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P.O. Box 12887  
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(512) 463-5561  
FAX (512) 463-5569

<https://www.sos.texas.gov>  
[register@sos.texas.gov](mailto:register@sos.texas.gov)

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***Secretary of State*** - Ruth R. Hughs

***Director*** - Robert Summers

***Editor-in-Chief*** - Jill S. Ledbetter

***Editors***

Liz Cordell

Eddie Feng

Belinda Kirk

Cecilia Mena

Joy L. Morgan

Breanna Mutschler

Barbara Strickland

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# 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 22. EXAMINING BOARDS

### PART 9. TEXAS MEDICAL BOARD

#### CHAPTER 174. TELEMEDICINE

##### SUBCHAPTER A. TELEMEDICINE

###### 22 TAC §174.5

The Texas Medical Board (Board) adopts, on an emergency basis, amendments to 22 TAC §174.5, effective June 5, 2020.

On March 13, the Governor of Texas certified COVID-19 as posing an imminent threat of disaster to the public health and safety and declared a state of disaster in all counties of Texas. On March 19, 2020, the Texas Governor issued a waiver suspending the strict enforcement of §174.5(e)(2)(A) which generally prohibits the utilization of telemedicine to prescribe scheduled drugs for the treatment of chronic pain. The waiver was issued in order to protect public health and curb the spread of COVID-19 by providing patients access to schedule drugs needed to ensure on-going treatment of chronic pain and avoid potential adverse consequences associated with the abrupt cessation of pain medication. The waiver was extended on April 9, 2020, and again on May 8, 2020. The waiver expires at 11:59 pm on June 5, 2020.

Therefore, the emergency amendment to §174.5(e) is immediately necessary to help the state's physicians, physician assistants and other health care professionals continue to mitigate the risk of exposure to COVID-19 and provide necessary medical services to related to chronic pain management with controlled substances for patients. Pursuant to the Governor's declaration of disaster issued on March 13, 2020, related to COVID-19, physicians determining whether to utilize telemedicine medical services for the treatment of chronic pain with scheduled medications, must give due consideration to additional important parameters to ensure the safety of the patient.

The emergency amendment would allow physicians to utilize telemedicine to issue refill prescriptions for scheduled medications to established chronic pain patients if the physician determines that such telemedicine treatment is needed due to the COVID-19 pandemic.

Pursuant to Section 2001.034 and 2001.036(a)(2) of the Texas Government Code, the amendment is adopted on an emergency basis and with an expedited effective date because an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice. The emergency amendment shall be in effect for only 30 days or the duration of the time period that the Governor's disaster declaration of March 13, 2020 in response to the COVID-19 pandemic is in effect, whichever is shorter, pursuant to Section 2001.034 of the Texas Government Code.

The emergency rule amendments are adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle.

Another statute affected by this rule is Chapter 111 of the Texas Occupations Code.

###### §174.5. Issuance of Prescriptions.

(a) The validity of a prescription issued as a result of a telemedicine medical service is determined by the same standards that would apply to the issuance of the prescription in an in-person setting.

(b) This rule does not limit the professional judgment, discretion or decision-making authority of a licensed practitioner. A licensed practitioner is expected to meet the standard of care and demonstrate professional practice standards and judgment, consistent with all applicable statutes and rules when issuing, dispensing, delivering, or administering a prescription medication as a result of a telemedicine medical service.

(c) A valid prescription must be:

(1) issued for a legitimate medical purpose by a practitioner as part of patient-practitioner relationship as set out in §111.005, of Texas Occupations Code; and

(2) meet all other applicable laws before prescribing, dispensing, delivering or administering a dangerous drug or controlled substance.

(d) Any prescription drug orders issued as the result of a telemedicine medical service, are subject to all regulations, limitations, and prohibitions set out in the federal and Texas Controlled Substances Act, Texas Dangerous Drug Act and any other applicable federal and state law.

(e) Limitation on Treatment of Chronic Pain. Chronic pain is a legitimate medical condition that needs to be treated but must be balanced with concerns over patient safety and the public health crisis involving overdose deaths. The Legislature has already put into place laws regarding the treatment of pain and requirements for registration and inspection of pain management clinics. Therefore, the Board has determined clear legislative intent exists for the limitation of chronic pain treatment through a telemedicine medical service.

(1) Treatment for Chronic Pain. For purposes of this rule, chronic pain has the same definition as used in §170.2(4) of this title (relating to Definitions).

(A) Treatment of chronic pain with scheduled drugs through use of telemedicine medical services is prohibited, unless:

(i) a patient is an established chronic pain patient of the physician and is seeking telephone refill of an existing prescription, and the physician determines that such telemedicine treatment is needed due to the COVID-19 pandemic; or

(ii) the treatment is otherwise allowed under federal and state law.

(B) If a patient is treated for chronic pain with scheduled drugs through the use of telemedicine medical services as permitted by subsection (A)(i) or (ii), the patient's medical records must document the exception and the reason that a telemedicine visit was conducted instead of an in-person visit.

(C) A physician, when determining whether to utilize telemedicine medical services for the treatment of chronic pain with scheduled drugs as permitted by subsection (A)(i) or (ii), shall give due consideration to factors that include: date of the patient's last in-person visit, patient co-morbidities, and occupational-related COVID risks. These are not the sole, exclusive, or exhaustive factors a physician should consider under this rule.

(D) The emergency amendment of this rule effective June 5, 2020 shall be in effect for only 30 days or the duration of the time period that the Governor's disaster declaration of March 13, 2020 in response to the COVID-19 pandemic is in effect, whichever is shorter.

(2) Treatment for Acute Pain. For purposes of this rule, acute pain has the same definition as used in §170.2(2) of this title. Treatment of acute pain with scheduled drugs through use of telemedicine medical services is allowed, unless otherwise prohibited under federal and state law.

~~[(A) Treatment of chronic pain with scheduled drugs through use of telemedicine medical services is prohibited, unless otherwise allowed under federal and state law.]~~

~~[(B) Treatment of acute pain with scheduled drugs through use of telemedicine medical services is allowed, unless otherwise prohibited under federal and state law.]~~

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

Filed with the Office of the Secretary of State on June 5, 2020.

TRD-202002297

Scott Freshour

General Counsel

Texas Medical Board

Effective date: June 5, 2020

Expiration date: July 4, 2020

For further information, please call: (512) 305-7016



## PART 11. TEXAS BOARD OF NURSING

### CHAPTER 217. LICENSURE, PEER ASSISTANCE AND PRACTICE

#### 22 TAC §217.24

##### Introduction

The Texas Board of Nursing adopts emergency amendments to Texas Administrative Code §217.24 pursuant to a finding of imminent peril to the public health, safety, and welfare which requires adoption in fewer than thirty (30) days' notice as authorized by Tex. Gov't. Code §2001.034.

##### Background

On March 23, 2020, the Office of the Governor granted a waiver of the Texas Board of Nursing Rule 217.24(e)(1) that limits the Advanced Practice Registered Nurses' ability to issue prescriptions for controlled substances for chronic pain via telemedicine. A waiver from this prohibition for refilling controlled substances for chronic pain patients evaluated via telemedicine was in effect until June 6, 2020, when the waiver expired.

Accordingly, emergency amendments to §217.24 are necessary to help the Advanced Practice Registered Nurses to continue to mitigate the risk of exposure to COVID-19 and provide necessary medical services related to chronic pain management with controlled substances for patients. This action will avoid a gap in care for chronic pain patients. The emergency amendment is only be applicable to those Advanced Practice Registered Nurses whose delegating physicians agree to permit them to issue refills for these patients via telemedicine. The Advanced Practice Registered Nurse must continue to exercise appropriate professional judgment and all documentation requirements must be met. The services provided are limited to refills of controlled substances in schedules III through V.

##### Statutory Authority

This emergency rule is adopted pursuant to Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing. The emergency rule is also adopted pursuant to Tex. Gov't. Code §2001.034 authorizing the adoption of an emergency rule.

This emergency adoption does not affect any other statutes or rules.

##### §217.24. Telemedicine Medical Service Prescriptions.

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

(e) Limitation on Treatment of Chronic Pain. Chronic pain is a legitimate medical condition that needs to be treated, but must be balanced with concerns over patient safety and the public health crisis involving overdose deaths. The Legislature has already put into place laws regarding the treatment of pain and requirements for registration and inspection of pain management clinics. Therefore, the Board has determined clear legislative intent exists for the limitation of chronic pain treatment through a telemedicine medical service.

(1) Treatment of chronic pain with scheduled drugs through use of telemedicine medical services is prohibited, unless otherwise allowed under federal and state law. For purposes of this section, "chronic pain" means a state in which pain persists beyond the usual course of an acute disease or healing of an injury. Chronic pain may be associated with a chronic pathological process that causes continuous or intermittent pain over months or years.

(A) Notwithstanding paragraph (e)(1), treatment of chronic pain with scheduled drugs through use of telemedicine medical services is not prohibited by this rule if the patient is an established chronic pain patient of the APRN and is seeking telephone refill of an existing prescription, and the APRN determines that such telemedicine treatment is needed due to the COVID-19 pandemic.

(B) If a patient is treated for chronic pain with scheduled drugs through the use of telemedicine medical services as permitted by (e)(1)(A), the medical records must document the exception and the reason that a telemedicine visit was conducted instead of an in-person visit.

(C) An APRN, when determining whether to utilize telemedicine medical services for the treatment of chronic pain with controlled substances as permitted by (e)(1)(A) above, shall give due consideration to factors that include, at a minimum, date of the patient's last in-person visit, patient co-morbidities, and occupational related COVID risks. These are not the sole, exclusive, or exhaustive factors an APRN should consider under this rule.

(D) The emergency amendment of this rule effective June 8, 2020, shall be in effect for only 30 days or the duration of the time period that the Governor's disaster declaration of March 13, 2020, in response to the COVID-19 pandemic is in effect, whichever is shorter.

(2) Treatment of acute pain with scheduled drugs through use of telemedicine medical services is allowed, unless otherwise pro-

hibited under federal and state law. For purposes of this section, "acute pain" means the normal, predicted, physiological response to a stimulus, such as trauma, disease, and operative procedures. Acute pain is time limited.

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

Filed with the Office of the Secretary of State on June 8, 2020.

TRD-202002316

Dusty Johnston

General Counsel

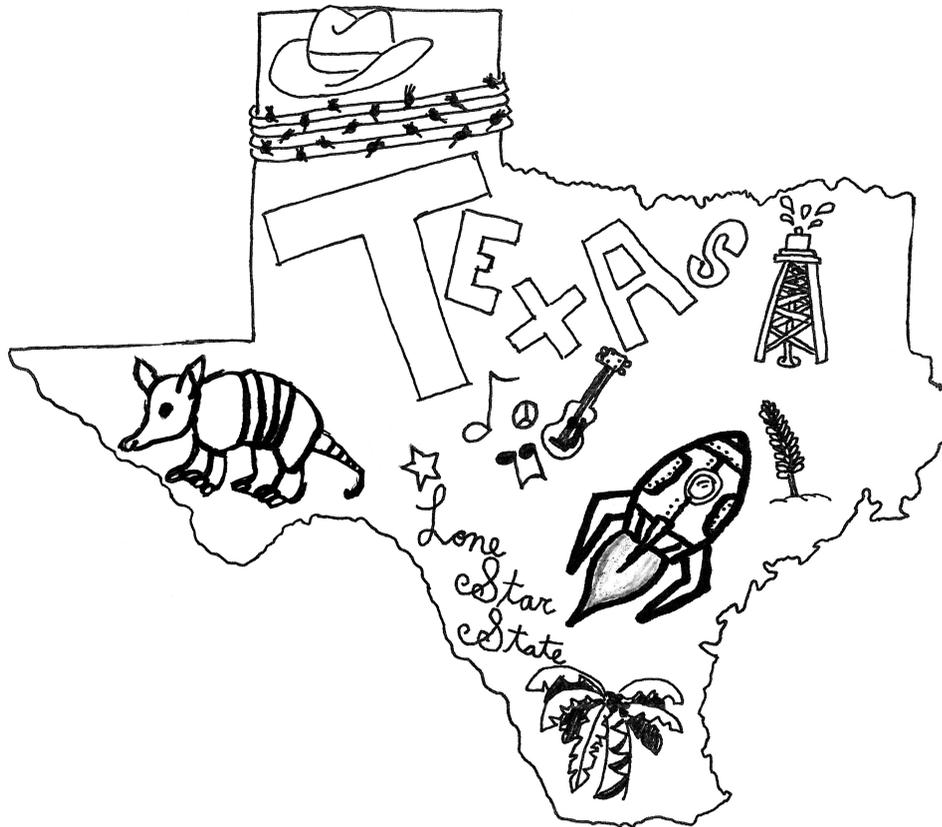
Texas Board of Nursing

Effective date: June 8, 2020

Expiration date: July 7, 2020

For further information, please call: (512) 305-6821

◆ ◆ ◆



# 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 19. EDUCATION

### PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

#### CHAPTER 1. AGENCY ADMINISTRATION

##### SUBCHAPTER A. GENERAL PROVISIONS

###### 19 TAC §1.18

The Texas Higher Education Coordinating Board (THECB) proposes amendments to Title 19, Part 1, Chapter 1, Subchapter A, §1.18 Operation of Education Research Centers.

Specifically, this amendment will allow for improved access to data for education researchers while maintaining controls for data security. By law, up to three Education Research Centers (ERCs) are authorized to operate in Texas. The ERCs are under the oversight of the THECB and are governed by an Advisory Board which meets at least quarterly and includes representation from the Texas Education Agency and the Texas Workforce Commission and each ERC, among others. Researcher proposals are reviewed and acted upon by the Advisory Board, and research must be of benefit to the state of Texas. The ERCs are self-funded.

Currently, researchers must access the P-16/Workforce Data Repository available through the ERCs by physically accessing special terminals at the ERC locations. The rule amendments would allow a researcher or researchers, when approved by the Advisory Board, to access the de-identified data approved for their project via remote access. Security guidelines for this access, including required Virtual Private Network (VPN) and multi-factor authentication have been developed and approved by the ERC Advisory Board. All FERPA and other federal and state education privacy law requirements must be met, as stipulated by existing ERC law and rule.

There would be minimal costs to public institutions of higher education to adjust to the revised rules given the security measures that the authorized ERCs already have in place and the self-supporting nature of the Education Research Centers.

Dr. Julie Eklund, Assistant Commissioner for Strategic Planning, has determined that for each year of the first five years the section is in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering the rules.

Dr. Julie Eklund, Assistant Commissioner for Strategic Planning, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be improved access to data for research related to Texas education and the workforce. There is no

effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment. There is no impact on small businesses, micro businesses, and rural communities.

Comments on the proposal may be submitted to Julie Eklund, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas, 78711 or via email at julie eklund@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

#### Government Growth Impact Statement

- (1) the rules *will not* create or eliminate a government program;
- (2) implementation of the rules *will not* require the creation or elimination of employee positions;
- (3) implementation of the rules *will not* require an increase or decrease in future legislative appropriations to the agency;
- (4) the rules *will not* require an increase or decrease in fees paid to the agency;
- (5) the rules *will not* create a new rule;
- (6) the rules *will not* limit an existing rule; and
- (7) the rules *will not* change the number of individuals subject to the rule.

The amendment is proposed under the Texas Education Code, Title 1, Chapter 1, Sections 1.005 and 1.006. Section 1.005(b) authorizes the Coordinating Board to establish up to three Education Research Centers. Section 1.006 requires the establishment of an Advisory Board for the purpose of reviewing study or evaluation proposals and ensuring appropriate data use.

The amendments affect Texas Education Code, Sections 1.005 and 1.006.

#### *§1.18. Operation of Education Research Centers.*

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

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

(3) P-20/Workforce Data Repository refers to the collection of data from each Cooperating Agency. The cooperating agencies shall execute agreements for the sharing of data for the purpose of facilitating the studies or evaluations at Education Research Centers (ERCs). In accordance with the agreements, each cooperating agency shall make available all appropriate data, including to the extent possible data collected by the cooperating agency for at least the preceding 20 years. A cooperating agency shall periodically update the data

as additional data is collected, but not less than once each year. The repository shall be operated by the CB.

(4) - (5) (No change.)

(b) Purpose.

(1) ERCs shall be established by the CB. An ERC may only be established at a sponsoring public institution of higher education in Texas but may be awarded to a consortium of such institutions. An ERC must be physically located within Texas and must retain all data at that location except for secure off-site data back-up in accordance with written procedures approved by the Advisory Board. Individual level data from the ERC P-20/Workforce Data Repository may not be provided to a researcher except in the following ways:

(A) individual [~~Individual~~] level data may [not] be provided to a researcher at a [~~location other than a~~] Research Center or the CB or a public institution of higher education located in Texas that is an acknowledged consortium member of the ERC; or[-]

(B) individual level data may be accessed by approved researchers via secure, restricted, VPN remote access provided all other provisions of this chapter are met and established policies are followed regarding additional controls.

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

(4) The ERCs may provide researchers access to shared data only through secure methods and require each researcher to execute an agreement regarding compliance with the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. §1232g) and rules and regulations adopted under that Act. Each ERC shall adopt rules or policies to protect the confidentiality of information used or stored at the center in accordance with applicable state and federal law, including rules or policies establishing procedures to ensure that confidential information is not duplicated or removed from an Education Research Center [a center] or from a remote access interface in an unauthorized manner.

(c) (No change.)

(d) Operation.

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

(3) All research at an ERC involving access to confidential information shall be conducted with the approval of the Advisory Board or by request of the Texas Workforce Commission, Commissioner of Higher Education or the Commissioner of Education if the requesting agency provides sufficient funds to the ERC to finance the project. All remote access research at an ERC involving access to confidential information shall be conducted with the approval of the Advisory Board.

(4) - (9) (No change.)

(e) - (f) (No change.)

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

Filed with the Office of the Secretary of State on June 8, 2020.

TRD-202002312

William Franz

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: July 19, 2020

For further information, please call: (512) 427-6533



## TITLE 22. EXAMINING BOARDS

### PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

#### CHAPTER 78. SCOPE OF PRACTICE

##### 22 TAC §78.14

The Texas Board of Chiropractic Examiners (Board) proposes amendments to 22 TAC §78.14 (Acupuncture). The purpose of the amendments is to clarify the qualifications a licensee must demonstrate to obtain a Board-issued acupuncture permit.

Since the beginning of 2020, numerous licensees have expressed dissatisfaction with the qualification provisions of subsection (e). Licensees specifically complained that the period of time (from December 5, 2018, to September 1, 2019) in which a licensee could obtain an acupuncture permit from the Board by demonstrating substantial prior experience and training was too short. Licensees also said that the legislatively-mandated change in the time when a license must be renewed from one year to two years also created confusion as to when a licensee had to apply for a permit. The Board agrees with the licensees' criticism of the current rule.

The Board's intent (when it adopted the provisions of subsection (e) on December 5, 2018) in providing alternative methods for licensees to obtain an acupuncture permit was to not burden licensees who had been safely practicing acupuncture for many years with unnecessary regulatory costs by making them repeat previously completed training and testing. At the time, the Board believed a September 1, 2019, deadline for applying for an acupuncture permit under the alternative methods in current subsection (e) was sufficient. The Board agrees that it is in the best interest of its licensees and the patients they serve to modify those methods.

Under the proposed amendments of subsection (e), a licensee seeking an acupuncture permit may qualify under three methods. For recent licensees (and all future licensees), the requirement remains the completion of a 100 hour acupuncture course and passing the National Board of Chiropractic Examiners' acupuncture exam. For those licensees who have been safely practicing acupuncture for several years, they have the option (depending on the length of time they have been practicing acupuncture) of demonstrating they held a chiropractic license and passed an exam in a 100 hour acupuncture course before January 1, 2010, or that they completed substantial acupuncture training before January 1, 2000, and can attest to having practiced acupuncture for at least ten years before January 1, 2010.

The amendments also remove redundant language in subsections (c) and (k) stating that a licensee may not practice or advertise acupuncture without first obtaining a Board permit; violations of those requirements are already subject to disciplinary action under subsection (b) of this rule and in the Board's advertising rules in 22 TAC §77.1 (Advertising and Public Communications).

The amendments also add clarifying language to subsection (g) to make clear that a licensee may apply for an acupuncture permit by simply making a written request to the Board. The Board is also amending the language in subsection (d), which prohibits the delegation of acupuncture, from "cannot" to "may not" to conform to rule drafting conventions.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the amendments as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed amendments will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed amendments will be in effect the public benefit is to clarify the qualifications a licensee must demonstrate to obtain a Board-issued acupuncture permit.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed amendments of 22 TAC §78.14. For each year of the first five years the proposed amendments are in effect, Mr. Fortner has determined:

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

Comments on the proposed amendments or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, Texas 78701, via email: rules@tbce.state.tx.us; or fax: (512) 305-6705, no later than 30 days from the date that these proposed amendments are published in the *Texas Register*. Please include the rule name and number in the subject line of any comments submitted by email.

These amendments are proposed under Texas Occupations Code §§201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic, and under 201.1525, which authorize the Board to adopt rules clarifying the scope of practice of chiropractic

No other statutes or rules are affected by these proposed amendments.

§78.14. *Acupuncture.*

(a) Acupuncture, and the related practices of acupressure and meridian therapy, includes methods for diagnosing and treating a patient by stimulating specific points on or within the musculoskeletal system by various means, including manipulation, heat, cold, pressure, vibration, laser, ultrasound, light electrocurrent, and the insertion of acupuncture needles or solid filiform needles for the purpose of obtaining a bio-positive reflex response by nerve stimulation.

(b) A licensee shall practice acupuncture only after obtaining a permit from the Texas Board of Chiropractic Examiners (Board).

(c) The Board shall place on each renewal license to practice chiropractic a statement that a licensee who has met all Board requirements is permitted to practice acupuncture. [A licensee whose license does not contain the statement permitting the practice of acupuncture shall not practice or advertise the practice of acupuncture.]

(d) A licensee with an acupuncture permit ~~[cannot]~~ may not delegate the performance of acupuncture.

(e) A licensee in good standing with the Board may obtain an acupuncture permit by:

(1) completing at least 100 hours of acupuncture training and passing the National Board of Chiropractic Examiners' acupuncture exam;

(2) demonstrating that the licensee had a chiropractic license and passed an exam in a 100 hour acupuncture course before January 1, 2010; or

(3) demonstrating that the licensee completed substantial acupuncture training before January 1, 2000, and practiced acupuncture for at least ten years before January 1, 2010.

~~[(e) Requirements for an acupuncture permit:]~~

~~[(1) On or after the effective date of this rule, a licensee may receive an acupuncture permit from the Board by completing at least one hundred (100) hours of training in acupuncture and passing the National Board of Chiropractic Examiners' examination. The training must be provided by an accredited chiropractic college, or post-secondary university, or other educational or testing institution approved by the Board. Such training shall include didactic, clinical, and practical training in the practice of acupuncture, clean needle techniques, examination, and protocols that meet the blood-borne pathogen standard established by the Occupational Safety and Health Administration.]~~

~~[(2) A person who became a licensee after January 1, 2010, and before the effective date of this rule, who has been practicing acupuncture in compliance with previous Board rules, shall have until September 1, 2019, to obtain an acupuncture permit from the Board by passing the National Board of Chiropractic Examiners' standardized certification examination in acupuncture and completing 100 hours of acupuncture training.]~~

~~[(3) A person who became a licensee before January 1, 2010, and has been practicing acupuncture in compliance with previous Board rules, shall have until September 1, 2019, to obtain an acupuncture permit from the Board by having:]~~

~~[(A) successfully completed and passed an examination in a one hundred (100) hour training course in acupuncture before January 1, 2010; or]~~

~~[(B) successfully completed and passed either the National Board of Chiropractic Examiners' standardized certification examination in acupuncture or the examination offered by the National Certification Commission of Acupuncture before the effective date of this rule; or]~~

[(C) successfully completed formal training along with providing a statement to the Board of having practiced acupuncture in clinical practice for at least ten years before January 1, 2010, and is in good standing with the Board and the regulatory entities of the other jurisdictions in which the licensee is licensed. The Board may audit any statement for accuracy.]

[(4) Documentation of acupuncture training shall be in the form of signed certificates of attendance or completion, or diplomas from course sponsors or instructors.]

(f) A licensee permitted to practice acupuncture must complete a minimum of eight (8) hours in Board-approved acupuncture courses every biennium.

(g) A licensee may apply for an acupuncture permit by submitting a written request to the Board. [A licensee shall not practice acupuncture until the licensee has submitted proof of compliance with subsection (e) and has received a permit from the Board.]

(h) A licensee practicing acupuncture shall not advertise in a manner that suggests the licensee possesses a license to practice acupuncture issued by the Texas State Board of Acupuncture Examiners, including using any of the terms "acupuncturist," "licensed acupuncturist," "L.Ac.," "Traditional Chinese Medicine," or "degreed in acupuncture."

(i) A licensee's advertising may include the terms "Board Certified" or "Board Certified in Chiropractic Acupuncture" if it also clearly identifies the nationally recognized certifying board and credentials.

(j) Approved programs in clinical acupuncture or meridian therapy offered by accredited chiropractic colleges or universities are designed for doctors of chiropractic and other disciplines. These courses are not intended as a substitute for a full curriculum teaching traditional Chinese medicine; rather they focus on the principle, theory, scientific findings, and practical modern application of acupuncture as currently practiced by doctors of chiropractic.

(k) The practice of acupuncture by a licensee who has not complied with the requirements of this section constitutes unprofessional conduct and subjects the licensee to disciplinary action. [A licensee who advertises acupuncture without first obtaining a permit also has engaged in unprofessional conduct.]

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

Filed with the Office of the Secretary of State on June 2, 2020.

TRD-202002259

Christopher Burnett

General Counsel

Texas Board of Chiropractic Examiners

Earliest possible date of adoption: July 19, 2020

For further information, please call: (512) 305-6700



## PART 16. TEXAS BOARD OF PHYSICAL THERAPY EXAMINERS

### CHAPTER 341. LICENSE RENEWAL

22 TAC §§341.1, 341.6, 341.8, 341.9

The Texas Board of Physical Therapy Examiners proposes amending 22 Texas Administrative Code (TAC) Chapter 341, License Renewal, specifically the following sections: §341.1. Requirements for Renewal, §341.6. License Restoration, §341.8. Inactive Status, and §341.9. Retired Status; Performing Voluntary Charity Care. The amendments are proposed pursuant to the provisions in HB 2059 during the 86th Legislative Session that mandates the addition of human trafficking prevention training for health care practitioners as a condition of license renewal.

#### Fiscal Note

Ralph A. Harper, Executive Director of the Executive Council of Physical Therapy & Occupational Therapy Examiners (ECP-TOTE), has determined that for the first five-year period these amendments are in effect there would be no increase or loss of revenue to the state. No fiscal implication to units of local government is anticipated as a result of enforcing or administering the rules.

#### Public Benefits and Costs

Mr. Harper has also determined that for the first five-year period these amendments are in effect the public benefit anticipated will be to increase and enhance physical therapy practitioners' knowledge of human trafficking prevention and to help combat human trafficking; thus offering better protection of the public.

#### Local Employment Economic Impact Statement

The amendments are not anticipated to impact a local economy, so a local employment economic impact statement is not required.

#### Small and Micro-Businesses and Rural Communities Impact

Mr. Harper has determined that there will be no costs or adverse economic effects to small or micro-businesses or rural communities; therefore, an economic impact statement or regulatory flexibility analysis is not required.

#### Government Growth Impact Statement

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed rule amendments. For each year of the first five years the proposed amendment will be in effect, Mr. Harper has determined the following:

- (1) The proposed rule amendments will neither create nor eliminate a government program.
- (2) The proposed rule amendments will neither create new employee positions nor eliminate existing employee positions.
- (3) The proposed rule amendments will neither increase nor decrease future legislative appropriations to the agency.
- (4) The proposed rule amendments will neither require an increase nor a decrease in fees paid to the agency.
- (5) The proposed rule amendments expand existing regulations with a new condition for license renewal.
- (6) The proposed rule amendments will neither repeal nor limit an existing regulation.
- (7) The proposed rule amendments will neither increase nor decrease the number of individuals subject to the rule's applicability.

(8) The proposed rule amendments will neither positively nor adversely affect this state's economy.

#### Takings Impact Assessment

The proposed rule amendments will not impact private real property as defined by Tex. Gov't Code §2007.003, so a takings impact assessment under Tex. Gov't Code §2001.043 is not required.

#### Requirement for Rule Increasing Costs to Regulated Persons

Tex. Gov't Code §2001.0045, Requirement for Rule Increasing Costs to Regulated Persons, does not apply to this proposed rule amendment.

#### Public Comment

Comments on the proposed amendments may be submitted to Karen Gordon, PT Coordinator, Texas Board of Physical Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701; email: karen@ptot.texas.gov. Comments must be received no later than 30 days from the date this proposed amendment is published in the *Texas Register*.

#### Statutory Authority

The amended sections are proposed under Texas Occupation Code §453.102, which authorizes the Board to adopt rules necessary to implement chapter 453. Additionally, the amendments to §341.1, §341.6, and §341.8 are proposed under Texas Occupation Code §453.254, which authorizes the Board to require license holders to complete continuing competence activities specified by the Board.

#### Cross-reference to Statute

The proposed amendments implement Texas Occupations Code §116.002 and §116.003 as mandated in House Bill 2059 (86th Texas Legislature, R.S.) which requires a health care practitioner to complete human trafficking prevention training as a condition of license renewal. No other statutes, articles, or codes are affected by these amendments.

#### §341.1. Requirements for Renewal.

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

(c) General requirements. The renewal application is not complete until all required items are received by the board. The components required for license renewal are:

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

(3) a passing score on the jurisprudence examination; ~~and~~

(4) successful completion of a human trafficking prevention course approved by the executive commissioner of the Health and Human Services Commission (HHSC). The course must be a minimum of one contact hour in order to claim CCU credit; and

(5) ~~[(4)]~~ a criminal history record report from the Department of Public Safety and the Federal Bureau of Investigation obtained through fingerprinting. A licensee is not required to submit fingerprints for the renewal of the license if the licensee has previously submitted fingerprints under:

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

(d) - (f) (No change.)

#### §341.6. License Restoration.

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

(c) Persons who are currently licensed in good standing in another state, district, or territory of the U.S. The requirements for restoration are:

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

(4) the restoration fee; ~~and~~

(5) successful completion of a human trafficking prevention course approved by the executive commissioner of the Health and Human Services Commission (HHSC). The course must be a minimum of one contact hour in order to claim CCU credit; and

(6) ~~[(5)]~~ a criminal history record report from the Department of Public Safety and the Federal Bureau of Investigation obtained through fingerprinting. A licensee is not required to submit fingerprints for the renewal of the license if the licensee has previously submitted fingerprints under:

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

(d) Persons who are not currently licensed in another state or territory of the U.S.

(1) A licensee whose Texas license is expired for one to five years. The requirements for restoration are:

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

(C) the restoration fee;

(D) (No change.)

(E) successful completion of a human trafficking prevention course approved by the executive commissioner of the Health and Human Services Commission (HHSC). The course must be a minimum of one contact hour in order to claim CCU credit; and

(F) ~~[(E)]~~ a criminal history record report from the Department of Public Safety and the Federal Bureau of Investigation obtained through fingerprinting. A licensee is not required to submit fingerprints for the renewal of the license if the licensee has previously submitted fingerprints under:

(i) - (ii) (No change.)

(G) ~~[(F)]~~ demonstration of competency. Competency may be demonstrated in one of the following ways:

(i) - (iii) (No change.)

(2) (No change.)

(e) Military Service Members, Military Veterans, and Military spouses. The board will expedite the restoration of a license to a military service member, a military veteran or a spouse of a member of the U.S. armed forces on active duty. The applicant must provide official documentation of active duty status, military veteran status, or the active duty status of the spouse.

(f) Renewal of a restored license. To renew a license that has been restored, a licensee must comply with all requirements in §341.1 of this title (relating to Requirements for Renewal).

#### §341.8. Inactive Status.

(a) - (c) (No change.)

(d) Requirements for reinstatement of active status. A licensee on inactive status may request a return to active status at any time. The components required to return to active status are:

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

(3) a passing score on the jurisprudence exam; ~~and~~

(4) successful completion of a human trafficking prevention course approved by the executive commissioner of the Health and Human Services Commission (HHSC). The course must be a minimum of one contact hour in order to claim CCU credit; and

(5) [(4)] a criminal history record report from the Department of Public Safety and the Federal Bureau of Investigation obtained through fingerprinting. A licensee is not required to submit fingerprints for the renewal of the license if the licensee has previously submitted fingerprints under:

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

(e) (No change.)

§341.9. *Retired Status; Performing Volunteer Charity Care.*

(a) - (c) (No change.)

(d) Requirements for initiation of retired status. The components required to put a license on retired status are:

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

(4) a passing score on the jurisprudence exam; [and]

(5) successful completion of a human trafficking prevention course approved by the executive commissioner of the Health and Human Services Commission (HHSC). The course must be a minimum of one contact hour in order to claim CCU credit; and

(6) [(5)] a criminal history record report from the Department of Public Safety and the Federal Bureau of Investigation obtained through fingerprinting. A licensee is not required to submit fingerprints for the renewal of the license if the licensee has previously submitted fingerprints under:

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

(e) Requirements for renewal of retired status. A licensee on retired status must renew the retired status every two years on his/her license renewal date. The components required to renew the retired status are:

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

(4) a passing score on the jurisprudence exam; [and]

(5) successful completion of a human trafficking prevention course approved by the executive commissioner of the Health and Human Services Commission (HHSC). The course must be a minimum of one contact hour in order to claim CCU credit; and

(6) [(5)] a criminal history record report from the Department of Public Safety and the Federal Bureau of Investigation obtained through fingerprinting. A licensee is not required to submit fingerprints for the renewal of the license if the licensee has previously submitted fingerprints under:

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

(f) Requirements for reinstatement of active status. A licensee on retired status may request a return to active status at any time. The components required to return to active status are:

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

(3) a passing score on the jurisprudence exam; [and]

(4) successful completion of a human trafficking prevention course approved by the executive commissioner of the Health and Human Services Commission (HHSC). The course must be a minimum of one contact hour in order to claim CCU credit; and

(5) [(4)] a criminal history record report from the Department of Public Safety and the Federal Bureau of Investigation obtained

through fingerprinting. A licensee is not required to submit fingerprints for the renewal of the license if the licensee has previously submitted fingerprints under:

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

(g) - (j) (No change.)

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

Filed with the Office of the Secretary of State on June 8, 2020.

TRD-202002303

Ralph A. Harper

Executive Director

Texas Board of Physical Therapy Examiners

Earliest possible date of adoption: July 19, 2020

For further information, please call: (512) 305-6900



## TITLE 28. INSURANCE

### PART 1. TEXAS DEPARTMENT OF INSURANCE

#### CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

##### SUBCHAPTER E. TEXAS WINDSTORM INSURANCE ASSOCIATION

##### DIVISION 3. LOSS FUNDING, INCLUDING CATASTROPHE RESERVE TRUST FUND, FINANCING ARRANGEMENTS, AND PUBLIC SECURITIES

**28 TAC §§5.4102, 5.4114, 5.4133, 5.4134, 5.4141, 5.4142, 5.4160 - 5.4162, 5.164, 5.4167, 5.4171**

The Texas Department of Insurance proposes to amend 28 TAC §§5.4102, 5.4114, 5.4133, 5.4134, 5.4141, 5.4142, 5.4161, 5.4162, 5.4164, 5.4167, and 5.4171 and to adopt new 28 TAC §5.4160. The proposed amendments and new section concern Texas Windstorm Insurance Association (association) loss funding. The proposed changes implement certain provisions in House Bill 1900, 86th Legislature, Regular Session (2019).

**EXPLANATION.** The association is the insurer of last resort for windstorm and hail insurance in a designated area along the Texas coast. The association provides windstorm and hail insurance coverage to those who are unable to get that coverage in the private market.

By statute, the association must pay its losses (policyholder claims) and operating expenses from net premium and other revenue. If net premium and other revenue are not enough, the association must pay losses and operating expenses from the catastrophe reserve trust fund (CRTF), which is an account maintained by the Texas Comptroller. The CRTF is funded mainly from the association's yearly profits. Losses and operating expenses for a catastrophe year that are greater than the association's net premium and other revenue for that year and

amounts in the CRTF must be paid with proceeds of alternating classes of public securities and member insurer assessments.

Amending §§5.4102, 5.4114, 5.4133, 5.4134, 5.4141, 5.4142, 5.4161, 5.4162, 5.4164, 5.4167, and 5.4171 and adopting new §5.4160 is necessary to implement the loss funding provisions in HB 1900, 86th Legislature, Regular Session (2019). HB 1900 amended Insurance Code §2210.453, which addresses the association's reinsurance funding, and Insurance Code §2210.071 and §2210.0715, which address excess loss payment and payment from reserves and the CRTF.

The amendments to Insurance Code §2210.453 require that the association, with Commissioner approval, assess its member insurers to pay for any reinsurance it purchases in excess of the association's statutory minimum funding level. By statute, the association must maintain total available loss funding in an amount not less than the association's probable maximum loss for a catastrophe year with a one in 100-year probability. Member assessments to pay for reinsurance under HB 1900 are distinct from member assessments to pay losses and would not affect the association's ability to make loss assessments.

Current 28 TAC §5.4114(e) allows a CRTF disbursement to allow the association to buy reinsurance in an amount that enables the association to exceed its statutory minimum funding level. Because Insurance Code §2210.453 now requires members to pay this amount, TDI proposes repealing this provision and adopting rules establishing the process for determining member insurers' responsibility.

Proposed §5.4160 requires the association to discuss determining its one in 100-year probable maximum loss for the year at the year's first regular board meeting. Following the discussion at this meeting, the association must determine its one in 100-year probable maximum loss for the year and disclose it to the Commissioner not later than April 1. The association must disclose its method for determining its one in 100-year probable maximum loss at the same time.

HB 1900 does not specify how the association must determine its one in 100-year probable maximum loss or how transparent its method must be. Proposed 5.4160 requires the association to have a public discussion at its board meeting and to disclose information about its method so that anyone interested can see how the association determined its one in 100-year probable maximum loss. The determination and information must be disclosed each year, regardless of whether the association requests a reinsurance assessment.

Under proposed §5.4160 if the association decides to buy reinsurance that exceeds its one in 100-year probable maximum loss, it must get a quote for reinsurance that equals the one in 100-year probable maximum loss. The association must disclose this quote to the board along with the total deposit premiums for all reinsurance for the year. The quote and the total deposit premiums must be disclosed not later than the board's second regular meeting of the year, which is usually in early May.

Members will be able to estimate the amount of reinsurance premium applicable to coverage that exceeds the one in 100-year probable maximum loss and for which they will be assessed. The association typically begins to negotiate for reinsurance in April, with contracts typically running from June 1 to May 31 of the following year. The deadlines for the association to provide its one in 100-year probable maximum loss and the quote and the total deposit premiums are proposed based on this schedule.

Under existing §5.4162 the association notifies each member of the amounts of net direct premiums the member wrote in Texas during the preceding calendar year and of net direct premiums of wind and hail insurance the member voluntarily wrote in the catastrophe area during the preceding calendar year. The association typically sends this notice to members in the late summer. Members have 30 days to appeal the amounts in the notice.

The association also notifies each member what its percentage of participation in an assessment will be, if there is an assessment during the current calendar year. The association typically sends the percentage of participation notice to members in the fall. Members have 30 days to appeal the percentage of participation in the notice.

Proposed 5.4162 requires that the notice of net direct premiums and voluntary wind and hail premiums and the notice of participation percentage inform members that the participation percentage will be used for reinsurance assessments, if there are any during the current calendar year.

Proposed §5.4160 requires the association to issue any reinsurance assessment by no later than December 1. This date is based on when the association's total reinsurance costs for the year become known. The association pays an initial deposit premium in periodic installments. The deposit premium is based on the association's estimated exposure for that year's hurricane season. The association's final premium, based on its actual exposure during hurricane season, is not known until the end of October. Proposed §5.4160 requires the association to make the request within a reasonable time after its reinsurance costs for the year are known.

There are three reasons for requiring the association to issue any reinsurance assessment by no later than December 1.

First, issuing a reinsurance assessment only after the final premium is known avoids the risk that the association will need to adjust it or issue refunds to members.

Second, it allows time for any appeal of the association's determination of its one in 100-year probable maximum loss.

Third, it ensures that the association will be able to deduct the assessed amount from its reinsurance premium and include it in the net gain from operations from the same year. Under Insurance Code §2210.452 and 28 TAC §5.4111, the association must deposit its net gain from operations for each calendar year in the CRTF. The association typically makes the deposit in May of the following year.

The proposed rules also implement HB 1900's amendments to Insurance Code §2210.071, on payment of excess losses, and §2210.0715, on payment from reserves and the CRTF.

To ensure that it is clear that net premium earned in one catastrophe year can be pledged to repay public securities issued in prior catastrophe years, TDI proposes amending the rules on the class 1 public security trust fund and the class 2 and class 3 public security trust funds, in Section 5.4141 and Section 5.4142, respectively. More specifically, amended Insurance Code §2210.071 prohibits the association from paying one catastrophe year's losses with premium earned in a later year. The proposed amendments clarify that net premium can be pledged to repay class 1, class 2, and class 3 payment obligations, even if those obligations are for public securities issued or disbursed to pay for losses resulting from an event that occurred in a prior year.

To harmonize the amendments to Insurance Code §2210.0715 with §2210.608, on use of public security proceeds, TDI proposes amending the rules on public security proceeds.

Finally, TDI proposes removing the requirement that each member insurer give the association a copy of its Exhibit of Premiums and Losses ("Statutory Page 14") from its Texas Property and Casualty Annual Statement. The information on Statutory Page 14 is accessible through the National Association of Insurance Commissioners (NAIC) and is published annually on TDI's website.

Section 5.4102. Definitions. Section 5.4102 is the definition section for Division 3.

An amendment to §5.4102(4), defining "association surcharge percentage," corrects a reference to the Administrative Code, changing §5.4127 to §5.4126.

An amendment to §5.4102(10), defining "catastrophic event," conforms the rule with definitions in Insurance Code §2210.602(1-b). The proposed amendment adds the qualifier "during a calendar year" to the definition.

An amendment to §5.4102(32), defining "net gain from operations," implements amendments to Insurance Code §2210.071 and §2210.453. The proposed amendments clarify that the association cannot include losses incurred in prior catastrophe years in its calculation of net gain from operations. Additionally, the amendments conform the rule to Insurance Code §2210.453, requiring members to pay reinsurance premiums applicable to the reinsurance coverage that exceeds the association's one in 100-year probable maximum loss.

The proposed amendment to §5.4102(34), defining "net premium," implements amendments to Insurance Code §2210.071. The proposed amendment to §5.4102(34) works in conjunction with the proposed amendments to §5.4141 and §5.4142, which contain the rules on the class 1 public security trust fund and the class 2 and class 3 public security trust funds. The sentence "following the issuance of public securities, net premium may be pledged for the payment of class 1, class 2, and class 3 payment obligations" is removed from the definition and an equivalent sentence is added to §5.4141 and §5.4142. Because it is a substantive rule, the sentence is more appropriate in those sections than in a definition, and will be more visible there.

A proposed amendment adds new §5.4102(37) to define "one in 100-year probable maximum loss" as the minimum funding level required by Insurance Code §2210.453(b). Defining the term implements the amendments to Insurance Code §2210.453. Subsequent paragraphs in §5.4102 are renumbered as appropriate to reflect the new paragraph.

The proposed amendments to the definition of "other revenue" (currently §5.4102(38), renumbered as §5.4102(39)) implement the amendments to Insurance Code §2210.453 by excluding reinsurance assessments from other revenue. The proposed amendments implement the amendments to Insurance Code §2210.071 by excluding income on funds held by the Texas Treasury Safekeeping Trust Company from other revenue. These proposed amendments are designed to clarify what funds the association can pledge to repay public securities.

Section 5.4114. Disbursements from the Catastrophe Reserve Trust Fund. Section 5.4114 describes the procedures for disbursing funds from the CRTF. Current §5.4114(e) allows a CRTF disbursement to buy reinsurance in an amount that enables the

association to exceed its one in 100-year probable maximum loss. Because Insurance Code §2210.453 now requires members to pay for reinsurance coverage that exceeds this amount, TDI proposes repealing subsection (e). The subsections that follow subsection (e) are redesignated as appropriate to reflect this change, and a reference to current subsection (g) in subsection (a)(4) is changed to reference redesignated subsection (f).

Section 5.4133. Public Security Proceeds. Amendments to §5.4133 clarify how HB 1900's amendments to Insurance Code §2210.0715 harmonize with Insurance Code §2210.608(b). The amendments to §2210.0715 prohibit including the proceeds of public securities issued for one catastrophe year with reserves available for a subsequent catastrophe year. Section 2210.608(b) allows "proceeds remaining after the purposes for which the public securities were issued are satisfied" to be used to pay for outstanding public securities or administrative expenses. Then, any remaining proceeds must be put in the CRTF.

The proposed amendments to §5.4133 add new subsections (e) and (f). These subsections describe how public security proceeds may be used during the catastrophe year for which they are issued or disbursed and during subsequent years. The proposed amendments ensure that the proceeds put in the CRTF (which may be used for to pay for losses in later catastrophe years) are not confused with the reserves referenced in §2210.0715 (which may not be used to pay for losses in later catastrophe years).

Section 5.4134. Excess Public Security Proceeds. Amendments to §5.4134 clarify that Insurance Code §2210.608(b) describes the permissive uses of excess public security proceeds remaining after the purposes for which the public securities were issued or disbursed are satisfied. The amendments add subsection (b) to the Insurance Code citation and insert the words "or disbursed."

Section 5.4141. Class 1 Public Security Trust Fund. The amendment to §5.4141 implements amendments to Insurance Code §2210.071(b). This proposed amendment works in conjunction with the proposed amendment to §5.4102(34), which defines "net premium." The sentence "following the issuance of public securities, net premium may be pledged for the payment of class 1, class 2, and class 3 payment obligations" is removed from the definition and an equivalent sentence is added to §5.4141 and §5.4142. The proposed amendment is added to §5.4141 as new subsection (e). It clarifies that net premium can be pledged to repay class 1 payment obligations, even if those obligations are for public securities issued to pay for losses from a catastrophic event that occurred in a prior year.

Section 5.4142. Class 2 and Class 3 Public Security Trust Funds. The amendment to §5.4142 implements amendments to Insurance Code §2210.071(b). This proposed amendment works in conjunction with the proposed amendment to §5.4102(34), which defines "net premium." The sentence "following the issuance of public securities, net premium may be pledged for the payment of class 1, class 2, and class 3 payment obligations" is removed from the definition and an equivalent sentence is added to §5.4141 and §5.4142. The proposed amendment is added to §5.4142 as new subsection (e). It clarifies that net premium can be pledged to repay class 2 and class 3 payment obligations, even if those obligations are for public securities issued to pay for losses from a catastrophic event that occurred in a prior year.

Section 5.4160. Member Assessments to Pay for Reinsurance. New §5.4160 describes the procedures for assessing members for reinsurance or alternative risk financing mechanisms. New §5.4160 implements new subsections (d) and (e) in Insurance Code §2210.453, requiring members to pay for any reinsurance coverage that exceeds the association's one in 100-year probable maximum loss.

This section also describes the deadlines the association must meet during each year.

The association must discuss with the board its methodology for determining its one in 100-year probable maximum loss for the calendar year at the first regular board meeting in the calendar year but before April 1. The association must also disclose to the Commissioner its one in 100-year probable maximum loss for the calendar year and the association's method for determining that probable maximum loss on the day after the effective date of this rule and no later than April 1 during each subsequent year.

If the association elects to purchase reinsurance or alternative risk financing mechanisms that provide coverage in excess of its one in 100-year probable maximum loss, then the association must also get a quote for coverage that provides funding equal to its one in 100-year probable maximum loss. The association must provide the quote to the board by the second regular board meeting in the calendar year, which is typically in early May. The purpose of this requirement is to allow members to estimate the amount of reinsurance premium for coverage that exceeds the association's one in 100-year probable maximum loss and for which they will be assessed

The association must issue any assessment no later than December 1 of the calendar year for which the assessment is issued.

Proposed §5.4160 also requires that the association include, in any request to the Commissioner to approve an assessment, the portion of the reinsurance premium that provides coverage above its one in 100-year probable maximum loss. In other words, the association's request must provide the amount of the reinsurance assessment it wants to make. The association must also provide the methodology it used to calculate that amount.

Proposed §5.4160 requires the association to make the request within a reasonable time after its reinsurance costs for the year are known. This requirement is intended to ensure that the request can be approved in time for the association to issue the assessment no later than December 1.

Additionally, proposed §5.4160 uses the term "alternative risk financing mechanisms" as used in Insurance Code §2210.453(a) and §2210.453(d) rather than "other financial arrangements" as used in Insurance Code §2210.612(e) and §2210.072(d), because alternative risk financing mechanisms are used in the context of reinsurance and are alternative ways for the association to transfer risk out of the association. Conversely, other financial arrangements include other types of borrowing "including public securities" which do not transfer risk out of the association.

Section 5.4161. Member Assessments to Pay Claims. The amendment to Section 5.4161 deletes the current text of subsection (j). A provision similar to current subsection (j) is incorporated in new §5.4160 as subsection (f). Current subsection (j) lists sections on member assessments that are part of the association's plan of operation and that control over any conflicting provisions in §5.4001 of this title (relating to Plan of Operation). Because proposed new §5.4160 will be the first section on mem-

ber assessments, the provision included in current subsection 5.4161(j) is more appropriate in §5.4160.

Section 5.4161's heading, "Member Assessments," is also amended to add the words "to Pay Claims." This amendment clarifies that §5.4161 specifies the requirements for assessments for claims, while §5.4160 specifies requirements for assessments to pay for reinsurance coverage.

In addition, current subsections (f) - (i) are redesignated as (e) - (h) to correct an error in the current rule text; the current rule text does not contain a subsection (e).

Finally, new subsection (i) is added stating "The association may use the proceeds from assessments only for losses and expenses resulting from the catastrophe year for which the assessments were made." This provision conforms the rule to HB 1900's amendments to Insurance Code §2210.0715.

Section 5.4162. Member Assessments to Pay Claims. Section 5.4162 addresses the procedure for determining the amount a member is required to pay when participating in an assessment.

Section 5.4162(a) is amended to add a citation to new §5.4160.

Section 5.4162(a)(1) is amended to conform with HB 3496, 85th Legislature, Regular Session (2017). The proposed amendment removes the paragraph's last sentence, which states that the anniversary date of an insurer's membership in the association is the date the insurer became an authorized property insurer in Texas.

Section 5.4162(b) contains nonsubstantive stylistic edits and the citation to 28 TAC §5.4001 is amended to be more specific by revising it to include a reference to "(a)(2)(N)."

Subsection (c) is amended to separate it into subsection (c) and a new subsection (d), to aid in readability. The subsections that follow it are redesignated as appropriate.

Current subsection (d), redesignated as subsection (e), is subdivided into paragraphs, to aid in readability.

Current subsection (e) is broken into three subsections which are designated as subsections (f), (g), and (h). Additionally, new subsection (g) is divided into paragraphs with non-substantive rewording. These changes are made to aid in readability.

Text is added to new subsection (h) to specify that the association must take action under the subsection "[w]ithin a reasonable period of time after sending the notice described in subsection (g)." Additional changes to the text of the subsection consist of non-substantive rewording to aid in readability.

An amendment adds new subsection (i), which requires that the association's notice of net direct premiums and voluntary wind and hail premiums and notice of participation percentage must inform members that the participation percentage will be used for reinsurance assessments, if there are any during the current calendar year. The association typically sends the notice of net direct premiums and voluntary wind and hail premiums in late summer. The notice of participation percentage is typically sent in the fall.

The proposed amendment removes current subsection (f), which requires that each member insurer give the association a copy of its Exhibit of Premiums and Losses (Statutory Page 14) from its Texas Property and Casualty Annual Statement. This requirement is no longer necessary, as members already file their annual statements electronically with the NAIC. TDI has access to the information through the NAIC and in practice already pro-

vides it to the association and publishes it annually on TDI's website. Removing this requirement reduces the burden on members and the association.

**Section 5.4164. Payment of Assessment.** Section 5.4164 requires members to pay their share of any assessment not later than the 30th day after receiving their notice of assessment. Section 5.4164 is amended to remove exceptions to the requirement, because they are no longer relevant. The exceptions cite other association rules that were repealed to implement Senate Bill 900, 84th Legislature, Regular Session (2015), which changed the association's funding structure.

**Section 5.4167. Inability to Pay Assessment by Reason of Insolvency.** Amendments to §5.4167 conform the section to the amendments to Insurance Code §§2210.071 and §2210.0715. The language "in the event it is necessary to obtain additional funds to provide for operating expenses and losses in the year the insurer is declared impaired," is replaced with "in the event an assessment is necessary in the year the insurer is declared impaired." An assessment may be necessary to cover operating expenses and losses from a year other than the year in which the assessment is made.

**Section 5.4171. Premium Surcharge Requirements.** Amendments to §5.4171 conform the rule to Insurance Code §221.001(c), in accordance with HB 3496. The proposed amendment revises subsection (e) to clarify that §5.4171 and other sections apply to farm mutual insurance companies that are acting as fronting insurers.

In addition to the specific amendments previously noted, the proposed amendments include nonsubstantive editorial and formatting changes to conform the sections to the agency's current style and to improve the rules' clarity. These changes include the following: Punctuation has been revised in places for clarity and grammatical accuracy. The word "Commissioner" has been capitalized whenever it appears lower case, and the word "association" has been made lowercase where it is capitalized, unless it begins a sentence. The word "division" is changed to "title" where the word appears in citations to Texas Administrative Code sections. The word "shall" has been replaced with "must" or "will" as appropriate give the context of the provision, to add clarity.

TDI received comments on an informal working draft posted on TDI's website on July 18, 2019. TDI considered those comments when drafting this proposal.

**FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Mark Worman, deputy commissioner of the Property and Casualty Division, has determined that during each year of the first five years the proposed rules are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering them, other than that imposed by the statute. This determination was made because the proposed rules do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed rules.

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

**PUBLIC BENEFIT AND COST NOTE.** For each year of the first five years the proposed rules are in effect, Mr. Worman expects that enforcing or administering the proposed rules will have the public benefits of ensuring that TDI's rules conform to Insurance Code §§221.001, 2210.006, 2210.071, 2210.0715, 2210.453,

and 2210.608. The proposed rules provide clarity on what the association may pledge to repay public security obligations. They also ensure that the association determines its one in 100-year probable maximum loss with public input and provides time for the appeal of that determination before any reinsurance assessment is made.

Finally, the proposed rules relieve members of having to provide the association with Statutory Page 14 from their annual statements.

Mr. Worman expects that the proposed amendments will impose an economic cost on the association. The association estimates that it will cost \$4,540 to discuss determining its one in 100-year probable maximum loss for the year at the year's first regular board meeting, \$1,530 to get the required reinsurance quotes and provide them at the year's second regular board meeting, and \$530 to request a reinsurance assessment.

