTED RULES

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

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES

SUBCHAPTER J. PURCHASED HEALTH SERVICES

DIVISION 5. GENERAL ADMINISTRATION

1 TAC §355.8095

The Texas Health and Human Services Commission (HHSC) adopts an amendment to §355.8095, concerning Medicaid Administrative Claiming Program. The amendment to §355.8095 is adopted without changes to the proposed text as published in the September 17, 2021, issue of the Texas Register (46 TexReg 6006). This rule will not be republished.

BACKGROUND AND JUSTIFICATION

The amendment is necessary to allow Aging and Disability Resource Centers (ADRCs) the opportunity to participate in the Medicaid Administrative Claiming (MAC) program. MAC is a joint federal-state funded program authorized by the Centers for Medicare & Medicaid Services (CMS) which provides reimbursement for the costs of Medicaid administrative activities that refer eligible or potentially eligible Medicaid recipients to appropriate Medicaid and health-related services. HHSC serves as a pass-through entity to administer these federal funds. MAC in Texas currently provides funding for school districts, mental health programs/programs serving individuals with intellectual and developmental disabilities, local health departments/districts, and early childhood intervention programs. Access to this reimbursement opportunity allows ADRCs a mechanism to better serve the healthcare needs of Medicaid beneficiaries.

The rule change also amends a statement regarding costs allowable for submission through a MAC claim to better reflect the staff requirements for cost reporting, as per the CMS-approved Time Study Implementation Guide.

COMMENTS

The 31-day comment period ended October 18, 2021.

During this period, HHSC did not receive any comments regarding the proposed rule.

STATUTORY AUTHORITY

The amendment to §355.8095 is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; 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; and Texas Government Code §531.021(b-1), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for Medicaid payments under the Texas Human Resources Code Chapter 32.

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

Filed with the Office of the Secretary of State on March 14, 2022.

TRD-202200885

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Effective date: April 3, 2022

Proposal publication date: September 17, 2021

For further information, please call: (512) 462-6200

TITLE 4. AGRICULTURE

PART 13. PRESCRIBED BURNING BOARD

CHAPTER 226. REQUIREMENTS FOR CERTIFICATION BY THE BOARD

4 TAC §§226.1, 226.3, 226.4

The Texas Prescribed Burning Board (Board), a semi-independent board administratively attached to the Texas Department of Agriculture (Department) adopts amendments to Title 4, Part 13, Chapter 226, §226.1, §226.3, and §226.4, pertaining to eco-regions. The amendments are adopted without changes to the adopted text as published in the February 4, 2022, issue of the Texas Register (47 TexReg 390) and will not be republished. Since the Board has increased the requirements to become a certified and insured prescribed burn manager and has observed that eco-regions can be extremely different within themselves, with extremely differing environs from one area of an eco-region to another area, the adopted amendments remove eco-regions from the requirements to become a certified and insured prescribed burn manager.

The adopted amendments also make an editorial change to §226.1(a) and §226.4(a) to add "certified and insured" to standardize terminology used within the rules.
The amendments are adopted under Texas Natural Resources Code §153.046, which provides that the Board shall establish standards for prescribed burning, certification, recertification, and training for certified and insured prescribed burn managers, and establish minimum education, professional and insurance requirements for certified and insured prescribed burn managers and instructors.

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

Filed with the Office of the Secretary of State on March 9, 2022.

TRD-202200855
Skyler Shafer
Assistant General Counsel
Prescribed Burning Board
Effective date: March 29, 2022
Proposal publication date: February 4, 2022
For further information, please call: (512) 936-9360

CHAPTER 228. PROCEDURES FOR CERTIFIED AND INSURED PRESCRIBED BURN MANAGERS

4 TAC §228.4

The Texas Prescribed Burning Board (Board), a semi-independent board administratively attached to the Texas Department of Agriculture (Department), adopts amendments to Title 4, Part 13, Chapter 228, §228.4, concerning Conducting Burns During a Burn Ban. The amendments are adopted without changes to the proposed text as published in the February 4, 2022, issue of the Texas Register (47 TexReg 392) and will not be republished.

The adopted amendments change the notification requirements for burns conducted during a burn ban. The adopted amendments require certified and insured prescribed burn managers (CIPBMs) to notify the Texas A&M Forest Service (TFS) central dispatch office prior to and upon completion of a burn conducted during a burn ban, rather than the TFS regional fire coordinator or TFS dispatch center/office. The changes to the notification process align rules for CIPBMs with current TFS policy, which changed to only have a central dispatch office take the notifications.

No comments were received regarding the amendments.

The amendments are adopted under Texas Natural Resources Code §153.046, which provides that the Board shall establish standards for prescribed burning, certification, recertification, and training for certified and insured prescribed burn managers, and establish minimum education, professional and insurance requirements for certified and insured prescribed burn managers and instructors.

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

Filed with the Office of the Secretary of State on March 9, 2022.
7. The repeal will not increase or decrease the number of individuals subject to the rule’s applicability as the rule itself is not applicable to individuals, but to state rules and procedures.

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

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

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

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV’T CODE §2007.043. The adopted repeal does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV’T CODE §2001.024(a)(6).

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

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

f. FISCAL NOTE REQUIRED BY TEX. GOV’T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

SUMMARY OF PUBLIC COMMENT. The public comment period was held January 28, 2022, to February 28, 2022. No public comment was received.

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

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

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

Filed with the Office of the Secretary of State on March 14, 2022.

TRD-202200889
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: April 3, 2022
Proposal publication date: January 28, 2022
For further information, please call: (512) 475-3959

10 TAC §1.5

The Texas Department of Housing and Community Affairs (the Department) adopts new 10 TAC Chapter 1, Administration, Subchapter A, General Policies and Procedures, §1.5, concerning Waiver Applicability in the Case of State or Federally Declared Disasters. The rule is adopted without changes to the proposed text as published in the January 28, 2022, issue of the Texas Register (47 TexReg 214) and will not be republished.

The purpose of the adopted rule is to clarify the rule’s applicability in the case of state waivers and state declared disasters.

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

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

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV’T CODE §2001.0221.

Mr. Bobby Wilkinson has determined that, for the first five years the adopted new section would be in effect:

1. The new section does not create or eliminate a government program but relates to the handling of waivers in the case of a declared disaster.

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

3. The new section does not require additional future legislative appropriations.

4. The new section will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The new section does not creating a new regulation, except that they are replacing sections being repealed simultaneously to provide for revisions.

6. The new section will expand the applicability of an existing regulation. The current rule limits its applicability to federal waivers and federally declared disasters. The adopted rule expands this applicability to state waivers and state declared disasters as well.

7. The new section will not increase or decrease the number of individuals subject to the rule’s applicability as the rule itself is not applicable to individuals, but to state rules and procedures.

8. The new section will not negatively or positively affect the state’s economy.

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

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

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV’T CODE §2007.043. The new section does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.
d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

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

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

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the new section are in effect, enforcing or administering the rule does not have any foreseeable implications related to costs or revenues of the state or local governments.

SUMMARY OF PUBLIC COMMENT. The public comment period was held January 28, 2022, to February 28, 2022. No public comment was received.

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

Except as described herein the adopted new section affects no other code, article, or statute.

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

Filed with the Office of the Secretary of State on March 14, 2022.
TRD-202200891
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: April 3, 2022
Proposal publication date: January 28, 2022
For further information, please call: (512) 475-3959

CHAPTER 8. PROJECT RENTAL ASSISTANCE PROGRAM RULE

10 TAC §§8.1 - 8.7

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 8, Project Rental Assistance Program Rule, §§8.1 - 8.7, without changes to the proposed text as published in the January 28, 2022, issue of the Texas Register (47 TexReg 215). The rules will not be republished. The purpose of the repeal is to provide clarification of the existing rule through new rulemaking action.

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


1. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the repeal would be in effect, the repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous readoption making changes to an existing activity, administration of the Section 811 PRA Program.

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

3. The repeal does not require additional future legislative appropriations.

4. The repeal does not result in an increase in fees paid to the Department nor in a decrease in fees paid to the Department.

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

6. The action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to an existing activity, administration of the Section 811 Program.

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

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

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department has evaluated this repeal and determined that the repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The repeal does not contemplate nor authorize a taking by the Department; therefore no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6). The Department has evaluated the repeal as to its possible effects on local economies and has determined that for the first five years the repeal would be in effect there would be no economic effect on local employment; therefore no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the new sections are effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

SUMMARY OF PUBLIC COMMENT. The public comment period was held January 28, 2022, to February 28, 2022, to receive input on the rule. No comment was received.
STATUTORY AUTHORITY. The repeal is made pursuant to Tex. Gov’t Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the repealed sections affect no other code, article, or statute.

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

Filed with the Office of the Secretary of State on March 14, 2022.
TRD-202200892
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: April 3, 2022
Proposal publication date: January 28, 2022
For further information, please call: (512) 475-3959

10 TAC §§8.1 - 8.6

The Texas Department of Housing and Community Affairs (the Department) adopts new 10 TAC Chapter 8, Project Rental Assistance Program Rule, §§8.1 - 8.3, 8.5, and 8.6 without changes to the proposed text as published in the January 28, 2022, issue of the Texas Register (47 TexReg 216). These rules will not be republished. Section 8.4 is adopted with a minor punctuation correction and will be republished. The purpose of the action is to provide clarification of the existing rule through new rulemaking action.

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

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV’T CODE §2001.0221.

1. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the new rule would be in effect, the rule does not create or eliminate a government program, but relates to the repeal, and simultaneous readoption making changes to an existing activity, administration of the Section 811 PRA Program.

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

3. The new rule does not require additional future legislative appropriations.

4. The new rule does not result in an increase in fees paid to the Department nor in a decrease in fees paid to the Department.

5. The new rule is not creating a new regulation, except that it is replacing the existing rule simultaneously to provide for revisions.

6. The action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to an existing activity, administration of the Section 811 Program.

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

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

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV’T CODE §2006.002. The Department has evaluated this new rule and determined that the new rule will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV’T CODE §2007.043. The new rule does not contemplate nor authorize a taking by the Department; therefore no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV’T CODE §2001.024(a)(6). The Department has evaluated the new rule as to its possible effects on local economies and has determined that for the first five years the new rule would be in effect there would be no economic effect on local employment; therefore no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV’T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the new rule is in effect, the public benefit anticipated as a result of the new rule would be increased clarity and improved access to the 811 Program. There will not be economic costs to individuals required to comply with the new rule.

f. FISCAL NOTE REQUIRED BY TEX. GOV’T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the new rule is in effect, enforcing or administering the rule does not have any foreseeable implications related to costs or revenues of the state or local governments.

SUMMARY OF PUBLIC COMMENT. The public comment period was held January 28, 2022, through February 28, 2022, to receive input on the action. No comments were received.

STATUTORY AUTHORITY. The new sections are adopted pursuant to Tex. Gov’t Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the new sections affect no other code, article, or statute.

§8.4. Qualification Requirements for Existing Developments.

Eligible Existing Developments must meet all of the requirements in §8.3 of this chapter (relating to Participation as a Proposed Development). In addition, the Existing Development must meet the following requirements:

1. The Development received an award (tax credit, direct loan, etc.) under a Department administered program in or after 2002, or has been otherwise approved by the Department in writing;

2. The Development has at least 5 housing units;

3. For Developments that were placed in service on or before January 1, 2017, the most current vacancy report as reflected in CMTS evidences that the Development maintained at least 85% physical occupancy for a period of at least 3 consecutive months;

4. For Developments that have received a UPCS inspection, the Development received a UPCS score of at least 80 on its most recent Department REAC inspection and all compliance issues associated with that inspection have been resolved;
(5) The Development is operating in accordance with the accessibility requirements of Section 504, the Rehabilitation Act of 1973 (29 U.S.C. Section 794), as specified under 24 C.F.R. Part 8, Subpart C, or operating under the 2010 ADA standards with the exceptions listed in "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities" Federal Register 79 FR 29671; and

(6) The Development is not Transitional Housing as defined in the 2018 Uniform Multifamily Rules.

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

Filed with the Office of the Secretary of State on March 14, 2022.
TRD-202200893
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: April 3, 2022
Proposal publication date: January 28, 2022
For further information, please call: (512) 475-3959

TITLE 13. CULTURAL RESOURCES
PART 3. TEXAS COMMISSION ON THE ARTS
CHAPTER 35. A GUIDE TO PROGRAMS AND SERVICES
13 TAC §35.1

The Texas Commission on the Arts (Commission) adopts amendments to 13 Texas Administrative Code §35.1, relating to the agency's grant guidelines. Amendments to 13 Texas Administrative Code §35.1 are adopted without changes to the proposed text as published in the December 31, 2021, issue of the Texas Register (46 TexReg 9145). The rule will not be republished.

Reasoned Justification:
The purpose of the proposed amendment is to ensure that the guidelines comply with changes to federal law pertaining to grants, clarify and modernize them, and correct minor grammatical errors.

How Rule Will Function:
The Commission has made revisions to A Guide to Programs & Services. The amended rule will function by revising the established grantmaking guidelines of the agency.

Summary of Comments:
Edits to the draft A Guide to Programs & Services were noted at the December 2, 2021, meeting, and the Commission instructed staff to proceed with posting the document to the Texas Register and agency website for public comment. Public comments were accepted from December 31, 2021, to January 30, 2022. No public comments were received.

Statutory Authority
The Commission adopts this rule pursuant to Texas Government Code §444.009, which provides the Commission with the authority to make rules and regulations for its government and that of its officers and committees and §444.024, which authorizes the Commission to award grants.