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.** TDI has determined that the proposed amendments will not have an adverse economic effect or a disproportionate economic impact on small or micro businesses, or on rural communities. As specified in the Public Benefit and Cost Note section of this proposal, the proposed amendments will have a small economic impact on the association. The association is not a small or micro business or a rural community as defined in Government Code §2006.001. As a result, and in accordance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

**EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045.** TDI has determined that this proposal does impose a possible cost on a regulated person, the association. However, no additional rule amendments are required under Government Code §2001.0045 because the proposed rules are necessary to implement legislation. The proposed rules implement Insurance Code §§2210.071, 2210.0715, and 2210.453, as amended by HB 1900. All the costs in the proposal will be incurred implementing §2210.453. The costs will be borne by the association, which estimates a total cost of approximately \$6,000. As described in the Public Benefit and Cost Note and elsewhere in this proposal, the costs result from requirements that are designed to implement §2210.453 transparently and effectively.

The exception in Government Code §2001.0045(c) applies. The proposed rules reduce the burden or responsibilities the rule imposes on regulated persons, by relieving members of having to provide the association with Statutory Page 14 from their annual statements.

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

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will not require an increase or decrease in fees paid to the agency;
- will create a new regulation;
- will limit an existing regulation;

- will not increase or decrease the number of individuals subject to the rule's applicability; and

- will not positively or adversely affect the Texas economy.

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

**REQUEST FOR PUBLIC COMMENT.** TDI will consider any written comments on the proposal that are received by TDI no later than 5 p.m. Central time on July 20, 2020. Send your comments to ChiefClerk@tdi.texas.gov; or to the Office of the Chief Clerk, MC 112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

The Commissioner will also consider written and oral comments on the proposal in a public hearing under Docket No. 2822 at 1 p.m. central time, on July 14, 2020. To avoid the risk of transmission of COVID-19, TDI will hold the public hearing remotely using online resources. Details of how to view and how to participate in the hearing will be made available on TDI's website at [www.tdi.texas.gov/alert/event/2020/07/docket-2822](http://www.tdi.texas.gov/alert/event/2020/07/docket-2822).

**STATUTORY AUTHORITY.** TDI proposes new §5.4160 and amended TAC §§5.4102, 5.4114, 5.4133, 5.4134, 5.4141, 5.4142, 5.4161, 5.4162, 5.4164, 5.4167, and 5.4171 under Insurance Code §§2210.008, 2210.151, 2210.152, 2210.452, and Insurance Code §36.001.

Insurance Code §2210.008 provides that the Commissioner may adopt rules as reasonable and necessary to implement Chapter 2210.

Insurance Code §2210.151 provides that the Commissioner adopt the association's plan of operation by rule.

Insurance Code §2210.152 provides that the plan of operation must include a plan for the equitable assessment of association members, procedures for obtaining and repaying amounts under any financial instruments authorized under Chapter 2210, and other provisions considered necessary by TDI to implement the purposes of Chapter 2210.

Insurance Code §2210.452 requires the Commissioner to adopt rules governing association payments to the catastrophe reserve trust fund and disbursements from the catastrophe reserve trust fund.

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.

#### CROSS-REFERENCE TO STATUTE.

The amendments to §5.4102 implement Insurance Code §§2210.071, 2210.453, and 2210.602.

The amendments to §5.4114 implement Insurance Code §2210.453.

The amendments to §5.4133 implement Insurance Code §2210.0715.

The amendments to §5.4134 implement Insurance Code §2210.0715.

The amendments to §5.4141 implement Insurance Code §2210.071.

The amendments to §5.4142 implement Insurance Code §2210.071.

New §5.4160 implements Insurance Code §2210.453.

The amendments to §5.4161 implement Insurance Code §§2210.0715 and §2210.453.

The amendments to §5.4162 implement Insurance Code §§2210.006 and §2210.453.

The amendments to §5.4164 implement Insurance Code §§2210.0725, 2210.074, and 2210.0742.

The amendments to §5.4167 implement Insurance Code §§2210.071 and §2210.0715.

The amendments to §5.4171 implement Insurance Code §221.001.

#### §5.4102. Definitions.

The following words and terms when used in this division will have the following meanings unless the context clearly indicates otherwise:

- (1) Association--Texas Windstorm Insurance Association.
- (2) Association program--The funding of any or all of the purposes authorized to be funded with the public securities under Insurance Code Chapter 2210, Subchapter M.
- (3) Association surcharge--Premium surcharges on policyholders of association policies under Insurance Code §§2210.612, 2210.613, or 2210.6131.
- (4) Association surcharge percentage--The percentage amount determined by the Commissioner [~~commissioner~~] under §5.4126(c) [~~§5.4127(e)~~] or (d) of this title [~~division~~] (relating to Determination of the Association Surcharge Percentage).
- (5) Authorized representative of the department--Any officer or employee of the department, empowered to execute instructions and take other necessary actions on behalf of the department as designated in writing by the Commissioner [~~commissioner~~].
- (6) Authorized representative of the trust company--Any officer or employee of the comptroller or the trust company who is designated in writing by the comptroller as an authorized representative.
- (7) Budgeted operating expenses--All operating expenses as budgeted for and approved by the association's board of directors, excluding expenses related to catastrophic losses.
- (8) Catastrophe area--A municipality, a part of a municipality, a county, or a part of a county designated by the Commissioner [~~commissioner~~] under Insurance Code §2210.005.
- (9) CRTF--Catastrophe Reserve Trust Fund. A statutorily created trust fund established with the trust company under Insurance Code Chapter 2210, Subchapter J.
- (10) Catastrophic event--An occurrence or a series of occurrences in a catastrophe area during a calendar year resulting in insured losses and operating expenses of the association in excess of premium and other revenue of the association.
- (11) Catastrophic losses--Losses resulting from a catastrophic event.
- (12) Class 1 payment obligation--The contractual amount of net premium and other revenue and association surcharges that the association must deposit in the class 1 public security trust fund at spec-

ified periods for the payment of class 1 public security obligations, public security administrative expenses, and contractual coverage amount as required by class 1 public security agreements.

(13) Class 2 payment obligation--The contractual amount of net premium and other revenue and either association surcharges or contingent surcharges that the association must deposit in the class 2 public security trust fund, or in the case of contingent surcharges, the premium surcharge trust fund, at specified periods for the payment of class 2 public security obligations, public security administrative expenses, and contractual coverage amount as required by class 2 public security agreements.

(14) Class 3 payment obligation--The contractual amount of net premium and other revenue and either association surcharges or contingent surcharges that the association must deposit in the class 3 public security trust fund, or in the case of contingent surcharges, the premium surcharge trust fund, at specified periods for the payment of class 3 public security obligations, public security administrative expenses, and contractual coverage amount as required by class 3 public security agreements.

(15) Class 1 public securities--A debt instrument or other public security that TPFA may issue as authorized under Insurance Code §2210.072 and Insurance Code Chapter 2210, Subchapter M.

(16) Class 2 public securities--A debt instrument or other public security that TPFA may issue as authorized under Insurance Code §2210.073 and Insurance Code Chapter 2210, Subchapter M.

(17) Class 3 public securities--A debt instrument or other public security that TPFA may issue as authorized under Insurance Code §2210.0741 and Insurance Code Chapter 2210, Subchapter M.

(18) Commercial paper notes--A debt instrument that the association may issue as a financing arrangement or that TPFA may issue as any class of public security.

(19) Commissioner--The Commissioner of Insurance.

(20) Comptroller--The Comptroller of the State of Texas.

(21) Contingent surcharge--Premium surcharges on policyholders of policies that cover insured property that is located in a catastrophe area and which may be necessary as provided under Insurance Code §2210.6132.

(22) Contractual coverage amount--Minimum amount over scheduled debt service that the association is required to deposit in the applicable public security trust fund or premium surcharge trust fund, as security for the payment of debt service on the public securities, administrative expenses on public securities, or other payments the association must pay in connection with public securities.

(23) Credit agreement--An agreement described by Government Code Chapter 1371 that TPFA may enter into as authorized under Insurance Code Chapter 2210, Subchapter M.

(24) Department--The Texas Department of Insurance.

(25) Earned premium--That portion of gross premium that the association has earned because of the portion of time during which the insurance policy has been in effect.

(26) Financing arrangement--An agreement between the association and any market source under which the market source makes interest-bearing loans or provides other financial instruments to the association to enable the association to pay losses or obtain public securities under Insurance Code §2210.072.

(27) Gross premium--The amount of premium the association receives, less premium returned to policyholders for canceled or reduced policies.

(28) Insured property--Real property, or tangible or intangible personal property including automobiles, covered under an insurance policy issued by an insurer. Insured property includes motorcycles, recreational vehicles, and all other vehicles eligible for coverage under a private passenger automobile or commercial automobile policy.

(29) Investment income--Income from the investment of funds.

(30) Letter of instruction--The Commissioner's [~~commissioner's~~] or authorized department representative's signed written authorization and direction to an authorized representative of the trust company.

(31) Losses--Amounts paid or expected to be paid on association insurance policy claims, including adjustment expenses, litigation expenses, other claims expenses, and other amounts that are incurred in resolving a claim for indemnification under an association insurance policy.

(32) Net gain from operations--Net income reported during a calendar year equal to the amount of all earned premium, other revenue of the association, and distributions of excess net premium and other revenue from the class 1, class 2, and class 3 public security trust funds that are in excess of: current catastrophe year incurred losses; operating expenses; reinsurance premium not paid or payable from member assessments; current year financial arrangement obligations; current year net premium payment obligations; and current year public security administrative expenses.

(33) Net investment income--Investment income less associated fees and expenses charged by the trust company, or others, for managing or investing the assets.

(34) Net premium--Gross premium less unearned premium. [~~Following the issuance of public securities, net premium may be pledged for the payment of class 1, class 2, and class 3 payment obligations.~~]

(35) Net premium payment obligations--Public security obligations that are paid in whole or in part from net premium and other revenue for public securities repayable under Insurance Code §§2210.612, 2210.613, and 2210.6131. The term does not include public security obligations[;] or the portion of public security obligations that are paid from association surcharges.

(36) Net revenues--Net premium plus other revenue, less scheduled policy claims, less budgeted operating expenses, less net premium payment obligations for that calendar year, less amounts necessary to fund or replenish any reserve fund required by a public security agreement.

(37) One in 100-year probable maximum loss--The minimum funding level required by Insurance Code §2210.453(b).

(38) [(37)] Operating reserve fund--Association or trust company held fund for the payment of budgeted scheduled policy claims and budgeted operating expenses.

(39) [(38)] Other revenue--Revenue of the association from any source other than premium. Other revenue includes net investment income on association assets. Other revenue does not include premium surcharges collected under Insurance Code §§2210.259, 2210.612, 2210.613, 2210.6131, or 2210.6132 or member assessments collected under Insurance Code §§2210.0725, 2210.074, [¶]

2210.0742, or 2210.453 and interest income on those amounts. Other revenue does not include income on funds held by the trust company.

(40) ~~[(39)]~~ Plan of operation--The association's plan of operation as adopted by the Commissioner ~~[eommissioner]~~ under Insurance Code §2210.151 and §2210.152.

(41) ~~[(40)]~~ Premium--Amounts received in consideration for the issuance of association insurance coverage. The term does not include premium surcharges collected by the association under Insurance Code §§2210.259, 2210.612, 2210.613, 2210.6131, or ~~[and]~~ 2210.6132.

(42) ~~[(41)]~~ Premium surcharge trust fund(s)--The dedicated trust fund or funds established by TPFA and held by the trust company in which the association or insurers must deposit contingent surcharges. TPFA may establish separate trust funds or separate accounts for class 2 and class 3 contingent surcharges.

(43) ~~[(42)]~~ Public securities--Collective reference to class 1 public securities, class 2 public securities, and class 3 public securities.

(44) ~~[(43)]~~ Public security administrative expenses--Expenses incurred by the association, TPFA, or TPFA consultants to administer public securities issued under Insurance Code Chapter 2210, including fees for credit enhancement, paying agents, trustees, attorneys, and other professional services.

(45) ~~[(44)]~~ Public security obligations--The principal of a public security and any premium and interest on a public security issued under Insurance Code Chapter 2210, Subchapter M, together with any amount owed under a related credit agreement.

(46) ~~[(45)]~~ Scheduled policy claims--That portion of the association's earned premium and other revenue expected to be paid in connection with the disposition of losses that do not result from a catastrophic event.

(47) ~~[(46)]~~ Trust company--The Texas Treasury Safekeeping Trust Company managed by the comptroller under Government Code §404.101, et seq.

(48) ~~[(47)]~~ Trust company representative--Any individual employed by the trust company who is designated by the trust company as its authorized representative for purposes of any agreement related to the CRTF or the public securities.

(49) ~~[(48)]~~ TPFA--The Texas Public Finance Authority.

(50) ~~[(49)]~~ Unearned premium--That portion of gross premium that has been collected in advance for insurance that the association has not yet earned because of the unexpired portion of the time for which the insurance policy has been in effect.

§5.4114. *Disbursements from the Catastrophe Reserve Trust Fund.*

(a) Disbursements in response to a catastrophic event require the following:

(1) In the event that the association reasonably estimates that a catastrophic event has occurred, the general manager of the association must provide the Commissioner and the comptroller a definitive written statement containing the total amount of the estimated catastrophic losses, potential reinsurance recoveries related to those losses, and the estimated portion of the catastrophic losses that exceeds the catastrophe year's premium and other revenue of the association;

(2) The Commissioner or an authorized representative of the department, on receiving the statement described in paragraph (1) of this subsection ~~[(a)(1)]~~, must have determined that a catastrophic event has occurred;

(3) The Commissioner or an authorized representative of the department must provide the trust company with a letter of instruction to pay the association or any third-party payee an amount from the CRTF that is equal to the lesser of either:

(A) the portion of the catastrophic loss that exceeds the catastrophe year's premium and other revenue of the association, or

(B) the balance of the CRTF; and

(4) The association must report to the Commissioner and the comptroller any subsequent change in the amount of catastrophic losses. If the change results in an increase in the amount of catastrophic losses, the association may request additional disbursements under this subsection. If the change results in a decrease in the amount of catastrophic losses, subsection ~~(f)~~ ~~[(g)]~~ of this section applies.

(b) To disburse funds to pay for costs associated with maintaining or managing the CRTF, the Commissioner or an authorized representative of the department must issue a letter of instruction to the trust company specifying the amount of money to be paid and specifying any third-party payee.

(c) To request a disbursement to pay for operating expenses, including reinsurance or alternative risk financing mechanisms under Insurance Code §2210.453, the association must submit a written request to the Commissioner, copied to the comptroller, that includes:

(1) an itemized list of operating expenses;

(2) the total amount of funds the association is requesting under this subsection; and

(3) a description of the event or events that caused the association to lack sufficient premium and other revenue to pay for the listed operating expenses.

(d) With the exception of disbursements to pay for reinsurance or alternative risk financing mechanisms under Insurance Code §2210.453, the Commissioner may only authorize the release of funds under subsection (c) of this section for operating expenses the Commissioner deems essential on a short-term basis.

~~[(e) The Commissioner may authorize a disbursement under subsection (e) of this section in an amount that enables the association to exceed the minimum funding level required under Insurance Code §2210.453.]~~

(e) ~~[(f)]~~ In authorizing the release of CRTF funds, the Commissioner may rely on any statements or notifications of definitive or estimated losses, association revenue, reinsurance proceeds, or any other related or supporting information, from any source, including the general manager of the association.

(f) ~~[(g)]~~ The association must remit to the CRTF any funds remaining after the purpose for which the funds were disbursed from the CRTF has been met.

§5.4133. *Public Security Proceeds.*

(a) As necessary, the association must make written requests to TPFA for the disbursement of public security proceeds for the association program, including~~[:]~~

(1) for the payment of incurred claims and operating expenses of the association,~~[:]~~ or

(2) other amounts as authorized in Insurance Code §2210.608.

(b) The association's written request must specify:

(1) the amount of the request; and

(2) the purpose of the request.

(c) To facilitate timely payment of losses, the association may request funds to be disbursed to the association before the settlement of incurred claims.

(d) The association must account for the receipt and use of public security proceeds separately from all other sources of funds. The association may hold public security proceeds in the manner authorized by the association's plan of operation or as required by agreement with TPFA.

(e) When public securities are issued after a catastrophic event, the association may use the proceeds as follows:

(1) for any purpose authorized in Insurance Code §2210.608(a), during the catastrophe year for which the public securities were issued;

(2) only to pay for losses and expenses resulting from the catastrophe year for which the public securities were issued, after that catastrophe year has ended; and

(3) after all losses and expenses resulting from the catastrophe year for which the public securities were issued are paid, the association may only use excess proceeds in accordance with Insurance Code §2210.608(b) and §5.4134 of this title (relating to Excess Public Security Proceeds).

(f) When public securities are issued before a catastrophic event, the association may use the proceeds as follows:

(1) for any purpose authorized in Insurance Code §2210.608(a) and (c), during the catastrophe year for which the proceeds were disbursed;

(2) only to pay for losses and expenses resulting from the catastrophe year for which the proceeds were disbursed, after that catastrophe year has ended; and

(3) after all losses and expenses resulting from the catastrophe year for which the proceeds were disbursed are paid, the association may only use excess proceeds in accordance with Insurance Code §2210.608(b) and §5.4134 of this title.

*§5.4134. Excess Public Security Proceeds.*

(a) The association may use any excess public security proceeds remaining after the purposes for which the public securities were issued or disbursed are satisfied in accordance with Insurance Code §2210.608(b) [§2210.608].

(b) As specified in Insurance Code §§2210.072(a), 2210.073(a), and 2210.0741(a), public securities may be repaid before their full term if the association's board of directors elects to do so and the Commissioner [e~~ommissioner~~] approves.

*§5.4141. Class 1 Public Security Trust Fund.*

(a) While class 1 public securities are outstanding, the association must deposit net premium and other revenue in the class 1 public security trust fund at periods and in amounts as required by the class 1 public security agreements to fund the class 1 payment obligation. As required by Insurance Code §2210.609(c), the association must deposit association surcharges collected under Insurance Code §2210.612 in the class 1 public security trust fund.

(b) Without limiting other options, the class 1 public security agreements may include an operating reserve fund. If the class 1 public security trust fund does not contain sufficient money to pay debt service on the class 1 public securities, administrative expenses on the class 1 public securities, or other class 1 public security obligations, the

association must transfer sufficient money from any operating reserve fund or other association-held funds to the class 1 public security trust fund to make the payment.

(c) The association may not directly or indirectly use, borrow, or in any manner pledge or encumber association surcharges collected or to be collected, except for the payment of class 1 public security obligations and as otherwise authorized in this title.

(d) The trust company must deposit any net investment income earned on net premium and other revenue and on the association surcharges into the class 1 public security trust fund while these amounts are on deposit.

(e) Following the issuance of public securities, net premium may be pledged for the payment of class 1 payment obligations. Net premium earned in one catastrophe year may be pledged for the repayment of public securities issued in prior catastrophe years.

*§5.4142. Class 2 and Class 3 Public Security Trust Funds.*

(a) While class 2 or class 3 public securities payable under Insurance Code §2210.613 and §2210.6131, respectively, are outstanding, the association must deposit net premium and other revenue in the class 2 public security trust fund and the class 3 public security trust fund, respectively, at periods and in amounts as required by the class 2 and class 3 public security agreements to fund the class 2 and class 3 payment obligations. As required by Insurance Code §2210.609(c), the association must deposit association surcharges collected under Insurance Code §2210.613 and §2210.6131 in the class 2 public security trust fund and the class 3 public security trust fund, respectively.

(b) Without limiting other options, for public securities payable under Insurance Code §2210.613 and §2210.6131, the class 2 and class 3 public security agreements may include an operating reserve fund. If the class 2 or class 3 public security trust funds do not contain sufficient money to pay debt service on the class 2 or class 3 public securities, administrative expenses on the class 2 or class 3 public securities, or other class 2 or class 3 public security obligations, the association must transfer sufficient money from any operating reserve fund or other association-held funds to the class 2 or class 3 public security trust fund, as applicable, to make the payment.

(c) The association may not directly or indirectly use, borrow, or in any manner pledge or encumber association surcharges collected or to be collected, except for the payment of the applicable public security obligations and as otherwise authorized in this title.

(d) The trust company must deposit any net investment income earned on net premium and other revenue and on the association surcharges into the appropriate trust fund accounts while these amounts are on deposit.

(e) Following the issuance of public securities, net premium may be pledged for the payment of class 2 and class 3 payment obligations. Net premium earned in one catastrophe year may be pledged for the repayment of public securities issued in prior catastrophe years.

*§5.4160. Member Assessments to Pay for Reinsurance.*

(a) The association, with the Commissioner's approval, must assess members as provided by Insurance Code §2210.453. If, in a calendar year, the association must assess its members under Insurance Code §2210.453,

(1) then the association must request the Commissioner's approval within a reasonable time after it knows its total reinsurance costs for that calendar year, and

(2) must issue the assessment no later than December 1 of that year.

(b) At the first regular board meeting in each calendar year, but before April 1, the association must discuss with the board its methodology for determining its one in 100-year probable maximum loss for the calendar year. In discussing its methodology, the association must provide the information described in subsection (d) of this section and make that information available to its members and the public.

(c) On the day after the effective date of this section, and not later than April 1 of each subsequent year, the association must disclose to the Commissioner its one in 100-year probable maximum loss for the calendar year and the association's method for determining that probable maximum loss.

(d) In disclosing its method for determining its one in 100-year probable maximum loss, the association must include:

(1) the hurricane model or models it relied on, including the model vendors, the model names, and the versions of each model;

(2) the in-force date and the total amount of direct exposures in force for the policy data used as the input for each hurricane model the association relied on;

(3) all user-selected hurricane model input assumptions used with each hurricane model the association relied on;

(4) the one in 100-year probable maximum loss model output produced by each hurricane model the association relied on;

(5) if the association relied on more than one hurricane model, the methodology the association used to blend or average the hurricane model outputs, including all weighting factors used; and

(6) any adjustments the association or another party made to the one in 100-year probable maximum loss model outputs or the blended or averaged output, including any adjustments to include loss adjustment expenses.

(e) The department will post the information disclosed under subsections (c) and (d) of this section on its website.

(f) If, in a year, the association elects to purchase coverage for reinsurance or alternative risk transfer mechanisms in excess of the one in 100-year probable maximum loss, then the association must also obtain a quote for coverage that provides funding equal to the one in 100-year probable maximum loss. The premium quote must assume the minimum required attachment point described in Insurance Code §2251.453(c).

(g) No later than the second regular board meeting of the calendar year, the association must provide each of the following to its board and make this information available to its members and the public:

(1) the reinsurance or alternative risk transfer mechanism premium quote required under subsection (f) of this section; and

(2) the total deposit premiums for all reinsurance or alternative risk transfer mechanism coverage for the year.

(h) If, at the time of the second regular board meeting of the calendar year, deposit premiums described in subsection (g) of this section are not known, then the association must provide its best estimate of those premiums to the board and make the estimate available to its members. As soon as the association knows the deposit premiums described in subsection (g) of this section, the association must provide them to the board and make them available to its members.

(i) In its request to the Commissioner to approve an assessment under Insurance Code §2210.453, the association must submit the following information:

(1) the portion of the association's reinsurance premium that provides coverage for losses or loss adjustment expenses above the association's one in 100-year probable maximum loss; and

(2) the methodology the association used to calculate the amount described in paragraph (1) of this subsection.

(j) This section and §§5.4161 - 5.4167 of this title (relating to Member Assessment to Pay Claims; Amount of Assessment; Notice of Assessment; Payment of Assessment; Failure to Pay Assessment; Contest After Payment of Assessment; and Inability to Pay Assessment by Reason of Insolvency, respectively) are a part of the association's plan of operation and will control over any conflicting provision in §5.4001 of this title (relating to Plan of Operation).

(k) Sections 5.4162 - 5.4167 of this title apply both to member assessments to pay for reinsurance and to §5.4161 of this title.

*§5.4161. Member Assessments to Pay Claims.*

(a) The association, with the approval of the Commissioner [eommissioner], must assess members as provided by Insurance Code Chapter 2210.

(b) The association must provide, in the aggregate for the catastrophe year, the following information when requesting the Commissioner [eommissioner] to approve a class 1, class 2, or class 3 assessment under Insurance Code §§2210.0725, 2210.074, or [and] 2210.0742, as applicable:

(1) the association's best estimate of the amount of losses expected to be paid as a result of the event, or series of events, that caused the need for the assessment requested;

(2) the amount of losses paid, or expected to be paid, from premium and other revenue of the association;

(3) the amount of losses paid, or expected to be paid, from available reserves of the association and available amounts in the CRTF;

(4) the amount of losses paid, or expected to be paid, from the proceeds of class 1 public securities issued, or expected to be issued;

(5) the amount of class 1 assessments previously approved and the amount of class 1 assessments now requested;

(6) in the case of a request to approve a class 2 or class 3 assessment, the amount of losses paid, or expected to be paid, from the proceeds of class 2 public securities issued, or expected to be issued;

(7) in the case of a request to approve a class 2 or class 3 assessment, the amount of class 2 assessments previously approved and the amount of class 2 assessments now requested;

(8) in the case of a request to approve a class 3 assessment, the amount of losses paid, or expected to be paid, from the proceeds of class 3 public securities issued, or expected to be issued;

(9) in the case of a request to approve a class 3 assessment, the amount of class 3 assessments previously approved and the amount of class 3 assessments now requested.

(c) If all or any portion of the authorized principal amount of class 1 public securities requested under §5.4124 or §5.4125 of this title [division] (relating to Issuance of Class 1 Public Securities before a Catastrophic Event and [or] Issuance of Public Securities after a Catastrophic Event [, respectively]) cannot be issued based on the factors described in §5.4135 of this title [division] (relating to Marketable Public Securities; the Amount of Class 1 Public Securities that Cannot be Issued; Market Conditions and Requirements; and Cost-Benefit Analysis), the association may request and the Commissioner

[commissioner] may approve the imposition of class 1 assessments as provided in this section.

(d) In its request to the Commissioner [commissioner] to approve the imposition of assessments under subsection (c) of this section, the association must submit the following information:

(1) the information required by subsection (b) of this section;

(2) information based on the analyses described in §5.4135 of this title [division];

(3) the amount of class 1 public securities that can be issued;

(4) the amount of class 1 public securities that cannot be issued; and

(5) the specific reasons, market conditions, and requirements that prevent TPFA from issuing all or any portion of the authorized principal amount of class 1 public securities. The association may rely on information and advice provided by TPFA, TPFA consultants, TPFA legal counsel, and third parties retained by the association for this purpose.

(e) [(f)] The association must request the issuance of the statutorily authorized principal amount of class 1 public securities before the association may request the Commissioner [commissioner] approve a class 1 assessment under Insurance Code §2210.0725.

(f) [(g)] The association must request the issuance of the statutorily authorized principal amount of class 2 public securities before the association may request the Commissioner [commissioner] approve a class 2 assessment under Insurance Code §2210.074.

(g) [(h)] The association must request the issuance of the statutorily authorized principal amount of class 3 public securities before the association may request the Commissioner [commissioner] approve a class 3 assessment under Insurance Code §2210.0742.

(h) [(i)] If the Commissioner [commissioner] approves the imposition of assessments under subsection (c) of this section, any class 2 and class 3 public securities must be issued as provided by Insurance Code Chapter 2210 and these rules.

(i) The association may use the proceeds from assessments only for losses and expenses resulting from the catastrophe year for which the assessments were made.

[(j) This section and §§5.4162 - 5.4167 of this division (relating to Amount of Assessment; Notice of Assessment; Payment of Assessment; Failure to Pay Assessment; Contest After Payment of Assessment; and Inability to Pay Assessment by Reason of Insolvency, respectively) are a part of the association's plan of operation and will control over any conflicting provision in §5.4001 of this subchapter (relating to Plan of Operation).]

#### §5.4162. Amount of Assessment.

(a) The association [Association] must [shall] determine which members of the association must [Association shall] participate in any assessment [to provide for the Association's required obligations as determined] under §5.4160 and §5.4161 of this title [division] (relating to Member Assessments to Pay for Reinsurance and Member Assessments to Pay Claims).

(1) The association [Association] may not include in the assessment an insurer that became a member of the association [Association] after September 1, 2009, and that had not previously been a member of the association [Association], until after the second anniversary of the date on which the insurer first becomes a member of

the association [Association]. [The anniversary date shall be the date the insurer is authorized by the department to engage in the business of property insurance in this state.]

(2) The association must [Association shall] include in the assessment an insurer described under paragraph (1) of this subsection after the second anniversary of the date on which the insurer first becomes a member of the association [Association] without regard as to whether the catastrophic event that gave rise to the class of assessments [public securities] occurred prior to the second anniversary of the date on which the insurer first became a member of the association [Association].

(3) The association [Association] may not include in the assessment formula[;] the net direct premium of an affiliate insurer engaged in the business of surplus lines insurance as described in the Insurance Code §2210.052(c)[;] that a federal agency or court of competent jurisdiction determines to be exempt from the assessment formula under [the] Insurance Code Chapter 2210.

(b) Each member company's percentage of participation must [This determination shall] be computed on a calendar year basis for the year in which the assessment is made. The percentage of participation is not [This determination shall not be] based on the year in which the catastrophic event occurred, except for an assessment made during that year. Net direct premiums must [shall] be determined as provided under §5.4001(a)(2)(N) [§5.4001] of this title [subchapter] (relating to Plan of Operation).

(c) The participating members of the association must participate in insured losses and operating expenses of the association, in excess of premium and other revenue, in the proportions required by Insurance Code §2210.052 and as depicted in subsection (e) of this section. A participating member is entitled to receive credit for insurance voluntarily written in the catastrophe area, as provided in Insurance Code §2210.052. [The designated members of the Association shall participate in any assessment levied in the proportion that the net direct premiums of such member written in this state during the preceding calendar year bears to the aggregate net direct premiums written in this state by all members of the Association as furnished to the Association by the department after review of annual statements, other reports, and required statistics; provided, however, that if at the time of such assessment the department has not furnished to the Association information necessary to compute a member's participation during the preceding calendar year, then each member's participation shall be based upon information furnished to the Association from the last calendar year in which such information is available and, upon obtaining the necessary information from the department, the Association shall reassess or refund to each member such amounts as are necessary to properly reflect such member's participation; provided, further, that a member shall be entitled to receive the following credit for insurance, similar to catastrophe insurance, written in such catastrophe areas.]

(d) If at the time of an assessment the department has not furnished to the association information necessary to compute a member's participation during the preceding calendar year, then each member's participation must be based upon information furnished to the association from the last calendar year for which such information is available. When the association receives the necessary information from the department, the association must reassess or refund to each participating member the amounts necessary to properly reflect the member's participation.

(e) [(d)] The Figure: 28 TAC §5.4162(e) [ §5.4162(d)] graphically depicts the Texas Windstorm Insurance Association Procedure For Calculating Member Assessment Percentages Including Credit For

Voluntary Writings. All premiums are for the most recent preceding calendar year ending December 31, as furnished by the department.

Figure: 28 TAC §5.4162(e)

[Figure: 28 TAC §5.4162(d)]

(1) Column 1(a): Statewide net direct premiums for extended coverage and other allied lines. Column 1(b): Statewide net direct premiums for extended coverage and other allied lines portion of the multiple peril line. Column 1(c): Statewide net direct premiums for homeowners and farm and ranch owners.

(2) Column 2: The sum of the statewide net direct premiums at 90% of the extended coverage and other allied lines, and 50% of the homeowners and farm and ranch owner's, or such percentage as may be determined in accordance with §5.4001(a)(2)(N)(i)(III) of this chapter (90% of Column 1(a) plus 90% of Column 1(b) plus 50% of Column 1(c)).

(3) Column 3: Each company's percentage of the net direct premiums as described in Column 2, which is the basis for indicating normal required participation in the association [Assoeiation] prior to credits for voluntary writings in the designated areas.

(4) Column 4: Total windstorm and hail premiums in the designated areas (association [Assoeiation] premiums plus voluntary premiums).

(5) Column 5: Normal company quota of total windstorm and hail premiums (Column 3 x Column 4).

(6) Column 6: Each company's voluntary writings in the designated areas multiplied by the same percentages as shown in Column 2. Note: Maximum credit must [shall] be limited to company's normal quota.

(7) Column 7: Each company's maximum possible allocation after applying credits for voluntary writings (Column 5 minus Column 6). Negative allocation to be shown as zero.

(8) Column 8: Percentage participation of each member company in the association [Assoeiation], prior to application of offset. Note: The offset figure measures the excess premiums developed by the maximum credit in Column 6.

(9) Column 9: Percentage participation of each member company in the association [Assoeiation].

(f) [(e)] The department will [shall] furnish to the association [Assoeiation] the amount of net direct premiums of each member company written on property in this state and the aggregate net direct premiums written on property in this state by all member companies during the preceding calendar year as reported by member companies to the department.

(g) Within a reasonable time after receiving the information described in subsection (f) of this section [~~the receipt of same~~] from the department, the association must [Assoeiation shall] notify each member company, in writing, [sent] by certified mail, of the following:

(1) the amount of net direct premiums the member company wrote on property in this state during the preceding calendar year; [the amount of the net direct premiums written on property in this state during the preceding calendar year by the member company to whom notice is given, including]

(2) the amount of net direct premiums of similar insurance the member company voluntarily wrote in the catastrophe area during the preceding calendar year; and [written in the catastrophe areas, upon which such company's percentage of participation will be determined.]

(3) that the notice and contents are [Such notice shall state that such notification, and the content thereof, is] an act, ruling, or decision of the association [Assoeiation] and that the member company to whom the [such] notice is given is [shall be] entitled to appeal it not later than the 30th day after [such act, ruling, or decision within 30 days from] the date shown on the notice in accordance with [the] Insurance Code §2210.551.

(h) Within a reasonable period of time after sending the notice described in subsection (g) of this section, [Thereafter,] the association must [Assoeiation shall] determine the percentage of participation for each member company in the manner provided in this section and must [shall] notify each member company of its percentage of participation [thereof], in writing, [sent] by certified mail. The notice must state that the notice and contents are [Such notice shall state that such notification, and the content thereof, is] an act, ruling, or decision of the association [Assoeiation] insofar as the mathematical determination of the percentage of participation is concerned and that the member company to whom the [such] notice is given is [shall be] entitled to appeal not later than the 30th day after the date shown on the [therefrom within 30 days from the date of such act, ruling, or decision as shown on said] notice in accordance with [the] Insurance Code §2210.551.

(i) In the notices required under subsections (g) and (h) of this section, the association must disclose to its members that the resulting participation percentages will be used for any reinsurance assessments for the calendar year that may be required under Insurance Code §2210.453(d).

[(f) To assist the Association in determining each member insurer's percentage of participation as soon as possible in the calendar year, each member insurer shall furnish to the Association on or before March 1 of each year a copy of its Exhibit of Premiums and Losses (Statutory Page 14) for the State of Texas that is filed annually with the department as part of the insurer's Texas Property and Casualty Annual Statement.]

#### §5.4164. *Payment of Assessment.*

Each [Except as provided by §5.4143 of this division (relating to Trust Funds for the Payment of Class 2 Public Securities) and §5.4146 of this division (relating to Member Assessment Trust Fund for the Payment of Class 3 Public Securities), each] member must remit to the association payment in full of its assessed amount of any assessment levied by the association within 30 days of receipt of notice of assessment.

#### §5.4167. *Inability to Pay Assessment by Reason of Insolvency.*

In the event a member of the association [Assoeiation] is placed in temporary or permanent receivership under order of a court of competent jurisdiction based on [upon] a finding of insolvency, and such member has been designated an impaired insurer by the commissioner, and in the event an assessment is necessary [it is necessary to obtain additional funds to provide for operating expenses and losses] in the year the insurer is declared impaired, the aggregate net amount not recovered from such insolvent insurer must [shall] be reallocated among the remaining members of the association [Assoeiation] in accordance with the method of determining participation as determined in the plan of operation.

#### §5.4171. *Premium Surcharge Requirements.*

(a) The association may be required to assess a premium surcharge under Insurance Code §§2210.612, 2210.613, or 2210.6131 on all policyholders of policies that cover association-insured property.

(b) Following a catastrophic event, insurers may be required to assess a premium surcharge under Insurance Code §2210.6132 on all policyholders of policies that cover insured property that is located

in a catastrophe area, including automobiles principally garaged in the catastrophe area. This requirement applies to property and casualty insurers, the association, the Texas FAIR Plan Association, Texas Automobile Insurance Plan Association policies, affiliated surplus lines insurers, and includes property and casualty policies independently procured from affiliated insurers.

(c) For premium surcharges described in subsection (a) of this section, this section and §§5.4172, 5.4173, 5.4181, 5.4182, and 5.4184 - 5.4192 of this title [division] (relating to Premium Surcharge Definitions, Determination of the Contingent Surcharge Percentage, Premiums to be Surcharged, Method for Determining the Premium Surcharge, Application of Premium Surcharges, Mandatory Premium Surcharge Collection, Remittance of Contingent Surcharges, Offsets, Association Surcharges Not Subject to Commissions or Premium Taxes; Contingent Surcharges not Subject to Commissions, Notification Requirements, Annual Premium Surcharge Report, Premium Surcharge Reconciliation Report, and Data Collection, respectively) apply to all policies written by the association.

(d) Contingent surcharges described in subsection (b) of this section and §§5.4172, 5.4173, 5.4181, 5.4182, and 5.4184 - 5.4192 of this title [division] only apply to policies written for the following types of insurance: commercial fire; commercial allied lines; farm and ranch owners; residential property insurance; commercial multiple peril (nonliability portion); private passenger automobile no fault (personal injury protection (PIP)), other private passenger automobile liability, private passenger automobile physical damage; commercial automobile no fault (PIP), other commercial automobile liability, and commercial automobile physical damage.

(e) This section and §§5.4172, 5.4173, 5.4181, 5.4182, and 5.4184 - 5.4192 of this title [division] do not apply to:

(1) a farm mutual insurance company operating under Insurance Code Chapter 911, unless the company is acting as a fronting insurer, as defined by Insurance Code §221.001(c);

(2) a nonaffiliated county mutual fire insurance company described by Insurance Code §912.310 that is writing exclusively industrial fire insurance policies as described by Insurance Code §912.310(a)(2);

(3) a mutual insurance company or a statewide mutual assessment company engaged in business under Chapter 12 or 13, Title 78, Revised Statutes, respectively, before those chapters' repeal by §18, Chapter 40, Acts of the 41st Legislature, First Called Session (1929), as amended by Section 1, Chapter 60, General Laws, Acts of the 41st Legislature, Second Called Session (1929), that retains the rights and privileges under the repealed law to the extent provided by those sections; and

(4) premium and policies issued by an affiliated surplus lines insurer that a federal agency or court of competent jurisdiction determines to be exempt from a premium surcharge under Insurance Code Chapter 2210.

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

Filed with the Office of the Secretary of State on June 8, 2020.

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James Person

General Counsel

Texas Department of Insurance

Earliest possible date of adoption: July 19, 2020

For further information, please call: (512) 676-6584

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## DIVISION 7. INSPECTIONS FOR WINDSTORM AND HAIL INSURANCE

The Texas Department of Insurance (TDI) proposes to amend 28 TAC §§5.4603, 5.4604, 5.4609, 5.4640, and 5.4642; and to repeal 28 TAC §5.4606 and replace it with new §5.4606. These proposed changes concern the process for certifying that structures comply with windstorm building codes for both ongoing and completed improvements. The proposed rules will apply to applications for certificates of compliance submitted on or after the effective date of the rules. The proposed rules are necessary to implement Senate Bill 615, 86th Legislature, Regular Session (2019), and House Bill 1900, 86th Legislature, Regular Session (2019), and important to maintain uniformity within TDI's regulations.

**EXPLANATION.** Amending §§5.4603, 5.4604, 5.4609, 5.4640, and 5.4642, and repealing existing §5.4606 and replacing it with new §5.4606 are necessary to implement SB 615 and HB 1900, which amended Insurance Code §2210.251 and §2210.2515. TDI must fulfill its new statutory charge, effective June 1, 2020, to regulate the application process for certificates of compliance for completed improvements. While the application process for certificates of compliance for completed improvements moved from the Texas Windstorm Insurance Association (TWIA) to TDI effective June 1, 2020, the proposed rules will apply to applications for certificates of compliance submitted on or after the effective date of the rules. TDI also proposes nonsubstantive changes to the rule text to maintain stylistic uniformity in TDI's regulations and remove provisions that are no longer applicable.

SB 615 and HB 1900, 86th Legislature. SB 615 and HB 1900 amend Insurance Code §2210.251 and §2210.2515. These amendments require TDI to regulate the application process for certificates of compliance for completed improvements and provide additional disciplinary authority and remedies for TDI to use to address noncompliant applications or structures.

Insurance Code §2210.251 and §2210.2515 govern certificates of compliance that provide evidence of a structure's insurability by TWIA. In 2015, the Legislature passed HB 2439, 84th Legislature, Regular Session (2015), which divided the certificate of compliance process between TWIA and TDI. As required by HB 2439, TWIA oversaw the certificate of compliance process for completed improvements, while TDI oversaw the certificate of compliance process for ongoing improvements.

Under HB 2439, TWIA was required to issue a certificate of compliance for a completed improvement if it received specific statutorily-required affirmations from a Texas-licensed professional engineer and a completed TDI-prescribed form. If TDI denied an application for an ongoing improvement for noncompliance, an applicant could apply to TWIA when the improvement was completed. For completed improvements, neither TDI nor TWIA had authority to inspect or verify the application's accuracy or enforcement authority. While HB 2439 was in effect, TDI received complaints about structures that were certified under TWIA's cer-

tificate application process but that did not meet the required windstorm building code standards.

The Sunset Advisory Commission reviewed TWIA in 2018-2019. Following the review, the Sunset Advisory Commission issued a report examining six issues, including windstorm certificates of compliance. The Sunset Review Commission's report recommended statutory changes to require that a certificate of compliance for a completed improvement be based on some inspection of the improvement. Texas Sunset Advisory Commission, *Staff Report with Final Results*, 46 (2019), [www.sunset.texas.gov/public/uploads/files/reports/Texas%20Windstorm%20Insurance%20Association%20Staff%20Report%20with%20Final%20Results.pdf](http://www.sunset.texas.gov/public/uploads/files/reports/Texas%20Windstorm%20Insurance%20Association%20Staff%20Report%20with%20Final%20Results.pdf).

With SB 615 and HB 1900, the Legislature put certificates of compliance for completed improvements under TDI regulation. TDI now has authority to deny applications for and rescind certificates of compliance for completed improvements. The bills also authorize TDI to submit a formal complaint on a licensed engineer to the Texas Board of Professional Engineers and Land Surveyors (TBPELS) related to the engineering work in an application for a completed improvement. SB 615, however, prohibits TDI from prescribing a form that requires an engineer to assume liability for the construction of the improvement.

Under SB 615 and HB 1900, TDI continues to regulate certificates of compliance for ongoing improvements. HB 1900 gives TDI authority to impose reasonable penalties on appointed qualified inspectors (AQIs) for failing to provide complete and accurate information in connection with the inspection of an ongoing improvement. The bill states that these reasonable penalties include prohibiting the inspector from applying for certificates of compliance under Insurance Code §2210.2515.

The following paragraphs explain how the proposed rules implement SB 615 and HB 1900.

Section 5.4603. Windstorm Inspection Forms. Section 5.4603 addresses windstorm inspection forms. Amending §5.4603 is necessary because amended Insurance Code §2210.2515 requires TDI to prescribe forms for applying for a certificate of compliance for a completed improvement. TDI will make available on its website new Certification Form for Completed Improvement, WPI-2E, and new Certificate of Compliance for Completed Improvement (Engineered), WPI-8E, both effective June 1, 2020. Proposed §5.4604 and §5.4606 specify the supporting evidence the WPI-2E will require.

Section 5.4604. Certification Form for Completed Improvement. Section 5.4604 addresses the application process for certificates of compliance for completed improvements. Amending §5.4604 is necessary to describe the new application process for completed improvements, including adding new forms prescribed by TDI as required in amended Insurance Code §2210.2515. The changes also implement TDI's authority to deny an application for a certificate of compliance for a completed improvement and to submit a formal complaint to the TBPELS. In addition, the proposed changes include nonsubstantive amendments to improve consistency and readability of TDI's regulations.

To keep TDI's regulations up-to-date and organized, the following changes are also proposed.

Current §5.4606. Requirements for Temporary Appointment of Qualified Inspectors. Existing §5.4606 addresses requirements for temporary appointment of qualified inspectors. TDI proposes repealing the section because it is no longer needed. TDI im-

plemented requirements for temporary appointment of qualified inspectors in 2006 in response to Hurricane Rita in §5.4606, but the response to Hurricane Rita is complete, and temporary appointment of qualified inspectors to respond to Hurricane Rita is no longer needed.

New §5.4606. Supporting Evidence for Sealed Postconstruction Evaluation Report for Certificate of Compliance for Completed Improvement. TDI proposes replacing repealed §5.4606 with a new section that will address supporting evidence requirements as required by amended Insurance Code §2210.2515. Applicants must submit supporting evidence with an application for a completed-improvement certificate. In addition to the evidence provided with the application, TDI may require additional supporting evidence as identified in this section.

Section 5.4609. Application for Qualified Inspector Appointment. Section 5.4609 addresses the application for a qualified-inspector appointment. TDI proposes deleting §5.4609(d) and (f). This revision is important because subsections (d) and (f) no longer apply. The subsections address engineers appointed as AQIs as of the effective date of §5.4606 under the previous version of Insurance Code §2210.254(a)(2) (Acts 2005, 79th Leg., Ch. 727, §2, 2005 Tex. Gen. Laws 1941 (amended 2011)).

Section 5.4640. Oversight. Amendments to §5.4640 implement TDI's new oversight authority for completed-improvement-certificate applications and issued certificates. This includes adding authority for TDI to deny an application, rescind an issued certificate, or report an engineer to the TBPELS.

Section 5.4642. Disciplinary Action. Section 5.4642 addresses disciplinary actions that TDI may take. Amending §5.4642 is necessary to describe the penalties TDI is authorized to impose on a person acting as an AQI under Insurance Code §2210.254 who has failed to provide complete and accurate information in connection with an inspection for a certificate of compliance.

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

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

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendments, new section, and repeal are in effect, Mr. Cox expects that administering and enforcing the proposed changes will have the public benefit of ensuring that TDI's rules conform to amended Insurance Code §2210.251 and §2210.2515. By implementing amended §2210.251 and §2210.2515, these rules will also streamline and standardize the certificate of compliance application process by making TDI the sole regulator. In addition, the proposed rules give TDI enforcement authority to effectively regulate the application process and better protect consumers.

Mr. Cox expects that the proposed amendments, repeal, and new section will impose an economic cost on persons required to comply. Under the proposed rules, as required by amended

Insurance Code §2210.2515, applicants are required to provide supporting evidence with their application to TDI for a certificate of completed improvement. Applicants, however, should already have had this supporting evidence to complete TWIA's completed-improvement-certificate application. Costs arise from additional expenses related to making hard copies, scanning documents, or mailing documents to TDI. Because the supporting evidence and submission method will vary per application, TDI cannot predict the cost amounts but expects the cost to be minimal.

Postage for a First-Class Mail Letter (1 oz.) is \$.55. *Mailing & Shipping Prices*, USPS.com (March 9, 2020 9:52 a.m.), [www.usps.com/business/prices.htm](http://www.usps.com/business/prices.htm). The total mailing cost will depend on the number of documents mailed. The cost to print supporting evidence is approximately \$.05 to \$.08 per page, with the total cost dependent on the amount of information printed. These costs will vary with each application.

Scanners range from \$50 to \$1200, and the price will depend on the scanner's quality, speed, and if it is a portable or self-loading model. If the applicant submits the documents electronically, there will be no postage or printing cost to do so.

TDI estimates individual employee compensation for an administrative assistant at \$17.61 an hour for one to ten hours of work to mail or scan and email documents to TDI. This wage is based on the national median hourly wage for each classification as reported in the May 2018 National Industry Specific Occupational Employment and Wage Estimates. Bureau of Labor Statistics, *Occupational Employment Statistics*, United States Dep't of Labor (March 9, 2020 9:53 a.m.), [www.bls.gov/oes/current/oes436014.htm](http://www.bls.gov/oes/current/oes436014.htm).

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.** TDI has determined that the proposed amendments, repeal, and new section may have an adverse economic effect or a disproportionate economic impact on 7,687 small or micro businesses. The cost analysis in the Public Benefit and Cost Note section of this proposal applies to these small and micro businesses.

According to the Texas Comptroller of Public Accounts, there are 7,687 small engineering businesses in Texas. However, TDI cannot predict how many small engineering businesses will apply for a certificate for completed improvement under the proposed rules. In addition, TDI anticipates that the number of engineers who would apply for a completed-improvement certificate is small. Most certificates issued are for ongoing improvements. The proposed rules will not affect rural communities.

As stated in the Public Benefit and Cost Note section of this proposal, TDI anticipates that each person applying for a certificate of completed improvement may incur some costs because of the proposed rule changes. The primary objective of this proposal is to implement amended Insurance Code §2210.251 and §2210.2515. TDI considered the following alternatives to minimize any adverse impact on small and micro businesses while accomplishing the proposal's objectives:

- (1) not proposing the amendments, repeal, and new section;
- (2) proposing a different requirement for small and micro businesses; and
- (3) exempting small or micro businesses from the proposed requirement that could create the adverse impact.

*Not proposing the amendments, repeal, and new section.* Not proposing the amendments, repeal, and new section would not prevent small and micro businesses from incurring the costs described above. The rules implement amended Insurance Code §2210.251 and §2210.2515, which require applicants to provide supporting evidence to apply for a certificate of completed improvement. Even if TDI does not make the proposed rule changes, applicants will still incur costs associated with providing supporting evidence to TDI under amended §2210.251 and §2210.2515. For these reasons, TDI rejected this option.

*Proposing a different requirement for small and micro businesses.* Proposing a different requirement would not alleviate any potential costs described above. The costs are imposed as a result of amended Insurance Code §2210.251 and §2210.2515. Although TDI has discretion to determine the submission method for and types of supporting evidence, TDI does not have discretion to not require it. For this reason, TDI rejected this option.

*Exempting small or micro businesses and rural communities from the proposed requirement that could create the adverse impact.* Adding an exemption would also not alleviate the potential costs associated with the proposed changes because these costs are a result of amended Insurance Code §2210.251 and §2210.2515. Even if TDI adds an exemption to the proposed rules, applicants would still be statutorily required to provide supporting evidence to TDI. For these reasons, TDI rejected this option.

**EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045.** TDI has determined that this proposal does impose a possible cost on regulated persons. However, Government Code §2001.0045 does not require additional rule amendments because the proposed changes are necessary to implement legislation. The proposed rule implements Insurance Code §2210.251 and §2210.2515 as added by SB 615 and HB 1900.

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

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

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

REQUEST FOR PUBLIC COMMENT. TDI will consider any written comments on the proposal that are received by TDI no later than 5 p.m. Central time on July 20, 2020. Send your comments to ChiefClerk@tdi.texas.gov; or to the Office of the Chief Clerk, MC 112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

The Commissioner will also consider written and oral comments on the proposal in a public hearing under Docket No. 2820 at 1:00 p.m. central time on July 10, 2020. To avoid the risk of transmission of COVID-19, TDI will hold the public hearing remotely using online resources. Details of how to view and how to participate in the hearing will be made available on TDI's website at [www.tdi.texas.gov/alert/event/2020/07/docket-2820](http://www.tdi.texas.gov/alert/event/2020/07/docket-2820).

**28 TAC §§5.4603, 5.4604, 5.4606, 5.4609, 5.4640, 5.4642**

STATUTORY AUTHORITY. TDI proposes amendments to 28 TAC §§5.4603, 5.4604, 5.4609, 5.4640, 5.4642, and new §5.4606 under Insurance Code §§2210.251, 2210.2515, and 36.001.

Insurance Code §2210.251 provides that TDI's issuance of a certificate of compliance demonstrates compliance with the applicable building code under the TWIA plan of operation.

Insurance Code §2210.2515 provides that TDI oversees the certification-of-compliance application process for both ongoing and completed improvements and authorizes the Commissioner to adopt rules as necessary to impose reasonable penalties on qualified inspectors that fail to provide complete and accurate information in connection with an inspection for a certificate of compliance and rescind certificates of compliance.

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.

CROSS-REFERENCE TO STATUTE. Amendments to §§5.4603, 5.4604, 5.4609, 5.4640, and 5.4642, and new §5.4606 implement Insurance Code §2210.251 and §2210.2515.

*§5.4603. Windstorm Inspection Forms.*

(a) Inspection Verification, Form WPI-2-BC-6. TDI adopts by reference the Inspection Verification, Form WPI-2-BC-6, effective January 1, 2017, for use in windstorm inspection, for structures constructed, repaired, or to which additions are made on and after January 1, 2008, and before April 1, 2020.

(b) Application, inspection, and renewal forms. TDI will make available the following forms on its website:

(1) Application for Appointment as a Qualified Inspector, Form AQI-1, effective January 1, 2017;

(2) Renewal Application for Appointment as a Qualified Inspector, Form AQI-R, effective January 1, 2017;

(3) Application for Certificate of Compliance for Ongoing Improvement, Form WPI-1, January 1, 2017;

(4) Certification Form for Completed Improvement, Form WPI-2E, effective June 1, 2020 [~~Application Form for Certificate of Compliance (WPI-8) for Completed Improvement, effective April 1, 2020~~]; and

(5) Inspection Verification, Form WPI-2, effective April 1, 2020, for structures constructed, repaired, or to which additions are made on and after April 1, 2020.

(c) TDI inspection and certification forms. When appropriate, TDI will issue the following forms:

(1) Field Form, Form WPI-7, effective April 1, 2020; and

(2) Certificate of Compliance for Ongoing Improvement, Form WPI-8, effective January 1, 2017; and[-]

(3) Certificate of Compliance for Completed Improvement (Engineered), Form WPI-8E.

*§5.4604. Certification Form for Completed Improvement*

(a) Persons must submit the following information when applying to TDI [~~the association~~] for a certificate of compliance [~~Certificate of Compliance~~] for a completed improvement on a structure:

(1) a statement from a professional engineer licensed by the Texas Board of Professional Engineer and Land Surveyors that affirms that the engineer has:

(A) designed the improvement,

(B) affixed the engineer's seal on the design, and

(C) affirmed the design complies with the applicable building code under the plan of operation, and that the improvement was constructed in accordance with the design; or

(2) a sealed postconstruction evaluation report completed and submitted by a professional engineer licensed by the Texas Board of Professional Engineer and Land Surveyors that:

(A) confirms the improvement's compliance with the applicable building code under the plan of operation;

(B) includes supporting evidence found in §5.4606 of this title (relating to Supporting Evidence for Sealed Postconstruction Evaluation Report for Certificate of Compliance for Completed Improvement) for the engineer's postconstruction evaluation report; and

(C) contains the engineer's seal.