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

Filed with the Office of the Secretary of State on March 7, 2022.
TRD-202200826
Gary Gibbs
Executive Director
Texas Commission on the Arts
Effective date: March 27, 2022
Proposal publication date: December 31, 2021
For further information, please call: (512) 936-6570

TITLE 28. INSURANCE
PART 1. TEXAS DEPARTMENT OF INSURANCE
CHAPTER 5. PROPERTY AND CASUALTY INSURANCE
SUBCHAPTER E. TEXAS WINDSTORM INSURANCE ASSOCIATION
DIVISION 10. ELIGIBILITY AND FORMS
28 TAC §5.4906

The Commissioner of Insurance adopts new 28 TAC §5.4906, concerning the renewal premium grace period of the Texas Windstorm Insurance Association (TWIA). The new section is adopted without changes to the proposed text as published in the January 28, 2022, issue of the Texas Register (47 TexReg 248). The rule will not be republished.

REASONED JUSTIFICATION. House Bill 2920, 87th Legislature, 2021, requires the Texas Department of Insurance (TDI) to adopt rules to establish a grace period of not more than 10 days after the due date for the receipt of payment of premium for the renewal of a policy.

Section 5.4906. Section 5.4906(a) establishes a premium payment grace period for TWIA policy renewals. Section 5.4906(b) provides that the grace period applies to certain premium surcharge payments made by TWIA policyholders under Insurance Code §2210.259 or §2210.6132. The surcharges are included to give effect to the grace period required by HB 2920 because these surcharges are part of the payment a policyholder must make to TWIA at renewal.

SUMMARY OF COMMENTS. TDI did not receive any comments on the proposed new section.

STATUTORY AUTHORITY. The Commissioner adopts new 28 TAC §5.4906 under Insurance Code §§2210.008, 2210.203(c-1), and 36.001.

Insurance Code §2210.008 provides that the Commissioner may adopt rules as reasonable and necessary to implement Chapter 2210.
Insurance Code §2210.203(c-1) requires TDI to adopt rules establishing a grace period of not more than 10 days after the due date for the receipt of payment of premium for the renewal of a policy.

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.

Filed with the Office of the Secretary of State on March 11, 2022.

TRD-202200882
James Person
General Counsel
Texas Department of Insurance
Effective date: March 31, 2022
Proposal publication date: January 28, 2022
For further information, please call: (512) 676-6584

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 5. TEXAS BOARD OF PARDONS AND PAROLES

CHAPTER 141. GENERAL PROVISIONS

SUBCHAPTER G. DEFINITION OF TERMS

37 TAC §141.111

The Texas Board of Pardons and Paroles adopts amendments to 37 TAC Chapter 141, Subchapter G, §141.111 concerning definition of terms. The rule is adopted with changes to the proposed text as published in the November 5, 2021, issue of the Texas Register (46 TexReg 7555). The rule will be republished.

The amendments are adopted to provide edits for clarity, uniformity, and consistency throughout the rules. Additionally, amendments were made to the rule to include a definition for "Early Release on Parole" and renumbering of subsequent terms. These amendments are necessary to implement changes made to Government Code, Chapter 508, by House Bill (H.B.) 2372, 87th Legislature, Regular Session. H.B. 2372 amended Subchapter E, Chapter 508, Government Code, by adding Section 508.1455, which requires the Board to release certain offenders on parole 180 days before their parole eligibility date, and requires the offender to participate in a program operated by TDCJ following their release. The bill also requires the Board and TDCJ to jointly adopt rules for identifying offenders, and the Board to adopt rules governing the release of the offender.

No public comments were received regarding adoption of these amendments.

The amended rule is adopted under §§508.036(b) and 508.0441, Government Code. Section 508.036(b) authorizes the Board to adopt rules relating to the decision-making processes used by the Board and parole panels. Section 508.0441 authorizes the Board to adopt reasonable rules as proper or necessary relating to the eligibility of an offender for release to parole or mandatory supervision and to act on matters of release to parole or mandatory supervision. Section 508.1455 authorizes the Board to adopt rules governing the release of an inmate on parole under this section.

§141.111. Definition of Terms.

The following words and terms used within these rules shall have the following meanings, unless the context clearly indicates otherwise.

(1) Administrative Violation of Parole or Mandatory Supervision—A technical violation of parole or mandatory supervision which does not allege criminal conduct.

(2) Affinity (Marriage)—A husband-wife relationship (first degree). By virtue of the marriage, a spouse is also related to individuals related to the other spouse by blood (consanguinity), and the degree of relationship by affinity is the same as the underlying relationship of consanguinity. The ending of a marriage by divorce or death of a spouse ends relationships of affinity created by that marriage unless a child of that marriage is living, in which case the marriage is considered to continue as long as a child of that marriage lives.

(3) Board—The Texas Board of Pardons and Paroles, consisting of seven members appointed by the Governor.

(4) Commutation of sentence—An act of clemency by the Governor which serves to modify the conditions of a sentence.

(5) Conditional pardons—A form of executive clemency granted by the Governor which serves to release a person from the conditions of his or her sentence and any disabilities imposed by law thereby, subject to the conditions contained in the clemency proclamation. A person released pursuant to the terms of a conditional pardon is considered, for purposes of revocation thereof, to be a releasee.

(6) Consanguinity—A relationship in which one individual is related to another individual where one is a descendant of the other or where they share a common ancestor. An adopted child is considered to be a child of the adoptive parent for this purpose. The degree of relationship by consanguinity may be determined by adding the number of generations between an individual and the individual's ancestor or descendant.

(7) Consanguinity within the third degree—An individual's relatives within the third degree by consanguinity are the individual's parent or child (relatives in the first degree); brother, sister, grandparent, or grandchild (relatives in the second degree); and great-grandparent, great-grandchild, aunt who is a sister of a parent of the individual, uncle who is a brother of a parent of the individual, nephew who is a child of a brother or sister of the individual, or niece who is a child of a brother or sister of an individual (relatives in the third degree).

(8) CU/FI—Consecutive felony sentence vote that designates the date on which the offender would have been eligible for release on parole if the offender had been sentenced to serve a single sentence. This is not a vote to release on parole.

(9) CU/NR—Consecutive felony sentence vote to deny favorable parole action and set for review on a future specific month and year (set-off).

(10) CU/SA—Consecutive felony sentence vote to deny parole and not release the offender until the serve-all date.

(11) DMS—Mandatory supervision vote to deny release to mandatory supervision and set for review on a future specific month and year (set-off).

(12) Department—The Texas Department of Criminal Justice.
(13) Division--The Parole Division of the Texas Department of Criminal Justice.

(14) Early Release on Parole--The discretionary release of an offender from incarceration, but not from the legal custody of the state, approximately 180 days prior to the offender's parole eligibility date, under such conditions and provisions for supervision as a parole panel may determine.

(15) Eligible inmate--An offender who has been sentenced to a term of imprisonment in the Texas Department of Criminal Justice Correctional Institutions Division; is confined in a penal or correctional institution, including a jail or a correctional institution in another state; and is eligible for release on parole.

(16) Fiduciary--A person holding a position of trust, who has the duty, created by the undertaking, to act primarily for another's benefit in that undertaking.

(17) Full Pardon--An unconditional act of executive clemency by the Governor which serves to release a person from the conditions of his or her sentence and from any disabilities imposed by law thereby.

(18) Further Investigation (FI)--An initial determination by a parole panel favorable to parole of an offender, subject to additional investigation and processing.

(19) Hearing Officer--A staff member designated by the Board and assigned to conduct a preliminary or revocation hearing concerning one or more allegations of violation of the terms and conditions of parole, mandatory supervision, or conditional pardon; and a sex offender conditions hearing to determine whether the offender constitutes a threat to society by reason of lack of sexual control.

(20) Initial review--The review conducted by the Board not later than the 180th day an offender is eligible for release on parole.

(21) Inmate--A person incarcerated in the TDCJ-Correctional Institutions Division (CID), other penal institution, or jail serving a sentence imposed upon conviction of a felony.

(22) Institutional Parole Officer--A staff member responsible for interviewing offenders and preparing case summaries for review by a parole panel or the Board; and notifying the offender of the release date decision along with the approval or denial reasons.

(23) Mandatory supervision--The non-discretionary release of an offender from incarceration, but not from the legal custody of the state, under such conditions and provisions for supervision as the parole panel may determine. For the purposes of revocation, the terms "parole" and "mandatory supervision" are interchangeable and reference to either one of said terms includes the other.

(24) Mandatory supervision date--The date on which the release to mandatory supervision of an eligible offender may occur.

(25) Offender--A person incarcerated in the TDCJ-Correctional Institutions Division (CID), other penal institution, or jail serving a sentence imposed upon conviction of a felony or a person released from prison on parole or mandatory supervision.

(26) Offender's file--The paper and electronic file maintained by the TDCJ Parole Division as the official custodian of record.

(27) Pardon--See the definition of "full pardon" set forth in this section.

(28) Parole--The discretionary release of an offender from incarceration, but not from the legal custody of the state, under such conditions and provisions for supervision as a parole panel may determine.

(29) Parole certificate--An order of the Board incorporating the terms and conditions of release.

(30) Parole panel--A three member decision-making body of the Board authorized to act in release matters. In certain cases, the full Board acts as the parole panel.

(31) Party--Each person or agency named or admitted as a party.

(32) Posthumous--An event occurring after death.

(33) Preliminary hearing--Hearing to determine whether probable cause exists to continue holding the offender in custody pending the outcome of the final hearing.

(34) Preponderance of the Evidence--Evidence that is of greater weight or more convincing than the evidence that is offered in opposition to it; that is evidence which as a whole shows that the fact sought to be proved is more probable than not.

(35) Projected Release Date--The minimum expiration date as determined by the Texas Department of Criminal Justice.

(36) Release plan--Proposed community and place of residence and proposed employment or proposed provision for maintenance and care of the releasee.

(37) Releasee--A person released from TDCJ-CID on parole or mandatory supervision.

(38) Remain Set--A decision by the Board, after a special review, to continue the initial denial vote set off.

(39) Remission of fine or forfeiture--An act of clemency by the Governor releasing a person from payment of all or a portion of a fine or canceling a forfeiture of a bond.

(40) Reprieve--A temporary release from the terms of an imposed sentence.

(41) Review period--A period in which a parole panel will review an eligible offender for release on parole or mandatory supervision.

(42) Revocation--The cancellation of parole, mandatory supervision, or a person granted a conditional pardon to immediate incarceration or recommend to the Governor revocation of a conditional pardon without further hearing or, in the instance of reprieve of a fine, to immediate payment of the fine.

(43) RMS--Mandatory supervision vote to release to mandatory supervision when TDCJ-CID determines that the offender has reached the projected release date.

(44) Serve-All (SA)--A decision by the Board to deny parole and not release the offender until the serve-all date.

(45) Serve-All Date--The projected release date or minimum expiration date as determined by the Texas Department of Criminal Justice.

(46) SID--State Identification Number assigned by the Texas Department of Public Safety.

(47) TDCJ--Texas Department of Criminal Justice.

(48) TDCJ-CID--Texas Department of Criminal Justice-Correctional Institutions Division.

(49) Treatment--Refers to rehabilitation programs also referred to as counseling or therapy.
PART 9. TEXAS COMMISSION ON
JAIL STANDARDS

CHAPTER 251. GENERAL

37 TAC §251.6

The Texas Commission on Jail Standards adopts an amendment to §251.6, concerning complaints. The rule is adopted without changes to the proposed text as published in the December 3, 2021, issue of the Texas Register (46 TexReg 8225) and will not be republished.

This section regulates the handling of complaints against jails that are regulated by the Commission on Jail Standards. The amendment moves 37 TAC §251.6(c) to (d) and in place of (c) adds language to requires county jail administrators to include in any inmate handbook and to prominently display throughout the jail information relating to the procedure for complaint filing, investigation, and resolution.

HB 1545 of the 87th Legislature amended Tex. Gov’t Code § 511.0071(g) to provide that the Commission shall adopt rules requiring jail administrators to include in any inmate handbook and prominently display throughout the jail information regarding the procedure for complaint investigation and resolution.

Comments were received that recommended the rule language include specific examples of places where the complaint rules be posted, and that the language require jails to clarify the ways to appeal/follow-up on a complaint. During the February 24, 2022, quarterly Commission meeting, the Commission mentioned that the matter was discussed at a recent workshop where it was agreed it was best to let each facility determine where to place them because the wide variation in facility design and the fact that inmates often tear down or deface such postings precluded the Commission from trying to specify or suggest in administrative code where these postings should be placed. The comments did not affect the rule language, which was passed unanimously by the Commission.

The amendment is adopted under the authority of Government Code, Chapter 511, which authorizes the Texas Commission on Jail Standards to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

This proposed change does not affect other rules or statutes. The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency’s legal authority.

Filed with the Office of the Secretary of State on March 9, 2022.

TRD-202200857
Brandon Wood
Executive Director
Texas Commission on Jail Standards
Effective date: March 29, 2022
Proposal publication date: December 3, 2021
For further information, please call: (512) 463-2690

CHAPTER 273. HEALTH SERVICES

37 TAC §273.2

The Texas Commission on Jail Standards adopts an amendment to §273.3, concerning continuity of medications, without changes to the proposed language as published in the December 3, 2021, issue of the Texas Register (46 TexReg 8226) and will not be republished.

The proposed amendment adds language to 37 TAC §273.2(12) to require that a county jail inmate with a mental illness be provided with each prescription medication that a qualified medical professional or mental health professional determines is necessary for the care, treatment, or stabilization of a county jail inmate. The amendment also makes a non-substantive change to replace the word “prisoner” with “inmate.” The latter is the currently accepted term used in Texas county jails.

SB 49 of the 87th Legislature amended Government Code § 511.009(d) to provide that the commission shall adopt reasonable rules and procedures establishing minimum standards, as specified, regarding the continuity of prescription medications for the care and treatment of prisoners.