(b) The following information must also be provided:

(1) the physical address (including street, street number, city, county, and ZIP code);

(2) whether the original transfer of title from the builder to the initial owner of the improvement has occurred or is expected to occur in the future;

(3) whether the improvement is substantially completed;

(4) the wind zone location;

(5) whether the structure is in a Coastal Barrier Resource System Unit [~~Zone~~];

(6) the property owner's name and contact information, or the name and contact information of the builder or contractor that made the completed improvement;

~~[(7) the name and contact information of the builder or contractor that made the completed improvement;]~~

~~[(8)]~~ [(8)] the name and contact information of the engineer certifying the completed improvement;

~~[(9)]~~ [(9)] the date construction of the completed improvement began;

~~[(10)]~~ [(10)] the date of application for the certificate of compliance for the completed improvement;

(10) [(41)] the name of the person submitting the application for the certificate of compliance for the completed improvement;

(11) [(42)] the type of structure to which the completed improvement was [is being] made, including the structure's name or number and number of units, if applicable;

(12) [(43)] the subject of the inspection (for example, entire structure, addition, alteration, or repair);

(13) [(44)] the building code standard and applicable wind load standard under which the completed improvement was designed or inspected;

[(15) either of the following from a Texas-licensed professional engineer:]

[(A) the plan or drawing number for the engineer's sealed design of the completed improvement and the engineer's affirmation of compliance with the applicable windstorm building code; or]

[(B) the title, date, and number of the engineer's sealed postconstruction evaluation report on the completed improvement and the engineer's confirmation that the completed improvement complies with the applicable windstorm building code;]

(14) [(46)] the wind-speed conditions that the completed improvement is designed to withstand;

(15) [(47)] the importance factor or risk category of the structure;

(16) [(48)] the exposure category of the structure;

(17) [(49)] information on the protection of exterior openings from windborne debris;

(18) [(20)] the dates the completed improvement was inspected; [and]

(19) [(21)] the signature and Texas Board of Professional Engineers and Land Surveyors registration number of the engineer certifying the completed improvement; and[-]

(20) supporting evidence under §5.4606 of this title.

(c) [(b)] TDI [The association] will make available the Certification Form for Completed Improvement, Form WPI-2E [Application for Certificate of Compliance (WPI-8) for Completed Improvement] on which the information in subsections [subsection] (a) and (b) of this section may be provided.

[(e) The association must issue a Certificate of Compliance for a completed improvement on an improvement if the applicant for the certificate has complied with Insurance Code §2210.2515(e) and with this section.]

§5.4606. Supporting Evidence for Sealed Postconstruction Evaluation Report for Certificate of Compliance for Completed Improvement.

(a) "Supporting evidence" includes but is not limited to:

(1) Product evaluations;

(2) Installation instructions from the manufacturer for the product;

(3) Test data;

(4) Written evidence from inspections--for example, an inspection report;

(5) Photographs;

(6) Video recording;

(7) Plans, either as-built plans (plans that demonstrate compliance with the applicable building code for the design of the structure), design drawings, shop drawings, or sketches; or

(8) Any other documentation or other form of evidence that supports statements made in the application, design, or postconstruction evaluation report submitted to TDI.

(b) To verify that an engineer's affirmed design or postconstruction evaluation report confirms the completed improvement's compliance with the applicable building code under the plan of operation, as required under §5.4604 of this title (relating to Certification Form for Completed Improvement), it must include supporting evidence, when applicable, such as the following:

(1) Roof covering certifications.

(A) Supporting evidence identifying all products and components included in the scope of the certification, including roof covering, fasteners, underlayment, roof deck, roof vents, skylights, and all other parts of the roof-covering assembly.

(B) Manufacturer's installation instructions, product evaluation reports, or test laboratory reports, and code-required installation requirements for all components included in the scope of certification (for example see subparagraph (A) of this paragraph).

(C) Supporting evidence that the components of the installed building products meet or exceed the code-required design pressures.

(D) Supporting evidence verifying that the roof covering, roof vents, and skylights are installed according to the manufacturer installation instructions, product test reports, and specifications in the applicable windstorm building code.

(E) Applicable information listed in §5.4626 of this title (relating to Substantiating Information).

(2) Building product certifications.

(A) Supporting evidence identifying all products included in the scope of the certification, including windows, side-hinged doors, sliding doors, overhead doors (sectional or rolling), exterior wall coverings, and other applicable building products.

(B) Manufacturer's installation instructions; product evaluation, reports, or test laboratory reports; product certifications; and code-required installation requirements for the building products included in the scope of the certification.

(C) Supporting evidence verifying that design-pressure ratings for all building products meet or exceed the required design pressures as specified in the applicable windstorm building code for the installation.

(D) Supporting evidence verifying that the building products that are required by the applicable windstorm building code were certified by a certification agency, such as the Window and Door Manufacturers Association or the American Architectural Manufacturers Association; are properly labeled; and have valid certifications.

(E) Supporting evidence recording all information on certification labels and verifying that the product test pressure exceeds code-required design pressure, and that building products are within the maximum size tested on each label and are installed exactly as tested.

(F) Supporting evidence specifying the minimum design pressures required by the applicable windstorm building code.

(G) Applicable information listed in §5.4626 of this title.

(H) Where the applicable windstorm building code requires windborne debris protection, supporting evidence either verifying the product is impact-resistant or protected with a windborne debris protection system. Where the applicable code requires windborne debris protection, the protection must be installed according to manufacturers' instructions and product test reports.

(3) Entire new building, existing building, or a new addition to an existing structure.

(A) Supporting evidence verifying complete load path as specified by the applicable windstorm building code, including connections between roof, walls, floor, and foundation.

(B) Supporting evidence verifying roof coverings as specified under paragraph (1) of this subsection.

(C) Supporting evidence verifying building products as specified under paragraph (2) of this subsection.

(D) Building plans, such as structural drawings from the engineer of record or as-built plans that demonstrate compliance with the applicable windstorm building code. The plans must show items such as lateral resisting elements, wall framing, roof framing, floor framing, and other pertinent elements of the structure that are included in the scope of work for the certification.

(E) Supporting evidence verifying the foundation system, such as existing plans or as-built plans. The plans must show the location of anchors, ties, or straps; pile locations; or other pertinent elements of the structural system that are included in the scope of work for the certification.

(F) For additions, supporting evidence verifying whether the addition is attached or detached from main structure. If the addition is attached, the supporting evidence must specify the load on the existing structure, the load imposed by the addition on the existing structure, and if the existing structure and the connection will satisfy the combined loading. Attached additions rely on the existing structure for stability and strength. Detached additions are independent of the existing structure. Supporting evidence must also verify load path from addition to existing structure, if applicable.

(G) Applicable information listed in §5.4626 of this title.

(c) The engineer or applicant for the certificate of compliance for completed improvement may provide the applicable supporting evidence listed in subsection (b) of this section with the application, Form WPI-2E. In addition, the engineer or applicant may be required to provide additional information as listed in subsection (b) of this section if TDI requires more information to verify the application, design, or postconstruction evaluation report. Failure to provide the documents requested by TDI could result in a denial of a Certificate of Compliance for Completed Improvement (Engineered), Form WPI-8E, or other action taken by TDI as stated in §5.4640 of this title (relating to Oversight) or §5.4642 of this title (relating to Disciplinary Action).

(d) For each component inspected, including roof, window, door, garage door, or exterior cladding, the engineer listed on the certificate of compliance for completed improvement must retain the supporting evidence and applicable information described in this section for that component for five years from the date of the most recent certification application submitted on the structure or until the component is replaced and recertified, whichever is longer.

*§5.4609. Application for Qualified Inspector Appointment.*

(a) Experience and education. An appointed qualified inspector must display demonstrable experience and education related to windstorm design.

(b) Appointed qualified inspector application. To apply for appointment as a qualified inspector, an applicant must provide TDI with:

(1) the applicant's name and contact information;

(2) the applicant's Texas Board of Professional Engineers and Land Surveyors registration number;

(3) a summary of the applicant's education and experience related to windstorm design; and

(4) a statement addressing whether the applicant has attended an orientation program as described in subsection (d) [(e)] of this section [or is an engineer described in subsection (d) of this section].

(c) Form AQI-1. TDI will make available the Qualified Inspector Appointment Application Form, Form AQI-1, on which applicants can provide the information required by subsection (b) of this section.

~~[(d) Engineers appointed as of the effective date of this section. Texas-licensed professional engineers who, as of the effective date of this section, are appointed as qualified inspectors under the immediate prior version of Insurance Code §2210.254(a)(2) (Acts 2005, 79th Leg., Ch. 727, §2, 2005 Tex. Gen. Laws 1941 (amended 2011)); must submit the information required by subsection (b) of this section to be appointed as qualified inspectors under current Insurance Code §2210.254(a)(2).]~~

(d) [(e)] Orientation program. Within the 180-day period immediately preceding the date TDI receives the application, an applicant must have attended or viewed a TDI-sponsored orientation program on TDI procedures and rules relating to windstorm and hail inspections.

~~[(f) Orientation program for engineers appointed as of the effective date of this section. Texas-licensed professional engineers who, as of the effective date of this section, are appointed as qualified inspectors under the immediate prior version of Insurance Code §2210.254(a)(2); must have attended or viewed the TDI-sponsored orientation program on TDI procedures and rules relating to windstorm and hail inspections within the 90-day period immediately following December 31, 2016.]~~

*§5.4640. Oversight.*

(a) Inspection oversight. An appointed qualified inspector is subject to TDI's regulatory authority, which includes oversight inspections conducted by TDI. TDI oversees all aspects of the inspection and notification of compliance of ongoing improvements by an appointed qualified inspector under Insurance Code Chapter 2210 and this chapter.

(b) Certificate of compliance oversight.

(1) Ongoing Improvements. As part of TDI's oversight, TDI may audit the inspections on structures for which it has received an Application for Windstorm Inspection Certificate of Compliance, Form WPI-1, or an Inspection Verification, Form WPI-2, including structures for which TDI has issued a Certificate of Compliance, Form WPI-8. If TDI determines that a structure does not meet the windstorm building code standards, TDI will not issue a Form WPI-8; or if TDI has issued a Form WPI-8 on a structure that is subsequently found not to be in compliance with the windstorm building code standards, TDI may rescind the Form WPI-8.

(2) Completed Improvements.

(A) TDI may deny an application for certificate of compliance if the postconstruction evaluation report or Certification Form for Completed Improvement, Form WPI-2E, is not fully documented as required under §5.4604 of this title (relating to Certification Form for

Completed Improvement) or §5.4606 of this title (relating to Supporting Evidence for Sealed Postconstruction Evaluation Report for Certificate of Compliance for Completed Improvement).

(B) TDI may submit a formal complaint to the Texas Board of Professional Engineers and Land Surveyors related to the engineering work of a professional engineer, as reflected in the sealed postconstruction evaluation report or other materials submitted by an engineer under §5.4604 and §5.4606 of this title.

(C) TDI may rescind a Certificate of Compliance for Completed Improvement (Engineered), Form WPI-8E, if TDI finds that the improvement does not comply with the applicable building code under the plan of operation.

(c) Types of oversight audits. TDI may conduct an oversight audit of an appointed qualified inspector by any one, or a combination, of the following methods:

(1) TDI may conduct an audit of an appointed qualified inspector based on documents and other information submitted to TDI; or

(2) TDI may conduct an on-site audit at the appointed qualified inspector's place of employment or ongoing improvement for which TDI has received a Form WPI-1[~~7~~] or a Form WPI-2.

(d) Notification of audits.

(1) In all audits in which TDI asks the appointed qualified inspector to bring substantiating information to the audit, TDI will expect the audit to take place no less than 15 days after the appointed qualified inspectors receives notice of the audit.

(2) The appointed qualified inspector may request a shorter time frame if a notice period in this subsection would cause a delay in the construction schedule.

(e) Information for oversight audits. In the process of conducting an oversight audit, TDI may require the appointed qualified inspector to provide:

(1) documentation described in §5.4626 of this title (relating to Substantiating Information); and

(2) any other information maintained by the appointed qualified inspector that will demonstrate that the ongoing improvement complies with the appropriate windstorm building code standards, and that the ongoing improvement is eligible for association insurance.

(f) Burden of verification. ~~For [With respect to]~~ oversight audits, the appointed qualified inspector bears the burden of verifying, ~~under [as set forth in]~~ §5.4622 of this title (relating to Inspection Verification), that the ongoing improvement complies with the wind load requirements of the applicable building code.

(g) Requirement to provide information. The appointed qualified inspector must provide information related to an audit in the same manner and time frame as required in §5.4615(5) of this title (relating to General Responsibilities of Appointed Qualified Inspectors). Failure to provide the information requested by TDI under this section may result in the nonissuance or rescission of a Certificate of Compliance, Form WPI-8 for the ongoing improvement, and the appointed qualified inspector may be subject to disciplinary action by TDI, as described in §5.4642 of this title (relating to Disciplinary Action).

§5.4642. *Disciplinary Action.*

(a) Revocation or denial of appointment. After notice and opportunity for hearing, the Commissioner may revoke an appointed qualified inspector's appointment or deny an appointed qualified inspector's application for appointment if:

(1) the applicant or appointed qualified inspector violates or fails to comply with the Insurance Code or any rule in this chapter;

(2) the applicant has made a material misrepresentation in the appointment application;

(3) the applicant has attempted to obtain an appointment by fraud or misrepresentation; or

(4) the applicant or appointed qualified inspector has made a material misrepresentation in any form, [ø] report, or other information required to be submitted to [filed with] TDI, including an Application for Certificate of Compliance for Ongoing Improvement [Application for Windstorm Inspection Certificate of Compliance], Form WPI-1; a construction inspection report; [ø] an Inspection Verification, Form WPI-2; an Inspection Verification, Form WPI-2-BC-6; or a Certification Form for Completed Improvement, form WPI-2E.

(b) Cease and desist order. The Commissioner ex parte, may enter an emergency cease and desist order under Insurance Code Chapter 83 against an appointed qualified inspector, or a person acting as an appointed qualified inspector, if:

(1) the Commissioner believes that:

(A) the appointed qualified inspector has:

(i) failed to demonstrate, through submitting or failing to submit to TDI, substantiating information as described in §5.4626 of this title (relating to Substantiating Information), that an ongoing improvement or a portion of an ongoing improvement subject to inspection meets the requirements of Insurance Code Chapter 2210 and TDI rules; or

(ii) refused to comply with requirements imposed under this chapter or TDI rules; or

(B) a person acting as an appointed qualified inspector is acting without appointment under Insurance Code §2210.254 or §2210.255; and

(2) the Commissioner determines that the conduct described by paragraph (1) of this subsection is fraudulent, hazardous, or creates an immediate danger to the public.

(c) Alternative sanctions. Under Insurance Code §2210.2551(b) and §2210.256(b), the Commissioner, instead of revocation or denial, may impose one or more of the following sanctions if the Commissioner determines from the facts that the alternative sanction would be fair, reasonable, or equitable:

(1) suspension of the appointment for a specific period, not to exceed one year; or

(2) issuance of an order directing the appointed qualified inspector to cease and desist from the specified activity or failure to act determined to be in violation of Insurance Code Chapter 2210, Subchapter F, or rules of the Commissioner adopted under Insurance Code Chapter 2210, Subchapter F.

(d) Failure to comply with order. Under Insurance Code §2210.2551(b) and §2210.256(d), if the Commissioner finds, after notice and a hearing, that an appointed qualified inspector has failed to comply with an order issued under subsections (a), (b), or (c) of this section, the Commissioner will, unless the Commissioner's order is lawfully stayed, revoke the appointed qualified inspector's appointment.

(e) Informal disposition. The Commissioner may informally dispose of any matter under this section or under §5.4612 of this title (relating to Appointment as Qualified Inspector) by consent order or default.

(f) Automatic cancellation. If the Texas Board of Professional Engineers and Land Surveyors revokes or suspends an engineer's license, the engineer's appointment as an appointed qualified inspector is automatically canceled.

(g) Reasonable penalty. If TDI finds that a person acting as an appointed qualified inspector under Insurance Code §2210.254 has failed to provide complete and accurate information regarding an inspection for a certificate of compliance under Insurance Code §2210.2515, then TDI may impose a reasonable penalty on the inspector, including prohibiting the inspector from applying for certificates of compliance under Insurance Code §2210.2515.

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

Filed with the Office of the Secretary of State on June 5, 2020.

TRD-202002288

James Person

General Counsel

Texas Department of Insurance

Earliest possible date of adoption: July 19, 2020

For further information, please call: (512) 676-6584



## 28 TAC §5.4606

STATUTORY AUTHORITY. TDI proposes to repeal 28 TAC §5.4606 under Insurance Code §2210.008(b) and §36.001.

Insurance Code §2210.008(b) authorizes the Commissioner to adopt rules as reasonable and necessary to implement Insurance Code Chapter 2210.

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.

CROSS-REFERENCE TO STATUTE. Section 5.4606 is repealed under TDI's rulemaking authority in Insurance Code §2210.008(b) and Insurance Code §36.001.

*§5.4606. Requirements for Temporary Appointment of Qualified Inspectors*

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

Filed with the Office of the Secretary of State on June 5, 2020.

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James Person

General Counsel

Texas Department of Insurance

Earliest possible date of adoption: July 19, 2020

For further information, please call: (512) 676-6584



## SUBCHAPTER O. STATISTICAL PLANS [TEXAS COMMERCIAL LINES STATISTICAL PLAN]

### 28 TAC §5.9502

The Texas Department of Insurance proposes new 28 TAC §5.9502, relating to the Texas Catastrophe Event Statistical Plan for Personal and Commercial Risks (statistical plan). The proposed rule is necessary to effectively implement Insurance Code Chapter 38, Subchapter E for statistical data collection in response to a catastrophe; standardize and streamline the catastrophe data reporting requirements to enhance efficiency and predictability for insurers and TDI; allow for better experience comparisons by TDI and the industry in general; ensure TDI has consistent, reliable information to evaluate the insurance market's health after a catastrophe; assist TDI in swiftly compiling complex data; allow for more timely analysis by TDI; and provide information about the impact of catastrophe events to policymakers.

The proposed rule adopts by reference a new statistical plan that will apply to reporting dates beginning on or after the effective date of the rule. TDI also proposes changing the title of Subchapter O of 28 TAC Chapter 5 from "Texas Commercial Lines Statistical Plan" to "Statistical Plans."

TDI previously proposed this section and the adoption by reference of a new statistical plan on November 8, 2019. TDI withdrew that proposal in order to allow for a data call to capture catastrophe events that happened on or after September 1, 2019, instead of on or after January 1, 2020. The department received comments based on the previous proposal, and has updated the current proposal based on those comments and now re-proposes the section with minor changes to the text and the statistical plan. The following changes were made to the statistical plan since the original proposal:

- new page numbers in the table of contents;
- the edition date changed from January 2020 to May 2020;
- a reporting requirement for farm mutual companies changed to provide the TDI license number instead of company number, as TDI no longer supports the PCCI company look-up tool; and
- the link for alien surplus lines companies changed to enable them to find their TDI company number and use that number in reporting under the statistical plan.

EXPLANATION. Replacing numerous, distinct data calls with a single statistical plan for catastrophe data collection will ensure consistent, predictable, efficient data collection in the wake of a catastrophe. Implementing a single statistical plan for catastrophe data collection allows insurers to predict what data will be necessary and make business decisions about the most efficient way to report that data to avoid having to scramble during a catastrophe.

The statistical plan describes the information responding insurers will provide to TDI following a catastrophe event. The proposed rule largely adopts the elements of the TDI Catastrophe Data Call Guidelines issued in April 2019.

New 28 TAC §5.9502 is essential to ensure that insurers use the new statistical plan beginning on the effective date of the rule. Previously, TDI would determine the data elements for each specific catastrophe event, which made requirements less predictable for insurers and meant that insurers had to program their systems to report the data after the event occurred. This also meant that TDI received varying qualities of data that required significant staff resources and time to clean up and organize. A statistical plan will simplify the reporting process, making reporting easier for insurers and analysis easier for TDI, which will

produce more timely responses by TDI to assess the insurance market's health.

Insurance Code §38.204 and §38.207 give the Commissioner authority to adopt such a statistical plan. Additionally, under Insurance Code §38.001, TDI may address a reasonable inquiry to any insurance company or other holder of an authorization, such as a surplus lines or farm mutual insurer, about the business condition or matters TDI considers necessary for the public good or for the proper discharge of TDI's duties.

The rule proposal adopts the statistical plan by reference. The statistical plan will apply to catastrophes that occur on or after September 1, 2019, and will be published on TDI's website at [www.tdi.texas.gov](http://www.tdi.texas.gov).

This information is important to TDI's ability to evaluate the financial condition of insurers after a catastrophe and to ensure consumers are protected. Standardized, high-quality, consistent data will result in better decision making and more efficient solutions to determine the insurance market's health after a catastrophe. This proposed rule will also decrease industry costs over time because it allows insurers to implement a predictable and streamlined catastrophe statistical plan and data reporting process.

This proposed rule will assist TDI in timely collecting vital data about the financial condition of insurers after a catastrophe. It will also simplify and standardize the catastrophe-data-reporting process for insurers.

Insurers, including surplus lines and farm mutual insurers, that write property or automobile insurance in Texas will report data under §38.001 under the statistical plan. Whether an insurer is required to report data for a catastrophe in a given year depends on the amount of Texas direct written premiums the insurer reported in the prior calendar year. This is different from previous data calls that required all insurers to report. TDI will use premiums the insurer reported on its Annual Statement to determine whether the insurer is required to report. For an alien surplus lines insurer, TDI will use premiums provided by the Surplus Lines Stamping Office of Texas to make the determination. Insurers that are not licensed to write business in Texas or not eligible to do business in Texas on a surplus lines basis should not report data, even if the insurer has claims in Texas resulting from the catastrophe.

TDI will activate the statistical plan data reporting after a catastrophe in Texas. Insurers are not required to report data under the statistical plan until TDI has activated data reporting. TDI will activate reporting under Insurance Code §38.001 through a bulletin on TDI's website at [www.tdi.texas.gov](http://www.tdi.texas.gov). The bulletin and statistical plan will provide instructions for responding insurers. These reports will be used to determine the financial impact of a catastrophe on insurers. A response made under §38.001 that is otherwise privileged or confidential by law remains privileged or confidential until introduced into evidence at an administrative hearing or in a court. Insurers should identify what documents are privileged or confidential in their responses.

The content of the proposed new section is described in the following paragraphs.

Section 5.9502(a) provides information about the section's purpose and applicability. Subsection (a) identifies which insurers must report under the statistical plan. This subsection also specifies that insurers are required to report their premium and loss experience after each catastrophe.

Section 5.9502(b) provides information about notice to insurers if reporting under the statistical plan is activated for a specific catastrophe event. TDI will post notice under §38.001 through a bulletin on its website at [www.tdi.texas.gov](http://www.tdi.texas.gov). Subsection (b) is essential to notify insurers about the statistical plan activation process.

Section 5.9502(c) states that a response under §5.9502 must comply with the statistical plan. This subsection is essential to ensure that all responses comply with the statistical plan.

Section 5.9502(d) clarifies that if submitted reports are otherwise confidential by law, they will remain confidential as provided by Insurance Code §38.001(d). Subsection (d) specifies that insurers should identify what documents are privileged or confidential. This subsection is important to clarify that a response made under Insurance Code §38.001 that is otherwise privileged or confidential by law remains privileged or confidential until introduced into evidence at an administrative hearing or in a court.

Section 5.9502(e) adopts the statistical plan by reference. Subsection (e) is essential to adopt the statistical plan for insurers.

**FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Brian Ryder, senior actuary and team lead, Property and Casualty Division, has determined that during each year of the first five years the proposed rule is in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the section, other than that imposed by the statute. This determination was made because the proposed rule does not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed rule. Mr. Ryder does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

**PUBLIC BENEFIT AND COST NOTE.** Standardized, high-quality, and consistent data will result in better decision making, more efficient solutions, and accurate identification of the insurance market's health after a catastrophe. This proposed rule will also decrease industry costs over time due to the implementation of a streamlined, standardized reporting process after a catastrophe.

The statistical plan is limited in scope but serves an important purpose. The information collected under it is essential to ensure that vulnerable consumers are protected and to provide TDI with the necessary data to evaluate market health, activity, and access.

Associated costs represent mostly upfront costs to the insurer. Once the internal procedures are revised, an insurer will have a process in place making future catastrophe data responses cost effective and efficient. Compared to the current one-time data call system, TDI anticipates that costs associated with catastrophe data reporting will decrease for insurers and TDI over time and will likely result in an overall reduction in costs.

For each year of the first five years the proposed rule is in effect, Mr. Ryder expects that administering the proposed rule will have the public benefit of ensuring that TDI's rules conform to Insurance Code §§38.001, 38.204, and 38.207. This proposed rule will assist TDI in collecting vital data about the financial condition of insurers after a catastrophe to allow the proper discharge of TDI's duties under Insurance Code §31.002.

Mr. Ryder expects that the proposed section will impose an economic cost on persons who must implement the statistical plan requirements and comply with the proposed rule.

Because TDI has issued catastrophe data calls in the past, insurers already have a foundation in place for responding, including staff, internal processes, and forms or applications. Thus, for insurers the potential additional costs arise from revising an insurer's internal processes to comply with the proposed new statistical plan. The extent to which those internal processes and documents will need to be revised will depend on each insurer's past and future business decisions, but the data to be collected under the statistical plan will be substantially the same whether TDI collects the data through one-time data calls or through this statistical plan. Any change in the process results mainly from implementing the new reporting procedure under the statistical plan. Importantly, however, adopting these reporting requirements as a statistical plan provides predictability to insurers with respect to which companies will be required to report and what information those companies must report. It also provides predictability to TDI in the form of standardized, organized data.

Insurers only need to implement the new statistical plan procedures once. And they will be able to use those revised procedures multiple times without change. This will result in lower costs over time for both TDI and the industry, higher quality data, and increased efficiency. In addition, TDI will receive consistent data over time allowing for accurate experience comparisons. This will lead to better decision making, improved responses to the market after a catastrophe, and improved internal procedures for TDI. This will also assist TDI in swiftly compiling complex data; allow for more timely analysis by TDI; and provide information about the impact of catastrophe events to policymakers.

It is not feasible for TDI to determine the actual cost of employees needed to comply with the proposed rule considering that each insurer occupies a different market share and will only provide data to the extent its business is affected by the identified catastrophe in the specified regions. Further, every insurer has unique internal processes, resources, and technical capabilities that are not feasible for TDI to evaluate. The method of compliance is a business decision, including the decision to employ staff or contract for some of these services.

Though costs to each insurer will depend heavily on the method of compliance the insurer chooses, TDI projects the following possible requirements. These estimates are conservative (high) so costs may be less than what is estimated here.

TDI estimates individual employee compensation for an administrative assistant at \$17.61 an hour, computer operator at \$22.04 an hour, and a computer and information systems manager at \$68.53 an hour for one to twenty hours of work to revise an insurer's internal procedures. TDI also estimates individual employee compensation for an administrative assistant at \$17.61 an hour and a computer operator at \$22.04 an hour for one to twenty hours of work to gather and submit the data. These wages are based on the national median hourly wage for each classification as reported in the May 2018 National Industry-Specific Occupational Employment and Wage Estimates at: [www.bls.gov/oes/current/oes436014.htm](http://www.bls.gov/oes/current/oes436014.htm); [www.bls.gov/oes/current/oes113021.htm](http://www.bls.gov/oes/current/oes113021.htm); and [www.bls.gov/oes/current/oes439011.htm](http://www.bls.gov/oes/current/oes439011.htm).

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.** The primary objectives of this proposal are to gather essential data to determine the insurance market's health after a catastrophe and to implement a streamlined, standardized process to reduce costs over time and increase reporting efficiency.

To implement this rule, TDI has determined that the proposed rule may have an adverse economic effect or a disproportionate economic impact on one to 100 small or micro businesses. The cost analysis in the Public Benefit and Cost Note section of this proposal also applies to these small and micro businesses. The new statistical plan will only apply to insurers meeting a monetary threshold of at least \$5 million in Texas written premium. Therefore, TDI estimates that the proposed rule will only affect a minimal number of small or micro businesses, if any. TDI considered the following alternatives to minimize any adverse impact on small and micro businesses while accomplishing the proposal's objectives:

- (1) not proposing the proposed section and instead collecting the needed data through one-time data calls;
- (2) proposing a different requirement for small and micro businesses; and
- (3) exempting small or micro businesses from the proposed requirement that could create the adverse impact.

TDI examined each of these alternatives and explains them below:

*Not proposing the proposed section.* Not adopting the proposed section would result in continuing the data-call approach. There would be no streamlined, anticipated process for collecting this important data for any insurer, regardless of size. This would mean no cost-savings result over time due to increased efficiency, and no statistical plan to ensure consistent data is collected that would allow an examination of experience comparisons over time. For these reasons, this option has been rejected.

*Proposing a different requirement for small and micro businesses.* Proposing a different requirement for small and micro businesses would not alleviate the adverse economic impact from compliance with this proposal because small and micro businesses would still be required to report data in response to a catastrophe data call issued by TDI. For these reasons, this option has been rejected.

*Exempting small and micro businesses from the proposed requirement that could create the adverse impact.* If small and micro businesses were exempted from the new proposed section, it would not alleviate the adverse economic impact from compliance with this proposal because small and micro businesses would still be required to report data in response to a catastrophe data request issued by TDI. In addition, there would be no streamlined, anticipated process for small and micro businesses for collecting this important data. This would mean no cost-savings would result for them over time due to increased efficiency. For these reasons, this option has been rejected.

TDI has determined that the proposal will not have an adverse economic effect on rural communities because the statistical plan will only apply to insurers meeting a monetary threshold of at least \$5 million in Texas written premium. As a result, and in accordance with Government Code §2006.002(c), it is not necessary for TDI to address rural communities in its regulatory flexibility analysis.

**EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045.** TDI has determined that this proposal does impose a cost on regulated persons. However, no additional rule amendments or repeals are required under Government Code §2001.0045 because the rule is being proposed in response

to past natural disasters and in anticipation of future natural disasters.

After issuing individual, separate data calls for past natural disasters, TDI determined that a new process was required to collect data concerning the financial health of the insurance market after a natural disaster. It needed a more efficient, standardized way to assess the financial health of the market. Because time is critical when responding to a catastrophe, spending extra time and resources drafting and issuing unique, incident-specific data calls, and sorting through variously formatted and delivered responses, inhibits TDI's ability to collect and analyze catastrophe statistical data efficiently. In addition, requiring insurers to respond to unique, incident-specific data calls diverts insurers' time and resources during a catastrophe. Therefore, this rule is being proposed in response to TDI's experience after past natural disasters and in response to future anticipated natural disasters.

GOVERNMENT GROWTH IMPACT STATEMENT. TDI has determined that for each year of the first five years that the proposed rule is in effect the proposed rule:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will not require an increase or decrease in fees paid to the agency;
- will create a new regulation to implement the new statistical plan;
- will not expand, limit, or repeal an existing regulation;
- will increase the number of individuals subject to the rule's applicability, as this is a new rule; and
- will positively affect the Texas economy as it will provide important, cost-effective information to TDI to assess the insurance market's health after a catastrophe.

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

REQUEST FOR PUBLIC COMMENT. TDI will consider any written comments on the proposal that are received by TDI no later than 5:00 p.m., central time, July 20, 2020. Send your comments to [ChiefClerk@tdi.texas.gov](mailto:ChiefClerk@tdi.texas.gov); or to the Office of the Chief Clerk, MC 112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

To request a public hearing on the proposal, submit a request before the end of the comment period, and separate from any comments, to [ChiefClerk@tdi.texas.gov](mailto:ChiefClerk@tdi.texas.gov); or to the Office of the Chief Clerk, MC 112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. The request for public hearing must be received by the department no later than 5:00 p.m., central time, on July 20, 2020. If the department holds a public hearing, the department will consider written and oral comments presented at the hearing.

STATUTORY AUTHORITY. TDI proposes 28 TAC §5.9502 under Insurance Code §§38.001, 38.202, 38.204 - 38.207, and 36.001.

Insurance Code §38.001 authorizes TDI to address a reasonable inquiry to any insurance company or other holder of an authorization, such as a surplus lines or farm mutual insurer, relating to the business condition or any matter TDI considers necessary for the public good or for the proper discharge of TDI's duties. This section also specifies that a response made under this section that is otherwise privileged or confidential by law remains privileged or confidential until introduced into evidence at an administrative hearing or in a court.

Insurance Code §38.202 allows the Commissioner to designate a statistical agent to gather data for relevant regulatory purposes or as otherwise provided by the Insurance Code.

Insurance Code §38.204 requires a designated statistical agent to collect data from reporting insurers and authorizes the Commissioner to adopt a statistical plan.

Insurance Code §38.205 provides that insurers must provide all premium and loss cost data to the Commissioner or designated statistical agent.

Insurance Code §38.206 authorizes the statistical agent to collect from reporting insurers any fees necessary for the agent to recover the necessary and reasonable costs of collecting data from that reporting insurer.

Insurance Code §38.207 authorizes the Commissioner to adopt rules necessary to accomplish the purposes of Insurance Code Chapter 38, Subchapter E.

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.

CROSS-REFERENCE TO STATUTE. Section 5.9502 implements Insurance Code Chapter 38, Subchapter E.

§5.9502. Texas Catastrophe Event Statistical Plan for Personal and Commercial Risks.

(a) Purpose and applicability.

(1) The purpose of this section is to establish requirements for the reporting of catastrophe-related data by insurers under Insurance Code Chapter 38, Subchapter E and Insurance Code §38.001.

(2) This section applies to all reports required to be filed under the Texas Catastrophe Event Statistical Plan for Personal and Commercial Risks for reporting dates beginning on or after the effective date of the plan. Insurers must report their claim and loss experience after each specified catastrophe event. Insurers are not required to report data under the statistical plan until TDI has activated the statistical plan for a specific event and requested information under Insurance Code §38.001 through a bulletin on TDI's website at [www.tdi.texas.gov](http://www.tdi.texas.gov).

(b) Data reporting notice. TDI will notify insurers, including surplus lines and farm mutual insurers, of data reporting under the Texas Catastrophe Event Statistical Plan for Personal and Commercial Risks by posting a data request under Insurance Code §38.001 through a bulletin on TDI's website at [www.tdi.texas.gov](http://www.tdi.texas.gov).

(c) Response requirements. A response must comply with the reporting requirements and instructions specified in the Texas Catastrophe Event Statistical Plan for Personal and Commercial Risks adopted by reference in subsection (e) of this section.

(d) Confidential information. Under Insurance Code §38.001(d), a response made under this section, whether to a statistical agent or to TDI, that is otherwise privileged or confidential by law remains privileged or confidential until introduced into evidence at an administrative hearing or in a court. Insurers should identify what documents are privileged or confidential in their responses.

(e) Adoption by reference. The Commissioner adopts by reference the Texas Catastrophe Event Statistical Plan for Personal and Commercial Risks, First Edition, May 2020. This document is published by TDI and is available on TDI's website at [www.tdi.texas.gov](http://www.tdi.texas.gov).

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

Filed with the Office of the Secretary of State on June 5, 2020.

TRD-202002282

James Person

General Counsel

Texas Department of Insurance

Earliest possible date of adoption: July 19, 2020

For further information, please call: (512) 676-6584



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

### CHAPTER 132. DEATH BENEFITS--DEATH AND BURIAL BENEFITS

#### 28 TAC §132.7

**INTRODUCTION.** The Texas Department of Insurance, Division of Workers' Compensation (DWC) proposes an amendment to §132.7, Duration of Death Benefits for Eligible Spouse. The purpose of this amendment is to align the rule with Labor Code §408.183, as amended by House Bill (HB) 2503, 86th Legislature, Regular Session (2019), effective September 1, 2019. The Legislature amended §408.183 to expand eligibility of spouses who may receive death benefits for life, regardless of remarriage, to spouses of peace officers as described in Texas Code of Criminal Procedures Article 2.12 and intrastate fire mutual aid system team members or regional incident management team members.

**EXPLANATION.** Amended §132.7(f) deletes the words "eligible spouses" in §132.7(f)(1)(B) and adds the words "or an individual described by Government Code §615.003(1) or Labor Code §501.001(5)(F)." The amendment also adds the words in §132.7(f)(1) "of first responders, as defined by Labor Code §504.055" to include those eligible spouses. New subsection §132.7(f)(2) is added, which states the amendment applies to "Eligible spouses of individuals, as defined by Government Code §615.003(1) or Labor Code §501.001(5)(F), who remarry on or after September 1, 2019."

The amendment does not alter the distribution of death benefits under §132.11 or the redistribution of death benefits under §132.12. If there is an eligible child or grandchild and an eligible spouse, death benefits continue to be divided between the beneficiaries, with half paid to the eligible spouse and half paid in equal shares to the eligible children.

**FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Deputy Commissioner of Hearings, Kerry Sullivan, has determined that, for each year of the first five years the amended rules will be in effect, there will be no measurable fiscal impact to state and local governments as a result of enforcement or administration of the amendment. The fiscal note for HB 2503 states, "based on information provided by the Texas Department of Insurance, State Office of Risk Management, Commission on Law Enforcement, The University of Texas System Administration, and Texas A&M University System Administration, this analysis assumes that the duties and responsibilities associated with implementing the provisions of this bill could be accomplished by utilizing existing resources." There will be no measurable effect on local employment or the local economy because of the amendment.

The amendment to §132.7 reflects the statutory changes HB 2503 made to Labor Code §408.183 and does not impose any additional requirements that could produce a fiscal impact.

**PUBLIC BENEFIT AND COST NOTE.** For each year of the first five years the proposed amendment is in effect, Deputy Commissioner Sullivan expects that it will have the public benefit of aligning the division's rules regarding the duration of death benefits with the statutory changes made by HB 2503 and continued death benefits for remarried eligible spouses under amended §132.7(f).

**ANTICIPATED COSTS TO COMPLY WITH THE PROPOSAL.** Deputy Commissioner Sullivan anticipates that, for each of the first five years the proposed amendment is in effect, there will be indeterminate costs to those required to comply with the proposal. Any costs resulting from the proposed amendment would be a direct result of the statutory change.

Government Code §2001.0045 requires a state agency to offset any costs on regulated individuals associated with a proposed rule. However, DWC has determined that this proposed rule will impose indeterminate costs on system participants as a result of the statutory change. Under §2001.045(c)(9), this requirement does not apply to a rule necessary to implement legislation.

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES.** Under Government Code §2006.002(c), if a proposed rule may have an adverse economic effect on small businesses, micro businesses, or rural communities, state agencies must prepare, as part of the rulemaking process, an economic impact statement that assesses the potential impact of the proposed rule and a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule. DWC has determined that the proposed amendment will not have an adverse economic effect on small or micro businesses or rural communities because it simply implements statutory requirements. Therefore, DWC is not required to prepare a regulatory flexibility analysis.

**GOVERNMENT GROWTH IMPACT STATEMENT.** DWC has determined that for each of the first five years that the proposed amendment is in effect, the proposed rule:

will not create or eliminate a government program;

will not require the creation of new employee positions or the elimination of existing employee positions;

will not require an increase or decrease in future legislative appropriations to DWC;

will not require an increase or decrease in fees paid to DWC;  
will not create a new regulation;  
will not limit or repeal an existing regulation; or  
will not positively or adversely affect the Texas economy.

The proposed amendment will align the division's rules regarding the duration of death benefits with the statutory changes made by HB 2503. The proposed amendment will provide that eligible spouses of deceased first responders, as defined in Labor Code §504.055, who remarried on or after September 1, 2017, as well as eligible spouses who remarried between September 1, 2015, and August 31, 2017, and their claim was based on a compensable injury that occurred on or after September 1, 2015, will remain eligible for death benefits. Eligible spouses of individuals, as defined in Government Code §615.003(1) or Labor Code §501.001(5)(F), who remarry on or after September 1, 2019, will remain eligible for death benefits.

**TAKINGS IMPACT ASSESSMENT.** DWC has determined that no private real property interests are affected by this proposal. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

**REQUEST FOR PUBLIC COMMENT.** If you would like to comment on the proposal or request a public hearing, you must submit your comments or hearing request by 5:00 p.m., Central time, on Monday, July 20, 2020. Email your comments or hearing requests to [Rulecomments@tdi.texas.gov](mailto:Rulecomments@tdi.texas.gov) or mail them to Cynthia Guillen, Texas Department of Insurance, Division of Workers' Compensation, DWC Legal Services, MS-4D, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645. If DWC holds a hearing, DWC will consider written comments and public testimony presented at the hearing.

**STATUTORY AUTHORITY.** DWC proposes §132.7 under the following statutory authority:

Labor Code §401.011 provides general definitions of the Texas Workers' Compensation Act.

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

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

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

Labor Code §408.181 provides the obligation an insurance carrier must satisfy in paying death and burial benefits.

Labor Code §408.182 provides how the insurance carrier should distribute the death benefits and defines eligible beneficiaries.

Labor Code §408.183 outlines the duration of death benefits for legal beneficiaries.

Labor Code §408.184 provides for the redistribution of death benefits if necessary.

Labor Code §415.002 outlines insurance carrier administrative violations.

Labor Code §501.001 defines a peace officer employed by a political subdivision, while the peace officer is exercising authority

granted under: (i) Code of Criminal Procedure Article 2.12; or (ii) Code of Criminal Procedure Articles 14.03(d) and (g).

Government Code §615.003 lists the various eligible survivors and the applicability of Chapter 615 to eligible individuals.

*§132.7. Duration of Death Benefits for Eligible Spouse.*

(a) Except as provided in subsection (f) of this section, a spouse who is determined eligible for death benefits is entitled to receive benefits until the date of the spouse's death or until remarriage. The insurance carrier shall notify the eligible spouse of the requirements of this section within 60 days of initiating benefits to that spouse.

(b) An eligible spouse who enters into a ceremonial or informal marriage is entitled to receive a lump-sum payment of 104 weeks of death benefits.

(c) An eligible spouse shall notify the division and the insurance carrier in writing within 30 days of the date of remarriage. The notice shall include the name and social security number of the deceased employee, the date of death, the workers' compensation claim file number, and the date of remarriage.

(d) The amount of the lump-sum payment shall be calculated by multiplying the amount paid to the spouse the week prior to the remarriage by 104. If the insurance carrier paid any weekly benefits to the eligible spouse after the remarriage, the total amount of such payments shall be deducted from the amount of the commuted payment.

(e) An eligible spouse who knowingly accepts death benefits after remarriage in excess of the amount allowed by this section, and who does not notify the division or the insurance carrier of remarriage, may be subject to administrative penalties.

(f) An eligible spouse who remarries is eligible for death benefits for life if the employee was a first responder, as defined by Labor Code §504.055, or an individual described by Government Code §615.003(1) or Labor Code §501.001(5)(F), who died as a result of an injury in the course and scope of employment or while providing services as a volunteer. Subsections (b) - (e) of this section do not apply to an eligible spouse under this subsection. This subsection applies to:

(1) Eligible [eligible] spouses of first responders, as defined by Labor Code §504.055:

(A) who remarry on or after September 1, 2017; and

(B) [~~2~~ eligible spouses] who remarried between September 1, 2015, and August 31, 2017, if the claim is based on a compensable injury that occurred on or after September 1, 2015; and[-]

(2) Eligible spouses of individuals, as defined by Government Code §615.003(1) or Labor Code §501.001(5)(F), who remarry on or after September 1, 2019.

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

Filed with the Office of the Secretary of State on June 3, 2020.

TRD-202002275

Kara Mace

Deputy Commissioner of Legal Services

Texas Department of Insurance, Division of Workers' Compensation

Earliest possible date of adoption: July 19, 2020

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



# TITLE 40. SOCIAL SERVICES AND ASSISTANCE

## PART 12. TEXAS BOARD OF OCCUPATIONAL THERAPY EXAMINERS

### CHAPTER 364. REQUIREMENTS FOR LICENSURE

#### 40 TAC §§364.1 - 364.4

The Texas Board of Occupational Therapy Examiners proposes amendments to 40 Texas Administrative Code §364.1, Requirements for Licensure; §364.2, Initial License by Examination; §364.3, Temporary License; and §364.4, Licensure by Endorsement. The amendments to the sections are proposed to streamline and increase the efficiency of the Board's licensing processes, including through the use of digital technology, and to reduce potential burdens for applicants.

The proposed amendments to §§364.1, 364.2, and 364.4 concern the application submission criteria required for the issuance of a license. An amendment to §364.1 would allow an applicant to submit the photograph required for initial licensure in electronic form. Amendments to §364.2 and §364.4 include adding provisions that would allow the Board to verify an applicant's history of licensure in occupational therapy, rather than routinely requiring that an applicant submit a verification of license from each state or territory of the U.S. in which the applicant is currently licensed or previously held a license. The amendments include that if the Board cannot verify the applicant's history of licensure, the applicant must submit a verification of license. The amendments concerning license verification will, therefore, result in applicants only being required to submit verifications for licenses that the Board cannot verify. Proposed amendments concerning similar requirements for the restoration of a license will also be submitted to the *Texas Register* for publication.

Additional amendments to §364.1, Requirements for Licensure, would remove redundant language that already appears in another section of the Occupational Therapy Rules and includes a further cleanup for consistency.

The proposed amendments, in addition, include amendments to §364.3, Temporary License. Applicants for a temporary license must submit a Confirmation of Examination Registration and Eligibility to Examine form from the National Board for Certification in Occupational Therapy (NBCOT), which must be sent directly to the Board by NBCOT and which reflects the eligibility window in which the applicant will take the examination. Related provisions in the section include that this is a 90-day window. This examination eligibility window is set by NBCOT, which is the national testing entity recognized by the Board. The proposed amendments would remove the reference to 90 days with regard to that window and replace such with "eligibility." This change will ensure that the section will not specify a number of days that are determined by another entity, NBCOT, prior to sending the form to the Board.

The proposed amendments to the section also include the removal of language regarding licensure in another country from §364.3(b). Board rule §364.3 requires that to be issued a temporary license, the applicant must meet all the provisions in §364.1, concerning requirements for licensure, and §364.2, concerning

initial license by examination, and licensure in another country is not addressed in the sections with regard to an applicant's eligibility for licensure. To bring greater uniformity to the Occupational Therapy Rules and remove potential barriers to licensure for an applicant who would otherwise be eligible for a temporary license, the amendments include the removal of language from the provision that would prevent an applicant from obtaining a temporary license in Texas if the applicant has received a license in another country.

The current §364.3(b) also allows for temporary licensure as an occupational therapist to be available to an applicant for an occupational therapist license who has had a history of licensure or employment as an occupational therapy assistant; proposed amendments to the section would, similarly, make temporary licensure as an occupational therapy assistant available to an applicant for an occupational therapy assistant license who has had a history of licensure or employment as an occupational therapist. The changes, likewise, are proposed to bring greater uniformity to the Occupational Therapy Rules and remove a potential barrier to temporary licensure for an applicant who otherwise would be eligible for such.

The amendments include additional cleanups to the sections.

#### FISCAL NOTE ON STATE AND LOCAL GOVERNMENTS

Ralph A. Harper, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal impact to state or local governments as a result of enforcing or administering these amendments as proposed under Texas Government Code §2001.024(a)(4) because the amendments do not impose a cost on state or local governments.

#### LOCAL EMPLOYMENT IMPACT

Mr. Harper has determined that the proposed amendments would not impact a local economy. Therefore, a local employment impact statement is not required under Texas Government Code §2001.022 and §2001.024(a)(6).

#### PUBLIC BENEFIT AND COST NOTE

Mr. Harper has determined under Texas Government Code §2001.024(a)(5) that for each of the first five years the proposed amendments would be in effect, the public benefit of the amendments will be the cleanup, clarification, and reduction of certain requirements concerning initial licensure. There would not be an additional anticipated economic cost to persons required to comply with the proposed amendments.

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

Mr. Harper has determined there would be no costs or adverse economic effects on small businesses, micro-businesses, or rural communities. Therefore, no economic impact statement or regulatory flexibility analysis is required under Texas Government Code §2006.002.

#### TAKINGS IMPACT ASSESSMENT

The Board has determined that no private real property interests are affected by these proposed amendments and that these amendments do not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result,

these amendments do not constitute a taking under Texas Government Code §2007.043.

#### GOVERNMENT GROWTH IMPACT STATEMENT

The Board has determined under Texas Government Code §2001.0221 that during the first five years the rules would be in effect:

- (1) the rules will not create or eliminate a government program;
- (2) the rules will not require the creation of new employee positions or the elimination of existing employee positions;
- (3) the rules will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rules will not require an increase or decrease in fees paid to the agency;
- (5) the rules will not create a new regulation;
- (6) the rules will not repeal or expand an existing regulation; the rules will limit existing regulations by removing the requirements that applicants may only submit a photograph in paper form and must routinely submit a license verification and by allowing applicants who have received a license in another country to obtain a temporary license and allowing applicants for an occupational therapy assistant license who have received an occupational therapist license or have had employment as an occupational therapist to obtain a temporary occupational therapy assistant license if eligible for such;
- (7) the rules will not increase or decrease the number of individuals subject to the rules' applicability; and
- (8) the rules will neither positively nor adversely affect this state's economy.

#### COSTS TO REGULATED PERSONS

The agency determined that the rules are not subject to Texas Government Code §2001.0045 as the rules do not impose a cost on regulated persons. In addition, the rules do not impose a cost on another state agency, a special district, or a local government.

#### ENVIRONMENTAL IMPACT STATEMENT

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

#### PUBLIC COMMENT

Comments on the proposed amendments may be submitted in writing to Lea Weiss, Occupational Therapy Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe Street, Suite 2-510, Austin, Texas 78701-3942 or to [lea@ptot.texas.gov](mailto:lea@ptot.texas.gov) within 30 days following the publication of this notice in the *Texas Register*. It is requested when sending a comment that individuals include the rule section to which the comment refers and that comments sent by email include "Public Comment" in the email's subject line.

#### STATUTORY AUTHORITY

The amendments are proposed under Texas Occupations Code §454.102, which authorizes the Board to adopt rules to carry out its duties under chapter 454. Specifically, the amendments to §364.1 and §364.2 are proposed under Texas Occupations Code §454.201, which requires a license under chapter 454 in order to

practice occupational therapy, and proposed under Texas Occupations Code §454.202, which requires that the applicant for a license submit a written application to the Board in the form prescribed by the Board. The amendments to §364.3 are proposed under Texas Occupations Code §454.211, which authorizes the Board to provide for the issuance of a temporary license. The amendments to §364.4 are proposed under Texas Occupations Code §454.216, which authorizes the Board to issue a license by endorsement, requires that the applicant provide to the Board information regarding the status of any professional license that the applicant holds or has held in another jurisdiction, and requires the applicant to submit a current photograph that meets requirements for a United States passport.

#### CROSS REFERENCE TO STATUTE

No other statutes, articles, or codes are affected by these amendments.

#### §364.1. Requirements for Licensure.

- (a) All applicants for initial Texas licensure shall:

- (1) submit a complete application form [as prescribed by the Board] and non-refundable application fee as set by the Executive Council;

- (2) submit in paper or electronic form a current color photograph that meets the requirements for a U.S. passport. A photograph in electronic form must be of a high-quality resolution comparable to that of a passport photograph in paper form;

- ~~submit a current photograph that meets the requirements for a U.S. passport;~~

- (3) submit a successfully completed Board jurisprudence examination on the Act and Rules;

- (4) have completed academic and supervised field work requirements of an accredited educational program in occupational therapy as per §454.203 of the Act (relating to Qualifications for Occupational Therapist or Occupational Therapy Assistant License) or if foreign-trained, have met substantially equivalent academic and supervised field work requirements as per §454.205 of the Act (relating to Foreign-Trained Applicants);

- (5) submit a complete and legible set of fingerprints in the manner prescribed by the Board for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation; and

- (6) either meet the requirements in §364.2 of this title (relating to Initial License by Examination) and apply by examination or meet the requirements in §364.4 of this title (relating to Licensure by Endorsement) and apply by endorsement.

- (b) The applicant must also meet the requirements in §364.2 of this title and apply by examination if the applicant:

- (1) has not passed the NBCOT certification examination;

or

- (2) has passed the NBCOT certification examination and

- (A) is not currently licensed as an occupational therapist or occupational therapy assistant in another state or territory of the U.S.; or

- (B) if not currently licensed in another state or territory of the U.S., is applying from the U.S. military or a non-licensing state or territory of the U.S. and cannot substantiate occupational therapy

employment for at least two years immediately preceding application for a Texas license.

(c) The applicant must also meet the requirements in §364.4 of this title and apply by endorsement if the applicant has passed the NBCOT certification examination and:

(1) is currently licensed as an occupational therapist or occupational therapy assistant in another state or territory of the U.S.; or

(2) if not currently licensed in another state or territory of the U.S., is applying from the U.S. military or a non-licensing state or territory of the U.S. and can substantiate occupational therapy employment for at least two years immediately preceding application for a Texas license.

(d) Applicants who are military service members, military veterans, and military spouses:

(1) The Board shall credit verified military service, training, or education toward the licensing requirements, other than an examination requirement, with respect to an applicant who is a military service member or military veteran.

(2) The Board shall waive the application fees for a military service member or military veteran who is applying for a license by examination as per §364.2 of this title [~~relating to Initial License by Examination~~]. In order to request a waiver of application fees, the military service member or military veteran must submit a copy of the Uniformed Services Military ID card or other appropriate official documentation evidencing current or former military affiliation and notify the Board of his or her military affiliation.

(3) The Board shall waive the application fees and will expedite the issuance of a license for a military service member, military veteran, or military spouse who is applying for licensure by endorsement as per §364.4 of this title [~~relating to Initial Licensure by Endorsement~~]. In order to request a waiver of application fees and expedited services, the military service member, military veteran, or military spouse must submit a copy of the Uniformed Services Military ID card or other appropriate official documentation evidencing current or former military affiliation and notify the Board of his or her military affiliation.

(4) In this section, "military service member," "military veteran," and "military spouse" have the meaning as defined in Chapter 55, Occupations Code, §55.001.

(e) An application for license is valid for one year after the date it is received by the Board. At the end of the year, the application fee must be paid to continue the application process for the second year.

(f) An applicant who submits an application containing false information may be denied a license by the Board.

(g) Should the Board reject an application for license, the reasons for the rejection will be communicated in writing to the applicant. The applicant may submit additional information and request reconsideration by the Board. If the applicant remains dissatisfied, a hearing may be requested as specified in the Act.

(h) Applicants and new licensees shall refer to Chapter 369 of this title for provisions regarding information changes and verification of temporary or regular license issuance and current licensure.

~~{(i) The address of record is the information provided to the public. Until applicants and licensees select an address of record, the work address will be used as the default. If no work address is available, the mailing address will be used. If no alternate address is available, the home address will be used. Applicants and licensees may update this information at any time.}~~

~~(i) [(j)] The first regular license is valid from the date of issuance until the last day of the applicant's birth month, with a duration of at least two years.~~

#### *§364.2. Initial License by Examination.*

(a) An applicant applying for license by examination must:

(1) meet all provisions of §364.1 of this title (relating to Requirements for a License); and

(2) pass the NBCOT certification examination for occupational therapists or occupational therapy assistants with a score set by NBCOT. Score reports must be sent directly to the Board by NBCOT.

(b) The application for license must be received no later than two years following the date of the passing examination. If the application is received after this time, the applicant must take and pass the NBCOT examination for licensure purposes only. The applicant must request Board approval to take this examination. The score report must be sent directly to the Board by NBCOT.

(c) An applicant who fails an examination may take additional examinations by sending in the appropriate, non-refundable fee as set by the Executive Council with the Board's re-exam form.

~~(d) Applicants with a history of licensure in occupational therapy in a state or territory of the U.S. If the Board cannot verify the applicant's history of licensure in occupational therapy, including disciplinary action, the applicant must submit a verification of license. The verification must be an original verification sent directly to the Board by the licensing board of the state or territory. Disciplinary action must be reported to the Board. [An applicant with a history of licensure in occupational therapy must submit a verification of license from each state or territory of the U.S. in which the applicant is currently licensed or previously held a license. This must be an original verification sent directly to the Board by the licensing board in that state or territory. Any disciplinary actions must be reported to the Board.]~~

(e) Previous Texas licensees are not eligible for Initial License by Examination.