Public comments were received that observed that the existing language of that rule that requires medical professionals and now also mental health professionals to act "as soon as possible" is too vague. The comment suggested the language include a time limit by which mental health medications be prescribed. The comments also observed that the proposed language does not instruct intake medical personnel to give any deference to prior mental health medication prescriptions and suggested the language should direct the jail medical/mental health professionals to contact current/previous providers for medical records & prescriptions. The Commission noted that prior rules workshops deliberated on the matter of requiring the continuity of medication "as soon as possible," and it was determined then and remains true that it would be impossible for some jails to meet specified time limits. Furthermore, medical professionals are already required to consult with current or prior medical providers, making the recommendation superfluous. Because the Commission

ADOPTED RULES March 25, 2022 47 TexReg 1625
does not employ medical professionals, it would exceed its professional capacity to attempt to insert itself into medical matters by prescribing time limits on medical prescriptions. Inmates are in the care of the medical and mental health professionals that treat them while incarcerated. The Commission does not question or regulate the professional judgement or course of action of medical or mental health professionals who treat inmates.

The amendment is adopted under the authority of Government Code, Chapter 511, which authorizes the Texas Commission on Jail Standards to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

This adopted change does not affect other rules or statutes.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.
This section contains notices of state agency rule review as directed by the Texas Government Code, §2001.039. Included here are proposed rule review notices, which invite public comment to specified rules under review; and adopted rule review notices, which summarize public comment received as part of the review. The complete text of an agency’s rule being reviewed is available in the Texas Administrative Code on the Texas Secretary of State’s website.

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the website and printed copies of these notices may be directed to the Texas Register office.

### Proposed Rule Reviews

**Texas Department of Agriculture**

**Title 4, Part 1**

The Texas Department of Agriculture (the Department) files this notice of intent to review the rules in Texas Administrative Code, Title 4, Part 1, Chapter 17, Subchapter F, Texas Wine Marketing Assistance Program, comprised of §17.200 (Definitions), §17.201 (Wine Marketing Assistance Program), and §17.202 (Package Store Participation).

This review is being conducted in accordance with the requirements of Texas Government Code §2001.039 (Agency Review of Existing Rules).

The Department will consider whether the initial factual, legal, and policy reasons for adopting each rule continue to exist and whether these rules should be repealed, readopted, or readopted with amendments.

Written comments pertaining to this rule review may be submitted by mail to Skyler Shafer, Assistant General Counsel, at Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711-2847 or by email at Skyler.Shafer@TexasAgriculture.gov. The deadline for comments is 30 days after publication of this notice in the Texas Register.

TRD-202200880
Skyler Shafer
Assistant General Counsel
Texas Department of Agriculture
Filed: March 11, 2022

The Texas Department of Agriculture (the Department) files this notice of intent to review the rules in Texas Administrative Code, Title 4, Part 1, Chapter 17, Subchapter H, Texas Shrimp Marketing Assistance Program, comprised of §17.400 (Definitions), §17.401 (Shrimp Marketing Assistance Program and Advisory Committee), and §1.402 (Shrimp Marketing Assistance Program Staff).

This review is being conducted in accordance with the requirements of Texas Government Code, §2001.039 (Agency Review of Existing Rules).

The Department will consider whether the initial factual, legal, and policy reasons for adopting each rule continue to exist and whether these rules should be repealed, readopted, or readopted with amendments.

Written comments pertaining to this rule review may be submitted by mail to Skyler Shafer, Assistant General Counsel, at Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711-2847 or by email at Skyler.Shafer@TexasAgriculture.gov. The deadline for comments is 30 days after publication of this notice in the Texas Register.

### Credit Union Department

**Title 7, Part 6**

Chapter 95, Subchapter A, concerning insurance requirements, consisting of §§95.100, (Definitions), 95.101 (Share and Depositor Insurance Protection), 95.102 (Qualifications for an Insuring Organization), 95.103 (General Powers and Duties of an Insuring Organization), 95.104 (Notices), 95.105 (Reporting), 95.106 (Amount of Insurance Protection), 95.107 (Sharing Confidential Information), 95.108 (Examinations), 95.109 (Fees and Charges), and 95.110 (Enforcement; Penalty; and Appeal).

Chapter 95, Subchapter B, concerning liquidating agents, consisting of §§95.200 (Notice of Taking Possession; Appointment of Liquidating Agent; Subordination of Rights; and 95.205 (State Not Liable for any Deficiency).

Chapter 95, Subchapter C, concerning guaranty credit union, consisting of §§95.300 (Share and Deposit Guaranty Credit Union), 95.301 (Authority for a Guaranty Credit Union), 95.302 (Powers), 95.303 (Subordination of Right, Title, or Interest), 95.304 (Capital Contributions; Membership Investment Shares; Termination), 95.305 (Audited Financial Statements; Accounting Procedures; Reports), and 95.310 (Fees and Charges).

Chapter 95, Subchapter D, concerning disclosure for non-federally insured credit unions, consisting of §95.400 (Requirements of Participating Credit Unions).

This rule review will be conducted pursuant to Texas Government Code, §2001.039. The commission believes that the reasons for adopting the rules contained in these chapters continue to exist. The commission will accept written comments received on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the Texas Register as to whether the reasons for adopting these rules continue to exist. The commission also invites comments on how to make these rules easier to understand. For example:

Does the rule organize the material to suit your needs? If not, how could the material be better organized?

Does the rule clearly state the requirements? If not, how could the rule be more clearly stated?
Does the rule contain technical language or jargon that is not clear? If so, what language requires clarification?
Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand? If so, what changes to the format would make the rule easier to understand?
Would more (but shorter) sections be better in any of the rules? If so, what sections should be changed?
Each rule will also be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Credit Union Department.

Any questions or written comments pertaining to this notice should be directed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699, or by email to cudmail@cud.texas.gov. Any proposed amendments as a result of the review will be published in the Texas Register in compliance with Texas Government Code, Chapter 2001, and will be open for an additional 31-day public comment period prior to final adoption or repeal by the commission.

TRD-202200862
John J. Kolhoff
Commissioner
Credit Union Department
Filed: March 10, 2022

Texas Department of Housing and Community Affairs

Title 10, Part 1

The Texas Department of Housing and Community Affairs (the Department) files this notice of rule review for 10 TAC Chapter 1, Administration, Subchapter A, General Policies and Procedures, 10 TAC §1.16, Ethics and Disclosure Requirements for Outside Financial Advisors and Service Providers. The purpose of the proposed action is to conduct a rule review in accordance with Tex. Gov't Code §2001.039, which requires a state agency to review its rules every four years.

At this time, the Department has determined that there continues to be a need for this rule, which is to comply with Tex. Gov't Code Chapters 2263, 2270, and 2252 as it relates to the conduct applicable to financial advisors or service providers. The Department has also determined that no changes to this rule as currently in effect are necessary. This rule proposed for readoption will be noted in the Texas Register's Review of Agency Rules section without publication of the text.

REQUEST FOR PUBLIC COMMENT. All comments or questions in response to this notice of rule review may be submitted in writing from March 25, 2022, through April 25, 2022. Written comments may be submitted to Brooke Boston, Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711-3941, or by email to bboston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m. Austin local time, April 25, 2022.

TRD-202200887
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Filed: March 14, 2022

Adopted Rule Reviews
Credit Union Department

Title 7, Part 6

The Credit Union Commission (Commission) has completed its review of Chapter 91, Subchapter G (relating to Lending Powers) respectively. The rules were reviewed as a result of the Department's general rule review under Texas Government Code Section 2001.039.

Notice of the review of 7 TAC, Part 6, Chapter 91, Subchapters G were published in the Texas Register as required on December 24, 2021 (46 TexReg 9063). The Department received no formal comment on the notice of intention to review.

The Department hereby certifies that the adoption has been reviewed by legal counsel and found to be within the agency's legal authority to readopt.

TRD-202200904
John J. Kolhoff
Commissioner
Credit Union Department
Filed: March 14, 2022

Texas Education Agency

Title 19, Part 2

Texas Education Agency (TEA) adopts the review of 19 TAC Chapter 151, Commissioner's Rules Concerning Passing Standards for Educator Certification Examinations, pursuant to Texas Government Code, §2001.039. TEA proposed the review of Chapter 151 in the January 14, 2022 issue of the Texas Register (47 TexReg 107).

Relating to the review of Chapter 151, TEA finds that the reasons for adopting Chapter 151 continue to exist and readopts the rules. TEA received no comments related to the review of Chapter 151.

No changes to Chapter 151 are necessary as a result of the review.

This concludes the review of Chapter 151.

TRD-202200926
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: March 16, 2022

Texas Education Agency (TEA) adopts the review of 19 TAC Chapter 152, Commissioner's Rules Concerning Examination Requirements, pursuant to Texas Government Code, §2001.039.

TEA proposed the review of Chapter 152 in the January 14, 2022 issue of the Texas Register (47 TexReg 107).

Relating to the review of Chapter 152, TEA finds that the reasons for adopting Chapter 152 continue to exist and readopts the rules. TEA received no comments related to the review of Chapter 152. At a later date, TEA may propose updates to Chapter 152 related to examination requirements.

This concludes the review of Chapter 152.

TRD-202200927
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: March 16, 2022
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: ChampionX, LLC v. Texas Commission on Environmental Quality; Cause No. D-1-GN-21-005896; in the 459th District Court of Travis County, Texas

Background: On August 11, 2021, the Texas Commission on Environmental Quality ("TCEQ") issued an administrative order ("Order") finding that certain parties, including ChampionX, LLC, were potentially responsible for solid waste, hazardous substances, pollutants, and other contaminants at the McBay Oil and Gas State Superfund Site (the "Site"), a former oil refinery and oil reclamation plant located on a 20.32-acre tract on FM 1272, two miles west of the intersection with FM 2968 (North Olive Street), near Grapeland, Houston County, Texas. TCEQ's Order required ChampionX, LLC, and other potentially responsible parties, to reimburse all costs associated with TCEQ's cleanup of the Site, which remain to be collected. On October 4, 2021, ChampionX, LLC filed this appeal of TCEQ's Order.

Proposed Settlement: The parties propose an Agreed Final Judgment, which provides for an award to TCEQ of $400.00 as reimbursement for TCEQ's response cost and $100.00 in attorney's fees. The State, on behalf of TCEQ, will continue to litigate this matter with other potentially responsible parties who were named in TCEQ's Order.

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 Tyler J. Ryska, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, MC-066, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911; email: Tyler.Ryska@oag.texas.gov. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-20220909
Austin Kinghorn
General Counsel
Office of the Attorney General
Filed: March 15, 2022

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 03/21/22 - 03/27/22 is 18% for Consumer AGR/Commercial credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 03/21/22 - 03/27/22 is 18% for Commercial over $250,000.

1 Credit for personal, family or household use.

2 Credit for business, commercial, investment or other similar purpose.

TRD-20220914
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: March 15, 2022

Texas Education Agency

Request for Applications Concerning the 2022-2023 School Action Fund - Planning and Implementation Grant Program

Filing Authority. The availability of grant funds under Request for Applications (RFA) #701-22-107 is authorized by Elementary and Secondary Education Act (ESEA) of 1965, as amended by Every Student Succeeds Act (ESSA), Title I, Part A, Section 1003.

Eligible Applicants. Texas Education Agency (TEA) is requesting applications under RFA #701-22-107 from local educational agencies (LEAs) with schools designated by TEA as Title I served Comprehensive Schools (2019 ratings) and Title I served D- and F-rated Targeted Schools (2019 ratings) to create new schools, restart underperforming campuses, and redesign campuses with new whole-school models. A campus may not receive funding concurrently from a School Redesign grant, a School Transformation Fund grant, a School Action Fund (SAF) Cycles 4 or 5 grant, a School Improvement grant, Texas Title I Priority School (TTIPS), an Effective Schools Framework (ESF) grant, a Texas COVID Learning Acceleration Supports (TCLAS) Decision 10 grant, or a Teacher Leadership grant.

Description. The purpose of this grant program is to increase the number of students in great schools by providing customized planning support to LEAs committed to bold and aggressive action to transform low-performing schools and create better options for students. Applicants choose to select a school action model that might include one of the following action models: restart a struggling school as an ACE campus (implementation), ACE campus (planning), or Resource campus; create a new school as a district-managed campus or an Early Childhood Education (ECE) partner-managed campus; or redesign a campus with a blended learning model or a rural campus within a district-designed P-20 system model.

The grant includes support for LEAs to design schools, and matched technical assistance support from TEA.
Dates of Project. The 2022-2023 School Action Fund - Planning and Implementation grant program will be implemented primarily during the 2022-2023 school year. Applicants should plan for a starting date of no earlier than August 12, 2022, and an ending date of no later than July 31, 2023, contingent on the continued availability of federal funding.

Project Amount. Approximately $6 million is available for funding the 2022-2023 School Action Fund - Planning and Implementation grant program. TEA anticipates awarding up to 24 grants. Planning awards will be approximately $200,000 and Implementation awards will be approximately $375,000. Please see the Program Guidelines for additional information. This project is funded 100% with federal funds and is contingent on federal appropriations.

Selection Criteria. Applications will be selected based on the ability of each applicant to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed grant programs and the extent to which the applications address the primary objectives and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding. TEA reserves the right to select from the highest-ranking applications those that address all requirements in the RFA.

TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Applicants’ Conference. A webinar will be held on April 7 and 8, 2022. Applicants’ conference webinar details and a registration link are included in the Program Guidelines. Questions relevant to the RFA may be emailed to DSSI@tea.texas.gov on or before April 5, 2022. These questions, along with other information, will be addressed during the webinar. The applicants’ conference webinar will be open to all potential applicants and will provide general and clarifying information about the grant program and RFA.

Requesting the Application. The complete RFA will be posted on the TEA Grant Opportunities web page at https://tea4avalonzo.tea.state.tx.us/GrantOpportunities/forms/GrantProgram-Search.aspx for viewing and downloading. In the “Search Options” box, select the name of the RFA from the drop-down list. Scroll down to the “Application and Support Information” section to view and download all documents that pertain to this RFA.

Further Information. In order to make sure that no prospective applicant obtains a competitive advantage because of acquisition of information unknown to other prospective applicants, any and all questions must be submitted in writing to the TEA contact persons identified in the program guidelines of the RFA at DSSI@tea.texas.gov no later than April 13, 2022. All questions and the written answers thereto will be posted on the TEA Grant Opportunities web page in the format of Frequently Asked Questions (FAQs) by April 19, 2022. In the “Search Options” box, select the name of the RFA from the drop-down list. Scroll down to the “Application and Support Information” section to view all documents that pertain to this RFA.

Deadline for Receipt of Applications. Applications must be received in the TEA Document Control Center by 11:59 p.m. (Central Time), May 9, 2022, to be eligible to be considered for funding. TEA will only accept applications by email.

TRD-202200915

Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: March 15, 2022

Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code, (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the proposed orders and the opportunity to comment must be published in the Texas Register no later than the 30th day before the date on which the public comment period closes, which in this case is April 25, 2022. 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 April 25, 2022. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2545. 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: 1585 A-Plus R.V., Incorporated; DOCKET NUMBER: 2021-0958-PWS-E; IDENTIFIER: RN107702987; LOCATION: Lubbock, Lubbock County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.106(f)(2) and Texas Health and Safety Code, §341.031(a), by failing to comply with the acute maximum contaminant level of ten milligrams per liter for nitrate; PENALTY: $6,500; ENFORCEMENT COORDINATOR: Samantha Salas, (512) 239-1543; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(2) COMPANY: 3009 Water Company, L.L.C.; DOCKET NUMBER: 2021-1018-PWS-E; IDENTIFIER: RN102975729; LOCATION: San Antonio, Comal County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §§290.42(e)(1), 290.110(e)(2) and (6), and 290.111(a)(2) and (b), by failing to provide a minimum treatment consisting of coagulation with direct filtration and adequate disinfection for groundwater under the influence of surface water (GUI), and failing to submit Surface Water Monthly Operating Reports for systems that use GUI; and 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification to the executive director regarding the failure to collect lead and copper tap samples for the July 1, 2015 - December 31, 2015 and Jan-

(3) COMPANY: Chevron Mart, Incorporated; DOCKET NUMBER: 2021-0801-PWS-E; IDENTIFIER: RN101846661; LOCATION: Houston, Harris County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.41(c)(1)(F), by failing to obtain a sanitary control easement covering land within 150 feet of the facility’s well; PENALTY: $50; ENFORCEMENT COORDINATOR: Ronica Rodriguez, (361) 825-3425; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(4) COMPANY: City of Glenn Heights; DOCKET NUMBER: 2021-0837-PWS-E; IDENTIFIER: RN101410785; LOCATION: Glenn Heights, Dallas County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.45(b)(1)(D)(iii) and Texas Health and Safety Code, §341.0315(c), by failing to provide two or more pumps that have a total storage capacity of 2.0 gallons per minute (gpm) per connection or that have a total capacity of at least 1,000 gpm and the ability to meet peak hourly demands with the largest pump out of service, whichever is less, at each pump station or pressure plane; PENALTY: $787; ENFORCEMENT COORDINATOR: Ronica Rodriguez, (361) 825-3425; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: Classic Chevrolet, Incorporated dba Classic Clean Fuels; DOCKET NUMBER: 2021-0262-PST-E; IDENTIFIER: RN103964797; LOCATION: Grapevine, Tarrant County; TYPE OF FACILITY: fuel retail sales facility; RULES VIOLATED: 30 TAC §334.10(b)(2), by failing to assure that all underground storage tank (UST) recordkeeping requirements are met; 30 TAC §334.50(b)(1) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the UST 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; and 30 TAC §334.606, by failing to maintain operator training certification records on-site and make them available for inspection upon request by agency personnel; PENALTY: $4,850; ENFORCEMENT COORDINATOR: Berenice Munoz, (915) 834-4976; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: Duce & Mari, LLC dba El Jardin Superette; DOCKET NUMBER: 2021-1228-PST-E; IDENTIFIER: RN102394616; LOCATION: Brownsville, Texas 78526-6956, Cameron County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank system; PENALTY: $2,438; ENFORCEMENT COORDINATOR: Sarah Smith, (512) 239-4495; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(7) COMPANY: Lake LBJ Boutique Resort & Marina, LLC dba Sunrise Beach Marina and Georg Pengg dba Sunrise Beach Marina; DOCKET NUMBER: 2021-1037-MLM-E; IDENTIFIER: RN101641926; LOCATION: Sunrise Beach, Llano County; TYPE OF FACILITY: watercraft fueling facility; RULES VIOLATED: 30 TAC §327.5(c), by failing to submit written information, describing the details of the discharge or spill and supporting the adequacy of the response action during 30 working days of the discharge of the reportable discharge or spill; and 30 TAC §335.4(1) and TWC, §26.121(a), by failing to not cause, suffer, allow, or permit the unauthorized disposal of industrial solid waste (ISW) in such a manner as to cause the discharge or imminent threat of discharge of ISW into or adjacent to waters of the state; PENALTY: $10,242; ENFORCEMENT COORDINATOR: Karolyn Kent, (512) 239-2536; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(8) COMPANY: Oliver & Thompson Companies, LLC; DOCKET NUMBER: 2021-1149-PWS-E; IDENTIFIER: RN109861591; LOCATION: Midland, Midland County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.41(c)(3)(A), by failing to submit well completion data for review and approval prior to placing the facility's public drinking water well into service; and 30 TAC §290.46(d)(2)(A) and §290.110(b)(4) and Texas Health and Safety Code, §341.0315(c), by failing to maintain a disinfectant residual of at least 0.2 milligrams per liter free chlorine throughout the distribution system at all times; PENALTY: $688; ENFORCEMENT COORDINATOR: Aaron Vincent, (512) 239-0855; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(9) COMPANY: R&E Link, LLC; DOCKET NUMBER: 2021-1238-AIR-E; IDENTIFIER: RN101380020; LOCATION: Splendora, Liberty County; TYPE OF FACILITY: portable air curtain incinerator; RULES VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code, §382.0518(a) and §382.085(b), by failing to obtain authorization prior to constructing or modifying a source of air contaminants; PENALTY: $1,625; ENFORCEMENT COORDINATOR: Kate Dacy, (512) 239-4593; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(10) COMPANY: RC1 HOLDINGS, INCORPORATED; DOCKET NUMBER: 2021-0888-PWS-E; IDENTIFIER: RN107232746; LOCATION: Odessa, Ector County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.106(f)(2) and Texas Health and Safety Code, §341.031(a), by failing to comply with the acute maximum contaminant level of ten milligrams per liter for nitrate; PENALTY: $6,750; ENFORCEMENT COORDINATOR: Samantha Salas, (512) 239-1543; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(11) COMPANY: Sam Ferreri dba Sam Ferreri Water System; DOCKET NUMBER: 2021-1095-PWS-E; IDENTIFIER: RN103105490; LOCATION: Houston, Harris County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.117(d)(2)(A), (h), and (i)(2), by failing to collect one lead and copper sample from the facility’s one entry point no later than 180 days after the end of the January 1, 2020 - December 31, 2020, monitoring period during which the copper action level was exceeded, have the samples analyzed, and report the results to the executive director (ED); 30 TAC §290.117(f)(3)(A), by failing to submit a recommendation to the ED for optimal corrosion control treatment within six months after the end of the January 1, 2020 - December 31, 2020, monitoring period during which the copper action level was exceeded; and 30 TAC §290.117(g)(2)(A), by failing to submit a recommendation to the ED for source water treatment within 180 days after the end of the January 1, 2020 - December 31, 2020, monitoring period during which the copper action level was exceeded; PENALTY: $1,787; ENFORCEMENT COORDINATOR: Miles Wehner, (512) 239-2813; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(12) COMPANY: TEXAS STOP SHOP, L.L.C. dba Breaktime; DOCKET NUMBER: 2021-1178-PST-E; IDENTIFIER: RN101723708; LOCATION: Highlands, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.10(b)(2), by failing to assure that all underground storage tank (UST) recordkeeping requirements are met; 30 TAC §334.49(c)(4)(C) and TWC, §26.3475(d), by failing to have the cathodic protection system inspected and tested for operability...
and adequacy of protection at a frequency of at least once every three years; 30 TAC §334.50(b)(1)(A) and (2) and TWC §26.3475(a) and (c)(1), by failing to monitor the USTs for releases at a frequency of at least once every 30 days, and failing to provide release detection for the pressurized piping associated with the UST system; and 30 TAC §334.606, by failing to maintain required operator training certification records and make them available for inspection upon request by agency personnel; PENALTY: $9,847; ENFORCEMENT COORDINATOR: Stephanie McCurley, (512) 239-2607; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(13) COMPANY: The LYCRA Company LLC; DOCKET NUMBER: 2021-1273-AIR-E; IDENTIFIER: RN104244942; LOCATION: La Porte, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §122.143(4) and §122.146(2), Federal Operating Permit Number O1891, General Terms and Conditions and Special Terms and Conditions Number 24, and Texas Health and Safety Code, §382.085(b), by failing to submit a permit compliance certification within 30 days of any certification period; PENALTY: $9,100; ENFORCEMENT COORDINATOR: Margarita Dennis, (817) 588-5892; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(14) COMPANY: Universal Health Services, Incorporated dba University Behavioral Health of Denton; DOCKET NUMBER: 2021-1261-PST-E; IDENTIFIER: RN101532604; LOCATION: Denton, Denton County; TYPE OF FACILITY: a hospital and an underground storage tank system with an emergency generator; RULES VIOLATED: 30 TAC §334.8(c)(5)(B)(ii), by failing to obtain a delivery certificate by submitting a properly completed underground storage tank (UST) registration and self-certification form at least 30 days before the expiration date; 30 TAC §334.48(g)(1)(A)(ii) and (B) and TWC §26.3475(c)(2), by failing to test the spill prevention equipment at least once every three years to ensure the equipment is liquid tight, and failing to inspect the overfill prevention equipment at least once every three years; 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the UST for releases at a frequency of at least once every 30 days; and 30 TAC §334.605(d), by failing to retrain a certified Class A and Class B operator by January 1st, 2020, with a course submitted to and approved by the TCEQ after April 1st, 2018; PENALTY: $9,675; ENFORCEMENT COORDINATOR: Tyler Richardson, (512) 756-3994; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(15) COMPANY: Wattec Manufacturing Solutions, LLC; DOCKET NUMBER: 2021-1205-IHW-E; IDENTIFIER: RN106278385; LOCATION: Fort Worth, Denton County; TYPE OF FACILITY: locomotive and off-highway vehicle components manufacturing; RULE VIOLATED: 30 TAC §335.4, by failing to be not cause, suffer, allow, or permit the disposal of industrial solid waste at an unauthorized facility; PENALTY: $11,250; ENFORCEMENT COORDINATOR: Karolyn Kent, (512) 239-2536; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-202200095

Gitanjali Yadav
Acting Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: March 15, 2022

Notice of Application and Preliminary Decision for TPDES Permit for Municipal Wastewater Renewal and Notice of a New Pretreatment Program

Notice Issued March 16, 2022

APPLICATION NO. WQ0012597001; San Jacinto River Authority, 2436 Sawdust Road, The Woodlands, Texas 77380, has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0012597001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 7,800,000 gallons per day. TCEQ received this application on December 12, 2017.

The applicant has also applied to the TCEQ for approval of its new pretreatment program under the TPDES program. Approval of the request for pretreatment program authority and the new pretreatment program will authorize the applicant to implement the legal authority, technically based local limits, enforcement response plan/enforcement response guide, standard operating procedures (including forms), and all required Streamlining Rule provisions, to regulate the discharge of pollutants by industrial users into its treatment works facilities, to perform inspections, surveillance, and monitoring, to determine compliance with applicable pretreatment standards and requirements, and to enforce against noncompliant industrial users. The request for approval complies with both federal and State requirements. The new pretreatment program will be approved without change if no substantive comments are received within 30 days of notice publication. The following treatment works facilities will be subject to the requirements of the new pretreatment program: TPDES Permit Nos. WQ0012597001, WQ0011401001, and WQ0011658001. The facility is located at 5402 Research Forest Drive, in The Woodlands, approximately 2,000 feet northwest of the confluence of Bear Branch and Panther Branch, approximately 3.5 miles south of the intersection of Farm-to-Market Road 1488 and Interstate Highway 45, in Montgomery County, Texas 77381. The treated effluent is discharged to Panther Branch; thence to Lake Woodlands; thence to Panther Branch; thence to Spring Creek in Segment No. 1008 of the San Jacinto River Basin. The unclassified receiving water uses are limited aquatic life use for Panther Branch (upstream of Lake Woodlands), high aquatic life use for Lake Woodlands and intermediate aquatic life use Panther Branch (downstream of Lake Woodlands). The designated uses for Segment No. 1008 are high aquatic life use, public water supply and primary contact recreation. 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://tceqmaps.arcgis.com/apps/webappviewer/index.html?id=d85bac4444b468bbd360b8168250f&marker=-95.474722%2C30.135833&level=12

The TCEQ Executive Director has completed the technical review of the application, newly developed pretreatment program, 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. The Executive Director has also made a preliminary decision that the requested new pretreatment program, if approved, meets all statutory and regulatory requirements. The permit application, Executive Director's preliminary decision, new pretreatment program, and draft permit are available for viewing and copying at the South Regional Library, 2101 Lake Robbins Drive, The Woodlands, Texas.