#### *§364.3. Temporary License.*

(a) The Board may only issue a temporary license to an applicant who is taking the NBCOT certification examination for the first time.

(b) Temporary Licensure is not available to applicants who have received a license in any state or territory of the U.S. [~~or another country~~] as an occupational therapy practitioner or to applicants applying from the U.S. military or a non-licensing state or territory of the U.S. who have had occupational therapy employment for at least two years preceding application for a Texas license, unless it was as an occupational therapy assistant [~~(OTA)~~], and they now meet the requirements for a temporary license as an occupational therapist [~~(OT)~~], or it was as an occupational therapist, and they now meet the requirements for a temporary license as an occupational therapy assistant. In this section, "occupational therapy practitioner" means an individual licensed as an occupational therapist or occupational therapy assistant in any state or territory of the U.S. [~~or another country~~].

(c) To be issued a temporary license, the applicant must:

(1) meet all provisions of §364.1 of this title (relating to Requirements for a License);

(2) meet all provisions of §364.2 of this title (relating to License by Examination);

(3) submit the Confirmation of Examination Registration and Eligibility to Examine form from NBCOT, which must be sent

directly to the Board by NBCOT and which reflects the eligibility [90 day] window in which the applicant will take the examination;

(4) submit a copy of the receipt showing that an NBCOT score report has been ordered for the Board;

(5) submit a signed verification of supervision on a form prescribed by the Board; and

(6) send the Board the non-refundable temporary license fee as set by the Executive Council.

(d) If the applicant fails the examination, fails to take the examination during the eligibility [90-day] window as stated on the Confirmation of Examination Registration and Eligibility to Examine form from NBCOT, or fails to have the score reported, the temporary license is void and must be returned to the Board. ~~[An additional temporary license will not be issued.]~~

(e) An additional temporary license will not be issued.

(f) [(e)] A temporary license shall be valid no longer than 180 days.

#### §364.4. *Licensure by Endorsement.*

(a) The Board may issue a license by endorsement to applicants who have passed the NBCOT certification examination and are either currently licensed in another state or territory of the U.S. that [United States which] has licensing requirements substantially equivalent to this state or, if not currently licensed in a state or territory of the U.S., are applying from the U.S. military or a non-licensing state or territory of the U.S. and can substantiate occupational therapy employment for at least two years immediately preceding application for a Texas license. Previous Texas licensees are not eligible for Licensure by Endorsement. An applicant seeking licensure by endorsement must:

(1) meet all provisions of §364.1 of this title (relating to Requirements for Licensure);

(2) arrange to have NBCOT send directly to the Board the applicant's NBCOT certification examination score report (or for applicants examined prior to 1986, a Verification of Certification form); and

(3) submit a verification of license if the Board cannot verify the applicant's history of licensure in occupational therapy, including disciplinary action. The verification must be an original verification sent directly to the Board by the licensing board of the state or territory. Disciplinary action must be reported to the Board. [submit a verification of license from each state or territory of the U.S. in which the applicant is currently licensed or previously held a license. This must be an original verification sent directly to the Board by the licensing board in that state or territory. Any disciplinary actions must be reported to the Board.] If the applicant is not currently licensed in a state or territory of the U.S. and is applying from the U.S. military or a non-licensing state or territory of the U.S., a Verification of Employment form must be submitted substantiating occupational therapy employment for at least two years immediately preceding application for a Texas license.

(b) **Provisional License:** The Board may grant a Provisional License to an applicant who is applying for licensure by endorsement if there is an unwarranted delay in the submission of required documentation outside the applicant's control. All other requirements for licensure by endorsement must be met. The applicant must also submit the Provisional License fee as set by the Executive Council. The Board may not grant a provisional license to applicants with disciplinary action in their license history or to applicants with pending disciplinary action. The Provisional License will have a duration of 180 days.

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

Filed with the Office of the Secretary of State on June 8, 2020.

TRD-202002304

Ralph A. Harper

Executive Director

Texas Board of Occupational Therapy Examiners

Earliest possible date of adoption: July 19, 2020

For further information, please call: (512) 305-6900



## CHAPTER 367. CONTINUING EDUCATION

### 40 TAC §367.1

The Texas Board of Occupational Therapy Examiners proposes amendments to 40 Texas Administrative Code §367.1, Continuing Education. The amendments are proposed to add requirements concerning training on the prevention of human trafficking pursuant to House Bill 2059 of the 86th Regular Legislative Session in 2019.

House Bill 2059 requires that a health care practitioner successfully complete a training course on human trafficking prevention approved by the executive commissioner of the Health and Human Services Commission as a condition for license renewal. The Bill defines "health care practitioner" as an individual who provides direct patient care. The proposed amendments to §367.1 and proposed amendments to other chapters of the Board rules will require the completion of human trafficking prevention training as condition for license renewal for all occupational therapy licensees. The proposed amendments also pre-approve up to two contact hours for a human trafficking prevention training course and would allow a specific training course to be repeated for credit during a subsequent renewal period.

### FISCAL NOTE ON STATE AND LOCAL GOVERNMENTS

Ralph A. Harper, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal impact to state or local governments as a result of enforcing or administering these amendments as proposed under Texas Government Code §2001.024(a)(4) because the amendments do not impose a cost on state or local governments.

### LOCAL EMPLOYMENT IMPACT

Mr. Harper has determined that the proposed amendments would not impact a local economy. Therefore, a local employment impact statement is not required under Texas Government Code §2001.022 and §2001.024(a)(6).

### PUBLIC BENEFIT AND COST NOTE

Mr. Harper has determined under Texas Government Code §2001.024(a)(5) that for each of the first five years the proposed amendments would be in effect, the public benefit will be an increase in training completed by occupational therapy licensees on the prevention of human trafficking. There would not be an additional anticipated economic cost to persons required to comply with the proposed amendments. HB 2059 requires that at least one approved course is available without charge, and

the amendments do not prevent the licensee from repeating a course.

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

Mr. Harper has determined there would be no costs or adverse economic effects on small businesses, micro-businesses, or rural communities. Therefore, no economic impact statement or regulatory flexibility analysis is required under Texas Government Code §2006.002.

#### TAKINGS IMPACT ASSESSMENT

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

#### GOVERNMENT GROWTH IMPACT STATEMENT

The Board has determined under Texas Government Code §2001.0221 that during the first five years the rule would be in effect:

- (1) the rule will not create or eliminate a government program;
- (2) the rule will not require the creation of new employee positions or the elimination of existing employee positions;
- (3) the rule will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rule will not require an increase or decrease in fees paid to the agency;
- (5) the rule will create a new regulation in the Occupational Therapy Rules concerning training on human trafficking as a required component of license renewal pursuant to HB 2059;
- (6) the rule will not repeal or expand an existing regulation; the rule will limit an existing regulation by adding that up to a maximum of two contact hours from a repeated training course on the prevention of human trafficking are exempt from subsection (c) of §367.1 of the Occupational Therapy Rules, which requires that each continuing education activity may be counted only one time in two renewal cycles;
- (7) the rule will not increase or decrease the number of individuals subject to the rule's applicability; and
- (8) the rule will neither positively nor adversely affect this state's economy.

#### COSTS TO REGULATED PERSONS

The agency determined that the rule is not subject to Texas Government Code §2001.0045 as the rule does not impose a cost on regulated persons as HB 2059 requires that at least one approved course is available without charge, and the amendments do not prevent a licensee from repeating a course. In addition, the rule does not impose a cost on another state agency, a special district, or a local government.

#### ENVIRONMENTAL IMPACT STATEMENT

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

#### PUBLIC COMMENT

Comments on the proposed amendments may be submitted in writing to Lea Weiss, Occupational Therapy Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe Street, Suite 2-510, Austin, Texas 78701-3942 or to lea@ptot.texas.gov within 30 days following the publication of this notice in the *Texas Register*. It is requested when sending a comment that individuals include the rule section to which the comment refers and that comments sent by email include "Public Comment" in the email's subject line.

#### STATUTORY AUTHORITY

The amendments to §367.1 are proposed under Texas Occupations Code §454.102, which authorizes the Board to adopt rules to carry out its duties under chapter 454, and proposed under Texas Occupations Code §454.254, which authorizes the Board to require license holders to attend continuing education courses specified by the Board.

#### CROSS REFERENCE TO STATUTE

The proposed amendments implement Texas Occupations Code §116.002 and §116.003, which require a health care practitioner to complete human trafficking prevention training as a condition of license renewal. No other statutes, articles, or codes are affected by these amendments.

#### §367.1. Continuing Education.

(a) The Act mandates licensee participation in a continuing education program for license renewal. All activities taken to complete this requirement must meet the definition of continuing education as outlined in this section. The licensee is solely responsible for keeping accurate documentation of all continuing education activities and for selecting continuing education as per the requirements in this chapter.

(1) Definition of Continuing Education; also known as CE. Continuing Education - Professional development activities that meet the requirements in this chapter and directly concern one or more of the following:

- (A) occupational therapy practice as defined in §362.1 of this title (relating to Definitions);
- (B) health conditions treated by occupational therapy;
- (C) ethical or regulatory matters in occupational therapy; or
- (D) occupational therapy documentation or reimbursement for occupational therapy services.

(2) Unacceptable Activities. Unacceptable professional development activities not eligible for continuing education include but are not limited to:

- (A) Any non-instructional time frames such as breaks, meals, introductions, and pre/post testing.
- (B) Business meetings.
- (C) Exhibit hall attendance.
- (D) Reading journals.
- (E) Courses that provide information about the work setting's philosophy, policies, or procedures or designed to educate employees about a specific work setting.
- (F) Courses in topics concerning professionalism or customer service.

(G) Courses such as: social work; defensive driving; water safety; team building; GRE, GMAT, MCAT preparation; general foreign languages; disposal of hazardous waste; patient privacy; CPR; First Aid; HIPAA; and FERPA.

(b) Required Continuing Education Hours.

(1) Unless otherwise specified in this chapter, 1 hour of continuing education is equal to 1 contact hour.

(2) All licensees must complete a minimum of 24 contact hours every two years during the period of time the license is current in order to renew the license. Licensees must provide proof of completion of contact hours at the Board's request.

(3) Training on Human Trafficking. As part of the minimum hours of required continuing education for each renewal, licensees must complete a training course on human trafficking that is approved by the Health and Human Services Commission. Documentation of completion of a training course is a certificate of completion or letter of verification indicating credit awarded.

(A) Pre-Approved Credit and Additional Credit. The completion of one training course per renewal period to meet the training requirement is pre-approved for continuing education credit up to a maximum of 2 contact hours. Additional continuing education credit may be earned for a training course exceeding 2 hours if the additional hours meet the requirements of this chapter.

(B) Repeated Course. A specific training course completed during one renewal period to meet the training requirement may be completed again during the next renewal period to meet the training requirement for that next renewal. Up to a maximum of 2 contact hours from the repeated course are exempt from subsection (c) of this section and may be applied toward license renewal.

(4) [(3)] Licensees who submit their renewal with all required items prior to the month when their license expires may count CE completed during their license's expiration month for their next renewal period.

(c) Each continuing education activity may be counted only one time in two renewal cycles.

(d) Activities approved or offered by the American Occupational Therapy Association or the Texas Occupational Therapy Association are pre-approved for CE credit for license renewal. The Board will review its approval process and continuation thereof for educational activities at least every five years.

(e) Program providers are prohibited from self-promotion of programs, products, and/or services during the presentation of 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 June 8, 2020.

TRD-202002305

Ralph A. Harper

Executive Director

Texas Board of Occupational Therapy Examiners

Earliest possible date of adoption: July 19, 2020

For further information, please call: (512) 305-6900



## CHAPTER 370. LICENSE RENEWAL

### 40 TAC §370.2, §370.3

The Texas Board of Occupational Therapy Examiners proposes amendments to 40 Texas Administrative Code §370.2, Late Renewal, and §370.3, Restoration of a Texas License. The amendments are proposed to support the Board in streamlining and increasing the efficiency of its licensing processes, including through the use of digital technology, and reduce potential burdens for applicants. The amendments also cleanup and modify requirements for the renewal of an expired license and add human trafficking prevention training requirements pursuant to House Bill 2059 of the 86th Regular Legislative Session in 2019.

Amendments to §370.2 include as a cleanup the replacement of the current §370.2(a) with the simplified "A renewal application is late if all the required renewal materials do not bear a postmark or electronic time-stamp showing a date prior to the expiration of the license." An additional amendment to the section concerns removing the requirement that to renew a license expired for more than 90 days, but less than one year, the individual must submit copies of the continuing education documentation. This change will reduce requirements for a late renewal and streamline the late renewal process.

Amendments to §370.3 concern the renewal of a license expired one year or more, which, in the Occupational Therapy Rules, is referred to as the restoration of a license. Amendments to the section would allow an applicant to submit the photograph required for the restoration of a license in electronic form and would allow the Board to verify an applicant's history of licensure in occupational therapy, rather than routinely requiring that an applicant submit a verification of license from each state or territory of the U.S. in which the applicant is currently licensed or previously held a license. The amendments include that if the Board cannot verify the applicant's history of licensure, the applicant must submit a verification of license. The amendments concerning license verification will, therefore, result in applicants only being required to submit verifications for licenses that the Board cannot verify. Proposed amendments in other sections concerning similar requirements for initial licensure will also be submitted to the *Texas Register* for publication.

A further amendment to §370.3 concerns reducing the number of continuing education hours required for the restoration of a license expired at least one year, but less than two years. Previously, the Occupational Therapy Rules required that to renew a license expired less than one year, the individual must complete thirty hours of continuing education. Recent amendments to other rule sections changed that amount to twenty-four hours. The proposed changes to §370.3 are a cleanup to coincide with such changes by reducing the required continuing education hours for restoration from forty-five to thirty-six hours. The amendments include further cleanups.

An additional modification to the section would include that certain restoration requirements for an individual whose license is expired two years or more must be completed no more than two years prior to the submission of the application. The amendment is proposed to specify a time frame during which the requirements must be met in the corresponding subsection.

Further amendments to §370.3 concern adding provisions requiring that individuals complete training on the prevention of human trafficking as a requirement for license restoration. House Bill 2059 of the 86th Regular Legislative Session in 2019 requires that a health care practitioner successfully complete a training

course on human trafficking approved by the executive commissioner of the Health and Human Services Commission as a condition for license renewal, and in the bill, "health care practitioner" refers to an individual who provides direct patient care. The proposed amendments to §370.3 and further proposed amendments to the Occupational Therapy Rules submitted for publication in the *Texas Register* would add the completion of this training as a requirement for license renewal for all occupational therapy licensees.

#### FISCAL NOTE ON STATE AND LOCAL GOVERNMENTS

Ralph A. Harper, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal impact to state or local governments as a result of enforcing or administering these amendments as proposed under Texas Government Code §2001.024(a)(4) because the amendments do not impose a cost on state or local governments.

#### LOCAL EMPLOYMENT IMPACT

Mr. Harper has determined that the proposed amendments would not impact a local economy. Therefore, a local employment impact statement is not required under Texas Government Code §2001.022 and §2001.024(a)(6).

#### PUBLIC BENEFIT AND COST NOTE

Mr. Harper has determined under Texas Government Code §2001.024(a)(5) that for each of the first five years the proposed amendments would be in effect, the public benefit of the amendments will be the cleanup, clarification, and reduction of certain requirements concerning the late renewal and restoration of a license and for the amendments concerning training on human trafficking, an increase in training completed by occupational therapy licensees on the prevention of human trafficking. There would not be an additional anticipated economic cost to persons required to comply with the proposed amendments. The proposed cleanups and modifications do not add costs and HB 2059 requires that at least one approved training course on human trafficking is available without charge.

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

Mr. Harper has determined there would be no costs or adverse economic effects on small businesses, micro-businesses, or rural communities. Therefore, no economic impact statement or regulatory flexibility analysis is required under Texas Government Code §2006.002.

#### TAKINGS IMPACT ASSESSMENT

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

#### GOVERNMENT GROWTH IMPACT STATEMENT

The Board has determined under Texas Government Code §2001.0221 that during the first five years the rules would be in effect:

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

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

(3) the rules will not require an increase or decrease in future legislative appropriations to the agency;

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

(5) the rules will create a new regulation in the Occupational Therapy Rules concerning training on human trafficking as a required component of license renewal pursuant to HB 2059;

(6) the rules will not repeal or expand an existing regulation; the rules will limit existing regulations by removing the requirement that to renew a license expired for more than 90 days, but less than one year, the individual must submit copies of the continuing education documentation, by removing the requirements that applicants for restoration must routinely submit a license verification and may only submit a photograph in paper form, and by reducing the number of continuing education hours required for the restoration of a license expired at least one year, but less than two years;

(7) the rules will not increase or decrease the number of individuals subject to the rules' applicability; and

(8) the rules will neither positively nor adversely affect this state's economy.

#### COSTS TO REGULATED PERSONS

The agency determined that the rules are not subject to Texas Government Code §2001.0045 as the rules do not impose a cost on regulated persons as HB 2059 requires that at least one approved course is available without charge and additional proposed amendments do not impose a cost. In addition, the rules do not impose a cost on another state agency, a special district, or a local government.

#### ENVIRONMENTAL IMPACT STATEMENT

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

#### PUBLIC COMMENT

Comments on the proposed amendments may be submitted in writing to Lea Weiss, Occupational Therapy Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe Street, Suite 2-510, Austin, Texas 78701-3942 or to [lea@ptot.texas.gov](mailto:lea@ptot.texas.gov) within 30 days following the publication of this notice in the *Texas Register*. It is requested when sending a comment that individuals include the rule section to which the comment refers and that comments sent by email include "Public Comment" in the email's subject line.

#### STATUTORY AUTHORITY

The amendments are proposed under Texas Occupations Code §454.102, which authorizes the Board to adopt rules to carry out its duties under chapter 454. Specifically, the amendments to §370.2 and §370.3 are proposed under Texas Occupations Code §454.252, which requires that a person whose license has been expired less than one year may renew the license by paying the renewal fee and late fee set by the Executive Council of Physical Therapy and Occupational Therapy Examiners and which authorizes the Board to reinstate a license expired one year or more. The amendments to §370.3 are proposed under Texas Occupa-

tions Code §454.253, which authorizes the Board to renew the expired license of an individual licensed in another state and the amendments to §370.3 are proposed under Texas Occupations Code §454.254, which authorizes the Board to require license holders to attend continuing education courses specified by the Board.

#### CROSS REFERENCE TO STATUTE

The proposed amendments to §370.3 implement Texas Occupations Code §116.002 and §116.003, which require a health care practitioner to complete human trafficking prevention training as a condition of license renewal. No other statutes, articles, or codes are affected by these amendments.

#### §370.2. *Late Renewal.*

(a) A renewal application is late if all the required renewal materials do not bear a postmark or electronic time-stamp showing a date prior to the expiration of the license. [A renewal application is late if all required materials are not postmarked prior to the expiration date of the license. Licensees who do not complete the renewal process prior to the expiration date are subject to late fees as described. Likewise, a renewal completed online must be electronically date and time stamped prior to the expiration date or it is late and subject to late fees as described.]

(b) ~~[(1)]~~ If the license has been expired for ~~[90 days or]~~ less than one year, the person may renew the license by completing all renewal requirements and submitting the renewal fee and the appropriate late fee.

~~[(2)]~~ If the license has been expired for more than 90 days, but less than one year, the person may renew the license by completing all renewal requirements and:

(A) submitting the renewal fee and the appropriate late fee; and

(B) submitting copies of the continuing education documentation as per Chapter 367.]

(c) ~~[(b)]~~ Military Service:

(1) A licensee will be exempt from late fees and penalty for failure to timely renew a license if the licensee establishes to the satisfaction of the Board that failure to renew the license in a timely manner was because the licensee was serving as a military service member.

(2) A licensee who is a military service member is entitled to two years of additional time after the expiration of the license to complete:

(A) any continuing education requirements; and

(B) any other requirements related to the renewal of the license.

(3) In this section, "military service member" has the meaning as defined in Chapter 55, Occupations Code, §55.001.

#### §370.3. *Restoration of a Texas License.*

(a) Restoration of a license expired one year or more to a person with a current license or occupational therapy employment:

(1) The Board may restore a license to a person whose Texas license has been expired one year or more if the person:

(A) is currently licensed in another state or territory of the U.S. and that license has not been suspended, revoked, cancelled, surrendered or otherwise restricted for any reason; or

(B) if not currently licensed in another state or territory of the U.S., is applying from the U.S. military or a non-licensing state

or territory of the U.S. and can substantiate occupational therapy employment for at least two years immediately preceding application for a Texas license.

(2) The person shall meet the following requirements:

(A) submit a completed restoration application form [as prescribed by the Board, which includes a current photograph that meets the requirements for a U.S. passport];

(B) submit in paper or electronic form a current color photograph that meets the requirements for a U.S. passport. A photograph in electronic form must be of a high-quality resolution comparable to that of a passport photograph in paper form;

(C) submit documentation of the completion of training on human trafficking as described in §367.1 of this title (relating to Continuing Education) that meets documentation requirements as per §367.3 of this title (relating to Continuing Education Audit);

(D) submit a verification of license if the Board cannot verify the applicant's history of licensure in occupational therapy, including disciplinary action. The verification must be an original verification sent directly to the Board by the licensing board of the state or territory. Disciplinary action must be reported to the Board. If the applicant is not currently licensed in a state or territory of the U.S. and is applying from the U.S. military or a non-licensing state or territory of the U.S., a Verification of Employment form must be submitted substantiating occupational therapy employment for at least two years immediately preceding application for a Texas license;

~~[(B)]~~ submit to the Board a verification of license from each state or territory of the U.S. in which the applicant is currently licensed or previously held a license. This must be an original verification sent directly to the Board by the licensing board in that state or territory. Any disciplinary actions must be reported to the Board. If not currently licensed in another state or territory of the U.S. and applying from the U.S. military or a non-licensing state or territory of the U.S., the person must submit a Verification of Employment form substantiating occupational therapy employment for at least two years immediately preceding application for a Texas license;

(E) ~~[(C)]~~ pass the jurisprudence examination;

(F) ~~[(D)]~~ pay the restoration fee; and

(G) ~~[(E)]~~ submit a complete and legible set of fingerprints in the manner prescribed by the Board for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation. The licensee is not required to submit fingerprints under this section if the license holder has previously submitted fingerprints under:

(i) Chapter 364 of this title (relating to Requirements for Licensure) for the initial issuance of the license;

(ii) Chapter 370 of this title (relating to License Renewal) as part of a prior license renewal; or

(iii) Chapter 371 of this title (relating to Inactive and Retired Status) as part of a prior license renewal or change of license status.

(b) Restoration of a license expired at least one year but less than two years to a person without a current license or occupational therapy employment:

(1) The Board may restore a license expired at least one year but less than two years to a person who was licensed in Texas and:

(A) is not currently licensed in another state or territory of the U.S.; or

(B) if not currently licensed in another state or territory of the U.S., is applying from the U.S. military or a non-licensing state or territory of the U.S. and cannot substantiate occupational therapy employment for at least two years immediately preceding application for a Texas license.

(2) The person shall meet the following requirements:

(A) submit a completed restoration application form [as prescribed by the Board, which includes a current photograph that meets the requirements for a U.S. passport];

(B) submit in paper or electronic form a current color photograph that meets the requirements for a U.S. passport. A photograph in electronic form must be of a high-quality resolution comparable to that of a passport photograph in paper form;

(C) ~~[(B)]~~ submit copies of the completed continuing education showing 36 [45] hours of continuing education as per Chapter 367 of this title (relating to Continuing Education) that includes training on human trafficking as described in that chapter;

(D) submit a verification of license if the Board cannot verify the applicant's history of licensure in occupational therapy, including disciplinary action. The verification must be an original verification sent directly to the Board by the licensing board of the state or territory. Disciplinary action must be reported to the Board;

~~[(C)]~~ submit to the Board a verification of license from each state or territory of the U.S. in which the applicant is currently licensed or previously held a license. This must be an original verification sent directly to the Board by the licensing board in that state or territory. Any disciplinary actions must be reported to the Board;

(E) ~~[(D)]~~ pass the jurisprudence examination;

(F) ~~[(E)]~~ pay the restoration fee; and

(G) ~~[(F)]~~ submit a complete and legible set of fingerprints in the manner prescribed by the Board for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation. The licensee is not required to submit fingerprints under this section if the license holder has previously submitted fingerprints under:

(i) Chapter 364 of this title (relating to Requirements for Licensure) for the initial issuance of the license;

(ii) Chapter 370 of this title (relating to License Renewal) as part of a prior license renewal; or

(iii) Chapter 371 of this title (relating to Inactive and Retired Status) as part of a prior license renewal or change of license status.

(c) Restoration of a license expired two years or more to a person without a current license or occupational therapy employment:

(1) The Board may restore a license expired two years or more to a person who was licensed in Texas and:

(A) is not currently licensed in another state or territory of the U.S.; or

(B) if not currently licensed in another state or territory of the U.S., is applying from the U.S. military or a non-licensing state or territory of the U.S. and cannot substantiate occupational therapy employment for at least two years immediately preceding application for a Texas license.

(2) The person shall meet the following requirements:

(A) submit a completed restoration application form [as prescribed by the Board, which includes a current photograph that meets the requirements for a U.S. passport];

(B) submit in paper or electronic form a current color photograph that meets the requirements for a U.S. passport. A photograph in electronic form must be of a high-quality resolution comparable to that of a passport photograph in paper form;

(C) submit documentation of the completion of training on human trafficking as described in §367.1 of this title (relating to Continuing Education) that meets documentation requirements as per §367.3 of this title (relating to Continuing Education Audit);

(D) submit a verification of license if the Board cannot verify the applicant's history of licensure in occupational therapy, including disciplinary action. The verification must be an original verification sent directly to the Board by the licensing board of the state or territory. Disciplinary action must be reported to the Board;

~~[(B)]~~ submit to the Board a verification of license from each state or territory of the U.S. in which the applicant is currently licensed or previously held a license. This must be an original verification sent directly to the Board by the licensing board in that state or territory. Any disciplinary actions must be reported to the Board;

(E) ~~[(C)]~~ pass the jurisprudence examination;

(F) ~~[(D)]~~ pay the restoration fee;

(G) ~~[(E)]~~ submit a complete and legible set of fingerprints in the manner prescribed by the Board for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation. The licensee is not required to submit fingerprints under this section if the license holder has previously submitted fingerprints under:

(i) Chapter 364 of this title (relating to Requirements for Licensure) for the initial issuance of the license;

(ii) Chapter 370 of this title (relating to License Renewal) as part of a prior license renewal; or

(iii) Chapter 371 of this title (relating to Inactive and Retired Status) as part of a prior license renewal or change of license status; and

(H) ~~[(F)]~~ satisfy one of the following no more than two years prior to the submission of the application:

(i) complete a re-entry course through an accredited college or university and submit the certificate of completion or transcript to the Board;

(ii) obtain an advanced or post-professional occupational therapy degree, with an official transcript sent to the Board; or

(iii) take and pass the NBCOT examination for licensure purposes only (after requesting Board approval to take the examination) and have the passing score reported to the Board directly by NBCOT.

(d) The Board shall expedite the restoration of a license to a military service member, military veteran, or military spouse. To request expedited services, the military service member, military veteran, or military spouse must submit a copy of the Uniformed Services Military ID card or other appropriate official documentation evidencing current or former military affiliation and notify the Board of his or her military affiliation. In this section, "military service member," "military veteran," and "military spouse" have the meaning as defined in Chapter 55, Occupations Code, §55.001.

(e) The licensee whose license has been restored shall refer to Chapter 369 of this title for provisions regarding verification of current licensure.

(f) The restoration fee as set by the Executive Council is non-refundable.

(g) Restoration requirements must be met within one year of the Board's receipt of the application. Restoration requirements are based on the length of time the license has been expired and whether the individual has a current license or occupational therapy employment as specified in this section at the time of the license's restoration.

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

Filed with the Office of the Secretary of State on June 8, 2020.

TRD-202002307

Ralph A. Harper

Executive Director

Texas Board of Occupational Therapy Examiners

Earliest possible date of adoption: July 19, 2020

For further information, please call: (512) 305-6900



## CHAPTER 371. INACTIVE AND RETIRED STATUS

### 40 TAC §371.1, §371.2

The Texas Board of Occupational Therapy Examiners proposes amendments to 40 Texas Administrative Code §371.1, Inactive Status, and §371.2, Retired Status. The amendments to the sections are proposed to cleanup and clarify the sections and to reduce the requirements to initiate retired status. In addition, amendments to §371.2 are proposed to add requirements concerning training on the prevention of human trafficking pursuant to House Bill 2059 of the 86th Regular Legislative Session in 2019. Cleanups and clarifications to the sections include amendments to provisions concerning fees to add greater uniformity and clarity to the manner in which such are referenced.

Amendments to §371.2 include changes concerning reducing the number of hours of continuing education required to initiate retired status. Rather than requiring that the individual complete the same number of continuing education hours required to renew an active or inactive status license, the amendments will instead require that to initiate retired status, the individual must complete six hours of continuing education, which is the number of hours required to renew a license already on retired status. This change will reduce potential barriers for licensees concerning the initiation of retired status. Concomitant with these changes, requirements to return a license to active status have been revised so that a licensee who has been on retired status less than one year must complete the remainder of continuing education hours required for the renewal of a license on active status.

Further amendments to §371.2 concern the addition of requirements concerning training on human trafficking. House Bill 2059 of the 86th Regular Legislative Session requires that a health care practitioner successfully complete a training course on human trafficking approved by the executive commissioner of the Health and Human Services Commission as a condition for license renewal, and in the bill, "health care practitioner"

refers to an individual who provides direct patient care. The proposed amendments to §371.2 and proposed amendments to other chapters of the Occupational Therapy Rules submitted for publication in the *Texas Register* would add the completion of this training as a requirement for license renewal for all occupational therapy licensees.

### FISCAL NOTE ON STATE AND LOCAL GOVERNMENTS

Ralph A. Harper, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal impact to state or local governments as a result of enforcing or administering these amendments as proposed under Texas Government Code §2001.024(a)(4) because the amendments do not impose a cost on state or local governments.

### LOCAL EMPLOYMENT IMPACT

Mr. Harper has determined that the proposed amendments would not impact a local economy. Therefore, a local employment impact statement is not required under Texas Government Code §2001.022 and §2001.024(a)(6).

### PUBLIC BENEFIT AND COST NOTE

Mr. Harper has determined under Texas Government Code §2001.024(a)(5) that for each of the first five years the proposed amendments would be in effect, the public benefit of the amendments will be the cleanup, clarification, and reduction of certain requirements concerning inactive and retired status, and for the amendments concerning training on human trafficking, an increase in training completed by occupational therapy licensees on the prevention of human trafficking. There would not be an additional anticipated economic cost to persons required to comply with the proposed amendments. The proposed cleanups, modifications, and clarifications do not add a cost and HB 2059 requires that at least one approved training course on human trafficking is available without charge.

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

Mr. Harper has determined there would be no costs or adverse economic effects on small businesses, micro-businesses, or rural communities. Therefore, no economic impact statement or regulatory flexibility analysis is required under Texas Government Code §2006.002.

### TAKINGS IMPACT ASSESSMENT

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

### GOVERNMENT GROWTH IMPACT STATEMENT

The Board has determined under Texas Government Code §2001.0221 that during the first five years the rules would be in effect:

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

- (3) the rules will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rules will not require an increase or decrease in fees paid to the agency;
- (5) the rules will create a new regulation in the Occupational Therapy Rules concerning training on human trafficking as a required component of license renewal pursuant to HB 2059;
- (6) the rules will not repeal or expand an existing regulation; the rules will limit an existing regulation by reducing the number of continuing education hours required for the initiation of retired status;
- (7) the rules will not increase or decrease the number of individuals subject to the rules' applicability; and
- (8) the rules will neither positively nor adversely affect this state's economy.

#### COSTS TO REGULATED PERSONS

The agency determined that the rules are not subject to Texas Government Code §2001.0045 as the rules do not impose a cost on regulated persons as HB 2059 requires that at least one approved course is available without charge and additional proposed amendments do not impose a cost. In addition, the rules do not impose a cost on another state agency, a special district, or a local government.

#### ENVIRONMENTAL IMPACT STATEMENT

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

#### PUBLIC COMMENT

Comments on the proposed amendments may be submitted in writing to Lea Weiss, Occupational Therapy Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe Street, Suite 2-510, Austin, Texas 78701-3942 or to [lea@ptot.texas.gov](mailto:lea@ptot.texas.gov) within 30 days following the publication of this notice in the *Texas Register*. It is requested when sending a comment that individuals include the rule section to which the comment refers and that comments sent by email include "Public Comment" in the email's subject line.

#### STATUTORY AUTHORITY

The amendments are proposed under Texas Occupations Code §454.102, which authorizes the Board to adopt rules to carry out its duties under chapter 454. Specifically, the amendments to §371.1 are proposed under Texas Occupations Code §454.212, which allows for the Board to provide for a license holder to place the holder's license on inactive status. Amendments to §371.2 are proposed under Texas Occupations Code §454.254, which authorizes the Board to require license holders to attend continuing education courses specified by the Board.

#### CROSS REFERENCE TO STATUTE

The proposed amendments to §371.2 implement Texas Occupations Code §116.002 and §116.003, which require a health care practitioner to complete human trafficking prevention training as a condition of license renewal. The proposed amendments to §371.2 implement Texas Occupations Code §112.051, which requires each licensing entity to adopt rules providing for reduced fees and continuing education requirements for a retired health care practitioner whose only practice is voluntary charity

care. No other statutes, articles, or codes are affected by these amendments.

#### §371.1. *Inactive Status.*

(a) Inactive status indicates the voluntary termination of the right to practice occupational therapy by a licensee in good standing with the Board. The Board may allow an individual who is not actively engaged in the practice of occupational therapy to put an active license on inactive status at the time of renewal. A licensee may remain on inactive status for no more than three renewals or six consecutive years and may not represent himself or herself as an occupational therapist or occupational therapy assistant.

(b) Required components to put a license on inactive status are:

(1) a completed renewal application form [as prescribed by the Board] documenting completion of the required continuing education as described in Chapter 367 of this title (relating to Continuing Education);

(2) the inactive status fee and any late fees that may be due; and

(3) a passing score on the jurisprudence examination.

(c) Requirements for renewal of inactive status. An inactive licensee must renew the inactive status every 2 years. The components required to maintain the inactive status are:

(1) a completed renewal application form [as prescribed by the Board] documenting completion of the required continuing education as described in Chapter 367 of this title (relating to Continuing Education);

(2) the inactive status [renewal] fee and any late fees that may be due; and

(3) a passing score on the jurisprudence examination.

(d) Requirements for reinstatement to active status. A licensee on inactive status may request to return to active status at any time. The components required to return to active status are:

(1) a completed renewal application form [as prescribed by the Board];

(2) the active status renewal fee and any late fees that may be due;

(3) a passing score on the jurisprudence examination;

(4) proof of the required continuing education, if required; and

(5) a complete and legible set of fingerprints submitted in the manner prescribed by the Board for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation. The licensee is not required to submit fingerprints under this section if the license holder has previously submitted fingerprints under:

(A) Chapter 364 of this title (relating to Requirements for Licensure) for the initial issuance of the license;

(B) Chapter 370 of this title (relating to License Renewal) as part of a prior license renewal; or

(C) Chapter 371 of this title (relating to Inactive and Retired Status) as part of a prior license renewal or change of license status.

(e) If the inactive status license has been expired one year or more, in order to return to active status, the individual must follow

the procedures to restore the license according to §370.3 of this title (relating to Restoration of a Texas License).

(f) The inactive status fees and any late fees as set by the Executive Council are nonrefundable.

(g) Licensees on inactive status are subject to the audit of continuing education as described in §367.3 of this title (relating to Continuing Education Audit).

§371.2. *Retired Status.*

(a) The Retired Status is available for an occupational therapy practitioner whose only practice is the provision of voluntary charity care without monetary compensation.

(1) "Voluntary charity care" means occupational therapy services provided as a volunteer with no compensation, for a charitable organization as defined in §84.003 of the Texas Civil Practice and Remedies Code. This includes any bona fide charitable, religious, prevention of cruelty to children or animals, youth sports and youth recreational, neighborhood crime prevention or patrol, or educational organization (excluding fraternities, sororities, and secret societies), or other organization organized and operated exclusively for the promotion of social welfare by being primarily engaged in promoting the common good and general welfare of the people in the community, including these type of organizations with a Section 501(c)(3) or (4) exemption from federal income tax, some chambers of commerce, and volunteer centers certified by the Department of Public Safety.

(2) "Compensation" means direct or indirect payment of anything of monetary value.

(3) The designation used by the retired status licensee is Occupational Therapist Registered, Retired (OTR, Ret) or Occupational Therapist, Retired (OT, Ret), or Certified Occupational Therapy Assistant, Retired (COTA, Ret) or Occupational Therapy Assistant, Retired (OTA, Ret).

(b) To be eligible for retired status, a licensee must hold a current license on active or inactive status or an active or inactive license that has been expired less than one year. The license may only be put on retired status at the time of renewal.

(c) Requirements for initial retired status are:

(1) a completed retired status [~~application~~] form [~~as prescribed by the Board~~];

(2) a passing score on the jurisprudence examination;

(3) completion of 6 hours of continuing education as described in Chapter 367 of this title (relating to Continuing Education) that includes training on human trafficking as described in that chapter; [the completed continuing education for the current renewal period;]

(4) the retired status [~~application~~] fee and any late fees that may be due; and

(5) a complete and legible set of fingerprints submitted in the manner prescribed by the Board for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation. The licensee is not required to submit fingerprints under this section if the license holder has previously submitted fingerprints under:

(A) Chapter 364 of this title (relating to Requirements for Licensure) for the initial issuance of the license;

(B) Chapter 370 of this title (relating to License Renewal) as part of a prior license renewal; or

(C) Chapter 371 of this title (relating to Inactive and Retired Status) as part of a prior license renewal or change of license status.

(d) Requirements for renewal of retired status. A licensee on retired status must renew every two years before the expiration date. The retired occupational therapy practitioner shall submit:

(1) a completed retired status [~~renewal~~] form [~~as prescribed by the Board~~];

(2) a passing score on the jurisprudence examination;

(3) the retired status [~~renewal~~] fee and any late fees that may be due;

(4) completion of 6 hours of continuing education each license renewal period[;] as described in Chapter 367 of this title (relating to Continuing Education) that includes training on human trafficking as described in that chapter; and

(5) a complete and legible set of fingerprints submitted in the manner prescribed by the Board for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation. The licensee is not required to submit fingerprints under this section if the license holder has previously submitted fingerprints under:

(A) Chapter 364 of this title (relating to Requirements for Licensure) for the initial issuance of the license;

(B) Chapter 370 of this title (relating to License Renewal) as part of a prior license renewal; or

(C) Chapter 371 of this title (relating to Inactive and Retired Status) as part of a prior license renewal or change of license status.

(e) Requirements for return to active status. A licensee who has been on retired status less than one year must submit the active status [~~regular license~~] renewal fee and the late fee as described in §370.1 of this title (relating to License Renewal) and 18 additional hours of continuing education as described in Chapter 367 of this title (relating to Continuing Education). A licensee who has been on retired status for one year or more must follow the procedures for §370.3 of this title (relating to Restoration of Texas License).

(f) The occupational therapy practitioner may continue to renew the retired status license indefinitely.

(g) Licensees on retired status are subject to the audit of continuing education as described in §367.3 of this title (relating to Continuing Education Audit).

(h) A retired occupational therapy practitioner is subject to disciplinary action under the OT Practice Act.

(i) The retired status fees and any late fees as set by the Executive Council are nonrefundable.

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

Filed with the Office of the Secretary of State on June 8, 2020.

TRD-202002308

Ralph A. Harper

Executive Director

Texas Board of Occupational Therapy Examiners

Earliest possible date of adoption: July 19, 2020

For further information, please call: (512) 305-6900

# WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

## TITLE 28. INSURANCE

### PART 1. TEXAS DEPARTMENT OF INSURANCE

#### CHAPTER 21. TRADE PRACTICES

#### SUBCHAPTER OO. DISCLOSURES BY OUT-OF-NETWORK PROVIDERS

#### 28 TAC §§21.4901 - 21.4904

The Texas Department of Insurance withdraws the emergency adoption of new 28 TAC §§21.4901 - 21.4904 which appeared

in the January 3, 2020, issue of the *Texas Register* (45 TexReg 13).

Filed with the Office of the Secretary of State on June 5, 2020.

TRD-202002283

James Person

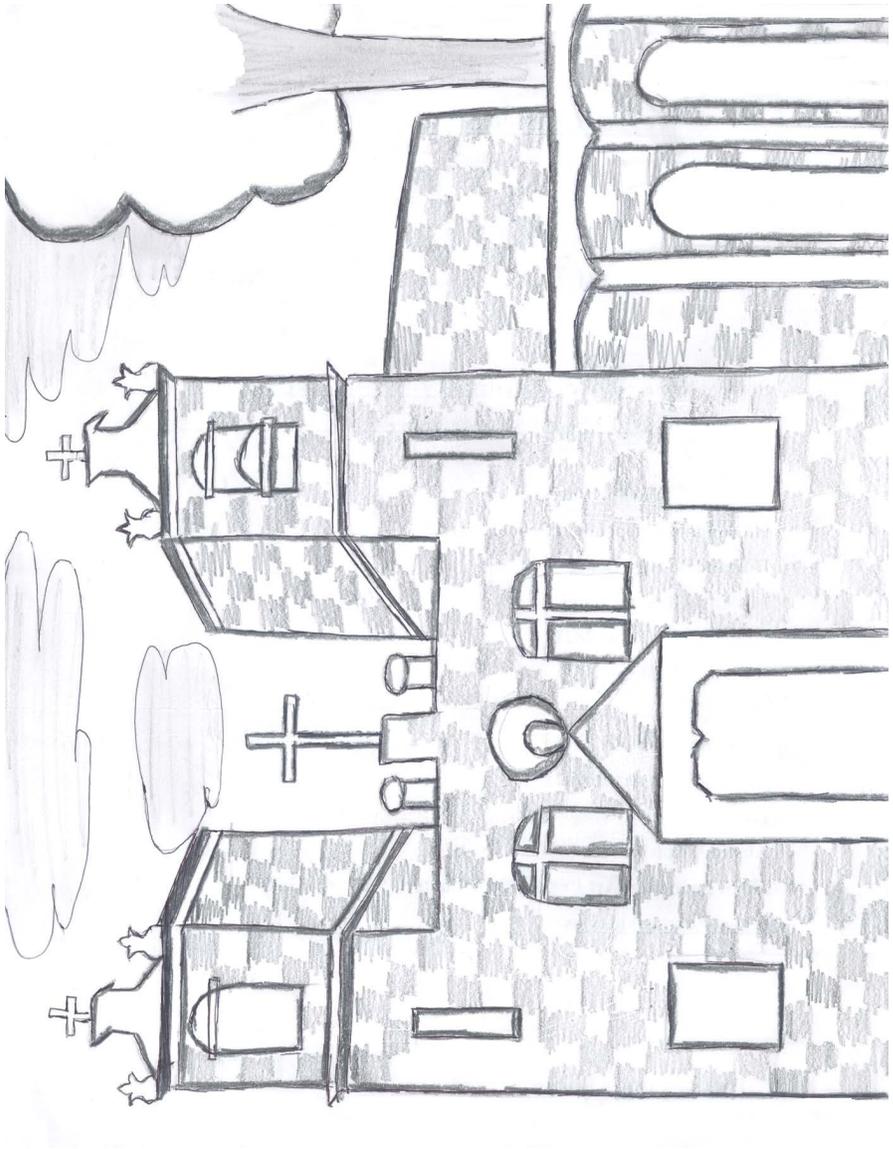
General Counsel

Texas Department of Insurance

Effective date: June 25, 2020

For further information, please call: (512) 676-6584





# ADOPTED RULES

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

## TITLE 1. ADMINISTRATION

### PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

#### CHAPTER 355. REIMBURSEMENT RATES SUBCHAPTER A. COST DETERMINATION PROCESS

##### 1 TAC §355.112

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts an amendment to §355.112, concerning Attendant Compensation Rate Enhancement. The amendment to §355.112 is adopted without changes to the proposed text as published in the March 20, 2020, issue of the *Texas Register* (45 TexReg 1915). The rule will not be republished.

##### BACKGROUND AND JUSTIFICATION

The purpose of the amendment to §355.112 is to implement Rider 44 of the 2020-21 General Appropriations Act, Article II, House Bill 1, 86th Legislature, Regular Session, 2019 (Rider 44). Rider 44(a)(4) appropriated funds for the creation of separate categories in the Attendant Compensation Rate Enhancement (rate enhancement) programs which serve individuals with intellectual and developmental disabilities in order to increase participation in those rate enhancement programs. The rider directed that the categories be based on the number of attendant hours included in the billing unit. The amendment to §355.112 creates separate rate enhancement categories for day habilitation (DH) services and non-DH services for Home and Community-Based Services (HCS) and Texas Home Living (TxHmL) programs and for services in a residential setting for the HCS program. The change allows flexibility in the rate enhancement program for HCS and TxHmL providers of services that do not utilize an hourly unit of service.

##### COMMENTS

The 31-day comment period ended on April 20, 2020.

During this period, HHSC received comments regarding the amendment from two entities: Texas Parent to Parent (TxP2P) and Providers Alliance for Community Services of Texas (PAC-STX). A summary of comments relating to the rule and HHSC's responses follow.

Comment: All commenters expressed support for the proposed rule amendment.

Response: HHSC appreciates the commenters' support of the rule.

Comment: One commenter pointed out a potential discrepancy between the appropriated funding in Rider 44(a)(4) and the fiscal estimate associated with the proposed rule amendment.

Response: Rider 44(a)(4) provided \$6,317,103 in General Revenue and \$10,298,107 in Federal Funds in fiscal year 2021 in Strategy A.3.1, HCS for an All Funds Amount of \$16,615,210. The fiscal estimate provided for the proposed amendment applied updated growth trends for the HCS waiver program and revised the Federal match percentage applied to the amounts appropriated in Rider 44(a)(4). No changes were made in response to this comment.

Comment: One commenter stated that Rider 44(a)(4) also appropriated additional funding for HHSC to address the daily unit of billing in Intermediate Care Facilities with an Intellectual Disability or Related Condition (ICF/IID) and noted that HHSC did not propose a similar rule amendment for that purpose. This commenter also asked if a September 1, 2020, implementation date for any changes applicable to ICF/IID would be feasible.

Response: HHSC believes that the Attendant Compensation Rate Enhancement Program for ICF/IID providers already accounts for separate billing categories based on the number of direct care hours in the billing unit. The ICF/IID program provides Residential and DH services, and there are already separate rate enhancement categories for both of those services. Therefore, no rule amendments are necessary. No changes were made in response to this comment.

Comment: One commenter stated that language needs to be added to §355.112(f)(7) to ensure that currently-participating providers who enroll for 2021 are able to maintain at least their 2020 participation level.

Response: HHSC is requesting that all HCS and ICF/IID providers who participate in the Attendant Compensation Rate Enhancement program complete a revised enrollment as specified in §355.112(f)(7). Since the program is undergoing substantial revision, including higher add-ons for DH and Residential Services, HHSC believes that all participating providers should request to enroll at a new level to ensure that they are able to meet the associated spending requirements. No changes were made in response to this comment.

Comment: One commenter stated that language should be added to §355.112 to allow currently-participating providers to request an increase of more than three levels if funds are available to do so.

Response: HHSC does not think adding language to the rule is necessary. Section 355.112(f)(1)(3) allows participating and nonparticipating providers to request to modify their enrollment status during any open enrollment period. The rule does not prevent non-limited providers from requesting an increase of more than three levels during open enrollment. However,

§355.112(f)(1)(4) prevents providers whose prior year enrollment was limited from requesting an increase of their enrollment levels to three or fewer levels during the first open enrollment period after their limitation. HHSC believes it would be inappropriate to enforce limitations on HCS and ICF/IID providers during the 2021 enrollment period due to the significant revisions to the program. No changes were made in response to this comment.

Comment: One commenter requested that HHSC provide the number of levels and add-on amounts for HCS and ICF/IID providers.

Response: HHSC will issue guidance through an information letter regarding the number of levels and add-on amounts for HCS and ICF/IID providers. No changes were made in response to this comment.

#### STATUTORY AUTHORITY

The amendment 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 Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; 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 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 June 5, 2020.

TRD-202002279

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Effective date: June 25, 2020

Proposal publication date: March 20, 2020

For further information, please call: (512) 424-6637



## TITLE 19. EDUCATION

### PART 2. TEXAS EDUCATION AGENCY

#### CHAPTER 74. CURRICULUM REQUIREMENTS

##### SUBCHAPTER B. GRADUATION REQUIREMENTS

###### 19 TAC §§74.11 - 74.13

The State Board of Education (SBOE) adopts amendments to §§74.11-74.13, concerning curriculum requirements. The amendments are adopted without changes to the proposed text as published in the March 6, 2020 issue of the *Texas Register* (45 TexReg 1531) and will not be republished. The adopted amendments update the rules to align with the requirements

of House Bill (HB) 678, 86th Texas Legislature, 2019, and revisions to career and technical education (CTE) programs of study.

REASONED JUSTIFICATION: The 83rd Texas Legislature, Regular Session, 2013, passed HB 5, amending Texas Education Code (TEC), §28.025, to transition from three high school graduation programs to one foundation high school program with endorsement options to increase flexibility for students. HB 5 gave the SBOE the authority to identify advanced courses related to the new graduation program, identify the curriculum requirements for the endorsements, and determine the requirements for performance acknowledgments related to the graduation program.

The 86th Texas Legislature, 2019, passed HB 678, which amended TEC, §28.025(b-21), to allow elementary school students to earn one high school credit toward the languages other than English (LOTE) graduation requirement by successfully completing a course in American Sign Language (ASL).

The 86th Texas Legislature, 2019, also passed HB 963, which requires the SBOE, not later than March 1, 2020, to conduct a review of the TEKS for CTE and technology applications courses for Grades 9-12 and amend the board's rules to consolidate courses and eliminate duplicative courses. The SBOE is required to implement this provision only if the legislature appropriated money specifically for that purpose. If the legislature did not appropriate money specifically for that purpose, the SBOE may, but is not required to, implement a requirement using other appropriations available for that purpose. The legislature did not appropriate money specifically for the purpose of implementing this requirement.

Texas is redesigning state-level programs of study to include coherent and rigorous content with challenging academic standards and relevant career and technical content. Programs of study will be aligned with state and regional labor market information, including high-wage, high-skill, and in-demand occupations. As a part of the program of study revision process, Texas conducted a statewide labor market analysis that discovered several instances where occupations and postsecondary training overlap.

The adopted amendments update the graduation requirements to reflect changes to the rules on endorsements to reflect the revised programs of study and to ensure that a student who completed a program of study could earn one of the endorsements. Additionally, the amendments update the rules to align with the consolidation of the high school technology applications and CTE TEKS, allow students who completed an ASL course in elementary school to earn one high school credit toward the LOTE graduation requirement, and clarify language regarding the requirements for satisfying a LOTE graduation requirement by completing a dual language immersion program while in elementary school.

The SBOE approved the proposed amendments for first reading and filing authorization at its January 31, 2020 meeting and for second reading and final adoption at its April 17, 2020 meeting.

In accordance with TEC, §7.102(f), the SBOE approved the amendments for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2020-2021 school year. The earlier effective date will allow districts of innovation that begin school prior to the statutorily required start date to implement the rules when they begin their school year. The effective date is August 1, 2020.

SUMMARY OF COMMENTS AND RESPONSES: The public comment period on the proposal began March 6, 2020, and ended April 10, 2020. The SBOE also provided an opportunity for registered oral and written comments at its April 2020 meeting in accordance with the SBOE board operating policies and procedures. No comments were received.

STATUTORY AUTHORITY. The amendments are adopted under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; TEC, §28.002(c), which requires the SBOE to by rule identify the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments; TEC, §28.025(a), which requires the SBOE to by rule determine the curriculum requirements for the foundation high school program that are consistent with the required curriculum and to designate the specific courses in the foundation curriculum that are required under the foundation high school program; and TEC, §28.025(c-1), which requires the SBOE to by rule provide students with multiple options for earning each endorsement, including, to the greatest extent possible, coherent sequences of courses. The SBOE by rule must permit a student to enroll in courses under more than one endorsement curriculum before the student's junior year.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code, §§7.102(c)(4); 28.002(a) and (c); and 28.025(a) and (c-1).

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 June 1, 2020.

TRD-202002227

Cristina De La Fuente-Valadez  
Director, Rulemaking

Texas Education Agency

Effective date: August 1, 2020

Proposal publication date: March 6, 2020

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



## CHAPTER 105. FOUNDATION SCHOOL PROGRAM

### SUBCHAPTER B. USE OF STATE FUNDS

#### 19 TAC §105.11, §105.12

The State Board of Education (SBOE) adopts the repeal of §105.11 and §105.12, concerning use of state funds. The repeals are adopted without changes to the proposed text as published in the March 6, 2020 issue of the *Texas Register* (45 TexReg 1536) and will not be republished. The adopted repeals implement House Bill (HB) 3, 86th Texas Legislature, 2019, which removed the SBOE's rulemaking authority related to maximum allowable indirect costs and the basic allotment for the Foundation School Program (FSP).

REASONED JUSTIFICATION: Section 105.11 establishes the limits that may be expended from special allotments on indirect

costs related to compensatory education, bilingual education, special language programs, and special education.

Section 105.12 explains the authorized use of state aid for acquisitions, renovation, repairs, and maintenance of facilities.

HB 3, 86th Texas Legislature, 2019, renumbered Texas Education Code (TEC), §42.004, to §48.004. The renumbered statute was amended to remove the SBOE's rulemaking authority related to maximum allowable indirect costs and the basic allotment for the FSP. The repeal of the rules is necessary since statutory authority no longer exists.

The SBOE approved the proposed repeals for first reading and filing authorization at its January 31, 2020 meeting and for second reading and final adoption at its April 17, 2020 meeting.

In accordance with TEC, §7.102(f), the SBOE approved the repeals for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2020-2021 school year. The earlier effective date will implement legislation in a timely manner by removing provisions for which statutory authority no longer exists. The effective date is 20 days after filing as adopted with the *Texas Register*.

SUMMARY OF COMMENTS AND RESPONSES: The public comment period on the proposal began March 6, 2020, and ended April 10, 2020. The SBOE also provided an opportunity for registered oral and written comments at its April 2020 meeting in accordance with the SBOE board operating policies and procedures. No comments were received.

STATUTORY AUTHORITY. The repeals are adopted under Texas Education Code, §48.004, as transferred, redesignated, and amended by House Bill 3, 86th Texas Legislature, 2019, which requires the commissioner to adopt rules, take actions, and require reports necessary to implement and administer the Foundation School Program.

CROSS REFERENCE TO STATUTE. The repeals implement Texas Education Code, §48.004, as transferred, redesignated, and amended by House Bill 3, 86th Texas Legislature, 2019.

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 June 1, 2020.