You may submit public comments or request a public meeting about this application or on the application for approval of the new pretreatment program. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application or the application for the new pretreatment program. TCEQ holds a public meeting if the Executive Director determines that there is a sig-
significant degree of public interest in the application, or the application for the new pretreatment program, or if requested by a local legislator. A public meeting is not a contested case hearing.

After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material, or significant public comments or on the application for the new pretreatment program. Unless the application is directly referred for a contested case hearing, the response to comments will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting a contested case hearing or reconsideration of the Executive Director's decision. There is no opportunity to request a contested case hearing on the application for the new pretreatment program. A contested case hearing is a legal proceeding similar to a civil trial in a state district court. TO REQUEST A CONTESTED CASE HEARING, YOU MUST INCLUDE THE FOLLOWING ITEMS IN YOUR REQUEST: your name, address, phone number; applicant's name and proposed permit number; the location and distance of your property/activities relative to the proposed facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; a list of all disputed issues of fact that you submit during the comment period; and the statement "[I/we] request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify by name and physical address an individual member of the group who would be adversely affected by the proposed facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose.

Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

The Commission may only grant a request for a contested case hearing on issues the requestor submitted in their timely comments that were not subsequently withdrawn. If a hearing is granted, the subject of a hearing will be limited to disputed issues of fact or mixed questions of fact and law relating to relevant and material wastewater quality concerns submitted during the comment period. TCEQ may act on an application to renew a permit for discharge of wastewater without providing an opportunity for a contested case hearing if certain criteria are met.

The Executive Director may issue final approval of the application unless a timely contested case hearing request or request for reconsideration is filed. If a timely hearing request or request for reconsideration is filed, the Executive Director will not issue final approval of the permit and will forward the application and request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this specific application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. If you wish to be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

All written public comments and public meeting requests must be submitted to the Office of the Chief Clerk, MC 105, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at www.tceq.texas.gov/goto/comment within 30 days from the date of newspaper publication of this notice. For details about the status of the application, visit the Commissioners' Integrated Database at www.tceq.texas.gov/goto/did. Search the database using the permit number for this application, which is provided at the top of this notice.

Public comments and requests must be submitted either electronically at www.tceq.texas.gov/goto/comment, or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. Any personal information you submit to the TCEQ will become part of the agency's record; this includes email addresses. For more information about this permit application or the permitting process, please call the TCEQ Public Education Program, Toll Free, at (800) 687-4040 or visit their website at www.tceq.texas.gov/goto/pep. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from San Jacinto River Authority at the address stated above or by calling Mr. Chris Meeks, San Jacinto River Authority, at (281) 367-9511.

TRD-202200922
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 16, 2022

Notice of Correction to Agreed Order Number 8
In the November 5, 2021, issue of the Texas Register (46 TexReg 7648), the Texas Commission on Environmental Quality (commission) published notice of Agreed Orders, specifically Item Number 8, for the City of Henderson, Docket Number 2020-0397-MWD-E. The error is as submitted by the commission.

The identifier should be corrected to read: "RN101612679."

For questions concerning these errors, please contact Michael Parrish at (512) 239-2548.

TRD-202200906
Gitanjali Yadav
Acting Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: March 15, 2022

Notice of District Petition
Notice issued March 10, 2022
TCEQ Internal Control No. D-02022022-003: HM Parkside L.P., a Texas limited partnership (Petitioner) filed a petition for creation of Parkside on the River Municipal Utility District No. 2 District of Williamson County with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ.

The petition states that: (1) the Petitioner holds title to a majority in value of the land to be included in the proposed District; (2) there is one lienholder, First United Bank and Trust Company, on the property to be included in the proposed District and the lienholder consents to the creation of the proposed District; (3) the proposed District will con-
tain approximately 539,542 acres located within Williamson County, Texas; and (4) all of the land within the proposed District is within the extraterritorial jurisdiction of the City of Georgetown. By Resolution No. 121421-L, passed and approved on December 14, 2021, the City of Georgetown, Texas, gave its consent to the creation of the proposed District, pursuant to Texas Water Code §54.016. The petition further states that the proposed District will: (1) design, construct, acquire, improve, extend, finance, issue bonds, maintain, operate, and convey an adequate and efficient water works and sanitary sewer system for domestic and commercial purposes; (2) design, construct, acquire, improve, extend, finance, issue bonds, maintain, operate, and convey works, improvements, facilities, plants, equipment, and appliances helpful or necessary to provide more adequate drainage for the proposed District, and control, abate, and amend local storm waters or other harmful excesses of water; (3) design, construct, acquire, improve, extend, finance, issue bonds, maintain, operate, and convey park and recreational facilities; (4) design, construct, acquire, improve, extend, finance, issue bonds, maintain, operate, and convey roads and improvements in aid of roads; and (5) design, construct, acquire, improve, extend, finance, issue bonds, maintain, operate, and convey such other additional facilities, systems, plants, and enterprises as shall be consonant with all of the purposes for which the proposed District is created.

According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioner that the cost of said project will be approximately $57,210,000 ($35,700,000 for utilities, $15,785,000 for roads, and $5,725,000 for recreational).

INFORMATION SECTION

To view the complete issued notice, view the notice on our website at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the website, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/f we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District’s boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our website at www.tceq.texas.gov.

TRD-202200860
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 10, 2022

Notice of District Petition

Notice issued March 10, 2022

TCEQ Internal Control No. D-02022022-003; Colony Investments, Ltd., a Texas limited partnership, and 608 Colony Investments, Ltd., a Texas limited partnership, (Petitioners) filed a petition for creation of Brazoria County Municipal Utility District No. 87 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioners hold title to a majority in value of the land to be included in the proposed District; (2) there is one lienholder, Broadway Bank, on the property to be included in the proposed District and the lienholder consents to the creation of the proposed District; (3) the proposed District will contain approximately 559.563 acres located within Brazoria County, Texas; and (4) all of the land within the proposed District is within the extraterritorial jurisdiction of Iowa Colony, Texas. Prior to the creation of the proposed District, the property is to be annexed into the corporate limits of City of Iowa Colony, Texas. By Resolution No. 2021-09, passed and approved on June 24, 2021, the City of Iowa Colony, Texas gave its consent to the creation of the proposed District, pursuant to Texas Water Code §54.016. The petition further states that the proposed District will: (1) purchase, construct, acquire, improve, or extend inside or outside of its boundaries any and all works, improvements, facilities, plants, equipment, and appliances necessary or helpful to supply and distribute water for municipal, domestic, and commercial purposes; (2) collect, transport, process, dispose of, and control domestic and commercial wastes; (3) gather, conduct, divert, abate, amend, and control local storm water or other local harmful excesses of water; (4) design, acquire, construct, finance, improve, operate, and maintain macadamized, graveled, or paved roads and turnpikes, or improvements in aid of those roads; (5) design, acquire, construct, finance, improve, and maintain parks and recreational facilities; and (6) purchase, construct, acquire, improve, or extend inside or outside of its boundaries such additional facilities, systems, plants, and enterprises as shall be consonant with all of the purposes for which the proposed District is created. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioners that the cost of said project will be approximately $65,300,000 ($45,500,000 for utilities, $16,900,000 for roads, and $2,900,000 for recreational).

INFORMATION SECTION

To view the complete issued notice, view the notice on our website at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the website, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an

47 TexReg 1634 March 25, 2022 Texas Register
official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the District's Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our website at www.tceq.texas.gov.

TRD-202200861
Laurie Ghars
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 10, 2022


APPLICATION.

Matthew Daley, 538 Hickory Lane, Rockwall, Texas 75087, has applied to the Texas Commission on Environmental Quality (TCEQ) for a Landscape Irrigator License. The Executive Director denied Mr. Daley's application for cause. Mr. Daley has requested a formal hearing on the Executive Director's decision. During the review of Mr. Daley's application, the Executive Director discovered that Mr. Daley was convicted of two Class A Misdemeanors, a Second-Degree Felony, and three State Jail Felonies. The Executive Director denied Mr. Daley's application because these citations were for offenses that directly relate to the duties and responsibilities of the licensed occupation.

CONTESTED CASE HEARING.

The State Office of Administrative Hearings (SOAH) will conduct a preliminary hearing on this application at:

10:00 a.m. - April 14, 2022
William P. Clements Building
300 West 15th Street, 4th Floor
Austin, Texas 78701

The purpose of a preliminary hearing is to establish jurisdiction, name the parties, establish a procedural schedule for the remainder of the proceeding, provide an opportunity for settlement discussions, and address other matters as determined by the administrative law judge. The preliminary hearing will be held unless all timely hearing requests are withdrawn or the parties agree to waive the preliminary hearing.

The evidentiary phase of the contested case hearing, to be held at a later date, will be a legal proceeding similar to a civil trial in state district court to determine whether Mr. Daley should be issued a Landscape Irrigator License. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. If Matthew Daley fails to appear at the preliminary hearing or evidentiary hearing, the Executive Director will request that the hearing be canceled, and that appeal of the Executive Director's decision be dismissed.

SOAH's rules allow for participation by telephone or videoconference. Permission must be obtained from SOAH at least ten days before the hearing.

Legal Authority: Texas Water Code Chapters 5 and 37; Texas Occupations Code Chapter 53; Texas Government Code, Chapter 2001; 30 Texas Administrative Code (TAC) Chapter 30, and the procedural rules of the TCEQ and SOAH, including 30 TAC Chapters 70 and 80 and 1 TAC Chapter 155.

INFORMATION.

For information concerning the hearing process, please contact the TCEQ Office of Public Interest Counsel, MC 103, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-6363. Further information regarding this hearing may be obtained by contacting Alicia Ramirez, Staff Attorney, TCEQ, Environmental Law Division, MC 173, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-0133. General information about the TCEQ can be found at our website at www.tceq.texas.gov. General information about SOAH can be found on its website at www.soah.texas.gov/index.asp, or by calling (512) 475-4993.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at www.tceq.texas.gov/goto/eddings or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

In accordance with 1 Texas Administrative Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

Persons with disabilities who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-4993, at least one week prior to the hearing.

Issued: March 15, 2022
TRD-202200917
Laurie Ghars
Chief Clerk
Texas Commission on Environmental Quality
Filed: (512) 239-3300

Notice of Informational Meeting for an Air Quality Standard Permit for Permanent Rock and Concrete Crushers: Proposed Air Quality Registration Number 167888
APPLICATION. Far South Mining LLC, 8845 West Loop 1604 North, San Antonio, Texas 78254-9519 has applied to the Texas Commission on Environmental Quality (TCEQ) for an Air Quality Standard Permit, Registration Number 167888, which would authorize construction of a permanent rock crusher. The facility is proposed to be located at the following driving directions: from the intersection of Ranch Road 12 and Fulton Ranch Road, travel 2.5 miles north on Fulton Ranch Road to private gate at site entry on right, Wimberley, Hays County, Texas 78666. This link to an electronic map of the site or facility's general location is provided as a public courtesy and not part of the application or notice. For exact location, refer to application. http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=29.9431&lng=-98.0197&zoom=13&type=r. This application was submitted to the TCEQ on February 4, 2022. The executive director has determined the application was technically complete on February 17, 2022.

The executive director shall approve or deny the application not later than 30 days after the end of the public comment period, considering all comments received within the comment period, and base this decision on whether the application meets the requirements of the standard permit.

CENTRAL/REGIONAL OFFICE. The application will be available for viewing and copying at the TCEQ Central Office and the TCEQ Austin Regional Office, located at 12100 Park 35 Circle, Building A, Room 179, Austin, Texas 78753-1808, during the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday.

INFORMATIONAL MEETING. The TCEQ will conduct an informational meeting to answer questions and discuss the application. The TCEQ will not be accepting formal comment orally at the meeting. The meeting will be held:

Tuesday, March 29, 2022 at 7:00 p.m.

Wimberley Community Center
14068 Ranch Road 12
Wimberley, Texas 78676

INFORMATION. Public written comments about this application may be submitted at any time during the public comment period. Public comments may be submitted either in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087, or electronically at www14.tceq.texas.gov/epic/eComment/. Please be aware that any contact information you provide, including your name, phone number, email address and physical address will become part of the agency's public record.

For more information about this permit application or the permitting process, please call the Public Education Program toll free at (800) 687-4040. General information can be found at our website at www.tceq.texas.gov. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from Far South Mining LLC, 8845 West Loop 1604 North, San Antonio, Texas 78254-9519, or by calling Mrs. Melissa Fitts, Vice President, Westward Environmental, Inc. at (830) 249-8284.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least five business days prior to the meeting.

Notice Issuance Date: March 15, 2022
TRD-202200911

Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 15, 2022

Notice of Opportunity to Comment on a Default Order of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Order (DO). The commission staff proposes a DO when the staff has sent the Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the Texas Register no later than the 30th day before the date on which the public comment period closes, which in this case is April 25, 2022. The commission will consider any written comments received, and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO 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 DO is not required to be published if those changes are made in response to written comments.

A copy of the proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on April 25, 2022. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorney is available to discuss the DO and/or the comment procedure at the listed phone number; however, TWC, §7.075, provides that comments on the DO shall be submitted to the commission in writing.

(1) COMPANY: Horeb Family, LLC. dba Joe's Cleaners; DOCKET NUMBER: 2021-0480-DCL-E; TCEQ ID NUMBER: RN100612480; LOCATION: 13340 Audelia Road, Suite 100, Dallas, Dallas County; TYPE OF FACILITY: dry cleaning facility; RULES VIOLATED: Texas Health and Safety Code, §374.102 and 30 TAC §337.11(e), by failing to renew the facility registration by completing and submitting the required registration form to the TCEQ for a dry cleaning and/or drop station facility; 30 TAC §337.20(e)(3)(A), by failing to install a dike or other secondary containment structure around each storage area for dry cleaning waste, dry cleaning solvent, and dry cleaning wastewater; and 30 TAC §337.20(e)(6), by failing to visually inspect each installed secondary containment structure weekly to ensure that the structure is not damaged; PENALTY: $1,846; STAFF ATTORNEY: William Hogan, Litigation, MC 175, (512) 239-3400; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-202200908
Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the opportunity to comment must be published in the Texas Register no later than the 30th day before the date on which the public comment period closes, which in this case is April 25, 2022. 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 proposed AOs is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office or Box 13087, MC 175, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on April 25, 2022. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorneys are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on an AO shall be submitted to the commission in writing.

(1) COMPANY: ASG ENTERPRISES INC dba JS Food Store; DOCKET NUMBER: 2020-1294-PST-E; TCEQ ID NUMBER: RN101841831; LOCATION: 110 Tooperwein Road, Converse, Bexar County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(d) and 30 TAC §334.49(a)(1) and (e)(2), by failing to provide corrosion protection for the USTs at the facility; PENALTY: $3,375; STAFF ATTORNEY: Jim Sallans, Litigation, MC 175, (512) 239-2053; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(2) COMPANY: Third General Stores LLC dba On The Road 110; DOCKET NUMBER: 2020-1501-PST-E; TCEQ ID NUMBER: RN109965426; LOCATION: 1580 North Temple Drive near Diboll, Angelina County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(B), by failing to monitor the USTs in a manner that will detect a release at a frequency of at least once every 30 days by using interstitial monitoring for tanks installed on or after January 1, 2009; TWC, §26.3475(a) and 30 TAC §334.50(b)(2)(A)(i)(II), by failing to test the line leak detectors at least once per year for performance and operational reliability; 30 TAC §334.48(e), by failing to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances used as motor fuel; 30 TAC §334.10(b)(2), by failing to assure that all UST recordkeeping requirements are met; and 30 TAC §334.606, by failing to maintain required operator training certification records and make them available for inspection upon request by agency personnel; PENALTY: $5,339; STAFF ATTORNEY: John S. Merculief II, Litigation, MC 175, (512) 239-6944; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(3) COMPANY: Raul Avalos dba Dirty Customs; DOCKET NUMBER: 2019-1233-AIR-E; TCEQ ID NUMBER: RN100818947; LOCATION: 4901 Dyer Street, El Paso, El Paso County; TYPE OF FACILITY: auto refinishing paint and body shop; RULES VIOLATED: Texas Health and Safety Code (THSC), §382.085(b), 30 TAC §106.436(13), and Permit by Rule (PBR) Registration Number 50770, by allowing rain caps, goose neck exhaust, or other stack heads that would restrict or obstruct vertical discharge of air contaminants; and THSC, §382.085(b), 30 TAC §106.436(16)(A) and (B), and PBR Registration Number 50770, by failing to maintain records; PENALTY: $3,563; STAFF ATTORNEY: David Keagle, Litigation, MC 175, (512) 239-3923; REGIONAL OFFICE: El Paso Regional Office, 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(4) COMPANY: GPM Empire, LLC dba Shell 7564; DOCKET NUMBER: 2021-0447-PST-E; TCEQ ID NUMBER: RN102247715; LOCATION: 12300 Elam Road, Balch Springs, Dallas County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.10(b)(2), by failing to assure that all UST recordkeeping requirements were met; and TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), 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: $3,938; STAFF ATTORNEY: David Keagle, Litigation, MC 175, (512) 239-3923; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-202200907
Gitanjali Yadav
Acting Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: March 15, 2022

Notice of Public Hearing on Proposed Revisions to 30 TAC Chapter 307

The Texas Commission on Environmental Quality (commission) will hold a hybrid in-person and virtual public hearing in Austin on May 2, 2022 at 10:00 a.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle.


The proposed rulemaking would provide a periodic public review and revision of the State's surface water quality standards, as provided for
in the Texas Water Code, §26.023 and required by the federal Clean Water Act, §303(c). To clarify existing regulations, a proposed change to §307.4 includes the addition of a statement explicitly prohibiting the discharge of visible pre-production plastic.

The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing. Individuals who plan to attend the hearing virtually and want to provide oral comments and/or want their attendance on record must register by April 29, 2022. To register for the hearing, please email Rules@tceq.texas.gov and provide the following information: your name, your affiliation, your email address, your phone number, and whether or not you plan to provide oral comments during the hearing. Instructions for participating in the hearing will be sent on April 29, 2022, to those who register for the hearing.

Members of the public who do not wish to provide oral comments but would like to view the hearing virtually may do so at no cost at:

https://teams.microsoft.com/l/meetup-join/19%3ameeting_MnMu1NJMyT6y3Zy7L3M00GmGrLk2NG0WMrnOTZ1O7dhZWYy-%40thread.v2/0?context=%7b%22Tid%22%3a%222871a83a-a1ce-4b7a-8156-3bcd93a08fba%7d&Ovh%3d%2222%22&Oid%22%3a%227440ea-69d4-469d-a8ef-06f2e9ac2a80%22%22IsBroadcastMeeting%22%3atrue%7d&btype=a&role=a

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

Public Comment for Proposed Rule Revisions

Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to fax4808@tceq.texas.gov. Electronic comments may be submitted at: https://www6.tceq.texas.gov/rules/ecomments/. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2020-014-307-OW. The comment period closes May 2, 2022. Please only choose one form of submission when submitting written comments.

Copies of the proposed rulemaking can be obtained from the commission’s website at https://www.tceq.texas.gov/rules/proposal_adopt.html. For further information, please contact Debbie Miller, Monitoring and Assessment Section, (512) 239-1703.

TRD-202000873
Charmaigne Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: March 11, 2022

Notice of Public Meeting on Air Quality Standard Permit for Concrete Batch Plants: Proposed Registration No. 167453

Application. Avant Garde Construction Co. has applied to the Texas Commission on Environmental Quality (TCEQ) for an Air Quality Standard Permit, Registration No. 167453, which would authorize construction of a permanent concrete batch plant located at 10945 Eastex Freeway, Houston, Harris County, Texas 77093. This application is being processed in an expedited manner, as al-
view at the TCEQ Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas. Visit www.tceq.texas.gov/goto/cbp to review the standard permit. Further information may also be obtained from Avant Garde Construction Co., 950 Shore Acres Boulevard, La Porte, Texas 77571-7129 or by calling Mr. Meliton Gomez, Owner at (281) 691-1310.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least five business days prior to the meeting.

Notice Issuance Date: March 15, 2022
TRD-202200910
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 15, 2022
♦ ♦ ♦ ♦

Notice of Request for Public Comment and Notice of a Public Meeting on Four Total Maximum Daily Loads for Indicator Bacteria in Tributaries of the Neches River Below Lake Palestine

The Texas Commission on Environmental Quality (TCEQ, commission, or agency) has made available for public comment four draft total maximum daily loads (TMDLs) for indicator bacteria in Tributaries of the Neches River below Lake Palestine, of the Neches River Basin, in Angelina County.

The purpose of the meeting is to provide the public an opportunity to submit oral comments on the draft TMDLs in four assessment units: Cedar Creek 0604A_02, Hurricane Creek 0604B_01, Jack Creek 0604C_01, and Biloxi Creek 0604M_03.

A TMDL is a detailed water quality assessment that provides the scientific foundation to allocate pollutant loads in a certain body of water in order to restore and maintain designated uses. The commission requests comments on each of the major components of the TMDL: problem definition, endpoint identification, source analysis, linkage analysis, margin of safety, pollutant load allocation, seasonal variation, public participation, and implementation and reasonable assurance.

After the public comment period, TCEQ may revise the draft TMDLs if appropriate. The final TMDLs will then be considered by the commission for adoption. Upon adoption, the final TMDLs and a response to all comments received will be made available on TCEQ’s website. The TMDLs will then be submitted to the United States Environmental Protection Agency (EPA) Region 6 office for final action. Upon approval by EPA, the TMDLs will be certified as an update to the State of Texas Water Quality Management Plan.

Public Meeting and Testimony. TCEQ will hold a public meeting about the draft TMDLs via video conference on April 13, 2022, at 6:00 p.m. You must register in advance to attend the meeting at https://tinyurl.com/NechesRiverBelowLakePalestine. Upon registration, you will receive details about how to join the meeting. When attending the meeting, please place your computer’s microphone or telephone on MUTE so that background noise is not heard, and turn your video OFF. The proposed draft TMDLs will be available on the project webpage at https://www.tceq.texas.gov/waterquality/tmdl/nav/118-lufkinwatersheds-bacteria.

Please periodically check https://www.tceq.texas.gov/waterquality/tmdl/nav/118-lufkinwatersheds-bacteria before the meeting date for meeting-related updates.

During the public meeting, individuals will have the opportunity to present oral statements. An agency staff member will give a brief presentation at the start of the meeting and will be available to answer questions before and after all oral statements have been received.

Written Comments. Written comments on the draft TMDLs may be submitted in one of the following three ways: by mail to Tim Cawthon, Water Quality Planning Division, Texas Commission on Environmental Quality, MC 203, P.O. Box 13087, Austin, Texas 78711-3087, by fax to fax4808@tceq.texas.gov, or electronically at https://www.tceq.texas.gov/rules/ecomments/ between March 25 and April 25, 2022. File size restrictions may apply to comments submitted via the eComments system. All written comments must be received at TCEQ by midnight on April 25, 2022, and should reference Four Total Maximum Daily Loads for Indicator Bacteria in Tributaries of the Neches River below Lake Palestine.

For further information regarding the draft TMDLs, please contact Tim Cawthon at Tim.Cawthon@tceq.texas.gov. The draft TMDLs will be made available on March 25, 2022, on TCEQ’s webpage https://www.tceq.texas.gov/waterquality/tmdl/nav/118-lufkinwatersheds-bacteria.

Persons with disabilities who have special communication or other accommodation needs who are planning to participate in the meeting should send a request to Tim Cawthon at Tim.Cawthon@tceq.texas.gov as far in advance as possible.

TRD-202200871
Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: March 10, 2022
♦ ♦ ♦ ♦

Texas Facilities Commission

Request for Proposals (RFP) #303-3-20733

The Texas Facilities Commission (TFC), on behalf of the Texas Department of Public Safety (DPS) announces the issuance of Request for Proposals (RFP) 303-3-20733. TFC seeks a five (5) or ten (10) year lease of approximately 6,747 square feet of usable office space and 195 square feet of outdoor lounge area within the city limits of Greenville, Texas.

The deadline for questions is April 7, 2022, and the deadline for proposals is May 10, 2022, at 3:00 p.m. The award date is June 16, 2022. 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 http://www.txsmartbuy.com/esbdetails/view/303-3-20733.

TRD-202200874
Rico Gamino
Director of Procurement
Texas Facilities Commission
Filed: March 11, 2022
♦ ♦ ♦ ♦

Request for Proposals (RFP) #303-3-20734
The Texas Facilities Commission (TFC), on behalf of the Office of the Attorney General (OAG) announces the issuance of Request for Proposals (RFP) 303-3-20734. TFC seeks a three (3) or five (5) year lease of approximately 5,838 square feet of usable office space within the city of Longview, Texas.

The deadline for questions is April 7, 2022, and the deadline for proposals is May 10, 2022, at 3:00 p.m. The award date is June 16, 2022. 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 http://www.texsmartbuy.com/esbdetails/view/303-3-20734.

TRD-202200919
Rico Gamino
Director of Procurement
Texas Facilities Commission
Filed: March 15, 2022

Request for Proposals (RFP) #303-3-20735

The Texas Facilities Commission (TFC), on behalf of the Office of the Attorney General (OAG) announces the issuance of Request for Proposals (RFP) 303-3-20735. TFC seeks a three (3) or five (5) year lease of approximately 4,695 square feet of usable office space within the city of San Antonio, Texas.

The deadline for questions is April 7, 2022, and the deadline for proposals is May 10, 2022, at 3:00 p.m. The award date is June 16, 2022. 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 http://www.texsmartbuy.com/esbdetails/view/303-3-20735.

TRD-202200918
Rico Gamino
Director of Procurement
Texas Facilities Commission
Filed: March 15, 2022

Texas Health and Human Services Commission

Public Notice - Children and Pregnant Women (CPW)

The Health and Human Services Commission (HHSC) is submitting a request to the Centers for Medicare & Medicaid Services (CMS) to amend the Texas Healthcare Transformation and Quality Improvement Program (THTQIP) waiver under section 1115 of the Social Security Act. The current waiver is approved through September 2030. The proposed effective date for this amendment is September 1, 2022.

House Bill 133, 87th Legislature, Regular Session, 2021 directs HHSC to transition the Case Management for Children and Pregnant Women (CPW) Medicaid benefit from fee-for-service to managed care for members enrolled in managed care. CPW is currently provided only in fee-for-service Medicaid and provides case management services to assist certain individuals in gaining access to needed medical, social, educational, and other services. Pursuant to this proposed amendment, Texas Medicaid managed care organizations (MCOs) will contract with and reimburse providers for billable case management services.

This amendment will further the demonstration objectives of expanding risk-based managed care to new populations and services and support the development and maintenance of a coordinated care delivery system.

The amendment allows this Medicaid benefit to be included in the managed care delivery system under the authority of the Texas Healthcare Transformation and Quality Improvement Program 1115 Waiver.