TRD-202002228

Cristina De La Fuente-Valadez  
Director, Rulemaking

Texas Education Agency

Effective date: June 21, 2020

Proposal publication date: March 6, 2020

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



## CHAPTER 110. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR ENGLISH LANGUAGE ARTS AND READING

The State Board of Education (SBOE) adopts the repeal of §§110.30-110.34 and 110.85, concerning Texas Essential Knowledge and Skills (TEKS) for English language arts and reading. The repeals are adopted without changes to the proposed text as published in the March 6, 2020 issue of the

*Texas Register* (45 TexReg 1537) and will not be republished. The adopted repeals remove the TEKS adopted to be effective in 2009 for high school English language arts and reading and related implementation language that will be superseded by new 19 TAC §§110.35-110.39 beginning with the 2020-2021 school year.

**REASONED JUSTIFICATION:** In 2017, the SBOE adopted revisions to the English language arts and reading TEKS. The revised TEKS for high school are scheduled to be implemented beginning with the 2020-2021 school year.

With the implementation of the revised English language arts and reading TEKS for high school scheduled for the 2020-2021 school year, the current TEKS in 19 TAC §§110.30-110.34 and 110.85 are no longer needed and may now be repealed.

The SBOE approved the proposed repeals for first reading and filing authorization at its January 31, 2020 meeting and for second reading and final adoption at its April 17, 2020 meeting.

In accordance with Texas Education Code, §7.102(f), the SBOE approved the repeals for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2020-2021 school year. The earlier effective date will allow districts of innovation that begin school prior to the statutorily required start date to implement the proposed rulemaking when they begin their school year. The effective date is August 1, 2020.

**SUMMARY OF COMMENTS AND RESPONSES:** The public comment period on the proposal began March 6, 2020, and ended April 10, 2020. The SBOE also provided an opportunity for registered oral and written comments at its April 2020 meeting in accordance with the SBOE board operating policies and procedures. No comments were received.

## SUBCHAPTER C. HIGH SCHOOL

### 19 TAC §§110.30 - 110.34

**STATUTORY AUTHORITY.** The repeals are adopted under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; TEC, §28.002(c), which requires the SBOE to by rule identify the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments; and TEC, §28.025(a), which requires the SBOE to by rule determine the curriculum requirements for the foundation high school graduation program that are consistent with the required curriculum under the TEC, §28.002.

**CROSS REFERENCE TO STATUTE.** The repeals implement Texas Education Code, §§7.102(c)(4); 28.002(a) and (c); and 28.025(a).

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

Filed with the Office of the Secretary of State on June 1, 2020.

TRD-202002229

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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Proposal publication date: March 6, 2020

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



## SUBCHAPTER D. OTHER HIGH SCHOOL ENGLISH LANGUAGE ARTS AND READING COURSES

### 19 TAC §110.85

**STATUTORY AUTHORITY.** The repeal is adopted under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; TEC, §28.002(c), which requires the SBOE to by rule identify the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments; and TEC, §28.025(a), which requires the SBOE to by rule determine the curriculum requirements for the foundation high school graduation program that are consistent with the required curriculum under the TEC, §28.002.

**CROSS REFERENCE TO STATUTE.** The repeal implements Texas Education Code, §§7.102(c)(4); 28.002(a) and (c); and 28.025(a).

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

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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



## CHAPTER 113. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR SOCIAL STUDIES

The State Board of Education (SBOE) adopts an amendment to §113.30, the repeal of §§113.51-113.68 and 113.71-113.80, and new §§113.51, 113.60, 113.61, and 113.101-113.126, concerning Texas Essential Knowledge and Skills (TEKS) for social studies. New §113.51 is adopted with changes to the proposed text as published in the March 6, 2020 issue of the *Texas Register* (45 TexReg 1538) and will be republished. The amendment to §113.30, the repeal of §§113.51-113.68 and 113.71-113.80, and new §§113.60, 113.61, and 113.101-113.126 are adopted without changes to the proposed text as published in the March 6, 2020 issue of the *Texas Register* (45 TexReg 1538) and will not be republished. The adopted rule actions add TEKS for a

new African American studies ethnic studies course, renumber sections, and update references to course numbers and titles to reflect recent revisions to the social studies TEKS.

REASONED JUSTIFICATION: The 83rd Texas Legislature, 2013, passed House Bill (HB) 5, amending Texas Education Code, §28.025, to transition from three high school graduation programs to one foundation high school program with endorsements to increase flexibility in graduation requirements for students. In August 2013, the SBOE held a work session to discuss changes to the graduation requirements in order to align with the requirements of HB 5, including discussion of courses required by HB 5.

There are currently state-approved TEKS for general social studies elective courses that allow educators to select specific historical, cultural, or research topics in social studies to address in greater depth. In social studies, these courses include Special Topics in Social Studies, Social Studies Research Methods, Social Studies Advanced Studies, and Ethnic Studies: Mexican American Studies.

In June 2019, a new African American Studies innovative course was approved by the commissioner of education for use beginning with the 2019-2020 school year. School districts and open-enrollment charter schools may offer any state-approved innovative course for elective credit with the approval of the local board of trustees.

New §113.51 adds TEKS for a new ethnic studies course in African American studies. Existing §§113.51-113.68 and 113.71-113.80 were repealed and adopted with new section numbers in order to move Social Studies Advanced Studies and Economics Advanced Studies from Subchapter D to the high school courses in Subchapter C and to group the ethnic studies courses together. The content of the renumbered sections did not change except to update references to course numbers and titles in new §§113.102, 113.104-113.106, 113.111, 113.114, and 113.115 to reflect recent revisions to the social studies TEKS. In addition, the implementation language in §113.30 and new §113.101 was updated to remove outdated references to section numbers and school years.

The following changes to §113.51 were made since the rules were published as proposed.

The student expectation in subsection (c)(2)(A) was amended to delete the phrase "the economic, political, and social reasons for."

The student expectation in subsection (c)(3)(A) was amended to delete the phrase "and evaluate" and to add the word "some" before the word "Americans."

The student expectation in subsection (c)(3)(E) was amended to replace the word "including" with the phrase "such as."

The student expectation in subsection (c)(3)(F) was amended to add the phrase "the gradual emancipation of enslaved people in the North (1777-1804)" after the word "including" and to delete the word "and" before the phrase "the abolition of slavery in Mexico (1829)."

A new student expectation in subsection (c)(4)(E) was added that states, "explain the impact of the convict leasing system on African Americans such as the Sugar Land 95." Subsequent student expectations in subsection (c)(4) were relettered appropriately.

The student expectation in proposed subsection (c)(4)(E), relettered as (c)(4)(F) at adoption, was amended to replace the word "analyze" with the word "explain."

The student expectation in proposed subsection (c)(4)(I), relettered as (c)(4)(J) at adoption, was amended to replace the word "evaluate" with the word "describe."

A new student expectation in subsection (c)(5)(B) was added that states, "describe the impact of U.S. Supreme Court decisions *Sweatt v. Painter* (1950) and *Brown v. Board of Education* (1954)." Subsequent student expectations in subsection (c)(5) were relettered appropriately.

The student expectation in proposed subsection (c)(5)(B), relettered as (c)(5)(C) at adoption, was amended to replace the word "including" with the phrase "such as" and to add the individual Rosa Parks and the organization Student Non-Violent Coordinating Committee.

The student expectation in proposed subsection (c)(5)(F), relettered as (c)(5)(G) at adoption, was amended to replace the word "including" with the phrase "such as."

The student expectation in proposed subsection (c)(5)(G), relettered as (c)(5)(H) at adoption, was amended to delete the word "and" before the word "failures" and to insert the phrase "and ongoing impact" before the phrase "of the Civil Rights Movement."

The student expectation in subsection (c)(6)(A) was amended to replace the phrase "quest for" with the phrase "effort to achieve."

The student expectation in subsection (c)(6)(B) was amended to replace the word "contributions" with the word "achievements" and to add the individual Fannie Lou Hamer.

The student expectation in proposed subsection (c)(7)(B) was replaced by a new student expectations that reads, "identify and explain the physical and human geographic factors that contributed to the Atlantic Slave Trade, the rise of the plantation system in the South, the development of textile mills in the North, and economic interdependence between the North and South."

The student expectations in proposed subsection (c)(8)(A) and (B) were deleted. Subsequent student expectations in subsection (c)(8) were relettered appropriately.

The student expectation in proposed subsection (c)(8)(C), relettered as (c)(8)(A) at adoption, was amended to add the phrase "and the roles of 'King Cotton' after the phrase "analyze the effects of the Industrial Revolution" and to replace the word "on" with the word "in" before the phrase "the economies of the United States and the world."

The student expectation in proposed subsection (c)(8)(D), relettered as (c)(8)(B) at adoption, was amended to delete the phrases "economic policies such as" and "Jim Crow economies" and to replace the phrase "impacted the standard of living of" with the phrase "limited economic opportunities for."

The student expectation in proposed subsection (c)(8)(E), relettered as (c)(8)(C) at adoption, was amended to delete the word "unsatisfactory" and to replace the phrase "opportunities in the South and increased economic opportunities in cities of the North and West caused" with the phrase "conditions and racism contributed to."

The student expectation in proposed subsection (c)(8)(J), relettered as (c)(8)(H) at adoption, was amended to replace the individual Fannie Lou Hamer with the individual Maggie L. Walker.

The student expectation in proposed subsection (c)(9)(A) was replaced by a new student expectation that reads, "compare and contrast how political perspectives of free and enslaved African Americans in the late 1700s and early 1800s were influenced by the unalienable rights expressed in the Declaration of Independence and civil rights in the Bill of Rights."

The student expectation in subsection (c)(9)(E) was amended to add the phrase "the War on Crime, the War on Drugs, mass incarceration" after the phrase "affirmative action."

The student expectation in subsection (c)(10)(C) was amended to delete the phrase "and analyze," to replace the phrase "leadership roles" with the word "leaders," and to delete the phrase "including Supreme Court cases."

A new student expectation in subsection (c)(11)(E) was added that reads, "identify and describe the diversity of peoples of African ancestry such as Afro-Latinos, Afro-Caribbeans, and recent African immigrants."

The student expectation in subsection (c)(14)(A) was amended to replace the phrase "of blues, ragtime, and jazz music" with "and influence of blues, ragtime, jazz, and hip hop music," to replace the phrase "including the achievements" with the phrase "such as the achievements," and to delete the phrase "such as" before Scott Joplin.

The student expectation in subsection (c)(14)(C) was amended to replace the word "including" with the phrase "such as" and to delete the phrase "individuals such as."

The student expectation in subsection (c)(14)(D) was amended to add the novel "Beloved by Toni Morrison" after the novel "Their Eyes Were Watching God by Zora Neale Hurston."

The student expectation in subsection (c)(14)(E) was amended to add the individual James Baldwin after the individual John T. Biggers.

A new subsection (c)(15) on African American culture was added that reads:

"(15) Culture. The student understands African American educational developments, achievements, and opportunities before and after the U.S. Supreme Court decision of *Brown v. Board of Education* (1954). The student is expected to:

(A) describe the efforts to prevent the education of enslaved people and free African Americans, including anti-literacy laws;

(B) analyze the expansion of educational opportunities for African Americans, including the Freedman's Bureau, Rosenwald Schools, the Second Morrill Act (1890), the establishment of Historically Black Colleges and Universities, and the role of the National Pan-Hellenic Council (Divine 9); and

(C) describe contemporary issues in education for African American students such as the school-to-prison pipeline, opportunity gaps, overrepresentation in special education, and underrepresentation in gifted and talented opportunities."

Subsequent paragraphs in subsection (c) were renumbered appropriately.

The student expectation in proposed subsection (c)(15)(C), renumbered as (c)(16)(C) at adoption, was amended to replace the word "including" with the phrase "such as."

In addition, technical edits were made throughout the section.

The SBOE approved the proposed rule actions for first reading and filing authorization at its January 31, 2020 meeting and for second reading and final adoption at its April 17, 2020 meeting.

In accordance with TEC, §7.102(f), the SBOE approved the rule actions for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2020-2021 school year. The earlier effective date will allow districts of innovation that begin school prior to the statutorily required start date to implement the rulemaking when they begin their school year. The effective date is August 1, 2020.

**SUMMARY OF COMMENTS AND RESPONSES:** The public comment period on the proposal began March 6, 2020, and ended April 10, 2020. The SBOE also provided an opportunity for registered oral and written comments at its April 2020 meeting in accordance with the SBOE board operating policies and procedures. Following is a summary of the comments received and corresponding responses.

**Comment.** One parent stated that African American historians such as Dr. John Hope Franklin and Dr. Henry Louis Gates should be considered for inclusion the TEKS for the proposed new Ethnic Studies: African American Studies course.

**Response.** The SBOE disagrees and has determined that the suggested additions were not necessary.

**Comment.** One parent recommended adding student expectations focusing on the Black Lives Matter movement in the citizenship strand of the proposed new course.

**Response.** The SBOE disagrees and has determined that the suggested addition was not necessary.

**Comment.** One parent recommended that the truth about the Confederacy as it pertains to African Americans should be included in the TEKS for the proposed new course.

**Response.** The SBOE disagrees and has determined that the topic is sufficiently addressed in the course as proposed. In response to other comments, the SBOE took action to approve additional changes to the proposed new course.

**Comment.** One parent recommended adding student expectations focusing on systematic racism, or certain policies that have harmed African Americans, in the government strand of the proposed new course.

**Response.** The SBOE agrees that a student expectation on racial and social injustices was warranted in the proposed new course. In response to this and other comments, the SBOE took action to amend §113.51(c)(9)(E) to read: "analyze the causes and effects of government actions and legislation addressing racial and social injustices from 1960 to the present day such as the issues of voting rights, civil rights, fair housing, education, employment, affirmative action, the War on Crime, the War on Drugs, mass incarceration, and health and nutrition."

**Comment.** One parent expressed support for the addition of student expectations focusing on structural, institutional, and systemic racism and the adverse effects these policies and actions had on African Americans, including the distrust and suspicion of the government that resulted.

**Response.** The SBOE agrees that a student expectation on racial and social injustices was warranted in the proposed new course. In response to this and other comments, the SBOE took action to amend §113.51(c)(9)(E) to read: "analyze the causes and effects of government actions and legislation addressing

racial and social injustices from 1960 to the present day such as the issues of voting rights, civil rights, fair housing, education, employment, affirmative action, the War on Crime, the War on Drugs, mass incarceration, and health and nutrition."

Comment. One community member recommended replacing the word "slavery" with the word "enslavement" and the word "slaves" with "enslaved people" throughout the proposed TEKS for the new Ethnic Studies: African American Studies course. The commenter stated that enslavement implies an external opposition.

Response. The SBOE disagrees and has determined that the terms "slavery" and "slaves" were appropriate as proposed as they align with language throughout the social studies TEKS.

Comment. One parent stated that it is important to include state or local components in the course and requested that the SBOE consider adding Texas-specific African American history topics.

Response. The SBOE agrees that it is important to address local examples when teaching the proposed course. However, the SBOE disagrees that local examples should be added to the proposed TEKS. The SBOE has determined that teachers may add more content than what is required in the standards.

Comment. One community member expressed support for the adoption of TEKS for the Ethnic Studies: African American Studies course.

Response. The SBOE agrees and took action to adopt the proposed new course as amended.

Comment. One community member proposed amending the student expectation in §113.51(c)(3)(F) by adding the Haitian Revolution of 1791-1804 because it was an important starting point of anti-slavery movements in the Americas.

Response. The SBOE disagrees and has determined that the suggested language was not necessary. In response to other comments, the SBOE took action to amend §113.51(c)(3)(F) to read, "analyze national and international abolition efforts, including the gradual emancipation of enslaved people in the North (1777-1804), the U.S. ban on the slave trade (1808), the abolition of slavery in Mexico (1829) and Great Britain (1833), and the significance of the Guerrero Decree in the Texas Revolution."

Comment. One community member recommended that civil rights should be referenced within the broader context of the Black Freedom Movement in the student expectations in §113.51(c)(5).

Response. The SBOE disagrees and has determined that civil rights are appropriately referenced in the student expectation in §113.51(c)(5). In response to other comments, the SBOE took action to amend the student expectation in proposed §113.51(c)(5).

Comment. One community member recommended adding Malcolm X to the student expectation in §113.51(c)(5)(B).

Response. The SBOE disagrees and has determined that the suggested change was not necessary. In response to other comments, the SBOE took action to amend the student expectation in proposed §113.51(c)(5)(B), adopted as (c)(5)(C), to read, "describe the continued struggle for civil rights in America during this time in history such as the notable works of the NAACP, National Urban League, Jackie Robinson, Rosa Parks, Martin Luther King Jr., Daisy Bates and the Little Rock Nine, the Student Non-Violent Coordinating Committee (SNCC), and local leaders."

Comment. One community member recommended adding Benjamin O. Davis, Sr. and Benjamin O. Davis, Jr. to the student expectation in §113.51(c)(5)(E).

Response. The SBOE disagrees and has determined that the suggested additions were not necessary.

Comment. Texas Environmental Justice Advocacy Services proposed amending the student expectation in §113.51(c)(7)(D) by adding the phrase "and environmental protections" after the phrase "urban development."

Response. The SBOE disagrees and has determined that the suggested addition was not necessary.

Comment. One community member proposed amending the student expectation in §113.51(c)(14)(D) by adding Notes of a Native Son by James Baldwin to the list of selected works by African American authors.

Response. The SBOE disagrees with the recommendation to add Notes of a Native Son to §113.51(c)(14)(D). However, in response to this and other comments, the SBOE amended the student expectation in §113.51(c)(14)(E) at adoption by adding James Baldwin. Additionally, the SBOE amended the student expectation in §113.51(c)(14)(D) by adding "Beloved by Toni Morrison."

Comment. One community member proposed amending the student expectation in §113.51(c)(14)(E) by adding Audre Lorde and Toni Morrison to the list of artists who have contributed works to African American self-identity.

Response. The SBOE disagrees with the recommendation to add Audre Lorde and has determined that the addition was not necessary. However, in response in this and other comments, the SBOE amended the student expectation in §113.51(c)(14)(D) at adoption by adding "Beloved by Toni Morrison."

Comment. Texas Environmental Justice Advocacy Services proposed amending the student expectations in §113.51(c)(15) by adding a new student expectation that reads, "identify how African American communities have used science and community-based participatory research or youth-led participatory action research methods to study disproportionate public health impacts among African American communities."

Response. The SBOE disagrees and has determined that the suggested addition to student expectations in §113.51(c)(15) was not necessary.

Comment. Texas Environmental Justice Advocacy Services proposed amending the student expectation in §113.51(c)(15)(B) by adding the phrase "and how industrialization has impacted African America communities and quality of life."

Response. The SBOE disagrees and has determined that the suggested addition was not necessary.

Comment. Texas Environmental Justice Advocacy Services proposed amending the student expectation in §113.51(c)(15)(C) by adding Emelda J. West to the list of contributions of African American individuals.

Response. The SBOE disagrees and has determined that the suggested addition was not necessary.

## SUBCHAPTER C. HIGH SCHOOL

19 TAC §§113.30, 113.51, 113.60, 113.61

STATUTORY AUTHORITY. The amendment and new sections are adopted under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; TEC, §28.002(c), which requires the SBOE to by rule identify the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments; and TEC, §28.025(a), which requires the SBOE to by rule determine the curriculum requirements for the foundation high school graduation program that are consistent with the required curriculum under TEC, §28.002.

CROSS REFERENCE TO STATUTE. The amendment and new sections implement Texas Education Code, §§7.102(c)(4); 28.002(a) and (c); and 28.025(a).

§113.51. *Ethnic Studies: African American Studies (One Credit).*

(a) General requirements. Students shall be awarded one credit for successful completion of this course. This course is recommended for students in Grades 10-12.

(b) Introduction.

(1) In *Ethnic Studies: African American Studies*, an elective course, students learn about the history and cultural contributions of African Americans. This course is designed to assist students in understanding issues and events from multiple perspectives. This course develops an understanding of the historical roots of African American culture, especially as it pertains to social, economic, and political interactions within the broader context of United States history. It requires an analysis of important ideas, social and cultural values, beliefs, and traditions. Knowledge of past achievements provides citizens of the 21st century with a broader context within which to address the many issues facing the United States.

(2) To support the teaching of the essential knowledge and skills, the use of a variety of rich primary and secondary source material such as biographies, autobiographies, landmark cases of the U.S. Supreme Court, novels, speeches, letters, diaries, poetry, songs, and artwork is encouraged. Resources are available from museums, historical sites, presidential libraries, and local and state preservation societies.

(3) The eight strands of the essential knowledge and skills for social studies are intended to be integrated for instructional purposes. Skills listed in the social studies skills strand in subsection (c) of this section should be incorporated into the teaching of all essential knowledge and skills for social studies. A greater depth of understanding of complex content material can be attained when integrated social studies content from the various disciplines and critical-thinking skills are taught together.

(4) Students identify the role of the U.S. free enterprise system within the parameters of this course and understand that this system may also be referenced as capitalism or the free market system.

(5) Throughout social studies in Kindergarten-Grade 12, students build a foundation in history; geography; economics; government; citizenship; culture; science, technology, and society; and social studies skills. The content, as appropriate for the grade level or course, enables students to understand the importance of patriotism, function in a free enterprise society, and appreciate the basic democratic values of our state and nation as referenced in the Texas Education Code (TEC), §28.002(h).

(6) Students understand that a constitutional republic is a representative form of government whose representatives derive their authority from the consent of the governed, serve for an established tenure, and are sworn to uphold the constitution.

(7) State and federal laws mandate a variety of celebrations and observances, including Celebrate Freedom Week.

(A) Each social studies class shall include, during Celebrate Freedom Week as provided under the TEC, §29.907, or during another full school week as determined by the board of trustees of a school district, appropriate instruction concerning the intent, meaning, and importance of the Declaration of Independence and the U.S. Constitution, including the Bill of Rights, in their historical contexts. The study of the Declaration of Independence must include the study of the relationship of the ideas expressed in that document to subsequent American history, including the relationship of its ideas to the rich diversity of our people as a nation of immigrants, the American Revolution, the formulation of the U.S. Constitution, and the abolitionist movement, which led to the Emancipation Proclamation and the women's suffrage movement.

(B) Each school district shall require that, during Celebrate Freedom Week or other week of instruction prescribed under subparagraph (A) of this paragraph, students in Grades 3-12 study and recite the following text: "We hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the Pursuit of Happiness--That to secure these Rights, Governments are instituted among Men, deriving their just Powers from the Consent of the Governed."

(8) Students identify and discuss how the actions of U.S. citizens and the local, state, and federal governments have either met or failed to meet the ideals espoused in the founding documents.

(9) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) History. The student understands the influential historical points of reference in African history prior to 1619. The student is expected to:

(A) identify the major eras, civilizations, and contributions of African history that are foundational to humanity and predate American slavery;

(B) describe and compare the various pre-colonial, indigenous, and ancestral roots of African Americans such as educational systems, social and political developments, family structures, global trade, and exchange; and

(C) analyze the effects of dehumanization through the capture, trade, and enslavement of Africans, within a regional and global context, including the Atlantic Slave Trade.

(2) History. The student understands the economic, political, and social development of slavery during the American colonial period, 1619 to 1775. The student is expected to:

(A) analyze the African diaspora, including the role of Africans and Europeans;

(B) compare and contrast the colonization of North, Central, and South America and the West Indies and neighboring islands and analyze the interactions among enslaved Africans and Native Americans;

(C) describe and explain the impact of the Middle Passage on African American culture; and

(D) explain the causes for the growth and development of slavery, primarily in the Southern colonies.

(3) History. The student understands the rationalization and ramifications for the continuation and growth of slavery and the anti-slavery movement in the United States from independence (1776) through the Emancipation Proclamation (1863). The student is expected to:

(A) analyze the economic, social, religious, and legal rationalization used by some Americans to continue and expand slavery after declaring independence from Great Britain;

(B) describe the impact of the Three-Fifths Compromise and the Fugitive Slave Act;

(C) analyze the role that slavery played in the development of nationalism and sectionalism during the early 19th century;

(D) analyze and evaluate various forms of individual and group resistance against the enslavement of African Americans;

(E) analyze the influence of significant individuals and groups prior to and during the abolitionist movement to determine their impact on ending slavery such as the work of David Walker, Elijah P. Lovejoy, John Brown, Sojourner Truth, Frederick Douglass, the American Anti-Slavery Society, and the Underground Railroad; and

(F) analyze national and international abolition efforts, including the gradual emancipation of enslaved people in the North (1777-1804), the U.S. ban on the slave trade (1808), the abolition of slavery in Mexico (1829) and Great Britain (1833), and the significance of the Guerrero Decree in the Texas Revolution.

(4) History. The student understands African American life from the Civil War through World War I. The student is expected to:

(A) summarize the roles and experiences of African American soldiers and spies in both the North and South during the Civil War;

(B) describe and analyze the successes and failures of Reconstruction;

(C) compare the opportunities and challenges faced by African Americans from post-Reconstruction to the early 20th century and viewpoints and actions of African Americans, including Ida B. Wells, W.E.B. Du Bois, Booker T. Washington, Marcus Garvey, the National Association for the Advancement of Colored People (NAACP), Freedmen's Towns, and the Exodusters;

(D) explain the circumstances surrounding increased violence and extremism such as the Ku Klux Klan (KKK), the Colfax Massacre, lynchings, race riots, and the Camp Logan Mutiny (The Houston Riot of 1917);

(E) explain the impact of the convict leasing system on African Americans such as the Sugar Land 95;

(F) explain how the rise of Jim Crow laws affected the life experiences of African Americans in the late 19th and early 20th centuries;

(G) describe the impact of the U.S. Supreme Court decision *Plessy v. Ferguson* (1896);

(H) analyze the social, economic, and political actions of African Americans in response to the Jim Crow era during the early

20th century such as the Great Migration, civil rights organizations, social organizations, political organizations, and organized labor unions;

(I) examine the experiences of African American soldiers during and after World War I; and

(J) describe the impact of African American military service from Reconstruction through World War I, including the role of the Buffalo Soldiers.

(5) History. The student understands change and continuity in the African American cultural identity during the Great Depression, World War II, and the Civil Rights Movement. The student is expected to:

(A) compare the positive and negative effects of the Great Depression and New Deal on the social and economic status of African Americans in various geographic regions;

(B) describe the impact of U.S. Supreme Court decisions *Sweatt v. Painter* (1950) and *Brown v. Board of Education* (1954);

(C) describe the continued struggle for civil rights in America during this time in history such as the notable works of the NAACP, National Urban League, Jackie Robinson, Rosa Parks, Martin Luther King Jr., Daisy Bates and the Little Rock Nine, the Student Non-Violent Coordinating Committee (SNCC), and local leaders;

(D) describe the interactions of the people of the diaspora relative to the struggle for civil rights;

(E) describe the impact of racism during World War II;

(F) explain the contributions of significant African American individuals and groups during World War II, including Doris "Dorie" Miller, the Tuskegee Airmen, and the 761st Tank Battalion;

(G) analyze how the effects of World War II laid the groundwork for the Civil Rights Movement such as Harry S. Truman's Executive Order 9981 and the contributions of A. Phillip Randolph, Mary McLeod Bethune, and Thurgood Marshall;

(H) analyze the successes, failures, and ongoing impact of the Civil Rights Movement, including methods such as sit-ins, boycotts, marches, speeches, music, and organizations; and

(I) evaluate the extent to which the Civil Rights Movement transformed American politics and society.

(6) History. The student understands the progress made and challenges faced by African Americans from the post-Civil Rights Era to contemporary times. The student is expected to:

(A) identify and explain the issues confronting African Americans in the continuing effort to achieve equality;

(B) describe the major achievements of contemporary African Americans and how their contributions have shaped the American experience such as John H. Johnson, Muhammad Ali, Fannie Lou Hamer, Shirley Chisholm, Earl G. Graves, Barbara Jordan, Colin Powell, Condoleezza Rice, and Barack Obama; and

(C) analyze the progress and challenges for African American men and women socially, economically, and politically from 1970 to the present such as the evolving role of education in the African American community.

(7) Geography. The student understands the impact of geographic factors on major events related to African Americans over time. The student is expected to:

(A) explain the causes and effects of forced and voluntary migration on individuals, groups, and societies throughout African American history;

(B) identify and explain the physical and human geographic factors that contributed to the Atlantic Slave Trade, the rise of the plantation system in the South, the development of textile mills in the North, and economic interdependence between the North and South;

(C) explain the westward movement and the Great Migration and summarize their impact on African Americans; and

(D) analyze how environmental changes impacted African American communities such as land use, settlement patterns, and urban development.

(8) Economics. The student understands ways in which African Americans have addressed opportunities, challenges, and strategies concerning economic well-being over time. The student is expected to:

(A) analyze the effects of the Industrial Revolution and the roles of "King Cotton" and the cotton gin in the economies of the United States and the world;

(B) explain how sharecropping and redlining limited economic opportunities for African Americans;

(C) explain how economic conditions and racism contributed to the Great Migration;

(D) evaluate the economic impact of the American labor movement and unionism on African Americans from the late nineteenth century to today;

(E) analyze how various geographic, cultural, social, political, and financial factors influenced the economic mobility of African Americans such as skin color, wealth, and educational background;

(F) evaluate the effectiveness of various approaches African Americans have used to solve economic issues;

(G) trace the rise and development African American businesses and entrepreneurship from the late 19th century to today; and

(H) examine the contributions of African American and Black American Business entrepreneurship such as Black Wall Street, black inventors, and the black experience in business and the economic contributions of individuals such as Madame C. J. Walker and Maggie L. Walker.

(9) Government. The student understands the significant impact of political decisions on African Americans throughout history. The student is expected to:

(A) compare and contrast how political perspectives of free and enslaved African Americans in the late 1700s and early 1800s were influenced by the unalienable rights expressed in the Declaration of Independence and civil rights in the Bill of Rights;

(B) explain the regional perspectives toward political rights of African American men and women from the early years of the republic through 1877;

(C) analyze the construction, interpretation, and implementation of the 13th, 14th, and 15th Amendments to the U.S. Constitution and the effects on African American men and women between 1877 and 1920;

(D) analyze how government policies, court actions, and legislation impacted African Americans from the 1920s through the 1950s;

(E) analyze the causes and effects of government actions and legislation addressing racial and social injustices from 1960 to the present day such as the issues of voting rights, civil rights, fair housing, education, employment, affirmative action, the War on Crime, the War on Drugs, mass incarceration, and health and nutrition; and

(F) analyze how the changing political environment has impacted civil rights from the late 20th century to the present.

(10) Government. The student understands the impact of political interactions on the African American struggle for human rights over time. The student is expected to:

(A) analyze examples of conflict and cooperation between African Americans and other groups in the pursuit of individual freedoms and civil rights such as the Freedom Riders and the Memphis Sanitation Workers Strike;

(B) explain how various philosophies and ideologies influenced the African American experience for social, political, and legal equality such as fair housing, equal opportunity, affirmative action, and voting rights; and

(C) identify the contributions of African American leaders at local, state, and national levels of government.

(11) Citizenship. The student understands the importance of multiple and changing points of view regarding citizenship of African Americans. The student is expected to:

(A) trace how perceptions of the rights and civic responsibilities of African Americans have changed over time, including the idea of being considered property with no rights under slavery;

(B) analyze how regional differences influenced political perspectives of African American communities;

(C) analyze the significance and associations of identity nomenclature relevant to African Americans such as Negro and Black;

(D) analyze selected contemporary African American issues that have led to diverse points of view in public discourse, including rights and activism; and

(E) identify and describe the diversity of peoples of African ancestry such as Afro-Latinos, Afro-Caribbeans, and recent African immigrants.

(12) Culture. The student understands the development of African American culture and society and the impact of shared identities and differing experiences. The student is expected to:

(A) analyze the impact of assimilation, stereotypes, de facto practices, and oppression on the lives of African Americans;

(B) analyze ways in which African Americans have retained cultural identity over time while adapting to and contributing to mainstream American culture; and

(C) analyze the various cultural practices that have shaped the individual and collective identity of African Americans over time to understand shared and differing experiences.

(13) Culture. The student understands the cultural traditions and contributions of African Americans from the colonial era through Reconstruction. The student is expected to:

(A) identify and describe the influence of African oral traditions, visual art, literary art, theater, music, and dance on African American culture;

(B) describe the influence of enslavement on African American culture;

(C) identify the contributions of early African American literature, including the works of Jupiter Hammon and Phillis Wheatley;

(D) explain the origins and characteristics of different musical genres and traditions of African Americans; and

(E) describe the expanding influence of African American music through the work of performers such as the Fisk Jubilee Singers.

(14) Culture. The student understands the influence of artistic expression on the African American experience and American culture from Reconstruction to the present. The student is expected to:

(A) describe the development and influence of blues, ragtime, jazz, and hip hop music such as the achievements of composers Scott Joplin and James Reese Europe;

(B) describe how various African American expressions of dance forms such as tap dance, step dance, hip hop, and modern dance and the contributions of African American dancers such as the Dance Theater of Harlem, Katherine Dunham, Bill "Bojangles" Robinson, Alvin Ailey, and Misty Copeland have contributed to the shared identity of various groups;

(C) explain the lasting impact of the Harlem Renaissance on American culture and society such as the achievements of Louis Armstrong, Josephine Baker, Duke Ellington, Langston Hughes, Sargent Johnson, Jules Bledsoe, Paul Robeson, Augusta Savage, and James VanDerZee;

(D) describe the reactions to and the influence of selected works by African American authors such as *The Souls of Black Folk* by W.E.B. Du Bois, *Native Son* by Richard Wright, *Their Eyes Were Watching God* by Zora Neale Hurston, *Beloved* by Toni Morrison, and *Eyes on the Prize* by Henry Hampton;

(E) describe storytelling, literary, filmmaking, and visual arts contributions related to self-identity made by African Americans such as Oscar Micheaux, John T. Biggers, James Baldwin, Lorraine Hansberry, Amiri Baraka, Sidney Poitier, Maya Angelou, Faith Ringgold, August Wilson, bell hooks, Spike Lee, John Singleton, and Oprah Winfrey;

(F) describe how characteristics of African American history and culture have been reflected in various genres of art, music, film, theatre, visual arts, and dance; and

(G) analyze the impact of popular culture on African Americans during significant eras.

(15) Culture. The student understands African American educational developments, achievements, and opportunities before and after the U.S. Supreme Court decision of *Brown v. Board of Education* (1954). The student is expected to:

(A) describe the efforts to prevent the education of enslaved people and free African Americans, including anti-literacy laws;

(B) analyze the expansion of educational opportunities for African Americans, including the Freedman's Bureau, Rosenwald Schools, the Second Morrill Act (1890), the establishment of Historically Black Colleges and Universities, and the role of the National Pan-Hellenic Council (Divine 9); and

(C) describe contemporary issues in education for African American students such as the school-to-prison pipeline, opportunity gaps, overrepresentation in special education, and underrepresentation in gifted and talented opportunities.

(16) Science, technology, and society. The student understands how African American achievements in science and technology have contributed to economic and social development in the United States. The student is expected to:

(A) identify examples of how advances made by African civilizations in areas such as astronomy, mathematics, architecture, and engineering have contributed to science and technology in the United States;

(B) identify examples of how industrialization was influenced by African Americans over time; and

(C) describe the contributions of significant African American individuals to science, philosophy, mathematics, and technology such as Benjamin Banneker, George Washington Carver, Granville Woods, Mary Jackson, Katherine Johnson, Henrietta Lacks, Dorothy Vaughan, Mae Jemison, and Neil deGrasse Tyson.

(17) Social studies skills. The student understands how historians use historiography to interpret the past and applies critical-thinking skills to organize and use information acquired from a variety of valid sources, including technology. The student is expected to:

(A) analyze primary and secondary sources such as maps, graphs, speeches, political cartoons, and artifacts to acquire information to answer historical questions;

(B) analyze information by applying absolute and relative chronology through sequencing, categorizing, identifying cause-and-effect relationships, comparing and contrasting, finding the main idea, summarizing, making generalizations, making predictions, drawing inferences, and drawing conclusions;

(C) apply the process of historical inquiry to research, interpret, and use multiple types of sources of evidence;

(D) evaluate the validity of a source based on corroboration with other sources and information about the author, including points of view, frames of reference, and historical context; and

(E) identify bias and support with historical evidence a point of view on a social studies issue or event.

(18) Social studies skills. The student communicates in written, oral, and visual forms. The student is expected to:

(A) create written, oral, and visual presentations of social studies information using effective communication skills, including proper citations and avoiding plagiarism; and

(B) use social studies terminology correctly.

(19) Social studies skills. The student uses geographic tools to collect, analyze, and interpret data. The student is expected to:

(A) create a visual representation of historical information such as thematic maps, graphs, and charts; and

(B) pose and answer questions about geographic distributions and patterns shown on maps, graphs, charts, and available databases.

(20) Social studies skills. The student uses problem-solving and decision-making skills, working independently and with others. The student is expected to use problem-solving and decision-making processes to identify a problem, gather information, list and con-

sider options, consider advantages and disadvantages, choose and implement a solution, and evaluate the effectiveness of the solution.

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

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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



## SUBCHAPTER D. OTHER SOCIAL STUDIES COURSES

### 19 TAC §§113.51 - 113.68, 113.71 - 113.80

**STATUTORY AUTHORITY.** The repeals are adopted under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; TEC, §28.002(c), which requires the SBOE to by rule identify the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments; and TEC, §28.025(a), which requires the SBOE to by rule determine the curriculum requirements for the foundation high school graduation program that are consistent with the required curriculum under TEC, §28.002.

**CROSS REFERENCE TO STATUTE.** The repeals implement Texas Education Code, §§7.102(c)(4); 28.002(a) and (c); and 28.025(a).

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

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### 19 TAC §§113.101 - 113.126

**STATUTORY AUTHORITY.** The new sections are adopted under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; TEC, §28.002(c), which requires the SBOE to by rule identify the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating

instructional materials and addressed on the state assessment instruments; and TEC, §28.025(a), which requires the SBOE to by rule determine the curriculum requirements for the foundation high school graduation program that are consistent with the required curriculum under TEC, §28.002.

**CROSS REFERENCE TO STATUTE.** The new sections implement Texas Education Code, §§7.102(c)(4); 28.002(a) and (c); and 28.025(a).

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

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## CHAPTER 126. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR TECHNOLOGY APPLICATIONS SUBCHAPTER C. HIGH SCHOOL

### 19 TAC §§126.31 - 126.52

The State Board of Education (SBOE) adopts the repeal of §§126.31-126.52 and 126.61-126.67, concerning Texas Essential Knowledge and Skills (TEKS) for technology applications. The repeals are adopted without changes to the proposed text as published in the March 6, 2020 issue of the *Texas Register* (45 TexReg 1548) and will not be republished. The adopted repeals update the TEKS to align with recent legislation requiring the board to consolidate high school technology applications TEKS into career and technical education (CTE) TEKS and eliminate TEKS for duplicative courses.

**REASONED JUSTIFICATION:** The 86th Texas Legislature, 2019, passed House Bill 963, which required the SBOE, not later than March 1, 2020, to conduct a review of the TEKS for CTE and technology applications courses for Grades 9-12 and amend the board's rules to consolidate courses and eliminate duplicative courses. The SBOE is only required to implement this provision if the legislature appropriated money specifically for that purpose. If the legislature did not appropriate money specifically for that purpose, the SBOE may, but is not required to, implement a requirement using other appropriations available for that purpose. The legislature did not appropriate money specifically for the purpose of implementing this requirement.

All but two of the courses in Chapter 126, Subchapters C and D, were repealed and adopted as new courses in 19 TAC Chapter 130. Section 126.40 and §126.45, relating to robotics programming and digital video and audio design, are duplicative of other courses in Chapter 130 and were not adopted as new courses in Chapter 130.

The SBOE approved the proposed repeals for first reading and filing authorization at its January 31, 2020 meeting and for second reading and final adoption at its April 17, 2020 meeting.

In accordance with TEC, §7.102(f), the SBOE approved the repeals for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2020-2021 school year. The earlier effective date will allow districts of innovation that begin school prior to the statutorily required start date to implement the rulemaking when they begin their school year. The effective date is August 1, 2020.

**SUMMARY OF COMMENTS AND RESPONSES:** The public comment period on the proposal began March 6, 2020, and ended April 10, 2020. The SBOE also provided an opportunity for registered oral and written comments at its April 2020 meeting in accordance with the SBOE board operating policies and procedures. Following is a summary of the public comment received and the corresponding response.

**Comment.** An administrator expressed support for eliminating courses duplicated in 19 TAC Chapter 126, Texas Essential Knowledge and Skills for Technology Applications, and 19 TAC Chapter 130, Texas Essential Knowledge and Skills for Career and Technical Education.

**Response.** The SBOE agrees that the elimination of duplicative courses is appropriate.

**STATUTORY AUTHORITY.** The repeals are adopted under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; TEC, §28.002(c), which requires the SBOE to by rule identify the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments; and TEC, §28.025(a), which requires the SBOE to by rule determine the curriculum requirements for the foundation high school graduation program that are consistent with the required curriculum under the TEC, §28.002.

**CROSS REFERENCE TO STATUTE.** The repeals implement Texas Education Code, §§7.102(c)(4); 28.002(a) and (c); and 28.025(a).

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

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## SUBCHAPTER D. OTHER TECHNOLOGY APPLICATIONS COURSES

### 19 TAC §§126.61 - 126.67

**STATUTORY AUTHORITY.** The repeals are adopted under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the

subjects of the required curriculum; TEC, §28.002(c), which requires the SBOE to by rule identify the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments; and TEC, §28.025(a), which requires the SBOE to by rule determine the curriculum requirements for the foundation high school graduation program that are consistent with the required curriculum under the TEC, §28.002.

**CROSS REFERENCE TO STATUTE.** The repeals implement Texas Education Code, §§7.102(c)(4); 28.002(a) and (c); and 28.025(a).

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

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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## CHAPTER 128. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR SPANISH LANGUAGE ARTS AND READING AND ENGLISH AS A SECOND LANGUAGE

### SUBCHAPTER C. HIGH SCHOOL

#### 19 TAC §§128.30 - 128.32

The State Board of Education (SBOE) adopts the repeal of §§128.30-128.32, concerning Texas Essential Knowledge and Skills (TEKS) for Spanish language arts and reading and English as a second language. The repeals are adopted without changes to the proposed text as published in the March 6, 2020 issue of the *Texas Register* (45 TexReg 1550) and will not be republished. The adopted repeals remove the TEKS adopted to be effective in 2009 for high school Spanish language arts and reading and English as a second language and related implementation language that will be superseded by new 19 TAC §§128.33-128.35 beginning with the 2020-2021 school year.

**REASONED JUSTIFICATION:** In 2017, the SBOE adopted revisions to the Spanish language arts and reading and English as a second language TEKS. The revised TEKS for high school are scheduled to be implemented beginning with the 2020-2021 school year.

With the implementation of the revised Spanish language arts and reading TEKS for high school scheduled for the 2020-2021 school year, the current TEKS in 19 TAC §§128.30-128.32 are no longer needed and may now be repealed.

The SBOE approved the proposed repeals for first reading and filing authorization at its January 31, 2020 meeting and for second reading and final adoption at its April 17, 2020 meeting.

In accordance with Texas Education Code, §7.102(f), the SBOE approved the repeals for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2020-2021 school year. The earlier effective date will allow districts of innovation that begin school prior to the statutorily required start date to implement the proposed rulemaking when they begin their school year. The effective date is August 1, 2020.

**SUMMARY OF COMMENTS AND RESPONSES:** The public comment period on the proposal began March 6, 2020, and ended April 10, 2020. The SBOE also provided an opportunity for registered oral and written comments at its April 2020 meeting in accordance with the SBOE board operating policies and procedures. No comments were received.

**STATUTORY AUTHORITY.** The repeals are adopted under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; TEC, §28.002(c), which requires the SBOE to by rule identify the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments; and TEC, §28.025(a), which requires the SBOE to by rule determine the curriculum requirements for the foundation high school graduation program that are consistent with the required curriculum under the TEC, §28.002.

**CROSS REFERENCE TO STATUTE.** The repeals implement Texas Education Code, §§7.102(c)(4); 28.002(a) and (c); and 28.025(a).

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

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## CHAPTER 130. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR CAREER AND TECHNICAL EDUCATION

The State Board of Education (SBOE) adopts the repeal of §§130.13, 130.14, and 130.308-130.310 and new §§130.123-130.127, 130.315-130.318, 130.420-130.435, and 130.485-130.491, concerning Texas Essential Knowledge and Skills (TEKS) for career and technical education (CTE). The repeals and new sections are adopted without changes to the proposed text as published in the March 6, 2020 issue of the *Texas Register* (45 TexReg 1551) and will not be republished. The adopted repeals and new sections update the TEKS to align with recent legislation requiring the board to consolidate high school technology applications TEKS into CTE TEKS and eliminate TEKS for duplicative courses. The new sections also

update the TEKS for CTE to add a new career cluster in energy to align with revised programs of study.

**REASONED JUSTIFICATION:** The 86th Texas Legislature, 2019, passed House Bill 963, which required the SBOE, not later than March 1, 2020, to conduct a review of the TEKS for CTE and technology applications courses for Grades 9-12 and amend the board's rules to consolidate courses and eliminate duplicative courses. The SBOE is only required to implement this provision if the legislature appropriated money specifically for that purpose. If the legislature did not appropriate money specifically for that purpose, the SBOE may, but is not required to, implement a requirement using other appropriations available for that purpose. The legislature did not appropriate money specifically for the purpose of implementing this requirement.

Texas is redesigning state-level programs of study to include coherent and rigorous content with challenging academic standards and relevant career and technical content. Programs of study will be aligned with state and regional labor market information, including high-wage, high-skill, and in-demand occupations. As a part of the program of study revision process, Texas conducted a statewide labor market analysis that discovered several instances where occupations and postsecondary training overlap. As part of this process, it was recommended that a new career cluster in energy be added to address programs of study in the energy industry.

In Chapter 130, repealed courses from 19 TAC Chapter 126 were adopted as new courses in Subchapters C, K, and O. Subchapter K also includes the repeal of duplicative courses in web technologies and computer programming. New Subchapter Q includes two courses formerly contained in Subchapter A as well as five new courses.

The SBOE approved the proposed repeals and new sections for first reading and filing authorization at its January 31, 2020 meeting and for second reading and final adoption at its April 17, 2020 meeting.

In accordance with TEC, §7.102(f), the SBOE approved the repeals and new sections for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2020-2021 school year. The earlier effective date will allow districts of innovation that begin school prior to the statutorily required start date to implement the rulemaking when they begin their school year. The effective date is August 1, 2020.

**SUMMARY OF COMMENTS AND RESPONSES:** The public comment period on the proposal began March 6, 2020, and ended April 10, 2020. The SBOE also provided an opportunity for registered oral and written comments at its April 2020 meeting in accordance with the SBOE board operating policies and procedures. Following is a summary of the comments received and corresponding responses.

**Comment.** An administrator expressed support for eliminating courses duplicated in Chapter 126, Texas Essential Knowledge and Skills for Technology Applications, and Chapter 130, Texas Essential Knowledge and Skills for Career and Technical Education.

**Response.** The SBOE agrees that the elimination of duplicative courses is appropriate.

**Comment.** An administrator stated that it is not clear whether teachers with technology applications certifications will be permitted to teach computer science courses and expressed concern that eliminating Computer Programming I and II, which tech-

nology applications teachers are currently certified to teach, without a provision that would allow them to teach the alternative computer science courses would create a burden for school districts that already struggle with hiring computer science teachers.

Response. This comment is outside the scope of the proposed rulemaking.

Comment. An administrator stated that certification requirements for teaching computer science courses from 19 TAC Chapter 126 and CTE computer programming courses from 19 TAC Chapter 130 vary and that while teachers need certification in computer science to teach Computer Science I, the certification for the CTE course Practicum in Information Technology requires certification in technology applications. The commenter stated that computer science teachers should be able to teach courses listed in both the programming and the software development pathways.

Response. This comment is outside the scope of the proposed rulemaking.

## SUBCHAPTER A. AGRICULTURE, FOOD, AND NATURAL RESOURCES

### 19 TAC §130.13, §130.14

STATUTORY AUTHORITY. The repeals are adopted under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; TEC, §28.002(c), which requires the SBOE to by rule identify the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments; and TEC, §28.025(a), which requires the SBOE to by rule determine the curriculum requirements for the foundation high school graduation program that are consistent with the required curriculum under the TEC, §28.002.

CROSS REFERENCE TO STATUTE. The repeals implement Texas Education Code, §§7.102(c)(4); 28.002(a) and (c); and 28.025(a).

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

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## SUBCHAPTER C. ARTS, AUDIO/VIDEO TECHNOLOGY, AND COMMUNICATIONS

### 19 TAC §§130.123 - 130.127

STATUTORY AUTHORITY. The new sections are adopted under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; TEC, §28.002(c), which requires the SBOE to by rule identify the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments; and TEC, §28.025(a), which requires the SBOE to by rule determine the curriculum requirements for the foundation high school graduation program that are consistent with the required curriculum under the TEC, §28.002.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code, §§7.102(c)(4); 28.002(a) and (c); and 28.025(a).

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## SUBCHAPTER K. INFORMATION TECHNOLOGY

### 19 TAC §§130.308 - 130.310

STATUTORY AUTHORITY. The repeals are adopted under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; TEC, §28.002(c), which requires the SBOE to by rule identify the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments; and TEC, §28.025(a), which requires the SBOE to by rule determine the curriculum requirements for the foundation high school graduation program that are consistent with the required curriculum under the TEC, §28.002.

CROSS REFERENCE TO STATUTE. The repeals implement Texas Education Code, §§7.102(c)(4); 28.002(a) and (c); and 28.025(a).

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## 19 TAC §§130.315 - 130.318

**STATUTORY AUTHORITY.** The new sections are adopted under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; TEC, §28.002(c), which requires the SBOE to by rule identify the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments; and TEC, §28.025(a), which requires the SBOE to by rule determine the curriculum requirements for the foundation high school graduation program that are consistent with the required curriculum under the TEC, §28.002.

**CROSS REFERENCE TO STATUTE.** The new sections implement Texas Education Code, §§7.102(c)(4); 28.002(a) and (c); and 28.025(a).

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

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## SUBCHAPTER O. SCIENCE, TECHNOLOGY, ENGINEERING, AND MATHEMATICS

### 19 TAC §§130.420 - 130.435

**STATUTORY AUTHORITY.** The new sections are adopted under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; TEC, §28.002(c), which requires the SBOE to by rule identify the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments; and TEC, §28.025(a), which requires the SBOE to by rule determine the curriculum requirements for the foundation high school graduation program that are consistent with the required curriculum under the TEC, §28.002.

**CROSS REFERENCE TO STATUTE.** The new sections implement Texas Education Code, §§7.102(c)(4); 28.002(a) and (c); and 28.025(a).

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

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## SUBCHAPTER Q. ENERGY

### 19 TAC §§130.485 - 130.491

**STATUTORY AUTHORITY.** The new sections are adopted under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; TEC, §28.002(c), which requires the SBOE to by rule identify the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments; and TEC, §28.025(a), which requires the SBOE to by rule determine the curriculum requirements for the foundation high school graduation program that are consistent with the required curriculum under the TEC, §28.002.

**CROSS REFERENCE TO STATUTE.** The new sections implement Texas Education Code, §§7.102(c)(4); 28.002(a) and (c); and 28.025(a).

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

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## CHAPTER 153. SCHOOL DISTRICT PERSONNEL

### SUBCHAPTER BB. COMMISSIONER'S RULES CONCERNING PROFESSIONAL DEVELOPMENT

The Texas Education Agency (TEA) adopts the repeal of §153.1011 and new §153.1011, concerning commissioner's rules on professional development. The repeal is adopted without changes to the proposed text as published in the March 20, 2020 issue of the *Texas Register* (45 TexReg 1922) and will not be republished. The new section is adopted with changes to the

proposed text as published in the March 20, 2020 issue of the *Texas Register* (45 TexReg 1922) and will be republished. The adopted rule actions repeal the existing teacher mentorship rule and add a new rule to implement the mentor program allotment enacted by House Bill (HB) 3, 86th Texas Legislature, 2019.

REASONED JUSTIFICATION: Section 153.1011 currently describes the program requirements for the Beginning Teacher Induction and Mentoring Program, an optional, grant-funded program to support mentorship that has been inactive due to lack of funding.

HB 3, 86th Texas Legislature, 2019, amended state law on mentorship requirements in Texas Education Code (TEC), §21.458, and created an optional mentor program allotment in TEC, §48.114. The new allotment is for eligible districts that implement a mentor training program in accordance with TEC, §21.458.

Because of these statutory changes, it is necessary to repeal §153.1011 as it relates to the Beginning Teacher Induction and Mentoring Program and replace it with a new rule related to the mentor program allotment for district mentor training programs.

The adopted new rule clarifies aspects of law related to mentor training programs for new teachers, as follows.

Adopted new subsection (a) establishes definitions related to the new rule. In response to public comment, subsection (a)(1) has been modified at adoption to clarify that a beginning teacher is a classroom teacher with less than two years of teaching experience in the subject or grade level to which the teacher is assigned.

Adopted new subsection (b) specifies how many beginning teachers a mentor teacher may be assigned, specific district- and school-based staff who must complete mentor training, and the timelines related to mentor training. Subsection (b) also clarifies the appropriate times of day and frequency with which meetings between mentors and beginning teachers should occur and the topics that mentor teachers and beginning teachers must cover. In response to public comment, modifications were made to subsection (b) at adoption. Subsection (b)(4) has been modified at adoption to indicate the responsibilities of a district, not a mentor teacher, and to specify that the district must designate at least 12 hours per semester for mentoring activities to occur between the mentor and beginning teacher. Subsection (b)(5)(A) has been modified at adoption to remove the option for 2 of the 12 required hours of mentoring activity between the mentor and beginning teacher per semester to occur outside the regularly contracted school day.

Adopted new subsection (c) addresses the application approval process for mentor program allotment funding.

Adopted new subsection (d) specifies compliance requirements for participating districts. In response to public comment, subsection (d)(1) has been modified at adoption to clarify the type of information collected through compliance reporting. The data will include an annual compliance report submitted by the district and an annual survey of the district's beginning teachers and mentor teachers for whom funds were used under TEC, §48.114.

Adopted new subsection (e) addresses permissible uses of mentor program allotment funds.

Adopted new subsection (f) outlines program review requirements.

Adopted new subsection (g) specifies the finality of commissioner decisions regarding mentor program allotment funds. In response to public comment, subsection (g) has been modified at adoption to clarify that the limitation on appeals addresses appeals to the commissioner, which reflects the promotion of efficient administration of the mentor allotment program.

Changes have been made to the assessment of data and reporting impact since published as proposed.

As proposed, the new rule required school districts to submit an application to be approved for mentor program allotment funds. In addition, school districts that receive mentor program allotment funds are required to submit information annually to verify program compliance and submit any information requested by TEA through activity/progress reports. At adoption, new subsection (d)(1)(B) was added to require beginning teachers and mentor teachers for whom funds were used under TEC, §48.114, to complete an annual survey as part of the verification of compliance.

Changes have been made to the assessment of principal and classroom teacher paperwork requirements since published as proposed.

At proposal, TEA determined that the proposed new rule would require a written report or other paperwork but that the rule did not specifically require a principal or classroom teacher to complete the report or paperwork. However, at adoption, new subsection (d)(1)(B) was added to require beginning teachers and mentor teachers for whom funds were used under TEC, §48.114, to complete an annual survey as part of the verification of compliance. Therefore, TEA has updated this assessment of paperwork requirements. The TEA has determined that the adopted new rule requires a written report or other paperwork to be completed by a principal or classroom teacher. However, the rule imposes the least burdensome requirement possible to achieve the objective of the rule.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began March 20, 2020, and ended April 20, 2020. Following is a summary of the comments received and corresponding responses.

Comment: The Texas Classroom Teachers Association (TCTA) commented that the definition of a beginning teacher should include one who has less than two years of experience in the subject or grade level to which the teacher is assigned, consistent with statutory language in TEC, §21.458(a).

Agency Response: The agency agrees. Subsection (a)(1) has been modified at adoption to clarify that a beginning teacher is a teacher who has less than two years of teaching experience in the grade level or subject to which the teacher is assigned.

Comment: TCTA commented that the definition of a mentor teacher should include statutory language from TEC, §21.458(a)(1) and (2), indicating that mentors must, to the extent practicable, teach in the same school and subject or grade level as the beginning teacher. TCTA commented this addition would emphasize best practices on selecting and assigning mentors.

Agency Response: The agency disagrees. Since TEC, §21.458, explicitly states that mentors must, to the extent practicable, teach in the same school and subject or grade level as the beginning teacher, those requirements do not need to be included in rule.

Comment: TCTA commented that subsection (b)(2) regarding mentor assignment should include the requirements in TEC, §21.458(a)(1) and (2), because it would outline the timelines and required level of commitment from districts and mentors to implement mentor programs with fidelity.

Agency Response: The agency disagrees. TEC, §21.458(b), requires the commissioner to include in rule the number of classroom teachers that may be assigned to a mentor, which is the intent of subsection (b)(2). Since TEC, §21.458(a)(1) and (2), state that, to the extent practicable, the mentor teacher must teach in the same grade or subject level and school as the beginning teacher, those requirements do not need to be included in rule.

Comment: TCTA expressed appreciation for subsection (b)(4), which requires districts to abide by TEC, §21.404, when designating a specific time for mentoring activities to occur. TCTA commented that its members have expressed concerns regarding campus and district attempts to use a teacher's planning and preparation time in ways inconsistent with TEC, §21.404.

Agency Response: The agency agrees that districts must abide by TEC, §21.404, when designating a specific time for mentoring meetings to occur.

Comment: TCTA commented that subsection (b)(4) should be renamed because the substance of the paragraph relates to district, not mentor, roles and responsibilities.

Agency Response: The agency agrees. Subsection (b)(4) has been modified at adoption to clarify that the paragraph addresses the district roles and responsibilities.

Comment: TCTA commented that subsection (b)(4) should include language from TEC, §21.458(g)(2), indicating that a district must provide release time or a reduced teaching load to mentor and beginning teachers, because it would indicate ways in which districts can facilitate time for mentoring activities to occur.

Agency Response: The agency disagrees. The purpose of subsection (b)(4) is to clarify that districts must abide by the requirements in TEC, §21.404, when specifying a time during which mentoring activities can occur. Since TEC, §21.458(g)(2), explicitly states that districts must schedule release time or a reduced teacher load for mentor teachers and beginning teachers to facilitate mentoring activities, those requirements do not need to be included in this rule.

Comment: TCTA commented that the 2 of the 12 required hours of mentoring activities should not be allowed to occur outside the regularly contracted school day because it conflicts with statutory requirements of TEC, §21.458(g).

Agency Response: The agency agrees. Subsection (b)(4) and (5)(A) have been modified at adoption to clarify that a district must designate at least 12 hours of time during the regularly contracted school day for mentoring activities to occur between mentor and beginning teachers.

Comment: Texas State Teachers Association (TSTA) commented it was unnecessary to state that districts may use teacher designations under TEC, §21.3521, to meet mentor selection requirements because district participation in the teacher incentive allotment is optional and other districts are equally capable of identifying highly effective teachers.

Agency Response: The agency disagrees. Subsection (b)(1)(C) provides further clarity in how a district may identify teachers who

have a superior record of improving student achievement, and no district is required to use these designations.

Comment: TSTA commented that the provisions in subsection (b)(5)(B)(i)(I)-(IV) exceed the parameters outlined in TEC, §21.458, and are unnecessary because they are too prescriptive, and mentor teachers, who are selected for their effectiveness, would know how to orient beginning teachers to the context, policies, and practices of the district. Additionally, TSTA commented that subsection (b)(5)(B)(ii)-(iv) sufficiently cover the intent of subsection (b)(5)(B)(i)(I)-(IV).

Agency Response: The agency disagrees. The provisions of subsection (b)(5)(B)(i)(I)-(IV) further clarify high-leverage best practices related to district context, policies, and practices with which beginning teachers interact daily.

Comment: TSTA commented that all districts that have implemented a mentoring program in accordance with TEC, §21.458, are entitled to an allotment as determined by a commissioner formula. TSTA referenced language in TEC, §48.114, stating that the commissioner formula is to determine "the amount to which" each district is entitled, and not base it on the availability of funds. TSTA also commented that annual adjustments to the funding formula may obscure the application process for districts.

Agency Response: The agency disagrees. The Texas Legislature appropriated \$3 million in funding for the mentor program allotment for the current biennium, and, should it decline to appropriate funds for a future biennium, no allotment funding would be available. Furthermore, a school district may not receive an allotment if its mentoring program does not meet the requirements of TEC, §21.458. Finally, there is no limitation in TEC, §48.114, on the ability of the commissioner to revise the allotment funding formula.

Comment: Texas Public Charter School Association (TPCSA) noted its support for the proposed new rule. Specifically, TPCSA supported the fact that charter school teachers do not need to be certified to serve as mentors, that mentor teachers must have three years of experience and a proven impact on student achievement, and that districts may use teacher designation under TEC, §21.3521, to fulfill some of the mentor selection requirements.

Agency Response: The agency agrees that mentor teachers serving in charter schools do not need to be certified classroom teachers and that districts may use designations through the teacher incentive allotment to fulfill some of the mentor selection requirements.

Comment: TPCSA expressed concern that without proper context for subsection (a)(2)(B), it may seem the agency is waiving a certification requirement for charter teachers to serve as mentors when most charter teachers do not require certification under TAC.

Agency Response: The agency disagrees that additional context is required in subsection (a)(2)(B) because the intent is to clarify mentor teacher certification requirements.

Comment: TPCSA commented that subsection (b)(1)(C) does not include the reason mentor teachers must have three years of teaching experience. TPCSA noted that three years of teaching experience suffices for establishing a superior record of student achievement.

Agency Response: The agency disagrees. While three years of teaching experience may be sufficient for some teachers to demonstrate a superior impact on student achievement, this is not necessarily true for all teachers. Additionally, the intent of subsection (b)(1)(C) is to clarify that districts may use teacher designations under TEC, §21.3521, as a way to identify highly effective teachers and includes language from TEC, §21.458(b)(3), for context.

Comment: Educate Texas commented that it would benefit districts and teachers if the approval for the "Mentor School Program" would allow for an appeal.

Agency Response: The agency disagrees. However, subsection (g) has been modified at adoption to clarify that the limitation on appeals addresses appeals to the commissioner, which reflects the promotion of efficient administration of the mentor program allotment.

Comment: Educate Texas commented that funding is based on the availability of funds, and the commissioner will have control over which districts receive funding. Educate Texas suggested the agency may consider this arbitrary decision-making related to which districts, teachers, and students may benefit.

Agency Response: The agency disagrees that the process for district funding will be arbitrary. The agency has posted a transparent application process to its website, which is based on statutory requirements. The agency has also posted to its website how funding will prioritize districts based on need with a transparent process for assigning priority points.

Comment: Educate Texas commented that the agency's reported fiscal impact to districts is zero, which is not the case if districts want to implement meaningful mentor programs.

Agency Response: The agency disagrees. Districts across the state vary greatly in terms of the infrastructure and programmatic elements already in place for mentor programs. Additionally, it is assumed there will be great variability among districts regarding how they choose to implement mentor programs, creating differences in programmatic spending.

Comment: Educate Texas commented that the agency may want to clarify how charter school teachers who do not need to be certified to teach may be eligible for state funding for the mentor program and offer funding proportional to traditional schools.

Agency Response: The agency provides the following clarification. Charter school teachers who do not need to be certified to serve as mentors may be eligible for state funding through the mentor program allotment.

Comment: Educate Texas commented that the agency may want to specify the types of data that will be collected from districts so that they can make informed decisions when applying.

Agency Response: The agency agrees. Subsection (d)(1) has been modified at adoption to clarify the type of information that will be collected through annual compliance reporting. The data will include an annual compliance report submitted by the district and an annual survey of the district's beginning teachers and mentor teachers for whom funds were used under TEC, §48.114.

Comment: Educate Texas commented that the agency should consider sharing information about the most comprehensive mentorship training programs to help inform districts in developing their programs.

Agency Response: The comment is outside the scope of the proposed rule. The agency agrees that providing information on comprehensive mentorship training programs would be helpful and will post information to its website.

### 19 TAC §153.1011

STATUTORY AUTHORITY. The repeal is adopted under Texas Education Code (TEC), §21.458, which allows districts to assign mentor teachers to work with new teachers and provides requirements for mentor selection, assignment, and training and topics to be covered between the mentor teacher and the classroom teacher being mentored. TEC, §21.458(b), requires the commissioner to adopt rules necessary to administer this statute; and TEC, §48.114, which establishes a mentor program allotment to be used for funding eligible district mentor training programs; outlines permissible use of mentor program allotment funds, which include mentor teacher stipends, scheduled release time for mentoring activities, and mentor support through providers of mentor training; and requires the commissioner to adopt a formula to determine the amount to which eligible school districts are entitled.

CROSS REFERENCE TO STATUTE. The repeal implements Texas Education Code, §21.458 and §48.114.

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

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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



### 19 TAC §153.1011

STATUTORY AUTHORITY. The new section is adopted under Texas Education Code (TEC), §21.458, which allows districts to assign mentor teachers to work with new teachers and provides requirements for mentor selection, assignment, and training and topics to be covered between the mentor teacher and the classroom teacher being mentored. TEC, §21.458(b), requires the commissioner to adopt rules necessary to administer this statute; and TEC, §48.114, which establishes a mentor program allotment to be used for funding eligible district mentor training programs; outlines permissible use of mentor program allotment funds, which include mentor teacher stipends, scheduled release time for mentoring activities, and mentor support through providers of mentor training; and requires the commissioner to adopt a formula to determine the amount to which eligible school districts are entitled.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §21.458 and §48.114.

§153.1011. *Mentor Program Allotment.*

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

(1) Beginning teacher--A classroom teacher in Texas who has less than two years of teaching experience in the subject or grade level to which the teacher is assigned.

(2) Classroom teacher--An educator who is employed by a school district in Texas and who, not less than an average of four hours each day, teaches in an academic instructional setting or a career and technical instructional setting. The term does not include a teacher's aide or a full-time administrator.

(A) For a school district, a classroom teacher, as defined in this paragraph, must hold an appropriate certificate issued by the State Board for Educator Certification and must meet the specifications regarding instructional duties defined in this paragraph.

(B) For an open-enrollment charter school, a classroom teacher is not required to be certified but must meet the qualifications of the employing charter school and the specifications regarding instructional duties defined in this paragraph.

(3) Mentor teacher--A classroom teacher in Texas who provides effective support to help beginning teachers successfully transition into the teaching assignment.

(4) School district--For the purposes of this section, the definition of school district includes open-enrollment charter schools.

(5) Teacher of record--An educator who is employed by a school or district and who teaches in an academic instructional setting or a career and technical instructional setting and is responsible for evaluating student achievement and assigning grades.

(b) Program requirements. In order for a district mentor program to receive funds through the mentor program allotment, as described in Texas Education Code (TEC), §48.114, the program must be approved by the commissioner of education using the application and approval process described in subsection (c) of this section. To be approved by the commissioner, district mentor programs must comply with TEC, §21.458, and commit to meet the following requirements.

(1) Mentor selection. To qualify as a mentor teacher, a classroom teacher must:

(A) complete a research-based mentor and induction training program approved by the commissioner;

(B) complete a mentor training program provided by the district;

(C) have at least three complete years of teaching experience with a superior record of assisting students, as a whole, in achieving improvement in student performance. Districts may use the master, exemplary, or recognized designations under TEC, §21.3521, to fulfill this requirement; and

(D) demonstrate interpersonal skills, instructional effectiveness, and leadership skills.

(2) Mentor assignment. School districts must agree to assign no more than:

(A) two beginning teachers to a mentor who serves as a teacher of record for, on average, six hours per instructional day; or

(B) four beginning teachers to a mentor who serves as a teacher of record for, on average, less than six hours per instructional day.

(3) District mentor training program. A school district must:

(A) provide training to mentor teachers and any appropriate district and campus employees, such as principals, assistant prin-

cipals, and instructional coaches, who work with a beginning teacher or supervise a beginning teacher;

(B) ensure that mentor teachers and any appropriate district and campus employees are trained before the beginning of the school year;

(C) provide supplemental training that includes best mentorship practices to mentor teachers and any appropriate district and campus employees throughout the school year, minimally once per semester; and

(D) provide training for a mentor assigned to a beginning teacher who is hired after the beginning of the school year by the 45th day of employment of the beginning teacher.

(4) District roles and responsibilities. A school district must designate a specific time during the regularly contracted school day for meetings between mentor teachers and the beginning teachers they mentor, which must abide by the mentor and beginning teachers' entitled planning and preparation requirements in TEC, §21.404, and the provisions of paragraph (5)(A) of this subsection.

(5) Meetings between mentors and beginning teachers. A mentor teacher must:

(A) meet with each beginning teacher assigned to the mentor not less than 12 hours each semester, with observations of the mentor teacher by the beginning teacher being mentored or observations of the beginning teacher being mentored by the mentor teacher counting toward the 12 hours each semester; and

(B) address the following topics in mentoring sessions with the beginning teacher being mentored:

(i) orientation to the context, policies, and practices of the school district, including:

(I) campus-wide student culture routines;

(II) district and campus teacher evaluation systems;

(III) campus curriculum and curricular resources, including formative and summative assessments; and

(IV) campus policies and practices related to lesson planning;

(ii) data-driven instructional practices;

(iii) specific instructional coaching cycles, including coaching regarding conferences between parents and the beginning teacher;

(iv) professional development; and

(v) professional expectations.

(c) Application approval process. Each year, TEA will provide an application and approval process for school districts to apply for mentor program allotment funding. Funding will be limited based on availability of funds, and, annually, the commissioner shall adopt a formula to determine the amount to which approved districts are entitled. The application shall address the requirements of TEC, §21.458, and include:

(1) the timeline for application and approval;

(2) approval criteria, including the minimum requirements necessary for an application to be eligible for approval; and

(3) criteria used to determine which districts would be eligible for funding.

(d) Ongoing verification of compliance with program requirements.

(1) Each year, participating districts will be required to submit or participate in a verification of compliance with program requirements through a process to be described in the application form. The verification of compliance will include:

(A) an annual compliance report, submitted by the district, attesting to compliance with authorizing statute and commissioner rule. The report is to include the number of beginning teachers for whom the district used funds received under TEC, §48.114; and

(B) an annual survey of the district's beginning teachers and mentor teachers for whom funds were used under TEC, §48.114. The survey will be used to gather data on program implementation and teacher perceptions.

(2) Failure to comply with TEC, §21.458, and this section after receiving an allotment may result in negative impact on a district's future mentor program allotment funding.

(e) Allowable expenditures. Mentor program allotment funds may only be used for the following:

(1) mentor teacher stipends;

(2) release time for mentor teachers and beginning teachers limited to activities in accordance with this section; and

(3) mentoring support through providers of mentor training.

(f) District mentor program review. School districts awarded mentor program allotment funds must agree to submit all information requested by TEA through periodic activity/progress reports, which will occur not more than once yearly. Reports will be due no later than 45 calendar days after receipt of the information request and must contain all requested information in the format prescribed by the commissioner.

(g) Final decisions. Commissioner decisions regarding eligibility for mentor program allotment funds are final and appeals to the commissioner regarding such decisions will not be considered.

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

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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## TITLE 22. EXAMINING BOARDS

### PART 5. STATE BOARD OF DENTAL EXAMINERS

#### CHAPTER 101. DENTAL LICENSURE

##### 22 TAC §101.3

The State Board of Dental Examiners (Board) adopts the amendment to 22 TAC §101.3, concerning the requirements for licensure by credentials. This amendment will remove the requirement that an applicant must submit an application to the Professional Background Information Services (PBIS), a third party vendor, for determination of a successful background verification. This rulemaking resulted from Board staff's effort to reduce licensure costs and streamline the application process for applicants. Board staff is equipped to complete Level II background verification. This amendment is adopted without changes to the proposed text as published in the May 1, 2020, issue of the *Texas Register* (45 TexReg 2812), and will not be republished.

One comment was received after publication of the proposed rule amendment during the official comment period. On June 1, 2020, the Texas Dental Association provided a written comment in support of adoption of the rule amendment as proposed. The Board agrees with this comment and no changes to the proposed rule amendment were made as a result of the comment.

This rule is adopted under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

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

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Casey Nichols

General Counsel

State Board of Dental Examiners

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##### 22 TAC §101.4

The State Board of Dental Examiners (Board) adopts this amendment to 22 TAC §101.4, concerning the requirements for temporary licensure by credentials. This amendment removes the requirement that an applicant must submit an application to the Professional Background Information Services (PBIS), a third party vendor, for determination of a successful background verification. The amendment also clarifies that biennial, not annual, renewals are required. This rulemaking resulted from Board staff's effort to reduce licensure costs and streamline the application process for applicants. Board staff is equipped to complete Level II background verification. This amendment is adopted with changes to the proposed text as published in the May 1, 2020, issue of the *Texas Register* (45 TexReg 2814), and will be republished.

One comment was received after publication of the proposed rule amendment during the official comment period. On June 1, 2020, the Texas Dental Association (TDA) provided a written comment in support of adoption of the rule amendment as proposed. TDA noted that language intended to be stricken through to denote deletion had been published in the *Texas Register* without the strikethrough. The language has been removed as per the proposed amendment's original intent.

This rule is adopted under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

§101.4. *Temporary Licensure by Credentials.*

(a) In addition to the general qualifications for licensure contained in §101.1 of this chapter (relating to General Qualifications for Licensure), an applicant for temporary licensure by credentials must present proof that the applicant:

(1) Has graduated and received either the "DDS" or "DMD" degree from a dental school accredited by the Commission on Dental Accreditation of the American Dental Association (CODA);

(2) Has taken and passed the examination for dentists given by the American Dental Association Joint Commission on National Dental Examinations;

(3) Is currently licensed in good standing in another state, the District of Columbia, or territory of the United States, provided that such licensure followed successful completion of a general dentistry clinical examination administered by another state or regional examining board;

(4) Is endorsed by the state board of dentistry in the jurisdiction in which the applicant practices at the time of the application. Such endorsement is established by providing a copy under seal of the applicant's current license, and by a certified statement that the applicant has current good standing in said jurisdiction;

(5) Has successfully passed background checks for criminal or fraudulent activities, to include information from: the National Practitioner Data Bank, the Healthcare Integrity and Protection Data Bank and/or the American Association of Dental Boards (AADB) Clearinghouse for Disciplinary Action;

(6) Is currently employed by a nonprofit corporation that is organized under the Texas Non Profit Corporation Act, and that accepts Medicaid reimbursement; and

(7) Has completed 12 hours of continuing education taken within the 12 months preceding the date the licensure application is received by the Board. All hours shall be taken in accordance with the requirements for continuing education as mandated by Chapter 104 of this title (relating to Continuing Education).

(b) A license granted under this section is valid only for practice as an employee of a non-profit corporation. If a dentist holding a temporary license under this section becomes employed by a non-profit corporation other than the non-profit corporation named in the application, the licensee must notify the Board of the change in employment within fifteen days of such change.

(c) A dentist holding a temporary license issued under this section may renew the license by submitting an application and paying all required fees.

(d) A dentist holding a temporary license may obtain a license under the provision of §101.3 of this chapter (relating to Licensure by Credentials) when the dentist meets the practice requirements set forth in that section, by requesting in writing that the Board issue such license and by paying a fee equal to the difference between the application fee charged under §101.3 of this chapter and the application fee charged under this section.

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

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Casey Nichols

General Counsel

State Board of Dental Examiners

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**22 TAC §101.14**

The State Board of Dental Examiners (Board) adopts new 22 TAC §101.14, concerning Exemption from Licensure for Certain Military Spouses. The adopted new rule is mandated by the passage of SB 1200 (86th Regular Legislative Session) and relates to exemption from licensure for certain military spouses. This rule allows qualified military spouses to practice dentistry without obtaining a license to practice dentistry during the time the military service member to whom the military spouse is married is stationed at a military installation in Texas. This new rule is adopted without changes to the proposed text as published in the May 1, 2020, issue of the *Texas Register* (45 TexReg 2815), and will not be republished.

One comment was received after publication of the proposed rule amendment during the official comment period. On June 1, 2020, the Texas Dental Association provided a written comment in support of adoption of the rule amendment as proposed. The Board agrees with this comment and no changes to the proposed rule amendment were made as a result of the comment.

This rule is adopted under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

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

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Casey Nichols

General Counsel

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**22 TAC §101.15**

The State Board of Dental Examiners (Board) adopts new 22 TAC §101.15 concerning Reinstatement of a Cancelled License. This rule will clarify the Board's considerations when reviewing an application for licensure for an applicant who previously held a Texas license that expired and was subsequently cancelled. This new rule is adopted with changes to the proposed text as published in the May 1, 2020, issue of the *Texas Register* (45 TexReg 2816), and will be republished.

After publication in the *Texas Register*, Board staff changed the proposed text of the rule in subsection (a)(1), Board staff substituted the phrase "and has practiced" to replace the existing "or had practiced." No other changes were made to the proposed text.

One comment was received after publication of the proposed rule amendment during the official comment period. On June 1, 2020, the Texas Dental Association provided a written comment in support of adoption of the rule amendment as proposed. The Board agrees with this comment and no changes to the proposed rule amendment were made as a result of the comment.

This rule is adopted under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

*§101.15. Reinstatement of a Cancelled License.*

The Board may reinstate a cancelled Texas dental license to active status, provided the license holder submits an application for reinstatement on a form prescribed by the Board, pays the appropriate fees due at the time application is made, and meets the requirements of this subsection.

(1) An applicant who, at the time of application for reinstatement, is practicing dentistry in another state, or territory outside of the United States, and has practiced dentistry actively within the two years immediately preceding the date of application, shall provide:

(A) verification of licensure and disciplinary history from all state board(s) of dentistry where the licensee has held a license;

(B) proof of active practice within the two years preceding the application;

(C) proof that the licensee has taken and passed the Texas jurisprudence assessment administered by the Board or an entity designated by the Board within one year immediately prior to application;

(D) proof of successful completion of a current course in basic life support;

(E) proof of completion of 12 hours of continuing education, taken within the 12 months preceding the date the application is received by the Board. All hours shall be taken in accordance with the requirements for continuing education as mandated by Chapter 104 of this title (relating to Continuing Education); and

(F) proof of submission of fingerprints for the retrieval of criminal history record information.

(2) An applicant who has not actively practiced for at least two years immediately preceding the request for reinstatement of a cancelled license must submit proof that the applicant has taken and passed the appropriate general dentistry clinical examination administered by a regional examining board designated by the Board as required by §101.2 of this chapter (relating to Licensure by Examination) pursuant to §257.002(d) of the Dental Practice Act.

(3) An applicant who applies to reinstate a cancelled license must comply with all other applicable provisions of the Dental Practice Act and Board rules.

(4) An applicant who applies to reinstate a cancelled license must have been in compliance or satisfied all conditions of any Board order that may have been in effect at the time the license was cancelled.

(5) The Board may, in its discretion as necessary to safeguard public health and safety, require compliance with other reasonable conditions in considering a request to reinstate a cancelled license.

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

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Casey Nichols

General Counsel

State Board of Dental Examiners

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## CHAPTER 103. DENTAL HYGIENE LICENSURE

### 22 TAC §103.3

The State Board of Dental Examiners (Board) adopts this amendment to 22 TAC §103.3, concerning the requirements for licensure by credentials. This amendment removes the requirement that an applicant must submit an application to the Professional Background Information Services (PBIS), a third party vendor, for determination of a successful background verification. This rulemaking resulted from Board staff's effort to reduce licensure costs and streamline the application process for applicants. Board staff is equipped to complete Level II background verification. This amendment is adopted without changes to the proposed text as published in the May 1, 2020, issue of the *Texas Register* (45 TexReg 2817). The rule will not be republished.

One comment was received after publication of the proposed rule amendment during the official comment period. On June 1, 2020, the Texas Dental Association provided a written comment in support of adoption of the rule amendment as proposed. The Board agrees with this comment and no changes to the proposed rule amendment were made as a result of the comment.

This rule is adopted under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

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

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Casey Nichols

General Counsel

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## 22 TAC §103.4

The State Board of Dental Examiners (Board) adopts this amendment to 22 TAC §103.4, concerning the requirements for temporary licensure by credentials. This amendment removes the requirement that an applicant must submit an application to the Professional Background Information Services (PBIS), a third party vendor, for determination of a successful background verification. The amendment also clarifies that biannual, not annual, renewals are required. This rulemaking resulted from Board staff's effort to reduce licensure costs and streamline the application process for applicants. Board staff is equipped to complete Level II background verification. This amendment is adopted without changes to the proposed text as published in the May 1, 2020, issue of the *Texas Register* (45 TexReg 2818). The rule will not be republished.

One comment was received after publication of the proposed rule amendment during the official comment period. On June 1, 2020, the Texas Dental Association provided a written comment in support of adoption of the rule amendment as proposed. The Board agrees with this comment and no changes to the proposed rule amendment were made as a result of the comment.

This rule is adopted under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

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

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General Counsel

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## 22 TAC §103.10

The State Board of Dental Examiners (Board) adopts new 22 TAC §103.10 concerning Exemption from Licensure for Certain Military Spouses. The adopted new rule is mandated by the passage of SB 1200 (86th Regular Legislative Session) and relates to exemption from licensure for certain military spouses. This new rule is adopted without changes to the proposed text as published in the May 1, 2020, issue of the *Texas Register* (45 TexReg 2819), and will not be republished.

One comment was received after publication of the proposed rule amendment during the official comment period. On June 1, 2020, the Texas Dental Association provided a written comment in support of adoption of the rule amendment as proposed. The Board agrees with this comment and no changes to the proposed rule amendment were made as a result of the comment.

This rule is adopted under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with

state laws relating to the practice of dentistry to protect the public health and safety.

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

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General Counsel

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## 22 TAC §103.11

The State Board of Dental Examiners (Board) adopts new rule 22 TAC §103.11, concerning Reinstatement of a Canceled License. This rule clarifies the Board's considerations when reviewing an application for licensure for an applicant who previously held a Texas license that expired and was subsequently cancelled. This new rule is adopted with changes to the proposed text as published in the May 1, 2020, issue of the *Texas Register* (45 TexReg 2820). The rule will be republished.

After publication in the *Texas Register*, Board staff changed the proposed text of the rule in paragraph (1). Board staff substituted the phrase "and has practiced" to replace the existing "or had practiced." No other changes were made to the proposed text.

One comment was received after publication of the proposed rule amendment during the official comment period. On June 1, 2020, the Texas Dental Association provided a written comment in support of adoption of the rule amendment as proposed. The Board agrees with this comment and no changes to the proposed rule amendment were made as a result of the comment.

This rule is adopted under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

### *§103.11 Reinstatement of a Cancelled License.*

The Board may reinstate a cancelled Texas dental hygiene license to active status, provided the license holder submits an application for reinstatement on a form prescribed by the Board, pays the appropriate fees due at the time application is made, and meets the requirements of this subsection.

(1) An applicant who, at the time of application for reinstatement, is practicing dental hygiene in another state, or territory outside of the United States, and has practiced dental hygiene actively within the two years immediately preceding the date of application, shall provide:

(A) verification of licensure and disciplinary history from all state board(s) of dentistry where the licensee has held a license;

(B) proof of active practice within the two years preceding the application;

(C) proof that the licensee has taken and passed the Texas jurisprudence assessment administered by the Board or an

entity designated by the Board within one year immediately prior to application;

(D) proof of successful completion of a current course in basic life support;

(E) proof of completion of 12 hours of continuing education, taken within the 12 months preceding the date the application is received by the Board. All hours shall be taken in accordance with the requirements for continuing education as mandated by Chapter 104 of this title (relating to Continuing Education); and

(F) proof of submission of fingerprints for the retrieval of criminal history record information.

(2) An applicant whose license has been expired for one year or more, who has not actively practiced for at least two years immediately preceding the request for reinstatement of a cancelled license, must submit proof that the applicant has taken and passed the appropriate clinical examination administered by a regional examining board designated by the Board as required by §103.2 of this chapter (relating to Licensure by Examination) pursuant to §257.002(d) of the Dental Practice Act.

(3) An applicant who applies to reinstate a cancelled license must comply with all other applicable provisions of the Dental Practice Act and Board rules.

(4) An applicant who applies to reinstate a cancelled license must have been in compliance or satisfied all conditions of any Board order that may have been in effect at the time the license was cancelled.

(5) The Board may, in its discretion as necessary to safeguard public health and safety, require compliance with other reasonable conditions in considering a request to reinstate a cancelled license.

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

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Casey Nichols

General Counsel

State Board of Dental Examiners

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

### 22 TAC §114.7

The State Board of Dental Examiners (Board) proposes new rule 22 TAC §114.7 concerning Exemption from Licensure for Certain Military Spouses. The proposed new rule is mandated by the passage of SB 1200 (86th Regular Legislative Session) and relates to exemption from licensure for certain military spouses. This new rule is adopted with changes to the proposed text as published in the May 1, 2020, issue of the *Texas Register* (45 TexReg 2821), and will be republished.

At the June 5, 2020 Board meeting, the Board voted to replace the phrase "practice" with "perform delegated permitted duties," in an effort to align the language with the Dental Practice Act and Chapter 114. No other changes were made to the proposed text.

One comment was received after publication of the proposed rule amendment during the official comment period. On June 1, 2020, the Texas Dental Association provided a written comment in support of adoption of the rule amendment as proposed. The Board agrees with this comment and no changes to the proposed rule amendment were made as a result of the comment.

This rule is adopted under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

#### §114.7 Exemption from Licensure for Certain Military Spouses.

(a) The executive director of the Texas State Board of Dental Examiners must authorize a qualified military spouse to perform delegated permitted duties as a dental assistant in Texas without obtaining a registration in accordance with §55.0041(a), Texas Occupations Code. This authorization to perform delegated permitted duties is valid during the time the military service member to whom the military spouse is married is stationed at a military installation in Texas, but is not to exceed three years.

(b) In order to receive authorization to perform delegated permitted duties the military spouse must:

(1) hold an active registration to perform delegated permitted duties as a dental assistant in another state, territory, Canadian province, or country that:

(A) has registration requirements that are determined by the board to be substantially equivalent to the requirements for registration in Texas; and

(B) is not subject to any restriction, disciplinary order, probation, or investigation;

(2) notify the board of the military spouse's intent to perform delegated permitted duties in Texas on a form prescribed by the board; and

(3) submit proof of the military spouse's residency in this state, a copy of the spouse's military identification card, and proof of the military member's status as an active duty military service member as defined by §437.001(1), Texas Government Code (relating to Definitions).

(c) While authorized to perform delegated permitted duties as a dental assistant in Texas, the military spouse shall comply with all other laws and regulations applicable to the practice of dentistry in Texas.

(d) Once the board receives the form containing notice of a military spouse's intent to perform delegated permitted duties in Texas, the board shall verify whether the military spouse's dental assistant registration in another state, territory, Canadian province, or country is active and in good standing. Additionally, the board shall determine whether the registration requirements in that jurisdiction are substantially equivalent to the requirements for registration in Texas.

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

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State Board of Dental Examiners  
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For further information, please call: (512) 305-9380

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**TITLE 25. HEALTH SERVICES**

**PART 1. DEPARTMENT OF STATE  
HEALTH SERVICES**

**CHAPTER 265. GENERAL SANITATION  
SUBCHAPTER B. TEXAS YOUTH CAMPS  
SAFETY AND HEALTH**

**25 TAC §§265.11 - 265.13, 265.15, 265.16, 265.23, 265.24,  
265.27, 265.28**

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), adopts amendments to §265.11, concerning Definitions; §265.12, concerning Directors, Supervisors, and Staff; §265.13, concerning Site and Physical Facilities; §265.15, concerning Medical and Nursing Care; §265.16, concerning Waterfront Safety; §265.23, concerning Application and Denial of a New License; Non-transferable; §265.24, concerning Application and Denial of a Renewal License; §265.27, concerning Revocation, Administrative Penalties, and Hearings; and §265.28, concerning Fees.

The amendment to §265.11 is adopted with changes to the proposed text as published in the March 20, 2020, issue of the *Texas Register* (45 TexReg 1952) and will be republished. The amendments to §§265.12, 265.13, 265.15, 265.16, 265.23, 265.24, 265.27, and 265.28 are adopted without changes to the proposed text, and therefore will not be republished.

**BACKGROUND AND JUSTIFICATION**

Texas Health and Safety Code, §141.006 establishes DSHS as the principal authority on matters relating to health and safety conditions at youth camps. Texas Health and Safety Code, §141.008 authorizes the Executive Commissioner of HHSC to adopt rules to implement the Texas Youth Camp Safety and Health Act.

The adoption amends §265.12 and §265.15 to address the requirements in House Bill (H.B.) 4372, 86th Legislature, Regular Session, 2019, which amended Texas Health and Safety Code, Chapter 141. H.B. 4372 requires that DSHS consider whether a youth camp employs an individual who was convicted of an act of sexual abuse in making a determination on issuance, renewal, or revocation of a youth camp operator's license and requires that DSHS forward a report of alleged abuse of a camper received by DSHS to the Department of Family and Protective Services or another appropriate agency. H.B. 4372 also creates a new retention period for camp staff records related to an investigation of, or conviction of, an act of sexual abuse and requires a written policy for youth camps reporting suspected abuse.

The amendments revise definitions and clarify the requirements for a criminal background check and completion of a sexual

abuse and child molestation awareness training and examination program for an individual having unsupervised contact with campers. The amendments update the requirements concerning preclusion of persons at a youth camp by excluding Class C assault misdemeanors under Texas Penal Code, §22.01 from the types of criminal convictions and deferred adjudications requiring preclusion and allow for the employment of persons with Class C assault misdemeanors under Texas Penal Code, §22.01 committed within the past ten years at the discretion of the youth camp. The amendments also update license application sections to reflect changes to youth camp definitions and simplify the rule language. The amendments update the references to Texas statutes throughout the subchapter to include the word "Texas."

**COMMENTS**

The 31-day comment period ended April 20, 2020.

During this period, DSHS received one comment from an individual in HHSC Child Care Regulation. A summary of the comment and DSHS's response follows.

Comment: The commenter pointed out that the childcare licensing agency listed as the "Department of Family and Protective Services" in §265.11(6) and (25) is incorrect and should be replaced with the current childcare licensing agency "Health and Human Services Commission."

Response: DSHS agrees and revises the rule as suggested.

**STATUTORY AUTHORITY**

The amendments are authorized by Texas Health and Safety Code, §141.008, which authorizes the Executive Commissioner of HHSC to adopt rules to implement the Youth Camp Safety and Health Act; and by Texas Government Code §531.0055, and Texas Health and Safety Code §1001.075, which authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001.

*§265.11. Definitions.*

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

- (1) Act--Texas Youth Camp Safety and Health Act, Texas Health and Safety Code, Chapter 141.
- (2) Adult--A person at least 18 years of age or older.
- (3) Camper--A minor child, under 18 years of age, who is attending a youth camp on either a day or boarding basis.
- (4) Challenge course--Activity designed for educational purposes or team building, which may offer a variety of challenges, including zip lines, high and low rope courses, rappelling, and climbing walls.
- (5) Commissioner--The Commissioner of the Department of State Health Services.
- (6) Day camp--A camp that operates during the day or any portion of the day between 7:00 a.m. and 10:00 p.m. for four or more consecutive days and that offers no more than two overnight stays during each camp session. To be eligible to be licensed as a youth camp, the camp's schedule shall be structured so that each camper attends for four hours or more per day for four consecutive days. The term does

not include a facility that is required to be licensed with the Health and Human Services Commission.

(7) Department--Department of State Health Services.

(8) Executive Commissioner--Executive Commissioner of the Health and Human Services Commission.

(9) Firearm--Any device designed, made, or adapted to expel a projectile through a barrel by using the energy generated by an explosion or a burning substance, or any device readily convertible to that use.

(10) Municipal water supply--A public water supply owned or operated by or for a city or a corporation having the right of administering local government.

(11) Pellet gun--Any device designed, made, or adapted to expel a projectile through a barrel by using compressed air or carbon dioxide. This definition includes air guns, air rifles, BB guns, and paint-ball guns.

(12) Permanent structure--Man-made buildings such as dining halls, dormitories, cabins, or other buildings that are constructed to remain stationary.

(13) Person--An individual, partnership, corporation, association, or organization. In rules for this subchapter, a person does not include a government or governmental subdivision.

(14) Playground--A designated area designed for campers to play freely on equipment as defined in the U.S. Consumer Product Safety Commission Publication Number 325, "Handbook for Public Playground Safety," December 2015 as amended.

(15) Primitive camp--A youth camp that does not provide either permanent structures or utilities for camper use.

(16) Public water system--A public water system, as defined in 30 Texas Administrative Code (TAC) §290.38(71) is a system for the provision to the public of water for human consumption through pipes or other constructed conveyances, which includes all uses described under the definition for drinking water (30 TAC §290.38(23)). Such a system shall have at least 15 service connections or serve at least 25 individuals at least 60 days out of the year. This term includes any collection, treatment, storage, and distribution facilities under the control of the operator of such system and used primarily in connection with such system, and any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. Two or more systems with each having a potential to serve less than 15 connections or less than 25 individuals but owned by the same person, firm, or corporation and located on adjacent land will be considered a public water system when the total potential service connections in the combined systems are 15 or greater or if the total number of individuals served by the combined systems total 25 or greater at least 60 days out of the year. Without excluding other meanings of the terms "individual" or "served," an individual shall be deemed to be served by a water system if he lives in, uses as his place of employment, or works in a place to which drinking water is supplied from the system.

(17) Resident camp--A camp that for a period of four or more consecutive days continuously provides residential services to each camper, including overnight accommodations for at least three consecutive nights.

(18) Supervised--A person is supervised if the person is within sight, except for infrequent momentary periods such as restroom breaks, and within reasonable hearing distance of a camper's outcry, of an adult with an obligation to report inappropriate or dangerous activ-

ities or behavior who has been made aware that the obligation is in effect at that time and who has willingly accepted the obligation. This definition is applicable only to rules relating to unsupervised contact with campers.

(19) Supervisor/counselor--A person, at least 18 years of age or older, who is responsible for the immediate supervision of campers.

(20) Swim test--A formalized test, specific to the body of water utilized, to determine each child's swimming ability. A swim test includes a skill evaluation, or some equivalent method of determining swimming ability, such as:

(A) Non-swimmer: Get into the shallow water, sit down, stand up, and exit the water.

(B) Intermediate swimmer: Jump feet first into water at least twelve inches deeper than the height of the child. Level off, swim 25 feet, turn around and swim back. Exit the water.

(C) Swimmer: Jump feet-first into water at least twelve inches deeper than the height of the child and swim 75 yards in a strong stroke on your stomach or side (breaststroke, sidestroke, crawl, trudgen, or any combination). Then swim 25 yards on your back (elementary back stroke), then float and rest on your back for one minute. Exit the water.

(21) TCEQ--Texas Commission on Environmental Quality.

(22) Travel camp--A day or resident camp, lasting for four or more consecutive days, that begins and ends at a fixed location, but may move from location to location on a daily basis.

(23) Waterfront--A natural or artificial body of water that includes a lake, ocean, bay, pond, river, swimming pool, or spa, which is the site of any water activity.

(24) Waterfront activity--A recreational or instructional activity, occurring in, on, or near a waterfront. Waterfront activity includes swimming, boating, water skiing, scuba diving, rafting, tubing, synchronized swimming or sailing.

(25) Youth camp--A facility or property, other than a facility required to be licensed by the Health and Human Services Commission that:

(A) has the general characteristics of a day camp, resident camp, or travel camp;

(B) provides supervision, and instruction in recreational, athletic, religious, or educational activities;

(C) during a camp session, offers at least two youth camp specialized activities in an outdoor setting;

(D) accommodates at least five minors during each camp session who attend or temporarily reside at the camp, apart from parents or guardians, for all or part of at least four consecutive days;

(E) operates as a youth camp for four consecutive hours or more per day;

(F) operates as a youth camp only during school vacation periods;

(G) operates as a youth camp for no more than 120 days each calendar year; and

(H) is not a facility or program operated by or on the campus of an institution of higher education or a private or independent institution of higher education as those terms are defined by the

Texas Education Code, §61.003, that is regularly inspected by one or more local governmental entities for compliance with health and safety standards.

(26) Youth camp specialized activity--A camp activity such as waterfront activities, archery, horseback riding, challenge courses, or riflery that requires special technical skills, equipment, or safety regulations, and a high level of adult supervision at all times.

(27) Youth camp operator--Any person who owns, operates, controls, or supervises a youth camp, whether or not for profit.

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 June 5, 2020.

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Barbara L. Klein

General Counsel

Department of State Health Services

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For further information, please call: (512) 231-5753



## TITLE 28. INSURANCE

### PART 1. TEXAS DEPARTMENT OF INSURANCE

#### CHAPTER 21. TRADE PRACTICES SUBCHAPTER OO. DISCLOSURES BY OUT-OF-NETWORK PROVIDERS

##### 28 TAC §§21.4901 - 21.4904

The Commissioner of Insurance adopts new 28 Texas Administrative Code (TAC) §§21.4901 - 21.4904, concerning disclosures by out-of-network providers. The new sections are adopted with changes to the proposed text as published in the January 10, 2020, issue of the *Texas Register* (45 TexReg 268). The department adopts §21.4902 and §21.4904 without changes to the proposed text. The department revises §21.4901 and §21.4903 to correct punctuation for consistency with agency style, and the department also revises §21.4903 in response to public comments. Sections 21.4901 and 21.4903 will be republished.

**REASONED JUSTIFICATION.** The new sections are necessary to implement exceptions to balance billing prohibitions in Insurance Code §§1271.157, 1271.158, 1301.164, 1301.165, 1551.229, 1551.230, 1575.172, 1575.173, 1579.110, and 1579.111, as enacted by Senate Bill 1264, 86th Legislature, Regular Session (2019).

A hearing was held on February 4, 2020.

The new rules interpret and implement SB 1264, which prohibits balance billing for certain health benefit claims under certain health benefit plans; provides exceptions to balance billing prohibitions; and authorizes an independent dispute resolution process for claim disputes between certain out-of-network providers and health benefit plan issuers and administrators.

SB 1264's balance billing protections generally apply to enrollees of health benefit plans offered by insurers and health mainte-

nance organizations that the department regulates, as well as to the Texas Employees Group, the Texas Public School Employees Group, and the Texas School Employees Uniform Group. The changes to law made by the bill apply to health care and medical services or supplies provided on or after January 1, 2020.

The new rules implement the exceptions to balance billing prohibitions found in Insurance Code §§1271.157, 1271.158, 1301.164, 1301.165, 1551.229, 1551.230, 1575.172, 1575.173, 1579.110, and 1579.111. The exceptions to balance billing prohibitions are only applicable in nonemergencies when a health benefit plan enrollee elects to receive covered health care or medical services or supplies from a facility-based provider that is not a participating provider for a health benefit plan, if the service or supply is provided at a health care facility that is a participating provider; or from a diagnostic imaging provider or laboratory service provider that is not a participating provider for a health benefit plan, if the service or supply is provided in connection with a health care or medical service or supply provided by a participating provider.

For many consumers, a surprise balance bill can be financially ruinous, which could dissuade some consumers from seeking necessary or advisable medical care. To protect consumers, SB 1264 prohibits many out-of-network providers from balance billing patients except in a very narrow set of circumstances. The proposed rules are necessary to prevent unscrupulous providers from exploiting the law's narrow exceptions to the balance billing prohibition, which would negatively affect the health and financial welfare of consumers. Without the new rules, a provider could demand that a patient sign away his or her balance billing protections mere moments before the patient receives surgery or some other medical care. Furthermore, without the new rule, the provider could slip an inconspicuous SB 1264 notice among a number of other forms that the enrollee must review before the procedure. Patients could be forced to make tough financial and health-related decisions in a vulnerable state, potentially without even knowing the balance billing protections they would be waiving. And if a patient hesitates or refuses to waive their balance billing protections shortly before the procedure, there could be significant health consequences if treatment is delayed or refused because of arguments over billing between patient and provider.

On December 18, 2019, the department adopted 28 TAC §§21.4901 - 21.4904 under emergency rulemaking procedures, to be effective on January 1, 2020. The emergency rules will be withdrawn at the time these rules become effective.

New §21.4901 addresses the purpose and applicability of new Subchapter OO. The department makes a change to §21.4901 as proposed to remove the hyphen from the word "non-emergency," for consistency with agency style.

New §21.4902 provides that words and terms defined in Insurance Code Chapter 1467 have the same meaning when used in Subchapter OO, unless the context clearly indicates otherwise.

New §21.4903 clarifies that, for purposes of the exceptions to the balance billing prohibitions, an enrollee's election is only valid if the enrollee has a meaningful choice between an in-network provider and an out-of-network provider, the enrollee was not coerced by another provider or their health benefit plan into selecting the out-of-network provider, and the enrollee signs a notice and disclosure statement at least 10 business days before the service or supply is provided acknowledging that the enrollee

may be liable for a balance bill and chooses to proceed with the service or supply anyway. Only an out-of-network provider that chooses to balance bill an enrollee is required to provide a notice and disclosure statement to the enrollee. The out-of-network provider may choose to participate in SB 1264's claim dispute resolution process instead of balance billing an enrollee.

New §21.4903 also adopts by reference the notice and disclosure statement that must be filled out by the out-of-network provider and given to the enrollee if the provider chooses to balance bill.

The proposed text in §21.4903 was changed in the adoption order in response to comments.

A change is made to §21.4903(a) to refer to an enrollee's "health benefit plan" instead of "health care plan." The department notes that SB 1264 uses both "health care plan" and "health benefit plan" in its provisions. Nevertheless, the department agrees to make the suggested change. However, this change in terms is not substantive and does not alter the scope or application of the rule.

The department makes a change to §21.4903(b). The department clarifies that legal representatives or guardians may make an election on behalf of an enrollee. The department adds "An enrollee's legal representative or guardian may elect on behalf of an enrollee" to the text of subsection (b).

The department also makes changes to §21.4903(d). The changes are made in part to allow for a provider's agent or assignee to maintain a copy of the notice and disclosure statement. This flexibility will help providers comply with the rule, for those providers that would rather delegate that responsibility. In addition, the department clarifies that the copy of the notice and disclosure statement must only be maintained if the medical service or supply is provided and a balance bill is sent. There is no need to maintain records when the underlying purpose is no longer necessary. The department also makes a change to state that the provider must provide the enrollee with a copy of the signed notice and disclosure statement on the same date the statement is received by the provider.

The department makes a change to §21.4903(f). The change clarifies when the dispute resolution procedures under Insurance Code Chapter 1467 and 28 TAC Chapter 21, Subchapter PP apply. The change provides an exception to the subsection's prohibition on participating in the dispute resolution processes if the election is defective or rescinded.

The department also makes changes to §21.4903(b) and (c) to remove the hyphen from the word "non-emergency," for consistency with agency style.

New §21.4904 requires health benefit plans to help their enrollees determine their financial responsibility for a service or supply for which a notice and disclosure statement has been provided, consistent with Insurance Code §1661.002.

#### SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Commenters: The department received 103 written comments and six oral comments. Commenters in support of the proposal were: AARP, Center for Public Policy Priorities, and Office of Public Insurance Counsel. Commenters in support of the proposal with changes were: Texas Association of Health Plans, Texas Hospital Association, and Texas Public Policy Foundation. Commenters against the proposal were: 94 individuals; American College of Obstetricians and Gynecologists, District

XI; American College of Physicians Services, Texas Chapter; Association of American Physicians and Surgeons, Inc.; Texas Medical Association; Texas Society for Gastroenterology and Endoscopy; and Texas Society of Pathologists.

Comments on the rule generally

Comment: Two commenters state that they strongly support proposed 28 TAC §§21.4901 - 21.4904 and state that it is consistent with the language and intent of SB 1264 and is necessary to protect Texas consumers.

One commenter states that it strongly supports the consumer protections in the proposed rules.

One commenter extends its support to the department's efforts and states that the rules are necessary to clarify that the non-emergency exception from the balance billing protections in SB 1264 is only permitted when the consumer has a choice between in-network and out-of-network providers and is afforded adequate time to understand the financial implications of their decision.

Agency Response: The department appreciates the support.

Comment: Many commenters state that the proposed rules contradict the principles of limited government and protection of individual rights in the Texas and U.S. Constitutions. One commenter states that the proposed rules protect third-party interests and are not in the best interests of the good practice of medicine or quality patient care.

Agency Response: The department notes that the commenters failed to specify which provisions of the U.S. or Texas Constitutions they believe are inconsistent with the proposed rules. Nevertheless, the department does not agree that the proposed rules violate either the federal or state constitutions. The department proposed the rule to interpret and implement SB 1264, including its limited exceptions to the balance billing prohibition. SB 1264 and the proposed rules serve an important consumer protection function, as surprise balance bills can be financially ruinous for many consumers. The proposed rules do not unreasonably intrude on the doctor-patient relationship, because the rules only apply when an out-of-network provider chooses to balance bill a patient. An out-of-network provider that chooses to participate in SB 1264's claim dispute resolution process instead of balance billing a patient is not subject to the proposed rule requirements.

Comment on §21.4901.

Comment: Several commenters state that the department has insufficient statutory authority to adopt the proposed rules. The commenters state that Insurance Code §§36.001, 752.0003(c), and 1467.003 do not authorize the department to adopt the rule proposal. The commenters also assert that the department's limited jurisdiction does not include prohibitions on balance billing and the disclosure exceptions.

Agency Response: The department disagrees that it lacks statutory authority to adopt the proposed rules or that it has exceeded its jurisdiction.

Insurance Code §36.001 provides authority for the Commissioner to adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of this state. Insurance Code §31.002(3) imposes a duty on the department to "ensure that the Insurance Code and other laws regarding insurance and insurance companies are executed...." Therefore, for purposes of determining the department's authority, it is significant that all

provisions of SB 1264, including the balance billing prohibitions, were codified in the Insurance Code.

Enforcement of the balance billing prohibition is governed by Chapter 752 of the Insurance Code. Section 752.0003(c) states that an appropriate regulatory agency "or the commissioner may adopt rules as necessary to implement this section." The department has exercised its rulemaking authority to interpret and implement SB 1264.

Insurance Code §1467.003 mandates that the department adopt rules as necessary to implement its powers and duties under Chapter 1467, which governs out-of-network claim dispute resolution. The proposed rules are related to the dispute resolution processes created by Chapter 1467. The proposed written notice and disclosure procedure and form are inextricably linked to the application of the dispute resolution processes in Chapter 1467 and the rules that implement that chapter in 28 TAC Chapter 21, Subchapter PP. Though the proposed rules and Subchapter PP are in different subchapters, they are part of a coherent regulatory framework of balance billing consumer protections. Proposed section 21.4903(f) relates to Insurance Code Chapter 1467 and makes explicit the connection between the subchapters.

Comment: One commenter requests that the purpose and applicability of the proposed rules be clarified to not include direct care models of providing health care because a direct care provider or facility does not submit out-of-network claims to a health benefit plan. Another commenter asks whether the proposed rules would apply to providers that offer patients up-front pricing for health care services. The commenter notes that these patients already have an understanding that they will be paying out-of-network costs but want the procedure performed at an in-network facility that is covered by their plan.

Agency Response: The department declines to make a change. The applicability of the proposed rules is based on and is consistent with the applicability of SB 1264's balance billing prohibitions to out-of-network facility-based providers, diagnostic imaging providers, and laboratory service providers. SB 1264 clearly defines "facility-based provider," "diagnostic imaging provider," and "laboratory service provider."

Consistent with Insurance Code §752.0003, regulatory agencies that license, certify, or otherwise authorize providers have authority to discipline their respective providers for violating a law that prohibits the provider from billing an insured, participant, or enrollee in an amount greater than an applicable copayment, coinsurance, or deductible. The department will coordinate with other regulatory agencies and will refer complaints about balance billing appropriately. The appropriate regulatory agency will determine the appropriate sanctions, if any, for a violation of the statute or the rules. The department has communicated with other state agencies and will continue to work with them to implement SB 1264. The department will closely monitor implementation and be ready to provide additional guidance, as needed.

Comments on §21.4903.

Comment: Several commenters note that the term "enrollee" is used throughout proposed §21.4903 and the form. The commenters suggest that the notice and disclosure form be revised to permit a guardian or legal representative of the patient to sign the form.

Agency Response: The department agrees with the commenters and has revised the proposed text by amending

§21.4903(b) to clarify that an enrollee's legal representative or guardian may elect on behalf of an enrollee.

Comment: Several commenters recommend that the term "health care plan" be replaced with "health benefit plan."

Agency Response: The department notes that SB 1264 uses both "health care plan" and "health benefit plan" in its provisions. Nevertheless, the department agrees to make the suggested change. However, this change in terms is not substantive and does not alter the scope or application of the rule.

Comment on: Several commenters recommend deleting §21.4903(b)(1). The commenters state that the proposed requirement limits the exception to the balance billing prohibition beyond what the Legislature intended. The commenters also oppose §21.4903(b)(1) because it would make satisfaction of the requirement dependent on a third party that is out of the provider's control. In addition, commenters state that the requirement is vague, overbroad, too subjective, and does not provide enough guidance. Further, the commenters state that if an enrollee is assigned an out-of-network provider, but is offered a choice, the assigned out-of-network provider should be able to use the waiver.

One commenter states that it supports the provisions of proposed §21.4903(b), and states that the provisions ensure that an actual election by the patient, within the meaning of SB 1264, has taken place.

One commenter supports the proposed rule because it allows providers to avoid the consumer protections of SB 1264 and balance bill only in the limited situation where they have given their patient all the information needed to make an informed decision and the patient has actively chosen to see that out-of-network provider.

Agency Response: The department disagrees that proposed §21.4903(b)(1) is inconsistent with SB 1264 and exceeds the department's statutory authority. The proposed rule interprets and implements the consumer protections imbedded in SB 1264 and is consistent with the statute. As stated in the Author's/Sponsor's Statement of Intent, SB 1264 "prevents consumers from receiving surprise medical bills so that in situations where the consumer has no choice over who provides their care, they cannot be surprise-billed." Senate Research Center, Bill Analysis, Tex. S.B. 1264, 86th Leg., R.S. (2019). Proposed §21.4903(b)(1) implements SB 1264 by clarifying that if an out-of-network provider wants to balance bill a consumer, that consumer must have a meaningful choice between an in-network provider and the out-of-network provider. As other commenters recognize, proposed §21.4903(b)(1) ensures that an election occurs, not merely an assignment.