The amendment also encourages the maintenance of a coordinated care delivery system through coordination of case management services that are available to a beneficiary. For example, MCO service coordinators and CPW providers enrolled in the MCO's provider network will be better able to share case documentation such as the beneficiary's service plan and health screenings to assess medical, social, and educational needs. In addition, the MCOs will have more visibility of prior authorization requests and reimbursement of the benefit among their members and may identify opportunities for MCO service coordinators to provide service coordination or collaborate and coordinate with the CPW provider.

Proposed Changes
This amendment will add the CPW benefit to the list of services delivered through managed care.

Waiver and Expenditure Authorities
The proposed amendment is within the approved demonstration waiver and expenditure authorities and no new authorities are being requested to implement this change of a benefit from fee-for-service only to managed care as well.

Financial Analysis
The amendment will result in additional costs to the 1115 waiver and budget neutrality as a portion of this case management benefit moving under the 1115 waiver was formerly part of an interagency contract. However, the impact to budget neutrality is minimal since the cost impact for this benefit is small in comparison to overall expenditures under the 1115.

Evaluation Design
The Center for Medicare and Medicaid Services (CMS)-approved 1115 evaluation design focusing on demonstration years 7-11 culminates in a Draft Evaluation Report due March 31, 2024, as required by STC 86. The amendment may influence evaluation measures on overall demonstration costs, but potential impacts will be negligible. As a result, the overall evaluation findings will not be meaningfully impacted by the amendment.

HHSC determined not to include any evaluation questions, hypotheses, or measures on the CPW benefit in the revised 1115 evaluation design focusing on demonstration years 10-19, as required by STC 82 as the amendment will have no impact on beneficiaries. However, the state will direct the external evaluator to interpret and present pertinent findings within the context of this amendment as necessary.

Enrollment, Cost Sharing and Service Delivery
This amendment will not have an impact on enrollment and will not result in cost sharing for beneficiaries.
CPW is available for high-risk pregnant women of any age and children age 20 and younger with a health condition or health risk. A CPW provider must be a licensed registered nurse or licensed social worker. Services include: 1) an authorized face-to-face comprehensive visit with the client and their family to perform a family needs assessment and develop a service plan to address the client's unmet needs; and 2) authorized face-to-face or telephone follow-up visits to assist the client and family with obtaining the necessary services until their needs are met.

U.S. Mail
Texas Health and Human Services Commission
Attention: Basundhara Raychaudhuri, Waiver Coordinator, Federal Coordination, Rules, and Committees
701 W. 51st Street Mail Code: H310
Austin, Texas 78751
Email
TX_Medicaid_Waivers@hhsc.state.tx.us.
Telephone
(512) 438-4321
Fax
(512) 323-1905
TRD-20220913
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: March 15, 2022

Public Notice - Texas Healthcare Transformation and Quality Improvement Program (THTQIP) Waiver

The Health and Human Services Commission (HHSC) is submitting a request to the Centers for Medicare & Medicaid Services (CMS) to amend the Texas Healthcare Transformation and Quality Improvement Program (THTQIP) waiver under section 1115 of the Social Security Act. The current waiver is approved through September 2030. The proposed effective date for this amendment is September 1, 2022.

In response to House Bill 2822, 87th Legislative Session, 2021, an amendment to the THTQIP 1115 waiver is needed for the Vendor Drug Program to exempt all adults age 18 and older in Medicaid from preferred drug list prior authorizations for drugs in the antipsychotic class under certain circumstances.

Proposed Changes
This amendment proposes to increase access to effective antipsychotic medication by reducing barriers to care through the elimination of preferred drug list prior authorizations for adults age 18 and older in Medicaid which furthers the demonstration's objective of improving outcomes while containing cost growth long-term. HHSC is requesting that CMS waive Section 1902(a)(10)(B) of the Social Security Act as well as 42 C.F.R. 440.240 related to comparability of services to the extent necessary to enable the state to vary the amount, duration, and scope of services to allow only adults age 18 or over access to any drug of the antipsychotic class on the Medicaid formulary without requiring a Preferred Drug List (PDL) prior authorization (PA) in certain circumstances.

The proposed change would allow individuals age 18 and over to bypass the PDL and PA, subject to federal law on maximum dosage limits and commission rules on drug quantity limits, when the patient has previously been prescribed:
- a 14-day trial of a preferred antipsychotic drug within the past year which was unsuccessful; or
- a nonpreferred antipsychotic drug and the prescription is for the purpose of drug dosage titration, given a prior authorization was already obtained; or
- a nonpreferred antipsychotic drug and the prescription modifies the dosage, dosage frequency, or both, of the drug as part of the same treatment for which the drug was previously prescribed, given a prior authorization was already obtained.

Financial Analysis
This waiver requires Texas Medicaid to demonstrate budget neutrality and provide regular reports and evaluations to CMS to show the requirements of the waiver are met.

Exempting Medicaid adults from PDL PAs for the antipsychotic drug class may cause drug utilization in this program to shift to non-preferred drugs in this class, which reduces rebate revenue and results in a higher net cost to the state. At this time, HHSC is unable to estimate the fiscal impact of this change because it is unknown how drug utilization will shift.

The impact to budget neutrality is anticipated to be negligible; however, it’s difficult to determine the gross cost impact of this amendment. Removal of the PDL PA for certain exceptions may result in a move to cheaper generic drugs but utilization patterns may increase by reducing barriers to care. There may be a reduction to supplemental rebates collected due to utilization shifts; however, rebate revenues are excluded from budget neutrality.

Evaluation Design
The CMS-approved 1115 evaluation design focusing on demonstration years 7 - 11 culminates in a Draft Evaluation Report due March 31, 2024, as required by STC 86. The amendment may influence a limited set of evaluation measures, but potential impacts will be negligible as the amendment will be implemented in the final month of demonstration year 11. As a result, the overall evaluation findings will not be meaningfully impacted by the amendment.

HHSC determined to not include any evaluation questions, hypotheses, or measures related to the PDL PA exemption for antipsychotic drugs in the revised 1115 evaluation design focusing on demonstration years 10 - 19, as required by STC 82. However, the state will direct the external evaluator to interpret and present pertinent findings within the context of this amendment as necessary.

Enrollment, Cost Sharing and Service Delivery
This amendment will not impact enrollment and there will not be beneficiary cost-sharing.

This amendment will not result in any changes to the formulay.

This amendment does not affect the authority of a pharmacist to dispense the generic equivalent or interchangeable biological product of a prescription drug.

This amendment does not affect any drug utilization review requirements prescribed by state or federal law.

This amendment does not affect clinical prior authorization edits to preferred and nonpreferred antipsychotic drug prescriptions.
An individual may obtain a free copy of the proposed waiver amendment, ask questions, obtain additional information, or submit comments by April 18, 2022, regarding this amendment by contacting Basundhara Raychaudhuri by U.S. mail, telephone, fax, or email. The addresses are as follows:

U.S. Mail
Texas Health and Human Services Commission
Attention: Basundhara Raychaudhuri, Waiver Coordinator, Federal Coordination, Rules, and Committees
701 W. 51st Street Mail Code: H310
Austin, Texas 78751
Email: TX_Medicaid_Waivers@hhs.texas.gov
Telephone (512) 438-4321
Fax (512) 323-1905
TRD-202200912
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: March 15, 2022

Public Notice - Texas State Plan Amendment to Allow Advanced Telecommunications for Physicians’ and Dentists’ Services

The Texas Health and Human Services Commission (HHSC) announces its intent to submit an amendment to the Texas State Plan to allow the use of advanced telecommunications for Physicians’ and Dentists’ Services under Title XIX of the Social Security Act. The proposed amendment is effective February 1, 2022.

The purpose of this amendment, Transmittal Number 22-0005, seeks to ensure that Medicaid recipients, child health plan program enrollees, and other individuals receiving benefits under a public benefits program administered by HHSC, regardless of the delivery model, have the option to receive certain services using advanced telecommunications.

Rate Hearing - No rate hearing will be needed as the rates will not change.

Copy of Proposed Amendment - Interested parties may obtain additional information and/or a free copy of the proposed amendments by contacting Shae James, State Plan Coordinator, by mail at the Health and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, Texas 78711; or by email at Medicaid_Chip_SPA_Inquiries@hhsc.state.tx.us. Copies of proposed amendment will be available for review at the local county offices of HHSC, (which were formerly the local offices of 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: Medical Benefits Office of Policy

Mail Code H-310 P.O. Box 149030
Austin, Texas 78756
Overnight Mail, special Deliver mail, or hand delivery
Texas Health and Human Services Commission
Attention: Medical Benefits Office of Policy
John H. Winters Building
Mail Code H-310
701 W. 51st St.
Austin, Texas 78751
Fax
Attention: Office of Policy at (512) 730-7474
Email
MedicaidBenefitRequest@hhsc.state.tx.us

Preferred Communication - During the current state of disaster due to COVID-19, physical forms of communication are checked with less frequency than normal business operations. For the quickest response, and to help curb the possible transmission of infection, please use email or phone if possible for communication with HHSC related to this state plan amendment.

TRD-202200925
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: March 16, 2022

Texas Department of Housing and Community Affairs

Notice of Public Comment Period and Public Hearing on Draft 2022 Department of Energy Weatherization Assistance Program State Plan

The Texas Department of Housing and Community Affairs (TDHCA) announces the opening of a 25-day public comment period for the Draft 2022 United States Department of Energy (DOE) Weatherization Assistance Program (WAP) State Plan. The public comment period begins Friday, March 25, 2022, and ends Monday, April 18, 2022, at 5:00 p.m. Austin local time.

Please visit the TDHCA Public Comment Center at: http://www.tdhca.state.tx.us/public-comment.htm to access the Plan.

Written comments concerning the Draft Plan should be submitted to TDHCA, Attn: Gavin Reid, P.O. Box 13941, Austin, Texas 78711-3941, or by email to gavin.reid@tdhca.state.tx.us.

In light of the March 13, 2020, disaster declaration by the Office of the Governor due to COVID-19, and the subsequent waivers of portions of Tex. Gov't Code, Ch. 551, a public hearing for the Draft 2022 DOE WAP State Plan will be accessible to the public via the web link information below. In order to engage in two-way communication during the hearing, persons must first register (at no cost) to attend the webinar via the link provided. Anyone who calls into the hearing without registering online will not be able to provide comment, but the hearing will still be audible.

Thursday, April 7, 2022
10:00 a.m. Austin local time

47 TexReg 1642  March 25, 2022  Texas Register
GoToWebinar
To register: https://attendee.gotowebinar.com/register/4244901454695472912
Dial-in number: +1 (562) 247-8422, access code 957-986-481 (persons
who use the dial-in number and access code without registering online
will only be able to hear the public hearing and will not be able to
provide comment).
After registering, you will receive a confirmation email containing in-
formation about joining the Public Hearing Webinar.
Local officials and citizens are encouraged to participate in the hearing
process. Written and oral comments received will be used to finalize
the 2022 DOE WAP State Plan.
Individuals who require auxiliary aids, services or sign language inter-
preters for this meeting should contact Rita Gonzales-Garza at (512)
475-3905, at least five days before the meeting so that appropriate ar-
rangements can be made. Non-English speaking individuals who re-
quire interpreters for this meeting should contact Rita Gonzales-Garza,
(512) 475-3905, at least five days before the meeting so that appropriate
arrangements can be made. Personas que hablan español y requieren un
intérprete, favor de llamar a Rita Gonzales-Garza, al siguiente número
(512) 475-3905 por lo menos cinco días antes de la junta para hacer los
preparativos apropiados.
If you have any questions, please contact Gavin Reid via email at
gavin.reid@tdhca.state.tx.us.
TRD-202200888
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Filed: March 14, 2022
♦ ♦ ♦ ♦
Texas Department of Insurance
Company Licensing
Application to do business in the state of Texas for Trusted Resource
Underwriters Exchange, a foreign Lloyds/reciprocal. The home office
is in Tampa, Florida.
Application to do business in the state of Texas for Westfield Select
Insurance Company, a foreign fire and/or casualty company. The home
office is in Westfield Center, Ohio.
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, 333 Guadalupe
Street, MC 103-CL, Austin, Texas 78701.
TRD-202200921
Justin Beam
Chief Clerk
Texas Department of Insurance
Filed: March 16, 2022
♦ ♦ ♦ ♦
Texas Lottery Commission
Scratch Ticket Game Number 2438 "$1,000,000 Crossword"
1.0 Name and Style of Scratch Ticket Game.
A. The name of Scratch Ticket Game No. 2438 is "$1,000,000 CROSS-
WORD". The play style is "crossword".
1.1 Price of Scratch Ticket Game.
A. The price for Scratch Ticket Game No. 2438 shall be $20.00 per
Scratch Ticket.
1.2 Definitions in Scratch Ticket Game No. 2438.
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: A, B,
BLACKENED SQUARE SYMBOL, "$20.00", "$40.00", "$50.00", "$100,
$150", "$200", "$500" and "$1,000".
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. Crossword and Bingo style games do not typically have Play
Symbol Captions. The Play Symbol Caption which corresponds with
and verifies each Play Symbol is as follows:
<table>
<thead>
<tr>
<th>PLAY SYMBOL</th>
<th>CAPTION</th>
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<td>TOHN</td>
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<td>$500</td>
<td>FVHN</td>
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<tr>
<td>$1,000</td>
<td>ONTH</td>
</tr>
</tbody>
</table>

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2438), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 025 within each Pack. The format will be: 2438-0000001-001.

H. Pack - A Pack of the "$1,000,000 CROSSWORD" Scratch Ticket Game contains 025 Tickets, packed in plastic shrink-wrapping and fan-folded in pages of one (1). Ticket 001 will be shown on the front of the Pack; the back of Ticket 025 will be revealed on the back of the Pack. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack. Every other Pack will reverse i.e., reverse order will be: the back of Ticket 001 will be shown on the front of the Pack and the front of Ticket 025 will be shown on the back of the Pack.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "$1,000,000 CROSSWORD" Scratch Ticket Game No. 2438.