The department acknowledges that individual providers may not have control over the assignment of providers to a particular enrollee. However, in circumstances where enrollee election is not feasible, providers are still entitled to payment under SB 1264's default arrangement. This includes payment at the usual and customary rate or at an agreed-on rate and an option to utilize alternate dispute resolution processes under Insurance Code Chapter 1467 and the rules adopted in 28 TAC Chapter 21, Subchapter PP. The statutory and regulatory framework operates to make the exceptions to the balance billing prohibition not the presumed operation, but the narrowly available option.

Comment: Several commenters state that the term "coerced," as used in proposed §21.4903(b)(2), is vague and overbroad.

The commenters also object to the proposed language because it provides that an out-of-network provider's use of the exception can be invalidated by someone else's coercive conduct--and potentially subjecting a provider to discipline because of someone else's conduct is unfair and exceeds the department's authority. The commenters state that the provision is a new condition that was not authorized by the Legislature. In addition, the commenters state that the language could put a provider in the position of being unable to either balance bill or access the dispute resolution procedures established under Insurance Code Chapter 1467.

Agency Response: The department disagrees that the text of proposed §21.4903(b)(2) is impermissibly vague or overbroad. See *CISPES (Comm. in Solidarity with People of El Salvador) v. FBI*, 77 F.2d 468, 475-76 (5th Cir. 1985) (addressing whether the term "coerce," as used in a federal statute, is vague or overbroad). An administrative rule need not define all the terms used in the rule, particularly when the term in question has a commonly understood definition. See *Tex. Mut. Ins. Co. v. Vista Cmty. Med. Ctr.*, 275 S.W.3d 538, 554 (Tex. App.-Austin 2008, pet. denied). In this context, to "'coerce' means to 'persuade (an unwilling person) to do something by using force or threats.'" Tex. Att'y Gen. Op. No. GA-949 (2012) (quoting New Oxford American Dictionary). Furthermore, the rule provides additional clarity as to the usage of the term, stating that "[a] provider engages in coercion if the provider charges or attempts to charge a nonrefundable fee, deposit, or cancellation fee for the service or supply prior to the enrollee's election." Both the plain meaning of the term and its usage in the context of §21.4903(b)(2) demonstrate that it is not impermissibly vague or overbroad.

The department also disagrees that proposed §21.4903(b)(2) is inconsistent with SB 1264 and exceeds the department's statutory authority. The proposed rule interprets and implements the consumer protections imbedded in SB 1264 and is consistent with the statute. The rule simply recognizes that a valid election or choice must be free of coercion. That principal is recognized in other settings involving elections. See, e.g., *Union Mfg. Co. v. NLRB*, 221 F.2d 532, 540 (D.C. Cir. 1955) (Under the National Labor Relations Act, a "'valid' election is one free from fraud, from restraint or from coercion of employees in the exercise of their rights.").

The commenters are also concerned that, due to the proposed rule, a provider could be put in the position of being unable to either balance bill a patient or participate in SB 1264's dispute resolution process. The proffered scenario assumes that the enrollee can successfully demonstrate that the notice and disclosure was entered into coercively. This would be a question of fact that the provider could rebut, as with other contractual disputes. In response to other comments, the department made changes to §21.4903(f) to clarify that in instances where coercion took place, voiding the election, then the claim may be eligible to participate in dispute resolution under Insurance Code Chapter 1467 and 28 TAC Chapter 21, Subchapter PP. Therefore, the department does not believe a change to the proposed rule is warranted in response to the commenters' concern.

Comment: Several commenters oppose the language in §21.4903(b)(3) that requires the provider to obtain the enrollee's written consent. The commenters state that the provision is a new condition that was not authorized by the Legislature. The commenters also recommend that proposed §21.4903(b)(3) be amended to allow the enrollee's legal representative or guardian to provide the required consent.

Agency Response: The department agrees that an enrollee's legal representative or guardian should be permitted to provide the written consent required by the rule. In response to comment, the department amends §21.4903(b) accordingly.

The department does not agree that proposed §21.4903(b)(3) is inconsistent with SB 1264 and exceeds the department's statutory authority. The proposed rule interprets and implements the consumer protections imbedded in SB 1264 and is consistent with the statute. SB 1264 requires that an enrollee make an election in writing, and the proposed rule simply clarifies that such an election is manifested through the enrollee's written consent.

Comment: Several commenters have concerns with the requirement that out-of-network providers provide the notice and disclosure statement before scheduling a medical service or supply. The commenters believe that this requirement is not authorized by statute, and state that the requirement imposes operational challenges that make the use of the exception almost impossible for certain provider types. If the department moves forward with the scheduling requirement, the commenters recommend that it be substituted with language that the notice and disclosure statement must be provided to the enrollee or the enrollee's legal representative or guardian no later than three business days after the scheduling of the nonemergency service or supply. According to the commenters, this shorter time frame would better reflect how services are delivered by indirect access providers.

Two commenters support each of the provisions in §21.4903(c) and state that they work together to ensure that patients can freely make an election without feeling coerced.

Agency Response: The department does not agree that proposed §21.4903(c) is inconsistent with SB 1264 and exceeds the department's statutory authority. The proposed rule interprets and implements the consumer protections imbedded in SB 1264 and is consistent with the statute. SB 1264 requires certain out-of-network providers to provide a complete written disclosure about a medical service or supply in order to balance bill the patient for that service or supply. The department believes that, for the written disclosure requirement to be an effective consumer protection tool, the disclosure must be provided to the patient before scheduling the service or supply. Nevertheless, the proposed rule does not require the notice and disclosure statement to be provided at a separate office visit from the scheduling. The provision simply requires that the notice and disclosure statement, and the important consumer information and cost estimate, be provided before scheduling the service or supply. Provision of the notice and disclosure statement and scheduling of the service or supply could occur consecutively at the same office visit.

The department recognizes that indirect access providers may have more difficulties providing the notice and disclosure statement in the timeframes required by the rule. However, SB 1264 requires an enrollee election, and it does not provide lesser consumer protections because those protections may be inconvenient. In circumstances where an enrollee election fails to satisfy the requirements of the rule, providers are still entitled to payment under the default statutory arrangement. This includes payment at the usual and customary rate or at an agreed rate. Additionally, the provider may be able to seek alternate dispute resolution processes under Insurance Code Chapter 1467 and the rules adopted in 28 TAC Chapter 21, Subchapter PP. The statutory framework operates to make the use of the notice and disclosure statement not the presumed operation, but the narrowly available option.

Comment: Many commenters state that requiring a patient to wait at least 10 business days to receive care from an out-of-network provider--on mutually agreeable terms--is potentially dangerous and contrary to the wording and intent of SB 1264. One commenter states that requiring a patient to wait 10 business days to receive assistance for medical problems will magnify those problems.

Several commenters state that requiring delay of treatment is not just inconvenient, but is also potentially dangerous and discriminates against patients who might prefer a provider who does not contract with a third-party payer.

Agency Response: The department recognizes these concerns but does not agree that changes to the proposed rule text are necessary and declines to revise the proposed rule. The department notes that the proposed rule does not require an out-of-network provider to wait 10 business days before providing a medical service or supply. Rather, the signed notice and disclosure statement are required at least 10 business days before the date of the service or supply only if the provider chooses to balance bill the patient. If the provider is willing to accept a reasonable payment for the service or supply through SB 1264's independent dispute resolution process instead of balance billing the patient, the service or supply can be scheduled at any time that is agreeable to the patient and provider. Any delays in care will be the result of providers' billing choices and not the proposed rule.

The department also does not agree that proposed §21.4903(c) is inconsistent with SB 1264 and exceeds the department's statutory authority. The proposed rule interprets and implements the consumer protections imbedded in SB 1264 and is consistent with the statute. To protect consumers, SB 1264 prohibits many out-of-network providers from balance billing patients except in a very narrow set of circumstances. The new rules are necessary to prevent providers from exploiting the law's narrow exceptions to the balance billing prohibition, which, if allowed, would exacerbate the balance billing concerns that led to the passage of SB 1264. Without the new rules, particularly proposed §21.4903(c), a provider could demand that a patient sign away his or her balance billing protections mere moments before the patient receives surgery or some other medical care. Furthermore, without the new rules, the provider could slip an inconspicuous SB 1264 notice amongst several other forms that the enrollee must review prior to the procedure. Patients could be forced to make tough financial and health-related decisions in an extremely vulnerable state, potentially without even knowing the balance billing protections they would be waiving. And if a patient hesitates or refuses to waive their balance billing protections shortly before the procedure, there could be significant health consequences if treatment is delayed or refused because of arguments over billing between patient and provider.

Comment: One commenter asks who bears the liability in the event a nonemergent medical issue becomes life-threatening during a 10-business day wait.

Agency Response: The department does not determine tortious liability. Liability is set by law and the application of that law is fact specific. The department notes, however, that the proposed rule does not require an out-of-network provider to wait 10 business days before providing a medical service or supply. Rather, the signed notice and disclosure statement are required at least 10 business days before the date of the service or supply only if the provider chooses to balance bill the patient. Any delays in

care will be the result of the providers' billing choices and not the proposed rule. Furthermore, under SB 1264 the disclosure and notice requirements imposed by these rules are not applicable to emergency care or supplies.

Comment: One commenter asks for the department's rationale for choosing a 10-business day timeframe.

Agency Response: The department's reason for choosing 10 business days is so that the enrollee has adequate time to consider the potential financial impact of his or her decision. In addition, the timeframe provides an enrollee the opportunity to contact their health benefit plan or administrator and request assistance to improve the accuracy of the cost estimate. The time also may allow an enrollee to consider alternatives to the out-of-network provider.

Comment: Several commenters express concern about the 10-business day requirement in proposed §21.4903(c). The commenters state that the one-size-fits-all timeframe is arbitrary, contrary to the plain language of the statute, and presents challenges to patients and providers alike. The commenters note that the delay is not required for consent to the procedure itself and is longer than timeframes advocated by stakeholders in the context of the department's stakeholder process. The commenters highlight certain scenarios where the 10-day requirement may affect health-care practices. For example, where a patient wants to pick an out-of-network provider but have the service performed at an in-network facility and wants to have the service performed sooner than 10 business days. Another scenario the commenters discuss is for urgent care issues, where the rule would apply even if the patient would like to be treated and be willing to pay the balance bill without waiting for the requisite time period.

The commenters state that if the department is unwilling to remove the time requirement, they recommend lowering it to three business days with one business day for rescission. Additionally, the commenters recommend that if the department moves forward that it add the option to waive the 10-business day requirement, and another possible exception for urgent care scenarios.

Two commenters support the 10-business-day timeframe and state that it is reasonable and necessary to protect patients. First, it ensures that patients who need medical care urgently will not be placed under duress by a waiver. Second, it affords the patient time needed to make an informed election. They state that the timeframe needs to accommodate the ability of a patient to explore alternatives, including in-network alternatives, after learning through the notice and disclosure statement that some of their care will be out-of-network and cost more. The patient will need time to contact their health plan to both get firm costs for care outlined in the disclosure as well as to identify alternate in-network providers. The patient also may need to reach out to alternative providers to learn more or get an appointment. The timeframe also needs to accommodate a reasonable period during which a patient can rescind acceptance of the waiver, in the event that they are able to find alternate in-network providers.

One commenter recommends that the department not adopt a specific timeframe, because an excessive notice period could result in unnecessary delays in nonemergent care.

One commenter states that the form be provided in time for the consumer to make an informed decision on whether to proceed in getting out-of-network care. They state that the rule addresses this concern.

Agency Response: The department recognizes these concerns but does not agree that changes to the proposed rule text are necessary and declines to revise the proposed rule. The department notes that requesting a waiver is entirely optional on the part of the provider or facility.

As other commenters recognize, the 10-business day timeframe provides an enrollee the opportunity to contact their health benefit plan or administrator and request assistance to improve the accuracy of the cost estimate. The time also may allow an enrollee to consider alternatives to the out-of-network provider.

The 10-business day requirement provides strong balance billing protection, consistent with the intent of SB 1264. A shorter timeframe or an enrollee waiver exception would erode the strong balance billing prohibitions created by the Legislature. SB 1264 prohibits many out-of-network providers from balance billing patients except in a very narrow set of circumstances. The statute provides new payment regulations to benefit out-of-network providers, including the possibility of dispute resolution. The department acknowledges the notice and disclosure procedures are not as simple or expedient as medical informed consent, but the framework of SB 1264 assumes that these waivers will not be the default billing scenario. There is a tradeoff between enrollee balance billing protection and status quo disruption, but SB 1264 requires a strong consideration of consumer protection.

Comment: Several commenters express concerns with the record retention requirement in proposed §21.4903(d). Some commenters state that the record retention requirement is not authorized by statute and that the department has no authority to impose it. Some commenters suggest that the rule be amended to allow the provider's agent or assignee to maintain and provide a copy of a signed and dated notice and disclosure statement. The commenters also suggest that the proposed rule is overbroad because it could require a provider to maintain the record even if the provider does not perform the service or balance bill the enrollee. The commenters also have concerns that the proposed rule would require a provider to provide a copy of the signed notice and disclosure statement on the same date the statement is signed, even if the enrollee signs the statement but does not immediately provide it to the provider. The commenters also recommend language that clarifies that a provider's failure to maintain a copy of the notice and disclosure statement or to provide a copy to the enrollee does not disqualify a provider from eligibility for the balance billing exception.

Two commenters support §21.4903(d) and state that it is important that the provider both give a copy of the signed statement to the patient and retain a copy for long enough that all billing, payments, and any disputes would have been resolved.

Agency Response: The department agrees to revise the proposed rule in response to some of the comments. The department believes it is reasonable to permit a provider's agent or assignee to maintain a signed notice and disclosure statement, and the proposed language is amended accordingly.

The department also agrees with the commenters that a provider need not maintain a signed statement if the provider ultimately does not perform the medical service or supply or balance bill the enrollee. The proposed language is amended accordingly.

The department also agrees with the commenters to amend the proposed language to clarify that a provider must give the enrollee a copy of the signed statement on the same date the signed statement is provided to the provider by the enrollee.

The department does not agree that proposed §21.4903(d) exceeds the department's statutory authority. The proposed rule interprets and implements the consumer protections imbedded in SB 1264 and is consistent with the statute. The existence of a signed statement is key to determining whether the balance billing prohibition was properly waived, thus it is proper to require providers to maintain that document for a reasonable period of time. The department further notes that the cost to maintain these documents is expected to be negligible. Providers already maintain patients' health and billings records, and the new notice and disclosure statement form may be stored with other documents commonly used by providers.

The department also declines to amend the proposed language to clarify the consequences to a provider for failing to maintain a copy of the notice and disclosure statement or provide a copy of the signed statement to the enrollee. The regulatory agency that licenses the provider is responsible for enforcing the proposed rules and determining sanctions or penalties where appropriate.

Comment on §21.4903(f): Several commenters note that a provider should be permitted to participate in SB 1264's dispute resolution process if the provider decides not to balance bill, receives an enrollee rescission, reschedules for a later date and does not balance bill, or realizes the form is defective. The commenters suggest revised language to amend §21.4903(f) and a new related §21.4903(g).

Two commenters state that they support §21.4903(f). They state that it ensures out-of-network providers use just one of the two available paths for payment in SB 1264.

Agency Response: The department agrees to revise the proposed rule in response to some of the comments. The department believes it is reasonable to permit a provider to participate in the dispute resolution processes described in Insurance Code Chapter 1467 if an enrollee rescinds a waiver or if the election was invalid because it does not meet the requirements of §21.4903(b). Changes to §21.4903(f) are made to provide clarification.

The department declines to allow a provider to receive a valid election under §21.4903 and then later unilaterally put it aside and pursue statutory dispute resolution. Once a waiver is agreed to, the enrollee has certain expectations. Allowing the retrospective unilateral waiver on the part of the provider might encourage providers to seek such waivers as a matter of routine practice. Additionally, existence of a waiver is a threshold question in the department's portal. The department anticipates contested waivers to be infrequent events. Allowing provider cancellation of a waiver already sought and obtained impedes the efficient implementation of the portal.

Comments on §21.4904. Two commenters state that proposed §21.4904 ensures health plans will help patients understand their costs outlined in the waiver.

Several commenters recommend that the adopted rule include an additional subsection to ensure that health benefit plan issuers and administrators are required to provide information similar to the Insurance Code §1661.002 requirement to provide information to enrollees in order to assist providers.

Agency Response: The department does not agree that changes to the proposed rule text are necessary and declines to revise the proposed rule. SB 1264 requires providers to provide a complete written disclosure to the enrollee, including specific mandates to disclose projected amounts for which the enrollee

may be responsible and the circumstances under which the enrollee would be responsible for those amounts. The department recognizes that out-of-network providers may lack the ability to make precise predictions as to an enrollee's financial responsibility. However, the provider should be able to provide the likely billed charges. The department and other regulatory agencies enforcing SB 1264 have the discretion to consider the full context of what information an out-of-network has access to. The department anticipates that out-of-network providers will make their best efforts to provide as much information as possible so that the enrollees may make an informed decision.

SB 1264 does not create a specific requirement for health benefit plans to provide out-of-network enrollee financial responsibility information to out-of-network providers, but the department expects that health benefit plans will coordinate with out-of-network providers in the interest of their enrollees.

#### Comments on the form

Comment: One commenter states that the form should be written in plain language for the consumer to make an informed decision on whether to proceed with out-of-network care despite the potential for balance billing.

Agency Response: The department agrees that plain language is important for the enrollee to make an informed decision, and it believes the proposed form uses plain language.

Comment: Several commenters recommend that the "you may need to pay" column be eliminated and replaced with a direction to seek an estimate of the health benefit plan issuer's or administrator's payment and coverage information. The commenters state that the requirement is neither appropriate nor feasible and could cause delays in care. In addition, the commenters ask the department to add an exception to the rules for a provider's good faith attempt if the department adopts the form as proposed.

One commenter also has concerns over the ability of an out-of-network provider to obtain information necessary for the form. The commenter urges an exemption for out-of-network physicians and their patients from the requirements to provide cost sharing information in situations where patients and physicians already have been making mutually agreeable and mutually beneficial arrangements without the oversight of this new rule.

Agency Response: The department does not agree that changes to the proposed form are necessary and declines to revise the form. SB 1264 requires a complete written disclosure to the enrollee, including specific mandates to disclose projected amounts for which the enrollee may be responsible and the circumstances under which the enrollee would be responsible for those amounts. The department recognizes that out-of-network providers may lack the ability to make precise predictions as to an enrollee's financial responsibility. However, the provider should be able to provide the likely billed charges. The department and other regulatory agencies enforcing SB 1264 have the discretion to consider the full context of what information an out-of-network provider has access to. The department anticipates that out-of-network providers will make their best efforts to provide as much information as possible so that the enrollees may make an informed decision.

Comment: Several commenters recommend striking or modifying many portions of the notice and disclosure form. These changes include amending the form title, headings, and content. Alternative language is suggested.

Agency Response: The department does not agree that changes to the proposed form are necessary and declines to revise the form. As previously noted, the form was written in plain language so that it is easy to understand. The department believes that the potential financial consequences of an enrollee signing the form are substantial, and the form was drafted so that enrollees would know the legal protections they are waiving. The department believes that the changes proposed by the commenters would undercut the intent of the form.

The department does note that the proposed rules do not prohibit a provider from manually entering the required information in the form, provided that it is legible.

Comment: One commenter asks the department to remove the CPT code requirement in the waiver form. The commenter states that a clear description of the service should suffice.

Agency Response: The department declines to modify this portion of the form. However, the department acknowledges that CPT codes are the intellectual property of the American Medical Association, and that not every provider uses CPT codes, or they may use them only selectively. The department encourages supplying CPT codes where the provider can provide them so that the enrollee can provide the code to their health benefit plan for an explanation of potential costs. The regulatory agencies charged with enforcing the proposed rules can determine whether a provider has substantially complied with the rule requirements and SB 1264.

#### Other comments:

Comment: One commenter recommends that the proposed rules address submission of claims subject to SB 1264 to require an indication of whether or not a waiver has been obtained and to clarify that such information may constitute "information necessary for" the health plan to pay the claim for purposes of the timely payment provisions of SB 1264.

One commenter asks the department to consider how insurers could be better held accountable for providing enrollees seeking out-of-network care and their physicians timely access to the information they need to make informed choices.

Agency Response: The department declines to make a change. These concerns are outside the scope of the proposed rules because the proposed rules implement what is required by SB 1264. Submission of claims is regulated by other provisions not amended by SB 1264. The department encourages health benefit plans to assist providers with supplying accurate cost estimates to enrollees.

Comment: One commenter suggested that the state pass a law to stop insurance companies from having network policies at all in Texas.

Agency Response: The department declines to make a change as the comment is outside the scope of the proposed rules and the department's authority.

STATUTORY AUTHORITY. The department adopts the new §§21.4901 - 21.4904 under Insurance Code §§36.001, 752.003(c), and 1467.003.

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

Insurance Code §752.0003(c) authorizes the Commissioner to adopt rules as necessary to implement balance billing prohibitions and exceptions to those prohibitions outlined in Insurance Code §§1271.157, 1271.158, 1301.164, 1301.165, 1551.229, 1551.230, 1575.172, 1575.173, 1579.110, and 1579.111.

Insurance Code §1467.003 provides that the Commissioner may adopt rules as necessary to implement the Commissioner's powers and duties under Insurance Code Chapter 1467.

*§21.4901. Purpose and Applicability.*

(a) The purpose of this subchapter is to interpret and implement Insurance Code §§1271.157, 1271.158, 1301.164, 1301.165, 1551.229, 1551.230, 1575.172, 1575.173, 1579.110, and 1579.111; and Insurance Code Chapter 1467.

(b) Section 21.4903 of this title is only applicable to a covered nonemergency health care or medical service or supply provided by:

(1) a facility-based provider that is not a participating provider for a health benefit plan, if the service or supply is provided at a health care facility that is a participating provider; or

(2) a diagnostic imaging provider or laboratory service provider that is not a participating provider for a health benefit plan, if the service or supply is provided in connection with a health care or medical service or supply provided by a participating provider.

*§21.4903. Out-of-Network Notice and Disclosure Requirements.*

(a) For purposes of this section a "balance bill" is a bill for an amount greater than an applicable copayment, coinsurance, and deductible under an enrollee's health benefit plan, as specified in Insurance Code §§1271.157(c), 1271.158(c), 1301.164(c), 1301.165(c), 1551.229(c), 1551.230(c), 1575.172(c), 1575.173(c), 1579.110(c), or 1579.111(c).

(b) An out-of-network provider may not balance bill an enrollee receiving a nonemergency health care or medical service or supply, and the enrollee does not have financial responsibility for a balance bill, unless the enrollee elects to obtain the service or supply from the out-of-network provider knowing that the provider is out-of-network and the enrollee may be financially responsible for a balance bill. An enrollee's legal representative or guardian may elect on behalf of an enrollee. For purposes of this subsection, an enrollee elects to obtain a service or supply only if:

(1) the enrollee has a meaningful choice between a participating provider for a health benefit plan issuer or administrator and an out-of-network provider. No meaningful choice exists if an out-of-network provider was selected for or assigned to an enrollee by another provider or health benefit plan issuer or administrator;

(2) the enrollee is not coerced by a provider or health benefit plan issuer or administrator when making the election. A provider engages in coercion if the provider charges or attempts to charge a non-refundable fee, deposit, or cancellation fee for the service or supply prior to the enrollee's election; and

(3) the out-of-network provider or the agent or assignee of the provider provides written notice and disclosure to the enrollee and obtains the enrollee's written consent, as specified in subsection (c) of this section.

(c) If an out-of-network provider elects to balance bill an enrollee, rather than participate in claim dispute resolution under Insurance Code Chapter 1467 and Subchapter PP of this title, the out-of-network provider or agent or assignee of the provider must provide the enrollee with the notice and disclosure statement specified in subsection (e) of this section prior to scheduling the nonemergency health care

or medical service or supply. To be effective, the notice and disclosure statement must be signed and dated by the enrollee no less than 10 business days before the date the service or supply is performed or provided. The enrollee may rescind acceptance within five business days from the date the notice and disclosure statement was signed, as explained in the notice and disclosure statement form.

(d) Each out-of-network provider, or the provider's agent or assignee, must maintain a copy of the notice and disclosure statement, signed and dated by the enrollee, for four years if the medical service or supply is provided and a balance bill is sent to the enrollee. The provider must provide the enrollee with a copy of the signed notice and disclosure statement on the same date the statement is received by the provider.

(e) The department adopts by reference Form AH025 as the notice and disclosure statement to be used under this section. The notice and disclosure statement may not be modified, including its format or font size, and must be presented to an enrollee as a stand-alone document and not incorporated into any other document. The form is available from the department by accessing its website at [www.tdi.texas.gov/forms](http://www.tdi.texas.gov/forms).

(f) A provider who seeks and obtains an enrollee's signature on a notice and disclosure statement under this section is not eligible to participate in claim dispute resolution under Insurance Code Chapter 1467 and Subchapter PP of this title. This subsection does not apply if the election is defective as described by subsection (b) of this section or rescinded by the enrollee under subsection (c) of this section.

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

Filed with the Office of the Secretary of State on June 5, 2020.

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James Person

General Counsel

Texas Department of Insurance

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For further information, please call: (512) 676-6584

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**TITLE 31. NATURAL RESOURCES AND CONSERVATION**

**PART 10. TEXAS WATER DEVELOPMENT BOARD**

**CHAPTER 357. REGIONAL WATER PLANNING**

The Texas Water Development Board (TWDB) adopts amendments to §§357.10, 357.21, 357.31, 357.33, 357.34, 357.42, and 357.43, relating to regional water planning, without changes. These rules will not be republished. Sections 357.11 and 357.45 are adopted with changes to the text as published in the February 28, 2020, issue of the *Texas Register* (45 TexReg 1317), and therefore, will be republished.

**BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED AMENDMENT.**

The purpose of the amendments is to implement changes from House Bill (HB) 807, 86th (R) Legislative Session, and to clarify rules to make them more understandable and uniformly applied by regional water planning groups (RWPGs). The specific provisions being amended or added and the reasons for the amendments are addressed in more detail below.

## SECTION BY SECTION DISCUSSION OF ADOPTED AMENDMENTS.

### *Subchapter A. General Information.*

#### *Section 357.10. Definitions and Acronyms.*

The definition of Regional Water Planning Gallons Per Capita Per Day is added to clarify the term as used in regional water planning. This definition aligns with the Texas Water Development Board and Texas Commission on Environmental Quality guidance document *Guidance and Methodology for Reporting on Water Conservation and Water Use*.

The remaining sections in §357.10 are renumbered to accommodate the addition of §357.10(25).

#### *Section 357.11. Designations.*

Section 357.11(d)(7) is revised to expand the eligible participation of the small businesses interest category. The updated ranges are based on information collected by the U.S. Small Business Administration.

Section 357.11(d)(9) is revised to remove Palo Duro River Authority from the required river authority interest category. The authority of the Palo Duro River Authority was revised by HB 1920 during the 85th Legislative Session by the reclassification of the river authority to a local water district.

New section 357.11(k) is added to implement a change to Texas Water Code (TWC) §16.052 made by HB 807, 86th Legislative Session (relating to an Interregional Planning Council). The change requires that the Board appoint an Interregional Planning Council during each state water planning cycle. The Interregional Planning Council is to be considered a Governmental Body in accordance with Texas Government Code §551.001 and must conduct business in accordance with the Texas Open Meetings Act. The Interregional Planning Council is also considered a Governmental Body under Texas Government Code §552.003 and must follow the Texas Public Information Act.

Due to the timing of the current planning cycle, the deliverable date for the Council's report will be determined by the EA and will be no later than adoption of the 2022 State Water Plan. For state water plan cycles beginning with the 2027 State Water Plan, a deliverable date for the Council's report will occur in advance of the Initially Prepared Plans to allow for consideration of recommendations by the RWPGs during development of their plans.

In future planning cycles, each RWPG will be required to submit an alternate along with their nomination(s). Alternates may assume all responsibilities of the appointed Council member, should the Council member not be able to serve during their term, without additional Board action. Interregional Planning Council nominees and their alternates must be current voting members of the RWPG.

The TWDB Board is required by statute to appoint the Council and, per statute, council members will only serve until the adoption of the next state water plan. Appointed Council(s) will have discretion in their voting procedures. Only current voting planning group members are eligible to be appointed to the Council

and future nominations must include alternates when submitted to the TWDB. It is up to each RWPG how many nominations they wish to submit. The TWDB does not have geographic residency requirements pertaining to regional water planning group or Council membership.

### *Subchapter B. Guidance Principles and Notice Requirements.*

#### *Section 357.21. Notice and Public Participation.*

Section 357.21(a) is revised to specify that the collection of certain information related to existing major water infrastructure facilities is excepted from the Public Information Act, Texas Government Code, Chapter 552.

### *Subchapter C. Planning Activities For Needs Analysis And Strategy Recommendations.*

#### *Section 357.31. Projected Population and Water Demands.*

Section 357.31(f) is revised to clarify that Population and Water Demand projections shall be presented for each Planning Decade for Water User Groups (WUG) and that Water Demand projections associated with Major Water Providers will be presented for each Planning Decade by category of water use.

#### *Section 357.33. Needs Analysis: Comparison of Water Supplies and Demands.*

Section 357.33(d) is revised to clarify that the reporting requirements for the social and economic impacts of not meeting Water Needs are only required for WUGs.

#### *Section 357.34. Identification and Evaluation of Potentially Feasible Water Management Strategies and Water Management Strategy Projects.*

Section 357.34(e)(3)(A) is revised to correct a typographical error.

Section 357.34(g) is added to specify the RWPGs must document in their RWP why certain water management strategies were not recommended, a task that is already required of RWPGs by the contract scopes of work. These strategies include aquifer storage and recovery, seawater desalination, and brackish groundwater desalination.

Section 357.34(h) is added to implement a change to TWC §16.053(e)(10) made by HB 807 (relating to Aquifer Storage and Recovery). The change requires that RWPGs assess the potential for aquifer storage and recovery to meet significant water needs in the planning area, as identified by the RWPG. RWPGs are to determine the threshold of significant needs, as it is critical to allow for a level of flexibility in planning approaches to maintain the bottoms up approach to planning. Each region has its unique circumstances that would contribute to what constitutes significant needs. Requiring the RWPGs to at a minimum provide their methodology for determining significant water needs allows for appropriate discussion in the state water plan.

Previous sections (g) and (h) are renumbered to (i) and (j), respectively.

Section 357.34(i)(3) is added to implement a change to TWC §16.053(e)(11) made by HB 807 (relating to Gallons Per Capita Per Day Goals). The change requires that RWPGs set specific gallons per capita per day goals for municipal WUGs in the planning region. The use of a drought water use condition (rather than an average water use condition) is adopted to align with

the drought condition requirements under which RWPs are developed.

*Subchapter D. Impacts, Drought Response, Policy Recommendations, and Implementation.*

*Section 357.42. Drought Response Information, Activities, and Recommendations.*

Section 357.42(b) is revised to clarify language of drought assessments.

A new section 357.42(b)(1) is added to clarify considerations drought assessments should include.

A new section 357.42(b)(2) is added to implement a change to TWC §16.053(e)(3)(E) made by HB 807 (relating to Drought Response Strategies). The change requires that RWPGs identify unnecessary or counterproductive variations in drought response strategies in the planning region that may confuse the public or impede drought response efforts. Additional information will be provided in guidance.

Section 357.42(d) is revised to remove the requirement that the collection of information related to existing major water infrastructure facilities be collected in a closed meeting, to comply with Texas Open Meeting Act requirements and to clarify the minimum content required to be presented in the RWPGs.

*Section 357.43. Regulatory, Administrative, or Legislative Recommendations.*

Section 357.43(b)(2) is revised to clarify that the RWPG shall assess the impact of the RWP on unique stream segments that have been designated by the legislature during a session that ends not less than one year before the required date of submittal of an adopted RWP to the Board, by any previous legislative session, or recommended as a unique river or stream segment in the RWP.

Section 357.43(d) is revised to implement a change to TWC §16.053(i) made by HB 807 (relating to Recommendations to Improve the Water Planning Process). The change specifies that RWPGs may include recommendations the RWPG believes would improve the planning process.

*Section 357.45. Implementation and Comparison to Previous Regional Water Plan.*

Section 357.45(b) is added to implement a change to TWC §16.053(e)(12) made by HB 807 (relating to Regionalization). The change requires that the RWPGs assess the progress of regionalization in the planning area.

Previous section 357.34(b) is renumbered to (c).

#### REGULATORY IMPACT ANALYSIS DETERMINATION

The board reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225, and determined that the rulemaking is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the rulemaking is to implement legislative changes and

provide greater clarity regarding the TWDB's rules related to regional water planning.

Even if the rule were a major environmental rule, Texas Government Code, §2001.0225 still would not apply to this rulemaking because Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: (1) does not exceed any federal law; (2) does not exceed an express requirement of state law; (3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and (4) is not adopted solely under the general powers of the agency, but rather Texas Water Code §16.053. Therefore, this rule does not fall under any of the applicability criteria in Texas Government Code, §2001.0225.

#### TAKINGS IMPACT ASSESSMENT

The board evaluated this adopted rule and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this rule is to implement legislative changes and clarify existing rules to make them more understandable. The rule substantially advances this stated purpose by adding language related to legislative changes and clarifying existing language related to regional water planning.

The board's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this rule because this is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code, §2007.003(b)(4). The board is the agency that administers the regional water planning process in order to develop a state water plan.

Nevertheless, the board further evaluated this rule and performed an assessment of whether it constitutes a taking under Texas Government Code, Chapter 2007. Promulgation and enforcement of this adopted rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject adopted regulation does not affect a landowner's rights in private real property because this rulemaking does not burden nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. In other words, this rule requires compliance with state law regarding the state water planning process. Therefore, the rule does not constitute a taking under Texas Government Code, Chapter 2007.

#### PUBLIC COMMENTS

The following written comments were received from the Central Texas Water Coalition (CTWC), Freese and Nichols, Inc. (FNI), and HDR Engineering, Inc. (HDR).

##### *Comment*

The CTWC commented that TWDB rules should provide additional guidance and structure on membership and operation of RWPGs. The CTWC provided recommendations on term

limits, residency requirements, interest category requirements, teleconference allowances for committee meetings, and requirements for procurement of technical consultants.

*Response*

The TWDB notes that these comments are not in response to any specific proposed rule change, but rather the comment is requesting the addition of a new rules. No change has been made in response to this comment.

*Regarding*

Section 357.10. Definitions and Acronyms.

*Comment*

FNI commented that a formal definition of Regional Water Planning Gallons Per Capita Per Day is a welcome addition to Chapter 357. FNI recommends revising the proposed definition to include reclaimed water and seawater desalination used to meet municipal water demands in the calculation of Regional Water Planning Gallons Per Capita Per Day since the current planning cycle includes demands for reclaimed water and that interest in innovative supply approaches such as desalination has continued to grow.

*Response*

Municipal water demands developed by the TWDB do not include reuse or brackish groundwater sources. The proposed definition maintains consistency with the existing definition established by the TWDB and Texas Commission on Environmental Quality in consultation with the Texas Water Conservation Advisory Council. If guidance on definitions are updated in the future, stakeholder input will be solicited. No change has been made in response to this comment.

*Regarding*

Section 357.11. Designations.

*Comment*

CTWC commented that the proposed addition to §357.11(k) regarding the Interregional Planning Council lacks specificity on membership and nominations.

*Response*

Further clarification on membership and nominations for the Interregional Planning Council is provided in the "Section by Section Analysis." No changes have been made to the rule in response to this comment.

*Comment*

The CTWC questioned the timing feasibility of the first Interregional Planning Council to deliver their report to the TWDB by October 14, 2020. HDR commented that the proposed deadline for the Interregional Planning Council to submit its recommendation report to the TWDB six months prior to the Initially Prepared Plan deadline appears reasonable, however if the RWPGs are expected to evaluate and respond to the report, more time may be necessary.

*Response*

The Board agrees that additional time may be warranted for the Council to submit a report to the TWDB this cycle, and that additional time may be warranted for RWPGs to consider and respond to recommendations from the Council in future cycles. The adopted rule language for Section 357.11(k)(5) is revised to:

*For the planning cycle of the 2022 State Water Plan, the Council's report shall be delivered to the Board by a date established by the EA, which will be no later than adoption of the 2022 State Water Plan. Beginning with the planning cycle for the 2027 State Water Plan and each planning cycle thereafter, the report shall be delivered to the Board no later than one year prior to the IPP deliverable date for the corresponding State Water Plan cycle, as set in regional water planning contracts.*

*Comment*

CTWC encouraged the TWDB to facilitate the Interregional Planning Council and identify and discuss issues to be addressed by the Interregional Planning Council.

*Response*

The Board acknowledges and appreciates this comment. No changes have been made in response to this comment.

*Comment*

FNI commented that it supports the proposed addition of Section 357.11(k) regarding the Interregional Planning Council. FNI commented that the new language clearly defines primary requirements while allowing the Council necessary flexibility in determining meeting schedules and report contents, which may vary within and among planning cycles.

*Response*

The Board acknowledges and appreciates this comment. No changes have been made in response to this comment.

*Regarding*

Section 357.34. Identification and Evaluation of Potentially Feasible Water Management Strategies and Water Management Strategy Projects.

*Comment*

CTWC requested the TWDB to explain why the proposed §357.34(g) allows each RWPG to set the threshold for significant identified water needs in the planning area and questioned how information that is not uniformly consistent be presented in the state water plan.

*Response*

Further clarification on significant identified water needs is provided in the "Section by Section Analysis." No changes have been made to the rule in response to this comment.

*Comment*

FNI commented that it supports the proposed addition to §357.34(g) and (h) regarding aquifer storage and recovery. FNI provided recommendations for future contract guidance and future grant funding.

*Response*

The Board acknowledges this comment. No changes have been made in response to this comment.

*Comment*

FNI commented that it supports the proposed addition to §357.34(i)(3) regarding gallons per capita per day goals.

*Response*

The Board acknowledges this comment. No changes have been made in response to this comment.

*Regarding*

Section 357.42. Drought Response Information, Activities, and Recommendations.

*Comment*

CTWC commented that they support the proposed addition to §357.42(b) regarding the identification of unnecessary or counterproductive variations in drought response strategies. CTWC commented that the proposed rule as written appears to apply only to municipal water user groups and requested that the proposed revisions are clarified to encompass all water user groups.

*Response*

The proposed rule does not limit RWPGs from identifying drought response strategies from non-municipal water user groups. No changes have been made in response to this comment.

*Comment*

FNI commented that the proposed addition to §357.42(b) regarding the identification of unnecessary or counterproductive variations in drought response strategies appears to set a reasonable minimum requirement and allows for RWPG flexibility.

*Response*

The Board acknowledges this comment. No changes have been made in response to this comment.

*Regarding*

Section 357.45. Implementation and Comparison to Previous Regional Water Plan.

*Comment*

FNI commented that it supports the proposed addition to §357.45(b) regarding an assessment of regionalization.

*Response*

The Board acknowledges this comment. No changes have been made in response to this comment.

*Comment*

HDR provided the following suggested revision to the proposed language in §357.45(b)(2) regarding an assessment of regionalization: "The number of implemented WMSs recommended in the previous RWP that have been implemented since the previously adopted RWP that serve more than one WUG,".

*Response*

The Board agrees that clarification on this rule is warranted. The rule is revised in response to this comment to clarify that the regionalization assessment of implemented water management strategies (WMS) in the previously adopted plan is specific to recommended WMS in the previous plan. In response to this, the adopted rule language for Section 357.45(b)(2)) is revised to: *The number of recommended WMSs in the previously adopted RWP that serve more than one WUG and have been implemented since the previously adopted RWP; and.*

**SUBCHAPTER A. GENERAL INFORMATION**

**31 TAC §357.10, §357.11**

**STATUTORY AUTHORITY**

The amendment is adopted under the authority of §6.101, which provides the TWDB with the authority to adopt rules necessary

to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Water Code §§16.052 and 16.053.

This rulemaking affects Water Code, Chapter 16.

*§357.11. Designations.*

(a) The Board shall review and update the designations of RW-PAs as necessary but at least every five years, on its own initiative or upon recommendation of the EA. The Board shall provide 30 days notice of its intent to amend the designations of RW-PAs by publication of the proposed change in the *Texas Register* and by mailing the notice to each mayor of a municipality with a population of 1,000 or more or which is a county seat that is located in whole or in part in the RW-PAs proposed to be impacted, to each water district or river authority located in whole or in part in the RWPA based upon lists of such water districts and river authorities obtained from the Commission, and to each county judge of a county located in whole or in part in the RW-PAs proposed to be impacted. After the 30 day notice period, the Board shall hold a public hearing at a location to be determined by the Board before making any changes to the designation of an RWPA.

(b) If upon boundary review the Board determines that revisions to the boundaries are necessary, the Board shall designate areas for which RWPs shall be developed, taking into consideration factors such as:

- (1) River basin and aquifer delineations;
- (2) Water utility development patterns;
- (3) Socioeconomic characteristics;
- (4) Existing RW-PAs;
- (5) Political Subdivision boundaries;
- (6) Public comment; and
- (7) Other factors the Board deems relevant.

(c) After an initial coordinating body for a RWPG is named by the Board, the RWPGs shall adopt, by two-thirds vote, bylaws that are consistent with provisions of this chapter. Within 30 days after the Board names members of the initial coordinating body, the EA shall provide to each member of the initial coordinating body a set of model bylaws which the RWPG shall consider. The RWPG shall provide copies of its bylaws and any revisions thereto to the EA. The bylaws adopted by the RWPG shall at a minimum address the following elements:

- (1) definition of a quorum necessary to conduct business;
- (2) method to be used to approve items of business including adoption of RWPs or amendments thereto;
- (3) methods to be used to name additional members;
- (4) terms and conditions of membership;
- (5) methods to record minutes and where minutes will be archived as part of the public record; and
- (6) methods to resolve disputes between RWPG members on matters coming before the RWPG.

(d) RWPGs shall maintain at least one representative of each of the following interest categories as voting members of the RWPG. However, if an RWPA does not have an interest category below, then the RWPG shall so advise the EA and no membership designation is required.

(1) Public, defined as those persons or entities having no economic interest in the interests represented by paragraphs (2) - (12) of this subsection other than as a normal consumer;

(2) Counties, defined as the county governments for the 254 counties in Texas;

(3) Municipalities, defined as governments of cities created or organized under the general, home-rule, or special laws of the state;

(4) Industries, defined as corporations, partnerships, sole proprietorships, or other legal entities that are formed for the purpose of making a profit and which produce or manufacture goods or services and which are not small businesses;

(5) Agricultural interests, defined as those persons or entities associated with production or processing of plant or animal products;

(6) Environmental interests, defined as those persons or groups advocating the conservation of the state's natural resources, including but not limited to soil, water, air, and living resources;

(7) Small businesses, defined as corporations, partnerships, sole proprietorships, or other legal entities that are formed for the purpose of making a profit, are independently owned and operated, and have fewer than 500 employees or less than \$10 million in gross annual receipts;

(8) Electric generating utilities, defined as any persons, corporations, cooperative corporations, or any combination thereof, meeting each of the following three criteria: own or operate for compensation equipment or facilities which produce or generate electricity; produce or generate electricity for either wholesale or retail sale to others; and are neither a municipal corporation nor a river authority;

(9) River authorities, defined as any districts or authorities created by the legislature which contain areas within their boundaries of one or more counties and which are governed by boards of directors appointed or designated in whole or part by the governor or board, including, without limitation, San Antonio River Authority;

(10) Water districts, defined as any districts or authorities, created under authority of either Texas Constitution, Article III, §52(b)(1) and (2), or Article XVI, §59 including districts having the authority to regulate the spacing of or production from water wells, but not including river authorities;

(11) Water utilities, defined as any persons, corporations, cooperative corporations, or any combination thereof that provide water supplies for compensation except for municipalities, river authorities, or water districts; and

(12) Groundwater management areas, defined as a single representative for each groundwater management area that is at least partially located within an RWPA. Defined as a representative from a groundwater conservation district that is appointed by the groundwater conservation districts within the associated groundwater management area.

(e) The RWPGs shall add the following non-voting members, who shall receive meeting notifications and information in the same manner as voting members:

(1) Staff member of the Board to be designated by the EA;

(2) Staff member of the Texas Parks and Wildlife Department designated by its executive director;

(3) Member designated by each adjacent RWPG to serve as a liaison;

(4) One or more persons to represent those entities with headquarters located in another RWPA and which holds surface water rights authorizing a diversion of 1,000 acre-feet a year or more in the RWPA, which supplies water under contract in the amount of 1,000 acre-feet a year or more to entities in the RWPA, or which receives water under contract in the amount of 1,000 acre-feet a year or more from the RWPA;

(5) Staff member of the Texas Department of Agriculture designated by its commissioner; and

(6) Staff member of the State Soil and Water Conservation Board designated by its executive director.

(f) Each RWPG shall provide a current list of its members to the EA; the list shall identify the interest represented by each member including interests required in subsection (d) of this section.

(g) Each RWPG, at its discretion, may at any time add additional voting and non-voting representatives to serve on the RWPG for any new interest category, including additional representatives of those interests already listed in subsection (d) of this section that the RWPG considers appropriate for water planning.

(h) Each RWPG, at its discretion, may remove individual voting or non-voting members or eliminate RWPG representative positions in accordance with the RWPG bylaws as long as minimum requirements of RWPG membership are maintained in accordance with subsection (d) of this section.

(i) RWPGs may enter into formal and informal agreements to coordinate, avoid conflicts, and share information with other RWPGs or any other interests within any RWPA for any purpose the RWPGs consider appropriate including expediting or making more efficient water planning efforts. These efforts may involve any portion of the RWPG membership. Any plans or information developed through these efforts by RWPGs or by committees may be included in an RWP only upon approval of the RWPG.

(j) Upon request, the EA will provide technical assistance to RWPGs, including on water supply and demand analysis, methods to evaluate the social and economic impacts of not meeting needs, and regarding Drought Management Measures and water conservation practices.

(k) The Board shall appoint an Interregional Planning Council during each state water planning cycle. The Interregional Planning Council will be subject to the following provisions:

(1) The Interregional Planning Council consists of one voting member from each RWPG, as appointed by the Board.

(2) Upon request by the EA, each RWPG shall submit at least one nomination for appointment, including a designated alternate for each nomination.

(3) Interregional Planning Council members will serve until adoption of the State Water Plan.

(4) The Interregional Planning Council, during each planning cycle to develop the State Water Plan, shall hold at least one public meeting and deliver a report to the Board. The report format may be determined by the Council. The report at a minimum shall include a summary of the dates the Council convened, the actions taken, minutes of the meetings, and any recommendations for the Board's consideration, based on the Council's work. Meeting frequency, location, and additional report content shall be determined by the Council.

(5) For the planning cycle of the 2022 State Water Plan, the Council's report shall be delivered to the Board by a date established by the EA, which will be no later than adoption of the 2022 State Water

Plan. Beginning with the planning cycle for the 2027 State Water Plan and each planning cycle thereafter, the report shall be delivered to the Board no later than one year prior to the IPP deliverable date for the corresponding State Water Plan cycle, as set in regional water planning contracts.

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 June 8, 2020.

TRD-202002298

Ashley Harden

General Counsel

Texas Water Development Board

Effective date: June 28, 2020

Proposal publication date: February 28, 2020

For further information, please call: (512) 463-7686



## SUBCHAPTER B. GUIDANCE PRINCIPLES AND NOTICE REQUIREMENTS

### 31 TAC §357.21

#### STATUTORY AUTHORITY

The amendment is adopted under the authority of §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Water Code §§16.052 and 16.053.

This rulemaking affects Water Code, Chapter 16.

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 June 8, 2020.

TRD-202002299

Ashley Harden

General Counsel

Texas Water Development Board

Effective date: June 28, 2020

Proposal publication date: February 28, 2020

For further information, please call: (512) 463-7686



## SUBCHAPTER C. PLANNING ACTIVITIES FOR NEEDS ANALYSIS AND STRATEGY

### 31 TAC §§357.31, 357.33, 357.34

#### STATUTORY AUTHORITY

The amendment is adopted under the authority of §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Water Code §§16.052 and 16.053.

This rulemaking affects Water Code, Chapter 16.

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 June 8, 2020.

TRD-202002301

Ashley Harden

General Counsel

Texas Water Development Board

Effective date: June 28, 2020

Proposal publication date: February 28, 2020

For further information, please call: (512) 463-7686



## SUBCHAPTER D. IMPACTS, DROUGHT RESPONSE, POLICY RECOMMENDATIONS, AND IMPLEMENTATION

### 31 TAC §§357.42, 357.43, 357.45

#### STATUTORY AUTHORITY

The amendment is adopted under the authority of §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Water Code §§16.052 and 16.053.

This rulemaking affects Water Code, Chapter 16.

*§357.45. Implementation and Comparison to Previous Regional Water Plan.*

(a) RWPGs shall describe the level of implementation of previously recommended WMSs and associated impediments to implementation in accordance with guidance provided by the board. Information on the progress of implementation of all WMSs that were recommended in the previous RWP, including conservation and Drought Management WMSs; and the implementation of WMSPs that have affected progress in meeting the state's future water needs.

(b) RWPGs shall assess the progress of the RWPA in encouraging cooperation between WUGs for the purpose of achieving economies of scale and otherwise incentivizing WMSs that benefit the entire RWPA. This assessment of regionalization shall include:

(1) The number of recommended WMSs in the previously adopted and current RWPs that serve more than one WUG;

(2) The number of recommended WMSs in the previously adopted RWP that serve more than one WUG and have been implemented since the previously adopted RWP; and

(3) A description of efforts the RWPG has made to encourage WMSs and WMSPs that serve more than one WUG, and that benefit the entire region.

(c) RWPGs shall provide a brief summary of how the RWP differs from the previously adopted RWP with regards to:

(1) Water Demand projections;

(2) Drought of Record and hydrologic and modeling assumptions used in planning for the region;

(3) Groundwater and surface water Availability, Existing Water Supplies, and identified Water Needs for WUGs and WWPs; and

(4) Recommended and Alternative WMSs and WMSPs.

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 June 8, 2020.

TRD-202002302

Ashley Harden

General Counsel

Texas Water Development Board

Effective date: June 28, 2020

Proposal publication date: February 28, 2020

For further information, please call: (512) 463-7686



## TITLE 34. PUBLIC FINANCE

### PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

#### CHAPTER 5. FUNDS MANAGEMENT (FISCAL AFFAIRS)

##### SUBCHAPTER C. CLAIMS PROCESSING-- TRAVEL VOUCHERS

###### 34 TAC §5.22

The Comptroller of Public Accounts adopts amendments to §5.22 concerning state of Texas travel guidance, without changes to the proposed text as published in the April 24, 2020, issue of the *Texas Register* (45 TexReg 2689). The rule will not be republished.

The amendment to subsection (a) changes "Web site" to "website" to conform with current spelling of the term and to be consistent with the way the term is spelled in Chapter 5.

The amendments to subsection (b)(3) clarify that a state agency may not reimburse a state employee for any costs or expenses in excess of those incurred for official travel that result from a state employee's personal preference or convenience.

The amendments to subsection (b)(4) clarify that a state agency may not reimburse a state employee for a travel expense incurred by or on behalf of another state employee, except under the circumstances specified in this subsection.

The amendments to subsection (g)(2)(B) and (C) require point-to-point mileage to be documented by an employee's vehicle odometer reading or by the single, readily available electronic mapping service selected by the employee's agency, institution of higher education, or other entity required to comply with Government Code, Chapter 660, and adopted by internal policy of the agency, institution, or entity.

The amendments to subsection (j)(1)(C) change "Texas Procurement and Support Services" to "comptroller's Statewide Procurement Division" because the name of that division has changed.

The comptroller did not receive any comments regarding adoption of the amendments.

The amendments are adopted under Government Code, §660.021, which authorizes the comptroller to adopt rules relating to the administration of Government Code, Chapter 660, concerning travel expenses, and the travel provisions of the General Appropriations Act.

The amendments implement Government Code, Chapter 660, concerning travel expenses.

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 June 5, 2020.

TRD-202002280

Victoria North

General Counsel for Fiscal and Agency Affairs

Comptroller of Public Accounts

Effective date: June 25, 2020

Proposal publication date: April 24, 2020

For further information, please call: (512) 475-2220



# REVIEW OF AGENCY RULES

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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.

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## Adopted Rule Reviews

Office of the Governor

### Title 1, Part 1

The Texas Crime Stoppers Council (Council) has completed the rule review of Texas Administrative Code Title 1, Part 1, Chapter 3, Subchapter H, Texas Crime Stoppers Program, in its entirety. The rule review was conducted under Texas Government Code §2001.039.

Notice of this review of Subchapter H was published in the January 3, 2020, issue of the *Texas Register* (45 TexReg 161). The Council received no comments in response to that notice.

As a result of the rule review, the Council finds that the reasons for initially adopting Subchapter H continue to exist and therefore read-

opts Subchapter H as amended in the March 20, 2020, issue of the *Texas Register* (45 TexReg 1975), in accordance with Texas Government Code §2001.039.

This concludes the review of Subchapter H.