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. Each Scratch Ticket contains exactly four hundred eighty-four (484) Play Symbols. A prize winner in the "$1,000,000 CROSSWORD" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose Play Symbols as follows: The player completely scratches all of the YOUR 20 LETTERS Play Symbols. The player then scratches all the letters found in the $1,000,000 CROSSWORD puzzle that exactly match the YOUR 20 LETTERS Play Symbols. If the player has scratched at least 2 complete WORDS, the player wins the prize found in the PRIZE LEGEND on the back of the Scratch Ticket. Only 1 prize paid in the $1,000,000 CROSSWORD puzzle. Only letters within the $1,000,000 CROSSWORD puzzle that are matched with the YOUR 20 LETTERS Play Symbols can be used to form a complete WORD. Every lettered square within an unbroken horizontal (left to right) or vertical (top to bottom) sequence must be matched with the YOUR 20 LETTERS Play Symbols to be considered a complete WORD. Words revealed in a diagonal sequence are not considered valid WORDS. Words within WORDS are not eligible for a prize. Words that are spelled from right to left or bottom to top are not eligible for a prize. A complete WORD must contain at least 3 letters. BONUS WORDS: The player scratches all the letters in BONUS WORD 1 and BONUS WORD 2 that exactly match the YOUR 20 LETTERS Play Symbols. If the player scratches a complete BONUS WORD, the player wins the PRIZE for that BONUS WORD. A completed BONUS WORD cannot be used to win in the $1,000,000 CROSSWORD puzzle. The $1,000,000 CROSSWORD puzzle and each BONUS WORD are played separately. 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 four hundred eighty-four (484) 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. Crossword and Bingo style games do not typically have Play Symbol Captions;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Scratch Ticket shall be intact;
6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;
8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The Scratch Ticket must not be counterfeit in whole or in part;
10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;
11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;
13. The Scratch Ticket must be complete and not miscut, and have exactly four hundred eighty-four (484) 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 four hundred eighty-four (484) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the four hundred eighty-four (484) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.
A. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.
B. GENERAL: A Ticket can win as indicated by the prize structure.
C. GENERAL: Each Ticket in a Pack will be different (i.e., the $1,000,000 CROSSWORD puzzle grid will have different words and configuration of words and each BONUS WORD will have different words).
D. GENERAL: There will be no correlation between any exposed data on a Ticket and its status as a winning or Non-Winning Ticket.
E. GENERAL: Each Ticket consists of a $1,000,000 CROSSWORD puzzle grid, a YOUR 20 LETTERS play area, two (2) BONUS WORD play areas and a BONUS WORDS PRIZE play area.
F. GENERAL: A Ticket can win one (1) time in the $1,000,000 CROSSWORD puzzle grid and one (1) time per BONUS WORD for a total of up to three (3) times per Ticket, as dictated by the prize structure.
G. GENERAL: The BONUS WORDS Prize Symbols will only appear in the BONUS WORDS PRIZE play area and will never appear in either of the BONUS WORDS play areas, the $1,000,000 CROSSWORD puzzle grid or the YOUR 20 LETTERS play area.
H. MAIN PLAY AREA: The $1,000,000 CROSSWORD puzzle grid will be formatted with at least one thousand (1,000) configurations (i.e., puzzle layouts not including words).
I. MAIN PLAY AREA: All $1,000,000 CROSSWORD puzzle grid configurations will be formatted within a grid that contains thirty (30) spaces (height) by fifteen (15) spaces (width).
J. MAIN PLAY AREA: No matching words on a Ticket.
K. MAIN PLAY AREA: No matching Play Symbols in the YOUR 20 LETTERS play area.
L. MAIN PLAY AREA: Each grid will contain the following: a) Twelve (12) 3 - letter words, b) Thirteen (13) 4 - letter words, c) Ten (10) 5 - letter words, d) Ten (10) 6 - letter words, e) Five (5) 7 - letter words, f) Five (5) 8 - letter words, g) Five (5) 9 - letter words.
M. MAIN PLAY AREA: There will be a minimum of three (3) vowels in the YOUR 20 LETTERS play area. Vowels are A, E, I, O and U.
N. MAIN PLAY AREA: All words will contain a minimum of three (3) letters.
O. MAIN PLAY AREA: Words will contain a maximum of nine (9) letters.
P. MAIN PLAY AREA: All words used will be from TX_Approved_Words.Vers.2.042321.doc.
Q. MAIN PLAY AREA: Words from TX_Prohibited_Words.Vers.2.042321.docx will not appear horizontally in the YOUR 20 LETTERS play area when read from left to right or right to left.
R. MAIN PLAY AREA: A player will never find a word horizontally (in either direction), vertically (in either direction) or diagonally (in either direction) in the YOUR 20 LETTERS play area that matches a word in the grid.
S. MAIN PLAY AREA: Each grid will have a maximum number of different grid formations with respect to other constraints. That is, for identically formatted grids (i.e., the same puzzle grid), all "approved words" will appear in every logical (i.e., 3 letter word = 3 letter space) position, with regards to limitations caused by the actual letters contained in each word (i.e., this will not place the word "ZOO" in a position that causes an intersection word to require the second letter to be "Z" when in fact, there are no approved words with a "Z" in the second letter position).
T. MAIN PLAY AREA: No consonant will appear more than thirty (30) times in the grid.

U. MAIN PLAY AREA: On Non-Winning Tickets, there will be one (1) completed word in the grid.

V. MAIN PLAY AREA: At least fifteen (15) of the YOUR 20 LETTERS Play Symbols will open at least one (1) letter in the grid.

W. MAIN PLAY AREA: The presence or absence of any letter in the YOUR 20 LETTERS play area will not be indicative of a winning or Non-Winning Ticket.

X. MAIN PLAY AREA: The $1,000,000 CROSSWORD puzzle grid will not have more than ten (10) words completed.

Y. BONUS WORDS: Each of the two (2) BONUS WORDS will contain exactly six (6) letters and will not match any word in the $1,000,000 CROSSWORD puzzle grid.

Z. BONUS WORDS: Each BONUS WORD will have at least two (2) letter play spots opened by the YOUR 20 LETTERS.

AA. BONUS WORDS: Non-winning BONUS WORDS Prize Symbols will be different and will not match a winning Prize Symbol.

BB. BONUS WORDS: The BONUS WORDS can be completed and won, as indicated by the prize structure.

CC. BONUS WORDS: The two (2) BONUS WORDS on a Ticket will be different.

2.3 Procedure for Claiming Prizes.

A. To claim a "$1,000,000 CROSSWORD" Scratch Ticket Game prize of $20.00, $40.00, $50.00, $100, $150, $200 or $500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $40.00, $50.00, $100, $150, $200 or $500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "$1,000,000 CROSSWORD" Scratch Ticket Game prize of $2,000, $20,000 or $1,000,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "$1,000,000 CROSSWORD" 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 "$1,000,000 CROSSWORD" 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 "$1,000,000 CROSSWORD" 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 19,080,000 Scratch Tickets in Scratch Ticket Game No. 2438. The approximate number and value of prizes in the game are as follows:

<table>
<thead>
<tr>
<th>Prize Amount</th>
<th>Approximate Number of Winners*</th>
<th>Approximate Odds are 1 in **</th>
</tr>
</thead>
<tbody>
<tr>
<td>$20.00</td>
<td>2,544,000</td>
<td>7.50</td>
</tr>
<tr>
<td>$40.00</td>
<td>890,400</td>
<td>21.43</td>
</tr>
<tr>
<td>$50.00</td>
<td>1,017,600</td>
<td>18.75</td>
</tr>
<tr>
<td>$100</td>
<td>890,400</td>
<td>21.43</td>
</tr>
<tr>
<td>$150</td>
<td>79,500</td>
<td>240.00</td>
</tr>
<tr>
<td>$200</td>
<td>154,230</td>
<td>123.71</td>
</tr>
<tr>
<td>$500</td>
<td>13,833</td>
<td>1,379.31</td>
</tr>
<tr>
<td>$2,000</td>
<td>600</td>
<td>31,800.00</td>
</tr>
<tr>
<td>$20,000</td>
<td>50</td>
<td>381,600.00</td>
</tr>
<tr>
<td>$1,000,000</td>
<td>8</td>
<td>2,385,000.00</td>
</tr>
</tbody>
</table>

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.41. 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. 2438 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. 2438, 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-202200902
Bob Biard
General Counsel
Texas Lottery Commission
Filed: March 14, 2022

Permian Basin Regional Planning Commission
Request for Proposals #2022-002
Permian Basin Regional Planning Commission (PBRPC) is accepting proposals for Information Technology Services. Proposals are due by April 8, 2022, at 3:00 p.m. via FEDEX, UPS, hand-delivery or courier delivery to: Permian Basin Regional Planning Commission, ATTN: Cathe Henderson 2910 LaForce Blvd. Midland, Texas 79706 or via USPS to P.O. Box 60660 Midland, Texas 79711. Any proposal received after that time and date will not be considered.

For bid specifications, the Request for Proposal will be available on the PBRPC website at www.pbrpc.org.

The PBRPC Board reserves the right to reject any and/or all bids, and to make awards as they appear advantageous to PBRPC.

PBRPC is an EEO Employer & Service Provider. Auxiliary Aides and Limited English Proficiency Assistance are Available Upon Request.

TRD-202200886
Cathe Henderson
Executive Assistant and HR Manager
Permian Basin Regional Planning Commission
Filed: March 14, 2022

Public Utility Commission of Texas

Requesting Comments Regarding Universal Service Report

In 2011, the Federal Communications Commission (FCC) comprehensively reformed the Universal Service Fund (USF) and Intercarrier Compensation (ICC) through the issuance of the USF/ICC Transformation Order (Transformation Order). The same year, the Texas Legislature passed Senate Bill (SB) 2603, 82nd Regular Session which codified PURA §56.032. The amendments, in accordance with the Transformation Order, required the Commission to consider the adequacy of basic rates to support universal services and accordingly authorized the Commission to revise monthly support amounts to be made available from the Small and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan.

In 2017, the Texas Legislature passed SB 586, 85th Regular Session, which amended PURA §56.032 to further require the Commission to develop and implement a mechanism for the Small and Rural ILEC Universal Service Plan that, when combined with regulated revenues, would allow these companies to earn a reasonable rate of return. The Commission implemented SB 586 by the adoption of §26.407 (relating to Small and Rural ILEC Universal Service Plan Support Adjustments).

Additionally, Section 2 of SB 586, which is uncodified, requires the Commission, on or after January 1, 2022, and before July 1, 2022, to initiate a proceeding to review and evaluate whether:

(1) §56.032, Utilities Code [as amended by SB 586], including any rules adopted to implement that section, accomplishes the purposes of the establishment of the universal service fund under §56.021(1)(B), Texas Utilities Code, and allows each small provider, as defined by §56.032, Texas Utilities Code, the opportunity to earn a reasonable return in accordance with §53.051, Texas Utilities Code, and should be continued; or

(2) changes in law to amend or replace the mechanism created by §56.032, Texas Utilities Code, are necessary to accomplish the purposes described in Subdivision (1) of this subsection.

Section 2 of SB 586 further requires the Commission to submit a report to the Texas Legislature by no later than September 1, 2022, addressing five specific issues. The Commission seeks public comment on the following five questions:

(1) the continued appropriateness of using the FCC prescribed rate of return for the mechanism established under §56.032(d), Utilities Code, if the FCC still prescribes a rate of return that may be used for that mechanism;

(2) the efficiency and frequency of adjustment proceedings conducted under §56.032(h) and §56.032(i), Utilities Code;

(3) the frequency and efficiency of determinations made on reasonable and necessary expenses under §56.032(d)(4), Utilities Code;

(4) the effect of changes in technology on regulated revenue and support needs or determinations made under §56.032, Utilities Code; and

(5) any other relevant information that commenters believe is necessary for inclusion in the report and is in the public interest.

As of July 2021, the FCC authorized rate of return was set at 9.75% as ordered in WC Docket No. 21-148, which is the rate as of the date of this request for comment.

The Commission has initiated the proceeding required by SB 586, which is styled as Project No. 53140--Review of Texas Universal Service Fund. Comments may be filed through the interchange on the Commission’s website. All comments should refer to Project No. 53140.

Questions concerning Project No. 53140 should be directed to Thomas Hunter, Executive Counsel, at (512) 936-7116. Hearing and speech-impaired individuals with test telephones (TTY-) may contact the Commission at (512) 936-7136.

TRD-202200916
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Filed: March 15, 2022

IN ADDITION March 25, 2022 47 TexReg 1649
How to Use the Texas Register

Information Available: The sections of the Texas Register represent various facets of state government. Documents contained within them include:

- **Governor** - Appointments, executive orders, and proclamations.
- **Attorney General** - summaries of requests for opinions, opinions, and open records decisions.
- **Texas Ethics Commission** - summaries of requests for opinions and opinions.
- **Emergency Rules** - sections adopted by state agencies on an emergency basis.
- **Proposed Rules** - sections proposed for adoption.
- **Withdrawn Rules** - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.
- **Adopted Rules** - sections adopted following public comment period.

**Texas Department of Insurance Exempt Filings** - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.


**Tables and Graphics** - graphic material from the proposed, emergency and adopted sections.

**Transferred Rules** - notice that the Legislature has transferred rules within the Texas Administrative Code from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

**In Addition** - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the Texas Register is referenced by citing the volume in which the document appears, the words “TexReg” and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 47 (2022) is cited as follows: 47 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 “47 TexReg 2 issue date,” while on the opposite page, page 3, in the lower right-hand corner, would be written “issue date 47 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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