TRD-202002333

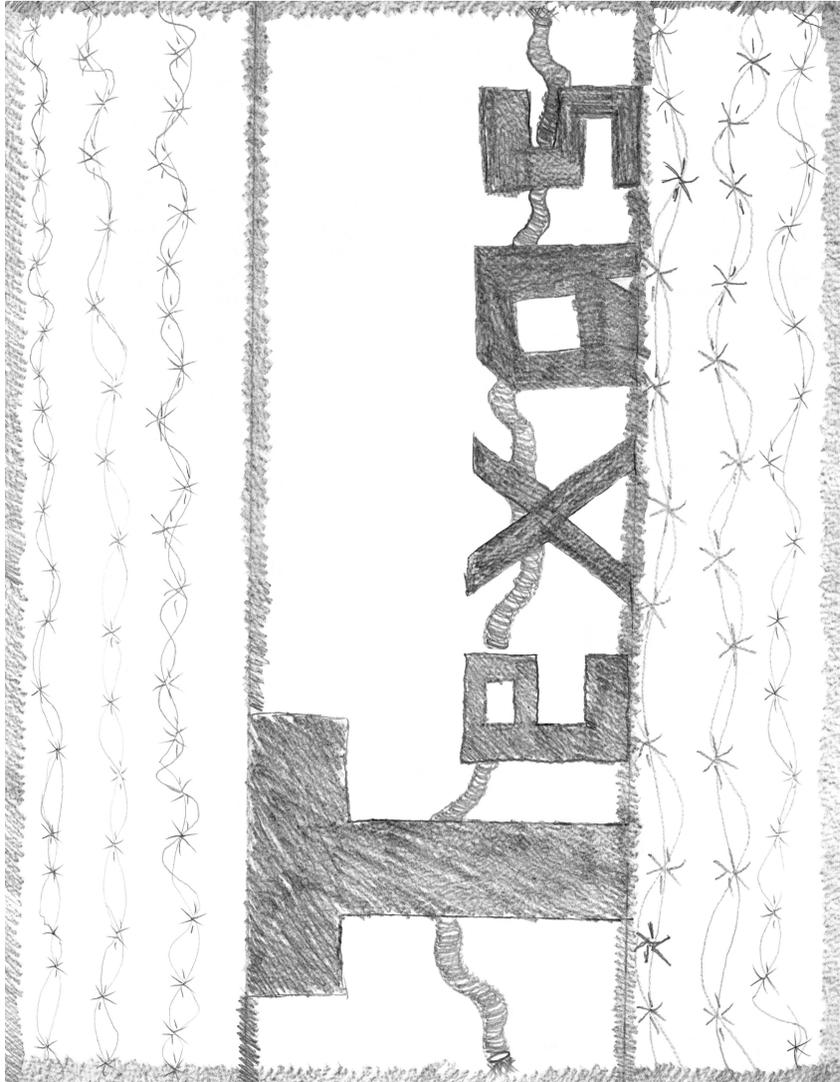
Margie Fernandez-Prew

Director, Texas Crime Stoppers Council

Office of the Governor

Filed: June 10, 2020





# TABLES & GRAPHICS

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Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

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Figure: 28 TAC §5.4162(e)

<b>TEXAS WINDSTORM INSURANCE ASSOCIATION PROCEDURE FOR CALCULATING MEMBER ASSESSMENT PERCENTAGES INCLUDING CREDIT FOR VOLUNTARY WRITINGS</b>			
[1] STATEWIDE DIRECT WRITTEN PREMIUMS	[2] NET DIRECT WRITTEN PREMIUMS	[3] COMPANY PERCENT OF STATEWIDE PREMIUMS WRITTEN	[4] TOTAL PREMIUMS IN CATASTROPHE AREAS
(a)(b)(c) E.C. CMP HO	Total of Col. [1](a) & (b) x 90% Col. [1](c) x 50%	[2] ÷ Total of [2]	(ASSOCIATION + VOLUNTARY)
[5] NORMAL REQUIRED QUOTA IN DESIGNATED AREAS	[6] CREDIT FOR COMPANY'S VOLUNTARY PREMIUMS	[7] DIFFERENCE BETWEEN NORMAL REQUIRED PARTICIPATION AND VOLUNTARY CREDIT PREMIUMS	[8] ASSOCIATION ASSESSMENT PERCENTAGE PRIOR TO OFFSET
([3] x [4])	(not to exceed column [5])	([5] - [6])	[7] ÷ Total of [7]
[9] NET ASSOCIATION ASSESSMENT PERCENTAGE (After application of offset)			

# IN

# ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

## Comptroller of Public Accounts

### Local Sales Tax Rate Changes Effective July 1, 2020

The additional 1/4 percent sales and use tax for improving and promoting economic and industrial development as permitted under Chapter 504 of the Texas Local Government Code, Type A Corporations (4A) will be abolished effective June 30, 2020 and an additional 1/4 percent sales and use tax for improving and promoting economic and industrial development as permitted under Chapter 505 of the Texas Local Government Code, Type B Corporations (4B) will become effective July 1, 2020 in the city listed below. There will be no change in the local rate or total rate.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Muleshoe (Bailey Co)	2009010	.020000	.082500

The additional 1/4 percent sales and use tax for improving and promoting economic and industrial development as permitted under Chapter 505 of the Texas Local Government Code, Type B Corporations (4B) will be abolished effective June 30, 2020 and an additional 1/2 percent sales and use tax for Municipal Street Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code will become effective July 1, 2020 in the city listed below. There will be no change in the local rate or total rate.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Hill Country Village (Bexar Co)	2015085	.020000	.082500

A 1 1/2 percent special purpose district sales and use tax will become effective July 1, 2020 in the special purpose district listed below.

SPD NAME	LOCAL CODE	NEW RATE	DESCRIPTION
Bexar County Emergency Services District No. 11	5015691	.015000	SEE NOTE 1

NOTE 1: The Bexar County Emergency Services District No. 11 is located in the central eastern portion of Bexar County. The district is located entirely within the San Antonio MTA, which has a transit sales and use tax. The district excludes any areas within the cities of San Antonio or Converse. The unincorporated areas of Bexar County in ZIP Codes 78109 and 78244 are partially located within the Bexar County Emergency Services District No. 11. Contact the district representative at

210-884-8192 for additional boundary information.

TRD-202002278  
William Hamner  
Special Counsel for Tax Administration  
Comptroller of Public Accounts  
Filed: June 4, 2020

◆ ◆ ◆  
**Office of Consumer Credit Commissioner**

**Notice of Rate Ceilings**

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 06/15/20 - 06/21/20 is 18% for Consumer<sup>1</sup>/Agricultural/Commercial<sup>2</sup> credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 06/15/20 - 06/21/20 is 18% for Commercial over \$250,000.

<sup>1</sup> Credit for personal, family or household use.

<sup>2</sup> Credit for business, commercial, investment or other similar purpose.

TRD-202002326  
Leslie L. Pettijohn  
Commissioner  
Officer of Consumer Credit Commissioner  
Filed: June 9, 2020

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**Texas Commission on Environmental Quality**

**Agreed Orders**

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **July 20, 2020**. 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 commissions jurisdiction or the commissions orders and permits issued in accordance with the commissions 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 commissions central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on **July 20, 2020**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission's enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides

that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: All Paws Go To Heaven, LLC; DOCKET NUMBER: 2019-1444-MLM-E; IDENTIFIER: RN104271523; LOCATION: McKinney, Collin County; TYPE OF FACILITY: pet crematory; RULES VIOLATED: 30 TAC §116.115(c), New Source Review (NSR) Permit Number 152484, Special Conditions (SC) Number 4, and Texas Health and Safety Code (THSC), §382.085(b), by failing to post the manufacturers recommended operating instructions at each incinerator; 30 TAC §116.115(c), NSR Permit Number 152484, SC Number 6, and THSC, §382.085(b), by failing to incinerate carcasses within two hours of receipt, unless stored at or below a temperature of 29 degrees Fahrenheit; 30 TAC §116.115(c), NSR Permit Number 152484, SC Number 9.C, and THSC, §382.085(b), by failing to weigh each batch load by a scale prior to incineration; 30 TAC §116.115(c), NSR Permit No. 152484, SC Number 10, and THSC, §382.085(b), by failing to maintain a minimum secondary chamber temperature of 1,600 degrees Fahrenheit for the incinerators; 30 TAC §116.115(c), NSR Permit Number 152484, SC Number 10.A, and THSC, §382.085(b), by failing to maintain equipment to continuously record the secondary chamber temperature for each incinerator at the exit of the secondary chamber whenever the incinerator is operating; 30 TAC §116.115(c), NSR Permit Number 152484, SC Number 10.B, and THSC, §382.085(b), by failing to maintain the exit temperature of the secondary chamber for the incinerator at or above 1,600 degrees Fahrenheit before the first charge of carcasses is fired; 30 TAC §116.115(c), NSR Permit Number 152484, SC Number 13.A, and THSC, §382.085(b), by failing to equip each incinerator with a continuous opacity monitoring system to monitor and record any opacity in excess of the opacity limits; 30 TAC §116.115(c), NSR Permit Number 152484, SC Number 14, and THSC, §382.085(b), by failing to store ash from the unit in a closed container until transported and disposed of; 30 TAC §116.115(c), NSR Permit Number 152484, SC Numbers 19.A, 19.B, and 19.E, and THSC, §382.085(b), by failing to maintain records; and 30 TAC §330.7(a), by failing to obtain a permit or other authorization prior to conducting storage, processing, or disposal of municipal solid waste; PENALTY: \$22,750; ENFORCEMENT COORDINATOR: Richard Garza, (512) 239-2697; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Aqua Texas, Incorporated; DOCKET NUMBER: 2020-0260-MWD-E; IDENTIFIER: RN102179363; LOCATION: Houston, Harris County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0012222001, Effluent Limitations and Monitoring Requirements Number 1., by failing to comply with permitted effluent limitations; PENALTY: \$1,437; ENFORCEMENT COORDINATOR: Stephanie Frederick, (512) 239-1001; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(3) COMPANY: Aqua Utilities, Incorporated; DOCKET NUMBER: 2019-1696-PWS-E; IDENTIFIER: RN102693215; LOCATION: Joshua, Johnson County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.45(b)(1)(C)(i) and Texas Health and Safety Code, §341.0315(c), by failing to provide a well capacity of 0.6 gallons per minute per connection; PENALTY: \$157; ENFORCEMENT COORDINATOR: Ronica Rodriguez, (361) 825-3425; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: Ashley and Fagan Investments Co. Incorporated dba Rio Brazos Water System; DOCKET NUMBER: 2020-0265-PWS-E; IDENTIFIER: RN103105805; LOCATION: Snyder, Kent County;

TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.41(c)(3)(K), by failing to provide a well casing vent with an opening that is covered with a 16-mesh or finer corrosion-resistant screen, facing downward, elevated, and located so as to minimize the drawing of contaminants into the well; 30 TAC §290.41(c)(3)(M), by failing to provide a suitable sampling cock on the discharge pipe of the facility's well pump prior to treatment at Well Number 2; 30 TAC §290.46(e) and Texas Health and Safety Code, §341.033(a), by failing to use a water works operator who holds an applicable, valid license issued by the executive director (ED); 30 TAC §290.46(f)(2) and (3)(A)(iv), by failing to maintain water works operation and maintenance records and make them readily available for review by the ED upon request; 30 TAC §290.46(m)(4), by failing to maintain all water treatment units, storage and pressure maintenance facilities, distribution system lines, and related appurtenances in a watertight condition; 30 TAC §290.46(m)(6), by failing to maintain all pumps, motors, valves, and other mechanical devices in good working condition; and 30 TAC §290.46(n)(2), by failing to make available an accurate and up-to-date map of the distribution system so that valves and mains can be easily located during emergencies; PENALTY: \$1,431; ENFORCEMENT COORDINATOR: Ryan Byer, (512) 239-2571; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(5) COMPANY: Blanchard Refining Company LLC; DOCKET NUMBER: 2018-1308-AIR-E; IDENTIFIER: RN102535077; LOCATION: Texas City, Galveston County; TYPE OF FACILITY: petroleum refinery; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(c), 116.715(a), and 122.143(4), Flexible Permit Numbers 47256 and PSDTX402M3, Special Conditions (SC) Number 1, New Source Review Permit Number 2612, SC Number 1, Federal Operating Permit Number O1541, General Terms and Conditions and Special Terms and Conditions Number 27, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$14,250; ENFORCEMENT COORDINATOR: Carol McGrath, (210) 403-4063; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(6) COMPANY: Chevron Phillips Chemical Company LP; DOCKET NUMBER: 2019-1069-AIR-E; IDENTIFIER: RN100209857; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(b)(2)(F) and (c), and 122.143(4), New Source Review Permit Numbers 21101 and PSDTX1248, Special Conditions Number 1, Federal Operating Permit Number O1235, General Terms and Conditions and Special Terms and Conditions Number 23, and Texas Health and Safety Code, §382.085(b), by failing to comply with the maximum allowable emissions rate; PENALTY: \$71,250; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$28,500; ENFORCEMENT COORDINATOR: Amanda Diaz, (512) 239-2601; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(7) COMPANY: City of Austin; DOCKET NUMBER: 2020-0068-MWD-E; IDENTIFIER: RN101607901; LOCATION: Austin, Travis County; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: 30 TAC §305.125(1) and (5), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010543011, Permit Conditions Number 2.g, by failing to prevent an unauthorized discharge of untreated wastewater into or adjacent to any water in the state; PENALTY: \$6,150; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$6,150; ENFORCEMENT COORDINATOR: Katelyn Tubbs, (512) 239-2512; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(8) COMPANY: City of Crosbyton; DOCKET NUMBER: 2019-0339-MWD-E; IDENTIFIER: RN101918142; LOCATION: Crosbyton, Crosby County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1) and TCEQ Permit Number WQ0010097001, Operational Requirements Number 3(b), by failing to submit a closure plan for review and approval to the TCEQ Municipal Permits Team for any closure activity at least 90 days prior to conducting such activities; 30 TAC §305.125(1) and TCEQ Permit Number WQ0010097001, Special Provision Number 7, by failing to obtain representative soil samples from the root zones of the land application area receiving wastewater; 30 TAC §305.125(1) and TCEQ Permit Number WQ0010097001, Special Provision Number 13, by failing to submit certification by a Texas Licensed Professional Engineer that the completed pond lining meets the appropriate criteria within 60 days of permit issuance; 30 TAC §305.125(1) and (17) and TCEQ Permit Number WQ0010097001, Sludge Provisions, Section III(G), by failing to submit a complete annual sludge report to the TCEQ by September 30th of each year; 30 TAC §309.13(c)(1), by failing to maintain a minimum horizontal distance of 150 feet from the land application area from private water wells; and 30 TAC §317.7(e), by failing to provide the required plant protection; PENALTY: \$15,000; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$12,000; ENFORCEMENT COORDINATOR: Had Darling, (512) 239-2520; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(9) COMPANY: D.R. Horton - Texas, Ltd.; DOCKET NUMBER: 2020-0295-WQ-E; IDENTIFIER: RN108365420; LOCATION: Conroe, Montgomery County; TYPE OF FACILITY: construction site; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a), and Texas Pollutant Discharge Elimination System General Permit Number TXR15441L, Part III, Section F(6)(a), by failing to install and maintain best management practices at the site which resulted in an unauthorized discharge; PENALTY: \$45,000; ENFORCEMENT COORDINATOR: Alejandro Laje, (512) 239-2547; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(10) COMPANY: DCP Operating Company, LP; DOCKET NUMBER: 2020-0311-AIR-E; IDENTIFIER: RN102550167; LOCATION: Big Spring, Howard County; TYPE OF FACILITY: natural gas compressor station; RULES VIOLATED: 30 TAC §101.201(a)(1)(B) and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit an initial notification for a reportable emissions event no later than 24 hours after the discovery of an emissions event; and 30 TAC §106.6(b), Permit by Rule Registration Number 49167, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$1,438; ENFORCEMENT COORDINATOR: Johnnie Wu, (512) 239-2524; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(11) COMPANY: KOTT LIVEOAKS INCORPORATED; DOCKET NUMBER: 2020-0017-PWS-E; IDENTIFIER: RN101274850; LOCATION: Fredericksburg, Gillespie County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.41(c)(3)(K), by failing to seal the wellhead by a gasket or sealing compound and provide a well casing vent for Well Number 3 that is covered with 16-mesh or finer corrosion-resistant screen, facing downward, elevated and located so as to minimize the drawing of contaminants into the well; 30 TAC §290.46(d)(2)(A) and §290.110(b)(4) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to maintain a disinfectant residual of at least 0.2 milligrams per liter (mg/L) of free chlorine throughout the distribution system at all times; 30 TAC §290.46(f)(2) and (3)(D)(ii), by failing to maintain water works operation and maintenance records and make them readily available for review by the executive director upon request; 30 TAC

§290.46(m)(4), by failing to maintain all water treatment units, storage and pressure maintenance facilities, distribution system lines, and related appurtenances in a watertight condition and free of excessive solids; 30 TAC §290.46(t), by failing to post a legible sign at the facility's production, treatment, and storage facilities that contains the name of the facility and an emergency telephone number where a responsible official can be contacted; and 30 TAC §290.46(s)(1), by failing to calibrate the facility's two well meters at least once every three years; PENALTY: \$1,773; ENFORCEMENT COORDINATOR: Samantha Duncan, (512) 239-2511; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(12) COMPANY: Liberty Utilities (Woodmark Sewer) Corp.; DOCKET NUMBER: 2019-1800-MWD-E; IDENTIFIER: RN101511400; LOCATION: Flint, Smith County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0013168001, Final Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: \$5,000; ENFORCEMENT COORDINATOR: Harley Hobson, (512) 239-1337; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(13) COMPANY: Libbert-Looneyville Water Supply Corporation; DOCKET NUMBER: 2020-0122-PWS-E; IDENTIFIER: RN101187433; LOCATION: Cushing, Nacogdoches County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(j), Texas Health and Safety Code, §341.0351, and TCEQ Agreed Order Docket Number 2016-0182-PWS-E, Ordering Provision Numbers 2.c and 2.e, by failing to notify the executive director (ED) prior to making any significant change or addition to the systems production, treatment, storage, pressure maintenance, or distribution facilities; 30 TAC §290.46(f)(2) and (3)(B)(ii) and TCEQ Agreed Order Docket Number 2016-0182-PWS-E, Ordering Provision Number 2.a.i, by failing to maintain water works operation and maintenance records and make them available for review to the ED during the investigation; and 30 TAC §290.46(n)(2) and TCEQ Agreed Order Docket Number 2016-0182-PWS-E, Ordering Provision Number 2.a.ii, by failing to maintain an accurate and up-to-date map of the distribution system so that valves and mains can be easily located during emergencies; PENALTY: \$197; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(14) COMPANY: LMMM Houston #67, Ltd. dba La Michoacana Meat Market; DOCKET NUMBER: 2019-1701-PST-E; IDENTIFIER: RN101754323; LOCATION: Conroe, Montgomery 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 §334.42(i) and TWC, §26.3475(c)(2), by failing to inspect all sumps, manways, overspill containers, or catchment basins associated with a UST system at least once every 60 days to ensure that their sides, bottoms, and any penetration points are maintained liquid-tight; 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the USTs in a manner which will detect a release at a frequency of at least once every 30 days, and failing to provide release detection for the pressurized piping associated with the UST system; 30 TAC §334.602(a), by failing to designate, train, and certify at least one named individual for each class of operator, Class A, Class B, and Class C for the facility; PENALTY: \$13,541; ENFORCEMENT COORDINATOR: Berenice Munoz, (915) 834-4976; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(15) COMPANY: Marion J. Smith dba Town North Village Water System and Cox Addition Water System; DOCKET NUMBER: 2019-1791-PWS-E; IDENTIFIERS: RN101272060 and RN101221117; LOCATION: Shallowater, Lubbock County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(j) and Texas Health and Safety Code (THSC), §341.0351, by failing to notify the executive director prior to making any significant change or addition to the systems production, treatment, storage, pressure maintenance, or distribution facilities; 30 TAC §290.41(c)(1)(F), by failing to obtain a sanitary control easement covering land within 150 feet of Well Numbers 1 and 2; 30 TAC §290.41(c)(3)(K), by failing to provide a well casing vent for Well Number 1 that is covered with a 16-mesh or finer corrosion-resistant screen, facing downward, elevated and located so as to minimize the drawing of contaminants into the well; 30 TAC 290.45(b)(1)(C)(i) and THSC, §341.0315(c), by failing to provide a well capacity of 0.6 gallons per minute per connection; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the systems facilities and equipment; 30 TAC §290.46(u), by failing to plug an abandoned public water supply well with cement in accordance with 16 TAC Chapter 76 or submit the test results proving that the well is in a non-deteriorated condition; and 30 TAC §290.46(v), by failing to ensure that all electrical wiring is securely installed in compliance with a local or national electrical code; PENALTY: \$791; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3421; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(16) COMPANY: McClelland Water Supply Corporation; DOCKET NUMBER: 2020-0323-MLM-E; IDENTIFIER: RN101458297; LOCATION: Shelbyville, Shelby County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §288.20(a) and §288.30(5)(B), and TWC, §11.1272(c), by failing to adopt a drought contingency plan which includes all elements for municipal use by a retail public water supplier; 30 TAC §290.42(e)(4)(A), by failing to provide a full-face self-contained breathing apparatus or supplied air respirator that meets Occupational Safety and Health Administration standards and is readily accessible outside the chlorinator room and immediately available to the operator in the event of an emergency; 30 TAC §290.42(e)(4)(C), by failing to provide forced air ventilation, which includes both high level and floor level screened and louvered vents, a fan which is located at and draws air in through the top vent and discharges to the outside atmosphere through the floor level vent, and a fan switch located outside, for enclosures containing more than one operating 150-pound cylinder of chlorine; 30 TAC §290.42(f)(1)(E)(ii), by failing to provide adequate containment facilities for all liquid chemical storage tanks; 30 TAC §290.46(e) and Texas Health and Safety Code, §341.033(a), by failing to use a water works operator who holds an applicable, valid license issued by the executive director (ED); 30 TAC §290.46(f)(2) and (3)(A)(i)(II) and (ii)(II), (B)(iii)(iv) and (v), and (D)(i) and (ii), by failing to maintain water works operation and maintenance records and make them readily available for review by the ED upon request; 30 TAC §290.46(i), by failing to adopt an adequate plumbing ordinance, regulations, or service agreement with provisions for proper enforcement to ensure that neither cross-connections nor other unacceptable plumbing practices are permitted; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the systems facilities and equipment; 30 TAC §290.46(p)(2), by failing to provide the ED with a list of all the operators and operating companies that the public water system uses on an annual basis; 30 TAC §290.110(c)(5), by failing to conduct chloramine effectiveness sampling to ensure that monochloramine is the prevailing chloramine species and that nitrification is controlled; and 30 TAC §290.121(a), by failing to maintain an up-to-date

chemical and microbiological monitoring plan that is subject to the review and approval of the ED, and a copy of which is maintained at each water treatment plant and at a central location; PENALTY: \$8,550; ENFORCEMENT COORDINATOR: Marla Waters, (512) 239-4712; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(17) COMPANY: Mobile Home Management, LLC; DOCKET NUMBER: 2020-0142-PWS-E; IDENTIFIER: RN102654977; LOCATION: Lubbock, Lubbock County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.45(b)(1)(A)(ii) and Texas Health and Safety Code, §341.0315(c), by failing to provide a pressure tank capacity of 50 gallons per connection; and 30 TAC §290.51(a)(6) and TWC, §5.702, by failing to pay annual Public Health Service fees and/or any associated late fees for TCEQ Financial Administration Account Number 91520232 for Fiscal Years 2005 through 2020; PENALTY: \$2,250; ENFORCEMENT COORDINATOR: Samantha Duncan, (512) 239-2511; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(18) COMPANY: OXY USA WTP LP; DOCKET NUMBER: 2019-1725-AIR-E; IDENTIFIER: RN101222602; LOCATION: Clairemont, Kent County; TYPE OF FACILITY: natural gas processing plant; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(b)(2)(F) and (c), and 122.143(4), New Source Review Permit Numbers 20660 and PSDTX795M2, Special Conditions Number 1, Federal Operating Permit Number O550, General Terms and Conditions and Special Terms and Conditions Number 6, and Texas Health and Safety Code, §382.085(b), by failing to comply with the maximum allowable emissions rates; PENALTY: \$121,875; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$48,750; ENFORCEMENT COORDINATOR: Richard Garza, (512) 239-2697; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(19) COMPANY: Sunnyside RV LLC; DOCKET NUMBER: 2020-0198-PWS-E; IDENTIFIER: RN102319688; LOCATION: Granbury, Hood County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.41(c)(3)(B), by failing to provide a well casing a minimum of 18 inches above the elevation of the finished floor of the pump house or natural ground surface; 30 TAC §290.42(1), by failing to maintain a thorough and up-to-date plant operations manual for operator review and reference; 30 TAC §290.46(f)(2) and (3)(B)(iv) and (D)(ii) and (iii), by failing to maintain water works operation and maintenance records and make them readily available for review by the executive director upon request; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the systems facilities and equipment; 30 TAC §290.46(n)(1), by failing to maintain at the facility accurate and up-to-date detailed as-built plans or record drawings and specifications for each treatment plant, pump station, and storage tank until the facility is decommissioned; and 30 TAC §290.46(n)(3), by failing to keep on file copies of well completion data as defined in 30 TAC §290.41(c)(3)(A) for as long as the well remains in service; PENALTY: \$310; ENFORCEMENT COORDINATOR: Samantha Duncan, (512) 239-2511; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(20) COMPANY: T.F.R. ENTERPRISES, INCORPORATED; DOCKET NUMBER: 2020-0234-MLM-E; IDENTIFIER: RN106043144; LOCATION: Leander, Williamson County; TYPE OF FACILITY: recycling facility of vegetative materials; RULES VIOLATED: 30 TAC §281.25(a)(4), 40 Code of Federal Regulations §122.26(c), and TWC, §26.121, by failing to obtain authorization to discharge stormwater associated with industrial activities under Texas Pollutant Discharge Elimination System General Permit Number

TXR050000; and 30 TAC §328.4(b)(3)(B)(i), by failing to protect recyclable material from degradation, contamination, or loss of value as recyclable material; PENALTY: \$11,688; ENFORCEMENT COORDINATOR: Berenice Munoz, (915) 834-4976; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(21) COMPANY: Tracy L. Taylor; DOCKET NUMBER: 2019-1779-PWS-E; IDENTIFIER: RN110868809; LOCATION: Nacogdoches, Nacogdoches County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.42(b)(1) and (c)(3), by failing to provide disinfection facilities for the groundwater supply for the purpose of microbiological control and distribution protection; 30 TAC §290.46(e)(4)(A) and Texas Health and Safety Code, §341.033(a), by failing to operate the water system under the direct supervision of a water works operator who holds a Class D or higher license; 30 TAC §290.46(n)(1), by failing to maintain at the public water system accurate and up-to-date detailed as-built plans or record drawings and specifications for each treatment plant, pump station, and storage tank until the facility is decommissioned; and 30 TAC §290.46(u), by failing to plug an abandoned public water supply well with cement in accordance with 16 TAC Chapter 76 or submit test results proving that the well is in a non-deteriorated condition; PENALTY: \$7,986; ENFORCEMENT COORDINATOR: Julianne Dewar, (817) 588-5861; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

TRD-202002317  
Charmaine Backens  
Director, Litigation Division  
Texas Commission on Environmental Quality  
Filed: June 9, 2020



#### Correction of Error

The Texas Commission on Environmental Quality adopted an amendment to 30 TAC §335.112 in the June 5, 2020, issue of the *Texas Register* (45 TexReg 3789). Due to an error by the Texas Register, the incorrect effective date was published for the adoption. The correct effective date for the adoption is June 11, 2020.

TRD-202002306



#### Enforcement Orders

An agreed order was adopted regarding NARAYANSWARUP, INC., Docket No. 2017-0549-PST-E on June 10, 2020, assessing \$9,688 in administrative penalties with \$1,937 deferred. Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding TPLUBB, LLC, Docket No. 2018-0591-MLM-E on June 10, 2020, assessing \$12,472 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Ryan Byer, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Pitts Oilfield Products & Services, LLC, Docket No. 2018-0798-IHW-E on June 10, 2020, assessing \$58,537 in administrative penalties with \$11,707 deferred. Information concerning any aspect of this order may be obtained by contacting John Paul Fennell, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Liberty Hill, Docket No. 2018-1024-MLM-E on June 10, 2020, assessing \$114,563 in administrative penalties with \$22,912 deferred. Information concerning any aspect of this order may be obtained by contacting Caleb Olson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding SAI JBA INC dba Tijuana Grocery, Docket No. 2018-1272-PST-E on June 10, 2020, assessing \$10,751 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Taylor Pearson, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding Glendale Water Supply Corporation, Docket No. 2018-1399-PWS-E on June 10, 2020, assessing \$1,110 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Kevin R. Bartz, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding Felipe Guajardo, Docket No. 2018-1449-MSW-E on June 10, 2020, assessing \$2,625 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Ian Groetsch, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Braman Ranches LLC dba Mellon Creek Ranch, Docket No. 2018-1537-PST-E on June 10, 2020, assessing \$7,950 in administrative penalties with \$1,590 deferred. Information concerning any aspect of this order may be obtained by contacting Marla Waters, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding TANK WORKS, INC. dba Brazos Bend Home & Ranch, Docket No. 2018-1611-PWS-E on June 10, 2020, assessing \$1,659 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Clayton Smith, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding TX LFG Energy, LP, Docket No. 2018-1688-AIR-E on June 10, 2020, assessing \$17,325 in administrative penalties with \$3,465 deferred. Information concerning any aspect of this order may be obtained by contacting Carol McGrath, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Mo Pham dba 24th Discount Store, Docket No. 2018-1734-PST-E on June 10, 2020, assessing \$7,699 in administrative penalties with \$4,099 deferred. Information concerning any aspect of this order may be obtained by contacting Berenice Munoz, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Rainbow Rider Enterprises, Inc., Docket No. 2018-1751-WQ-E on June 10, 2020, assessing \$10,724 in administrative penalties with \$2,144 deferred. Information concerning any aspect of this order may be obtained by contacting Alejandro Laje, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Strawn, Docket No. 2019-0050-PWS-E on June 10, 2020, assessing \$675 in administrative penalties. Information concerning any aspect of this order

may be obtained by contacting Ryan Byer, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Luciano Trevino, Docket No. 2019-0250-WQ-E on June 10, 2020, assessing \$20,250 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Caleb Olson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding D.N.D. Corporation dba Quick Stop Food Mart, Docket No. 2019-0315-PST-E on June 10, 2020, assessing \$34,243 in administrative penalties with \$6,848 deferred. Information concerning any aspect of this order may be obtained by contacting Tyler Smith, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Roma, Docket No. 2019-0335-PST-E on June 10, 2020, assessing \$16,500 in administrative penalties with \$3,300 deferred. Information concerning any aspect of this order may be obtained by contacting John Fennell, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding BASF TOTAL Petrochemicals LLC, Docket No. 2019-0356-AIR-E on June 10, 2020, assessing \$29,125 in administrative penalties with \$5,825 deferred. Information concerning any aspect of this order may be obtained by contacting Richard Garza, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding QUIKTRIP CORPORATION dba QUIKTRIP 4045, Docket No. 2019-0423-PST-E on June 10, 2020, assessing \$8,250 in administrative penalties with \$1,650 deferred. Information concerning any aspect of this order may be obtained by contacting Hailey Johnson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Winona, Docket No. 2019-0485-PWS-E on June 10, 2020, assessing \$905 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding HOBICO, Incorporated, Docket No. 2019-0509-PWS-E on June 10, 2020, assessing \$1,117 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Samantha Duncan, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Harris County Municipal Utility District No. 238, Docket No. 2019-0725-PWS-E on June 10, 2020, assessing \$315 in administrative penalties with \$315 deferred. Information concerning any aspect of this order may be obtained by contacting Ronica Rodriguez, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Corix Utilities (Texas) Inc., Docket No. 2019-0758-PWS-E on June 10, 2020, assessing \$1,380 in administrative penalties with \$345 deferred. Information concerning any aspect of this order may be obtained by contacting Miles Wehner,

Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding Serapio Lara and Lydia Lara, Docket No. 2019-0828-MSW-E on June 10, 2020, assessing \$1,312 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Taylor Pearson, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default and shutdown order was adopted regarding IDRIS INVESTMENTS, INC. dba AFG Food Mart, Docket No. 2019-0844-PST-E on June 10, 2020, assessing \$5,650 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Kevin R. Bartz, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Rohm and Haas Texas Incorporated, Docket No. 2019-0874-AIR-E on June 10, 2020, assessing \$33,038 in administrative penalties with \$6,607 deferred. Information concerning any aspect of this order may be obtained by contacting Johnnie Wu, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Baytown, Docket No. 2019-0894-MWD-E on June 10, 2020, assessing \$18,000 in administrative penalties with \$3,600 deferred. Information concerning any aspect of this order may be obtained by contacting Aaron Vincent, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Ball Metal Beverage Container Corp., Docket No. 2019-0976-AIR-E on June 10, 2020, assessing \$7,623 in administrative penalties with \$1,524 deferred. Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Air Liquide Large Industries U.S. LP, Docket No. 2019-1006-AIR-E on June 10, 2020, assessing \$31,875 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Amanda Diaz, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Owens Corning Insulating Systems, LLC, Docket No. 2019-1021-AIR-E on June 10, 2020, assessing \$16,000 in administrative penalties with \$3,200 deferred. Information concerning any aspect of this order may be obtained by contacting Mackenzie Mehlmann, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding ELR Land Investments, LLC, Docket No. 2019-1026-MLM-E on June 10, 2020, assessing \$12,188 in administrative penalties with \$2,437 deferred. Information concerning any aspect of this order may be obtained by contacting Alejandro Laje, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Archer-Daniels-Midland Company, Docket No. 2019-1070-AIR-E on June 10, 2020, assessing \$20,625 in administrative penalties with \$4,125 deferred. Information concerning any aspect of this order may be obtained by contacting Carol McGrath, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Dumas, Docket No. 2019-1075-MWD-E on June 10, 2020, assessing \$17,100 in administrative penalties with \$3,420 deferred. Information concerning any aspect of this order may be obtained by contacting Harley Hobson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Hurst, Docket No. 2019-1117-WQ-E on June 10, 2020, assessing \$4,875 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Caleb Olson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Lilbert-Looneyville Water Supply Corporation, Docket No. 2019-1133-PWS-E on June 10, 2020, assessing \$417 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Julianne Dewar, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding RT 29 Development LLC, Docket No. 2019-1172-EAQ-E on June 10, 2020, assessing \$33,750 in administrative penalties with \$6,750 deferred. Information concerning any aspect of this order may be obtained by contacting Caleb Olson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Gulf South Pipeline Company, LP, Docket No. 2019-1202-AIR-E on June 10, 2020, assessing \$13,500 in administrative penalties with \$2,700 deferred. Information concerning any aspect of this order may be obtained by contacting Mackenzie Mehlmann, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding George Oberdorf dba Boyd Acres Water System, Docket No. 2019-1243-PWS-E on June 10, 2020, assessing \$868 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Julianne Dewar, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Montesino Developments, LLC dba Cash Register Services, Docket No. 2019-1263-PWS-E on June 10, 2020, assessing \$854 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Epifanio Villarreal, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding CALS'S CONVE-NIENCE, INC. dba Stripes 268 and dba Stripes 5043, Docket No. 2019-1283-PST-E on June 10, 2020, assessing \$20,581 in administrative penalties with \$4,116 deferred. Information concerning any aspect of this order may be obtained by contacting Hailey Johnson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Equistar Chemicals, LP, Docket No. 2019-1360-AIR-E on June 10, 2020, assessing \$9,626 in administrative penalties with \$1,925 deferred. Information concerning any aspect of this order may be obtained by contacting Richard Garza, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding ROUND MOUNTAIN EXPRESS INC. dba Bigs 108, Docket No. 2019-1391-PST-E on June 10, 2020, assessing \$16,125 in administrative penalties with \$3,225

deferred. Information concerning any aspect of this order may be obtained by contacting Carlos Molina, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Callahan County Water Supply Corporation, Docket No. 2019-1424-PWS-E on June 10, 2020, assessing \$232 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Miles Wehner, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Elderville Water Supply Corporation, Docket No. 2019-1652-PWS-E on June 10, 2020, assessing \$1,725 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Amanda Conner, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Rainbow Ranch of Texas, L.L.C., Docket No. 2019-1660-PWS-E on June 10, 2020, assessing \$60 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Steven Hall, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202002331  
Bridget C. Bohac

Chief Clerk  
Texas Commission on Environmental Quality  
Filed: June 10, 2020,



#### Notice of Correction to 30 TAC Chapter 319 Proposed Amendments

The Texas Commission on Environmental Quality (commission) published proposed amendments to 30 TAC Chapter 319 in the June 5, 2020, issue of the *Texas Register* (45 TexReg 3732). Errors are as submitted by the commission and should be corrected as follows:

On page 3735, in the proposed amendment to 30 TAC §319.2, the title should be underlined to read as follows:

§319.2. Exclusions for Land Application or Evaporation.

On page 3736, the proposed amendment to 30 TAC §319.9(b) is missing proposed rule text language, which was published in Table 2 of Figure: 30 TAC §319.9(b) (45 TexReg 3885) as underlined language. This language should be removed from under Table 2 and should be included under subsection (b) to read as follows:

(b) The following table sets forth the bacteria self-monitoring schedules applicable to treated domestic sewage effluent that is discharged to water in the state.

Figure: 30 TAC §319.9(b)

[Figure: 30 TAC §319.9(b)]

**Table 2**  
**MEASUREMENT FREQUENCY FOR [OF] BACTERIA [MEASUREMENT]**

<b>[Minimum Required Frequency<sup>1, 2, 3, 4]</sup></b>			
<b>Permitted Daily Average Flow (mgd)</b>	<b>Chlorine Systems</b>	<b>Ultraviolet Systems</b>	<b>Natural Systems</b>
>10	5/week	Daily	Daily
>5-10	3/week	Daily	5/week
>1-5	1/week	Daily	3/week
>0.5-1.0	2/month	Daily	1/week
0.1-0.5	1/month	5/week	2/month
<0.1	1/quarter	5/week	1/month

[(1) Sampling must be spaced across the time period at approximately equal intervals, with the exceptions of the five times per week sampling schedule. Five samples per week must be taken one on each of five days during a seven day period.]

[(2) A permittee that has at least twelve months of uninterrupted compliance with its bacteria limit may notify the commission of its compliance and request a less frequent measurement schedule.]

[(a) If the commission finds that a less frequent measurement schedule is protective of human health and the environment, the permittee will be given a less frequent measurement schedule. Daily will drop to 5/week, 5/week to 3/week, 3/week to 1/week, 1/week to 2/month, 2/month to 1/month, 1/month to 1/quarter, 1/quarter to 1/6 months.]

[(b) A violation of the bacteria limit by a facility that has been granted a less frequent measurement schedule will require the permittee to return to the standard frequency schedule.]

[(c) A permittee that has had a violation while on a less frequent measurement schedule may not apply for another reduction in measurement frequency for at least 24 months from the last violation.]

[(3) A chemical system other than chlorine will be required to comply with the ultraviolet frequency schedule.]

[(4) The executive director may establish a more frequent measurement schedule if necessary to protect human health or the environment.]

(1) Sampling must be spaced across the time period at approximately equal intervals, with the exception of the five times per week sampling schedule. Five samples per week must be taken one on each of five days during a seven-day period.

(2) A permittee that has at least 12 months of uninterrupted compliance with its bacteria limit may notify the commission of its compliance and request a less frequent measurement schedule.

(A) If the commission finds that a less frequent measurement schedule is protective of human health and the environment, the permittee will be given a less frequent measurement schedule. Daily will drop to five/week, five/week to three/week, three/week to one/week, one/week to two/month, two/month to one/month, one/month to one/quarter, and one/quarter to one/six months.

(B) A violation of the bacteria limit by a facility that has been granted a less frequent measurement schedule will require the permittee to return to the standard frequency schedule.

(C) A permittee that has had a violation while on a less frequent measurement schedule may not apply for another reduction in measurement frequency for at least 24 months from the last violation.

(3) A chemical system other than chlorine will be required to comply with the ultraviolet frequency schedule.

(4) The executive director may establish a more frequent measurement schedule if necessary to protect human health or the environment.

TRD-202002325

Patricia Duron

Program Supervisor, General Law Division

Texas Commission on Environmental Quality

Filed: June 9, 2020



#### Notice of Opportunity to Comment on an Agreed 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 Agreed Order (AO) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AO, the commission shall allow the public an opportunity to submit written comments on the proposed AO. 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 **July 20, 2020**. 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 the 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 the AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on July 20, 2020**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the com-

ment procedure at the listed phone number; however, TWC, §7.075, provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: J.P. GAS & MEGAMART, INC. dba J P Truckstop; DOCKET NUMBER: 2018-1071-PST-E; TCEQ ID NUMBER: RN102041225; LOCATION: 45950 Interstate 10 West, Winnie, Chambers 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)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide release detection for the pressurized piping associated with the UST system; 30 TAC §334.74(3), by failing to file a release determination report with the commission within 45 days after a suspected release occurred. Specifically, monthly inventory control records for the USTs, Tank 1 and Tank 2 from March 2018 - May 2018, indicated suspected releases and the respondent did not file a release determination report with the commission within the required 45-day time frame; and 30 TAC §334.72, by failing to report a suspected release to TCEQ within 24 hours of discovery. Specifically, monthly inventory control records for the USTs, Tank 1 and Tank 2 from March 2018 - May 2018, indicated suspected releases that were not reported; PENALTY: \$18,924; STAFF ATTORNEY: Jake Marx, Litigation Division, MC 175, (512) 239-5111; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-202002318

Charmaine Backens

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: June 9, 2020



#### Notice of Opportunity to Comment on Default Orders 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 Orders (DOs). 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 **July 20, 2020**. 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 each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Build-

ing 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 July 20, 2020**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on the DOs shall be submitted to the commission in **writing**.

(1) COMPANY: Brian Smith; DOCKET NUMBER: 2018-0843-PST-E; TCEQ ID NUMBER: RN106597966; LOCATION: 3650 Lawn Oak Drive, Orange, Orange County; TYPE OF FACILITY: an out-of-service underground storage tank (UST) system; RULES VIOLATED: TWC, §26.3475(d) and 30 TAC §334.49(a)(1), by failing to adequately protect from corrosion an out-of-service UST system; 30 TAC §334.54(b)(2), by failing to maintain all piping, pumps, manways, tank access points, and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons while temporarily out of service; and TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A) and §334.54(c)(1), by failing to monitor an out-of-service UST system for releases; PENALTY: \$15,187; STAFF ATTORNEY: Taylor Pearson, Litigation Division, MC 175, (512) 239-5937; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(2) COMPANY: Greenville USA Investments Inc dba Prime Stop USA; DOCKET NUMBER: 2018-1634-PST-E; TCEQ ID NUMBER: RN102049202; LOCATION: 4414 Wesley Street, Greenville, Hunt 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)(A), by failing to monitor the UST for releases at a frequency of at least once every 30 days; TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide release detection for the pressurized piping associated with the UST system; and TWC, §26.3475(c)(2) and 30 TAC §334.51(a)(6), by failing to ensure that all installed spill containment devices are maintained in good operating condition; PENALTY: \$5,124; STAFF ATTORNEY: Kevin Bartz, Litigation Division, MC 175, (512) 239-6225; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-202002319

Charmaine Backens

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: June 9, 2020



## Texas Ethics Commission

### List of Late Filers

Below is a list from the Texas Ethics Commission naming the filers who failed to pay the penalty fine for failure to file the report in reference to the specified filing deadline. If you have any questions, you may contact Sue Edwards at (512) 463-5800.

#### Deadline: 30 Day Pre-Election Report due February 3, 2020

Jorge Artalejo, 2914 Lebanon, El Paso, Texas 79930

Margarita Ruiz Johnson, P.O. Box 1073, Pearland, Texas 77588

Carey F. Lashley Jr., 7810 Candle Ln., Houston, Texas 77071

Jenifer Rene Pool, P.O. Box 572211, Houston, Texas 77257

#### Deadline: 8 Day Pre-Election Report due February 24, 2020

Lawrence A. Allen, 3717 Cork, Houston, Texas 77047

James A. Armstrong III, 1839 Leath St., Dallas, Texas 75212

Evan A. Bohl, 6206 Checkrein St., San Antonio, Texas 78240

Richard A. Bonton, 12680 West Lake Houston Pkwy., Ste. 510 PMB 180, Houston, Texas 77044

William J. Booher, 8127 Weeping Willow Pl, Missouri City, Texas 77459

Talbert T. Brimage, 24 Fisher St, Freeport, Texas 77541

Jasmine F. Crockett Esq., P.O. Box 152868, Dallas, Texas 75315

Jerry V. Davis, 5517 Pickfair, Houston, Texas 77026

Undrai Fizer, P.O. Box 682242, Houston, Texas 77268

Nicole H. Garza, 435 W. Nakoma St., Ste. 101, San Antonio, Texas 78216-2627

Robert Garza, 2116 Veterans Blvd., Ste. 5, Del Rio, Texas 78840

Christopher L. Graham, P.O. Box 625, DeSoto, Texas 75123

Michelle D. Hammel, 6340 N. Eldridge Pkwy. Ste. N107, Houston, Texas 77041

Teresa J. Hawthorne, P.O. Box 670844, Dallas, Texas 75367

Claver T. Kamau-Imani, 11839 Moss Branch Rd., Houston, Texas 77043

Robert Stanley Litoff, 7026 Forest Crest North, San Antonio, Texas 78240-3314

Marilynn S. Mayse, 2201 Main St. Ste. 1220, Dallas, Texas 75201

Kimberly R. McLeod, 4201 FM 1960, Ste. #503, Houston, Texas 77068

Bill Metzger (only email on file)

Melissa M. Morris, 7650 Springhill St Unit 704, Houston, Texas 77021

Fernando Jesus Padron, P.O. Box 40216, San Antonio, Texas 78229

Gocha Allen Ramirez, 886 Coyote Dr., Rio Grande City, Texas 78582

Jacorion X. Randle, P.O. Box 622, Beaumont, Texas 77704

Steve Riddell, 1308 Shady Creek Drive, Euless, Texas 76040

Byron K. Ross, 3223 North Park Dr., Missouri City, Texas 77459

Alexandra Smoots-Thomas, 5619 Feagan, Houston, Texas 77077

TRD-202002327

Anne Peters

Executive Director

Texas Ethics Commission

Filed: June 9, 2020



## General Land Office

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 *Federal Register* pp. 1439 - 1440). Under federal law, federal agency activities and actions affect-

ing the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of June 1, 2020 to June 5, 2020. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period extends 30 days from the date published on the Texas General Land Office web site. The notice was published on the web site on Friday, June 12, 2020. The public comment period for this project will close at 5:00 p.m. on Sunday, July 12, 2020.

FEDERAL AGENCY ACTIONS:

**Applicant:** Freeport LNG Development, L.P.

**Location:** The project site is located on the Freeport Harbor Ship Channel, near the City of Freeport, in Brazoria County, Texas. The Freeport Maintenance Offshore Dredge Material Disposal Site (ODMDS) is located approximately 3 miles offshore and about 1,000 feet southwest of the centerline of the Outer Bar Channel.

**Latitude & Longitude (NAD 83):** 28.982761, -95.309178

**Project Description:** Freeport LNG Development (FLNG) have requested a Department of the Army maintenance dredge permit to include the use of mechanical, hydraulic and hopper dredges and to dispose of the dredged material in the Freeport Harbor Maintenance Offshore Dredge Material Disposal Site (ODMDS). The maintenance dredge permit authorizes dredging of the entire FLNG Basin (both Dock 1 and Dock 2). Dredging conducted via a hydraulic cutter head dredge and/or mechanical clamshell will utilize to a dump scow barge. The barge will be transported to the Freeport Harbor Maintenance ODMDS where the material will be dumped.

Maintenance dredge cycles utilizing a hopper dredge will not require a barge for transportation of the dredged material. Each maintenance dredging cycle is expected to take 3 months to complete. Submittals to evaluate effects of dredging and disposal of dredge material will be conducted, as required by Section 103 of the MPRSA. FLNG has estimated that maintenance dredge cycles will occur annually and are estimated to remove approximately 250,000 cubic yards.

**Type of Application:** U.S. Army Corps of Engineers (USACE) permit application #SWG-2013-000147. This application will be reviewed pursuant to Section 10 of the Rivers and Harbor Act and Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972. The consistency review for this project may be conducted by the Texas Commission on Environmental Quality as part of its certification under §401 of the Clean Water Act.

**CMP Project No:** 20-1270-F1

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection, may be obtained from the Texas General Land Office Public Information Officer at 1700 N. Congress Avenue, Austin, Texas 78701, or via email at [pialegal@glo.texas.gov](mailto:pialegal@glo.texas.gov). Comments should be sent to the Texas General Land Office Coastal Management Program Coordinator at the above address or via email at [federal.consistency@glo.texas.gov](mailto:federal.consistency@glo.texas.gov).

TRD-202002330

Mark A. Havens

Chief Clerk and Deputy Land Commissioner

General Land Office

Filed: June 10, 2020



## Department of State Health Services

### Correction of Error

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopted amendments to 25 TAC §421.78 in the June 12, 2020, issue of the *Texas Register* (45 TexReg 4044).

Due to an error by the Texas Register, the text in 25 TAC §421.78(d)(10)(V) - (Z) was published incorrectly. The text should read as follows:

(V) APG Code (Obtained from 3M™ APG Grouper) if applicable (Up to 10);

(W) APG Category Code (Obtained from 3M™ APG Grouper) if applicable (Up to 10);

(X) APG Type Code (Obtained from 3M™ APG Grouper) if applicable (Up to 10);

(Y) Final APG Assignment Code (Obtained from 3M™ APG Grouper) if applicable (Up to 10);

(Z) Final APG Category Code (Obtained from 3M™ APG Grouper) if applicable (Up to 10);

TRD-202002328



## Texas Department of Insurance

### Company Licensing

Application to do business in the state of Texas for Dairyland National Insurance Company, a foreign fire and/or casualty company. The home office is in Stevens Point, Wisconsin.

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 Robert Rudnai, 333 Guadalupe Street, MC 103-CL, Austin, Texas 78701.

TRD-202002332

James Person

General Counsel

Texas Department of Insurance

Filed: June 10, 2020



## Public Utility Commission of Texas

### Public Notice of Staff Strawman for New 16 Texas Administrative Code (TAC) §25.226 Request For Comments

The staff of the Public Utility Commission of Texas (commission) has prepared a strawman for new 16 TAC §25.226. The strawman addresses the transfer of load into or out of the Electric Reliability Council of Texas (ERCOT) power region. The strawman applies to electric cooperatives, electric utilities, municipally owned utilities, and ERCOT. The section does not apply to a utility interconnecting load to its system for the first time.

The staff's strawman rule can be found on the commission's interchange filer system under Project No. 48249, Rulemaking Relating to the Transfer of Load into or out of the Electric Reliability Council of Texas Power Region. Written comments on the strawman rule may be filed through the Interchange on the commission's website as long as the Commission's Order filed in Docket No. 50664, *Issues Related to the State of Disaster for Coronavirus Disease 2019*, is in effect. A copy of all comments received may be viewed by accessing the Interchange at: <https://interchange.puc.texas.gov>. Should the Commission's Order

entered in Docket No. 50664 no longer be in effect, then parties may file written comments by submitting 16 copies to the commission's filing clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. Initial comments are due by July 20, 2020. Reply comments are due August 4, 2020. All responses should reference Project Number 48249.

Questions concerning this notice should be referred to Alicia Maloy, Senior Infrastructure Analyst, Infrastructure Division, (512) 936-7387. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1.

TRD-202002329  
Andrea Gonzalez  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: (512) 936-7244

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## Texas Water Development Board

### Applications for May 2020

Pursuant to Texas Water Code §6.195, the Texas Water Development Board provides notice of the following applications:

Project ID #51052, a request from the City of Corpus Christi, 1201 Leopard Street, Corpus Christi, Texas 78469-9277, received on May 8, 2020, for \$222,475,000 in financial assistance from the State Water Implementation Fund for seawater desalination project.

Project ID #51044, a request from Alliance Regional Water Authority, 1040 State Highway 123, San Marcos, Texas 78666-7739, received on May 11, 2020, for \$65,000,000 in financial assistance from the State Water Implementation Fund for second phase of the project to develop a Carrizo aquifer wellfield with an initial capacity of 5,500 acre-feet per year, and an ultimate capacity of 35,690 acre-feet per year.

Project ID #51066, a request from Brazosport Water Authority, 1251 Farm-to-Market Road 2004, Lake Jackson, Texas 77566-4096, received on May 11, 2020, for \$15,000,000 in financial assistance from the State Water Implementation Fund for the Dow Reservoir and Pump Station Expansion project. Project would provide additional water storage capacity and would include construction of an upland, off-channel reservoir, intake and pump station, outlet and emergency spillway, and floodplain enhancements that provide floodplain mitigation and stream restoration.

Project ID #51067, a request from Gulf Coast Water Authority, 3630 Farm-to-Market Road, Texas City, Texas 77591-4824, received on May 11, 2020, for \$45,000,000 in financial assistance from the State Water Implementation Fund for the southeast transmission line, Old Galveston line replacement project.

Project ID #62893, a request from Port O'Connor Improvement District, P.O. Box 375, Port O'Connor, Texas 77982-0375, received on May 12, 2020, for \$6,000,000 in financial assistance from the Drinking Water State Revolving Fund for new water wells and reverse osmosis development project.

Project ID #51021, a request from the City of Houston, P.O. Box 1562, Houston, Texas 77251-1562, received on May 12, 2020, for \$38,000,000 in financial assistance from the State Water Implementation Fund for the northeast water treatment plant project.

Project ID #51001, a request from Upper Trinity Regional Water District, 900 North Kealy Street, Lewisville, Texas 75057, received on

May 12, 2020, for \$413,000,000 in financial assistance from the State Water Implementation Fund for the continued development of the Lake Ralph Hall project.

Project ID #51055, a request from Guadalupe Blanco River Authority on behalf of the City of Carrizo Springs, 933 East Court Street, Seguin, Texas 78155-5819, received on May 12, 2020, for \$47,100,000 in financial assistance from the State Water Implementation Fund for the Carrizo groundwater supply project.

Project ID #73887, a request from the City of Pearland, 3519 Liberty Drive, Pearland, Texas 77581-5416, received on May 12, 2020, for \$75,000,000 in financing from the Clean Water State Revolving Fund for the John Hargrove water reclamation facility's expansion project.

Project ID #73888, a request from the City of Diboll, 400 Kenley Street, Diboll, Texas 75947, received on May 12, 2020 for \$4,000,000 in financial assistance from the Clean Water State Revolving Fund for a wastewater treatment plant improvement project.

TRD-202002315  
Ashley Harden  
General Counsel  
Texas Water Development Board  
Filed: June 8, 2020

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## Workforce Solutions Deep East Texas

### RFQ 20-399 Legal Services

The **Deep East Texas Local Workforce Development Board dba Workforce Solutions Deep East Texas** is issuing a Request for Proposals for the FOR THE OPERATION AND MANAGEMENT OF WORKFORCE SOLUTIONS DEEP EAST TEXAS CHILD CARE SERVICES (CCS) SYSTEM

A copy of the RFP # 20-395 is available on the Board's website at [www.detwork.org](http://www.detwork.org).

**Deadline for Submission of Proposals: 11:00 p.m. CST, Monday, April 6, 2020.**

Proposals will ONLY be accepted via email and must be submitted to [kmoulder@detwork.org](mailto:kmoulder@detwork.org). Proposals submitted via private or public mail carrier, courier service, fax, or hand delivery will not be accepted.

Requests for copies of the RFP and questions regarding the RFP can be made to:

Kim Moulder, Staff Services Officer

Workforce Solutions - Deep East Texas

415 South First Street, Suite 110B

Lufkin, Texas 75901

Phone: (936) 639-8898 Fax: (936) 633-7491

Email: [kmoulder@detwork.org](mailto:kmoulder@detwork.org)

The Deep East Texas Local Workforce Development Board plans, oversees, and evaluates employment and training services to Angelina, Jasper, Newton, Nacogdoches, Houston, Trinity, Shelby, Polk, San Augustine, San Jacinto, Sabine, and Tyler Counties. Bidders will provide services throughout the entire region and will coordinate with other workforce service providers.

TRD-202002313

Kim Moulder  
Staff Service Specialist  
Workforce Solutions Deep East Texas  
Filed: June 8, 2020



## How to Use the Texas Register

**Information Available:** The sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

**Governor** - Appointments, executive orders, and proclamations.

**Attorney General** - summaries of requests for opinions, opinions, and open records decisions.

**Texas Ethics Commission** - summaries of requests for opinions and opinions.

**Emergency Rules** - sections adopted by state agencies on an emergency basis.

**Proposed Rules** - sections proposed for adoption.

**Withdrawn Rules** - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

**Adopted Rules** - sections adopted following public comment period.

**Texas Department of Insurance Exempt Filings** - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

**Review of Agency Rules** - notices of state agency rules review.

**Tables and Graphics** - graphic material from the proposed, emergency and adopted sections.

**Transferred Rules** - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

**In Addition** - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

**How to Cite:** Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 43 (2018) is cited as follows: 43 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 "43 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 43 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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